IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.14 of 1996

CNR No. BRHC010232071996

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SAHADEO YADAV, son of Balli Yadav, resident of village Keilaghat, P.S. Barari, District Bhagalpur

... ... Appellant/s

Versus

The STATE OF BIHAR

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Siddharth Harsh
For the Respondent/s : Mr. Sujit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR

JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 19-11-2026

1. The present appeal has been preferred against the judgment of conviction, dated 15.12.1995, and order of sentence, dated 20.12.1995, passed by the learned Additional Sessions Judge–II, Bhagalpur, in Sessions Trial No. 236 of 1882, arising out of Kotwali Police Station Case No. 40 of 1980, whereby the sole appellant was convicted for the offences punishable under Section 302 read with Section 34 and Section 457 of the Indian Penal Code. Pursuant to his conviction, the sole appellant was sentenced, vide order, dated 20.12.1995,to undergo rigorous imprisonment for life for offence under Section 302 read with 34 of the Indian Penal

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Code and for the offence under Section 457 of the Indian Penal Code, he was sentenced to undergo rigorous imprisonment for four years. However, both the sentences were directed to run concurrently.

2. The prosecution case, as unfolded in the fardbeyan of the informant, Ajay Kumar Singh, on 23.12.1980, is that in the intervening night of 22/23 December, 1980, at about 3 A.M., the informant's elder brother, Nirbhay Kumar Sharma @ Chunnu, woke up to answer the call of nature and shouting, "Thief, Thief", upon which, the informant woke up and saw that Chunnu bhaiya was following a person and he also followed him and saw that his elder brother had descended from the rooftop and reached near the water tap situated on the eastern side of the house. The informant also saw three-four other persons near the water tap along with his elder brother, who appeared to be of average height and build. The informant further stated that it was a moonlit night and bulb was also illuminated outside, due to which he claimed to have saw their faces and would be able to identify them.

3. Thereafter, the informant, accompanied by others, opened the door and went outside, where they found his elder brother lying on the ground beside the water tap with stab injuries inflicted by the thieves. A lathi (wooden stick) and a sheet, left

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behind by the thieves, were also found at the place where his elder brother was lying injured. The Informant took his elder brother to the hospital, where the doctor declared him dead.

4. On the basis of the aforesaid *fardbayan* of the informant, Kotwali Police Station Case No. 40 of 1980, dated 23.12.1980, was registered against the three-four unknown persons for the offences punishable under Sections 457/302 of the Indian Penal Code. Upon registration of the case, S.I. Vijay Kumar Sinha was entrusted with the investigation of the case.

5. Upon completion of investigation, the police submitted Charge-Sheet/Final Form No. 136, dated 07.05.1981, against the sole appellant for the offences punishable under Sections 302 and 457 of the Indian Penal Code. In this case, the learned Chief Judicial Magistrate, without taking cognizance of the aforesaid offences against the appellant, committed this case to the Court of Sessions for trial, vide order, dated 26.06.1982.

6. On 04.02.1986, the learned 6th Additional Sessions Judge, Bhagalpur, framed charges against the appellant Sahdeo Yadav @ Maina Yadav under Section 302 read with Section 34 and Section 457 of the Indian Penal Code, 1980. The charges were read over and explained to the appellant in Hindi, to which he pleaded not guilty and claimed to be tried.

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7. The prosecution, in order to substantiate its case, has examined as many as eleven witnesses and also exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned herein under in tabular form:

List of Prosecution Witnesses :

P.W. No.	Name of witness	Description
1.	Vivekanand Singh	Formal Witness
2.	Arun Kumar Singh	Tendered by the prosecution for cross-examination
3.	Sadai Kumar Shirmour	Brother of the Deceased
4.	Abhay Kumar Singh	Elder brother of the Deceased
5.	Dhananjay Kumar Singh	Uncle of the Deceased/ Tendered by the prosecution for cross-examination
6.	Ajay Kumar Singh	Informant
7.	Shatrughan Singh	Father of the Deceased
8.	Dr. H. I. Ansari	Doctor who conducted the Post-mortem
9.	Sri S. P. Gupta	Judicial Magistrate who conducted the TIP
10.	Babu Lal Ram	Investigating Officer
11.	Bijay Kumar Sinha	Police Officer who prepared the inquest report

List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date/proved by
1	Signature of Vivekanand Singh on the Inquest Report.	05.03.1986/PW 1
1/1	Signature of Arun Kumar Singh	05.03.1986/PW 1

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	on Injury report	
2	Written Report (Fardbeyan)	19.04.1986
3	Post-mortem examination report	25.07.1986
4	T.I.P. Chart	17.05.1989
5	Formal F.I.R	17.05.1989
6	Inquest Report	17.05.1989
7	Seizure list	17.05.1989
7/1	Seizure list	17.05.1989
A	Para 25, 26 & 27 of the Original Case Diary	**By Defence** – 30.05.1989
A/1	Para 25, 26 & 27 of the Carbon copy of Case Diary	**By Defence** – 30.05.1989

8. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 on 07.06.1989. In his statement, under Section 313 of the Code of Criminal Procedure, the appellant denied the incriminating circumstances appearing against him in the prosecution evidence and stated that he has falsely been implicated in the present case.

9. Mr. Siddharth Harsh, learned Counsel for the appellant, argued that the judgment of conviction is against the weight of evidence and has been rendered on mere presumption of guilt. It is contended that the prosecution has failed to prove its case beyond reasonable doubt inasmuch as the testimonies of the prosecution witnesses suffer from contradictions and inconsistencies, which the learned Trial Court failed to properly appreciate and convicted the appellant.

