

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1432 of 2024**

Arising Out of PS. Case No.-605 Year-2020 Thana- SONEPUR District- Saran

Mahesh Kumar @ Mahesh Das S/o Baldeo Das R/o vill - Barbatta, P.S. - Sonepur, Distt.- Saran

... .. Appellant

Versus

- 1. The State of Bihar
 - 2. Akash Kumar @ Akash Rai S/o Maheshwar Rai R/o vill - Manpur (Barhatta), P.S. - Sonepur, Distt.- Saran
 - 3. Rajesh Sah S/o Vishwanath Sah R/o Anandpur, P.S. - Sonepur, Distt.- Saran
- Respondents

with

CRIMINAL APPEAL (DB) No. 1434 of 2024

Arising Out of PS. Case No.-605 Year-2020 Thana- SONEPUR District- Saran

Mahesh Kumar @ Mahesh Das Son of Baldeo Das Resident of Village- Barbatta, P.S.- Sonepur, Distt.- Saran

... .. Appellant

Versus

- 1. The State of Bihar
 - 2. Ranjan Kumar Son of Late Santlal Rai Resident of Village- Manpur (Barhatta), P.S.- Sonepur, Distt.- Saran
- Respondents

Appearance :

(In CRIMINAL APPEAL (DB) No. 1432 of 2024)

For the Appellant/s : Mr. Kumar Priya Ranjan, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 1434 of 2024)

For the Appellant/s : Mr. Kumar Priya Ranjan, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 02-05-2025

These two appeals have been listed simultaneously for consideration. In Cr. App.(DB) No.1432 of 2024, the appellant has



assailed the judgment of acquittal dated 06.09.2024 passed by the learned Additional District and Sessions Judge-II, Saran at Chapra (hereinafter referred to as the trial court) in Sessions Trial No.180 of 2021 arising out of Sonepur P.S. Case No.605 of 2020. In this Sessions trial two accused were facing the charges under Section 302/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. They have been acquitted giving them benefit of doubt.

2. In Cr. App.(DB) No. 1434 of 2024, the appellant is the same and one person who has assailed the judgment of acquittal dated 06.09.2024 passed by the same trial court in Sessions Trial No. 364 of 2022. In this Session Trial only one accused was facing the charges under Section 302/34 IPC and Section 27 of the Arms Act.

Prosecution Case

3. The prosecution case is based on the written information of one Mahesh Kumar who in his written information dated 16.08.2020 alleged as under:-

“On 15.08.2020 between 06:30 P.M. to 07:30 P.M., a phone call came on the mobile of his son Dharmendra Kumar and then his son went away by saying that he will return in a while. At about 09:30 P.M., some people informed that Dharmendra Kumar



has been shot dead by unidentified criminal near Bajrangbali Temple at Manpur village adjacent to Bypass Road. Then the informant along with others went there and got to know that his son has been taken to Sadar Hospital, Chapra. After reaching Sadar Hospital Chapra, the informant got to know that an unknown criminal has shot his son to death. After post-mortem, they came to police station on 16.08.2020.”

4. On the basis of the aforementioned written information, a formal FIR giving rise to Sonapur P.S. Case No.605 of 2020 dated 16.08.2020 was registered under Section 302/34 IPC and Section 27 of the Arms Act.

5. Upon completion of investigation police submitted first charge-sheet bearing No. 12 of 2021 dated 08.01.2021 under section 302/34 IPC and Section 27 of the Arms Act against two accused namely, (i) Akash Kumar @ Akash Rai and (ii) Rajesh Shah. Cognizance was taken by the learned Magistrate whereafter the records were committed to the court of learned Sessions Judge, Saran at Chapra. It was registered as Sessions Trial No. 180 of 2021.

6. The second charge-sheet bearing No. 265 of 2021 dated 27.06.2021 was filed for the offences under Section 302/34 IPC and Section 27 of the Arms Act against one accused namely,



Raju Paswan. In this case, after cognizance the records were committed to the Court of Sessions and it was registered as Sessions Trial No. 364 of 2022.

