

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.454 of 2024**

Arising Out of PS. Case No.-368 Year-2020 Thana- MURLIGANJ District- Madhepura

Sahita Devi, W/o Visnath Yadav @ Vishwanath Yadav, Resident of  
Kolhaipatti, Ward No. 5, P.S Murliganj, District Madhepura

... .. Appellant

Versus

1. The State of Bihar
2. Deep Narayan Yadav, S/o Kokai Yadav, R/o vill - Basantpur, Dumariya, P.S. - Kumarkhand, Distt. - Madhepura
3. Shashinath Yadav, S/o Late Khali Yadav, R/o vill - Kolhaipatti, P.S. - Murliganj, Distt. - Madhepura
4. Bhuto Yadav, S/o Late Nageshwar Yadav, R/o vill - Kolhaipatti, P.S. - Murliganj, Distt. - Madhepura
5. Sushil Kumar Yadav, S/o Shashinath Yadav, R/o vill - Kolhaipatti, P.S. - Murliganj, Distt. - Madhepura

... .. Respondents

**Appearance :**

For the Appellant	:	Mr. Mukesh Kumar Jha, Advocate
For the State	:	Mr. Satya Narayan Prasad, Addl PP
For the Resp Nos. 2, 3 and 5	:	Mr. Pramod Mishra, Advocate
For the Respondent No. 4	:	Mr. Suraj Kumar, Advocate

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

**HONOURABLE JUSTICE SMT. G. ANUPAMA**  
**CHAKRAVARTHY**  
**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 22-11-2024**

Heard Mr. Mukesh Kumar Jha, learned counsel for the  
appellant, Mr. Satya Narayan Prasad, learned Additional Public  
Prosecutor for the State and Mr. Pramod Mishra, learned counsel  
for the Respondent Nos. 2, 3 and 5 as also Mr. Suraj Kumar,  
learned counsel for the Respondent No. 4.



2. This appeal against acquittal has been preferred by the informant-appellant for setting aside the judgment dated 16.03.2024 (hereinafter referred to as the 'impugned judgment') passed by the learned Additional Sessions Judge-III, Madhepura (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 206 of 2021 arising out of Murliganj P.S. Case No. 368 of 2020. By the impugned judgment, the learned trial court has been pleased to acquit respondent nos. 2 to 5 of the charges under Sections 341, 323, 379, 307, 325, 326/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

**Prosecution Case**

3. As per the prosecution case, on 26.11.2020 at about 07:00 AM, the son of the informant, namely, Rajeev Kumar Yadav went to Pratap Nagar Jhakran Rajni G.P. on motorbike to bring labourers for cultivating wheat. The informant alleged that she also went behind her son but in the meantime, due to previous enmity, Nawal Kishor Yadav, Sushil Kumar Yadav, Mandhir Yadav @ Sanjeev Yadav, Shashinath Yadav, Bhuto Yadav, Prabhash Yadav, Deep Narayan Yadav and Mukesh Yadav all stopped his motorbike and asked him to come down. Further on the order of Sashi Nath Yadav, accused Nawal Kishore Yadav, Sanjeev Yadav, Sushil Kumar Yadav and Deep Narayan Yadav started firing on her son



due to which he sustained two bullet injuries on both of his legs and also sustained head injury. When the informant raised alarm and the villagers also heard the sound of firing, they came there and saw the occurrence. The informant further alleges that at some distance, her husband was also present there who came there and took her injured son to Murliganj P.H.C. from where he was referred to Sadar Hospital, Madhepura for better treatment. The informant further alleges that from the place of occurrence, the motorcycle bearing Registration No. BR 43B 8049, mobile no. 9667643188 and purse were also taken away by the accused persons.

4. On the basis of the written statement of the informant, Murliganj P.S. Case No. 368 of 2020 dated 26.11.2020 was registered for the offences punishable under Sections 341, 323, 379, 307/34 IPC and Section 27 of the Arms Act. Upon investigation, a chargesheet bearing no. 63/2021 dated 30.03.2021 was submitted in the court of learned A.C.J.M.-II, Madhepura against four accused persons, namely, Deepnarayan Yadav, Shashinath Yadav, Bhuto Yadav and Sushil Kumar Yadav for the offences under Sections 341, 323, 379, 307, 325, 326/34 IPC and Section 27 of the Arms Act. On the basis of this chargesheet, learned A.C.J.M.-II, Madhepura took cognizance and summoned the



above-named accused persons on 01.04.2021. On finding that the case is triable by the Court of Sessions, the records were committed to the Court of Sessions on 29.09.2021. Charges were read over and explained to the appellants in Hindi which they denied and claimed to be tried.

