

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.538 of 2008

=====

Murari Raut, Son of Nand Raut, resident of Village- Nautan Khurd, Police
Station- Majhaulia, District- West Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Amrendra Nath Verma, Advocate
		Mr. Paras Nath Rai, Advocate
		Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and

HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 18-09-2025

One and only issue involved in the instant appeal is as to whether the appellant is entitled to get benefit of doubt on the ground of absolutely perfunctory investigation, nay, practically no investigation in a case of commission of murder punishable under Section 302 of the IPC.

2. Majhaulia P.S. Case No. 105/02 dated 09th June 2002 was registered under Section 302/34 of the IPC and Section 27 of the Arms Act by the Officer-in-Charge of the said police station on the basis of a statement made by one Deba Singh. The FIR contained the following incidents:

3. On 09th June 2002, Sunday at about 6:30 AM, the informant was going with his nephew Uday Narayan Singh by a motorcycle bearing Registration No. **BR0-5S-1592**. Uday was the rider of the motorcycle and the informant was sitting on the back



seat of the said motorcycle. They were going to village Nautan to arrange some labourer for cultivation of agricultural land situated at Bhaironpur. When they reached village Nautan, mother of Murari Raut stopped them and asked Uday about their destination. Then, she started talking with Murari and Uday for about 10 minutes. Thereafter, the informant and Uday proceeded towards their destination. When they reached in front of sugarcane field situated by the side of the garden of one Amar Dev Lal, accused Murari Raut, Suresh Singh, Nand Raut came out of the said sugarcane field and resisted them from proceeding with the motorcycle. When Uday stopped the motorcycle, Nand Raut directed others to apprehend the informant and Uday and kill them by opening fire. Immediately, Murari Raut, the appellant opened fire at Uday Narayan Singh causing gunshot injury on his right hand, he fell down from motorcycle and tried to flee away from the spot but accused Suresh Singh caught hold of him. Then, Murari Raut fired at the back side of the earlobe touching the barrel on the place of injury. Even after receiving successive gunshot injuries, Uday tried to flee away from the spot. In the meantime, hearing the sounds of firearm, one Nageshwar Singh and Lal Babu Singh rushed to the place of occurrence and saw the incident. They raised hue and cry. Hearing the said hue and cry,



accused persons fled away from the said spot; failing which, there was every apprehension that the informant might also be murdered.

4. It is alleged by the informant that the accused persons hatched a conspiracy against the deceased, who used to raise protests against the illegal acts and loitering of the accused persons.

5. The Officer-in-Charge of Majhaulia Police Station instructed Harendra Prasad Singh to investigate the case.

6. It is further ascertained from the Station House Diary Entry Nos. 158 and 159, recorded at 07:00 AM and 07:10 AM respectively on 9th June 2002, that at about 07:00 AM, the appellant, namely, Murari Raut, came to the police station riding a motorcycle bearing No. BR-05-A-8216 and handed over the SBBL 3459 with identification mark LN0327/DMK/98A and the motorcycle to the on-duty police officer, and made a statement that he committed the murder of Uday Narayan Singh by firing and his dead body was lying by the side of the sugarcane field. The on-duty police officer received the SBBL gun and kept it in the police malkhana. He also received the motorcycle by which Murari came to the police station. Station Diary Entry No. 159 states that the Officer-in-Charge of the Police Station, namely, Mahendra Prasad



Yadav, along with other police personnel, namely, Ramshankar Kumar, Ram Ratan Paswan, and others, whose names we cannot decipher from the photostat copy of the Station House Entries (Exhibit-5), left the police station to work out the said information.

7. The informant made his statement, which was treated as the FIR, at the place of occurrence

8. During investigation, S.I. Harendra Prasad Singh prepared the inquest report over the dead body of Uday Narayan Singh, sent the dead body to the hospital for Post-mortem examination, recorded the statement of the witnesses under Section 161 of the CrPC and submitted charge-sheet against three accused persons, namely, the present appellant, Sanjay singh and and Nandu Singh under Section 302/34 of the IPC and Section 27 of the Arms Act.

9. Only Murari Raut, the appellant herein, faced trial before the learned Additional District and Sessions Judge, Fast Track Court 1st West Champaran, Bettiah.

10. The trial court framed charges against the appellant under Section 302 IPC and Section 27 of the Arms Act on 15th February 2003. As the appellant pleaded not guilty when the charge was read over and explained to him, the trial of the case commenced.



