

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**GOVT. APPEAL (DB) No.6 of 1999**

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The State of Bihar

... .. Appellant/s

Versus

1. Bidhesh Paswan S/O Padarath Paswan R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
2. Ramakant Paswan S/O Kameshwar Paswan R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
3. Ram Chandra Paswan S/O Rama Nand Paswan R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
4. Ram Pratap Paswan S/O Sahdeo Paswan R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
5. Ram Jatan Paswan S/O Radhika Paswan R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
6. Rameshwar Yadav S/O Foolchand Yadav R/O Village- Kharauna, P.S-  
Rafiganj, Distt.- Aurangabad.
7. Subhash Yadav S/O Basudev Yadav R/O Village- Pakari, P.S- Goh, Distt.-  
Aurangabad.
8. Binod Yadav S/O Ram Awtar Yadav R/O Village- Pakari, P.S- Goh, Distt.-  
Aurangabad.
9. Jai Ram Yadav S/O Basudeo Yadav R/O Village- Pakari, P.S- Goh, Distt.-  
Aurangabad.
10. Sudarshan Yadav S/O Gopal Yadav R/O Village- Pakari, P.S- Goh, Distt.-  
Aurangabad.
11. Raj Nath Yadav S/O Madan Yadav R/O Village- Jujharpur, P.S- Goh, Dist.-  
Aurangabad.
12. Lakhan Yadav @ Ram Lakhan Singh S/O Deo Saran Singh R/O Village-  
Bahadurpur, P.S- Rafiganj, Distt.- Aurangabad.
13. Tapeswar Kahar S/O Sheo Lakhan Kahar R/O Village- Bahadurpur, P.S-  
Rafiganj, Distt.- Aurangabad.
14. Bindeshwar Paswan S/O Jamuna Paswan R/O Village- Paharpura, P.S- Goh,  
Dis.- Aurangabad.
15. Ram Chandra Yadav S/O Ram Bilash Yadav R/O Village- Paharpura, P.S-  
Goh, Dis.- Aurangabad.

... .. Respondent/s

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**Appearance :**

For the Appellant : Mr. Dilip Kumar Sinha, A.P.P.  
For the Respondents : Ms. Meena Singh, Advocate

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

**Date : 12-05-2025**

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 28.01.1999 passed by the Court of learned 1<sup>st</sup> Additional Sessions Judge, Aurangabad in Sessions Trial No. 178 of 1992/ 24 of 1993, whereby the learned Trial Court has acquitted all the 15 respondents/accused of all the charges levelled against them.

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

2.1. The informant Bipin Kumar Sharma gave his *fardebayan* on 30.01.1992 at 20:00 hours before the S.I. of Goh Police Station in which he had stated that his land is situated at village Bahadurpur and Kharauna under Rafiganj Police Station. There he has his estate (*kutchery*). He keep Ram Pravesh Paswan of the same village as a caretaker (*baraheel*) for looking after his agriculture activities in the village Kharauna and Dhuja Ram from his village is the caretaker (*baraheel*) in the village Bahadurpur. In 1983, the extremists broke into the courtyard (*kachari*) located in



Bahadurpur village and burnt it down and also murdered his uncles Radha Mohan Singh and Durga Mohan Singh by slitting their throats, for which his uncle Radhe Shyam Sharma had filed a case in Rafiganj Police Station. In that case, the accused Ramchandra Paswan of village Bahadurpur and 15 other persons were sentenced to life imprisonment. All the accused persons are in jail now. Since this matter was very old, they were completely relieved. But the accused persons and their family members were jealous of it. That day, at 10:00 a.m., he along with his uncles Radhe Shyam Sharma, Arun Sharma, Droni Singh and Ramji Singh had gone to village Kharauna for taking care of the paddy of their field. His uncle Radhe Shyam Sharma had also had his licensee rifle. At around 03:30 p.m., they were returning home after handing over the paddy to his caretaker Rampravesh Paswan. At around 04:00 pm, when they reached the canal which is situated to the north of village Pokharaha, they saw that Bidesh Paswan and Ramakant Paswan both from village Kharauna, PS- Rafiganj, District- Aurangabad were sitting on the *faal* wearing the checked shawl and a little distance away from there in the north, Ramchandra Paswan, Pratap Paswan, Ramjatan Paswan, Rameshwar Paswan, Tapeswar Kahar, Lalan Yadav, all residents of village- Bahadurpur, PS- Rafiganj and Subhash Yadav, Vinod