7. Mr. Kumar Priyaranjan, learned counsel for the appellant has submitted that in both the trials, the prosecution witnesses and the documentary evidences are the same and one. In this connection, learned trial court has drawn the attention of this Court to the order dated 27.08.2024 passed in Sessions Trial No. 364 of 2022 by the learned Additional District Judge-II, Saran at Chapra. By this order, the learned trial court has after hearing both the sides passed an order after marking exhibits in the present case which were available in the original record of Sessions Trial No. 180 of 2021.

8. Learned counsel submits that the prosecution witnesses in the present case are the same and one who have deposed as prosecution witnesses in Sessions Trial No. 180 of 2021. He has stated to the extent that deposition of the witnesses are the same and one.

9. In the aforesaid view of the matter on the request of learned counsel for the parties, we have heard both the appeals which are being disposed of by this common judgment.



10. On behalf of the prosecution as many as 7 witnesses deposed and 7 documents were marked exhibits. List of the witnesses and list of documents marked exhibits on behalf of the prosecution are as under :-

List of Prosecution Witnesses

P.W.-1	Birendra Kumar
P.W.-2	Mahesh Kumar @ Mahesh Das
P.W.-3	Sharda Devi
P.W.-4	Nisha Kumari
P.W.-5	Mankeshwar Mahto
P.W.-6	Dr. Harishchandra Prasad
P.W.-7	Dr. Dinesh Kumar Prajapati

List of Documentary Evidence

Ext.-P-1	The signature of the informant on the written information
Ext.P-1/1	Signature of Sharda Devi
Ext.P-1/2	Signature of Birendra Kumar
Ext.-P-2	Signature of Aquil Ahmad S.I. on formal FIR
Ext.-P-3	Endorsement by Aquil Ahmad S.I. on the written information
Ext.-P-4	Signature of Krishnadeo Prasad on Inquest Report
Ext.-P-5	Charge-sheet
Ext.-P-6	Photocopy of Post-mortem report with objection
Ext.-P-7	Signature of Dr. Harishchandra Prasad on Post-mortem report with objection



11. The statement of the accused were recorded under Section 313 Cr.P.C in which they pleaded innocence. The defence, however, did not produce any oral or documentary evidence.

Findings of the learned trial court

12. After analyzing the evidences of the prosecution witnesses and the entire materials on the record, the learned trial court found that there is no eye-witness in this case. All the witnesses are family members of the deceased who were not present at the time and place of occurrence.

13. The learned trial court has noticed that the prosecution witnesses have made vacillating statements during investigation and in course of trial. Initially they named only two accused persons but in course of trial they implicated five persons.

14. The learned trial court has also noticed that the murder weapon has not been produced before the court, no recovery memo of the weapon has been brought before the court and it has not been shown by producing the confessional statement leading to recovery of material object in accordance with Section 27 of the Evidence Act that the recovery of weapon of crime has been made on the basis of the disclosure statement of the accused Akash Kumar @ Akash Rai.



15. The learned trial court has found that the I.O. had not collected the blood which were present at the place of occurrence. There is no D.N.A. report of the Forensic Science Laboratory to show that the blood at the place of occurrence belongs to the deceased Dharmendra Kumar.

16. It has also been found that there is no call data report and no mobile tower location data to establish the complicity of the accused persons in commission of the alleged murder of Dharmendra Kumar. The case is not based on last seen theory as no person has come forward to say that the deceased was last seen in the company of the accused persons.

17. In the kind of materials present on the record, the trial court has held that the prosecution witnesses are not reliable and they are untrustworthy. Following the principles governing a case of substantial evidence, the learned trial court has relied upon the judgments of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116** and **State of Himachal Pradesh vs. Raj Kumar 2018 (2) SCC 69** to take a view that in a case based on circumstantial evidence all the circumstances taken commutitatively form a complete chain and there should be no gap left in the chain of evidence. The trial court found that in the present case the



circumstances brought before the court are not consistent and there cannot be an irresistible conclusion on the basis of the materials on the record that the accused are guilty of commission of offence.