11. In order to bring home the charge against the accused, prosecution examined, in all, 08 witnesses.

12. Amongst them, PW-5 Deba Singh is the de facto complainant and claimed to be an eye-witness to the occurrence. PW-1, Premanand Singh; PW-2, Alakh Nath Tiwari; PW-3, Shaktinath Tiwari; and PW-4, Muralidhar Tiwari are residents of the neighboring area where the incident took place. PW-1 is a resident of Village Dudha within Police Station Majhauria; PW-2, PW-3, and PW-4 are residents of Village Nautan Khurd.

13. PW-6, Niraj Kr. Singh, is a resident of Village (Mauza) Dudha Bhalia within the same police station. It appears from the evidence that, on the date and time of the occurrence, he went to a shop situated by the side of the place of occurrence to purchase diesel.

14. PW-7, namely, Dr. Ravindra Kumar, is the Medical Officer attached to M.J.K. Hospital, Bettiah, on 9th June 2002. He conducted the *post-mortem* examination over the dead body of Uday Narayan Singh.

15. PW-8, Md. Shakir Hussain, is a resident of Village Mansha Tola. He used to work at the relevant point of time as an advocate's clerk. He proved/affirmed the signature of Mahendra



Prasad Yadav, the then Station House Officer of the said Majhauria Police Station, on the formal FIR.

16. During the trial of the case, the statement of PW-5, the *post-mortem* report of the deceased Uday Narayan Singh, the signature of the Station House Officer on the formal FIR, the inquest report, and Police Station Diary Entry Nos. 158 and 159 were marked as Exhibits 1 to 5, respectively.

17. The Defence case, as disclosed from the trend of cross-examination of the witnesses on behalf of the prosecution and examination of the accused under Section 313 of the CrPC appears to be complete denial of the prosecution version. It is pleaded by the appellant that there was previous village dispute and differences between the appellant and the deceased and the informant, therefore, he was wrongly implicated in the case by the informant. The learned Additional District and Sessions Judge, Fast Tract Court-I, West Champaran, Bettiah held the appellant guilty for committing offence under Section 302 of the IPC and Section 27 of the Arms Act and by his judgment and order of conviction and sentence dated 16th April 2008, the appellant was sentenced to suffer imprisonment for life for the offence under Section 302 of the IPC and rigorous imprisonment for 03 years for the offence under Section 27 of the Arms Act with fine of Rs.



5,000/- in default, Simple Imprisonment for further period of 01 year.

18. The convict has preferred the instant appeal assailing the aforementioned judgment and order of conviction and sentence.

19. The learned Advocate for the appellant, at the outset, submits that the trial court passed the order of conviction and sentence against the appellant only on the basis of the evidence of PW-5 and PW-7, and the Station House Entry Nos. 158 and 159 (collectively marked as Exhibit-5), recorded by the on-duty police officer attached to Majhaulia Police Station at 07:00 AM and 07:10 AM respectively. However, it is submitted by the learned Advocate for the appellant that the evidence on record is not enough, and the documents relied upon by the learned trial judge also do not establish the guilt of the accused; therefore, he is entitled to get the benefit of doubt.

20. In support of his contention, the learned Advocate on behalf of the appellant first takes us to the evidence of PW-5, Deba Singh, who is the informant of this case. It is found from his evidence that about two and a half years before the date of his deposition, the incident took place on one Sunday at about 06:30 AM. He and his nephew Uday were going to Bhaironpur to engage



some labourers for agricultural work by motorcycle. Deceased Uday Narayan Singh was the motorcycle rider and the informant was sitting behind him on the rear seat of the motorcycle. On their way to Bhaironpur, they were stopped in front of the house of the appellant at village Nautan. His mother talked to them for about 10 minutes. Again, they proceeded to Bhaironpur. As soon as they reached near the garden of one Amar Deo Lal, three persons—namely, Murari Raut, Nand Raut, and Suresh Singh—appeared before them. Murari was armed with a gun. Nand Raut directed him to kill them. Immediately, Murari fired at Uday, and he received a gunshot injury on his right arm. The informant and Uday fell down on the ground from the motorcycle. Uday started to flee away, but Suresh Singh caught hold of him, as a result of which he again fell down on the ground. Thereafter, Murari fired at Uday behind his right earlobe, and he died instantaneously. During the incident, one Lal Babu and Nageshwar Singh reached the place of occurrence; other villagers also assembled there. The informant started to cry, and the accused persons fled.

