

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 727 of 2019

Arising Out of PS. Case No.-59 Year-2015 Thana- BHAGWANPUR HAT District- Siwan

MUKESH PAL, Son of Mokhtar Pal, Resident of Village-Chorauli, P.S.-
Bhagwanpur Hat, District-Siwan.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pratik Mishra, Advocate Mr. Sheojee Mishra Advocate Mr. Vatshal Vishal, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 12-12-2025

This Criminal Appeal, bearing Criminal Appeal (DB)

No. 727 of 2019, has been preferred by the appellant, Mukesh Pal, against the judgment of conviction, dated 06.06.2019 and the order of sentence, dated 07.06.2019, passed by the learned Additional District and Sessions Judge VI, Siwan, in Sessions Trial No. 29 of 2016, arising out of Bhagwanpur Hat P.S. Case No. 59 of 2015. By the impugned judgment, the learned Trial Court found the appellant guilty of the offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The appellant has been sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/- (ten thousand)



for the offence under Section 302 IPC and rigorous imprisonment for four years with fine of Rs. 5,000/- (five thousand) for the offence under Section 27 of the Arms Act. Both sentences were directed to run concurrently.

2. The prosecution case originates from the fardbeyan of Lalan Rai, uncle of the deceased Sanjeev Kumar, recorded on 02.04.2015 at about 10:10 P.M. at Sadar Hospital, Siwan. According to the informant, at about 07:00 P.M. on the same day, the appellant allegedly called his nephew Sanjeev Kumar and thereafter the informant heard the sound of firing. When he reached the place of occurrence, he claims to have found Sanjeev Kumar lying injured with a gunshot wound on his thigh. The injured was taken towards Siwan for medical treatment but succumbed to the injuries on the way.

3. On the basis of the fardbeyan, Bhagwanpur Hat P.S. Case No. 59 of 2015 was registered under Section 302 IPC and Section 27 of the Arms Act. After investigation, the police submitted charge sheet on 30.09.2015. Cognizance was taken and the case was committed to the court of sessions. The appellant was charged under Section 302 IPC and Section 27 of the Arms Act, to which he pleaded not guilty.

4. The prosecution examined five witnesses. The



defence did not examine any witness. On consideration of evidence, the learned Trial Court convicted and sentenced the appellant as noted above. Aggrieved thereby, the appellant has filed the present appeal.

5. This Court has heard the learned counsel appearing for the appellant as well as learned counsel representing the State. The record of the case including depositions, exhibits, fardbeyan, FIR, post-mortem report and the impugned judgment has been examined with care.

6. The learned Trial Court assessed the depositions of the prosecution witnesses, the medical evidence and the materials collected during investigation, and concluded that the prosecution had successfully established the guilt of the appellant beyond reasonable doubt.

7. To reach the conclusion of guilt, the learned Trial Court primarily relied upon the testimonies of P.W.3, the sister of the deceased; P.W.4, the informant and the uncle of the deceased. According to the Trial Court, P.W.3 was a natural witness whose presence near the place of occurrence was consistent with the prosecution story. The Trial Court noted that P.W.3 deposed that the appellant came to their house at around 07.00 P.M. on 02.04.2015, took the deceased with him, and



shortly thereafter she heard multiple gunshots from the western direction. She claimed to have reached the place of occurrence and seen the appellant with firearm. Although her statement had been recorded at a later stage during investigation, the Trial Court held that such delay, by itself, could not render her evidence unreliable when her version was otherwise natural and consistent with the chain of events.

8. The testimony of P.W.4, the informant, was also considered reliable by the Trial Court. P.W.4 stated that soon after hearing the sound of firing he reached the spot and found his nephew injured due to a gunshot. The Trial Court observed that P.W.4, being a close relative of the deceased, was a natural witness who rushed to the place of occurrence immediately after the incident. The Trial Court held that merely because P.W.4 did not claim to have seen the actual firing, his testimony could not be discarded if it supported the prosecution narrative regarding the circumstances immediately following the firing.

9. The learned Trial Court also relied upon the deposition of P.W.2, who claimed to have seen the deceased running and then falling after being shot. The Trial Court held that P.W.2 was an independent witness whose presence at the place of occurrence could not be doubted. According to the Trial



Court, discrepancies in the minor details of his statement did not affect the core of the prosecution case, namely, that the deceased suffered a firearm injury at the hands of the appellant.

10. The medical evidence adduced through P.W.1, the doctor, who conducted the post-mortem examination, was held to fully support the prosecution version. The doctor found one firearm injury on the upper anterior part of the right thigh of the deceased and opined that death was caused due to shock and haemorrhage resulting from the said firearm injury. The Trial Court held that the post-mortem findings were compatible with the ocular evidence of P.W.2 and P.W.3.

