

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Avinash Kumar & Anr.**

**Vs.**

**The State of Bihar & Anr.**

CRIMINAL APPEAL (DB) No.35 of 2024

with

GOVT. APPEAL (DB) No. 2 of 2024

12 September 2024

**(Hon'ble Mr. Justice Rajeev Ranjan Prasad & Hon'ble Mr. Justice Shailendra Singh)**

**Issue in consideration**

- Has there been several lapses on the part of the prosecution conducting the trial and that on the part of the Investigating Agency. Has the learned trial court grossly erred in acquitting the accused of the charge under Section 307 and 504 IPC
- Has the trial court grossly erred in acquitting the accused of the charge under Section 307 and 504 IPC. Has there been several lapses on the part of the prosecution conducting the trial and that on the part of the Investigating Agency.

**Headnotes**

Held : it was held that the learned trial court has grossly erred in acquitting the accused of the charge under Section 307 and 504 IPC. The guilt of the accused has been proved beyond any shadow of doubt.

Has there been evidences available on the records that the prosecution been able to prove the date,time, place and manner of occurrence beyond any reasonable doubt.

Held: it was held that there exist no iota of doubt that the oral testimonies of prosecution witnesses are fully corroborated by the injury reports and the evidence of other prosecution witnesses who are the doctors of the hospital . It has been duly proved by these injured witnesses that the accused had repeatedly fired upon them. The view taken by learned trial court is erroneous one and could not have been taken. It is evident from the judgment of the Hon'ble Supreme Court that the onus of proving the prosecution case rests entirely on the prosecution and

the prosecution has a liberty to choose its witnesses for it to prove its case. We find that in this case prosecution had brought all the three injured witnesses before the court and from their deposition, it is quite clear that they are consistent about the date, time, place and manner of occurrence. The injury reports which of all the injured witnesses have been duly proved by the doctors respectively. It was held from the judgment of the learned trial court that the learned trial court has not given appropriate consideration to the evidence of the injured witnesses. In this regard, learned counsel for the appellant has submitted that there are catena of judgments of the Hon'ble Supreme Court that the

evidence of injured witnesses has greater evidentiary value and the same cannot be discarded lightly unless compelling reasons exist. Reference has been made to Hon'ble Supreme Court in the case of State of M.P. vs. Mansingh and Others reported in (2003) 10 SCC 414

Is the conduct of the IO blameworthy. Is it required to examine the role of the I.O. in the matter of investigation of the case and take appropriate action

Held: In course of cross examination, Among other things the IO has stated that in the case diary, he had not recorded about the presence of blood at the place of occurrence, he had not examined the next door neighbour of the informant who is just beside the house of the place of occurrence and he had not recorded the statement of the villagers. It was held that the present case is a fit case to be referred to the Department of Home, Government of Bihar to examine the role of the I.O. in the matter of investigation of the case and take appropriate action in terms of the directions of the Hon'ble Supreme Court in the case of State of Gujarat Versus Kishanbhai and Others reported in (2014) 5 SCC 108,

The seizure list has been marked with objection. The learned trial court has observed that the seizure list witnesses have not been examined and they have been withheld by the prosecution which would raise a doubt over the prosecution story.

Held: It was held that to prove the prosecution story, the prosecution is not bound to examine a particular number of witnesses. It is well-settled by the judicial pronouncements that it is the quality of the witness which matters, not the quantity. It was held that there are reliable witnesses in form of three injured witnesses and the I.O. who have duly proved the place of occurrence beyond all reasonable doubt.

Does non-mentioning of specific time at which the occurrence took place in the fardbeyan would not create any doubt over the prosecution story

Held : In such circumstances, the Court is of the considered opinion that in a case where the informant had suffered grievous injuries, the wounds were bleeding and he was in pain, non-mentioning of specific time at which the occurrence took place in the fardbeyan would not create any doubt over the prosecution story. In fact the learned trial court has recorded a finding that in the said occurrence, the injured persons have sustained firearm injuries.

Rajesh Yadav and Anr. vs. State of Uttar Pradesh reported in (2022) 12 SCC 200, - Discussed [Para -25]

State of Rajasthan v. Ani @ Hanif and Ors. reported in (1997) 6 SCC 162. It is submitted that in this case the Hon'ble Supreme Court has categorically recorded that the evidence of injured witnesses cannot be rejected even if his name was not mentioned in the FIR[Para -27]

Evidence of injured witnesses has greater evidentiary value and the same cannot be discarded lightly unless compelling reasons exist. We are reminded of the judgment of the Hon'ble Supreme Court in the case of State of M.P. vs. Mansingh and Others reported in (2003) 10 SCC 414 in which the Hon'ble Supreme Court has observed the same[Para -42]

In the case of State of Gujarat Versus Kishanbhai and Others reported in (2014) 5 SCC 108, the Hon'ble Supreme Court observed a case of an investigation in which role of I.O. is found Blameworthy [Para -47]

In the case of Harendra Rai Vs. State of Bihar and Others reported in AIR 2023 SC 4331, the Hon'ble Supreme Court observed regarding several lapses on the part of the prosecution conducting the trial and that on the part of the Investigating Agency were noticed [Para -51]

It was held that the charge under Section 384 IPC has not been duly proved. The immediate cause of occurrence was a demand of money but on what account the money was being demanded has not been proved by the prosecution beyond reasonable doubt[Para -53]

The Hon'ble Supreme Court dealt with the issue of defective investigation and prosecution (Ram Bihari Yadav 1998 4 SCC 517; para 35). [Para -52]

#### Case Law Cited

State of Bihar vs. Lalu Prasad Yadav reported in AIR **2002 SC 2432**; Javed Masood vs. State of Rajasthan reported in **(2010) 3 SCC 538**; Parminder Kaur vs. State of Punjab reported in **(2020) 8 SCC 811**; Jarnail Singh vs. State of Punjab reported in **(2009) 9 SCC 719**; Gangadhar Behra & Ors. vs. State of Odisha reported in **(2002) 8 SCC 381**; Rajesh Yadav and Anr. vs. State of Uttar Pradesh reported in **(2022) 12 SCC 200**; State of Rajasthan v. Ani @ Hanif and Ors. reported in

**(1997) 6 SCC 162**; State of M.P. vs. Mansingh and Others reported in **(2003) 10 SCC 414**; Rajesh Prasad Vs. The State of Bihar and Another reported in **(2022) 3 SCC 471**; H.D. Sundara Vs. State of Karnataka reported in **(2023) 9 SCC 581**; Babu Sahebagouda Rudragoudar and Others Vs State of Karnataka reported in **2024 SCC Online SC 561**.

#### **List of Acts**

Indian Penal Code Sections 341, 323, 307, 384, 504/34; Section 27 of the Arms Act.

#### **List of Keywords**

Charge-sheet; cognizance

#### **Appearances for Parties**

(In CRIMINAL APPEAL (DB) No. 35 of 2024)

For the Appellant/s:Mr. Anshul, Advocate;Mr. Rakesh Kumar Ranjan, Advocate;Mr. Saurav Kumar, Advocate; Mr. Pramod Rajpati, Advocate

For the Respondent/s:Mr. Bipin Kumar, APP;For the Resp No. 2:Mr. Ajay Kumar Thakur, Advocate; Mr. Sudhish Kumar, Advocate

(In GOVT. APPEAL (DB) No. 2 of 2024)

For the Appellant/s:Mr. Rajendra Nath Jha, APP;

For the Respondent/s:Mr. Ajay Kumar Thakur, Advocate;Mr. Sudish Kumar, Advocate

Headnotes prepared by Reporter: Saurabh Prakash, Advocate

#### **Judgment/Order of the Hon'ble Patna High Court**

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.35 of 2024

Arising Out of PS. Case No.-243 Year-2021 Thana- GOPALPUR District- Patna

Avinash Kumar Son Of Sunil Singh Resident Of Village - Kachhuara, P.S. -  
Gopalpur, District - Patna

... .. Appellant

Versus

- 1. The State of Bihar
- 2. Sameer Kumar, Son of Uday Singh, Resident of Village - Kachhuara, P.S. -  
Gopalpur, District – Patna.