21. PW-5 also stated on oath that whenever accused Suresh Singh or Murari Singh used to go to their village they started playing obscene songs by a tape recorder. They also used to tease the woman of their village. Over the said incident, Uday



raised a voice of protest, therefore, the relation of Uday with Murari Raut and Suresh Singh was inimical and out of grudge Murari committed murder of Uday.

22. From the evidence of PW-5, it is also ascertained that he came to know from the police that after the occurrence, Murari went to the police station, admitted his guilt, and deposited his gun in the said police station. The written complaint submitted by Deba Singh was marked as Exhibit-1. The post-mortem examination over the dead body of Uday Narayan Singh was done on the date of occurrence itself, and the dead body was handed over to the relatives of the deceased at about 04:00 PM. Thereafter, Uday was cremated.

23. Considering the cross-examination, the defense tried to prove that both the informant and the deceased, namely, Uday, had previous criminal antecedents and were also accused in serious criminal cases of murder and cognate penal provisions. The witness, however, denied the said suggestions. It is also found from the cross-examination of PW-5 that Murari Raut was previously working in the armed forces. He also denied the suggestion that he was released from his service due to his mental illness. From his cross-examination, we also find that the I.O. did not seize the motorcycle of Uday from the place of occurrence. No



examination was conducted to determine whether there were stains of blood on the said motorcycle. From the evidence of PW-5, it is also ascertained that the wearing apparel of Uday was soaked with blood, but the blood-stained wearing apparel was not seized. We also find that the place where the deceased fell after receiving the gunshot injury was soaked with blood, but the I.O. did not seize the blood-soaked earth and controlled earth from the place of occurrence. Thus, there was no occasion for the I.O. to obtain a forensic report regarding the bloodstained wearing apparel of the deceased and the bloodstained and controlled earth of the place of occurrence.

24. Before dealing with the evidence of PW-7, the autopsy surgeon, we proposed to deal with the evidences of PW-1 to PW-4. From the evidence of PW-1, namely, Parmanand Singh, we found that on the date of occurrence at about 07:00AM, he heard a hue and cry and came out from his house. He heard that the appellant fired at Uday, when he reached village Nautan, he saw uday lying dead near the garden. He also saw PW-5 at the spot. PW-5 told him that Murari committed murder of Uday. It is also found from the evidence of PW-1 that the appellant had visiting terms with Suresh Singh. Suresh had fixed a tape recorder in his motorcycle and used to play obscene songs by his tape



recorder whenever, he rode the motorcycle and went to some other village. Over the said incident, Uday and some other villagers protested and told them not to play obscene songs by the said tape recorder.

25. PW-2, namely, Alok Nath Tiwari, was attending nature's call on the date of time of occurrence at a place about 02 bighas away from the place of occurrence. Suddenly, he heard a noise, "kill them, kill them". Immediately thereafter, he heard sounds of firing. Then, he rushed to the road and saw Murari Raut fleeing away with a gun in his hand. Then he reached the place of occurrence and found PW-5, Deba Singh crying and saying Murari and Suresh Killed his nephew Uday Narayan Singh. PW-2 was also a witness of Inquest Report prepared by one Ramshankar Kumar under the instruction of the SHO, namely, Mahendra Prasad Yadav. PW-2 has proved the Inquest Report and it was marked as Exhibit-4. He also proved Station House Diary Nos. 158 and 159 recorded by the Additional SHO, Harendra Prasad Singh of Majhulia P.S., copies of the said two Station House Diary Entries were marked as Exhibit-5 with objection. From the cross-examination of PW-2, it is found that there was no signature of any police officer below the Station Diary Entry Nos. 158 and 159.



26. PW-3, namely, Shaktinath Tiwari, also reached at the place of occurrence after the incident. When he was proceeding towards the place of occurrence, he saw Suresh Singh and Murari Raut going towards their home. He heard the incident from the informant.

27. Similar is the evidence of Muralidhar Tiwari (PW-4 herein). He also heard the incident from Deba Singh. When he reached the place of occurrence, he found the dead body of Uday lying on the ground, and it was full of blood. His motorcycle was lying at some distance from his dead body. He heard the incident from PW-5.