11. With regard to investigation, the Trial Court noted the statements of P.W.5, the Investigating Officer. The Trial Court observed that although certain lapses had occurred in the investigation, such as non-seizure of empty cartridges and non-preparation of a sketch map, but these lapses were not sufficient to discard the otherwise consistent and credible evidence of P.W.3, P.W.4 and P.W.2.

12. The Trial Court also took into account the fact that P.W.5 had stated about the telephonic communication between the deceased and the appellant around the time of the incident. In the Trial Court's view, such circumstances strengthened the



prosecution case by showing proximity of the appellant to the deceased immediately before the incident.

13. On the basis of the cumulative assessment of the oral and medical evidence, the Trial Court concluded that the prosecution had proved that the appellant had fired at the deceased, causing his death. The defence plea of false implication was rejected as unsupported by any material on record. Accordingly, the appellant was convicted under Section 302 IPC and Section 27 of the Arms Act and sentenced as per the order dated 07.06.2019.

14. Learned counsel appearing for the appellant submitted that the conviction recorded by the Trial Court is unsustainable in law and facts. It was argued that the entire prosecution case suffers from inherent improbabilities, material contradictions and serious lapses in investigation, which were overlooked by the Trial Court.

15. It was submitted that the fardbeyan recorded at 10:10 P.M. on 02.04.2015 does not disclose the presence of P.W.2 or P.W.3 at the place of occurrence. According to the appellant, the prosecution subsequently introduced these two witnesses, and their presence at the place of occurrence is not supported by the earliest version. It was argued that both these



witnesses made contradictory statements on material aspects of the case and their depositions cannot be relied upon. Counsel pointed out that P.W.3 claimed to have heard four to five gunshots, whereas the post-mortem report confirms a single firearm injury. Similarly, P.W.2 stated that two shots were fired, which again contradicts the medical evidence. P.W.3 stated that her evidence was recorded after nearly one month, which the counsel described as an unnatural delay casting doubt on her claim of having witnessed the incident.

16. It was further contended that the informant P.W.4, who is the uncle of the deceased, did not state in the fardbeyan that either P.W.2 or P.W.3 were present at the place of occurrence. He himself did not see the appellant firing upon the deceased. His evidence, according to the appellant, only describes the post-occurrence situation and does not establish the authorship of the firearm injury.

17. Learned counsel for the appellant also drew attention to the medical evidence. It was argued that the prosecution witnesses claimed multiple shots, whereas the medical evidence shows only a single firearm entry wound. It was submitted that the dimensions of the bullet recovered from the body of the deceased also raise doubts about the



prosecution's version regarding the alleged manner of firing. Counsel submitted that the medical evidence does not correlate with the ocular testimonies relied upon by the Trial Court.

18. With respect to the investigation, it was argued that the Investigating Officer admitted that no empty cartridge was found or seized from the place of occurrence, and no sketch map showing the boundaries of the place of occurrence was prepared. The non-examination of the Station House Officer was also highlighted as a serious lapse. Further, although the Investigating Officer stated that the tower location of the mobile phone of the appellant was at Hajipur on the date of the incident, such material was not exhibited or proved in accordance with law. According to the appellant, the failure to produce call detail records and tower location reports materially weakens the prosecution's case.

19. Counsel for the appellant also referred to the delay in forwarding the FIR to the court, submitting that the case diary shows that the FIR reached the court only on 04.06.2015, which gives rise to the possibility of interpolation or embellishment. The alleged motive suggested by the prosecution was described as wholly unreliable, unsupported by evidence and insufficient to draw an inference of guilt.



20. In support of his submissions, learned counsel relied upon several decisions of the Supreme Court, including the principles laid down in Takahi Hiraji v. Thakore Kubersing Chamansing, Ram Narain v. State of Punjab, State of Uttarakhand v. Darshan Singh, State of Orissa v. Brahmananda Nanda, Prabhu Prasad Sah v. State of Bihar, Marudanal Augusti v. State of Kerala, Sujit Biswas v. State of Assam, Nainmal Pratap Mal Shah v. Union of India and Abhishek Ojha v. State of Chhattisgarh. It was contended that these authorities lay down that the prosecution must prove its case beyond reasonable doubt and that suspicion, however grave, cannot take the place of proof. Learned counsel argued that the present case is replete with contradictions and infirmities, and therefore, the appellant is entitled to acquittal.

