

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.18 of 2023**

Arising Out of PS. Case No.-362 Year-2011 Thana- SHEKHPURA District- Sheikhpura

Guddu Miyan @ Haider Ali @ Guddu Khan Son Of Md. Jafar Khan R/O
Muradabad, Delhi, P.S.- Muradabad, District- Muradabad, Delhi, Permanent
R/O Mohalla- Jamalpur Bigha, P.S. And District- Sheikhpura, Bihar

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Dinkar Kumar, Advocate

For the State : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-02-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment of conviction dated 24.11.2022 (hereinafter referred to as
the 'impugned judgment') and order of sentence dated 06.12.2022
(hereinafter referred to as the 'impugned order') passed by learned
Additional District and Sessions Judge-III, Sheikhpura (hereinafter
referred to as the 'learned trial court') in Session Case No. 20 of
2015/ Trial No. 64 of 2022 arising out of Sheikhpura P.S. Case No.
362 of 2011. By the impugned judgment, the appellant has been
convicted for the offences punishable under Sections 302/34, 307/34
of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms



Act and by the impugned order, he has been ordered to undergo rigorous life imprisonment with a fine of Rs. 10,000/- for the offence under Section 302/34 IPC and in default of payment of fine, he shall further undergo simple imprisonment for six months. He has also been ordered to undergo rigorous imprisonment for 10 years with a fine of Rs.5,000/- under Section 307/34 IPC and in default of payment of fine, he shall further undergo six months imprisonment. Further, under Section 27 of the Arms Act, he has been ordered to undergo three years rigorous imprisonment with a fine of Rs.5,000/- and in default of payment of fine, he shall further undergo three months imprisonment. All the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the *fardebayan* of Santosh Kumar (PW-8) recorded by S.I. Ashok Kumar Yadav, SHO, Sheikhpura on 22.11.2011 at 17:00 Hours at Jamalpur Bigha. The informant (PW-8) in his *fardebayan* has stated that he is the owner and partner of a shop known as 'Patna Tent House' situated at Jamalpur-Bigha. On 22.11.2011 at about 4:00 P.M., as usual while he was sitting in his shop and was taking out articles of tent-house, he saw Guddu Miyan @ Haidar Ali (the appellant) and Nandan Yadav @ Nandan Sindhaniya who were quarrelling with Amit Kumar near his shop. In the meantime, his brother Dharmendra Kumar was returning from the market and, on seeing the quarrel, tried to pacify them.



Thereupon, accused Guddu Miyan took out a country-made pistol and fired upon Dharmendra Kumar and also fired upon Amit Kumar as a result of which they fell there. On seeing the occurrence, the informant and others rushed to the place of occurrence, whereafter Guddu Miyan and his two friends fled away towards the western direction. When the informant reached the place of occurrence and tried to lift his brother Dharmendra Kumar, he found him dead and Amit Kumar was lying injured. With the help of other individuals, Amit Kumar was taken to the hospital for treatment. The informant further stated that his uncle Bhagwan Prasad witnessed the entire incident along with other persons.

4. On the basis of the *fardbeyan*, Sheikhpura P.S. Case No. 362 of 2011 dated 22.11.2011 was registered under Sections 302/307/34 IPC and Section 27 of the Arms Act against this appellant and two unknown accused. After investigation, police submitted chargesheet bearing Chargesheet No. 88 of 2012 dated 20.04.2012 under Sections 302, 307, 34 IPC and Section 27 of the Arms Act against this appellant keeping the investigation pending against others. Later on another charge-sheet bearing No. 478 of 2012 dated 30.11.2017 was filed against Nandan Yadav. Nandan Yadav was declared juvenile, hence his records were sent to the Juvenile Justice Board.



5. Learned Chief Judicial Magistrate, Sheikhpura vide order dated 07.05.2012 took cognizance of the offences punishable under above mentioned Sections.

6. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried, accordingly, vide order dated 26.04.2016, charges were framed under Sections 302/307/34 of the IPC and Section 27 of the Arms Act.

7. In course of trial, the prosecution has examined altogether eleven witnesses and exhibited several documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Qamruddub Miya
PW-2	Amit Kumar
PW-3	Bhagwan Prasad
PW-4	Anil Ram
PW-5	Birendra Mahto
PW-6	Kishor Mahto
PW-7	Sunaina Devi
PW-8	Sanotsh Kumar
PW-9	Dr. Raman Kumar
PW-10	Dr. Ashok Kumar
PW-11	Rajendra Choudhary

List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	Signature of Bhagwan Prasad on Fardbeyan
Exhibit ‘2’	Signature of Santosh Kumar on Fardbeyan
Exhibit ‘3’	Post-Mortem Report
Exhibit ‘4’	Writing and Signature of Dr. Ashok Kumar on



	the Injury Report
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8. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he has been falsely implicated in this case and at the time of occurrence, he was at his Girihinda.

9. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court

10. Learned trial court after examining and analysing the evidences of the injured eye witness (PW-2), eye witnesses PW-3, PW-5 and PW-8 as also Dr. Raman Kumar (PW-9) who conducted the Post-mortem and Dr. Ashok Kumar (PW-10) who examined the injured, found that it is the case of firing caused by Guddu Miya @ Haider Ali (appellant) on Dharmendra Kumar who died on the spot and Amit Kumar (PW-2) received serious bullet injury. Learned trial court found that the sequence of events and chain of circumstances are fully corroborated and completed by way of the depositions of prosecution witnesses.

11. Learned trial court further observed that the defence has pointed out that there are vital contradictions in the deposition of the prosecution witnesses, however, after scrutinizing the evidences, learned trial court did not find any vital contradictions.



12. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been able to prove its case beyond all shadow of reasonable doubts. Accordingly, the appellant has been convicted for the offences punishable under Sections 302/34, 307/34 IPC and Section 27 of the Arms Act.

Submissions on behalf of the Appellant

13. Learned counsel for the appellant while assailing the impugned judgment and order has submitted that the learned trial court has not properly appreciated the evidences available on the record.

14. Learned counsel for the appellant submits that PW-4 has been declared hostile by the prosecution and PW-1, PW-6 and PW-7 are all hearsay witnesses. Learned counsel submits that injured witness Amit Kumar (PW-2) has clearly stated in paragraph '11' of his deposition that co-accused Nandan had opened fire on the deceased (Dharmendra Kumar) which hit in his abdomen. PW-2 has also stated in paragraph '14' that on hearing the sound of firing, others reached at the place of occurrence, therefore, on the strength of evidence of PW-2, it is submitted that except PW-2 all other prosecution witnesses including the informant are hearsay witnesses.



15. Learned counsel submits that the appellant had no motive at all to commit the alleged offence against the deceased.

16. Learned counsel further submits that the Doctor (PW-10) who examined the injured (PW-2) has deposed in paragraph '10' that the injury report of PW-2 is tampered by way of overwriting with respect to the date of the injury report.

17. Learned counsel submits that most of the prosecution witnesses are closely related with the deceased Dharmendra Kumar, so they are interested witnesses and their deposition is not trustworthy.

18. Learned counsel submits that when the alleged occurrence was going on, the brother of the deceased, Santosh Kumar who is also the informant of this case remained mute spectator and did not intervene to save his brother from firing and assault, hence, his testimony is not trustworthy.

It is thus submitted that the learned trial court has failed to appreciate the evidences available on the record. In his submissions, the impugned judgment and order are liable to be set aside.

Submission on behalf of the State

19. On the other hand, learned Additional Public Prosecution for the State has submitted that the learned trial court



has analyzed the entire evidence and it would appear from a reading of the impugned judgment and order that the learned trial court has rightly taken a view that the case of the prosecution has been proved beyond all reasonable doubts and held the appellant guilty of the offences punishable under Sections 302/34, 307/34 IPC and Section 27 of the Arms Act.

20. Learned Additional Public Prosecutor submits that the ocular evidence of the prosecution witnesses, particularly, that of PW-2 is getting corroborated from the medical evidence brought on the record.

Consideration

21. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the records, this Court finds that in this case the prosecution case is based on the *fardbeyan* of Santosh Kumar (PW-8) who has stated as that he happened to be the owner and partner of the shop known as 'Patna Tent House' situated at Jamalpur-Bigha. On 22.11.2011 at about 4:00 P.M., as usual while he was sitting in his shop and was taking out articles of tent-house, he saw Guddu Miyan @ Haidar Ali (the appellant), and Nandan Yadav @ Nandan Sindhaniya quarrelling with Amit Kumar near his shop. In the meantime, his brother Dharmendra Kumar was



returning from the market and, on seeing the quarrel, tried to pacify them. Thereupon, accused Guddu Miyan took out a country-made pistol and fired upon Dharmendra Kumar and also fired upon Amit Kumar as a result of which they fell there. On seeing the occurrence, the informant and others rushed to the spot, upon which Guddu Miyan and his two friends fled away towards the western direction after firing. When the informant reached the place of occurrence and tried to lift his brother Dharmendra Kumar, he found him dead and Amit Kumar was lying injured. With the help of other individuals, Amit Kumar was taken to the hospital for treatment. The informant further stated that his uncle Bhagwan Prasad witnessed the entire incident along with other persons.