28. PW-6, Niraj Kr. Singh, stated in his evidence that on the date of occurrence, at about 06:30 to 07:00 AM, he went to a shop situated in Village Nautan Khurd to purchase diesel. While he was weighing the diesel in a jerry can, he heard two sounds of firing. He also saw that the villagers were running towards the place of occurrence. He rushed to the place of occurrence and saw Uday lying on the ground on the right side of the road. Uday's uncle was standing there and was yelling that Uday was killed by Murari. He was also stating that Murari opened fire at Uday on being asked by Nand Raut. He also said that Suresh apprehended



Uday and Murari opened fire at him. He also found Murari and others at the place of occurrence.

29. It transpires from the evidence of PW-7, Dr. Ravindra Kumar, that he conducted the post-mortem at MJK Hospital, Bettiah, over the dead body of Uday Narayan Singh, identified by Constable No. 505, Rabindra Kumar Singh, Chaukidar Tilak, Udesch Hazara, and villagers Bindeshwari and Ajeet, on 09th June 2002 at 11:40 AM. The autopsy surgeon found the following antemortem injuries on the said body of Uday Narayan Singh:

*“1. Lacerated wound with ragged margin size about ½ inch * 1/4 inch into cavity deep over left side just below ear (near left mandibular area). It was the wound of entry.*

*2. Lacerated wound over right forearm with tendon exposed about 4 inch * 2 inch x ½ inch (muscle deep) being wound of entry.*

3. On dissection of injury no. 1, surgeon found fracture of upper part of left mandible with blood and blood clots with fracture of left orbit along with neighboring



scalp brain matter and brain tissues were lacerated. The autopsy surgeon recovered pellets from brain substance which were reserved and sealed and handed over to police.

4. On dissection of injury no. 2, he did not find any fracture or radius or ulna, but laceration of muscles, vessels and tendons were found with blood cloths and 7 pellets were recovered from the wound which were preserved, sealed and handed over to the police. He opined that the cause of death of the deceased was due to the above noted injuries leading to hemorrhage and shock caused by firearms.

5. The postmortem report was marked as Exhibit-2. The Medical Officer also found rigor mortis present all over the body.”

30. During cross-examination, the defense tried to discredit the evidence of PW-7, suggesting that *rigor mortis* all over the body could not be found within 5/6 hours of death. The medical officer, however, denied the said suggestion. During cross-examination, the defense took affirmative explanation of the



injuries, and the autopsy surgeon replied that he did not find any exit wound. Injury No. 1 was caused by a bullet; it was a pellet injury caused by a cartridge. Ten pellets were recovered from injury No. 1, which was mentioned in the *post-mortem* report.

31. Learned Advocate on behalf of the appellant has assailed the impugned judgment passed by the learned Additional Sessions Judge, Fast Track Court-I, West Champaran, Bettiah on the following grounds:

(i) He submits that the effect is on the de facto complainant; no other person claimed to be the eyewitness of the occurrence. Witnesses No. 1 to 4 came to the place of occurrence after the incident took place. Therefore, the trial court relied on the solitary evidence of PW-5 regarding the incident and how the appellant allegedly committed the murder of his nephew, Uday Narayan Singh.

(ii) It is further submitted by him that from the evidence of PW-5 and other witnesses, it is ascertained that there was a previous dispute between Uday on one hand and Murari and Suresh on the other over playing obscene songs by a tape recorder attached to the motorcycle of Suresh Singh. The deceased raised a protest against playing obscene music by the appellant and his associate Suresh Singh. Thus, the court cannot refuse to consider if



the appellant was falsely implicated by the informant. No such discussion was made by the trial court in the impugned judgment. Next, the learned counsel for the appellant further submits that PW-5 stated that Murari Raut landed a fatal blow to the deceased behind his earlobe, touching the barrel on the body of the deceased. Thus, the said injury was caused from very close range; however, the autopsy surgeon did not find charring, tattooing, or singeing around the wound of entry behind the earlobe. Therefore, the evidence of PW-5 becomes suspect when it is examined along with the evidence of the autopsy surgeon and the post-mortem report.