Submission on behalf of the informant-appellant

18. Mr. Kumar Priyaranjan, learned counsel for the informant-appellant before this Court has assailed the impugned judgment on various grounds. Learned counsel submits that the learned trial court could not appreciate that the order of acquittal cannot be passed only because there are certain defects in investigation. The trial court was obliged to appreciate the evidences on the record and even though the witnesses are the family members of the deceased, their evidence cannot be discarded on this ground alone.

19. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Allarakha K. Mansuri v. State of Gujarat** reported in (2002) 3 SCC 57 (Paragraph '7'), **State of Gujarat v. Kishanbhai and Ors.** reported in (2014) 5 SCC 108 (Paragraphs '19', '22' and '23') and in the case of **Edakkandi Dineshan v. State of Kerala** reported in (2025) 3 SCC 273 (Paragraphs '26' and '27'). It is his submission that in the case of **Kishanbhai** (supra), the Hon'ble Supreme Court has made it mandatory in Paragraph '23' of the judgment that



whenever an order of acquittal is passed, the investigating/prosecuting officials concerned responsible for such acquittal must necessarily be identified. It is submitted that each erring officer must suffer consequence of his lapse by appropriate departmental action, whenever called for.

20. It is pointed out that recently in the case of **Geeta Pandey** (supra) the Hon'ble Supreme Court has referred to Paragraph '8' of the judgment in case of **Paras Yadav v. State of Bihar** reported in **(1999) 2 SCC 126**, wherein it has been held inter alia that the lapse on the part of the investigating officer should not be taken in favour of the accused and the prosecution evidence is required to be examined dehors such omissions to find out whether such evidence is reliable or not.

21. Learned advocate, therefore, submits that in this case the findings of the learned trial court is required to be examined by reappreciating the entire prosecution evidences on the record and then this court sitting in appeal may take an appropriate view as to whether the finding of the learned trial court is based on correct appreciation of the materials available on the record.

Submissions on behalf of Respondent

22. On the other hand, Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State submits that the learned



trial court has rightly appreciated the entire materials on the record. It is submitted that no doubt there are shortcomings and the investigation seems to be defective. It was the I.O. who has neither collected any scientific data such as small detail and mobile tower location of the accused and time of occurrence nor he collected blood lying at the place of occurrence, the investigation is failing on certain material aspects of the matter but when this Court will examine the judgment of acquittal, it may be found that the trial court has gone through the deposition of each and every prosecution witness and has considered the same before arriving at the conclusion. The trial court has not rejected the evidence of the prosecution witnesses on the ground that they are family members of the deceased alone. In fact, their evidences have been found unreliable and untrustworthy. The trial court has not committed any error in acquitting the accused persons.

23. Learned Additional Public Prosecutor further submits that in a case based on circumstantial evidence, it is required to answer as to 'how', 'when', 'why' and 'where', these are the important aspects which would be required to be answered by the prosecution. The principles governing the case of circumstantial evidence may be found in the judgment of the



Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda** (supra).

24. As regards the statement of learned counsel for the appellant that I.O. has not done his part of the job in collecting the evidences and collating the same with the other circumstances appearing in course of investigation, learned Additional Public Prosecutor would submit that in that regard this Court may take appropriate view of the matter keeping in view the judgment of the Hon'ble Supreme Court.

Consideration

25. We have considered the submissions of learned counsel for the appellant and learned Additional Public Prosecutor for the State. We have also gone through the evidences available on the record and the findings recorded by the learned trial court.

26. On a close perusal of the records, we find that when the written information was submitted to police by the informant Mahesh Kumar (P.W.-2), he only informed that on 15.08.2020 at about 06:30 P.M.-07:00 P.M., his son Dharmendra Kumar (the deceased) got a call on his mobile number 9304341030, whereafter he left the house saying that he will return in some time but thereafter at about 09:30 P.M. he came to know from some persons that Dharmendra Kumar has been shot dead by some unknown



criminals near Bajrangbali Temple in Manpur village besides Bypass road. The informant states that he left his house and reached Sadar Hospital Chapra, where he came to know that his son was shot dead by some unknown criminals. The post-mortem was conducted in the hospital and thereafter he came to the police station.

