

**IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.13 of 1999**

Arising Out of PS. Case No.-82 Year-1987 Thana- DHORAIYA District- Banka

The State of Bihar

... .. Appellant/s

Versus

1. SK. Manso @ Mansoor S/O Ulfat Mujour R/O Village- Jaipur, P.S- Dhoraiya, Distt.- Banka.
2. SK. Jahir S/O Ulfat Mujour R/O Village- Jaipur, P.S- Dhoraiya, Distt.- Banka.
3. SK. Tahir S/O Ulfat Mujour R/O Village- Jaipur, P.S- Dhoraiya, Distt.- Banka.
4. Md. Gulam Rasool @ SK Gulam Rasool S/O Ulfat Mujour R/O Village- Jaipur, P.S- Dhoraiya, Distt.- Banka.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dilip Kumar Sinha, A.P.P.
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 25-06-2025

The State has preferred the present appeal under Section 378(1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') against the judgment of acquittal dated 17.05.1999 passed by the Court of learned 2nd Additional Sessions Judge, Banka in Sessions Trial No. 139 of 1992, whereby the learned Trial Court has acquitted all the 4 respondents/accused of all the charges levelled against them.



2. The prosecution case, in a nutshell, is as under:-

2.1. The informant Mosmat Bibi Jaibunissa has stated in her *fardebayan* recorded on 14.08.1987 at around 10:00 a.m. at Government Hospital, Ghoraiya that, in the morning that day at around 07:00 a.m., her son Sheikh Mansoor and Sheikh Nasir along with ploughman Sheikh Ramjani were ploughing her field situated at the south-west corner of village. Then, at that time, Sheikh Manso of her village came with a *gandasa*, Sheikh Jahoor with spear, Sheikh Rasool with a *bana* and Sheikh Tahir with a *lathi* in their hands to the field abusing and told them to stop ploughing, else they won't let them go alive. On this, she said that she was getting her field ploughed and will not stop ploughing. On this, the above mentioned four accused persons surrounded them and started assaulting. Her ploughman Sheikh Ramjani was hit with a spear by Sheikh Jahir and by *gandasa* wielded by Sheikh Mansi. Sheikh Rasool hit her on her head with *bana* and when her son tried to save her, he was hit on his head by Sheikh Tahir with a *lathi*. After this, when Ramjani fell down, all the four accused persons started hitting him due to which he fell unconscious there. Besides this, her two sons, Sheikh Ramjani and the above mentioned ploughmen were beaten and injured by them. When they raised alarm, nearby residents, namely Sheikh Haviv, Sheikh



Badruddin, Sheikh Nazimuddin etc. came running and all the four accused persons ran away. Thereafter, she along with her other companions brought Sheikh Ramjani on a cot to the Government Hospital, Dhoraiya since Ramjani's condition was very bad. The above mentioned persons had beaten him with an intention to kill him. Manso told in an abusive tone that he should not be spared alive. She took Ramjani to Hospital where she was advised to take him to B.M.C.H., Bhagalpur. She got him seated in a Maxi and then took him to Bhagalpur. After that, she along with other injured namely Md. Kalimuddin, Md. Shamim and her two sons went for treatment where she gave her statement. The reason for the incident is that the above mentioned accused persons claim the field which she was ploughing to be theirs.

2.2. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 139 of 1992.



2.3. Before the Trial Court, the prosecution had examined following 14 witnesses:-

PW-1	Md. Shahabuddin Ansari
PW-2	Md. Kalimuddin
PW-3	Nazbuddin @ Nazruddin
PW-4	Sheikh Nasir
PW-5	Md. Badruddin
PW-6	Md. Shamim Alam @ Md. Samim
PW-7	Nazma Khatoon
PW-8	Md. Mukhtar Alam
PW-9	Md. Gulam Rasul
PW-10	Md. Mansoor
PW-11	Bibi Jaibunnisa
PW-12	Dr. Haider Imam Ansari
PW-13	Md. Mansoor Khan
PW-14	Md. Saminuddin Ansari

2.4. Defence has also examined three witnesses, namely D.W. 1 Dr. Zia-ur-Rahman, D.W. 2 Nasiruddin Khan and D.W. 3 Md. Muzib.

