

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1404 of 2024**

Arising Out of PS. Case No.-32 Year-2016 Thana- DALSINGHSARAI District- Samastipur

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Ajay Kumar S/o- Late Jagdish Prasad Satyarthi Resident Of Village- Mahnar
Bazar, Ward No 7, Bari Durgaji Road, PS- Mahnar, Dist- Vaishali

... .. Appellant/s

Versus

1. The State of Bihar
2. Sahdeo Sah S/o- Late Juga Sah Village-Mahnar W.No-16, PS- Mahnar Dist-
Vaishali

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bijay Kumar Pathak, Advocate
For the State	:	Mr. Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)**

Date : 09-04-2026

The present appeal has been preferred under proviso of Section 372 of the Code of Criminal Procedure, 1973 challenging the judgment dated 04.10.2024 passed by the Court of learned Additional Sessions Judge-V, Samastipur in Sessions Case No.812 of 2017 (arising out of Dalsinghsarai (Vidyapati) P.S. Case No. 32 of 2016) whereby and whereunder the respondent no.2 has been acquitted by the learned Trial Court from the charges levelled against him under Sections 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and section



27 of the Arms Act.

2. The records of this appeal have been placed before this Court for consideration of the prayer of the appellant.

3. The prosecution case, in brief, as unfolded from *fardbayan* of the informant (PW-11) recorded on 21.03.2016 at about 16:00 hours at Paras Hospital, Patna by the SHO, Vidyapati Nagar (PW-14), is that the deceased, who was the son of the informant, was residing along with his wife Asha Jaiswal and two sons at the house of his father's brother-in-law, Raj Kumar Chaudhary, at Bajitpur. He was carrying on business of trunks, boxes, chairs, racks, tables, etc., in a rented shop belonging to one Muneshwar Chaudhary at Bajitpur market. It is alleged that on 20.03.2016, in the afternoon, the informant's wife Manju Jaiswal (PW-2), his son Anjan Kumar (PW-1) and his sister Saraswati Devi (PW-7) had gone to meet the deceased for some necessary work. At about 6:30 PM, while they were sitting on the roof of the house, they noticed four persons riding on two motorcycles approaching, out of whom one Sahdeo Sah (respondent no.2) was identified as a pillion rider. At about 7:00 PM, when the deceased was returning from his shop carrying vegetables, the sound of a gunshot was heard. Upon looking



towards the place of occurrence, the aforesaid witnesses allegedly saw the accused persons fleeing towards the western direction on a motorcycle, one of them having a pistol in his hand, while the other assailants could not be identified. It is further alleged that the deceased was seen staggering and falling on the road near an electric pole near the shop of Shankar Chaudhary. The injured was immediately taken to PHC, Vidyapatinagar, thereafter to Sub-Divisional Hospital, Dalsinghsarai and was subsequently referred to Paras Hospital, Patna, where he was admitted in a critical condition.

The informant has stated that he was informed about the occurrence by his sister and son, who were in a state of shock and unable to narrate the incident in detail. Further, it has been alleged that the informant's wife, Manju Jaiswal, in collusion with other councillors, had removed the wife of the accused Sahdeo Sah, namely Asha Devi, from the post of Chairman, Nagar Parishad, Mahnar, by passing a no-confidence motion. On account of the said incident, Sahdeo Sah allegedly demanded a sum of Rs. 25 lakhs as compensation and extended threats of dire consequences.

It is the further case of the prosecution that the injured succumbed to his injuries on 22.03.2016, whereafter,



a second *fardbayan* of the informant was recorded on the same day at Paras HMRI Hospital, Raja Bazar, Patna at about 9:00 AM, which was forwarded to the SHO, Vidyapati Nagar. The contents thereof were substantially similar, and on that basis, Section 302 of the Indian Penal Code was added to the FIR on 28.03.2016.

4. On the basis of the above-mentioned *fardbayan* of the informant (PW-11), Dalsinghsarai (Vidyapati) P.S. Case No. 32 of 2016 was registered by the police against respondent no.2 and the charge-sheet was submitted against the accused person on 22.04.2017. Accordingly, cognizance was taken and the accused was put on trial.

5. Further, after commitment of the case to Court of Sessions, charges under Sections 302 of the IPC and Section 27(1) of the Arms Act were framed against respondent no.2 on 11.12.2017 to which he pleaded not guilty and claimed to be tried.