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10. Learned Counsel further submits that the prosecution has failed to establish the place of occurrence as well as the manner in which the alleged occurrence had taken place beyond reasonable doubt. The testimonies of the prosecution witnesses contain material inconsistencies regarding the sequence of events and the manner in which the alleged occurrence took place, thereby creating serious doubt over the prosecution version. Further, the testimonies of the prosecution witnesses appear to be stereotyped, tutored and parrot-like. Their depositions, particularly on material aspects of the occurrence and identification of the assailants, lack the naturalness of independent and spontaneous narration and, therefore, require careful scrutiny.

11. Learned Counsel next submits that the appellant was not named in the First Information Report inasmuch as the First Information Report was registered against three to four unknown persons. The name of the appellant surfaced during the investigation of the case, and the prosecution has failed to establish his identity and involvement through wholly reliable and convincing evidence. Further, though the appellant was taken on remand by the police, the name of other persons could not come to light. No independent witness has been examined by the prosecution to support its version of the alleged occurrence,

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although, as per the prosecution evidence itself, several persons from the neighbourhood had assembled at or near the place of occurrence after the alarm was raised. The non-examination of independent witnesses assumes significance and creates further doubt over the prosecution case.

12. Lastly, it is submitted that the alleged seized articles i.e. kurta, lathi and chadar (sheet), were not produced before the Trial Court as material evidence during the trial. Their non-production deprived the defence of an opportunity to examine the alleged physical evidence and test its connection with the occurrence.

13. In view of the aforesaid infirmities and the cumulative effect of the deficiencies in the prosecution evidence, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. As such, the appellant is entitled to be acquitted of the charges levelled against him.

14. Per contra, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor, argued that the judgement of conviction and the order of sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It has been submitted that the prosecution witnesses have remained consistent during the trial

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and there is no lacuna in the case of the prosecution. The minor inconsistencies in the testimony of the witnesses cannot be a ground to reject their evidence as a whole.

15. It is further submitted that the testimony of the witnesses stands corroborated in material particulars by the prosecution evidence and the offences alleged against the appellant appears to be serious in nature inasmuch as the prosecution witnesses examined have duly supported its case.

16. Learned Additional Public Prosecutor finally argued that guilt of the appellant has been satisfactorily proved by the evidence adduced during the trial and there is no infirmity in the judgment of conviction passed by the learned trial Court.

17. I have heard learned Counsel for the parties concerned and have perused the materials available on record.

18. It would be apposite to discuss the oral/documentary evidence as available on record to re-appreciate the evidence for just decision of the present appeal.

19. PW 1, Vivekanand Singh, is a formal witness, who has identified and proved his signature as well as the signature of Arun Kumar Singh on the seizure list.

20. PW 2, Arun Kumar Singh, was tendered by the prosecution for cross-examination. In his cross-examination, he

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deposed that he could not tell what clothes the deceased was wearing at the time of preparation of the inquest report.

21. PW 5, Dhananjay Kumar, is the uncle of the deceased and he was tendered by the prosecution for cross-examination. In his cross-examination, he has deposed that his father and Shatrughan Prasad Singh are cousins. Devendra Prasad Singh and Shatrughan Prasad Singh are brothers. He has further deposed that Devendra Prasad Singh is presently posted as Deputy Superintendent of Police at Darbhanga.

22. PW 7, Shatrughan Singh, was tendered by the prosecution for cross-examination. In his cross-examination, he has deposed that Devendra Singh is his brother and at the time of occurrence, Devendra Singh was posted as Police Inspector at Chandi. The statement of this witness was recorded by the police on the second or third day of the occurrence. The police did not read over the statement to him. He was also not been able to see the case diary. The police was noting down only the points of his statement in his presence. The police was not noting down his statement in the case diary. This witness denied having made any statement before the police to the effect that Sahdeo Yadav was supplying milk to his house for a few days about three years prior to the occurrence and Sahdeo Yadav had been told once or twice

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not to enter into the house without permission. He has further denied having stated to the police that Sahdeo Yadav had cut branches from the Gular tree situated adjacent to their house for feeding his cattle and he had been prohibited from doing so. He has denied the suggestion that he, Devendra Babu and the Investigating Officer had replaced a page of the case diary.

23. PW 11, Vijay Kumar Sinha, in his examination-in-chief, has deposed that on 23.12.1980, while he was posted at Kotwali Police Station, Bhagalpur and was on O.D. duty at Bhagalpur Medical College Hospital, at 5:30 AM, he received a written report from Ajay Kumar Singh and he forwarded the same to Kotwali Police Station for its registration under Sections 302/457 of the Indian Penal Code. He further deposed that he prepared the inquest report of the dead body of Nirbhay Kumar Sirmaur in presence of witnesses, Arun Kumar Singh and Vivekanand Singh. This witness sent the inquest report along with the dead body. The Officer-in-Charge, Sri B. L. Das, also arrived at the hospital, whereupon he handed over the charge of the case to him. He has further stated that he prepared the seizure list at the request of the Investigating Officer and the witnesses signed the same in his presence.

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24. In his cross-examination, this witness (PW 11) deposed that there was a police camp at B.M.C.H. at the relevant time and that police camp still exists. He has further deposed that Ajay Kumar Singh is the son of Devendra Singh, who was Police Inspector.