... .. Respondents

with

GOVT. APPEAL (DB) No. 2 of 2024

Arising Out of PS. Case No.-243 Year-2021 Thana- GOPALPUR District- Patna

The State of Bihar, through the District Magistrate, Patna

... .. Appellant

Versus

Sameer Kumar, Son of Uday Singh, Resident of Village - Manoharpur  
(Kachhuara), P.S. - Gopalpur, District- Patna

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 35 of 2024)

For the Appellant/s : Mr. Anshul, Advocate  
Mr. Rakesh Kumar Ranjan, Advocate  
Mr. Saurav Kumar, Advocate  
Mr. Pramod Rajpati, Advocate  
For the Respondent/s : Mr. Bipin Kumar, APP  
For the Resp No. 2 : Mr. Ajay Kumar Thakur, Advocate  
Mr. Sudhish Kumar, Advocate

(In GOVT. APPEAL (DB) No. 2 of 2024)

For the Appellant/s : Mr. Rajendra Nath Jha, APP  
For the Respondent/s : Mr. Ajay Kumar Thakur, Advocate  
Mr. Sudish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 12-09-2024

These two appeals have been preferred by the informant  
and the State respectively for setting aside the judgment dated



07.12.2023 (hereinafter referred to as the 'impugned judgment') passed in Sessions Trial No. 838 of 2021 arising out of Gopalpur P.S. Case No. 243 of 2021 passed by the learned Additional Sessions Judge-V, Civil Court, Patna (hereinafter referred to as the 'learned trial court) by which the learned trial court has been pleased to acquit the respondent no. 2 for the offences punishable under Sections 341, 323, 307, 384, 504/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

2. Both the appeals were taken up for consideration after receipt of the trial court records. At the outset, it was decided to hear the appeals on their own merit for final disposal. Both the appeals were heard on 10.09.2024 and 11.09.2024 at length.

### **Prosecution Case**

3. The prosecution story is based on the *fardbeyan* (Exhibit '1') of Avinash Kumar (PW-1), resident of village Kachuara, P.S. Gopalpur, District-Patna recorded by S.I. S.N. Singh of Ram Krishnanagar Police Station on 19.07.2021 at 13:00 hours at Ford Hospital, Bed No. 408, Patna. In his *fardbeyan* (Exhibit '1'), he has stated that on 19.07.2021 when the informant (PW-1) was at his home and was walking in his park, all of a sudden, (1) Samir Kumar, (2) Uday Singh, (3) Sudhir Kumar and (4) Wife of Samir armed with pistol, lathi/danda came and started



abusing and asked for Rs.5 lakhs as ransom otherwise he would be killed. On hearing hulla, informant's father Sunil Singh and brother Nitish Kumar also came there and an altercation took place, in meantime, Samir Singh started indiscriminate firing from his pistol which hit in the informant's arm and stomach of his father Sunil Singh and Chest of his brother Nitish as a result of which they became injured and fell down. Thereafter, co-villagers took them to Patna Ford Hospital for treatment.

4. The *fardbeyan* of the informant was sent to the Gopalpur Police Station within whose jurisdiction the occurrence had taken place. On the basis of the *fardbeyan* of the informant, Gopalpur P.S. Case No. 243 of 2021 dated 19.07.2021 was registered under Sections 341, 323, 307, 384, 504/34 IPC and Section 27 of the Arms Act at 16:35 hours.

5. After investigation, police submitted a charge-sheet under the aforementioned sections of the IPC and the Arms Act against one of the accused Sameer Kumar, who is respondent in both the appeals. The learned Additional Chief Judicial Magistrate, IX<sup>th</sup> Court, Patna *vide* his order dated 26.10.2021 took cognizance of the offences. The investigation against other accused were kept pending. On 16.11.2021, police papers were



supplied to the accused and records were committed to the court of Sessions.

6. It would further appear from the records that during the investigation, the informant (PW-1) had filed a protest petition (Exhibit '2') in which he alleged that the accused persons are wealthy and influential persons who have gained over the Investigating Officer. It is stated that the Investigating Officer is not recording the statement of witnesses correctly in the case diary only to help the accused persons and the accused persons are giving threats and asked them not to depose in the case otherwise they will kill petitioner and his witnesses.

7. From the trial court records it would appear that Sessions Trial No. 838 of 2021 was registered after receipt of the records in the learned trial court on 20.12.2021. On 10.02.2022, the charges under Sections 307/384/34 and 504/34 IPC were explained to the accused in Hindi, he denied the charges and claimed to be tried. The learned trial court framed the charges under Sections 307, 384/34 and 504/34 IPC and issued summons to the prosecution witnesses.

8. On behalf of the prosecution, as many as eight witnesses deposed and some documentary evidences were also marked exhibits. The complete description of the prosecution





witnesses and the documents marked exhibit are being provided hereunder for a ready reference.

List of Prosecution witnesses

PWs	Name
PW-1	Avinash Kumar
PW-2	Nitish Kumar
PW-3	Sunil Singh
PW-4	Dhanesh Kumar
PW-5	Dr. Prabhat Ranjan
PW-6	Dr. Raja Anurag Gautam
PW-7	Indrajeet Priyadarshi
PW-8	Abhishek Kumar Ranjan

List of Exhibits

Exhibit No.	Description
Exhibit -1	Fardbeyan
Exhibit-2	Protest Application
Exhibit-3	Injury Report of Nitish Kumar
Exhibit-4	Injury Report of Sunil Singh
Exhibit-5	Injury Report of Avinash Kumar
Exhibit-6	Formal F.I.R.
Exhibit-7	Seizure-List of Khokha
Exhibit-8	Arrest Memo of Accused
Exhibit-9	Charge-sheet

9. On behalf of the defence, one Tinku Kumar @ Ritik was examined as DW-1. No documentary evidence has been brought on record on behalf of the defence.

Findings of the learned Trial Court

10. The learned trial court having examined the evidences on the record made an observation as regards the



conduct of the informant of the case. It has been observed that from initiation of the case, the informant kept on blaming one another and as soon as he was discharged from hospital, he filed a complaint petition before the court with his apprehension that his case would not be investigated properly by the I.O. and he suspected during his examination that the independent witnesses of the case would not support the case as they are in connivance with the accused. The learned court observed that the informant did not rely upon female members of his family i.e. mother, wife and sister, therefore he did not get them examined and he engaged his personal lawyer to assist in course of trial.