6. The prosecution to substantiate its case during trial, has examined as many as fifteen witnesses and has exhibited several documents, while the defence has also examined three witnesses and has adduced documentary evidences. The list of prosecution witnesses, along with the



documents exhibited on behalf of both the prosecution and the defence are mentioned hereinbelow in a tabular chart:

List of Prosecution witnesses

Rank	Name	Nature of Evidence
PW-1	Anjan Kumar (Informant’s son)	Eye witness
PW-2	Manju Jaishwal (Informant’s wife)	Eye witness
PW-3	Asha Jaiswal (Wife of deceased)	Hearsay witness
PW-4	Vinod Chaudhary (Neighbouring)	Hearsay witness
PW-5	Baijanath Chaudhary	Hearsay witness
PW-6	Amit Kumar @ Bittu (Neighbouring)	Hearsay witness
PW-7	Saraswati Devi (Sisterof informant)	Hearsay witness
PW-8	Vishundeo Sah	Hearsay witness
PW-9	Ram Naresh Sah	Hearsay witness
PW-10	Gopal Kumar Sah	Hearsay witness
PW-11	Ajay Kumar (Informant)	Hearsay witness
PW-12	Indu Devi (Sisterof Informant)	Hearsay witness
PW-13	Dr. Mukesh Kumar	Expert Witness
PW-14	Ekbal Ahmad Khan	1 st I.O.
PW-15	Mukesh Kumar	2 nd I.O.

List of Exhibits on behalf of Prosecution

Ex. No.	Rank	Description
Ext-1	PW-4	Signature of PW-4 on <i>fardbayan</i>
Ext-1/1	PW-11	Signature of informant on <i>fardbayan</i>
Ext-1/2	PW-14	<i>Faradbayan</i>
Ext-1/3	PW-11	Signature of the Mani Bhushan Jaishwal on second <i>fardbayan</i>
Ext-1/4	PW-11	Signature of PW-11 on protest petition dated 17.05.2016



Ext-2	PW-13	Post-Mortem Report
Ext-3	PW-14	Seizure list
Ext-3/a	PW-14	Seizure list of the mobile of deceased produced by the informant.
Ext-4	PW-14	Formal FIR

List of Defence witnesses

Rank	Name	Nature of Evidence
DW-1	Sahdeo Sah	Accused
DW-2	Devendra Paswan	Alibi witness
DW-3	Shanti Swaroop	Shopkeeper and proprietor of Sai Enterprises, Patna.

List of exhibits on behalf of defence

Ex. No.	Description
Ext-A	Computerized bill of mobile dated 20.03.2016
Ext-B	The C.D. of cctv footage of Sai enterprises, Patna
Ext-C	Affidavit dated 19.11.2016 of DW-3
Ext-D	Certified copy of judgment in S.T. No. 342 of 2000
Ext-E	Certified copy of judgment in S.T. No. 317 of 2018
Ext-F	Certified copy of FIR in Desri p.s. case no. 60 of 2004
Ext-G	Certified copy of final form of Desri p.s. case no. 60 of 2004
Ext-H	Certified copy of FIR of Mohaddinagar P.S. case no. 63 of 2005
Ext-I	Certified copy of final form of Mohiuddinnagar P.S.63 of 2005
Ext-J	Certified copy of F.I.R of Hajipur Town P.S. Case No.226 of 2009
Ext-K	Certified copy of final form of Hajipur Town P.S. Case No.226 of 2009
Ext-L	Certified copy of F.I.R in Hajipur Town P.S. Case No.1125 of 2014
Ext-M	Certified copy of Final Form in Hajipur Town P.S. Case No.1125 of 2014
Ext-N	Certified copy of F.I.R in Patory P.S. Case No. 423 of 2021
Ext-N/1	Certified copy of F.I.R in Manhar P.S. Case No. 103



	of 2007
Ext-N/2	Certified copy of F.I.R in Manhar P.S. Case No. 104 of 2007
Ext-N/3	Certified copy of F.I.R in Manhar P.S. Case No. 144 of 2012
Ext-O	Certified copy of Final Form in Patory P.S. Case No. 423 of 2021
Ext-O/1	Certified copy of Final Form in Manhar P.S. Case No. 103 of 2007
Ext-O/2	Certified copy of Final Form in Manhar P.S. Case No. 104 of 2007
Ext-O/3	Certified copy of Final Form in Manhar P.S. Case No. 144 of 2012

7. The prosecution evidence was closed on 06.05.2019 and the statement of the accused/respondent no.2 was recorded under Section 313 Cr.P.C on 16.12.2019, wherein he denied the allegations and pleaded innocence.