25. PW 8, Dr. H. I. Ansari, was the doctor who conducted the post-mortem examination on the dead body of Nirbhay Kumar Sirmaur, on 23rd December, 1980, at about 3:15 PM. The deceased was of healthy built and fair complexion. Rigor mortis was present. On further examination, he found the following ante mortem injuries:-

> *"Stab wound on the left side back of chest, size 3/4" × 1/4", chest deep between the 6th and 7th intercostal spaces. On dissection, the weapon was found to have passed through the above intercostal space and entered the chest cavity, pierced the lower lobe of left lung and had come out through the lung into the chest cavity.*
>
> *The chest cavity was full of blood and blood clots. Lungs were pale. Both chambers of Heart empty. The stomach contained black pasty material. The liver, spleen and kidneys were found pale. The urinary bladder was empty, and the colon contained gas.*
>
> *On opening the scalp, the area corresponding to the vertex was found contused.*

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The underlying brain tissue were also found contused and had some blood clot."

26. In the opinion of the doctor (PW 8), the injuries were ante-mortem in nature. Injury No. 1 was caused by a sharp-pointed weapon. Injury No. 2 was caused by a hard and blunt substance. The cause of death was haemorrhage shock and coma as a result of injury to vital organ, lung. He further opined that injury No. 1, i.e., the stab wound, was sufficient to cause death.

27. In his cross-examination, PW-8 has stated that there must have been a penetration of the left lung.

28. Nothing, in particular, was elicited by the defence to show that the findings of the doctor and/or his opinion, with regard to the cause of death was incorrect. This apart, I, too, do not find anything inherently incorrect or improbable in the evidence given by PW 8.

29. It can, therefore, be safely concluded, and I do conclude, that the deceased died as a result of having sustained the injuries as has been mentioned by the doctor (PW 8) and the hemorrhage, shock and coma, which resulted from the ante mortem injuries aforementioned, became the cause of his death and that the injuries, which had been inflicted on, and sustained

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by, the said deceased, was sufficient to cause death of a person in the ordinary course of nature.

30. What also clearly follows from the discussion of the medical evidence on record is that the death of the said deceased was homicidal in nature. Whether the appellant was the one, who had caused the death, of the deceased, therefore, falls for consideration.

31. The test identification parade of the appellant was held on 15.02.1981 by Sri S. P. Gupta, Judicial Magistrate, Bhagalpur (PW 9). PW9, in his examination-in-chief, has deposed that pursuant to the order of the Chief Judicial Magistrate, Bhagalpur, he conducted a test identification parade of the suspect in connection with Kotwali Police Station Case No. 40 of 1980, at Central Jail, Bhagalpur, in presence of Ramakant Rai, Clerk. The suspect was Sahdeo Yadav @ Maina Yadav and the witnesses were Ajay Kumar Singh, Sadai Kumar Sirmaur and Abhay Kumar Singh.

32. This witness further deposed that the suspect was placed among nine other persons of similar appearance, age and physique for the purpose of the identification parade. He further deposed that witness Ajay Kumar Singh identified the suspect, Sahdeo Yadav, stating that he had seen him scaling the boundary

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wall of his house at the time of the occurrence. Witness Sadai Kumar Sirmaur also identified the suspect, Sahdeo Yadav, stating that he had seen him scaling the boundary wall of his house. Witness Abhay Kumar Singh likewise identified the suspect, Sahdeo Yadav, stating that he had seen him scaling the boundary wall. He has also stated that no police officer was present at the time of conducting the test identification parade.

33. In his cross-examination, this witness (PW 9) has deposed that he could not recall whether the witnesses had accompanied him to the jail or who had identified the witnesses. He has further deposed that while one witness was participating in the test identification parade, the other witnesses were kept outside at a different gate. After completion of the identification by a witness, he was sent to a secluded place within the jail premises where he could not interact with the other witnesses. He did not mention in the test identification parade chart that the position of the suspect had been changed. He also did not record the identifying marks of the suspect in the test identification parade chart. He has deposed that the answers given by the witnesses during the identification parade were recorded. He denied the suggestion that the Investigating Officer and the Police

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Inspector were present at the time of the test identification parade and had conducted the identification of the witnesses.

34. PW 3, Sadai Kumar Sirmaur, in his examination-in-chief, has deposed that deceased Nirbhay Kumar Sirmaur @ Chunnu was his elder brother. He deposed that on the date of occurrence, he was sleeping in a room along with Dhananjay Kumar Singh. His elder brother Chunnu was scheduled to leave for Nepal the following morning. He further deposed that at about 3 AM, upon hearing the alarm of "Chor-Chor" from outside, he woke up. His sister, Madhulika Singh, was raising an alarm from the courtyard/verandah, shouting that Chunnu Bhaiya is chasing the thieves and had gone to the roof. Thereafter, this witness, along with Dhananjay Kumar Singh, proceeded towards the roof with lathis and on reaching the roof, they saw Chunnu Bhaiya grappling with one person, while two to three other persons were standing nearby. He deposed that the place of occurrence was near a water tap and his brother was calling them. Thereafter, they came downstairs, unlocked the middle room and came outside, where they found Chunnu Bhaiya writhing in pain and asking for water. The miscreants jumped over the boundary wall and fled towards the eastern direction along the road. His sister Madhulika Singh gave water to Chunnu Bhaiya. PW-3 further deposed that

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his brother was bleeding profusely. He first took him to K. K. Nursing Home, where no doctor was available, and thereafter took him to B.M.C.H., Bhagalpur, where the doctor declared him dead.

35. This witness (PW 3) deposed that it was moonlit night on the night of occurrence and that a municipal street light was glowing near the water tap and in that light, he had properly seen the faces of the miscreants. He further deposed that one sheet and a lathi belonging to the miscreants were left behind at the place of occurrence.

36. This witness (PW 3) further deposed that he had gone to jail for the purpose of the Test Identification Parade, wherein he identified one of the miscreants in presence of a Magistrate, who was also present in the Court.

