

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.22 of 1999

Arising Out of PS. Case No.- Year-0 Thana- District-

The State of Bihar

... .. Appellant/s

Versus

1. Nawal Kishore Gope S/o- Chhatu Gope Moh- Tekari Road Ps- Sultanganj Dist- Patna
2. Kanhai Gope S/o- Chhatu Gope Moh- Tekari Road Ps- Sultanganj Dist- Patna

... .. Respondent/s

with

CRIMINAL REVISION No. 644 of 1999

DEEPAK KUMAR S/o- Late Ramchandra Prasad Moh- Tekari Road Ps- Sultanganj Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nawal Kishore Gope S/o- Chhatu Gope Moh- Tekari Road Ps- Sultanganj Dist- Patna
3. Kanhai Gope S/o- Chhatu Gope Moh- Tekari Road Ps- Sultanganj Dist- Patna

... .. Respondent/s

Appearance :

(In GOVT. APPEAL (DB) No. 22 of 1999)

For the Appellant : Mr. Dilip Kumar Sinha, APP

For the Respondents : Ms. Renuka Sharma, Advocate

(In CRIMINAL REVISION No. 644 of 1999)

For the Petitioner : Mr. R.C. Thakur, Advocate

For the State : Mr. Dilip Kumar Sinha, APP

For Res. Nos.2 & 3 : Ms. Renuka Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 13-05-2025

The State has preferred Govt. Appeal (DB) No.22 of



1999 under Section 378(1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') against the judgment dated 27.07.1999 passed by the court of learned A.D.J.-XII, Patna in Sessions Trial No. 319/96, arising out of Sultanganj P.S. Case No.258/95 whereby the learned Trial Court has acquitted both the accused persons, i.e. Respondent Nos. 1 and 2, of all the charges levelled against them.

2. Prosecution case, as per the fardbeyan dated 03.12.1995 recorded at 20:00 hours given by Deepak Kumar @ Dipu in P.M.C.H. Emergency Ward is that on 03.12.1995 at 19:00 hours while he was lying on his bed in the room inside his house and his mother Raj Mahal Devi was standing there, three young miscreants, aged about 25 years each, came inside the room and one of them, who was having a revolver in his hand, fired upon his mother who fell down injured. When the informant stood up, one of the accused, who was having a sickle (Hansua) in his hand, gave blow on the back portion of his neck and at right hand causing injuries on his neck and right hand. The three accused persons fled away after committing the crime. On hearing the sound of firing, the students, who were residing in his house on rent, and neighbourers came there and took the informant and his mother to P.M.C.H. on a tempo and,



in course of treatment, Raj Mahal Devi died.

3. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 319/96.

4. Before the Trial Court, prosecution examined seven witnesses, namely, PW-1, Suresh Yadav, PW-2, Maheshwari Devi, PW-3, Shyam Babu Yadav, PW-4, Deepak Kumar, PW-5, Dr. Vinay Kumar, PW-6, Dr. Vishnu Deo Prasad and PW-7, R.N. Pandey. Defence has also examined one witness, namely Vimal Kumar. The Court has also examined three witnesses, namely, CW-1, Suresh Yadav, CW-2, Deepak Kumar and CW-3, Maheshwari Devi.

5. Heard Mr. Dilip Kumar Sinha, learned A.P.P. for the appellant/State and Ms. Renuka Sharma, learned counsel for the respondents/accused.

6. Mr. Dilip Kumar Sinha, learned A.P.P. appearing for the appellant/State would mainly submit that there are eye-



witnesses to the incident in question who have supported the case of the prosecution, despite which the Trial Court has discarded their deposition. It is contended that though the informant, Deepak Kumar lodged the FIR against unknown persons and did not disclose the names of the assailants while giving fardbeyan, he had given the explanation for not giving the names of the assailants to the police while giving his fardbeyan. It is submitted that the brother of the accused, i.e., Gauri Shankar Yadav, while carrying the injured to the hospital in tempo had given threat to the informant and, therefore, he did not disclose the names of the assailants at the relevant point of time. It is further submitted that even PW-1 and PW-2 have also supported the case of the prosecution. Statements of the said witnesses were recorded under Section 164 of the Code before the concerned Magistrate. Learned APP further submits that the medical evidence also supports the case of the prosecution and, in fact, informant, PW-4, is an injured eye-witness who has supported the case of the prosecution. It is submitted that the doctor who had given treatment to PW-4 is also examined as PW-5. Thus, in the present case, when the injured eye-witness has supported the case of the prosecution, the Trial Court ought to have believed the version given by the