Yadav, Mahavir Mistri, Jairam Yadav, Sudarshan Yadav, all residents of village- Pakari, P.S.- Goh, District- Aurangabad and some other unknown persons were standing across the road. When they reached near the *faal*, Bidesh Paswan and Ramakant Paswan suddenly caught hold of his uncle but his uncle pushed them away. In the meantime, all the aforesaid accused persons rushed towards them and entangled in fighting with them and started beating them with slaps and also started kicking them. At that time, Ramakant Paswan and Ramchandra Paswan told them to shoot. On his instigation, Bidesh Paswan fired from the pistol in his hand with the intention to kill him. He tried to escape but got shot in the finger of his right hand. He was injured. His uncle Radheshyam Sharma was caught hold by Subash Yadav, Mahavir Mistri, Jairam Yadav and Vinod Yadav shot at his uncle Radheshyam Sharma, close to his beard, with the pistol in his hand with an intention to kill him. The bullet pierced his jaw and came out near his left temple. He fell down injured and died. Bidesh Paswan snatched his rifle. Tapeswar Kahar, Rampratap Paswan, Ramjatan Paswan, Rameshwar Yadav, Lakhan Yadav and Sudarshan Yadav took his uncle's body near a water body (*chat*) located outside and tried to slit his throat with a *fasuli*. Hearing the sound of firing, many people from his village came firing. Seeing this, the accused



persons left his uncle's body and took his rifle and fled towards village Pakari. Many people from his village saw the accused persons running away. All the people were armed with pistol, revolvers, guns and *fasuli*.

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. 178 of 1992/ 24 of 1993.

2.3. Before the Trial Court, the prosecution had examined following 9 witnesses:-

PW-1	Gopal Pandey
PW-2	Arun Kumar
PW-3	Dr. Ashutosh Kumar Singh
PW-4	Madheshwar Sharma
PW-5	Ramesh Singh
PW-6	Bipin Kumar Sharma
PW-7	Droni Singh
PW-8	Uma Shankar Dubey
PW-9	Dr. Yogesh Prasad Sharma



2.4. Defence has also examined three witnesses, namely D.W. 1 Ram Pravesh Paswan, D.W. 2 Bhola Prasad and D.W. 3 Ram Chandra Paswan.

3. Heard Mr. Dilip Kumar Sinha, learned A.P.P. for the appellant-State and Ms. Meena Singh, learned counsel for the respondents/accused.

4. Learned Additional Public Prosecutor Mr. Dilip Kumar Sinha would mainly submit that, in the present case, there are two eye-witnesses who have supported the case of the prosecution and the medical evidence also supports the version given by the eye-witnesses. He further submits that, out of two eye-witnesses, one is injured eye-witness, i.e. the informant. The said witness sustained injury. Further, the Doctor, who had given the treatment to the informant, has also been examined by the prosecution, despite which the Trial Court has discarded the deposition given by the two eye-witnesses and thereby acquitted the Respondents-accused.

5. On the other hand, learned counsel Ms. Meena Singh appearing on behalf of the Respondents-accused opposed the present appeal. Learned counsel submits that the so-called two eye-witnesses are the near relatives of the deceased and their presence at the place of occurrence was doubtful. It is further



submitted that even the medical evidence does not support the version given by the so-called eye-witnesses. Learned counsel further submits that the prosecution has failed to prove the place of occurrence and the manner in which the occurrence took place and, therefore, the Trial Court has not committed any error while passing the impugned judgment. Learned counsel would further submit that the *fardbeyan* was given by the informant at 08:00 p.m. for the alleged incident which took place at 04:00 p.m. Thus, there is a delay in lodging the F.I.R. It is further submitted that even prior to the lodging of the F.I.R., as per PW-9, the Doctor who had given treatment to the injured, informant was examined at 07:15 p.m. However, surprisingly, the F.I.R. was lodged at 08:00 p.m. Learned counsel referred the deposition given by the informant (PW-6) as well as the deposition given by the Investigating Officer (PW-8). It is contended that the informant did not give the name of the assailants to the Police at the first instance. However, thereafter he had disclosed the names of the assailants. Even the relatives of the deceased were not informed with regard to the manner in which the incident took place and the names of the assailants. Learned counsel for the Respondents-accused further submits that there are major contradictions, discrepancies and inconsistencies in the deposition of the