37. This witness (PW 3), in his cross-examination, has deposed that on the date of occurrence, his father was not present at the house, whereas his mother was present. Devendra Singh is his uncle, who had earlier served as a Police Inspector at Bhagalpur. He further deposed that Ajay Kumar Singh was also residing with him in the same house at that time. PW-3 further deposed that Dhananjay had gone outside the house, but he had come upon hearing the alarm. His mother had also come outside upon hearing the commotion. He further stated that he had not

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heard the deceased Chunnu raising any alarm. He stated that he and Dhananjay first went to the courtyard and thereafter proceeded to the roof. He further stated that he, Dhananjay, Ajay, his mother, Madhulika and Abhay Kumar went to the roof. Near the water tap, one person was engaged in a scuffle. At that time, he saw four persons from a distance. The boundary wall was situated at a distance of approximately 10–12 yards from the side of the house. He saw all four miscreants jumping over the boundary wall and fleeing. At that time, the accused was wearing a lungi and kurta, whereas he had not noticed what the other three miscreants were wearing. PW 3 further deposed that he did not chase the miscreants. He stated that the accused fled towards the northern direction, whereas all four miscreants jumped over the boundary wall and fled towards the eastern direction. He had never seen the accused selling milk on a bicycle nor had the accused ever supplied milk at his house. He further stated that while giving his statement before the Investigating Officer, he remembered what clothes the accused was wearing at the time of occurrence, but he could not remember whether he had specifically disclosed the same to the Investigating Officer. He also stated that a cow was present at his house and was tied in the courtyard. PW 3 further stated that after the date of occurrence, he

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again saw the accused during the Test Identification Parade. At the Test Identification Parade, approximately 10–12 persons were standing along with the accused, but he identified only the accused. He further deposed that upon hearing the alarm, several people from the neighbourhood had assembled, but he remembered the names of Rajiv Ranjan Singh, Vibhuti Chaudhary, Putun Dada and Raj Narayan Pandey. He denied the suggestion that the accused used to supply milk at his house and he was familiar to him prior to the alleged occurrence and there was a dispute over payment of money.

38. PW 4, Abhay Kumar Singh, in his examination-in-chief, has deposed that Nirbhay Kumar Singh was his younger brother, who was also known as Chunnu in the family. The occurrence took place in December, 1980, about four to five years prior to his deposition. Approximately at about 3 AM, on the date of occurrence, he was sleeping in the eastern room of his house and upon hearing the alarm “Chor-Chor”, he woke up and came out of his room. In the courtyard, his sister, Madhulika, told him that Chunnu Bhaiya is chasing the thieves and had gone to the roof. He also rushed to the roof, from where he saw Chunnu Bhaiya grappling with one of the thieves near the water tap. He then hurried downstairs, where his younger brothers were opening

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the lock of the door. When they came outside, he saw Chunnu lying on the ground and the thief was fleeing by scaling the boundary wall. Blood was oozing from Chunnu's body, and he was asking for water. Madhulika gave him water to drink. Thereafter, they took Chunnu to K. K. Nursing Home, but no doctor was available there. They then took him to Sadar Hospital, B.M.C.H., where the doctor declared him dead. He has deposed that the test identification parade was held in jail, where he had identified the said person. He has also deposed that Madhulika is presently in Canada and is not likely to come here at present. He identified the same person in the test identification parade.

39. PW 4, in his cross-examination, has deposed that Madhulika went to Canada in February, 1985, and her address is known to his family. Madhulika had not participated in the test identification parade. His mother is alive and resides at home, but she had also not participated in the test identification parade. There are houses on both the eastern and western sides of his house. Upon hearing the alarm "Chor-Chor", people gathered from the houses situated on both sides. He could not disclose their names, as he was trying to save his brother's life. At that time, he did not talk to anyone. His house is surrounded by a boundary wall on all sides. The staircase leading to the roof is situated inside

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the house and is accessible through the verandah. He did not see any of the miscreants climbing the staircase to reach the roof. He also did not see Chunnu or the miscreant on the roof, nor did he see any miscreant jumping down from the roof. He has further stated that the distance between the place where Chunnu Bhaiya had fallen and the point from where the miscreant was escaping by scaling the boundary wall was approximately 4 feet. He saw the miscreant escaping by scaling the boundary wall. He stated that there were three to four persons escaping by scaling the boundary wall. On further clarification, he stated that he had seen two or three persons fleeing, and they were running almost together. He did not chase them in order to apprehend them. He could not remember whether he had raised an alarm of “Pakro-Pakro”. He stated that his statement had not been recorded by the Sub-Inspector during three days and that his statement was recorded by the police after his return from Gaya after about 25 days. He has further stated that he did not know whether the accused had a house at Gawar Toli, kept cows and buffaloes, or carried the business of selling milk. He had not seen the accused selling milk. He denied the suggestion that he had falsely implicated the accused or he knew the accused prior to the occurrence.

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40. PW 6, Ajay Kumar Singh is the informant of this case and the cousin brother of the deceased. He, in his examination-in-chief, deposed that in the intervening night of 22nd and 23rd December, 1980, he was sleeping with deceased Nirbhay Kumar Singh in the same room and at about 3 AM, upon hearing the alarm “Chor-Chor”, he woke up. Nirbhay Ji was raising the alarm “Chor-Chor”. When he came out, he saw Nirbhay Ji chasing a thief and proceeding towards the staircase leading to the roof. He also went to the roof. On reaching there, he saw that near the water tap, towards the eastern side of the house, Nirbhay Ji was engaged in a scuffle with three or four persons. He had caught hold of one of the thieves. He witnessed the occurrence from the roof. The street light was illuminated and it was a moonlit night; therefore, he could clearly see the faces of all the persons. He saw the persons scaling the boundary wall and fleeing towards the east. Even at that time, he could identify those persons. When he went near Chunnu @ Nirbhay Ji, he found that Chunnu had sustained a knife injury on his back and was bleeding. He was asking for water. A lathi and a chadar, belonging to the miscreants, were lying at the place of occurrence. He took Chunnu Bhaiya to K. K. Nursing Home, but no doctor was available there. He

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thereafter took him to B.M.C.H., where the doctor declared him dead.