5. In course of trial, the prosecution examined as many as seven witnesses and exhibited three documents to prove its case. The list of the prosecution witnesses and documents exhibits on behalf of the prosecution are mentioned hereunder in tabular form:-

**List of Prosecution Witnesses**

PW-1	Rajeev Kumar
PW-2	Vishwanath Yadav
PW-3	Sanjeev Yadav
PW-4	Sahita Devi
PW-5	Dr. Sunita Kumari
PW-6	ASI Prashant Kr. Verma
PW-7	ASI Manoj Kumar

**List of Exhibits on behalf of Prosecution**

Exhibit-1	Signature of witness-Sanjeev Yadav (PW-3) on seizure list
Exhibit-2	Injury report
Exhibit-3	Charge-sheet
Exhibit-4	Whole seizure list

**Findings of the Learned Trial Court**

6. Learned trial court after analysing the evidences on the record found that there are many discrepancies in the statement



of private witnesses with regard to the time and manner of occurrence. Learned trial court found that though they all have supported the prosecution case in their examination-in-chief but they could not stand with the same in their cross-examination. Learned trial court also found that except the victim there is no eye witness in this case. All the witnesses are family members and the prosecution has failed to examine the key and independent witnesses like Dileep Yadav (Sadhu of Victim), Kritnaraya, Dinesh and Bhupendra who were said to be present at the place of occurrence.

7. Learned trial court found that the Doctor has also failed to substantiate the prosecution case as she has not mentioned about the number of firearm injuries on the body of the victim.

8. Learned trial court observed that the prosecution has to prove its case beyond shadow of all reasonable doubts but this case is full of doubts with regard to place of occurrence, type of injuries and even the date of preparation of seizure list. Therefore, learned trial court came to the conclusion that the prosecution has not been able to establish and prove its case against the accused persons, namely, Deepnarayan Yadav (Respondent no. 1), Shashinath Yadav (Respondent no. 2), Bhuto Yadav (Respondent no. 3) and Sushil Yadav (Respondent no. 4) for the offences under



Sections 341, 323, 379, 307, 325, 326/34 IPC and Section 27 of the Arms Act. Accordingly, learned trial court acquitted the accused-respondent nos. 2 to 5.

**Submissions on behalf of the appellant**

9. Learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that the approach of the learned trial court in dealing with the materials available on the record is erroneous and the conclusions drawn are wholly unreasonable and perverted. Learned counsel submits that the learned trial court failed to consider that as per the case of the prosecution due to the firing made by the accused persons on the order of respondent no. 3, son of the informant, namely, Rajeev Kumar (PW-1) sustained firearm injury on his head and legs and the injury report (Exhibit '2') supports the case of the prosecution. Learned counsel has relied upon the deposition of the Doctor (PW-5) which has been discussed by the learned trial court in paragraph '13' of the impugned judgment.

10. Learned counsel submits that the learned trial court has not given due evidentiary value to the deposition of PW-1 who is the injured and had suffered firearm injury on multiple site as per opinion of the Doctor.



**11.** It is submitted that even as the learned trial court found that all the prosecution witnesses have supported the prosecution case but there are discrepancies in the oral testimonies of the private witnesses regarding time and manner of occurrence, however, this finding of the learned trial court is not correct.

**12.** It is submitted that the learned trial court has grossly erred in acquitting the respondent nos. 2 to 5 of the charges.

**Submissions on behalf of the Respondents**

**13.** On the other hand, learned counsel for the respondent nos. 2 to 5 has defended the impugned judgment. Learned counsel submits that in this case it would appear that according to PW-1 the place of occurrence is situated at a distance of 2-2.5 km from his house. The learned trial court has concluded on the basis of the evidences on the record that there is no eyewitness to the occurrence and the prosecution witnesses are only the family members who are having prior enmity. In these circumstances, the learned trial court has rightly examined the evidence of the close family members of PW-1 with all circumspection and care.

**14.** Learned counsel submits that the informant of this case is the mother of PW-1 who has been examined as PW-4. The case was registered on the basis of a written application (not duly



exhibited). In her deposition, in paragraph '9', the informant has stated that she had not written the application and had put only her thumb impression. She further stated that she cannot say as to who had written the application and she cannot say that what were written therein.