said witness. Learned APP, therefore, urged that the prosecution has proved the case against the respondents/accused beyond reasonable doubt. Learned APP also contended that the Trial Court has committed grave error while acquitting the respondents/accused and, therefore, the impugned judgment be quashed and set aside and the present appeal be allowed.

7. On the other hand, learned counsel appearing for the respondents/accused has vehemently opposed the present appeal. Learned counsel for the respondents/accused would mainly submit that for the alleged incident which took place at 07:00 p.m., the informant Deepak Kumar gave his fardbeyan at 08:00 p.m., i.e., within one hour in the hospital itself. However, while giving the said fardbeyan, he had not given the names of the assailants. It is submitted that the present respondents/accused have falsely been implicated because of family dispute between the parties and, in fact, the present respondent Nawal Yadav and his brother Gauri Shankar Yadav took the injured to the hospital. Learned counsel for the respondents/accused referred the inquest report of the dead body of the deceased. It is submitted that, in fact, the respondent/accused, Nawal Kishore has signed the said inquest. Thus, he was very much present on the next day morning at



10:45 a.m. on 04.12.1995.

7.1. Learned counsel for the respondents/accused thereafter contended that even the medical evidence does not support the version given by so called eye-witness, i.e., the informant. Learned counsel referred the deposition given by PW-5, Dr. Vinay Kumar, who had given treatment to the informant, PW-4. She has also referred the deposition given by PW-6, Dr. Vishnu Deo Prasad, who had conducted the *post mortem* on the dead body of the deceased in support of the aforesaid contention.

7.2. Learned counsel for the respondents/accused further submits that even the statement of the informant and the other two witnesses under Section 164 of the Code came to be recorded on 05.01.1996, i.e., after more than one month. Learned counsel, therefore, urged that the prosecution has miserably failed to prove the case against the respondents/accused beyond reasonable doubt and, therefore, the Trial Court has rightly passed the order of acquittal in favour of the respondents/accused. It is also submitted that in the present Government Appeal filed against the order of acquittal, this Court may not interfere with the said impugned judgment as no error has been committed by the Trial Court.



8. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

9. PW-1, Suresh Yadav has deposed in his examination-in-chief that the occurrence took place on 03.12.1995 at 07:00 p.m. He was returning from Diwan after taking milk and as soon as he reached Tekari Road and was at a distance of about 10 yards towards south of the house of Raj Mahal Devi (deceased), he saw Nawal, Kanhai Yadav and Santosh Yadav with blood sprinkled on their bodies and Kanhai Yadav was having a pistol in his hand. The aforesaid persons were fleeing towards south saying that mother and son had been finished. It is further deposed that when he proceeded ahead and reached near the house of Raj Mahal Devi, he saw that people were putting Raj Mahal Devi and his son Deepak Kumar on a tempo. He told Maheshwari Devi that Santosh, Kanhai and Nawal are fleeing away. Maheshwari Devi said that Santosh, Kanhai and Nawal have fled away after committing murder of Raj Mahal Devi and Deepak Kumar. Deepak is the adopted son of Raj Mahal Devi. It is further deposed by this witness in his examination-in-chief that the police came at the place of occurrence and seized two blood stained sickles



(*Chhamania*) from the place of occurrence. When the seizure list was being prepared, the police called him and he put his signature on the same (Ext.1). His statement was recorded under Section 164 of the Code and he put his signature on the same (Ext.1/1). The said witness also identifies accused Nawal and Kanhai in court.

