

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.538 of 2024

Arising Out of PS. Case No.-77 Year-2022 Thana- KISHANPUR District- Supaul

Shiv Chander Kamat @ Shiv Chandra Kamat, Son of Late Bam Bholi Kamat
Resident of Village - Ratanpura, Ward No. 9, P.S. - Kishanpur, District -
Supaul (Bihar)

... .. Appellant

Versus

1. The State of Bihar
2. Subhash Yadav, Son of Shashi Shekhar @ Surat Lal Yadav, Resident of Village - Ratanpura, P.S. - Kishanpur, District - Supaul (Bihar)
3. Ranjit Kumar Kamat @ Poin, Son of Vasudev Kamat, Resident of Village - Ratanpura, P.S. - Kishanpur, District - Supaul (Bihar)
4. Aditya Anand @ Bitto Kumar, Son of Ashok Kumar Yadav, Resident of Village - Ratanpura, P.S. - Kishanpur, District - Supaul (Bihar)
5. Nitish Kumar, Son of Rajesh Ranjan, Resident of Village - Ratanpura, P.S. - Kishanpur, District - Supaul (Bihar).
6. Bhavesh Kumar, Son of Birendra Kumar, Resident of Village - Ratanpura, P.S. - Kishanpur, District - Supaul (Bihar).

... .. Respondents

Appearance :

For the Appellant	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Yogendra Kumar, Advocate Mr. Manish Kumar No.-13, Advocate Mr. Rohit Kumar, Advocate Mrs. Meena Singh, Advocate Mr. Manish Kumar No 13
For the State	:	Mr. Binod Bihari Singh, Addl.PP
For the Resp No. 2	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Vikas Kumar Jha, Advocate Mr. Rabish Kumar, Advocate
For the Resp No. 4 to 6	:	Mr. Purushottam Kumar Tanushri, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-02-2025

Heard Mr. Krishna Prasad Singh, learned senior counsel
assisted by Mr. Yogendra Kumar, learned counsel for the appellant,
Mr. Yogesh Chandra Verma, learned senior counsel assisted by Mr.



Vikas Kumar Jha, learned counsel for respondent no. 2 and Mr. Purushottam Kumar Tanushri, learned counsel for respondent nos. 4 to 6. No one has appeared on behalf of respondent no. 3. Mr. Binod Bihari Singh, learned Additional Public Prosecutor has appeared on behalf of the State.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 12.03.2024 (hereinafter referred to as the 'impugned judgment') whereby and whereunder the learned Additional District and Sessions Judge-II, Supaul (hereinafter referred to as the 'learned trial court') has been pleased to acquit respondent nos. 2 to 6 of the charges under Sections 147, 307/149, 302/149, 120(B) of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act in Sessions Trial No. 576 of 2022 arising out of Kishanpur P.S. Case No. 77 of 2022.

Prosecution Case

3. The prosecution case is based on the *fardbeyan* (Exhibit 'P/3') of Shiv Chander Kamat (PW-6) recorded by A.S.I. Jitendra Kumar, Kishnapur Police Station on 22.03.2022 at 1 O' clock at Sadar Hospital, Supaul. In his *fardbeyan*, the informant alleged that when he was going to a sleep in the night at 11:15 PM and his sons had also gone to sleep in the rooms near the courtyard, 5-6 boys came hurling abuses from the East side of