prosecution witnesses and, therefore, the Trial Court has rightly held that the prosecution has failed to prove the case against the Respondents-accused beyond reasonable doubt and thereby acquitted all the accused. Learned counsel, therefore, urged that no error has been committed by the Trial Court while passing the impugned judgment. Learned counsel, therefore, urged that this appeal be dismissed.

6. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

7. 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.

8. Evidence of PW-1 Gopal Pandey, PW-4 Madheshwar Sharma and PW-7 Droni Singh need not be gone into detail as they have not supported the case of the prosecution and they have been declared hostile. However, PW-7, in his cross-examination, has stated that the Police took his statement right near the dead body. On the second day, some other Police Officer recorded his statement and he investigated the case. Further, he had stated that the Police had also recorded the statements of Bipin Kumar and



Arun Kumar near the dead body. He did not see Bipin signing the statement. He has further stated that he did not take the Police to the place of incident. The Police had gone there. Bipin had gone with the Police to the place of incident. The Police had inspected the dead body before going to the place of incident but he did not see them writing anything. The Police did not collect blood from near the dead body.

9. PW-2 Arun Kumar is the eye-witness of this case. He has deposed in his examination-in-chief that the deceased Radheshyam Sharma is his father. On 30.01.1992, at around 04:00 p.m., he, his father, Vipin Singh, Droni Singh, Ramjee Singh were coming from Kharauna to Dadar and reached near Dudharpur Minor Canal. There he saw Bidesh Paswan, Ramakant Paswan sitting there. When they reached near siphon, they saw that Bidesh and Ramakant suddenly caught hold of his father. Subhash Yadav, Vinod Yadav, Sudarshan Yadav, Mahavir Mistri, Jairam Yadav, Ram Chandra Paswan, Ram Jatan Paswan, Ram Pratap Paswan, Rameshwari Yadav, Tapeswar Kahar suddenly came running from the north of the *faal* and started assaulting them. There was a licensed rifle in his father's hand. The accused persons were also carrying pistol, gun and rifle. Ramakant and Ramchandra Paswan ordered to shoot. Bidesh Paswan fired a bullet which hit his



brother's fourth finger of right hand. Subhash Yadav, Mahavir Mistri and Jairam Yadav grabbed his father. Vinod Yadav shot from his pistol below the beard from point blank range which hit his father's temple and his father died on the spot instantly. He has further stated that in 1983, his uncle Radhe Mohan Singh and caretaker (*baraheel*) Durga Mohan Singh were murdered at his father's Bahadurpur *kutcheri*. The militants killed him and also set the house on fire. The case for the said incident was filed by his father at Rafiganj P.S. in which the accused persons were sentenced for life imprisonment. His father was murdered in protest against this.

9.1. In his cross-examination, in Para-12, he had stated that there are 4-5 families in Pokhaha which belong to their caste. He had not paid any attention as to whether anyone had come to the place of occurrence from Pokhaha or not. He cannot tell who came to the place of occurrence and from where. Till the time the dead body was at the place of occurrence, a lot of people from the vicinity gathered there. Further, he had stated that the accused persons grabbed his father's legs and dragged him to the *chat*. The road is made of *morang* which is pebbled. He was dragged upto 5 feet and taken to the *chat*. His clothes did not get torn while he was dragged. The soil/mud at the *chat* was hard and grass had