9.1. In his cross-examination, he has stated that he gave his statement before the police thrice. The first statement was given on the date of occurrence and at the place of occurrence at about 10:15 p.m. He told Darogaji in his statement that when he was at a distance of about 10 yards towards south of the house of Raj Mahal Devi, he saw Nawal, Kanhai Yadav and Santosh Yadav having blood sprinkled on their bodies and Kanhai Yadav was having a pistol in his hand. He also told Darogaji in his statement that the aforesaid persons were fleeing towards south saying that mother and son had been finished. It was also told that when he proceeded ahead and reached near the house of Raj Mahal Devi, he saw that people were putting Raj Mahal Devi and his son Deepak Kumar on a tempo. The said witness also told Darogaji that he told Maheshwari Devi that Santosh, Kanhai and Nawal are fleeing away and Maheshwari Devi said that Santosh, Kanhai



and Nawal have fled away after committing murder of Raj Mahal Devi and Deepak Kumar. It was also told to Darogaji by this witness that Deepak is the adopted son of Raj Mahal Devi. He did not tell Darogaji that the police seized two blood stained sickles from the place of occurrence. He also told Darogaji in his statement that when seizure list was being prepared, he was called by Darogaji. This witness has stated in his cross-examination that when he saw the three accused persons, he was alone. He did not see the occurrence. On the date of occurrence, he was called by Darogaji from his in-laws' house at about 10:15 p.m. He did not give any information regarding the occurrence. He has no knowledge as to who gave application for recording his statement under Section 164 of the Code. The said witness has denied the suggestion that no such occurrence took place.

10. PW-2, Maheshwari Devi has deposed in her examination-in-chief that the occurrence took place two years and five months ago on a Sunday at about 07:00 hours. She was sitting at her door and was taking tea. After taking tea, she went to the room of her aunt Raj Mahal Devi. When she was in the room, at that time, Nawal and Chhaththu came there having pistols in their hands. Nawal fired upon Raj Mahal Devi due to



which she fell down. At the same time, Kanhai, Santosh and one unknown attacked Raj Mahal Devi and Deepak by means of sickle causing injuries to them. The said witness has further deposed in her examination-in-chief that she came at her door raising alarm and after alarm, the accused persons fled away towards Paththar Ki Masjid. Raj Mahal Devi had no issue and she had adopted Deepak Kumar. The accused persons killed Raj Mahal Devi for property. After the incident, the people of Mohalla brought Raj Mahal Devi and Deepak to hospital where Raj Mahal Devi died. The said witness has identified accused Nawal and Kanhai in court.

10.1. In her cross-examination she has stated that she gave her statement on the day of occurrence at about 10:30 p.m. She had stated in her statement before the police that Nawal shot fire upon Raj Mahal Devi due to which Raj Mahal Devi fell down. She had also stated in her statement that at the same time, Kanhai, Santosh and one unknown person attacked Raj Mahal Devi and Deepak due to which they sustained injuries. She had also stated in her statement that she came at her door raising alarm and after alarm, the accused persons fled towards Paththar Ki Masjid. She does not remember that her statement was recorded under Section 164 of the Code or not.



She does not remember as to what statement she had given before the Magistrate. She put her thumb impression on a blank paper. The said witness has denied the suggestion that she, Deepak, Suresh and Kameshwar and his father-in-law hatched a conspiracy for implicating the accused persons. She has also denied the suggestion that she did not state before the Magistrate the fact that she had stated in court in her evidence. The whole occurrence continued for only five minutes. A question was put to the said witness as to whether Nawal Yadav and Gauri Shankar Yadav brought Raj Mahal Devi and Deepak to hospital and took care of them and in reply she stated that Nawal Yadav had not brought Raj Mahal Devi and Deepak Yadav to hospital and that Nawal Yadav had not taken care of them. The said witness has denied the suggestion in her cross-examination that no such occurrence took place. She has further denied the suggestion that the accused persons named by her had not played any role in the crime and that she had given false evidence.