27. It is evident from the written information which is the basis of the FIR that it has been submitted in the police station after more than 12 hours of the knowledge on the part of the informant with regard to the murder of his son. He came to know about the occurrence at 09:30 P.M. itself on 15.09.2020 and the family members of the deceased were present at the time of preparation of the inquest report and they were present during post-mortem but no statement was made before police by way of fardbeyan. A written application was submitted after 12 hours of the occurrence on the next day at about 11:30 A.M. and till that time the informant did not raise any suspicion against the accused persons. The informant did not disclose that his son had informed about the person who had given him the call and/or where his son had gone in the evening at 06:30 P.M.-07:00 P.M. after receiving the phone call.



28. This Court finds that the informant has been examined as P.W.-2 in this case. In course of trial, he has stated that his son told him that Akash Kumar had called his son on mobile whereafter he had left. P.W.-2 has stated that his son told him that the deceased had gone with Ranjan and Akash and three persons Raju Paswan, Rajesh Shah and Suraj Mahto of village Anantpur. This is what the trial court has noticed in its finding that initially the informant took name of two persons at the stage of his statement under Section 161 Cr.P.C. but in course of trial he added three more names. This has been taken as inconsistent and untrustworthy statement of P.W.-2 and we find no fault in appreciation of the evidence on the part of the learned trial court.

29. We have noticed that in Paragraph '7' of his deposition, P.W.-2 has stated that his statement was recorded twice before the police. The defence invited his attention towards his previous statements made before police in which he had not stated that Akash Kumar had called his son and his son has said that he had gone with Ranjan and Akash and three other persons of village Anantpur. In Paragraph '5' of his deposition, he has stated that he is not aware that from which mobile number call had come on the mobile number of his son. We find that in his deposition in course of trial he has stated that his statement was recorded twice by



police. Those two statements before police has not been brought on record.

30. We have further noticed that P.W.-1 Birendra Kumar is the brother of the deceased who has stated that his brother had received a phone call and that phone call was of Akash. He had said that Ranjan, Raju, Rajesh and Suraj who were with Akash were calling him. This witness has stated that his father was nervous, so at the time of lodging of the FIR he had not given the name of the accused persons. He has stated that he cannot remember the mobile number on which Dharmendra had received the call. His attention was also drawn towards his previous statement in which he had not stated that Akash had given call to his brother.

31. Sharda Devi (P.W.-3) is the mother of the deceased. She has also made a parrot like statement on line with P.W.-1 and P.W.-2. She has stated that when her husband had lodged the case she had also gone to the police station. She had received information at her home but she cannot say the name of the person who had informed. In Paragraph '8' of her deposition she has stated that she had gone with her husband to the P.S. to lodge the case and she was present with him. On the said statement all the persons had put their signature. Whereafter police had come for



investigation at her house. From the deposition of P.W.-3 it appears that the statement of the informant was recorded by police on which he and P.W.-3 had also put her signature. But this recorded statement of the informant has not been brought on record in course of investigation and trial.

32. Nisha Kumari (P.W.4) is the sister of the deceased who has deposed that a friend of her brother had given a telephone call whereafter he had left the house. She has stated that at 9:00 P.M.-9.30 P.M. a person from the village came and informed the family of this witness that Dharmendra had suffered firearm injury, whereafter this witness along with her another brother and parents had gone near Manpur Temple but that was a lonely place and nothing was there. Thereafter she had gone to the police station. She has stated in her cross-examination that she does not remember the boundary of the place of occurrence. The defence examined her also with respect to the cases pending against the deceased. This witness has stated that she is not aware of the number of cases which are going on against her brother but she has stated that there were cases. It is evident from the deposition of P.W.4 that when she reached at the place of occurrence, she had not found any sign of murder. The place was lonely and there was



nothing. She has not stated about presence of blood near Manpur Temple.