3. Heard Mr. Dilip Kumar Sinha, learned A.P.P. for the appellant-State.

4. Learned A.P.P. appearing on behalf of the appellant-State referred the deposition of the prosecution witnesses and thereafter mainly contended that, in the present case, there are injured eye-witnesses who have supported the case of the prosecution. Further, the medical evidence also corroborates the version given by the injured eye-witnesses. Thus, the prosecution



has proved the case against the Respondents-accused beyond reasonable doubt, despite which the Trial Court has recorded the order of acquittal. The State has, therefore, preferred the present acquittal appeal.

5. Learned A.P.P. further submits that, in the present case, three persons sustained injuries and one person died. Three witnesses have supported the case of the prosecution and even the prosecution has examined PW-1, who is an independent witness. He has also supported the case of the prosecution. However, the Trial Court has committed grave error while discarding the deposition given by the said witnesses. Learned A.P.P., therefore, urged that the impugned judgment be quashed and set aside and thereby the Respondents-accused be convicted for the alleged offences.

6. No one is present on behalf of the Respondents-accused. However, as the present Government Appeal is pending since the year 1999 and the incident in question is of the year 1987, we have taken up the case which has been listed for final hearing.

7. We have considered the submissions canvassed by the learned A.P.P. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.



8. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

9. PW-1 Md. Shahabuddin Ansari has stated in his examination-in-chief that, on the day of incident, he heard a noise from Jaibunnisa's plot. He went to the field after hearing the noise. Two ploughmen, namely Ramjani and Nasir, were ploughing the field of Bibi Jaibunnisa. Zahoor, Mansoor and Tahir were there. He did not see anyone else. Mansoor had a *bana* in his hand, Zahoor and Tahir had a *lathi* in their hand. These people assaulted Ramjani, Nasir, Kalim and Mansoor. No one went to save them due to fear of getting hurt. The three accused persons had killed Ramjani while assaulting him. Others were lightly assaulted. Ramjani fell unconscious at the place of occurrence. He died on the way when he was taken to Bhagalpur for treatment. First, he was taken to Dhoraiya and then to Bhagalpur.

9.1. In his cross-examination, he has stated that there is a land dispute between both the parties. A Title Suit regarding the same was going on in the *chakbandi* and Civil Court. The incident occurred on the same land. He has denied the suggestion that the accused Mansoor had filed a case against him for stealing paddy. The accused Mansoor had filed a case against Ramjani for illegally



cutting paddy. Further, he had stated that he heard the noise that a scuffle had taken place. He had heard the noise of assault. He even saw the beating himself. When he went to the place of incident, he saw a knife wound on the waist of Mansoor and a man who had been hit lightly by a stick. Ramjani's forehead was broken. He stayed there for 15-20 minutes. He has further stated that there was a fight between both the parties.

10. PW-2 Md. Kalimuddin has stated in his examination-in-chief that, on the day of incident, he was working as a labourer in the fields of Most. Bibi Jaibunnisa. Sheikh Ramjani was ploughing there. Sheikh Tahir, Sheikh Ghulam Rasul and Sheikh Manso came there armed with weapons. Zahoor was having a spear in his hand, Tahir had a *lathi* in his hand, Ghulam Rasul had a *bana* and Sheikh Manso had a *gandasa* in their hands. They told the widow that the field belongs to them and that she should get away with the plough. Further, he has stated that Sheikh Tahir fractured his right hand by hitting him with the *lathi*. He sustained total five injuries. He was present at the time of scuffle. When they started to flee, Sheikh Ramjani and Shamim and both sons of the widow were assaulted. Ramjani fell down there after getting assaulted with the weapons carried by the accused persons. Upon hearing the noise and commotion, many villagers came



there. After this, the accused persons fled to their home. The villagers took Ramjani to Dhoraiya on a cot. Ramjani was referred to Bhagalpur. He died upon reaching there. He has further stated that the accused persons had also filed a case and then the Police arrested them at the Hospital. His treatment was done from jail at Banka Hospital.

10.1. In his cross-examination, he has stated that his statement was recorded before the Police during the investigation. He had stated before the Police that Tahir fractured his hand by hitting him with a *lathi*. He had also stated to the Police that he had sustained 5 injuries. He had also stated to the Police that all the four accused persons assaulted Ramjani badly due to which he fell down. He cannot tell the *khata* and *khesra* of the plot which was being ploughed. There is a dispute between both the parties for the land upon which the incident took place. Both parties claim over that land as their own. Apart from the disputed land, the accused persons have around 4 *bighas* of land. He has further stated that he saw *lathi*, spear and sword in the hands of the accused persons. He later reiterated that sword was not there. Further, in Para-14, he has stated that, on the day of incident, when he was at the Hospital, the Police arrested him. The accused Sheikh Jahir had also filed a case against them for the incident of



that day in which he was arrested. They remained in jail for 10-15 days. Mohd. Jahir and Mansoor have been implicated in a false case of grievous assault lodged by them which has been committed to the Court of Sessions.