11. PW-3, Shyam Babu Yadav has deposed in his examination-in-chief that the incident took place on 03.12.1995 at 07:00-07:30 a.m. He was returning to his house after milching the cow and when he reached near the house of Raj



Mahal Devi, he saw a crowd gathered there. At that time, inmates of Raj Mahal Devi were bring her down stairs. Raj Mahal Devi was injured. People informed that the miscreants had injured her and fled away. No one disclosed the names of the assailants of Raj Mahal Devi. Gauri Gope and Muhalla people took her on a tempo to hospital. He had seen Dipu also in an injured condition. He was also taken on the same tempo. Next day, he came to know that Raj Mahal Devi has died. He heard that Dipu was adopted by Raj Mahal Devi. The police arrived at the place of occurrence in his presence. The police seized two blood stained sickles from the place of occurrence in his presence. Police prepared seizure list of the seizure article upon which he put his signature as a witness. He has identified the seizure list which bears his signature (Ext.1/2).

11.1. In his cross-examination, the said witness has stated that he had not ascertained whether police had sealed the seized sickle or not. He is not aware about the adoption of Dipu by Raj Mahal Devi. As there was a crowd near the tempo, he does not remember as to who, except Gauri had put Dipu into the tempo.

12. PW-4, Deepak Kumar, who is the informant of the case, has stated in his examination-in-chief that the



occurrence took place on 03.12.1995 at about 07:00 p.m. and at that time he was lying on his bed. Beside him, his mother Raj Mahal Devi (deceased) and Maheshwari Devi were sitting. Suddenly, after hearing the sound of firing, he got up and saw his mother lying in pool of blood. Bullet hit his mother. He saw Nawal having a pistol in his hand. Kanhai was having a Chhawania in his hand. When he got up from the bed, Kanhai attacked him by means of Chhawania which hit on his neck and right hand. Seeing this, Maheshwari Devi ran downstairs raising alarm. After assaulting him and his mother, Nawal and Kanhai too ran downstairs. It is further deposed by this witness that when he sustained in the said incident, Gauri Shankar Yadav took him and his mother to P.M.C.H. by a tempo. On way to hospital, Gauri Shankar Yadav threatened not to take names of his brother, else he would be finished. After reaching P.M.C.H., his mother died. The police had recorded his statement firstly on 03.12.1995 and secondly on 06.12.1995 in P.M.C.H. On 03.12.1995, due to threat given by Gauri Shankar, he did not take the name of any accused. On 03.12.1995, he was badly injured and was not in a position to speak. The said witness identifies accused Nawal and Kanhai in court.

12.1. In his cross-examination, the said witness has



stated that after this incident, he came to know that he is the adopted son of Ramchandra Prasad Yadav and he has no certificate or paper regarding this fact. His first statement was recorded on 03.12.1995 in the hospital which was taken down by Darogaji. The fardbeyan contains his signature (Ext.A). At the time of taking down fardbeyan, he had stated before Darogaji that beside his bed, his mother Raj Mahal Devi and Maheshwari Devi were sitting. He had stated before Darogaji that his mother was shot. He did not state before Darogaji that he had seen Nawal having a pistol in his hand. He did not either state in his fardbeyan that Kanhai was having a Chhawania in his hand. He did not take the name of any accused in his first statement. He did not get it recorded that when he got up from his bed, Kanhai attacked him by means of Chhawania which hit his neck and right hand. He did not either get it recorded that Maheshwari Devi, after seeing the incident, fled away downstairs raising alarm. He did not get it written at the time of fardbeyan that on way Gauri Shankar Yadav threatened him that if he takes the names of his brothers, he would not be alive. The said witness did not state in his fardbeyan that after death of his father, he and his mother would become the owner of the property. Therefore, the