grown over. Thus, there were no signs of trampling or dragging there. No trace of blood was there. He did not see any blood spilled while dragging. Further, in Para-19, he had stated that the Police reached the place where the dead body was kept through his village. The Police had inspected the dead body. The Police did not ask the name of the deceased. He also did not tell the name of the deceased and the names of the murderers to the Police at that time. Police from Goh had come there. There was no force at Dadar picket at that time. The dead body was lying on the ground. The Police arrived near the dead body at 07:00 p.m. They did not make any attempt to inform the Police and also did not make any arrangement to take the dead body from there. They did not give any statement to the Police during the whole night and also did not tell the names of the murderers. The dead body was removed from there on the next day at 12:00 p.m. and was sent for *post mortem* examination. Superintendent of Police had also reached there in the morning. He recorded his statement before S.I. at 10:00 a.m. on 31.01.1992. In Para-26, he had stated that his father was carrying a rifle. In Para-32, he had stated that at the place of incident, firstly Bidesh Paswan and Ramakant caught hold of his father, but his father jolted them and freed himself from their hold. Subhash Yadav, Mahavir Mistri and Jairam Yadav again grabbed



his father. No one else grabbed his father. Before these three grabbed him, Bidesh Paswan had fired the shot which hit his brother and after he got caught, Binod fired from a close range which hit his father. Other accused persons were also carrying rifles and guns. Those accused who were assaulting them were empty handed. When the first shot was fired, they did not try to run away because the accused were messing with them. He cannot say as to how many people grabbed and assaulted them. The second shot was fired when they were being assaulted. After firing the second shot, his father got injured and fell down and then the accused released them. He did not even run towards the dead body of his father after being released. He has further stated that he was slightly assaulted. 10-15 minutes after the first firing, the firing from village started. In Para-39, he had stated that he did not state before the Police that the accused persons were carrying guns and rifles but said that they were armed with weapons. He had stated before the Police that Ramchandra Paswan and Ramakant Paswan gave the order to shoot. He stated that the accused persons fled towards the Pakdi village.

10. PW-3 Dr. Ashutosh Kumar Singh has stated, in his examination-in-chief, that on 31.01.1992, he was posted as Medical Officer at Sadar Hospital, Aurangabad. On that day, at



04:55 p.m., he conducted the *post mortem* examination of the dead body of Radhey Shyam Singh and found the following *ante mortem* injuries:-

“I. Rigor Mortis present in all the limbs.

II. A lacerated wound on right side of chin over the body of mandible of size 1” x  $\frac{3}{4}$ ” with fracture on the body of mandible (right side), going obliquely down wards and backward to the left rupturing the muscles of neck, trachea, cricoit cartilage, great vessels of left side of neck and the cartridge (bullet) was found in the left side of neck behind the mid point of left clarrical multiple small openings were present around the wound in an area of 5” diameter.

III. A lacerated wound on left side of scalp behind the left ear at temporal occipital junction with fracture of skull on that point of size  $\frac{3}{4}$ ” diameter with burning of hairs and blackening of skin around. The wound in an area of 1.5” diameter the bullet’s direction was obliquely forward and to the right.

On exploration massive intracranial hemorrhage was found with cartridge of brain and left temporal bone was lacerated. The bullet was found on the left temporal bone of brain.

2. Both the extracted bullets were sealed in a vial which bears my signature and kept in office of superintendent as exhibit.

3. On dissection- Heart- both chambers empty. Stomach contained semi digested food about 203. Urinary bladder empty. Lungs, Liver, Spleen and Kidneys all intact and pale.

4. Cause of death was massive hemorrhage and shock due to above mentioned injuries caused by firearm which led to cardio-respiratory failure and death. Time elapsed since death till P.M. examination- within 24 hours.”



10.1. In his cross-examination, he has stated that the injuries were caused by two separate gun shots. Injury on the chin was caused by bullet which came from above and went downwards. Bullet injury on scalp behind the left ear must have come from behind. No wad or particles of gun powder was found in any of the injuries. In case of head injury by fire-arm, the firing was made from a close range and wad or gun particles may not have entered the side. Injury on the chin was not from a close range or point blank range. Charring is possible only where firing is made upto a close range of 8". In case if pellets charring will be found even from firing from 2 to 3 feet but not from bullet. Further, he had stated that he had not mentioned whether any mud was found on the dead body or not. If he would have found any mud, he would have mentioned the said fact.