Findings of the Trial Court

8. The learned Trial Court, upon analysing the evidence and appreciating the submissions tendered on behalf of the parties with respect to the charges levelled against the respondent no.2, arrived at a conclusion that the prosecution has not been able to prove the participation of respondent no.2. The learned Trial Court has exhaustively enumerated its findings by considering that the *fardbayan* was not properly proved, the place of occurrence not being well-established and proved as the same was held to be not visible from the house of the victim. The non-production of the pellet and ballistic record with



respect to the seized empty cartridge, etc. further rendered the entire manner of occurrence to be doubtful considering improvements made by witnesses during the trial. It has also been considered that the prosecution failed to get the report of the FSL marked as Exhibit, inquest report, dead body *challan* and the post-mortem report have also been not legally and properly proved. The learned Trial Court has also considered that the motive behind the occurrence is also remote and bleak and the court was thus of the firm view that the respondent no.2 deserved to be acquitted giving him the benefit of doubt.

9. The learned Trial Court has also found serious infirmities in the prosecution case under the charge for section 27 of the Arms Act considering that the prosecution neither produced the ballistic report with respect to use of ammunition nor was able to produce the pellets recovered from the body of the deceased which were all essential for establishing the charge under Section 27 of the Arms Act. The learned Trial Court, thus, came to the definite conclusion that the prosecution has only relied upon the testimonies of related/interested witnesses whereas there are several legal and factual infirmities in the prosecution case rendering the same doubtful. The respondent no.2 was, as such, given the benefit of doubt and was acquitted



from all the charges levelled against him.

Argument on behalf of Appellant

10. The learned counsel for the informant/appellant has submitted that there is no delay in lodging the FIR and, in any event, any alleged delay stands duly explained. It is submitted that the Officer-in-Charge-cum-Investigating Officer had first made a Sanha entry and thereafter promptly proceeded with the investigation. In the absence of any material to suggest that the FIR is fabricated or that any prejudice has been caused to the accused, no benefit can be extended to the accused on this ground.

11. It is further argued that PWs 1, 2, 3, and 7 are eyewitnesses to the occurrence, having witnessed the same from the roof, and their testimonies are duly corroborated by PW-4, who has affirmed their presence at the place of occurrence. Their evidence is consistent, cogent, and free from material contradictions, thereby inspiring confidence. Additionally, Pws 6, 8 and 9 being witnesses present in the vicinity of the place of occurrence, have supported the prosecution case and have deposed about the death being caused due to firearm injury, thus lending further assurance to the prosecution version.

12. It is further submitted that the testimony of PW-



11 is relevant, as he received information from PWs 1, 2, and 7 and has consistently deposed regarding the recording of the *fardbayan*, preparation of the inquest report, forwarding of the dead body, and the existence of prior enmity arising out of political rivalry. The evidence of PW-13 also assumes significance, particularly as no material contradiction has been elicited in the cross-examination, especially on the aspect of close-range firing.

13. The prosecution further relies upon the testimonies of PWs 14 and 15, being official witnesses, to substantiate the investigation and its scientific aspects, and in the absence of any specific challenge regarding delay in FIR, no adverse inference can be drawn. It is also contended that the place of occurrence, being adjacent to the residential premises of the victim near the roadside, was clearly visible from the vantage point of the witnesses. Further, the learned counsel for the appellant has submitted that the plea of *alibi* advanced by the defence is unreliable, as the same must be proved with absolute certainty, which the defence has failed to do.

14. Lastly, the conduct of the accused including his abscondence after institution of the case and subsequent arrest pursuant to attachment proceedings, coupled with his movement



in the surrounding areas, further indicates his involvement. Hence, minor lapses, if any, in the investigation do not affect the core of the prosecution case, and the evidence on record being consistent and trustworthy, the accused is liable to be convicted, as such, the impugned judgment of acquittal is thus fit to be set aside.

Argument on behalf of State:

15. Per contra, the learned Additional Public Prosecutor for the State strenuously opposed the submissions of the learned counsel for the appellant and supported the findings of the learned Trial Court with respect to the acquittal of respondent no.2 by contending that respondent no.2 has been falsely implicated on account of an enmity between the parties with regard to political rivalry.

16. It has been submitted that there is an unexplained delay of about 25 hours in lodging the FIR giving rise to considerable doubt upon the authenticity of the contents thereof. The said delay becomes fatal to the prosecution case in background of the fact that there are several other lacunae in the prosecution case including the fact that neither the Inquest Report nor the dead body *challan* has been produced in court in evidence, coupled with the fact that the evidence of PW-14



(Investigating Officer) affirms that the same do not contain the FIR number. The case number also does not find place in the Post-mortem Report (Ext-2) prepared by PW-13, further indicating the fact that till preparation of the post-mortem report, no FIR was lodged.