accused persons after killing them wanted to grab the property. In para-16, the said witness admitted that he was admitted in P.M.C.H. for treatment on 03.12.1995 and he was treated for about one month. In between 03.12.1995 to 06.12.1995, Maheshwari Devi, Ambika Rai, Kameshwar Yadav and Suresh Yadav came to see him in P.M.C.H. He disclosed about the threatening given by Gauri Shankar to Maheshwari Devi, Ambika Rai and Kameshwar Yadav. He gave his statement second time before the police on 06.12.1995 and in that statement he had stated before the police that beside his bed, his mother Raj Mahal Devi and Maheshwari Devi were sitting. He had also stated that he suddenly got up from the bed after hearing the sound of firing and saw his mother lying in pool of blood and his mother was shot. He had also stated that he saw Nawal having a pistol in his hand. He does not remember whether he had stated that Kanhai was having a Chhawania in his hand. He does not remember that he had stated before Darogaji that Gauri Shankar Yadav threatened him on way that if he takes the names of his brothers, he would be killed. He does not remember that on 06.12.1995, he told Darogaji that due to threat given by Gauri Shankar on 03.12.195, he had not taken the names of any accused. The said witness has further



stated in his cross-examination that Raj Mahal Devi was brought downstairs by Gauri Shankar Yadav and another from the room where the incident took place. The said witness has denied the suggestion that no such occurrence took place and he is falsely implicating the accused persons due to greed of property and he has deposed falsely.

13. PW-5, Dr. Vinay Kumar has deposed in his examination-in-chief that on 03.12.1995, he was posted as Resident Surgeon at P.M.C.H. On the same day at about 08:15 p.m., he examined Deepak Kumar and found following injuries:

1) Multiple lacerated wound over right arm and right forearm above and below elbow joint each measuring $\frac{3}{4}$ cm x 1cm x muscle to bone deep total six in number.

2) Lacerated wound over right side of the face 2 cm x 1 cm x skin deep.

3) Lacerated wound over right side of the neck 5 cm x 1 cm x skin deep.

4) Lacerated wound over back of scalp 15 cm x 1 cm x bone deep.

The said witness has also deposed in his examination-in-chief that he found the age of injuries to be



within six hours from the time of examination. In his opinion, the cause of injury was hard and blunt object and he also found all the injuries to be simple in nature.

13.1. The said witness has stated in his cross-examination that Sickle, Chhawania, Fasuli are not hard blunt object.

14. PW-6 Dr. Vishnu Deo Prasad has deposed in his examination-in-chief that on 04.12.1995, he was posted as Assistant Professor, Department of Forensic Medicine, P.M.C.H., Patna. On that very date at 01:30 p.m., the dead body of Raj Mahal Devi was received in the mortuary of P.M.C.H., Patna. He conducted the *post mortem* examination on the dead body of the deceased at 03:00 p.m. on the same day and found rigour mortis present all over the body. He found the following *ante mortem* injuries on the dead body of the deceased:

- 1) Sharp cut injury 4"x2.5" on the left side of the neck 3" below the left ear.
- 2) Sharp cut injury 1"x1/2" on the neck 1" below left ear.
- 3) Sharp cut injury 2"x1/2" on the left cheek.
- 4) Sharp cut injury 1.5"x1/2" on the lower lip.
- 5) Sharp cut injury 2.5"x1/2" on the left palm.



6) Sharp cut injury 2"x1/2" on the right palm.

7) Sharp cut injury 2"x2" on the back of the neck.

8) Entry wound 1"x1" on the midline of the back with black margin.

9) Exit wound 1/2"x1/2" on the left side of the abdomen 4" below left nipple.

He found injury no.9 and 8 through and through.

It is further stated by this witness in his examination-in-chief that dissection of head, chest, abdomen and neck were done. The liver, spleen and both Kidney were found pale. The stomach contained 4 ozs of water, fluid. The uterus was found absent because of operation. The urinary bladder was found empty.

In his opinion, the cause of death was shock and haemorrhage to above mentioned injuries and injury nos.1 to 7 was caused by sharp cutting instrument and injury nos.8 and 9 was caused by firearm. In his opinion, the *post mortem* interval was within 24 hours approximately.

14.1. The said witness has stated in his cross-examination that he has not mentioned whether the sharp cut injuries found on the body of the deceased were straight, oblique, curved. He has not mentioned the depth of the injuries.