(iii) It is submitted by the learned Advocate for the appellant that according to the prosecution, accused Murari Raut went to the police station immediately after the occurrence, surrendered himself before the on-duty police officer and made a statement that he committed murder of Uday with the help of his licensed SBBL gun and handed over the said gun to the on-duty police officer. The on-duty police officer recorded the said fact in the Station House Diary Entry No. 158 and had kept the gun in police station *Malkhana*. It is vehemently urged by the learned Advocate for the appellant that the police officer, did not seize the said gun. No seizure list was prepared also in respect of the



motorcycle which was also handed over to police by the appellant. The I.O. did not examine the motorcycle to ascertain as to whether there was a tape recorder attached with it. The SBBL gun which was allegedly handed over to the police by the appellant himself as the weapon of offence was not formally seized, sealed, and labelled by the I.O. The said gun was not even sent to the ballistic expert for his opinion as to whether the said gun was in working condition and also to ascertain the bore and gauge of the barrel as well as the bore of the cartridge which the said gun was capable of firing. Therefore, prosecution hopelessly, failed to prove that the SBBL gun which was allegedly handed over to the on-duty police officer by the appellant himself in the said police station was the offending weapon with the help of which murder of the deceased was committed. The learned Advocate on behalf of the appellant further argues that the police officer generally records the statement of the appellant even under Section 161 of the CrPC. It is submitted by him that a statement of the accused recorded by the police is not admissible in evidence but it was the primary duty of the I.O. to record any statement made by the accused admitting commission of offence and place it in the case diary to ascertain as to whether the statement made by him could be corroborated by the statement of other witnesses.



32. When the prosecution case relates to confession of guilt by the appellant coupled with delivery of weapon of offence, it was the bounded duty of the I.O. to get the statement of the accused recorded under Section 161 of the CrPC. No step was also taken by the I.O. during investigation of the case.

33. Learned Advocate on behalf of the appellant thus, submits that the investigation of this case is not only a glaring incidence of perfunctory investigation but a case of no investigation at all. In a case of no investigation, the appellant cannot be convicted under the charge of Section 302 of the IPC read with Section 27 of the Arms Act.

34. In support of is argument, learned counsel for the appellant refers to a decision of the Hon'ble Supreme Court in **Sukhwant Singh v. State of Punjab**, reported in (1995) 3 SCC 367. In the said reported decision, paragraph no. 21 described a circumstance where PW-6 recovered one empty cartridge from the spot and a pistol alongwith some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty cartridge and the seized pistol to the ballistic expert for the examination and expert opinion. Comparison could have provided link evidence between the crime and the accused.



This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before the Hon'ble Supreme Court. It hardly needs to be emphasized that in cases where injuries are caused by fire arms, the opinion of the Ballistic Expert, is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent. Non examination of the weapon of offence by the prosecution and failure to produce the Ballistic Expert opinion along with other circumstances, inspired the Hon'ble Supreme Court to set aside the order of conviction of the appellant only on the basis of the sole testimony of PW-3.

35. Learned Advocate on behalf of the prosecution had no scope to deny the lacunae pointed out by the learned Advocate for the appellant in record. It is only submitted by him that immediately after the occurrence, the appellant went to the police station and handed over the SBBL Gun with the help of which he committed the murder of the Uday Narayan Singh. The said fact was recorded in the Station House Diary, therefore, this piece of evidence will surely connect the appellant with the charge labelled



against him and there is no reason for interference against the judgment delivered by the trial court.

36. Section 102 of the Criminal Procedure Code, 1973, empowers a police officer to seize certain properties. Section 102 runs thus:

“102. Power of police officer to seize certain property. — (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:]

[Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the



possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]”

37. Thus, it is the bounden duty of a police officer to seize any property which creates suspicion of commission of any offence. In the instant case, the appellant/accused himself produce a SBBL Gun to the on-duty police officer in the police station stating that the said gun is the offending weapon. Thus, seizure of the said gun was absolutely necessary under the provision of Section 102 of the CrPC. It was also the duty of the I.O. to seal and label the seized gun so that during trial, the offending weapon may not be confused to be any other weapon. It is the duty of the trial court to mark the offending weapon as a material exhibit, obtain the signatures of witnesses, label it as a paper exhibit, and confront the offending weapon with the autopsy surgeon to ascertain whether it was capable of causing the injuries sustained by the deceased. This court feels from the nature of investigation made by the I.O. that the I.O. does not have the basic knowledge as to how an investigation is to be conducted. Of course, there are judgments where under certain circumstances, failure on the part of the prosecution to recover and produce the offending weapon



was not held to be fatal under the facts and circumstances of a particular case. But in the instant case, we are of the view that non production of the SBBL gun which was allegedly handed over by the appellant to the police, failure on the part of the I.O. to produce the Firearm for ballistic examination as well as failure to examine the pellets which was recovered from the wounds of the deceased is absolutely fatal for the prosecution.