11. PW-3 Nazbuddin @ Nazruddin has stated in his examination-in-chief that, he went to the place of incident on hearing the commotion. Ghulam Rasul had a *bana* in his hand, Jahoor had a spear in his hand, Mansoor had *gandasa* in his hand and Tahir had a *lathi* in his hand. The accused persons assaulted Naseer, Kalim, Ramjani and Mansoor. He has further stated that Ramjani was most grievously injured and he became unconscious. His family members took him to Dhoraiya Hospital. The Doctors referred him to Bhagalpur. He died on his way there.

11.1. In his cross-examination, he has stated that his statement was recorded by the Police 8-10 days after the incident in the village. In Para-12, he has stated that when he went to the spot, he saw 3-4 persons in an injured condition. Kalim, Naseer, Manso and Ramjani were injured. After he reached the place of incident, many villagers also came there whose names he cannot say. *Daroga* came after 8-10 days. He took his statement.

12. PW-4 Sheikh Nasir has stated in his examination-in-chief that, on the day of incident, he was ploughing his field.



Sheikh Jahir, Sheikh Tahir, Ghulam Rasul, Sheikh Mansoor came there with weapons in their hands. Jahir had a spear, Tahir was having a *lathi*, Ghulam Rasul had a *bana* and Mansoor had a *gandasa* in their hands.

12.1. In his cross-examination, he has stated that he cannot tell the *khata* and *khesra* of the plot where the incident took place. A case under Section 145 was filed against that land, which they won. He has further stated that his mother does not plough. She was standing at the boundary. In Para-16, he has stated that Kalim was carrying a spade in his hand. His mother did not have a spade in her hand. All the four accused persons came together only once and all of them were carrying weapons in their hands. In Para-18, he has stated that his mother was assaulted in 2-3 places. Najma Khatoon and Shamim were also assaulted. Total 8 persons were assaulted. Firstly, his mother got assaulted. He did not count as to how many *lathis* his mother was assaulted with. She was not assaulted with any sharp weapon. His mother did not faint. All the accused persons together assaulted his mother. Further, in Para-19, he has stated that he showed the blood-stained clothe to *darogaji*. He did not seize them. The accused persons had falsely filed a counter-case against them. Further, in Para-24, he has stated that the Police did not seize the clothe of Ramjani. The Police sent



Ramjani to Bhagalpur. The Police arrested him at 10:00 or 10:30 hours. He has denied the suggestion that they went to assault the accused persons by forming a group of assailants. He has also denied the suggestion that they altogether assaulted the accused person and that they are deposing falsely to avoid a counter-case.

13. PW-5 Md. Badruddin was produced for cross-examination in which he has stated that he was deposing for the first time in this case.

14. PW-6 Md. Shamim Alam @ Md. Samim has stated in his examination-in-chief that, on the day of incident, he was working in the field of Bibi Jaibunnisa. His father was ploughing the field. Sheikh Zahir came to the field with a spear in his hand, Sheikh Mansoor with *gandasa*, Gulam Rasul with *bana* and Sheikh Tahir with *lathi*. They asked Jaibunnisa to stop the ploughing on which she refused. On this, all the four accused persons started assaulting his father. Sheikh Rasul and Tahir hit him on the left side of his head and on his body. The accused also assaulted Sheikh Kalim and broke his hand. The accused persons also assaulted Sheikh Nasir, Sheikh Mansoor, Bibi Nazmuddin and Jaibunnisa. His father got injured and fell on the ridge of the field and fainted. The injured persons were taken to Dhoraiya Hospital



from where he was referred to Bhagalpur Hospital. His father died on the way to Bhagalpur.

14.1. In his cross-examination, he has stated that he had recorded his statement before the Police 15 days after the incident took place. On the same day, the accused Sheikh Zahir filed a counter-case in which he is also an accused. He has further stated that, apart from his father, all other injured persons were admitted in the Dhoraiya Hospital. The Police did not record his statement in the Hospital. He showed the blood-stained clothe to *darogaji* which he took away. In Para-8, he has stated that there are 8 accused persons in the counter-case including both the sons of Jaibunnisa and Kalim. His father was also made an accused in that counter-case.