21. Learned counsel appearing for the State supported the judgment of conviction and submitted that the learned Trial Court rightly relied upon the evidence of P.W.3 and P.W.4. It was contended that P.W.3 is the sister of the deceased and her presence at or near the place of occurrence was natural. According to the State, slight variations in the number of shots heard or minor inconsistencies do not render her evidence unreliable. Learned counsel also submitted that P.W.2 is an



independent witness who claimed to have seen the deceased running and then falling after being shot. The State urged that the presence of these witnesses near the place of occurrence was satisfactorily established.

22. The State relied heavily upon the medical evidence which confirms that the deceased suffered a firearm injury and died due to shock and haemorrhage. It was contended that the single firearm injury found in the post-mortem report does not negate the prosecution case merely because the witnesses spoke about more than one shot being fired. Learned counsel argued that the essential fact remains that the appellant was seen with a firearm immediately before the deceased collapsed.

23. It was further submitted that the telephonic communication between the deceased and the appellant around the time of the incident, as stated by the Investigating Officer, lends support to the prosecution's case of their proximity and interaction shortly before the occurrence. Although certain investigative lapses were acknowledged, learned counsel argued that such lapses cannot demolish the entire prosecution's case when the core evidence adduced by the prosecution remains trustworthy.

24. Learned counsel for the State thus prayed for



dismissal of the appeal.

25. The Court has carefully examined the depositions of the witnesses, the medical evidence, the contents of the fardbeyan and FIR, and the materials brought on record during investigation. The submissions advanced by both sides have been considered in light of the settled principles of criminal jurisprudence.

26. The prosecution's case rests substantially on the testimonies of P.W.2, P.W.3 and P.W.4. P.W.4, the uncle of the deceased, is the informant who admittedly did not witness the firing. His evidence is confined to what he saw after reaching the place of occurrence. The fardbeyan recorded on 02.04.2015 at 10:10 P.M. does not refer to the presence of P.W.2 or P.W.3 at the place of occurrence. There is also no reference in the earliest version that the appellant was seen by any witness holding a firearm before or after the incident. The omission of the names of P.W.2 and P.W.3 in the fardbeyan is material, particularly when the prosecution later projected these two witnesses as having direct knowledge of the incident.

27. The evidence of P.W.3 requires close scrutiny. She stated that the appellant came to their house at around 07:00 P.M. on 02.04.2015, took her brother on a motorcycle and



shortly thereafter she heard four to five gunshots. She further stated that she rushed to the place of occurrence and saw the appellant with a firearm. However, her statement under Section 161 CrPC was recorded about one month after the occurrence. From her own testimony it appears that the police visited her house on the next day, yet her statement was not recorded at that stage. No reason has been placed on record to explain this delay. The Trial Court treated her evidence as natural, but the delay in recording her statement coupled with the absence of her name in the fard beyan raises a legitimate doubt about her presence at the place of occurrence. The number of gunshots she claims to have heard is also inconsistent with the medical evidence. The post-mortem report shows only one firearm injury on the body of the deceased. This contradiction is not merely a variation in detail, but goes to the root of her version of the incident.

28. Turning to the evidence of P.W.2, he claimed to have seen the deceased running and then falling after being shot. He also stated that two shots were fired. Like P.W.3, his name does not appear in the fardbeyan. He admitted during deposition that he was examined by the police after 25 to 30 days. He further stated that nobody else was present at the place of occurrence when he reached there, which contradicts the claim



of P.W.3. The delay in recording his statement and the contradictions with P.W.3 create uncertainty regarding whether he was actually present at the place of occurrence. The medical evidence again contradicts his account of two shots being fired.

29. The testimony of P.W.4 does not resolve these contradictions. He reached the spot after the firing and saw the deceased lying injured. He did not claim to have seen anyone else there. Though he referred to hearing the firing, he did not claim to have seen the appellant either before or after the alleged incident. Moreover, the motive suggested during investigation was denied by him during deposition, and his testimony does not provide independent corroboration of the prosecution's version.

30. The medical evidence is clear that there was only one firearm injury on the upper anterior part of the right thigh of the deceased. The doctor stated that death was caused due to shock and haemorrhage. The medical evidence, therefore, confirms a firearm injury but does not shed light on the identity of the assailant. What deserves emphasis is that both P.W.2 and P.W.3 spoke about more than one gunshot, which does not fit with the singular injury found during the post-mortem examination. The inconsistency cannot be overlooked in a case



where conviction rests primarily on the oral evidence of these witnesses.