**15.** Learned counsel submits that the place of occurrence as disclosed by the informant, the injured and the I.O. materially differed. The learned trial court has rightly held that injured of this case (PW-1) is the only eyewitness of the occurrence and the material witnesses such as Dinesh Yadav, Bhupendra and Kirti Narayan who had allegedly come at the place of occurrence on *hulla* have been withheld by the prosecution.

**16.** It is submitted that even as the son of the appellant has suffered injuries on his person, but his initial treatment particulars and the opinion of the Doctor, namely, Dr. Rakesh Kumar has not been proved in this case. Dr. Sunita Kumari (PW-5) who has proved injury report prepared by her has clearly stated that she had received injury report sent by Dr. Rakesh Kumar (not examined) of Udharan Hospital, Nandlal Chhapra. The injury report prepared by Dr. Sunita Kumari (PW-5) has been marked as Exhibit '2' this is dated 11.02.2021 i.e. after about two and half months of the occurrence and it is based on the report of Dr.



Rakesh Kumar of a private hospital. In these circumstances, it would not be safe to convict the respondent nos. 2 to 5 and the learned trial court has committed no error in appreciation of the evidences on the record.

**17.** Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581** to submit that in a case of acquittal there would be a double presumption of innocence and the Appellate Court may interfere with the judgment of acquittal only and only when the Appellate Court finds that there cannot be any other opinion except that of guilt of the accused beyond all reasonable doubts.

**18.** Learned Additional Public Prosecutor for the State has defended the impugned judgment and endorsed the submissions of learned counsel for the respondent nos. 2 to 5.

### **Consideration**

**19.** We have heard learned counsel for the parties and the learned Additional Public Prosecutor for the State as also perused the trial court records.

**20.** The occurrence in question allegedly took place on 26.11.2020 at about 7:00 AM. The said occurrence was reported to the police station by the informant (PW-4) who is mother of the



injured, by submitting a written application. The informant is an illiterate lady who had put her thumb impression on the written application, which is the basis of the FIR giving rise to Murliganj P.S. Case No. 368 of 2020. The formal FIR has been registered on 26.11.2020 at 20:30 hours i.e. after about fifteen and half hours of the occurrence. Unfortunately, neither the said written application nor the formal FIR have been exhibited in the trial court.

**21.** The informant (PW-4) has stated in course of trial that she had lodged this case against nine persons but from the written application it would appear that she has named only eight persons and they were the accused of the case. In paragraph '9' of her deposition, the informant has stated that she had not written the application. She had only given her thumb impression and she cannot say as to who had written the application. When asked, she said that she cannot say that what were written in the application.

**22.** It appears from perusal of the evidence of the injured Rajiv Kumar, who has been examined as PW-1, that the occurrence took place when he was going to Pratap Nagar, Jhakran by his motorcycle, with him was his co-brother Dilip. About half kilometer before Jhakran, Nawal Kishore Yadav, Mandheer @ Sanjeev Yadav, Sushil Yadav, Shashinath Yadav, Bhuto Yadav, Prabhas Kumar, Deep Narayan Yadav, Mukesh Yadav and Pankaj Kumar, total nine persons who were concealing themselves in the



*baans bhitti* (bamboo clump) came outside as soon as this witness reached and they started indiscriminate firing upon PW-1. Shashi Nath ordered to kill whereon Mandhir @ Sanjeev Yadav, Nawal Kishore, Sushil and Deep Narayan Yadav had been firing indiscriminately which hit him on both of his legs, one shot passed away from beside his head and he fell down whereafter he was assaulted by *lathi*, rod and from the butt of the pistol. In his cross-examination, this witness has stated that on the date of occurrence there were fogs. He has further stated that he had seen the accused persons first time from a distance of 20-25 feet, but this witness has stated that he could not say as to who was possessing which weapon. He has stated that about 15-20 rounds of firing had taken place and he had received shots from the front. He had also received the shots in her stomach and he had fallen down whereafter he was assaulted by *lathi* etc. In paragraph '15' of his deposition, PW-1 had clearly stated that at that time, he was alone there. He has further stated that he had become unconscious and after 15-20 months, he had regained his consciousness. In paragraph '16' of his deposition, he has stated that after regaining his consciousness, he could not say that who were with him, he was in injured condition. So far as this part of the deposition of PW-1 is concerned, it is crystal clear that at the time of occurrence



he was alone at the place of occurrence when assault took place. He claims that there were fogs but claims that he had seen the accused persons from a distance of 20-25 feet which according to this Court seems doubtful. He has stated that he could not see that who was holding which kind of weapon. He has not named the accused persons who were having *lathi*, rod and pistol in their hand. PW-1 has also not stated that from which kind of weapon, the accused persons were firing.