22. In course of trial, the informant (PW-8) has reiterated the prosecution case and supported the same. He claims to be an eye witness of the occurrence. This Court finds that in this case, the star prosecution witness is Amit Kumar (PW-2) who is the injured witness. In his examination-in-chief, Amit Kumar (PW-2) has stated that Guddu Miyan (the appellant) called him hurling abuses on him and when he reached there, the appellant started assaulting him with hand and fist blow. Amit Kumar (PW-2) has stated that when Dharmendra



(deceased) came to intervene and to set him afire, the appellant Guddu Miyan fired upon him. Whereafter, Nandan also fired upon Dharmendra and when Amit Kumar (PW-2) wanted to save Dharmendra then Guddu Miyan (the appellant) fired upon him also. In the meantime, Santosh, Hanuman Prasad and Anil Ram reached there running, whereafter the accused fled away.

23. In his cross examination, this witness has remained consistent and the defence has not been able to create any dent in his testimony. In paragraph '11', he has stated that in his statement before police, he had stated that when the exchange of words were taking place Guddu and Nandan reached there and Nandan had fired upon Dharmendra which hit into the stomach of Dharmendra and Dharmendra caught hold of Guddu. In Paragraph '13', he denied the suggestion of the defence that in his statement before police he had not stated that Guddu had fired. This Court finds that although Qamruddub Miya (PW-1) and Anil Ram (PW-4) have been declared hostile by the prosecution but Bhagwan Prasad (PW-3) and Birendra Mahto (PW-5) have supported the prosecution case. It is true that Bhagwan Prasad (PW-3) and Birendra Mahto (PW-5) are related witnesses but learned counsel for the appellant could not demonstrate before us that their testimonies are required to be



discarded for any apparent reason. We are, therefore, of the opinion that the depositions of PW-3 and PW-5 cannot be rejected only because they are related witness. Father of the deceased (PW-6) and mother of the deceased (PW-7) are not the eye witnesses to the occurrence, however, the informant (PW-8) has deposed as an eye witness. PW-2 has also stated that PW-3 and PW-7 had come running to the place of occurrence.

24. We have further noticed that the ocular evidence of the prosecution witnesses, particularly, that of PW-2 are getting corroborated from the medical evidence brought on the record through Dr. Raman Kumar (PW-9) who was posted as a Medical Officer in Sadar Hospital Munger on 23.11.2011. He had conducted the autopsy on the dead body of the deceased and had found the following ante-mortem injuries during the post-mortem examination.

“(1) One circular lacerated wound of size 1/2 Inch in diameter deep to bone over left side of lower and nose with intended margin. Chharing all over the face was present-wound of entry.

(2) One circular lacerated wound of size 1/2 Inch in diameter deep to left side of upper abdominal cavity with inverted margin- wound of entry.”

The postmortem report is Exhibit ‘3’.



25. Similarly Dr. Ashok Kumar (PW-10) who was the Deputy Superintendent in Sadar Hospital, Sheikhpura had examined injured witness Amit Kumar (PW-2) on 28.11.2012. He had found the following injuries on the body of the injured witness (PW-2):-

“(i) Lacerated wound on left side. Upper abdomen in round in shape $\frac{1}{2}$ Inch in diameter margin char and wound of entry.

(ii) Lacerated wound on lower right abdomen with invented margin 1 C.M. in diameter round in shape wound of exit bullet injury. Nature of both wound were kept reserved till x-ray report. As per X-ray report, it was bullet injury. Patient was further referred to P.M.C.H, Patna for better treatment. Age of injury within 6 hours.”

26. We have further noticed that in his statement under Section 313 CrPC, the appellant took a plea that he had been falsely implicated in this case and at the time of occurrence he was at ‘Girihinda’ but in this regard, no evidence at all has been adduced on behalf of the defence.

27. In our considered opinion, learned trial court has not committed any error in appreciation of the evidences available on the record.

28. The impugned judgment and order need no interference. This appeal is dismissed.



29. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

Jyoti/-

AFR/NAFR	
CAV DATE	
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