17. It is further submitted that the place of occurrence has also not been established as there is lack of uniformity in the statement of the prosecution witnesses with regard to the same. The place of occurrence is further doubted on account of absence of objective evidence, like blood stained soil not being collected from the place of occurrence and the alleged empty cartridges recovered therefrom, not being subjected to examination. Furthermore, neither the motorcycle nor any weapon of assault was recovered or seized during investigation and the source of light and means of identification was also not proved.

18. Further, emphasis has been laid on the fact that although out of total 15 prosecution witnesses, PW Nos. 1, 2, 3 & 7 claimed to be eyewitnesses, their evidence loses all sanctity and credibility as from the evidence of PW-14 (IO), it would be gathered that they were not examined by him at the place of occurrence. PW-14 has rather stated in his evidence that he



recorded the statements of PWs 2, 3, 7 & 12 as late as on 29.03.2016, i.e; almost after nine days of the occurrence and no explanation for the same has been tendered. None of the local witnesses named the accused during investigation and no relatives of the victim/ deceased were found to be at or near the place of occurrence. Further, the defence plea of alibi also stands supported by the fact that the tower location of the mobile of the accused/respondent no.2 was not found near the place of occurrence, as per scientific examination. However, the main thrust of submission is that the prosecution has failed to prove its case beyond the shadow of reasonable doubt, as such, the acquittal of respondent no.2 warrants no interference.

Analysis and Consideration

19. We have given our thoughtful consideration to the submissions advanced by learned counsel for the appellant/informant and learned APP for the State and considered and analysed the impugned judgment and materials on record, including both oral and documentary evidence adduced by the prosecution and defence.

20. The prosecution has examined altogether 15 witnesses out of whom PW-11, the informant, is not an eyewitness of the occurrence and has given his statement on the



basis of the version of PWs 1, 2 & 7, who although claimed to be eyewitnesses, but such claim has been made subject to scrutiny on various accounts. PW-4 to 10 (except PW-7) are independent witnesses who have supported the death of the deceased caused by firearm injury but have not stated about the involvement of the accused/respondent no.2 in the said offence and PW-12, is a related witness who also does not claim to be an eyewitness. While PW-13 is the doctor who conducted post-mortem and supported death by firearm injury, PW-14 & PW-15 are investigating officers of this case. The defence has also examined some witnesses including the accused/respondent no.2 himself as DW-1 to show his innocence and also establish his plea of alibi.

21. It is gathered from the records that the police had arrived at the place of occurrence upon rumour and thereafter recorded the *fardbayan* of the informant (PW-11) on the next day, i.e; after lapse of more than 25 hours of the occurrence and no plausible reason has been tendered for such delay in lodging of the FIR. Moreover, the informant (PW-11) has himself stated in Para-5 of his deposition that he neither read the self-statement nor the same was read out to him by PW-14. As such the FIR itself suffers with inherent infirmities.



22. It also transpires from the records that the place of occurrence has not been well established by the prosecution, in as much as, the same has been differently stated by the witnesses, especially PW-14 and PW-11. Furthermore, no objective evidence in the form of blood stained soil, the motorcycle, and the arms used in the offence has been recovered or seized from the place of occurrence and the empty cartridge (Ext-M) was never sent for ballistic examination. It is also a fact that the so-called pellet recovered from the body of the deceased at the time of post-mortem, was also neither produced nor marked as an exhibit. Thus, no effort was made by the prosecution to get the pellet matched with the empty cartridge, which was recovered, as such, no conclusive connection can be drawn between the two.

23. So far as the incident being witnessed by some of the prosecution witnesses is concerned, it is clear that the informant (PW-11) is not an eyewitness of the case and he has admitted this fact that he had lodged the FIR upon revelations made by PWs 1, 2 & 7. However, the evidence of these witnesses, i.e., PWs 1, 2 & 7 are replete with several contradictions which pose serious doubt on their evidence as eyewitness. It is apparent from their evidence that PWS 1, 2 & 7



along with PW-3 claimed to have seen the occurrence from the rooftop of the house of the deceased from where the place of occurrence would not have been visible, as this fact has been admitted by PW-7 and the same stands corroborated by the evidence of I.O (PW-14).