**11.** The learned trial court observed that the learned Additional P.P. who was previously conducting the prosecution case did not get declare the witness hostile who did not support the case and even though the informant had wished not to examine some of the witnesses, they were examined by the prosecution. It has been noted by the learned trial court that not only making blames over the then APP, citing several pronouncements the informant also pointed fingers on the court that its control over the trial was missing and the defence was on driving seat. The court observed that the informant forgot that he was himself vigilant throughout the investigation as well as during trial by engaging his



own counsel and there was no occasion for the court to believe that the court was not active for ensuring fair trial. The court observed that it is true that the Presiding Judge has power under Section 165 of the Indian Evidence Act to ask any question, he pleases any time from any witness about any fact be it relevant or irrelevant but at the same time the judge should not intervene in such a manner which suggests that he is biased towards any of the parties. The court observed that the informant was present in the court along with his counsel during whole proceedings of the trial and at no point of time it has been shown that defence has tried to disrupt or tried to evade from the court's proceedings or delayed the trial by way of filing any silly petition in the court and the accused has regularly attended the court as well. Contrary to it, the conduct of the informant looks like a gas lighter as he has neither faith on I.O. nor over independent witnesses nor on female members of his family nor even on Presiding Judge as he only was the keeper of truth.

**12.** The learned trial court has recorded a finding that the defence has not made objection on the firearm injuries upon the bodies of the injured persons but it's rebuttal was explaining the court that it was not the accused but the other dreaded criminals of locality/purchaser of land who have shot at on these



injured persons over the dispute of commission. In this connection, the court took notice of the fact that defence had examined Tinku @ Ritik as DW-1 who had allegedly brought the injured persons to the hospital as claimed by the informant in his evidence before the court. The same version favourable to the defence was also made by PW-7 who is an independent witness before the court during his examination-in-chief but the Public Prosecutor never sought permission to cross-examine him at any stage of trial. The court took note of the Hon'ble Supreme Court in the case of **State of Bihar vs. Lalu Prasad Yadav** reported in **AIR 2002 SC 2432** in which it has been held that any permission sought by Public Prosecutor to cross-examine the witness after the cross-examination of defence should be refused by the court.

13. The learned trial court relied upon the judgment of the Hon'ble Supreme Court in the case of **Javed Masood vs. State of Rajasthan** reported in **(2010) 3 SCC 538** wherein it has been held that if the prosecution supporting defence is not declared hostile by prosecution, accused can rely on such evidence. The trial court has thus observed that the story of the defence that the injured persons have sustained the firearm injuries but the crime scene was not as told by the informant i.e. his home's compound but *Chaudi-Khanda* half kilometre away



from his village, carries force. The learned trial court observed that even though the Public Prosecutor is not bound to examine all witnesses and the discretion lies with the prosecution whether to tender or not witness to prove its case, an adverse inference may be drawn if withholding of witness was with oblique motive. The court held that non-examination of witnesses of the seizure who admittedly were the female family members of the informant and might be the best eyewitness as per the prosecution story creates a suspicion to the prosecution story as told by the informant and non-examination of material independent witnesses by the prosecution would adversely affect its case. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Parminder Kaur vs. State of Punjab** reported in **(2020) 8 SCC 811**.

14. The learned trial court has observed that as per the prosecution case, the accused facing trial along with his family members visited the informant's house and demanded ransom and in protest opened firing resulting in injuries to the informant, his brother and father. The charge-sheet contained name of fourteen prosecution witnesses but only eight of them have been examined on behalf of the prosecution out of them two are the doctors of a private hospital, one is I.O. of the case, four out of rest five are the



family members including three injured and only a single independent witness was examined by the prosecution. The court observed that even though the prosecution story is presumed upto such an extent that the accused had intentionally insulted and thereby provoked the informant or his family members to cause them to break the public peace, in the absence of actual words used by the accused persons in *fardbeyan* (FIR) or in testimonies of PWs conviction under section 504 of the IPC cannot be sustained.

**15.** The learned trial court held that the charge of demanding ransom has not been proved in this case as it is hard to believe that a person along with his father, brother and wife would demand ransom from their immediate neighbor and had it been so then the other neighbors or the co-villagers would have definitely come forward against the misdeeds of these accused persons. In absence of any independent witness on this point, the learned trial court held that it would not be safe to hold the accused guilty of offence under Section 384 IPC when nothing has been delivered to the accused by the informant or his family.

**16.** The learned trial court has observed that the testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or a family member of the



victim of the offence. In such a case, the court has to adopt a careful approach in analysing the evidence of such witness. While examining the credibility of such witnesses and the evidentiary value of their testimonies, the general presumption runs that a related witness would not falsely testify against an innocent person as they would prefer to see the real culprits getting punished as held in **Jarnail Singh vs. State of Punjab** reported in **(2009) 9 SCC 719**. The testimony of a witness in a criminal trial cannot be discarded on such ground. The learned trial court has taken note of the judgments of the Hon'ble Supreme Court in the case of **Gangadhar Behra & Ors. vs. State of Odisha** reported in **(2002) 8 SCC 381**.

17. The learned trial court found that in the present case there are three injured persons who have sustained bullet arms injuries and the same has been corroborated by the medical expert though they are of a private hospital. The defence had raised a point on not getting the first aid given at local Primary Health Center and not getting examined at any government hospital. The court held that according to the informant himself it was Tinku Kumar (DW-1) who had driven them to hospital but Tinku has stated that he drove them from another place than that of the place of occurrence as alleged by the informant. The court took a view



that non-reporting to the local police station either by the informant's family members or by the locals also makes the prosecution story doubtful. The court doubted the prosecution story of firing gunshots by the accused at informant's house doubtful and has also held that the way the investigation had proceeded in the matter, the false implication of the accused by the informant can be visibly seen. In ultimate analysis, the learned trial court held that there are various contradictions in the statement of witnesses given before the court as well as statements earlier given during investigation, they do not inspire confidence in the case. The trial court held that "higher is the probability, that due to dispute over parking, passage etc, the informant has falsely implicated the accused due to fear of further deadly attack on his family members by real culprits being dangerous persons and non-production of material as natural witnesses i.e. mother, sister and wife of the informant by the prosecution/informant himself also casts shadow over prosecution story."

**18.** With the aforementioned analysis and appreciation of the evidences on the record, the learned trial court has acquitted the accused.





**Submissions on behalf of the Appellant in Cr. Appeal  
(DB) No. 35 of 2024**

19. Mr. Ansul, learned counsel representing the appellant in Cr. Appeal (DB) No. 35 of 2024 and Mr. Rajendra Nath Jha, learned Additional Public Prosecutor representing the State in Cr. Appeal (DB) No. 2 of 2024 have jointly assailed the impugned judgment of the learned trial court on various grounds. It is submitted that in this case, the learned trial court has made some unwarranted and irrelevant observations. There is no reason for the learned trial court to comment upon the conduct of the informant only because he had filed a protest by way of a complaint against the conduct of the then I.O. and had alleged that the I.O. was not conducting the investigation in a fair manner. In fact, ultimately, the learned trial court has itself blamed the I.O. of the case in paragraphs '71' and '72' of the impugned judgment. The court has clearly observed that not only the informant but the defence has also made objections on the fair investigation by the I.O. The I.O. had not recorded the restatement of the informant nor collected the blood stained soil and clothes and had not produced the seized *kokha* and pellet before the court nor got them examined by the Forensic Science Laboratory (FSL).