Brahm Sthan. They were abusing the informant whereafter the informant did not go for sleep and went near the road. He has stated that there was lighting at his door in which he identified that (1) Subhash Yadav, (2) Ranjit Kumar Kamat, (3) Chandan Yadav, (4) Bitto Yadav, (5) Nitish Kumar and (6) Bhavesh Kumar were there. The informant asked them to refrain from hurling abuses on which Subhash Yadav and Ranjit Kamat scolded him and asked about his son Chandan. The accused persons threatened him that they would shot dead Chandan and he should be brought outside the house. The informant alleged that he did not say anything but on hearing the sound, his son Chandan Kumar and younger son Abhinandan Kumar both came in front of the accused persons whereafter Ranjit @ Poin identified Chandan Yadav and asked Subhash Yadav to kill him. Thereafter Subhash Yadav shot at Chandan on his chin whereafter Chandan fell down. A second firing was also done aiming Abhinanadan Kumar but the cartridge passed through his temporal region and he went unhurt. Thereafter the informant alleged that on hearing the sound of firing, his elder brother Ramchandar Kamat and younger brother Ramsunder Kamat @ Chaudhary and his nephews Akash and Sunil came running and they raised hulla whereafter all the six named accused persons fled away towards the school in the western side by foot.



Thereafter Chandan was brought to Sadar Hospital, Supaul where Doctor declared him dead. The informant further alleged that the accused persons had hatched a conspiracy at the door of Siyaram Kamat of Bagha and apart from these accused persons, some other accused, namely, Radheshyam Kamat, Virendra Kamat, Arvind Kamat, Sanjay @ Vikas and Jivad Kamat all of village Ratanpura were involved. They had also threatened earlier. The informant alleged that there is a Mahakal Group in his village in which 25/30 boys are involved. The accused persons are members of the Mahakal Group. They had been doing hulla in the school which is nearby the house of the informant. They had stored liquor and were making noises which was objected to by Chandan Kumar and for this reason, he has been killed.

4. On the basis of this *fardbeyan*, Kishanpur P.S. Case No. 77 of 2022 dated 22.03.2022 was registered under Sections 307, 302, 120(B)/34 IPC and Section 27 of the Arms Act. After investigation, Police submitted a chargesheet against respondent nos. 3, 4 and 6 vide Chargesheet No. 225 of 2022 dated 16.06.2022 under the aforementioned Sections keeping the investigation pending against other accused persons. Thereafter, a supplementary chargesheet being Chargesheet No. 363 of 2022 dated 18.10.2022 was submitted against respondent no. 2 and 5 under the aforementioned sections keeping investigation pending against accused Chandan



Kumar. Cognizance was taken of the offences and the records were committed to the court of Sessions for trial whereafter charges were explained to the accused who denied the charges and claimed to be tried. Accordingly, charges were framed under Sections 147, 307/149, 302/149, 120B IPC and Section 27 of the Arms Act.

5. In course of trial, the prosecution examined as many as twelve witnesses and exhibited several documents to prove the prosecution case. The defence also examined eight witnesses. The list of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Ramsunder Kamat
PW-2	Abhinandan Kumar
PW-3	Sunil Kumar
PW-4	Akash Kumar
PW-5	Ram Chander Kamat
PW-6	Shiv Chander Kamat
PW-7	Parmeshwri Yadav
PW-8	Rajiv Kumar
PW-9	Sanjay Yadav
PW-10	Dr. Brijnandan Bharti
PW-11	Suman Kumar
PW-12	Kundan Kumar

List of Defence Witnesses

DW-1	Ravinder Yadav
DW-2	Shubhnarain Kamat



DW-3	Nunulal Yadav
DW-4	Mohan Kumar
DW-5	Rajender Sah
DW-6	Kameshwar Thakur
DW-7	Umesh Kamat
DW-8	Jailal Yadav

List of Prosecution Exhibits

Ext.P1/PW2	Signature of PW2 on the carbon copy of the inquest report of the deceased Chandan Kumar
Ext.P2/PW10	Postmortem Report
Ext.P3/PW11	Fardbayan
Ext.P4/PW11	Endorsement made on fardbayan regarding registration of the case and handing over the investigation
Ext.P5/PW11	Carbon copy of the inquest report of the deceased Chandan Kumar
Ext.P6/PW11	Production cum seizure list of the empty cartridge
Ext.P7/PW11	Production cum seizure list of the pellet