31. The Investigating Officer, P.W.5, admitted that no empty cartridge was recovered from the place of occurrence and no sketch map showing the boundaries of the place of occurrence was prepared. He also admitted that the tower location of the mobile phone of the appellant on the date of occurrence was at Hajipur, though the tower location report was not exhibited. The call detail records were not placed before the court in proper form. The absence of these materials weakens the prosecution case. While investigative lapses by themselves may not be fatal, in a case based substantially on oral evidence whose reliability is already doubtful, such lapses assume significance.

32. Section 157 of the Cr.P.C corresponding Section 176 of BNSS lays down detailed procedure for investigation by a police officer. Under sub-Section (1), it is the duty of the police officer to send forthwith report of the information received by him in respect of commission of a cognizable offence to a magistrate empowered to take cognizance of such offence upon a police report. Immediately thereafter, Investigating Officer shall proceed to the spot to investigate the facts and



circumstances of the case. Thus, the spot inquiry and preparation of the sketch map of the place of occurrence is one of the salient duties in investigation of a cognizable case.

33. It is needless to say that in the instant case no witness claimed themselves to be the eye-witness of occurrence. They did not see the accused/appellant injuring the deceased by gun-shot injury. The witness, P.W. 3 who reached the place of occurrence immediately after the occurrence, saw the deceased in injured condition and the appellant standing with a fire arm in his hand.

34. Under the facts and circumstances of the case, sketch map of the place of occurrence was required to be drawn by the Investigating Officer because the sketch map would have given a clear picture of the distance between the house of the informant and the place of occurrence where the incident took place. There is no independent evidence to ascertain the distance between the house of the deceased and the place of occurrence. Thus, it is not possible to come to a finding regarding time gap between the actual incident and arrival of the witnesses.

35. It is also found from the evidence of the Investigating Officer that he did not make any attempt to seize bloodstained and controlled earth from the place of occurrence.



No empty cartridge was seized from the place of occurrence. The Investigating Officer did not make any attempt to seize the fire-arm or the bullet head. If the bullet head was stuck in the thigh of the victim, it must have been removed at the time of post-mortem examination. We do not find on examination of lower court record that the Investigating Officer seized the bullet head and sent the same to the forensic science laboratory. No opinion of the autopsy surgeon was taken as to whether the bullet head was recovered from the body of the deceased which caused fatal injury to the deceased.

36. We are not unmindful to note that in order to bring home the charge against the appellant, it is always not necessary to prove the motive when the evidence is absolutely clear, trustworthy and of sterling quality. In such a case of unimpeachable evidence on record, failure on the part of the prosecution to prove the motive cannot be considered as a lacuna offering benefit of doubt to the accused. However, in the instant case, the Investigating Officer practically did not take any attempt to collect cogent and trustworthy evidence to prove the case. It appears to us that the Investigating Officer conducted only a table work without proper investigation.

37. The Court also notes that though the fardbeyan



was recorded at 10:10 P.M. on 02.04.2015, the FIR appears to have reached the court after a considerable delay. The case diary indicates that the FIR was placed before the court only on 04.06.2015. No explanation for this delay has been offered. The delay raises a legitimate concern regarding the possibility of deliberate introduction of details after due deliberation, especially when the FIR does not mention the presence of the two purported eyewitnesses.

38. In evaluating the evidence as a whole, the Court finds that the prosecution has not been able to establish a consistent chain of events from which the guilt of the appellant may be inferred beyond reasonable doubt. The inconsistencies between the ocular and medical evidence, the delay in recording the statements of key witnesses, the absence of their names in the earliest version, and the lapses in investigation cumulatively create a reasonable doubt regarding the prosecution story. In such circumstances, the benefit of doubt must go to the appellant.

39. Learned counsels for both sides relied upon several decisions of the Supreme Court in support of their respective submissions. The Court considers it necessary to examine only those principles which are relevant to the facts and



circumstances of the present case.

40. In *Sujit Biswas v. State of Assam* reported in *(2013) 12 SCC 406*, the Supreme Court held that suspicion, howsoever strong, cannot take the place of proof. The Court observed that the prosecution must establish its case beyond reasonable doubt and that where two views are possible, the view favourable to the accused must be adopted. The judgment also emphasized that the burden lies on the prosecution to prove every link in the chain of circumstances and that the failure to put material circumstances to the accused under Section 313 CrPC may render such circumstances unusable.

41. In *State of Uttarakhand v. Darshan Singh* reported in *(2020) 12 SCC 605*, the Supreme Court observed that where the ocular version of witnesses suffers from material contradictions or is inconsistent with the medical evidence, the prosecution version becomes doubtful. The Court held that the testimony of eyewitnesses must be scrutinised with caution when their presence at the place of occurrence is not established by the earliest version or when their statements are recorded after undue delay.