41. This witness (PW 6) deposed that he gave a written report to the Sub-Inspector of the police station. The said written report was written by him and bears his signature. The Sub-Inspector subsequently recorded his statement and he also showed him the place of occurrence. He participated as a witness in the test identification parade, where he identified one of the miscreants, who is present in the dock in the Court.

42. PW 6, in his cross-examination, deposed that at the time of occurrence, his father was posted as Police Inspector at Chandi. Prior to that, his father had also been posted as Police Inspector at Bhagalpur. Apart from himself and Chunnu Ji, no other person was sleeping in that room. He could not ascertain the direction from which the alarm was coming, but he had heard it. After coming out of the room, he reached the verandah, where he did not find anyone at that time. He did not notice whether anyone was present in the courtyard or not. When he came to the verandah, he saw a thief is going upstairs by the staircase. He could see only one thief. The said person was of normal height and was neither particularly stout nor fat. He has further stated that it might have taken him about one or two minutes to reach the

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roof. By the time he reached the roof, the said person had already fled. He could not remember how long he remained on the roof, but stated that he might have remained there for about one and a half to two minutes. While he was on the roof, Sadai, Dhananjay and Abhay had also arrived there. He could not remember whether any other persons had come to the roof. He did not have any conversation with them there. Thereafter, he saw Chunnu near the water tap, where he noticed that three or four persons were engaged in the grappling with him. When he was witnessing the scuffle from the roof, Sadaiv, Dhananjay and Abhay were also there. After coming down from the roof, he went towards the middle room. Sadai and Dhananjay Ji had been sleeping in that room. The door on the northern side of the middle room, which provided an exit, was locked. After coming down from the roof, Sadai Bhaiya was opening the lock of the room, and he did not remember anyone else coming there. He went directly towards the water tap after the lock was opened. Chunnu was lying near the water tap. Sadai, Dhananjay and Abhay, all three, also reached that spot. By the time he reached the place of occurrence, the miscreants had already fled away. He had seen two or three persons scaling the boundary wall and escaping. During the occurrence and immediately thereafter, some persons from the

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neighbourhood had assembled there. Vibhuti Chaudhary and Rajiv Ranjan were also among those present. He did not have any conversation with them at that time. He denied the suggestion that the accused used to supply milk at his house and a dispute had taken place with him a few days prior to the occurrence over payment for the milk. He also denied the suggestion that he already knew the accused before the occurrence.

43. PW 10, Babu Lal Ram, the Investigating Officer of this case, in his examination-in-chief, has deposed that he took over the charge of the case from Assistant Sub-Inspector Vijay Kumar Sinha, recorded the statement of the informant, Ajay Kumar Singh, and also recorded the statements of Arun Kumar Singh and Vivekanand Singh on 23.12.1980. He inspected the place of occurrence, which is the brick-built house of the informant, having a concrete roof. The main entrance of the house faced north. At a distance of about ten yards to the north of the house, there was a brick boundary wall, approximately four feet in height. Fresh marks indicating that bricks had fallen from the top of the wall were noticed. The informant pointed out the place of occurrence to him. He has further deposed that on the eastern side of the house, there was a cattle shed having a roof covered with clay tiles, some of which were found freshly broken. Towards the

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east of the cattle shed, a potato plant was found trampled, and signs of trampling were also noticed on a plant situated to its north. Bloodstains were found on the ground in the area between the potato plant and the boundary wall. A lathi and a chadar were found at a distance of about two yards to the west of the place where blood had fallen. The blood-stained soil, the chadar and the lathi were seized in presence of witnesses and a seizure list was prepared. Assistant Sub-Inspector Vijay Kumar Sinha prepared the seizure list on his dictation, and the same bears his signature. Witnesses Vibhuti Bhushan Chaudhary and Rajiv Ranjan Singh signed the seizure list in his presence. He identified their signatures. He has further deposed that he recorded the statements of Sadai Kumar Singh, Dhananjay Kumar Singh and Kumari Madhulika. During the investigation, a police dog was brought to the place of occurrence and after sniffing chadar and lathi, the dog led the police to the house of Sahdeo Yadav @ Maina Yadav, situated at Adampur Koyla Ghat. Sahdeo Yadav was not found at his house. A kurta bearing bloodstains was seized from the premises in the presence of witnesses Gopeshwar Jha and Mahesh Prasad. He prepared and signed the seizure list, which was also signed by the witnesses. The same has been marked as Exhibit-7/1. He has stated that when the seized kurta was placed along

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with other kurtas before the police dog, the dog choose the seized kurta. Similarly, when the chadar was mixed with other articles, the dog choose the seized chadar. An objection was raised by the defence counsel in respect of the said question.

44. This witness (PW 10) deposed that he recorded the statement of other persons also, including the deceased's father, Dr. Shatrudhan Prasad Singh, Abhay Kumar Singh and Sanjay Brahmachari. He requested for the test identification parade, which was conducted by a Magistrate. Neither he nor any other police officer was present during the test identification parade. He obtained the test identification parade chart. He further deposed that the blood-stained soil and chadar, seized from the place of occurrence, along with the kurta seized from the house of the accused, were sent to the Forensic Science Laboratory, Patna, Bihar, for chemical examination. After completion of the investigation, he submitted the charge-sheet.