List of Material Evidence

MO1/PW11	Pellet
MO2/PW11	Empty Cartridge

Findings of the learned Trial Court

6. After analyzing the evidences on record, the learned trial court found that PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-12 are interested witnesses being relatives and their evidences do not inspire confidence. Moreover, PW-7, PW-8 and PW-9 did not support the prosecution case. Therefore, the testimonies of the



prosecution witnesses create doubt regarding the implication of the accused persons. Learned trial court found that the I.O. did not send the alleged seized cartridge and pellet for scientific examination and the I.O. did not find any source of light at the place of occurrence. Learned trial court found that no murder weapon or any incriminating article was recovered from the possession of any of the accused persons to connect them with the crime.

7. Learned trial court after taking into consideration all the materials available on record held that the prosecution is unable to prove its case beyond all reasonable doubts and, hence, the Respondent Nos. 2 to 6 were acquitted of the charges giving them benefit of doubt.

Submission on behalf of the Appellant

8. Learned Senior counsel for the appellant has assailed the impugned judgment on the ground that the learned trial court has indulged in surmises and conjectures and has arrived at a wrong finding. The learned trial court has not taken into consideration the evidences of the eyewitnesses merely on the ground that they were close relatives of the deceased Chandan Kamat.



9. Learned Senior counsel submits that the learned trial court has, while recording the judgment of acquittal, placed much reliance upon the fact that there were contradictions in the deposition of prosecution witnesses and that the source of light, i.e. electric bulb, was not seized by the Investigating Officer.

Submission on behalf of the State and Respondents

10. On the other hand, Mr. Yogesh Chandra Verma, learned Senior counsel representing respondent nos. 2 to 6, submits that the learned trial court has rightly appreciated the evidences available on the record. It is submitted that while testimony of the related witnesses cannot be discarded outrightly, in absence of any corroboration, the evidence of the related witnesses may, in certain circumstances, not inspire confidence of the Court. Referring to the findings of the learned trial court, learned Senior counsel submits that the prosecution witnesses, namely PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-12, are closely related to the informant. The prosecution witnesses, namely PW-7, PW-8 and PW-9, have not supported the prosecution version. The testimonies of the prosecution witnesses are not duly corroborated and a doubt has been created regarding the false implication of accused persons.



11. Learned Senior counsel submits that in his evidence, the I.O. (PW-11) visited the place of occurrence firstly in the night of 21.03.2022. At the place of occurrence, there was a huge crowd who told him that the injured has been taken to the hospital, whereafter the I.O. proceeded for Sadar Hospital, Supaul. In the Sadar Hospital, Supaul, he recorded the *fardbeyan* of the father of the deceased, inquest report was prepared by Sub-Inspector Jitendra Kumar (not examined) of Kishanpur Police Station and thereafter, formal FIR was lodged by PW-11. Once again, on 22.03.2022, at 6:00 AM, he visited the place of occurrence, conducted inspection of the place and prepared a map and recorded statement of the witnesses. He has stated that the informant presented one empty cartridge of which he prepared a seizure list which has been marked Exhibit 'P/6' by PW-11. It is submitted that the fact that the empty cartridge was not found by PW-11 at the place of occurrence during his two visits and it was only later on presented to him by the informant would create huge doubt over the authenticity of the prosecution case. It is submitted that in his cross-examination, the I.O. has stated that the empty cartridge was not produced in course of inspection of the place of occurrence. The seizure list was prepared by one Dharmendra Singh, but he was not interrogated by PW-11 in course of



investigation. In his examination-in-chief, I.O. has not stated that there was any electric bulb at the place of occurrence. In his *najri* map prepared at the place of occurrence, he had not mentioned about any source of light or presence of electricity bulb.

12. Learned Senior counsel submits that on the face of the material contradictions in the testimonies of the prosecution witnesses, the learned trial court has not committed any error in appreciation of the evidences on the record.

Consideration

13. We have heard learned Senior counsel for the parties and the learned Additional Public Prosecutor for the State as also perused the trial court's records.