15. PW-7 Nazma Khatoon has stated in her examination-in-chief that she gave her statement before the Police in connection with this incident. She was also injured and had gone to the hospital. She had received two injuries on her body. As soon as she reached the place of incident, the accused persons started beating her. She had further stated that the injured persons were taken to the hospital.

16. PW-8 Md. Mukhtar Alam has stated in his examination-in-chief that during the investigation of Ramjani's



murder case, *darogaji* called him to the place of incident. Darogaji seized blood-stained soil from there in front of him. Ghulam Rasool was also present there at that time. *Darogaji* had also prepared a Seizure List of the blood-stained soil on which he had put his signature.

16.1. In his cross-examination, he has stated that Gulam Rasul along with *darogaji* had come to the place of incident. *Darogaji* collected about 250 gms. of blood-stained soil. *Darogaji* prepared the Seizure List at the place of incident.

17. PW-9 Md. Gulam Rasul has stated that the Police recorded his statement on the second day of the incident. He had not seen any of the accused persons in an injured condition in the hospital.

18. PW-10 Mansoor has stated in his examination-in-chief that, on the day of incident, Ramjan @ Ramjani and Sheikh Nasir were ploughing the field. At that time, Sheikh Mansoor, Sheikh Gulam Rasool, Sheikh Tahir and Sheikh Zahir came to his field and started abusing his mother Bibi Zaibunnisa. Gulam Rasool and a *bana* in his hand, Mansoor had a rifle, Tahir had a *lathi* and Zahir had a spear. The accused persons assaulted Ramjani due to which he fell unconscious. He was beaten by Gulam Rasool, Sheikh Tahir, Sheikh Mansoor and Sheikh Zahir,



who were brothers. There was a commotion during the assault. On hearing the noise, many villagers gathered there and the accused persons fled to their home. Darogaji had sent all the persons to Dhoraiya Hospital where except Ramjani other injured persons got treatment. Ramjani was referred to Bhagalpur. He died on his way there.

18.1. In his cross-examination, he has stated that a counter-case has also been filed in this incident in which he is the accused. He has further stated that he reached at the place of incident at 06:45 a.m. with his brother Sheikh Nasir, mother Bibi Zaibunnisa, Shamim and Kasim. He had been in the Dhoraiya Hospital for three days. During these three days, he did not see any accused persons in Dhoraiya Hospital. The Police arrested him from Dhoraiya Hospital in connection with the counter-case and sent him to Banka. Along with him, his brother Sheikh Nasir and Sheikh Kalim were also arrested and sent to Banka. His mother was treated in Dhoraiya Hospital. His mother is also an accused in the counter-case.

19. PW-11 Bibi Jaibunnisa is the informant of this case. She has stated in her examination-in-chief that on the day of incident, at 07:00 a.m., she was at her field where Ramjani, Nasim and others were ploughing. Apart from the three of them, Shakil,



Naseem and Mansoor, along with his wife, were there. At that time, the accused Ghulam Rasul, Zahir, Tahir and Mansoor came there. All the four accused are brothers. Ghulam Rasul had a *bana*, Mansoor had a *gandasa*, Zahir had a spear and Tahir had a *lathi* in their hands. The accused persons asked her to stop ploughing to which she refused. On her refusal, the accused persons started abusing and punching her and all the accused persons surrounded Ramjani and started beating him. The accused assaulted all those who were present there from her side. Ramjani tried to run away but fell on the ridge of the western side of the field. Even after Ramjani fell down, the accused persons kept hitting him. There was a commotion during the fight on which Hanif, Nadim and other villagers came. The accused persons fled from the place of incident. Ramjani had fainted due to beating. All the injured persons were taken to Dhoraiya Hospital. Ramjani was referred by the Doctor for better treatment. The rest of the injured persons were treated there. She gave her *fardebayan* before the Police in the Hospital itself. Darogaji recorded her statement and after recording her statement, he read it out to her on which she put her thumb impression.

19.1. In her cross-examination, she has stated that the Police recorded her statement again after two months. In Para-4,



she had stated that the accused Mansoor had filed a false counter-case. She was not arrested in any counter-case. She has denied the suggestion that Ghulam Rasul was ill at the place of his posting and he has been falsely implicated.