45. PW 10, in his cross-examination, has stated that a written report had been received before he visited the hospital and the said written report had been received prior to registration of the formal First Information Report. The receipt of the written report was entered in the station diary of Kotwali Police Station. His departure from Kotwali Police Station was also recorded in

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the station diary. The station diary would disclose which police officers were present at Kotwali at that time. He was not accompanied by any other police officer when he left Kotwali. However, the Assistant Superintendent of Police was present at the hospital. He voluntarily stated that he had recorded the statements of Vibhuti Bhushan Chaudhary and Rajiv Ranjan Singh, who resided in the same lane and were witnesses in the case. The case diary does not mention that there were numerous houses on both sides of Satish Sarkar Lane. He has stated that he did not seize any bricks which had fallen from the boundary wall, nor did he find any fingerprints on the wall. Satish Sarkar Lane connects with Radha Rani Road. He has further described the layout of the informant's house. The case diary does not specify the area over which blood was found at the place of occurrence, nor does it mention whether the blood was found in the form of droplets or a patch. He has further stated that no bloodstains were found on the lathi seized from near the place of occurrence. Regarding the police dog, he has stated that its name was not mentioned in the case diary. The dog had been brought from the Police Lines and he was trained to handle it. The case diary does not record whether any witnesses were present when the dog was made to smell the lathi and the chadar. No trainer had accompanied the dog. The

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house of Bali Yadav was situated at Koyla Ghat, Gawal Toli. The dog entered his house, although it was not previously familiar with that house. The number of rooms in the house was not mentioned in the case diary. The witnesses to the seizure list were present when the dog emerged from a room carrying a kurta in its mouth. No separate statement of Balli Yadav was recorded. He voluntarily stated that Balli Yadav told him that the said kurta belonged to his son. He has further stated that blood-like stain was found on the kurta seized from the house of Balli Yadav, the kurta was sent for examination on 26.02.1981, however he did not receive the chemical examination report. He has stated that no injuries were found on the arms or knees of Sahdeo Yadav. He subsequently clarified that no injuries were found on his elbows or knees either. Sahdeo Yadav was not sent for medical examination. Paragraphs 25, 26 and 27 in both the original and carbon copies of the case diary were in his handwriting. In the original case diary, paragraphs 25, 26 and 27 were marked as Exhibit-A; whereas in the carbon copy, they were marked as Exhibit-A/1. He has further stated that, on the particular page of the case diary containing paragraph 26, both in the original and carbon copy, the digit following '276' in the page number had been torn off. The pages of the case diary were numbered sequentially. He denied the

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suggestion that the statement of Dr. Shatrughan Prasad Singh, recorded in paragraph 26, had been altered at the instance of his brother, Police Inspector Devendra Prasad Singh. He also denied the suggestion that Shatrughan Babu had told him that Sahdeo Yadav used to supply milk to his house for a few days about three years prior to the occurrence. He further denied the suggestion that he had altered the said statement. Lastly, he has stated that the informant, Ajay Kumar Singh, had stated that he had seen the thieves fleeing from the place of occurrence.

46. Having carefully re-appreciated the entire evidence on record, this Court proceeds to examine whether the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt.

47. It is settled law that in criminal cases, since life and liberty of the accused is involved, a strict standard of proof is required so as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can be convicted only if the court reaches the conclusion that the prosecution version has been proved beyond the shadow of all

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reasonable doubts. The burden of proving the guilt of the accused is upon the prosecution.

48. The principal evidence relied upon by the prosecution for establishing the identity of the appellant consists of the testimonies of PW 3, PW 4 and PW 6, who are members of the deceased's family.

49. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection.

50. On an examination of the testimonies of PW 3, PW 4 and PW 6, we find material discrepancies concerning the manner in which the occurrence was witnessed.

51. PW 6, the informant, has deposed that upon hearing the alarm of "Chor-Chor" by the deceased, he woke up and saw the deceased chasing a thief towards the staircase leading to the rooftop. He thereafter proceeded to the rooftop and allegedly saw three or four persons grappling with the deceased near the water tap. However, in his cross-examination, PW 6 has deposed that when he came out of the room and reached the verandah, he saw

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only one thief proceeding upstairs through the staircase. PW 3 has given a materially different account of the occurrence. According to him, he woke up upon hearing an alarm raised by his sister, Madhulika Singh, from the courtyard, informing the family that the deceased was chasing the thieves and gone to the rooftop. He has further deposed that he, along with Dhananjay Kumar Singh, proceeded towards the rooftop carrying lathis, where they saw the deceased grappling with one person, while two or three other persons were standing nearby. PW 3 has deposed that he had not heard the deceased raising any alarm. He also stated that he and Dhananjay first went to the courtyard and thereafter proceeded to the rooftop. He further stated that he saw four persons from a distance and that all of them jumped over the boundary wall and fled towards the eastern direction. PW 4, on the other hand, has deposed that upon hearing the alarm, he came out of his room and was informed by his sister, Madhulika, that the deceased was chasing the thieves and gone to the rooftop. He further stated that from the rooftop, he saw the deceased grappling with one of the thieves near the water tap. PW 4 categorically deposed further that he did not see the deceased or any miscreant on the rooftop. He also stated that he did not see any miscreant climbing the staircase

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or jumping down from the rooftop. According to him, he only saw the miscreants escaping by scaling the boundary wall.