42. In *Ram Narain v. State of Punjab* reported in *AIR 1975 SC 1727*, the Supreme Court held that omissions in the



first information report may assume significance when the prosecution subsequently introduces witnesses whose presence was not disclosed in the earliest version. The Court observed that delay in forwarding the FIR to the Magistrate may give rise to suspicion about whether the document was prepared later with embellishments.

43. In *Marudanal Augusti v. State of Kerala* reported in *(1980) 4 SCC 425*, the Supreme Court held that unexplained delay in recording the statements of witnesses under Section 161 CrPC is a circumstance which casts doubt on the credibility of such witnesses. The Court reiterated that the prosecution must ensure that material witnesses are examined at the earliest and that the failure to do so may weaken the prosecution case.

44. In *State of Orissa v. Brahmananda Nanda* reported in *(1976) 4 SCC 288*, it was held that where the prosecution fails to prove motive or where the circumstances relied upon do not form a complete chain pointing towards the guilt of the accused, the conviction cannot be sustained. The Court emphasised that the benefit of doubt must always go to the accused when the prosecution evidence is not free from suspicion.

45. In *Takahi Hiraji v. Thakore Kubersing*



Chamansing reported in ***(2001) 6 SCC 145***, the Supreme Court reiterated that when the prosecution version is contradicted by objective medical evidence, the version of eyewitnesses must be assessed with greater caution. The Court observed that the prosecution cannot rely solely on the oral assertions of witnesses when the medical findings do not support their narrative.

46. The principles in the decisions of ***Nainmal Pratap Mal Shah v. Union of India (1980) 4 SCC 427***, ***Prabhu Prasad Sah v. State of Bihar (1976) 4 SCC 289*** and ***Indrakunwar v. State of Chhattisgarh (2023 LiveLaw SC 932)*** further highlight that an accused cannot be convicted on the basis of doubtful evidence or on the basis of assumptions unsupported by the record. The prosecution must prove its case with cogent, consistent and reliable evidence.

47. Applying these principles to the facts of the present case, it becomes evident that the prosecution was required to prove the presence of P.W.2 and P.W.3 at the place of occurrence, the manner in which the incident took place, and the authorship of the firearm injury through consistent and reliable evidence. The omissions in the FIR, the delay in recording the statements of alleged eyewitnesses, and the inconsistencies between the ocular and medical evidence undermine the



prosecution version. When such circumstances are assessed in light of the legal principles laid down by the Supreme Court, the Court finds it difficult to uphold the conviction recorded by the Trial Court.

48. Upon a comprehensive consideration of the evidence on record, the submissions of the parties and the legal principles governing appreciation of ocular and medical evidence, this Court is of the view that the conviction of the appellant cannot be sustained.

49. As noted earlier, the earliest version contained in the fardbeyan does not mention the presence of P.W.2 or P.W.3 at the place of occurrence. Their statements were recorded after an unexplained delay and their testimonies suffer from material inconsistencies. The medical evidence confirms only one firearm injury, whereas both these witnesses spoke of multiple gunshots. The Investigating Officer acknowledged that no empty cartridge was recovered and that the tower location of the mobile phone of the appellant on the date of occurrence was at a considerable distance from the place of occurrence, though the relevant records were not exhibited. The FIR reached the court after a substantial delay for which no explanation is forthcoming. These circumstances, taken together, cast a serious



doubt on the prosecution story.

50. The Trial Court placed reliance on the testimonies of P.W.2 and P.W.3 without adequately addressing the delay in their examination or the inconsistencies between their evidence and the medical findings. The omissions in the earliest version, the contradictions between the witnesses and the lapses in investigation were not subjected to the degree of scrutiny required in a case resting principally on oral testimony. The prosecution has failed to establish a complete and coherent chain of circumstances leading to the guilt of the appellant.

51. In the considered opinion of this Court, the evidence adduced by the prosecution does not satisfy the requirement of proof beyond reasonable doubt. The inconsistencies in the prosecution case are not minor or peripheral; they strike at the root of the case. The appellant is, therefore, entitled to the benefit of doubt.

52. Accordingly, the judgment of conviction dated 06.06.2019 and the order of sentence dated 07.06.2019 passed by the learned Additional District and Sessions Judge VI, Siwan, in Sessions Trial No. 29 of 2016 are set aside. The appellant, Mukesh Pal, is acquitted of the charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.



53. The appellant is directed to be released forthwith from custody, if not wanted in any other case.

54. The appeal is allowed.

(Bibek Chaudhuri, J)

Dr. Anshuman, J: I agree.

Uttam/-

(Dr. Anshuman, J)

AFR/NAFR	NAFR
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