14. In the present case, the star witness of the prosecution is the informant, namely, Shiv Chander Kamat @ Shiv Chandra Kamat who is father of the deceased and has been examined as PW-6. He claims himself an eye witness to the occurrence but on a close perusal of his *fardbeyan* (Exhibit 'P3') recorded by A.S.I. Jitendra Kumar (not examined) and his deposition in course of trial, we find that his statements are at material variance. In his *fardbeyan*, he has stated that he got recorded his statement on 22.03.2022 in the mid night at 1 O'clock, however, from the formal FIR, we find that it has been



registered on 22.03.2022 at 04:20 AM. In his *fardbeyan*, the informant has stated that when he was going to sleep in the night at 11:15 PM and his sons had also gone to sleep in the rooms near the courtyard, 5-6 boys came hurling abuses from the East side of 'Brahma Asthan'. They were abusing the informant whereafter the informant did not go to sleep and went near the road. He has stated that there was lighting at his door in which he identified that (1) Subhash Yadav, (2) Ranjit Kumar Kamat, (3) Chandan Yadav, (4) Bitto Yadav, (5) Nitish Kumar and (6) Bhavesh Kumar were there. The informant asked them to refrain from hurling abuses on which Subhash Yadav and Ranjit scolded him and asked about his son Chandan. They threatened the informant that they would shot dead Chandan and he should be brought outside the house. The informant has alleged that he did not say anything but on hearing the sound, his son Chandan Kumar and younger son Abhinandan Kumar both came in front of the accused persons whereafter Ranjit @ Poin identified Chandan Kumar and asked Subhash Yadav to kill him. As per the *fardbeyan*, Subhash Yadav fired upon Chandan at his chin whereafter Chandan fell down. A second firing was also done aiming Abhinandan Kumar but the cartridge passed through nearby his temporal region and he went unhurt. Thereafter the informant has stated that on hearing the sound of firing, his elder



brother Ramchandra Kamat, younger brother Ramsundar Kamat @ Chaudhary and his nephew Akash and Sunil came running and they raised hulla whereafter all the six named accused persons fled away towards the school in the western side by foot. Chandan was brought to Sadar Hospital, Supaul where the doctor declared him dead. The reason behind the occurrence has been also stated by the informant. He has stated that the accused persons had hatched a conspiracy in the house of Siyaram Kamat of Bagha and apart from these accused persons, some other accused, namely, Radheshyam Kamat, Virendra Kamat, Arvind Kamat, Sanjay @ Vikas and Jivad Kamat all of village Ratanpura were involved. They had also threatened earlier. The accused persons are members of the Mahakal group in which 25-30 boys are involved. They had been doing hulla in the school which is nearby the house of informant, they had stored liquors and were making noise which was objected to by Chandan Kumar and for this reason, he was killed.

15. When PW-6 came to depose in course of trial, he attributed specific roles to all the accused persons in the killing of his son. According to him, it was Ranjit Kamat who got identified Chandan Kumar in order to kill him. Nitish Kamat caught hold of the hair of Chandan from behind, Ranjit caught hold of the hand of



Chandan and Subhash Yadav shot at Chandan from the close range at his chin. Subhash Yadav fired another shot at Abhinandan but that went away and Abhinandan was not hurt. In his cross-examination, in paragraph '4' this witness has stated that his son had no enmity prior to Holi with Subhash Yadav. The place of occurrence is near the well at his door. It was night hours and at his door, it was lighting. In paragraph '6' of his deposition, this witness has stated that on the Holi festival, he had not seen any dispute taking place between his son Chandan and the accused persons. He has stated that the dispute was seen by his brother Ramsundar and his brother had told him about the dispute two days after the occurrence. He has stated that police had not collected the bloodstained clothes of the injured and had not seized the bulb which was lighting at the place of occurrence. In paragraph '20', he has stated that apart from his family members, no other villager had seen the occurrence. Regarding the population around his house, he has stated that there are houses from all the four sides of his house. It is for this reason, learned counsel for the respondent nos. 4 to 6 has submitted that if there was any quarrel between Chandan Kumar on the one hand and Subhash Yadav on the other hand on the occasion of Holi festival,



there was no reason for Ranjit Kamat to get identified Chandan Kumar to Subhash Yadav.