**20.** It is submitted that the learned trial court could not appreciate that the previous Additional Public Prosecutor who was conducting the case collusively allowed Indrajeet Priyadarshi (PW-7) to record his testimony as prosecution witness despite knowing that he had become hostile and his testimony was not to be required to be recorded. In fact while deposing as PW-1, the informant had categorically stated in his examination-in-chief that the witnesses namely, Rakesh Kumar, Kameshwar Chaudhary, Indrajeet and Surendra Sao had gone in collusion with the accused so he would not want to examine them in course of trial. It is pointed out that the protest petition has been brought on record and the same has been marked Exhibit '2'. In the protest petition, it is clearly stated in so many paragraphs that the accused persons have gained over the I.O. and the I.O. is not recording the statement of the witnesses correctly in the case diary only to help the accused persons. It is submitted that PW-7 was won over by the accused, he has made a vague statement in his examination-in-chief that there was a *hulla* in the village on 19.07.2021 at about 07:00-08:00 am that a quarrel has taken place between Sunil Singh, his two sons Avinash Kumar and Nitish Kumar with the purchaser of land, in which they have been shot at. It is evident from the examination-in-chief of PW-7 that he is not an eyewitness to the



occurrence, he was not present at *Chaudi-Kandha* bridge and he has only claimed that on hearing *hulla* in the village, he had gone there. He has stated that on reaching there, the villagers took them to hospital. It is submitted that PW-7 had been won over by the defence and in this regard, his attention towards his previous statement made before the I.O. in course of investigation was not drawn. In his previous statement before the I.O., PW-7 had stated that Sameer Kumar (accused) had gone armed with pistol at the house of the informant and from the gate of the boundary of the house of the informant, he had made repeated firing as a result whereof all the three persons had suffered injuries. In this regard, the evidence of the I.O. (PW-8) has not been properly appreciated by the learned trial court. The I.O. has given the description of the place of occurrence in paragraph '3' of his examination-in-chief. He had found that the place of occurrence is the same and one which is stated by the informant, the accused had fired from his pistol from outside the gate of the house of the informant. In paragraph '4' of his examination-in-chief, the I.O. has stated that in course of inspection of the place of occurrence, he had found one 7.65 mm fired cartridge which was seized and seizure list was prepared. The said seizure list has been marked Exhibit '7' with objection.



**21.** Learned counsel submits that the I.O. (PW-8) has further stated in his examination-in-chief that he had arrested accused Sameer Kumar and his arrest memo has been proved as Exhibit '8'. After his arrest, Sameer Kumar had made a confessional statement in which he disclosed that the pistol used in commission of crime has been concealed beneath brick towards Southern portion of his house. On the disclosure made by the accused, Sameer Kumar, the said pistol was recovered and in this regard, on the basis of his own recorded statement, Gopalpur P.S. Case No. 244 of 2021 was registered on 20.07.2021. It is, thus, submitted that on the next day of the occurrence, Sameer Kumar was arrested and on his disclosure, the pistol which was the weapon of crime was recovered.

**22.** Learned counsel submits that Indrajeet Priyadarshi (PW-7) was examined by the I.O. (PW-8) on 13.08.2021. Learned counsel submits that even as it would appear from the evidence of the I.O. (PW-8) that there are lapses on his part in not recording the time of inspection of the place of occurrence and he had not recorded the statement of the neighbours whose houses are situated there, that would not be a reason to cause any doubt on the prosecution story.



**23.** Learned counsel submits that in this case, the learned trial court has not doubted the evidence of the prosecution that the informant, his father and brother were shot at by firearm and they had suffered injuries. The doctors of the Ford Hospital who have been examined as PW-5 and PW-6 have proved the injury report of the victims and the injury reports have been duly exhibited as Exhibit '3', Exhibit '4' and Exhibit '5' respectively.

**24.** It is submitted that so far as evidence of DW-1 is concerned, it would appear from his deposition that he had come to depose in court on his own at the instance of Uday Singh who is the father of accused Sameer Kumar and was himself an accused in this case. During his cross-examination, he has stated that both the parties had dispute on account of some old land holdings but he had not seen any paper in this regard. He was also suggested that he was not examined by police, therefore, his statement was not recorded in the case diary. This witness falsely claimed that he was examined by police after 15-20 days of the occurrence. Learned counsel submits that on perusal of the charge-sheet, it would appear that DW-1 was not a charge-sheet witness, he was brought by the defence for the first time to depose in course of trial only after the defence found that the name of DW-1 had come in the deposition of the informant (PW-1) as the person who had been



driving vehicle of the informant in which he was brought for treatment. It is, thus, submitted that the learned trial court has grossly erred in giving much credence to the evidence of Indrajeet Priyadarshi (PW-7) and Tinku Kumar (DW-1).

**25.** It is submitted that on the one hand, the learned trial court has believed the evidence of PW-7 and DW-1, the learned trial court has discarded the evidence of the three injured witnesses who have deposed as PW-1, PW-2 and PW-3 and have supported the prosecution case. Their ocular evidences are getting fully corroborated by the injury reports (Exhibit '3', '4' and '5') which have been duly proved by Doctors PW-5 and PW-6. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Rajesh Yadav and Anr. vs. State of Uttar Pradesh** reported in **(2022) 12 SCC 200**, learned counsel submits that when there is no inconsistency much less any contradiction in the evidence of three injured witnesses, merely because they are related witnesses, their evidences could not have been discarded by the learned trial court. It is submitted that the evidence of all the three injured witnesses are clear, cogent and they have withstood the rigor of cross-examination, therefore they are sterling witnesses of the case and they do not require further corroboration.



26. Learned counsel submits that a mere non-examination of the female members of the family *per se* will not vitiate case of the prosecution. They were formal witnesses to the seizure list prepared by I.O. They are not material witnesses to the facts and circumstances of the case. The Hon'ble Supreme Court has held that it depends on the quality and not the quantity of the witnesses and its importance. No adverse inference can be drawn on this ground. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

27. Learned counsel has also relied upon judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan v. Ani @ Hanif and Ors.** reported in (1997) 6 SCC 162. It is submitted that in this case the Hon'ble Supreme Court has categorically recorded that the evidence of injured witnesses cannot be rejected even if his name was not mentioned in the FIR and the role of the learned trial court in this regard while appreciating the evidences have been duly discussed in paragraphs '11', '12' and '13' of the judgment. It is submitted that in this case, the learned trial court seems to have allowed the trial to develop a contest between the prosecution and the defence and made unnecessary and uncalled for observations, in the process



distorting the prosecution evidence by introducing combative and competitive elements in its observations.

**28.** It is lastly submitted that the learned trial court has committed grave error in not appreciating the evidences in proper perspective keeping in the view the catena of judgments of the Hon'ble Supreme Court that the evidence of injured witnesses has greater evidentiary value and the same cannot be discarded lightly unless compelling reasons exist.

**29.** It is submitted that the judgment of the learned trial court acquitting the accused who is respondent before this Court has resulted in travesty of justice and from the entire evidence on the record the only conclusion which may be reached is that the findings of the learned trial court are perverse. It is submitted that the one and only conclusion which may be reached on the basis of the evidence in the present case is that the accused Samir Kumar is guilty of the commission of offences under Sections 307, 384 and 504/34 and is liable to be convicted and punished in accordance with law.

**Submissions on behalf of the accused-respondent no.2**

**30.** Learned counsel representing respondent no. 2 submits that the informant (PW-1) lodged the first information report without giving date and time of occurrence. From perusal of





the *fardbeyan* of the informant it appears that while he was walking in the park of the house, the alleged occurrence took place. Referring to the deposition of PW-1, learned counsel submits that in para '11' of his deposition the informant has stated that his co-villager Tinku Kumar drove the vehicle and carried them for treatment. In para '36' the informant deposed that blood had fallen on earth. In para '40' it has been admitted by the informant that his further statement was not recorded by the I. O. The informant in para '41' has deposed that when he received firearm injury, the assailant was standing in front of them at a distance of 5-6 feet having pistol in their hand from before and after 3-4 minute his father Sunil Singh and brother Nitish Kumar reached there and they saw the pistol in the hand of the accused.