11. PW-5 Ramesh Singh is a formal witness. He has denied to have any information about the incident.

12. PW-6 Bipin Kumar Sharma is the informant of this case. The deceased Radheshyam Sharma is his uncle. He had stated, in his examination-in-chief, that Ramakant and Ramchandra Paswan had ordered to shoot, upon which Bidesh Paswan fired at them with the intention of killing them. The bullet hit the fourth finger of his right hand. His hands were also injured



with sticks. Subhash Yadav, Jairam Yadav and Mahavir Mistri held his uncle Radheshyam Sharm and Vinod Yadav shot at his uncle with a pistol which hit his neck near the jaw and came out from his right temple, as a result of which, he died on the spot. Bidesh Paswan took his uncle Radheshyam Sharma's rifle. He has further stated that they have land in Bahadurpur for which there was a dispute. On the basis of his statement, *Darogaji* recorded his *fardbeyan* which was read over to him and he had put his signature on it.

12.1. In his cross-examination, in Para-8, he had stated that after the incident, his uncle's body was taken to their village and kept near the road on the southern side. The dead body remained at the site of incident for about half an hour and then it was removed from there. The villagers removed the body. He cannot say as to who had removed the dead body. Further, he had stated that the dead body was carried by hands. The Police came two hours after the dead body was taken to the village and during this time, the *chowkidar* and *dafadar* were not informed. In Para-11, he had stated that he did not tell his mother or aunt after going to the home as to who had killed his uncle. The female members of his house did not go near the dead body. Although, the dead body remained lying on the roadside till the afternoon of the next day,



he did not tell the name of the accused to their family members. Further, he had stated that he did not have any conversation with *Darogaji* when they were going from the dead body to the place of incident. He cannot say as to who had named the accused persons or not. In Para-20, he had stated that the accused persons are the residents of five villages. Their houses fall under Rafiganj and Goh Police Station. In Para-22, he had stated that he did not know about the names of the 15 accused persons who were convicted in the murder of his uncle in Bahadurpur. None of the accused in this case was an accused in that case. None of the relatives of those convicted accused is an accused in the present case. Further, he had stated that the witnesses are incapable of identifying Lakhan Yadav. He has further stated, in Para-43, that the accused persons, after assaulting his uncle, took out their weapons and only then they came to know that they were armed. The accused who were quarreling were not armed with gun or rifle whereas he was armed with pistol. He had not counted as to how many persons were carrying pistol. Some of the accused persons were also carrying guns and rifles. When he was shot at, after two minutes, another shot was fired which hit his uncle. When the second shot was fired, his uncle was holding a rifle. He fell down after getting shot at and then the rifle was snatched by the accused persons. He had



not seen his uncle pointing the rifle at the accused. The place where the incident occurred was levelled. His uncle was shot at from a close range in the jaw. His uncle fell down but he did not try to run away. The accused persons dragged his uncle to a *chat*. He cannot say as to whether the blood had come out because of dragging. On hearing the sound of firing, the villagers came there firing. He cannot say as to how many rifles or guns were there in his village. He cannot say how many gun and rifle holders arrived at the place of incident. The accused persons had left before the villagers arrived at the place of incident. He had not told the villagers that the accused persons had gone to Pakdi and that they should chase them. They had not gone inside the water to retrieve the body until villagers came. Body was drowned in the water. He cannot say as to whether the blood was oozing out from the dead body when it was being carried by the villagers. He had further stated, in Para-54, that the *Darogaji* had sent him for treatment to Goh Hospital in the night of the incident. Blood had spilled out from his body but he cannot say at which places it had spilled. He was hit on his back and hand with a *lathi*.

13. PW-8 Uma Shankar Dubey is the Investigating Officer of this case. He had stated, in his examination-in-chief, that on 30.01.1992, he was posted as Station In-charge of Goh Police



Station. On 30.01.1992 at 07:30 p.m., when he was returning after attending the *Janta Darbar* organized in the Rafiganj Block Office, and had reached to the road in front of village-Sukundi, the *chowkidar* Hari Yadav informed him about the incident, on the basis of which, he left for village-Dadar along with the Police force and S.I. S. N. Sahar. After reaching Dadar, he recorded the *fardbeyan* of Bipin Kumar Sharma. He prepared the injury report of the informant which is marked as Exhibit-5. During the investigation, as per the information given by the informant, place of incident was inspected. He prepared a Seizure List of blood soaked soil, white *dhoti*, towel and leather shoe from the place of incident. The Seizure List is marked as Exhibit-7.