33. Mankeshwar Mahto (P.W.5) is the Investigating Officer of this case who has stated that the information with respect to the occurrence was received in the Police Station on 16.08.2021 at 11.30 A.M. On that basis, FIR was registered and he had taken over charge of the investigation. He has stated that he had prepared the inquest report and recorded the restatement of the informant. He has stated that he has inspected the place of occurrence which is situated at the distance of 1 kilometre long from the Police Station. He has given the description of the place of occurrence. He had found the blood at the place of occurrence. He had not collected the same. On a reading of the evidence of the I.O., it is crystal clear that he is not coming out with correct statement. It would appear from the inquest report on which the signature of Krishnadeo Prasad has been proved that the inquest report was prepared on 16.08.2020 at 06:00 P.M. The place where the inquest report was prepared is falling within the jurisdiction of Sonepur Police Station. Krishnadeo Prasad has however, not been examined in course of trial. It further appears that in this case certified copy of the post-mortem report was brought on record but when Dr. Harishchandra Prasad (P.W.6) who is said to have



conducted the post-mortem on the dead body of Dharmendra Kumar came to depose, he said that he had not put his signature on the post-mortem report and it was not his signature. He has stated that he is suffering from alzheimer disease and he forgets many other things. The trial court has observed that the court was unable to understand and judge this witness. In his cross-examination, he has stated that he is suffering from the disease for last five years but he is not getting any treatment for the same. He has stated that post-mortem report was written by his staff. Dr. Dinesh Kumar Prajapati (P.W.-7) who was posted on the post of Pharmacist in the Chapra Sadar Hospital has proved the handwriting and signature of the doctor Harish Chandra Prasad (P.W.6). The said post-mortem report has been certified by the Deputy Superintendent, Sadar Hospital and the attested xerox copy of the post-mortem report has been proved as Ext.-P/6 (with objection). In his cross-examination, P.W.7 has stated that he was looking at the post-mortem report for the first time in the court and he cannot say that where the xerox copy was prepared.

34. In the aforementioned background of the evidences available on the record, the learned trial court has recorded its finding in paragraph ‘ 41’ of the judgment in Sessions Trial No.



180 of 2021 (paragraph '40' of Sessions Trial No. 364 of 2022)

which reads as under:-

“41. On the basis of materials available on record the Court comes to the conclusion that none of the ingredient of offence u/s 302/34 IPC and 27 Arms Act stand fulfilled. There is no eye witness in this case. All the witnesses are family members who were not present at the time and place of alleged murder of Dharmendra Kumar. The FIR was lodged against unknown. In an after thought exercise the Pws named the accused persons varying from two in S/161 Cr.P.C. to five in their depositions before the Court. The persons who told that the accused persons murdered Dharmendra Kumar was not produced before the Court. The Inquest Report was not duly proved in the absence of examination of Krishna Deo Prasad the Police Jamadar who prepared it. The PM Report is also not proved in the absence of expert. Even if the PM Report is taken into consideration it does not disclose who fired at the deceased Dharmendra Kumar. During appreciation of evidence the PWs have been found to be unreliable and untrustworthy. The murder weapon was not produced before the Court and there is no recovery produced before the Court in furtherance of the confessional statement of accused Akash Kumar. The prosecution failed to bring on record the FSL report to show that the blood at the PO belonged to the deceased Dharmendra Kumar. There is no CDR data, no mobile tower location data brought on record to establish the complicity of accused persons in commission of the alleged murder of Dharmendra Kumar. Neither the mobile of deceased nor of the accused was produced by the prosecution as evidence in this case and to link the conversation between them. There is no last seen together theory applicable in this case as no person has come forward to say that the deceased was last seen in the company of accused persons. Even considering from the angle of circumstantial evidence, the chain stood not completed. There was no motive proved by the prosecution. The prosecution was obliged to prove by cogent and reliable piece of evidence the confessional statement of the accused Akash Kumar which the prosecution could not. The Court therefore concludes that other than



confessional statement of accused Akash Kumar there is nothing on record to prove the guilt of the accused persons in this case. Conviction merely on the basis of confessional statement of one of the accused is not sustainable.”