52. The aforesaid statements reveal substantial differences in the manner in which the witnesses claim to have witnessed the occurrence. While PW 6 claims to have seen three or four persons grappling with the deceased from the rooftop, PW 3 claims to have seen one person grappling with the deceased and two or three others standing nearby. PW 4 has denied seeing the actual occurrence on the rooftop and has confined his observation to the alleged escape of the miscreants. These discrepancies cannot be treated as insignificant variations concerning peripheral details.

53. Another material circumstance is the contradictory account regarding the number and movement of the alleged miscreants. The prosecution case initially speaks of three to four unknown persons. However, the witnesses have given differing accounts regarding the number of persons seen at the rooftop, near the water tap and while escaping over the boundary wall.

54. PW 6 has stated that by the time he reached the place where the deceased was lying, the miscreants had already fled. PW 4 has also stated that he saw two or three persons

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escaping. PW-3, however, has stated that he saw four persons jumping over the boundary wall.

55. The witnesses have also differed regarding the direction in which the miscreants allegedly escaped. PW 3 has stated that all four persons jumped over the boundary wall towards the eastern direction, while he has also made a statement that the accused fled towards the northern direction. Such inconsistency becomes relevant when the prosecution seeks to establish the identity of an unknown accused on the basis of a brief observation during a night time occurrence i.e. in moonlit night and street light.

56. When witnesses are examined in the court after a considerable lapse of time, it is neither unnatural nor unexpected that there can be some minor variations in the statements of the prosecution witnesses. However, where the discrepancies relate to the opportunity of identification, the actual presence of a witness at the relevant place and the manner in which the accused was allegedly seen, such discrepancies assume considerable significance.

57. In **Pankaj v. State of Rajasthan,** reported in **(2016) 16 SCC 192**, the Hon'ble Supreme Court held that when the genesis and manner of the incident itself are doubtful, conviction

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cannot be sustained. The Hon'ble Supreme Court in paragraph no. 25 of the aforesaid judgement has held as under:

> *"25. It is well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused can not be convicted. Inasmuch as the prosecution the has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."*

58. The next important aspect requiring consideration is the identification of the appellant. Admittedly, the appellant was not named in the fardbeyan. The First Information Report was registered against three to four unknown persons. The informant an other witnesses have specifically stated that he had never seen the appellant prior to the occurrence and had seen him for the first time during the test identification parade conducted in jail.

59. Thus, the prosecution was required to establish that the witnesses had an adequate and reliable opportunity to observe

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the appellant during the occurrence and their subsequent identification was free from any possibility of mistake or influence.

60. PW 9, the Judicial Magistrate who conducted the test identification parade, has deposed that the parade was held on 15.02.1981 at Central Jail, Bhagalpur. The appellant was placed among nine other persons of similar appearance, age and physique, who was identified by the witnesses, namely, Ajay Kumar Singh, Sadai Kumar Sirmaur and Abhay Kumar Singh, saying that they had seen him scaling the boundary wall of his house at the time of the occurrence.

61. The occurrence took place at about 3 AM. during the intervening night of 22nd and 23rd December, 1980. The appellant was not previously known to the informant or the other identifying witnesses. Further, the description of the accused given by the informant was vague and general, referring only to differences in height, complexion and built. Such broad descriptions are insufficient to inspire confidence regarding the correct identification of unknown persons. The identification of the appellant, therefore, assumes significance and requires careful scrutiny, particularly in view of the circumstances in which the occurrence took place.

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62. The name or involvement of the appellant transpired in this case for the first time on 23.12.1980, when the sniffer dog entered into his house and came out with a kurta having small marks of blood like stain and the Test Identification Parade was conducted on 15.02.1981, i.e. about more than 55 days. Further, the appellant surrendered before the Court on 10.02.1981.

63. The delay caused in conducting the Test Identification Parade adversely affects the sanctity of the same and benefit of doubt with regard to the same would lie in favour of the appellant, on the basis of the proposition laid laid down by the Hon'ble Supreme Court, in the case of **State of U.P. v. Wasif Haider**, reported in **2019 (2) SCC 303**, wherein it has been indicated that in a case where out of seven witnesses, the T.I.P. was held after an inordinate delay of 55 days and although the involvement of the accused was brought to light on an earlier day itself, the prosecution did not take any effort to arrest or interrogate him for a substantial period of time for which no reasonable explanation was provided, such T.I.P would be susceptible to doubt. The defence had pleaded in the said case that an inordinate delay was caused by the prosecution witnesses to mark their identification.

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64. In such circumstances, the inordinate delay in conducting the Test Identification Parade; particularly in absence of any satisfactory explanation from the prosecution, undermines the reliability of the identification evidence and diminishes the evidentiary value of the entire exercise.

65. Further, although the witnesses have referred to moonlit night and street light as the sources of illumination at the time of occurrence, the prosecution has not adduced any convincing objective evidence regarding the precise location, intensity or adequacy of such illumination. The Investigating Officer has also admitted that no site plan of the house or the place of occurrence was prepared. More importantly, the opportunity of observation claimed by the witnesses is itself rendered doubtful in view of the material contradictions and inconsistencies in their testimonies, as discussed herein above. PW 4, in particular, has admitted that he did not witness the actual occurrence on the rooftop and had merely seen certain persons allegedly escaping over the boundary wall.

66. The identification evidence of PW 4, therefore, has to be appreciated in the light of the limited opportunity of observation available to him. Similarly, the identification made by PW 3 and PW 6 cannot be examined in isolation from the material

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inconsistencies in their respective accounts. It is also significant that PW 6 has categorically admitted that he had never seen the appellant prior to the occurrence and had first seen him during the Test Identification Parade. Thus, having regard to the fact that the appellant was previously unknown to the witnesses, the unexplained delay in conducting the Test Identification Parade, coupled with the doubtful circumstances of identification and the deficiencies in the investigation, creates a serious doubt regarding the reliability of the identification evidence.