24. Further, from Para-86 of the evidence of I.O (PW-14), it would be gathered that no eyewitness to the incident was found at the place of occurrence or even in vicinity and as a matter of fact the statement of these witnesses were recorded by the I.O at a much belated stage at their residential house and they were not examined at the place of occurrence. PW-10 and other independent witnesses also did not disclose the presence of PWs 1, 2 & 7 at the scene of crime. It is also a fact that these witnesses are the immediate family members of the deceased and there was a political rivalry between the families.

25. In the same context it is further noticed that the so-called eyewitnesses have neither lodged the *fardbayan* nor are signatories to the same. The independent witnesses examined in this case are PWs 4 to 10 (except PW-7). Out of these independent witnesses, while PW-5 has been declared hostile by the prosecution, PW-s 4, 6, 9 & 10 have not disclosed the name of any accused and have also clearly stated that they



did not see any family members of the deceased at the place of occurrence rather it was PW-10 who accompanied the victim/deceased till Vidyapatnagar Hospital.

26. It is apposite to note further that the plea of *alibi* taken by the accused/respondent no.2 also seems to have been supported by the fact that the tower location of his mobile was not found at the place of occurrence as admitted by the I.O (PW-14) as well as the defence exhibits being exhibit-A, B & C, showing the presence of accused in Patna, which have also been admitted in evidence and the prosecution has not controverted the same in a proper legal manner.

27. From the entire analysis of evidence, we find that the prosecution has mainly relied upon the number of witnesses which is as many as fifteen, examined on his behalf but has not paid heed to the fact that quality and not quantity of evidence, is the requirement in law for proving the veracity of a case. This proposition is in consonance with Section 134 of the Indian Evidence Act (corresponding to Section 139 of BSA). Merely by examining a number of witnesses whose testimony are not of sterling quality in the backdrop that the other witnesses have not disclosed the name of the accused, as such, would not be of much help to the prosecution, in absence of



other corroborative evidence.

28. Considering in the light of rival submissions, we find that the prosecution suffers from several deficiencies and there are several gaping loopholes impacting the veracity and credibility of the case of the prosecution. In the wake of such insufficient evidence, the learned Trial Court has taken a view that the prosecution has failed to prove its case beyond shadow of doubt against Respondent No.2. This view taken by the learned Trial Court is thus a possible and probable view and there appears to be no perversity in the same, leading to acquittal of the accused/Respondent No.2, extending to him the benefit of doubt.

29. The law is well settled that in cases of appeals against acquittal, unless and until the finding of the learned Trial Court is found to be palpably perverse or illegal, the appellate court would not interfere with the same for the purposes of reversing the finding of acquittal. This proposition has been clearly laid down by the Hon'ble Apex Court in the case of **Nikhil Chandra Mondal vs. State of W.B.**, reported in (2023) 6 SCC 605 and also in a case of **Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar**, reported in 2024 SCC OnLine SC 2623.



30. Further, in the case of **Rajesh Prasad vs. State of Bihar**, reported in (2022) 3 SCC 471, which also took note of the case of **Chandrappa v. State of Karnataka**, reported in (2007) 4 SCC 415, the Hon'ble Apex Court specifically held that an appellate court must bear in mind that in cases of acquittal, there is double presumption in favour of the accused, one being the presumption of innocence available to him under the principles of criminal jurisprudence and the second being, acquittal of the accused, thereby reinforcing the presumption of his innocence. Paragraph-29 of **Rajesh Prasad** (supra) is being quoted hereunder:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against



acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.”

31. Upon consideration of all the above-mentioned facts and circumstances and after having examined and analyzed the evidence led by the prosecution which is infested with some glaring deficiencies shaking the very foundation of the case, we are unable to find any fault with the view taken by the Trial Court, acquitting the accused/Respondent No.2, giving him benefit of doubt. In view of the settled law, even if two reasonable conclusions are possible on the basis of evidence on record, this Court does not find any reasonable ground to disturb the finding of acquittal recorded by the Trial Court.

32. Therefore, for the reasons aforesaid and considering that the impugned judgment and order of acquittal is based on sound reasons, the same warrants no interference as



we do not find any illegality or perversity in the findings recorded by the learned Trial Court in the impugned judgment dated 04.10.2024 passed by the Court of learned Additional Sessions Judge-V, Samastipur in Sessions Case No.812 of 2017 (arising out of Dalsinghsarai (Vidyapati) P.S. Case No. 32 of 2016).

33. Accordingly, the present appeal stands dismissed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

Harsh/-

AFR/NAFR	NAFR
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