He has not mentioned the colour of margin of sharp cut injuries. It is further stated that usually wound of exit remains bigger than wound of entry but in close contact fire sometime entry wound is higher than exit wound. It is not correct to say that wound of entry will not be higher than wound of exit.

15. PW-7, R.N. Pandey, who is the Investigating Officer of the case, has deposed in his examination-in-chief that on 03.12.1995, he was posted in Sultanganj police station. On the same day, at about 07:45 p.m., he received information that a woman was shot in Tekari Road. For verification of this information when he reached Tekari Road, he came to know that the injured has been taken to P.M.C.H. He went to P.M.C.H. and recorded the fardbeyan of injured Deepak Kumar at 08:00 p.m. Sri L.K. Konar, S.H.O. gave him the charge of investigation of this case. He inspected the place of occurrence. He got two blood stained Chhawania in the room where the incident took place. He also found blood on the floor of the room where the alleged incident took place. The said witness seized the two Chhawania and blood in presence of Suresh Yadav (PW-1) and Shyam Babu Yadav (PW-3) and prepared seizure list on which PW-1 and PW-3 put their signatures. The said witness has further deposed that he recorded the



statements of witnesses and after completing the investigation, he submitted the charge-sheet.

15.1. The said witness has stated in his cross-examination that he made entry of the information regarding a woman being shot on 03.12.1995 at 07:45 p.m. in station diary no.77 at 07:45 hours. He got confidential information regarding the injured being taken to P.M.C.H. He has not written the name of the person who gave information in diary. Informant Deepak Kumar had not got it written in the fardbeyan that beside his bed, his mother Raj Mahal Devi and Maheshwari Devi were sitting. He had not got it written in the fardbeyan that, suddenly, after hearing the sound of firing, he got up from his bed and saw his mother lying in pool of blood. After recording the fardbeyan, D.S.P., Patna City and S.H.O. of Sultanganj P.S. also recorded the statement of informant Deepak Kumar. At the time of recording of the statement of Deepak Kumar by the aforesaid officers, he was present there. Suresh Yadav had not stated before him in his statement that when he reached at a distance of about 10 yards towards south of the house of Raj Mahal Devi, he saw Nawal, Kanhai Yadav and Santosh Yadav with sprinkles of blood on their bodies and Kanhai Yadav was having a pistol in his hand. Suresh had not



stated before him that all the three persons were fleeing away towards south. Suresh had not stated before him that the three persons were saying that mother and son have been finished. Suresh had also not stated before him that when he reached near the house of Raj Mahal Devi, he saw that Raj Mahal Devi and her son Deepak Kumar were being put on a tempo. It is further stated by this witness in his cross-examination that Maheshwari Devi had not stated that at the same time, Kanhai, Santosh and one unknown attacked Raj Mahal Devi and Deepak by means of Chhawania due to which they sustained injuries. He recorded the re-statement of the informant Deepak Kumar @ Dipu on 06.12.1995. Deepak Kumar @ Dipu had not stated in his re-statement that beside his bed, his mother Raj Mahal Devi and Maheshwari Devi were sitting. Deepak @ Dipu had not stated in his re-statement that he saw Nawal having pistol in his hand. Deepak had not stated that Kanhai was having a Chhawania in his hand. He had not stated that when he got up from his bed, Kanhai had attacked him by means of Chhawania which hit his neck and right hand. Deepak had also not stated that after becoming injured in the aforesaid incident, Gauri Shankar Yadav brought him and his mother to P.M.C.H. by a tempo. The said witness has further stated that