**31.** Referring to the deposition of PW-2, the brother of the informant, learned counsel submits that this witness deposed that the informant (PW-1) was in the orchard of the compound when accused persons Samir with pistol, Uday and Sudhir with lathi and Nishi Kumari with brick came and started abusing his brother and demanding rupees five lakh. This witness and his father came down. Uday Singh gave order and Samir indiscriminately fired as a result of which he, his father and brother got injured. This witness in para '3' has deposed that his



statement was recorded after 25 days of the occurrence. In para '39' this witness deposed that he told the police during investigation that at the time of occurrence he was in the balcony of his house on first floor and his brother (informant) was in the orchard in the compound when the accused persons came and started abusing and demanding money.

**32.** Learned counsel stated that PW-8, the investigating officer, in para '69' and '70' has stated that PW-2 told him that accused Samir Kumar and Uday Singh were demanding rupees five lakh as Chanda for temple which was protested by his brother. He had not stated that he and his father got down and Uday Singh gave order to kill and he received injury on right side of chest.

**33.** Referring to evidence of PW-3 the father of the informant learned counsel submits that this witness has deposed that he was giving fodder to the cattle and his son (informant) was standing in orchard in campus. Accused persons came, Samir with pistol, Uday and Sudhir with lathi and Nishi Kumari with brick and Samir demanded rupees five lakh and on objection, Uday Singh gave order and firing started. On *hulla* his another son Nitish Kumar (PW 2) came. Firing made by Samir caused injury to Avinash Kumar (informant) and his another son Nitish. This witness in para '36' to '38' stated that no information was given to



Chaukidar and Mukhiya regarding the occurrence. This witness stated that when first firing was made all the three tried to catch the accused. PW-8, the investigating officer, has stated that these facts have not been stated by this witness (PW-3) to him during investigation.

**34.** Learned counsel submits that these facts show that for the first time in the court the prosecution has developed the case and changed the place of occurrence. Learned counsel submits that from the statement of DW-1, who has carried the injured to hospital, it would appear that the place of occurrence is on the northern side of the village near Chauri Khanda bridge from where the injured were taken to hospital for treatment. Further PW-3 during investigation has stated that the place of occurrence was an orchard by the side of the house where his son had gone for a walk.

**35.** Learned counsel submits that in the charge-sheet fourteen witnesses are named and most of them have been withheld by the prosecution purposely because they have given altogether a different way of occurrence at different places and if they were produced then they would have revealed the real facts which would have been prejudicial to the prosecution case.



**36.** Learned counsel referring to statement of I.O. submits that he has not found any empty fired cartridge from the place of occurrence and he did not find any blood at the place of occurrence (para '20'). I.O. in para '58' has stated that one '*khokha*' which he has seized was never produced in court nor the same was sent to FSL.

**Consideration**

**37.** We have heard learned counsel for the appellant, learned Additional P.P. for the State and learned counsel for the respondent no.2 in Cr. Appeal (DB) No. 35 of 2024 who is the sole respondent in Government Appeal (DB) No. 2 of 2024 as well as perused the trial court records.

**38.** From the fardbeyan (Exhibit '1') of the informant (PW-1) it is evident that it was recorded on 19.07.2021 at 13:00 hours at Ford Hospital, Patna where the informant was admitted and was receiving treatment. The fardbeyan was recorded by S.I. S.N. Singh of Ram Krishna Nagar Police Station. A plea has been taken on behalf of the accused-respondent that the fardbeyan does not mention the date and time of occurrence. We find from the injury report (Exhibit '5') that the informant was brought to Ford Hospital and Research Centre on 19.07.2021 at 8:00 am where he was admitted as an indoor patient vide Admission No. 50211. The



Doctor (PW-6) has proved the injury report and in his examination-in-chief, he has stated as under:-

“On 19.07.2021, I was posted at Ford Hospital, Patna. I examined Avinash Kumar, alleged case of firarm injury at Kachuara at 7:30 pm on 19.07.2021. Leading to wound in right shoulder with active bleeding and pain. Inability to move right upper limb. On examination patient conscious oriented afebrile, wound over right shoulder anteriorly 1 cm in diameter/darkening of margin (2” – 3” above axillary margin).”

**39.** The prosecution witnesses have deposed that the occurrence took place on 19.07.2021 at about 7:30 am. The informant has been examined as PW-1 in course of trial and in his examination-in-chief he has stated that the occurrence is of 19.07.2021 at 7:30 am. PW-1 has stated in paragraph 42 of his deposition that in his fardbeyan he had stated that the occurrence is of 19.07.2021 at 7:30 am. From the pattern of cross-examination, it would appear that the defence has not questioned the date and time of occurrence. In such circumstances, this Court is of the considered opinion that in a case where the informant had suffered grievous injuries, the wounds were bleeding and he was in pain, non-mentioning of specific time at which the occurrence took place in the fardbeyan would not create any doubt over the prosecution story. In fact the learned trial court has recorded a



finding that in the said occurrence, the injured persons have sustained firearm injuries.

**40.** We have noticed that the learned trial court has doubted the prosecution case saying that the story of the defence that though the injured persons have sustained firearm injuries but the crime scene was not as told by the informant i.e. his home's compound but *Chaudi-Khanda* which is half kilometer away from the village, carries force. The trial court has mainly relied upon the oral testimony of PW-7 and DW-1. PW-7 has stated that on 19.07.2021 at about 7-8 am, there was a hulla in the village that a quarrel has taken place between Sunil Singh, his two sons Avinash and Nitish Kumar with the purchaser of the land in which they have been shot at. He admits that he is not an eyewitness to the occurrence but he claims that on hearing hulla in the village, he had gone there. He has stated that on reaching there, the villagers took them to Hospital. We have found that even as PW-7 did not support the prosecution case as regards the place of occurrence, the then Additional Public Prosecutor did not get him declared hostile. PW-7 was not cross-examined and his attention was not drawn towards his previous statement recorded by the I.O. (PW-8). At this stage, we notice that by filing a protest petition (Exhibit '2'), the informant (PW-1) had raised a grievance against the then



I.O. and had brought it to the notice of the court that some of the prosecution witnesses have been gained over by the accused persons who are wealthy and influential persons. In fact while deposing as PW-1 the informant had categorically stated in paragraph '6' of his examination-in-chief that the witnesses namely, Rakesh Kumar, Kameshwar Chaudhary, Indrajeet (PW-7) and Surendra Sao had gone in collusion with the accused, hence he does not want to examine them. These witnesses had criminal history and the accused had also got criminal history. Even the learned trial court has found several lapses on the part of the I.O. in course of investigation. The learned trial court has recorded that at one stage that the informant had raised a grievance against the then Additional P.P. saying that he had got PW-7 examined even though he was well aware that PW-7 had been gained over and the then Additional P.P. did not get PW-7 declared hostile. We have noticed this aspect of the matter and find that the submission of learned counsel for the appellant in this regard carries much substance. The I.O. (PW-8) has stated in his examination-in-chief that he had recorded statement of Indrajeet (PW-7) in course of his investigation. On perusal of the deposition of PW-7, we are of the considered opinion that in his examination-in-chief, PW-7 has made a vague statement. He has stated in his examination-in-chief



that on hearing hulla, he had reached there with other villagers and from there, the villagers took the injured to hospital whereas it has come in evidence that the informant was taken to hospital by his own vehicle.