20. PW-12 Dr. Haider Imam Ansari has stated in his examination-in-chief that, on 14.08.1987, he was posted as Assistant Professor in the Forensic Medicine Department at J.N. Medical College, Bhagalpur. On that day, at 04:30 p.m., he conducted the *post mortem* examination of the dead body of Sk. Ramjani and noted the following:-

“i. Echinosis present around the right eye and rigor mortis present.

ii. Bandaged wound on Head on cutting it there was a lacerated wound semi-circular in shape, found on the forehead $2\frac{1}{2}$ ” x $\frac{1}{2}$ ” scalp deep.

iii. Lacerated wound on right side frontal bone 2” behind injury no. 2- longitudinal in shape, size 2” x $\frac{1}{4}$ ” scalp deep.

iv. Lacerated wound on left parietal bone in size $1\frac{1}{2}$ ” x $\frac{1}{2}$ ” x scalp deep.

v. Lacerated wound on occipital region of head- size 1” x $\frac{1}{2}$ ” in the right side.

vi. Lacerated wound on the right parietal region of head- size $2\frac{1}{2}$ ” x $\frac{1}{2}$ ” which was ‘Y’ shaped.

vii. Lacerated wound on the right parietal region of head behind injury no ‘6’- size on wound $\frac{3}{4}$ ” x $\frac{1}{4}$ ”.

viii. Bruise on the right scapular region of the back size- $1\frac{1}{4}$ ” x $\frac{3}{4}$ ”.



ix. Abrasion on the right cloncular region
size 1" x ½".

x. Bruise on the left side of chest size 1^{1/4}"
x ½".

2. On dissection, there was fracture of 3rd
and 4th ribs on the left side, inter coastal areas found
infiltrated with blood, corresponding to external
wounds. On opening the scalp and the head,
hematoma, found almost all over, there was linear
fracture of right perital, temporal and occipital bones.
Blood clot present on the vault of the skull. There was
subdural hemorrhage, sub arachnoid hemorrhage found
in the perital and temporal areas of brain.

3. In the chest, lungs found congested,
Heart- both chambers contained blood. In the stomach,
dirty coloured fluid was found. Other viscera
congested. Bladder and colon found empty.

4. All the injuries were ante-mortem and
caused by hard-blunt substance such as *lathi* and *bana*.
Death was due to intra cranial hemorrhage and shock.
Time elapsed since Death- About 4 to 8 hours."

21. PW-13 Md. Mansoor Khan is the investigating
officer of this case. He has stated, in his examination-in-chief, that
the *fardebayan* is in the pen and signature of Shri L.K.Jha. The
fardebayan was marked as Exhibit 3 and formal F.I.R. was marked
as Exhibit-4.

21.1. In his cross-examination, he has stated that he does
not know the complete name of Shri L.K. Jha. He got the chance
to work with Shri L.K. Jha in Dhoraiya. He saw him doing the



paper work at Dhoraiya Police Station. The said *fardebayan* and formal F.I.R. were not written before him.

22. PW-14 Saminuddin Ansari has stated that Dr. D. Das was the in-charge Medical Officer at Dhoraiya State Dispensary in 1987. He was transferred from there after three years. He does not know as to where he went on his transfer. He had been treated by him in 1987 and identifies his handwriting and signature. The three injury reports are in the pen and signature of Shri D. Das, the then Medical Officer of Dhoraiya State Dispensary.

22.1. In his cross-examination, he has stated that he does not have any slip or certificate of Dr. D. Das available with him. The Injury Report was not prepared in front of him. He has no knowledge of the information mentioned in the report.

23. Evidence of D.W. 1 Dr. Zia-ur-Rahman, D.W. 2 Nasiruddin Khan and D.W. 3 Md. Muzib need not be gone into as they have not supported the case of the prosecution. In their cross-examination also, they have not stated anything about the incident.