35. Having analyzed the entire evidence on the record once again, we find that the learned trial court has not committed any error in appreciation of the evidence.

36. As regards the principles governing cases of circumstantial evidence, in case of **Sharad Birdhichand Sarda** (supra), the Hon’ble Constitution Bench of the Supreme Court has held in paragraph ‘152’ as under:-

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. AIR 1972 SC 656 : (1972) 4 SCC 625



37. It is evident on a close scrutiny of the entire materials on the record that the prosecution in this case has not even proved the motive of the occurrence. The manner of occurrence has also not been proved in this case. In fact, there is no material on the record to connect the accused persons with the occurrence in question. At the same time, we do agree with submission of learned counsel for the appellant that in this case during investigation, the I.O. has not done its duty properly and even the basic requirements which are expected from a Police Officer investigating the case, has not been followed. The murder has taken place within jurisdiction of Sonepur Police Station. The inquest report was prepared on 15.08.2020 at 6.30 P.M. but no F.I.R. was registered and the police kept on waiting for a written application till next day and what happened during this period from 15.08.2020 till next day is not known. In a case of murder delay of more than 12 hours in registering of the F.I.R. itself creates doubt over the authenticity of the story particularly when some of the names which were known to the informant were not disclosed in the F.I.R. The I.O. did not collect the blood sample and sent it to the F.S.L. The doctor did not depose properly and the I.O. when came to depose has made a statement that information regarding the occurrence was received in the Police Station on



16.08.2020 at 11:30 A.M. which cannot be said to be a correct statement for the reason that on the previous day itself the inquest report and post-mortem had already taken place. The conduct of the I.O., the Doctor and the prosecuting officers *prima-facie* lack bonafide and it would be required to be reviewed/examined in accordance with law.

38. For the aforementioned reasons, following the dictum of the Hon'ble Supreme Court in the case of **State of Gujarat v. Kishanbhai and Ors.**, we direct the Department of Home, Govt. of Bihar to conduct an enquiry with regard to the officials such as the I.O., the Doctor and the conduct of Prosecution in this case and identify as to whether the failure on the part of these officials were designedly for the purpose of helping the accused. We record the directions and observations of the Hon'ble Supreme Court in paragraph '23' of the judgment in case of **Kishanbhai** (supra) hereunder:-

“23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady



suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

39. We also reproduce the observations of the Hon’ble Supreme Court in case of **Edakkandi Dineshan** (supra) in paragraph ‘26’ hereinbelow:-

26. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In *Paras Yadav v. State of Bihar*⁸, the Supreme Court observed as under : (SCC p. 130, para 8)

“8. ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from *Ram Bihari Yadav v. State of Bihar*⁹: (SCC pp. 523-24, para 13)

‘13. ... In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.’ ”

8. (1999) 2 SCC 126 : 1999 SCC (Cri) 104

9. (1998) 4 SCC 517 : 1998 SCC (Cri) 1085



40. For the reasons stated hereinabove, although we find that upon appreciation of the materials on the record no case for interference is made out, we are of the considered opinion that the responsibility of the erring officials must be fixed by the Department of Home within a reasonable period by independently examining their role, whether it was designedly or negligently?

41. This Court is of the view that now time has come when the directions and observations of the Hon'ble Supreme Court given a decade back in paragraphs '19', '22' and '23' of the judgment are required to be followed in its terms and spirit by the Department of Home. Whenever any acquittal takes place, role of the investigating officers/prosecution, etc. are required to be reviewed at appropriate level.

42. The reason(s) for failure of the prosecution must surface and adequate departmental action be taken against the erring officials, if their conduct is found blameworthy. In this case, review be done within four months from the date of receipt/communication of a copy of the judgment. Such review shall be independent, uninfluenced and in accordance with law.

The informant will be at liberty to pursue the matter with the Department.



43. For the reasons stated hereinabove, these appeals stand disposed of with the aforementioned observations and directions but without interfering the judgments of acquittal.

44. A copy of this judgment be sent to the Department of Home, Government of Bihar, immediately.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

durgesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.05.2025
Transmission Date	07.05.2025