**40.1** In our opinion PW-7 cannot be taken as an independent witness in this case and on the face of the statement of PW-1 in his examination-in-chief as regards PW-7, his testimony cannot be given much evidentiary value. The three injured witnesses who are PW-1, PW-2 and PW-3 in this case are consistent with regard to the place of occurrence. PW-1 has stated that Samir Kumar, Uday Singh and behind them Sudhir Kumar and Nishi Kumari had come to his compound, Samir Kumar was armed with a pistol while Uday Singh and Sudhir had a lathi in their hand and Nishi had a brick in her hand and they had demanded a rangdari of Rs. 5 lakhs with a threat that if the same would not be paid then he would be killed. On protest made by the informant, his father Sunil Singh and brother Nitish Kumar (both injured) came there whereafter the occurrence took place in which Samir Kumar had fired from his pistol causing injuries to all the three persons. PW-2 and PW-3 have also stated in their examination-in-chief that when Avinash Kumar (PW-1) was in the orchard of his compound, the occurrence took place. The I.O.





(PW-8) has stated in his examination-in-chief that he had visited the place of occurrence. In paragraph '3' of his examination-in-chief, he has given the description of the place of occurrence and has stated in paragraph '4' of his deposition that in course of inspection of the place of occurrence, he had seized one fired cartridge of 7.65 mm, on the base of the cartridge, 7.65 was inscribed. He had prepared the seizure list on which Suruchi Kumari and Sarita Kumari had put their signature as witnesses.

**41.** The seizure list has been marked Exhibit '7' with objection. The learned trial court has observed that the seizure list witnesses have not been examined and they have been withheld by the prosecution which would raise a doubt over the prosecution story. This Court would not agree with this view of the learned trial court for the reason that in any case, to prove the prosecution story, the prosecution is not bound to examine a particular number of witnesses. It is well-settled by the judicial pronouncements that it is the quality of the witness which matters, not the quantity. We find that there are reliable witnesses in form of three injured witnesses and the I.O. who have duly proved the place of occurrence beyond all reasonable doubt. Learned trial court has given much credence to the evidence of PW-7 for the reason that the prosecution has not got him declared hostile but in the kind of



materials present on the record wherein the informant (PW-1) has shown that he was complaining to the court that the prosecution witnesses have been won over and PW-7 was not required to be examined, still the then APP examined him but did not get him declare hostile, we are of the considered opinion that the evidence of PW-7 cannot be given much weightage in presence of the evidence of three injured witnesses and the I.O.

**41.1** Similarly, we find that the learned trial court has relied upon the evidence of Tinku Kumar @ Ritik who has deposed as DW-1. He has deposed on the line of PW-7 and has stated that when he reached Chauri Khanda bridge, he found that Sunil Singh, Avinash Kumar and Nitish Kumar were in injured condition and they were saying that a quarrel had taken place with the purchasers of the land who had fired at them and had fled away. DW-1 has stated in his examination-in-chief that he was asked to bring the vehicle and took the injured to Patna for treatment whereafter he came back and took the vehicle to Chauri Khanda bridge from where he took the injured persons to Ford Hospital at Patna and got them admitted. In his cross-examination, this witness has stated that he had not received any summon from the court and he had come to depose as a witness on his own at the instance of Uday Singh, who is the father of the accused. He falsely claimed



that his statement was recorded by Police after 15-20 days of the occurrence but the prosecution suggested him that police had not recorded his statement, therefore, his statement is not present in the case diary. In his cross-examination, DW-1 has stated that there was an old dispute between both the parties on account of agricultural holding (खेती-बाड़ी) but he had not seen any paper in this regard. DW-1 was suggested that he is close to Uday Singh and he had come to depose in an attempt to save the accused and he was making a false statement. This suggestion was, however, denied by DW-1. We again find that the evidence of DW-1 is not trustworthy. He was not examined by the I.O. in course of investigation and he was not a chargesheet witness in this case. He has accepted that he had come to depose at the instance of Uday Singh. It is not the case of the defence that DW-1 was interrogated by police in course of investigation, his statement was recorded in the diary but he was not made a chargesheet witness. DW-1 has appeared all of a sudden in course of trial, therefore, even as it is found that he was the person who had driven the vehicle in which the injured was taken to the Hospital, he cannot be said to be a wholly reliable witness to prove the place of occurrence and his oral testimony would not create any doubt over the evidence of the injured witnesses.



42. We have noticed from the judgment of the learned trial court that the learned trial court has not given appropriate consideration to the evidence of the injured witnesses. In this regard, learned counsel for the appellant has submitted that there are catena of judgments of the Hon'ble Supreme Court that the evidence of injured witnesses has greater evidentiary value and the same cannot be discarded lightly unless compelling reasons exist. We are reminded of the judgment of the Hon'ble Supreme Court in the case of **State of M.P. vs. Mansingh and Others** reported in **(2003) 10 SCC 414** in which the Hon'ble Supreme Court has observed in paragraph '9' as under:-

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him, it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”



**43.** In paragraph '12' of its judgment in the case of **Mansingh (supra)**, the Hon'ble Supreme Court has observed as under:-

“**12.** Even if it is accepted that there were deficiencies in the investigation as pointed out by the High Court, that cannot be a ground to discard the prosecution version which is authentic, credible and cogent. Non-examination of Hira Lal is also not a factor to cast doubt on the prosecution version. He was not an eyewitness, and according to the version of PW 8 he arrived after PW 8. When PW 8 has been examined, the non-examination of Hira Lal is of no consequence.”

**44.** In the case of **Rajesh Yadav (supra)**, the Hon'ble Supreme Court was considering a case of double murder and one injured wherein the injured witness and one of the three investigating officers (IOs) were not examined and one eye witness and another I.O. had turned hostile. The Hon'ble Supreme Court held in paragraph '34' as under:-

“**34.** A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.”

**45.** It is evident from the judgment of the Hon'ble Supreme Court that the onus of proving the prosecution case rests



entirely on the prosecution and the prosecution has a liberty to choose its witnesses for it to prove its case. We find that in this case prosecution had brought all the three injured witnesses before the court and from their deposition, it is quite clear that they are consistent about the date, time, place and manner of occurrence. The injury reports which are marked Exhibit '3', Exhibit '4' and Exhibit '5' respectively of all the injured witnesses have been duly proved by the doctors who are PW-5 and PW-6 respectively. The injury reports of all the three injured witnesses are being reproduced hereunder for a ready reference:-

**"Injury Report of Sunil Singh**

Examine Sunil Singh, Age-60 Y/M of village Kachuara, P.O- Kachuara, P.S.- Gopalpur, Patna on 19/07/21 vide Regd. Nos. 76549 at Emerging of Ford Hospital are found following Injury on his person-

(1) Lacerated wound of size 1 ½ cm x 1 cm x depth unaccessed over left flank about 4 cm supero-medical to ant sup iliac spine with blood oozing and enverted margin -Entry wound

(2) Lacerated wound of size – 1.5 cm x 1.25cm to the rt. of umbilicus & everted margin C blood oozing out- Exit wound

(3) Lacerated wound of size .5 cm x .5 cm depth unaccessed and lat aspect of (Lt) fore arm- Entry wound with charring around the wound

(4) Lacerated wound of size 1 cm x 0.5 cm, over medial aspect of left fore arm – exit wound

M.I.- A mole over the chin

A mole over left leg near ankle.



Radiological finding - xray abdomen exact  
Posture – No abnormality seen

xray - left fore arm AD- Lat- No abnormality  
seen

USG- W/A – Normal

Nature of injury- simple in nature cause of  
firearm

Age of Injury - within 6 hours.

### **Injury Report of Nitish Kumar**

Examine Nitish Kumar, Age 30 Y/M of village  
Kachuara, P.O.- Kachuara, P.S.- Gopalpur, Dist- Patna,  
Bihar on 19/07/21 vide regd. No. -76548 at Emerging of  
Ford hospital Patna. and found following injury on his  
person.