16. We have also noticed from the cross-examination of PW-6 that, according to him, blood had fallen and spread on the ground in an area of about one and half feet and when he lifted his injured son, then his body and clothes were also stained with blood. Contrary to this claim of PW-6, the I.O. (PW-11) has stated in his evidence that no witness of this case had taken him to the place of occurrence and showed him the bulb or any source of light at the place of occurrence. Ramsundar Kamat, the brother of PW-6 has stated before the I.O. in course of investigation that on 21.03.2022 he has sleeping at his Darwaza when he heard the noises at the door of Shivchandra Kamat. He has stated that before he could have understood something, he heard people shouting that some one has been shot dead whereafter he went to the place where Chandan had fallen down, he found him unconscious and beside him, his nephew and his brother were also unconscious. The neighbours had assembled there. The I.O. has further stated that Abhinandan Kumar had not stated in course of investigation that there was a bulb light at the door and in the said light he had identified Subhash Yadav armed with pistol and at that time, Ramsundar Kamat and Shivchandra Kamat were present there.



17. This Court has further found that in paragraph '26', the I.O. (PW-11) has stated that he had not seized any bloodstained soil or cloth from the place of occurrence. In his statement in paragraph '27', he has stated that he had not found any mark of firing at the place of occurrence or in the nearby place.

18. Further, this Court has noticed from the deposition of PW-6 in paragraph '35' that the deceased was working in a motorcycle showroom, the motorcycles were being sold on installments basis and the deceased was engaged in recovery of the installments by visiting the house of the customers.

19. The informant (PW-6) has materially improved upon his statements in course of trial is evident from his deposition.

20. Sanjay Yadav (PW-9) is said to be an independent witness in this case who has stated that there was a quarrel between Ranjit Kamat and Chandan in which Ranjeet Kamat had taken out a pistol from his waist and shot at Chandan whereafter Chandan fell down and thereafter Ranjit fled away. This witness has, however, been interrogated by police after 2-3 months.

21. In his cross-examination, PW-11 has stated that it is true that in the information, which he telephonically received regarding the occurrence, it was not told that Subhash Yadav had shot at someone. In the *najri* map, which he prepared during the



inspection of the place of occurrence, he had not mentioned any source of light or presence of electricity bulb. In course of investigation, the witness Abhinandan Kamat (PW-2) had stated that Ranjeet Kamat had a quarrel with his mother which was objected to by deceased Chandan and had beaten Ranjeet due to which Ranjeet Kamat was angry with deceased Chandan and he had gone to the showroom of Anas Motorcycle in search of Chandan. In paragraph '23' of his deposition, PW-11 has stated that it is true that prior to giving the name of the accused persons by the informant in his *fardbeyan*, in the information received by him regarding the occurrence and in course of verification, no other person had told him the name of the persons involved in the crime. It further appears that the I.O. had found that the place of occurrence is situated in an area which is densely populated but he had not recorded statement of any independent witness. He had not examined the person who had presented the empty cartridge and he had not found any sign of firing nearby the place of occurrence. None of the prosecution witnesses had shown him any source of light.