13.1. In his cross-examination, he had stated that he had met Bipin Kumar Sharma, the nephew of the deceased, in Dadar itself. The place of incident is 2 kilometers to the south-west direction. Bipin Kumar Sharma had not told him that he, too, got injured during the incident. He recorded his statement at the place of incident. The Inquest Report was prepared at 10:00 p.m. He had not asked the informant near the dead body as to where and by whom the murder had been committed. In Para-21, he had stated that Bipin had told him in Dadar that Radheshyam Singh had been murdered at a certain place. Then he had proceeded towards the



place of incident along with him. Bipin had not told him the names of the accused persons in Dadar. He had told the name of the accused persons at the place of incident. He has further stated that Bipin alone went with him to the place of incident. Later, other persons had also reached there. He had not interrogated Bipin about anything on the way from Dadar to the place of incident. The first thing he did at the place of incident was to record the statement of the informant. He has denied the suggestion that he did not record the *fardbeyan* of the informant at the scene of incident but recorded it at the place where the dead body of the deceased was kept i.e. in Dadar village. Hence, he suppressed it and later recorded a new statement against the accused persons. He had further stated that he did not send the seized blood-stained soil anywhere for examination to find out if it was human blood. He had not recorded in the Inquest Report as to whether dead body of the deceased was wet or not and whether the nails of his hands and feet were stained with mud or not. Apart from the informant, the statement of any eye-witness was not recorded at the place of incident. In Para-38 of case diary, he had recorded the statement of Arun Sharma, who is the son of the deceased. In Para-50, he had stated that Arun Kumar had told him that Ramakant Paswan had given the order to shoot. He had not mentioned the name of



Ramchandra Paswan among those who gave the order. Bipin Kumar Sharma did not tell him that the accused persons had their eyes on their land.

14. PW-9 Dr. Yogesh Prasad Sharma has stated, in his examination-in-chief, that on 30.01.1992, he was posted at Goh State Dispensary. On that day, at 07:15 p.m., he had examined the injured Bipin Kumar and noted the following injuries:-

“I. Lacerated wound at the tip of right ring finger.

Age of injury within 24 hours. Mark of identification would be scar of the above injury. Injury caused by hard blunt substance simple in nature.”

14.1. In his cross-examination, he had stated that he submitted the injury report to the Police on the same day. It was a superficial injury so he had not noted its dimension. Such injury may be possible if the injured comes into contact with some hard object or ground with force. He has further stated that the injury can be manufactured if one takes the risk.

15. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the Trial Court records and exhibits.

16. From the evidence led by the prosecution, it would reveal that for the alleged incident which took place at about 03:30



- 04:00 p.m. on 30.01.1992, the *fardebayan* was given at 08:00 p.m. The informant has given the name of the accused persons who were present at the place of occurrence and the role played by the accused in the incident in question. It is a specific case that the accused Bidesh Paswan opened fire in which the informant tried to save him. At that time, he sustained bullet injury on the finger of right hand. In the *fardebayan*, he did not state that before giving his *fardebayan* whether he had taken treatment in the hospital or not. It is a specific case that the accused Subash Yadav, Mahavir Mistri, Jairam Yadav and Vinod Yadav shot at his uncle Radheshyam Sharma, close to his beard, with the pistol in his hand with an intention to kill him. The bullet pierced his jaw and came out near his left temple. He fell down injured and then died.

17. At this stage, it is also relevant to note that the informant (PW-6) has narrated the incident in the same manner while giving deposition before the Court. Similarly, PW-2, who is the son of the deceased and projected as eye-witness, has also deposed in Para-2 of his deposition that Vinod Yadav shot him with a pistol under his beard. The bullet pierced his father's temple and he died instantly on the spot.