38. The decision of **Sukhwant Singh (supra)** was specifically relied on by the Hon'ble Supreme Court in ***Ram Singh Vs. State of UP*** reported in **(2024) 4 SCC 208**. Thus, the Hon'ble Supreme Court emphasized that in cases where injuries are caused by firearm, the opinion of the ballistic expert becomes very important to connect a crime cartridge recovered during the investigation to the firearm used by the accused with the crime, failure to produce expert opinions in such cases affects trustworthiness of the prosecution case. We are absolutely aware that in the case of ***State of Punjab v. Jugraj Singh***, reported in **(2002) 3 SCC 234**, the Hon'ble Supreme Court opined that when there is convincing evidence of eye-witnesses, non-examination of expert would not affect the trustworthiness of the version put forth by the witness. The same principle was relied on in ***Gulab Vs. State of U.P.*** reported in **(2022) 12 SCC 677**.



39. On the contrary, in **Pritinder Singh @ Lovely vs The State of Punjab** reported in (2023) 7 SCC 727, the Hon'ble Supreme Court in the facts and effects of that case held that conviction cannot be sustained. That, apart from not collecting any evidence as to whether the gun used in the crime belonged to the appellant or not, even the ballistic expert had not been examined to show the wad and pellets were fired from the SBBL gun of the appellant. In case of such nature as in hand when there was serious doubt as to the credibility of the **Sukhwant Singh v. State of Punjab**, (1995) 3 SCC 367 witnesses, the failure to examine ballistic expert would be a glaring defect of the prosecution case.

40. It is settled law that the suspicion, however strong may be, cannot take place of proof without reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt.

41. In the light of the cardinal axiom of criminal administration of justice stated above, when we have examined the case, it appears to us that this is a case of practically no investigation; and without proper investigation the police submitted the charge-sheet against the accused.



42. Let us elaborate the reason of our considered opinion. It is the case of the prosecution that immediately after the occurrence, the appellant surrendered himself in the local police station and handed over one gun, claiming the same to be the weapon of offence. Police did not arrest him formally and took him to custody then and there. On the other hand, he was made to sit inside the police station. Had he been in custody of police and his statement was recorded by the police officer and apprehended to his statement, the SBBL gun which he deposited in the police station was seized, his statement relating to delivery of gun and have been admissible in evidence under Section 27 of the Indian Evidence Act. No such statement was recorded by the I.O. Even during trial, the offending weapon was not produced in court. The pellets which were recovered from the wounds of the deceased were also not formally seized and produced before the court during trial to mark them as material exhibits. Thus, investigation was not only perfunctory, but also the role of the prosecution is found to be improper, lackadaisical and shrouded with suspicion. For this reason also, the appellant is entitled to get benefit of doubt.

43. In the instant case, however, it was deduced from the evidence on record that the appellant himself surrendered before the police station and handed over one SBBL gun saying that with



the help of the said gun, he committed the murder of Uday. This statement was not judicially recorded by the I.O. Surprisingly enough, he did not take any attempt even to record the statement by himself. In such case, the statement of the accused recorded by the police could have been contradicted with him and the I.O. of the case. The prosecution also failed to examine the I.O. We have repeatedly stated that the firearm was not seized, sealed, and labelled, nor produced before the court during the trial. Therefore, it is not a case of non-recovery of the weapon, but a case of suppression of the most important evidence by the investigating authority at the time of trial. The prosecution relied on Station House Diary Entries No. 158 and 159 to prove that the appellant surrendered himself and deposited the weapon of offence, and that it was recorded in the Station House Diary. It is needless to say that the Station House Diary is not evidence, nor can it be used by the court as a substantive piece of evidence. It can only be used for the purpose of corroboration or contradiction with the person who recorded the statement. The prosecution has failed to produce the police officer who recorded the said Station House Diary Entries No. 158 and 159. Therefore, on the basis of the said diary entries, the Court is not in a position to hold that the weapon, even if it was



produced by the accused/appellant as the weapon of offence, was indeed the weapon used in the commission of the crime

44. In *State of Uttarakhand v. Jainail Singh*, reported in **(2018) 1 SCC 128**, The Hon'ble Supreme Court upheld the judgment of acquittal passed by the High Court of Uttarakhand on the ground of infirmities, including the infirmity with regard to a particular type of mark around the wound of entry behind the lobe of the ear. According to the prosecution's case, the shot was fired from a very short distance, as stated by the informant—that the barrel of the gun was touched behind the earlobe of the deceased. However, as per the medical evidence of the doctor, a particular type of mark, where the pellets were hit, should have been present (such as charring, tattooing, or singeing), but no such mark was noticed around the place of injury. No explanation was given for this. This also raised doubt in the prosecution's case.