67. Further, it is an unnatural corollary that the witnesses will identify the appellant from behind when they were not familiar to each other inasmuch as all the three witnesses have identified the appellant in the Test Identification Parade saying that they had seen him scaling the boundary wall of his house at the time of the occurrence. Nobody can identify a person in the night of a winter season while fleeing away, i.e. from behind. It is not the case of the prosecution that the witnesses have claimed to be identifying the appellant in the Test Identification Parade saying that they had seen their faces while scuffle was going on in between the appellant and the deceased.

68. Another circumstance which requires consideration is the non-examination of any independent witnesses. PW 3 and

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PW 6 have admitted that several persons from the neighbourhood assembled at the place of occurrence after the alarm was raised. They have specifically referred to the presence of Vibhuti Bhushan Chaudhary and Rajiv Ranjan Singh, among others. The Investigating Officer, too, has deposed that he recorded the statements of Vibhuti Bhushan Chaudhary and Rajiv Ranjan Singh, who were residents of the same lane and had signed the seizure list. However, none of these witnesses have been examined during trial to corroborate the prosecution version.

69. It is true that the prosecution is not required to examine any particular number of witnesses, nor can the testimony of related witnesses be discarded merely on account of non-examination of independent witnesses. However, in the present case, when the presence of several independent persons in the immediate vicinity of the place of occurrence stands established, their non-examination assumes significance, particularly in view of the material contradictions and inconsistencies in the testimonies of the family members.

70. The prosecution has also relied on the alleged recovery of a kurta from the house of the appellant and the evidence relating to the police dog. PW 10, the Investigating Officer, has stated that after smelling the lathi and chadar

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allegedly left at the place of occurrence, the police dog proceeded to the house of Sahdeo Yadav at Adampur Koyla Ghat. A kurta allegedly having blood like stains was seized from the appellant's premises. The Investigating Officer further stated that the dog subsequently identified the seized kurta when it was placed alongside other kurtas and similarly identified the chadar when mixed with other articles. However, in his cross-examination, PW-10 admitted that the name of the dog was not mentioned in the case diary, no trainer had accompanied it, and there was no record of the presence of any independent witness or the procedure adopted during the tracking exercise.

71. It would be relevant to note that in the case of **Abdul Rajak Murtaza Dafadar v. State of Maharashtra (AIR 1970 SC 283)**, a three-Judge Bench of the Hon'ble Supreme Court declined to express any concluded opinion or to lay down any general rule concerning tracker dog's evidence or its admissibility against the accused.

72. In the case of **Abdul Rajak Murtaza Dafadar** (supra), the Hon'ble Supreme Court has observed as under:

> "… It was argued in that case that the tracker dog's evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the

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> actions of bacilli. The comparison does not, however, appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice***. But dogs are intelligent animals with many thought processes similar to the thought processes of human beings and wherever you have thought processes there is always the risk of error, deception and even self-deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.***
>
> (emphasis supplied)

73. In the case of **Dinesh Borthakur v. State of Assam,** reported in **(2008) 5 SCC 697**, the Hon'ble Supreme Court has held that the in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused.

74. In the present case, it further appears from the evidence of PW-10 that the house from which the kurta was allegedly recovered belonged to Balli Yadav. The Investigating Officer admitted that no separate statement of Balli Yadav was recorded. The assertion of PW 10 that Balli Yadav had informed

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him that the kurta belonged to his son, therefore, remains uncorroborated.

75. More importantly, PW 10 has admitted that the chemical examination report was not received by him. Although the bloodstained soil, chadar and kurta were allegedly sent to the Forensic Science Laboratory, Patna, the prosecution has not produced any forensic report establishing that the stains on the kurta allegedly recovered from the house of the appellant were human blood or just red marks and that it was the blood of the deceased. The prosecution has also failed in bringing on record any report with regards to the finger print on the danda. The prosecution has also not able to seize knife, the alleged weapon of murder and it also failed to brought on record the report of the chemical examiner with regard to the blood collected from the spot.

76. In such circumstances, the alleged recovery of the kurta from the house of the appellant, coupled with the evidence relating to the police sniffer dog, cannot be treated as reliable evidence sufficient to establish the guilt of the appellant.

77. In the present case, the non-production of the seized articles deprived the defence of a fair opportunity to test the prosecution's claim regarding those articles and their alleged

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incriminating character. This omission assumes greater significance because the prosecution has not otherwise brought on record any convincing scientific or forensic evidence connecting the alleged seized articles with the crime.

78. In the case of ***Pradeep Kumar v. State of Chhattisgarh*****,** reported in **(2023) 5 SCC 350,** the Honble Supreme Court has held, in paragraph 27, as under:-

> **"27.** It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted."

79. In the facts and attending circumstances of the present case, the appellant ought to have been accorded benefit of reasonable doubt inasmuch as the prosecution has failed, in the light of the discussion of the evidence on record, to bring home the charges against the appellant beyond all reasonable doubt.

80. In the result and for the foregoing reasons, this appeal is allowed. The impugned conviction of the appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The appellant is held not guilty of the

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offences, which he stand convicted of, and he is hereby acquitted of the same under benefit of doubt.

81. Since the appellant is on bail, he is discharged from the liabilities of the bail bonds.

82. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(Anil Kumar Sinha, J.)

Vikash Kumar, J.:- I agree.

(Vikash Kumar, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	01.10.2026
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