17.1. However, at this stage, we would like to refer the deposition given by PW-3 Dr. Ashutosh Kumar Singh, who had



conducted the *post mortem* examination of the dead body of the deceased. The said witness, in Para-8 of his cross-examination, has specifically stated that the injuries were caused by two separate gunshots. Injury on the chin was caused by bullet which came from above and went downwards. Thus, from the aforesaid deposition given by PW-3, it can be said that two separate gunshots were fired and the injury on the chin was caused by bullet which came from above and went downwards. We are, therefore, of the view that the medical evidence does not support the case of the so-called eye-witnesses.

18. At this stage, it is required to observed that PW-1 and PW-4 have not supported the case of the prosecution and they have turned hostile. At this stage, it is also relevant to note that PW-7 was also declared as hostile and he was cross-examined in detail.

19. At this stage, it is also relevant to observe that the informant (PW-6) has specifically deposed that he sustained fire-arm injury on his finger. However, if the deposition given by PW-9, the Doctor who had given the treatment to the informant, has specifically deposed that he had examined the informant on 30.01.1992 at about 07:15 p.m. At this stage, it is required to be recalled that *fardebayan* of the informant was recorded at 08:00



p.m. However, at the time of giving his *fardbeyan*, the informant did not disclose that he had already taken treatment in the hospital at 07:15 p.m. It is also required to be observed that PW-9 has further stated that injury was caused by hard and blunt substance and the injury was simple in nature. During cross-examination, PW-9 has further stated that such injury may be possible if the injured comes into contact with hard object or ground with force. The injury can be manufactured if one takes the risk. Thus, we are of the view that the medical evidence does not support the version given by informant.

20. At this stage, it is also required to be observed that PW-6 (informant) has admitted, in Para-54 of his cross-examination, that in the night of the incident, *Darogaji* sent him for treatment to Goh and, therefore, he went to the hospital. He has further stated that he did not know at what time he reached the hospital. He further stated that he also sustained injury on his back and hand because of stick blow. PW-9 did not state about the injury sustained by the said witness on his back or hand.

21. At this stage, we would also like to refer the deposition given by PW-8 (Investigating Officer). From the deposition of the said witness, it transpires that he was returning to Goh after attending Janta Darbar in Rafiganj Block Office. When



he reached the road near village- Sakundi, *chowkidar* Hari Yadav of village-Gonpura informed him about the alleged incident and, therefore, from the said place, he went to village-Dadar. In Para-17 of his cross-examination, the said witness has stated that when he reached village-Dadar, he met the nephew of the deceased i.e. Bipin Kumar Sharma. He has further stated that the place of occurrence is two kilometers away from the place where he met Bipin Kumar Sharma. He had further admitted, in Para-19, that at the village-Dadar, Bipin Kumar Sharma (informant) did not inform him that, in the incident in question, he sustained injury. He had further admitted, in Para-21, that at village-Dadar, Bipin Kumar Sharma (informant) did not disclose the name of the assailants. He had also admitted, in Para-23, that when he reached at the place of occurrence only Bipin Kumar Sharma (informant) was present and thereafter the other persons came at the said place. The Investigating Officer further deposed that he did not record the statement of any other eye-witness except the informant at the place of occurrence.

22. Thus, from the aforesaid evidence led by the prosecution, it transpires that there are major contradictions, omissions and inconsistencies in the version given by the prosecution witnesses. It is required to be observed, at this stage,



that so-called two eye-witnesses are near relatives of the deceased and, therefore, they are interested/related witnesses. The deposition given by such witnesses are required to be scrutinized closely. We have closely scrutinized the deposition given by the so-called eye-witnesses i.e. PW-2 and PW-6 and we are of the view that the version given by the said witnesses is not corroborated by the medical evidence. The prosecution has, therefore, failed to prove even the place of occurrence and the manner in which the occurrence took place. From the evidence it further transpires that because of the dispute between the parties, the accused have been falsely implicated.

23. We are, therefore, of the view that the prosecution has failed to prove the case against the Respondent-accused beyond reasonable doubt.

24. 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.”*

25. 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.”*

26. 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.

27. 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 order of acquittal in favour of the accused.

28. 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

29. Accordingly, the present appeal stands dismissed.

**(Vipul M. Pancholi, J)**

**(Sunil Dutta Mishra, J)**

Sachin/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	15.05.2025
Transmission Date	15.05.2025