(1) Lacerated wound of size 1 cm x 1 cm depth  
unaccessed, inverted margin. Just Lat & below the rt.  
Sterno clavicular Jt. were blood oozing- Entry wound.

(2) Lacerated wound of size 1 ½ cm x 1 cm  
near anyal of (Rt) scapulae with everted margin- Exit  
wound.

M.I- Black mole over midline of neck

Black mole over (Rt) elbow Jt.

Radiological Findings

HRCT- Chest- Fracture post part of (RT) 7<sup>th</sup>  
Rib.

- Large (RT) Haemopneumothorax well  
mediasmal shift to left and surgical emphysems over (Rt)  
chest wall (Rt) Upper lobe pulmonary conturians.

NCCI of Abdomen - No significant  
abnormality seen

Intervention - Intercostal tube drainage  
insertion in (Rt) plural cavity.

- Pt. was discussed C (Rt) ICT- Drainage in site  
on 27/07/21



Nature of Injury- Grievous Injury caused by some fire arm.

Age of Injury - within – 6 hours.

**Injury Report of Avinash Kumar**

36Y/M , kachuara, Goalpur, Patna-20

Alleged case of fire arm injury at KACHUARA @ 7:30 A.M. on 19/07/2021. leading to wound in (Rt) shoulder with active bleeding & pain. Inability to move (Rt) Upper Rib..

Pt. Conscious/oriented/afebrile

Chest -Wound over (Rt) shoulder Anteriorly- 1 cm diameter/darkening of Margin. (2"-3" above Axillary margin)

Inability to move (Rt) shoulder ( Painfull) elbow/wrist/Hand- Rom(N)

Radiological Report- Metallic Foreign body in Right glenohumeral joint with fracture of humeral head.

M.I- (1) Scar Mark over Forehead

(2) Scar Mark over Lt. leg (lateral side)

Removal of foreign body (using detopectoral approach (Rt) shoulder exposed Proximal humerus (head) was fractured communitied with metallic foreign body in sito. Metallic foreign body removed, Fracture approximated wound cloned & shoulder Immobiliser applied, Antibiotic/ analgesic- given. Mettalic foreign body sent to MRD (Record Dept. Ford Hospital Patna).

**46.** We have noticed that some observations have been made by the learned trial court taking note of the submissions on behalf of the defence that why the injured witnesses were not taken to a Primary Health Centre or a Government Hospital. We are of the opinion that raising any question by way of doubt on the





ground that the injured were not taken to the Primary Health Centre or Government Hospital when they had suffered serious firearm injuries and required immediate appropriate medical attention in a well-equipped hospital would be totally irrelevant and misplaced. The injured were bleeding and they were in pain. The defence has not suggested that on way to hospital there was any Primary Health Centre or the Government Hospital where appropriate treatment could have been received by the injured persons. PW-1 has stated in paragraph '33' of his deposition that in the way by which he went to Ford Hospital, there is no nursing home and hospital. When the injured persons were bleeding and they had a threat to their life, their treatment in a private hospital at Patna nearest to their place cannot be taken as any reason to doubt the prosecution story.

47. From the evidence of the I.O. (PW-8), we have noticed that immediately on the next day of the occurrence, the accused Samir Kumar was arrested and his confessional statement was recorded by the I.O. in which he disclosed that he had concealed the pistol which was the weapon of crime under bricks in the southern portion of his house, from where the pistol was recovered. The arrest memo of Samir Kumar has been exhibited and marked as Exhibit '8' but the part of the confessional



statement leading to recovery of the pistol has not been exhibited in course of trial. The I.O. has though stated in his examination-in-chief that he had seized the pistol from the place disclosed by the accused and in this connection, he had lodged Gopalpur P.S. Case No. 244 of 2021 dated 20.07.2021, we find that the seizure list of the pistol and the FIR of Gopalpur P.S. Case No. 244 of 2021 has not been exhibited in the present case. The I.O. had not sent the pistol and the seized fired cartridge to Forensic Science Laboratory for scientific investigation. These are the lapses on the part of the I.O. (PW-8) and it only strengthens the belief of this Court that the complaint of the informant by filing a protest petition (Exhibit '2') against the conduct of the I.O. was correct and had the learned Magistrate before whom Ext.-2 was filed monitored the investigation and directed the competent authority to change the I.O., the investigation of this case would have been much fair. The trial court had no reason to blame the informant if he had raised a grievance against the I.O. (PW-8). The learned trial court should have noticed that how the I.O. had been trying to spoil the prosecution case. While commenting on the role of the Investigating Officer and recording that there are lapses on his part, the learned trial court has held that the way the investigation had proceeded in the matter, the false implication of the accused



by the informant can be visibly seen. We are of the view that this observation of the learned trial court is perverted. The conduct of the IO in this case is blameworthy. In course of his cross-examination, the IO has stated that in the case diary, he had not recorded about the presence of blood at the place of occurrence, he had not examined the next door neighbour of the informant who is just beside the house of the place of occurrence and he had not recorded the statement of the villagers.

**47.1** In the case of **State of Gujarat Versus Kishanbhai and Others** reported in **(2014) 5 SCC 108**, the Hon'ble Supreme Court has, in case of an investigation in which role of I.O. is found blameworthy issued following directions:-

“**22.** Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes



committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

**47.2** We are of the opinion that the present case is a fit case to be referred to the Department of Home, Government of Bihar to examine the role of the I.O. (PW-8) in the matter of investigation of this case and take appropriate action in terms of the directions of the Hon'ble Supreme Court in the case of **Kishanbhai** (*supra*)



**48.** Despite the lapses on the part of the I.O. (PW-8) which we have noticed above, in the present case, this Court cannot throw away the prosecution case. This Court cannot discard the oral testimonies of the injured witnesses such as PW-1, PW-2 and PW-3. It is found that in the written report (Exhibit '1'), the informant has clearly alleged that it was Samir Kumar who was armed with a pistol, he had fired after some hot exchange of words between the accused and the injured persons. It was this accused-respondent who had repeatedly fired from the pistol in his hand which caused firearm injuries to PW-1, PW-2 and PW-3. Exhibit '3', '4' and '5' are the injury reports. From the pattern of cross-examination, it nowhere appears that there would be any reason on the part of the injured witnesses to falsely implicate the accused-respondent in the present case. The defence has suggested to the PW-1 that he was shot at in connection with some transaction over commission but due to village politics he had falsely implicated Samir. This suggestion has been denied by PW-1. Similar suggestions were given to PW-2 and PW-3 which they also denied. We find that in this case three persons had suffered fire-arm injuries, they could have implicated more than one person as assailants causing fire-arm injuries but no attempt of false



implication has been made. The allegation of firing has been made only against Samir.

**48.1** This Court finds from the evidences available on the records that the prosecution has been able to prove the date, time, place and manner of occurrence beyond any reasonable doubt. This Court would have no iota of doubt that the oral testimonies of PW-1, PW-2 and PW-3 are getting fully corroborated by the injury reports and the evidence of PW-5 and PW-6 who are the doctors of the Ford Hospital, Patna. It has been duly proved by these injured witnesses that the accused Samir Kumar had repeatedly fired upon them. The view taken by learned trial court is erroneous one and could not have been taken.

**49.** We are conscious of the well-settled law that a judgment of acquittal cannot be interfered with lightly. In the case of **Rajesh Prasad Vs. The State of Bihar and Another** reported in **(2022) 3 SCC 471**, the Hon'ble Supreme Court has observed in paragraph '29' as under:-

“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<sup>10</sup> 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:

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10. (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325



(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.”