45. This Court is fully aware that a defective investigation in a criminal case is not always fatal to the prosecution when there is direct oral evidence. In *Munna Lal v. State of U.P.*, reported in **(2023) 18 SCC 661**, the Hon'ble Supreme Court held in paragraph 40 as follows:

“In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2



and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the Appellants, thereby creating reasonable doubt in the prosecution case.”

46. In the instant case, the non-examination of the Investigating Officer (I.O.) has left numerous questions unanswered, such as: Why was the appellant's statement not recorded either by the I.O. or recorded judicially? Secondly, why was the SBBL gun, allegedly handed over to the police by the appellant, not seized, sealed, and labelled? Why were the pellets and the gun not sent to the ballistic expert for examination? Why were the blood-soaked clothing of the deceased not seized? Why was the appellant's motorcycle, allegedly used to play obscene songs, not seized to establish motive? Why was the sketch map of the place of occurrence not prepared? Why was the blood-soaked earth and controlled earth from the place of occurrence not recovered?

47. Considering such infirmities in the prosecution's case, we are of the view that the trial court failed to consider the above-mentioned lacunae in the prosecution's case and, based on



the oral evidence of PW-5 as well as relying on Station House Diary Entries No. 158 and 159, convicted the appellant and sentenced him to suffer imprisonment for life for the offence punishable under Section 302 of the IPC and rigorous imprisonment for 03 years for the offence punishable under Section 27 of the Arms Act, with a fine of Rs. 5,000/-, and, in default, simple imprisonment of one year. On careful examination of the evidence on record independently, along with the judicial precedents, we are not agreeable with the judgment passed by the trial court. Prosecution's case suffer from serious infirmities for which the appellant is entitled to get benefit of doubt.

48. Accordingly, the order of conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 302 of the IPC read with Section 27 of the Arms Act.

49. The appellant, namely, Murari Raut, of Cr. Appeal (DB) No. 538 of 2008, is already on bail, and having been acquitted, let him be discharged from the liabilities of bail bonds and sureties, if any.

50. Before we part with, we think that we must delineate the standard operating procedure to be followed by the police officers during investigation. These are as follows:



(i) At the commencement of investigation, the Investigating Officer shall visit the place of occurrence and prepare a sketch map of the place of occurrence, stating, particularly, the place of offence and surrounding places as to whether there is any residential house, agricultural field or other specially identifying characteristics in the place of occurrence.

(ii) During investigation, it is the duty of the I.O. to examine the informant and other eye-witnesses, if any, and the people residing in the neighbourhood. The time and date of examination of the above witnesses must be reflected in the General Diary Entry.

(iii) In case where the informant and witnesses states that they would be able to identify the accused, though not named in the FIR, the I.O. shall take step immediately to hold test identification parade of the accused persons.

(iv) As soon as the accused arrested, the I.O. shall record his/her statement under Section 161 of the CrPC.

(v) The statement of the accused so recorded by the I.O. shall be closely examined by him to find out as to whether the accused has made a statement with regard to the discovery of any fact or not.



(vi) If the accused makes a statement with regard to the discovery of any fact, the I.O. shall immediately proceed to work out the said information and such discovery of fact(i.g., recovery of stolen articles or any material found under the circumstances which creates suspicion of the commission of any offence) shall be seized under proper seizure list in presence of the accused and the witnesses. The seizure list shall contain the signature of the accused and the witnesses and the seized materials shall be sealed and labelled.

(vii) the label shall contain the number of the police station case and the signature of the accused , seizure witnesses and the I.O.. The said label shall be pasted on the sealed seized materials.

(viii) with the original lable, the I.O. shall also prepare a specimen label under some mechanical process (e.g., carbon copy) and the specimen labelled shall be kept in the Case Diary for using the same in trial.