he recorded the statements of Maheshwari Devi, Suresh Yadav and Shyam Babu one after another on 03.12.1995. He had got the clue of the accused persons on the basis of statements of the above witnesses recorded on 03.12.1995. At one place, he had stated that the inquest report bears the signatures of witnesses, Nawal Kishore Yadav and Gauri Shankar Yadav, residents of Paththar Ki Masjid, but subsequently, he has denied that this inquest report was prepared in his presence. He has stated that he had got the inquest report from the S.H.O. The said witness has further stated that the witnesses to the inquest report Nawal Kishore Yadav and Gauri Shankar Yadav are nephews of deceased Raj Mahal Devi. He has denied the suggestion that on 04.12.1995, none of the witnesses had taken the names of accused Nawal and Kanhai. He has also denied that, to help the informant, he had ante-dated the diary. He has denied the suggestion that he had falsely stated that at the time of preparation of the inquest report, he was not present. He has further stated that he has not made entry with regard to the process of seizure in the diary. He did not get the blood and blood stains on the Chhawania examined. The Chhawania which he had seized is not before him in the court. He had not seized the blood stained clothes of Raj Mahal Devi or Deepak.



16. We have considered the arguments canvassed by the learned Advocates appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the trial court records and exhibits. It transpires from the records that the fardbeyan of PW-4, the informant was recorded on 03.12.1995 at 20:00 hours in P.M.C.H., Emergency Ward. The version given by the informant in the fardbeyan is that when he was lying on his bed in the room inside his house and his mother Raj Mahal Devi was standing there, three young miscreants, aged about 25 years each, came inside the room and one of them, who was having a revolver in his hand, fired upon his mother who fell down injured. When the informant stood up, one of the accused, who was having a sickle (Hansua) in his hand, gave blow on the back portion of his neck and at right hand causing injuries on his neck and at right hand and thereafter the three accused persons fled away from the place of occurrence. Thus, from the aforesaid fardbeyan, it is revealed that the informant did not disclose the names of the assailants. It further transpires from the evidence led by the prosecution that PW-1, Suresh Yadav, has deposed before the court that when he was returning from Diwan after taking milk and as soon as he reached Tekari Road and was at a distance of about



10 yards towards south of the house of Raj Mahal Devi (deceased), he saw Nawal, Kanhai Yadav and Santosh Yadav with blood sprinkled on their bodies and Kanhai Yadav was having a pistol in his hand. When he proceeded ahead and reached near the house of Raj Mahal Devi, he saw that people were putting Raj Mahal Devi and his son Deepak Kumar on a tempo. Thus, from the deposition given by the said witness, it can be said that PW-1 has not seen the actual occurrence.

16.1. At this stage, if the deposition given by PW-7, R.N. Pandey is carefully examined, in para-11 of his cross-examination, the said witness has stated that Suresh Yadav did not state that he saw Nawal, Kanhai Yadav and Santosh Yadav with blood sprinkled on their bodies and Kanhai was having a pistol in his hand while giving his statement before the said witness (Investigating Officer).

16.2. It is also relevant to note that statement of this accused under Section 164 of the Code came to be recorded after a period of more than one month, i.e., on 05.01.1996.

17. PW-2, Maheshwari Devi has though deposed before the court in her examination-in-chief that at the time when she was sitting at her door and was taking tea, Nawal and Chhaththu came there having pistols in their hands. Nawal



fired upon Raj Mahal Devi due to which she fell down. At that time, Kanhai, Santosh and one unknown attacked Raj Mahal Devi and Deepak by means of sickle causing injuries to them.

17.1. However, at this stage, if the deposition given by PW-7, the Investigating Officer, is examined, it transpires that in para-13 of his cross-examination, the said witness has stated that Maheshwari Devi did not state that at that time Kanhai, Santosh and one unknown attacked Raj Mahal Devi and Deepak by means of sickle due to which they sustained injuries, rather she had stated that three unknown persons assaulted the informant by means of sickles causing injuries to him while giving her statement before the said witness (Investigating Officer).

18. PW-3, Shyam Babu Yadav has deposed in para-1 of his examination-in-chief that when he was returning to his house, he saw a crowd gathered there. Raj Mahal Devi was in an injured condition and the people informed that unknown persons caused injuries to Raj Mahal Devi. However, nobody disclosed the names of the assailants. Thus, from the aforesaid deposition, it can be said that the said witness is not an eye-witness.