**50. In the case of H.D. Sundara Vs. State of Karnataka** reported in **(2023) 9 SCC 581**, the Hon’ble Supreme Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against



acquittal under Section 378 Cr.P.C. and the same has been referred to recently by the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar and Others Vs State of Karnataka** reported in **2024 SCC Online SC 561**. Paragraph '38' whereof is being reproduced hereunder for a ready reference:-

“38. Further, in the case of *H.D. Sundara v. State of Karnataka*<sup>2</sup> this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:—

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”





**51.** Recently, in the case of **Harendra Rai Vs. State of Bihar and Others** reported in **AIR 2023 SC 4331**, the Hon'ble Supreme Court was dealing with the case of acquittal by the learned trial court and the judgment of the learned trial court was affirmed by the Hon'ble High Court in appeal against acquittal, several lapses on the part of the prosecution conducting the trial and that on the part of the Investigating Agency were noticed. What has been observed by the Hon'ble Supreme Court in paragraphs '84' to '89' of the judgment in the case of **Harendra Rai (Supra)** are required to be taken note of for purpose of proper appreciation of the evidences available on the record. Those are being reproduced hereunder for a ready reference:-

**“84.** According to the common practice of Trial Court and also according to the General Rules (Criminal) as applicable in the case, all the papers and documents filed and produced during any inquiry and trial of a criminal case are marked as 'Paper No.' and at the stage of evidence, when any article, weapon, material, or document is admitted as evidence, it is marked as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers (generally as Ex-Ka for prosecution evidence and Ex-Kha as defence evidence).

**85.** At the stage of evidence, when any document/paper is formally produced for being treated as a piece of evidence, the Court looks at two basic aspects. Firstly, the existence of the document on the Court's record and, secondly, the proof of its execution or its contents being sufficiently deposed to by a witness having requisite knowledge thereof, whereafter, the document in question is marked as exhibit. At the stage of exhibiting any document as a piece of evidence, the truth of what is stated in the



document is not considered. It is left open to final evaluation at the trial after cross-examination, and the entire testimony of the witness about the existence and contents of the document is weighed in conjunction with various other factors emerging during a trial. At the final evaluation stage, the Trial Court concludes whether the document speaks the truth and decides what weight to give it for final decision. In other words, its evidentiary value is analysed by the Courts at the time of final judgment.

**86.** This Court in the case of *Arbada Devi Gupta v. Birendra Kumar Jaiswal*<sup>13</sup>, in paragraph 16 has held as follows:

“**16.** .....The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the ‘evidence of those persons who can vouchsafe for the truth of the facts in issue’....”

**87.** In this view of the matter, the marking of a piece of evidence as ‘exhibit’ at the stage of evidence in a Trial proceeding is only for the purpose of identification of evidence adduced in the trial and for the convenience of the Court and other stakeholders in order to get a clear picture of what is being produced as evidence in a Trial proceeding.

**88.** As we are dealing with this case as an “exceptionally painful episode of our Criminal Justice System”, we have already taken judicial notice of the judgment passed by the High Court in the Habeas Corpus petition for drawing an adverse inference against the subsequent conduct of the accused of the trial in question, it's Public Prosecutor, Police Administration and the Presiding Officer of the Trial Court as provided under Section 8 of the Evidence Act.

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13. (2003) 8 SCC 745; (AIR 2004 SC 175)



89. In the present case, considering the failure of State machinery and failure of the Trial Court to ensure a fair trial from the perspective of the victim side, the aspect of non-marking of the FIR and Bayan Tahriri as an exhibit, non-production of the formal witnesses, i.e., the Constable Clerk and Investigating Officer to prove the lodging of FIR/Bayan Tahriri and the flimsy rejection of application filed by Kishori Rai seeking his examination as a witness along with the examination of Nagendra Singh and Sanjeev Kumar Singh (who had signed said written statement/Bayan Tahriri as attesting persons) as witnesses in the Trial proceeding do not vitiate the genuineness of the FIR and Bayan Tahriri, and we refuse to give any discount to the accused persons for non-exhibition thereof.”

52. The Hon’ble Supreme Court dealt with the issue of defective investigation and prosecution. It has been observed that the basic requirement that the trial must be fair is crucial for any civilized criminal justice system. It is essential in a society which recognizes human rights and is based on values such as freedom, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time to protect the innocent. In this process, court should always be in search of the truth and should come to a conclusion, based on the facts and circumstances of each case, without defeating the very purpose of justice (**Refer Ram Bihari Yadav 1998 4 SCC 517; para 35**).



**53.** Keeping in view the aforesaid judgments of the Hon'ble Supreme Court, we are of the view that in this case, the prosecution has been able to prove that on the given date, at the time and at the given place of occurrence by the informant, the accused Samir Kumar had fired upon PW-1, PW-2 and PW-3 causing them firearm injuries. The prosecution has been able to prove the charge under Section 307 and 504/34 IPC beyond all reasonable doubts. It is evident from the evidence on the record that the quarrel between the injured witnesses and the accused had taken place on account of some demand for money which was being allegedly made by the accused by way of ransom. This Court finds that so far as the allegation that there was a demand of Rupees Five Lakhs by way of rangdari is concerned, the same has not been proved beyond all reasonable doubts, however, it is evident from the prosecution evidence and the pattern of cross-examination that the quarrel had ensued between the parties on demand of money. In this regard while PW-1 has stated in his fardbeyan that the accused was demanding a sum of rupees five lakhs, in his examination-in-chief he has stated that the accused was demanding a rangdari of rupees five lakhs. Thus, we find that the PW-1 has stated about a demand on account of rangdari for the first time in course of trial. I.O. has stated that he had recorded the



re-statement of PW-1 in paragraph '14' of the case diary but PW-1 has alleged that his re-statement was not correctly recorded by I.O., thus, there being no clinching evidence on the point of demand as rangdari. We are of the view that the charge under Section 384 IPC has not been duly proved. The immediate cause of occurrence was a demand of money but on what account the money was being demanded has not been proved by the prosecution beyond reasonable doubt, hence we acquit the accused of the charge under Section 384 IPC.

**54.** In result, this Court is of the considered opinion that the learned trial court has grossly erred in acquitting the accused Samir Kumar who is Respondent No. 2 in Criminal Appeal (DB) No. 35 of 2024 and the sole respondent in Government Appeal (DB) No. 2 of 2024 of the charge under Section 307 and 504 IPC. The guilt of the accused has been proved beyond any shadow of doubt. No other views may be possibly taken. The judgment of the learned trial court is, therefore, set aside. The accused, namely, Samir Kumar is hereby convicted for the offence punishable under Section 307 and 504 IPC. He is, however, acquitted of the charge under Section 384 IPC.

**55.** We direct that the accused, namely, Samir Kumar shall be taken into custody by the Officer-in-Charge of Gopalpur



Police Station and be produced before this Court for hearing on the question of sentence in view of Section 235 Cr.P.C.

56. The matter shall be listed for hearing on sentence on 17<sup>th</sup> September, 2024 at 03:00 pm when the accused shall be produced before this Court.

57. Let a copy of this judgment be sent to the Senior Superintendent of Police, Patna through special messenger for appropriate action.

58. A copy of the judgment shall be sent to the Department of Home, Government of Bihar to take appropriate action in the light of the judgment of the Hon’ble Supreme Court in the case of **Kishanbhai (supra)**.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/Rishi-

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CAV DATE	
Uploading Date	13.09.2024
Transmission Date	13.09.2024