24. We have considered the submissions canvassed by the learned A.P.P. We have also perused the Trial Court record and the impugned judgment rendered by the Trial Court. From the evidence led by the prosecution, it transpires that the alleged incident took place at 07:00 a.m. for which *fardebayan* of the



informant was recorded at 10:00 a.m. If the *fardebayan* of the informant is carefully examined, it is revealed that it is a specific case of the informant, who is an injured in the incident in question, that the accused Sheikh Jahir inflicted injury with spear to Ramjani and accused Sheikh Mansoor inflicted injury with *gandasa* to Ramjani. Keeping in view the aforesaid version given by the informant in the *fardebayan*, if the deposition of PW-1 is carefully examined, it is revealed that, in examination-in-chief, PW-1, who is an independent witness, has stated that Mansoor had a *bana* in his hand whereas Zahoor and Tahir were carrying *lathi*. No one else was present and all the three persons assaulted Ramjani, Nasir, Kalim and Mansoor. At this stage, if the deposition of PW-2 is carefully examined, it is his case that the accused Zahoor was carrying a spear, Tahir was having a *lathi* in his hand whereas Ghulam Rasul was carrying a *bana*. So far as Sheikh Mansoor is concerned, he was having *gandasa* in his hand. So far as the informant (PW-11) is concerned, she has stated the same thing which has been deposed by PW-2. However, there are major contradictions and improvement in the deposition of the prosecution witnesses. At this stage, it is required to be observed that it is a case of the informant in the *fardebayan* that Sheikh Zahir



inflicted blow with spear to Ramjani whereas Sheikh Mansoor gave blow with *gandasa* to the deceased.

24.1. Keeping in view the aforesaid case of the so-called eye-witnesses, if the deposition given by PW-12 (Dr. Haider Imam Ansari) is examined, it is revealed that in Para-4 of his deposition, the said witness has specifically deposed that all the injuries were *ante mortem* and were caused by hard and blunt substance such as *lathi* and *bana*. We are, therefore, of the view that the medical evidence does not support the version given by the so-called eye-witnesses.

25. At this stage, it is also required to be observed that the informant and the prosecution witnesses have suppressed the manner in which the occurrence took place. From the deposition of the prosecution witnesses, it has been revealed that in the incident in question, the accused persons have also sustained injury and, in fact, the counter-case has been filed by the accused side against the informant and the other injured witnesses. However, it is required to be observed at this stage that the prosecution has failed to bring on record the nature of injuries sustained by the accused persons in the incident in question. It is well settled that it is the duty of the prosecution to explain the injury sustained by the accused.



26. It is not in dispute that, in the present case, the prosecution has failed to examine the Investigating Officer, who has carried out the investigation. The Trial Court has specifically observed in the impugned judgment that because of the non-examination of the Investigating Officer, in the present case, serious prejudice has been caused to the defence. We are of the view that the Trial Court is right in observing the said aspect. As observed hereinabove, from the deposition of the prosecution witnesses, it transpires that the accused persons have sustained injury in the incident in question and, therefore, counter-case has been filed. Some of the prosecution witnesses were arrested in connection with the counter-case. Thus, because of the non-examination of the Investigating Officer, in the present case, the defence has lost the opportunity to cross-examine the Investigating Officer. We are also of the view that serious prejudice has been caused to the defence because of the non-examination of the Investigating Officer and which can be considered as fatal.

27. In the present case, even the prosecution has failed to examine the Doctor, who had given the treatment to the injured witnesses, and, in fact, the prosecution had examined PW-14 Md. Saminuddin Ansari who has deposed before the Court that he had taken the treatment in the year 1987 with the Doctor who was



posted at Dhoraiya State Dispensary in the year 1987. It is required to be observed that PW-14 Md. Saminuddin Ansari had deposed before the Court in the year 1999. Surprisingly, though the said witness was not having any slip or certificate of Dr. D. Das who had given treatment to him, the said witness identified the handwriting and signature of the said Doctor. Further, the said witness has also admitted that the injury report was not prepared in front of him and he has no knowledge of the information mentioned in the injury report signed by Dr. D. Das in favour of the three injured persons.

28. It is also not in dispute that, in the present case, there is no recovery or discovery of the weapons which have been allegedly used in commission of the crime. Thus, there is no recovery or discovery from the accused.

29. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**. The Hon'ble Supreme Court has laid down the principle regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. In Para-42 of the said decision, the Hon'ble Supreme Court has observed as under:-



“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 Code of Criminal Procedure, 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.”



30. In the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605**, the Hon'ble Supreme Court has observed, in Para-22, as under:-

“22. Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that Appellant Court 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. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding recorded by the Trial Court.

32. Looking to the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the accused beyond reasonable doubt. We have also gone through the reasoning recorded by the Trial Court while passing the impugned judgment . We are of the view that the Trial Court has not committed any error while passing the impugned judgment.

33. In view of the aforesaid discussion, we are of the view that no interference is required in the impugned judgment rendered by the Trial Court.

34. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

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