(ix) In case of offence under Section 302 of the IPC or 103 of the BNS, as soon as the Officer-in-Charge of the Police Station gets an information of unnatural death (U.D.), he shall record the said fact in the Station House Diary entry and start Unnatural Death (U.D.) Case and either him or any other



officer entrusted by him shall proceed to the spot for preliminary inquiry as to the cause of death.

(x) If subsequently, FIR is received with regard to such death, the record of U.D. Case shall be tagged with the case diary and investigation of the FIR case shall be proceeded with.

(xi) In case of recovery of any weapon suspected to be used in the commission of offence, the police officer shall seize the said weapon under proper seizure list with seal and label in presence of witnesses.

(xii) It is the bounden duty of the police officer to obtain opinion of the autopsy surgeon as to whether injury received by the victim can be caused with the help of the seized weapon.

(xiii) In case of firearm injury and recovery of firearm and pellets/cartridge, the I.O. shall obtain the ballistic expert's report to ascertain as to whether the offending weapon and the pellets/cartridge were used to commit the alleged offence.

(xiv) Whenever there is bleeding injury received by the injured, the I.O. shall seize the bloodstained wearing apparels, bloodstained earth and controlled earth of the place of occurrence under proper seizure list and sent them to the



forensic expert to ascertain the blood group and other necessary details. In case of death of the victim by drowning, poisoning, strangulation, etc., the I.O. shall receive the viscera of the deceased and send them to forensic expert to have the report with regard to the contents of water, poison or blood in the viscera. In case of investigation of other offence, the above guidelines shall be followed, *mutatis mutandis* with necessary changes with certain changes necessary for investigation of the case.

(xv) In case of other offence, the I.O. shall follow the above guidelines whichever is applicable according to the case.

51. The Standard Operating Procedure (S.O.P.) prepared by us shall be strictly followed in the course of investigation by all police officers including the I.O.s/ SHOs/SDPOs/Deputy Superintendent of Police in the State of Bihar.

52. It is advisable that the Department of Home, Government of Bihar shall conduct training programmes and refresher courses for police officers of the State of Bihar, periodically on the subject of proper investigation of criminal cases, particularly, in the light of Bihar Police Manual covering Chapters-police station, outposts, road-posts and patrols, informations, investigation (Chapters VI, VII, VIII and IX of Volume-I) including the foremost



principles of investigation described in Appendix-79 of Police Manual (Volume III), as well as judicial pronouncements by the High Courts and Hon'ble the Supreme Court through the Director, Bihar Police Academy, Rajgir or any other Training Institute for Bihar Police Service Officials/staffs. Training shall primarily be conducted to the Deputy Superintendent of Police/SHO/IO/ASI and other specialized police officer who were assigned a role of supervision in the criminal cases prior to submission of final report.

53. It is further advised to the Department of Home as well as the Director General of Police, Government of Bihar, to constitute a Committee for improvement in the Bihar Police Manual in consonance with Bhartiya Nyay Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, Bhartiya Sakshya Adhiniyam 2023 and Information Technology Act, 2000 for the functioning of police in Protection and Investigation of the crime. It is made clear that in Bhartiya Nyay Sanhita, 2023 most of the offences are of Indian Penal Code but in addition to that new offences have also been defined for the first time. Therefore, procedure for investigation of those new offences with improvement in the procedure of investigation relating to old offences mentioned in Bihar Police Manual in consonance with the new laws, as mentioned above, shall be prepared. It is further directed that members of the Committee shall be experienced persons including those who have played vital role in preparation of



the Rules and Act, namely, the Bihar Special Armed Police Act, 2021.

54. Let a copy of this order be sent to the Principal Secretary, Department of Home, Government of Bihar and the Director General of Police, Government of Bihar for information and necessary compliance. The Director General of Police, Bihar, is also directed to circulate this judgment to all the police officers of the State of Bihar, for strict compliance of the guidelines contained in this judgment. It is further directed to both of them to intimate about the progress of this compliance to the Registrar General, Patna High Court within 90 days from today.

55. The Registry is directed to intimate the progress to this Court with regard to the compliance upon receiving the receipts.

56. Let a copy of this judgment be sent to the concerned court below along with the Trial Court’s Record.

(Bibek Chaudhuri, J)

Dr. Anshuman, J: I agree.

(Dr. Anshuman, J)

suraj/-

AFR/NAFR	NAFR
CAV DATE	10.09.2025
Uploading Date	18.09.2025
Transmission Date	18. 09.2025