19. PW-4 is the informant of the case, who has



narrated the incident in a different manner while giving deposition before the court. From the deposition of the said witness, it transpires that he had given explanation for not giving the names of the assailants while giving his fardbeyan before the police. In para-3 of his deposition, he has stated that Gauri Shankar Yadav, who is brother of the two accused, gave threat to him when the said witness, i.e., the informant and his mother were being taken to the hospital in a tempo. However, from the cross-examination of the said witness, it transpires that after a period of three days, he disclosed the names of the assailants and, in fact, his statement was also recorded under Section 164 of the Code on 05.01.1996 after a period of more than one month. It further transpires that in para-16, he has stated that he was admitted in P.M.C.H. on 03.12.1995 where he was treated for one month.

20. Now, at this stage, we would like to examine the deposition given by PW-6, Dr. Vishnu Deo Prasad who had conducted the *post mortem* on the dead body of the deceased. From his deposition, it transpires that the doctor found seven sharp cut injuries on the dead body of the deceased and injury no.8 was an entry wound whereas injury no.9 was an exit wound. The said doctor further stated that cause of death was



shock and haemorrhage due to the injuries sustained by the deceased and injury nos.1 to 7 were caused by sharp cutting instrument whereas injury nos.8 and 9 were caused by firearm. Now if the fardbeyan and the evidence led by the prosecution is carefully examined, it is revealed that it is not the case of the informant that any of the accused persons used/gave blow with sickle to the deceased. We are, therefore, of the view that the medical evidence does not support the version given by the so-called eye witness.

21. At this stage, it is also required to be observed that if the evidence of PW-5, Dr. Vinay Kumar, who had given treatment to PW-4, is carefully examined, it transpires that the said doctor examined the informant at about 08:15 p.m. Though the said doctor found certain injuries on the body of the injured, the doctor has specifically observed that, in his opinion, the cause of injuries was hard and blunt object and also found all the injuries to be simple in nature. During cross-examination, the said doctor further stated that sickle, Chhawania, Fasuli are not hard blunt object.

22. Thus, from the aforesaid deposition given by the doctor, it is revealed that PW-4 sustained simple injuries and that too by hard and blunt object. We are, therefore, of the view



that the said medical evidence also does not support the version given by the so called injured eye-witness, i.e., PW-4. It is difficult to believe that for the injuries, which were sustained by PW-4, that too of simple in nature, he remained in hospital for a period of one month.

23. We are of the view that there are major contradictions, inconsistencies and improvements in the version given by the prosecution witnesses and, in fact, the prosecution has failed to prove the case against the respondents/accused beyond reasonable doubt.

24. We have also gone through the reasoning recorded by the Trial Court and we are of the view that the Trial Court has not committed any error while passing the impugned judgment of acquittal.

25. At this stage, we would like to refer the decision rendered by this Court in **Criminal Appeal (DB) No.621 of 2023 (Purushottam Singh vs. State of Bihar & Anr.)**, wherein this Court has held in paragraph nos.18, 19 and 20 as under:

“18. It is pertinent to note that we are dealing with the acquittal appeal filed by the informant, the Hon’ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in (2007) 4 SCC 415 has observed in paragraph no. 42 as under:-



“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

19. Recently, the Hon’ble Supreme Court in the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605** has observed in paragraph no. 22 as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having



secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

20. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption in favour of the accused, when the order of acquittal has been accorded by the Trial Court, Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

26. Keeping in view the aforesaid decision rendered by the Hon’ble Supreme Court, if the present Government Appeal filed by the State against the order of acquittal is examined, we are of the view that the appellate court should not disturb the finding of acquittal recorded by the Trial Court even if two reasonable conclusions are possible on the basis of the evidence on record.

27. Looking to the aforesaid facts and circumstances of the present case, no interference is required in the impugned judgment rendered by the Trial Court. Accordingly, the appeal



stands dismissed.

Criminal Revision No. 644 of 1999

As the Government Appeal filed by the State against the impugned judgment of acquittal is dismissed, the revision application filed by the informant challenging the very same judgment of acquittal rendered by the Trial Court, in our view, is also required to be dismissed and, accordingly, the same stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2025
Transmission Date	16.05.2025