22. From the evidence of Ramsunder Kamat (PW-1), it would appear that he has stated that because of election disputes, the accused persons had committed the occurrence. He has stated



in paragraph '16' of his deposition that when *hulla* started, he was sleeping in his house. He had gone to sleep at 10:30 PM. When he reached at the door of his brother, he found that Abhinandan was sitting holding Chandan and both of them were facing towards South. Chandan was bleeding. Abhinandan was anxious and Chandan was unconscious. In paragraph '12' of his deposition, he has stated that he raised *hulla* after seeing Chandan and shouted, *goli maar diya – goli maar diya* but no one came because of night hours. From the deposition of PW-1, it is crystal clear that he is not an eyewitness to the occurrence. His assertion that he got awakened after hearing *hulla* is also doubtful because in his own statement later on he has stated that when he went to the door of his brother, he found that Abhinandan was holding Chandan. PW-1 does not talk of presence of either the informant or any other family member at that time. He has stated that he raised *hulla* whereafter no one came because of the night hour.

23. The another witness, Abhinandan Kumar (PW-2) is brother of the deceased, who has stated that when the named accused persons surrounded his brother Chandan Kumar, then he became afraid of them and he went near the boundary and stood there. He has stated that at the said place, his father Shiv Chander Kamat and his uncle Ramsunder Kamat were also standing. This



witness has given an impression that the occurrence has taken place in his presence as well as in presence of Shiv Chander Kamat and Ram Chander Kamat but from the evidence of Ramsunder Kamat (PW-1), we have found that he was sleeping in his house after taking meal at 10:30 PM and according to him, he reached the place of occurrence only after hearing *hulla* and found that Abhinandan (PW-2) was holding Chandan and Chandan was bleeding. From the deposition of PW-2 also it appears that he is not consistent in his statement, his attention was drawn towards his previous statements made before the I.O. in which he had not stated that Subhash Yadav had shot at Chandan from point blank range on his neck which hit his chin and PW-2 had shouted. PW-2 denied to have made such a statement but the I.O. has stated in paragraph '36' of his deposition that PW-2 had not stated in course of investigation that at the place of occurrence there was a bulb light at his door and he identified Subhash Yadav in the said bulb light who was standing with a pistol. This Court finds that the I.O. (PW-11) has contradicted PW-2 on material aspects of the prosecution witnesses as regards the source of light and identification of the accused.



24. Sunil Kumar (PW-3) is a hearsay witness. He has stated in paragraph '9' of his deposition that he was told about the occurrence by his uncle and brother Abhinandan.

25. Akash Kumar (PW-4) is also not an eyewitness to the occurrence. He has stated that he ran towards the door after hearing the sound of firing. His attention was also drawn towards his previous statement made before police in which he had not stated that a bulb light was there at the door of his cousin brother Chandan Kumar and in the said bulb light he had seen Subhash Yadav armed with a pistol in his right hand and that five persons were present near the well. In paragraph '12', he has stated that he heard the sound of two rounds of firing. It is evident that this witness is not an eyewitness. PW-2 has stated that even after raising *hulla* by PW-1, no one had come because of the night hours. Ramchander Kamat (PW-5) was also sleeping in his house at 11:15 PM when he heard the sound of firing. He has stated in paragraph '23' of his deposition that he had not seen Subhash Yadav firing.

26. From the depositions of the prosecution witnesses, it is evident that they are not consistent, they have given different genesis of occurrence, they are all related witnesses whose testimonies alone are not inspiring confidence. Despite the place of



occurrence being densely populated, there is no independent witness in this case and according to PW-2, no one came even after *hulla* because it was night hour.

27. We are considering an appeal against acquittal. The principles governing an appeal against acquittal have been discussed time and again by the Hon'ble Supreme Court. In case of **H.D. Sundara and Others vs. State of Karnataka** reported in (2023) 9 SCC 581, the Hon'ble Supreme Court has reiterated principles which are being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

1. State of Karnataka v. H.K. Mariyappa , 2010 SCC OnLine Kar 5591



8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

28. In ultimate analysis of the entire materials on the record, we find no reason to interfere with the impugned judgment of the learned trial court.

29. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

SUSHMA2/Rishi

AFR/NAFR	
CAV DATE	
Uploading Date	15.02.2025
Transmission Date	15.02.2025