**23.** This Court further finds that as regards the place of occurrence, he has stated in paragraph '4' of his deposition that the place of occurrence is at a distance of two or two and half kilometer from his house. It may also be three kilometer. He was going on a motorcycle and his mother was following her by foot. PW-1 has given the boundary of the place of occurrence as follows:-

North – Anmol Yadav;  
South – does not remember;  
East – Parmanand Yadav; and  
West – Amrish Yadav

The I.O. (PW-7) has given the description of the place of occurrence as follows:-

North – Dilip Yadav;  
South – Belo Yadav;  
East – Parmanand Yadav; and



West – Amol Yadav

**24.** The father of the injured has been examined as PW-2 in this case. He has stated that he was working in his field at 7:30 AM when he heard sound of indiscriminate firing from northern direction, he ran towards that side and reached near *baans bhithi* which belongs to Sikandar Yadav. He has stated in his examination-in-chief that he reached near his son Rajeev who was lying unconscious and had suffered shots in both his legs and had seen the sign of passing away of a shot touching his head. He has stated that there he found Bhupendra Yadav, Ganesh Yadav, Krit Narayan Yadav and many other persons. This Court finds that these persons whom this witness has named present near his son have not been examined in course of trial and the prosecution has withheld these witnesses. PW-2 has stated that Shashi Nath Yadav is his elder brother, Nawal Kishore and Sushil are his nephews. In paragraph ‘8’ of his deposition, he has stated that plot in which he was present is Plot No. 1473 of Khata No. 1289 and this witness has given the name of the boundary Raiyats of the said plot. He has stated that he was alone sowing the wheat seeds. When he heard the sound of firing, there was no one near him, people were present at distance. In paragraph ‘10’ he has stated that from his plot, *baans bhithi* is at a distance of 200 gaj north. *Baans bhithi* is dense and north-east to the said *baans bhithi* is the place of



occurrence. He has given the description of the boundary of the *baans bhiti* as follows:-

North – Bimal Yadav;  
South – Nand Kishore Yadav;  
East – Sikandar Yadav; and  
West – Sikandar Yadav

**25.** PW-2 has also stated that the place of occurrence is situated at a distance of 500 yards from *baans bhiti*. From the evidence of PW-2, it appears that he is not an eyewitness to the occurrence and he claims his presence in his land which is at a distance of about 700 yards from the place of occurrence and when he reached near his son (PW-1), he found him in unconscious condition.

**26.** As regards the place of occurrence, PW-2 has given the boundary of the place of occurrence as follows:-

North – Anmol Yadav;  
South – Belo Yadav;  
East – Paramanand Yadav; and  
West – Bindeshwari Yadav

**27.** He has stated that the place of occurrence is at a distance of 50 yards from the *pakki* road towards east-south direction. Although, this witness claims in paragraph '11' of his deposition that when he reached the place of occurrence, he found that his wife, Krit Narayan, Bhupendra and Dinesh were present



and they had surrounded his son who was in semi-conscious condition and was even becoming unconscious often, this Court would not accept this testimony of PW-2 because he has himself stated in paragraph '12' of his deposition that when the sound of firing stopped, he had ran from his field alone. This witness as noticed above has stated he was alone involved in sowing wheat seeds. This Court has already noticed that those persons whose names have been disclosed and it has been claimed that they were present when PW-2 reached near his son, have not been examined except wife of PW-2, who is the informant of this case. This Court is of the opinion that PW-2 is not a reliable witness and he has set up himself as a witness in this case only to support the prosecution case. The defence suggested him that he has falsely implicated the accused because of land dispute.

**28.** Another family member of the injured who is a witness in this case is Sanjeev Yadav (PW-3). He has stated in his examination-in-chief that he was in his house when he got information that firing has taken place in Jhakaran, Pratap Nagar. PW-3 has stated that his mother had reached the place of occurrence where Rajeev Kumar (PW-1) had suffered fire arm injury and was in a pool of blood. PW-3 has not stated about presence of either PW-2 or the other persons who have been



named by PW-2 in his examination-in-chief. This Court finds that even as PW-3 has stated that from the place of occurrence, Hero Honda Splendor Pro Registration No. BR43P8049 was seized and he is a witness to the seizure list which has been marked Exhibit '4' and that the said vehicle belonged to his father, from the deposition of the I.O. (PW-7) it appears that in course of investigation, the I.O. had received information that the stolen motorcycle is standing in the *baans bhiti* of Dilip Yadav in Pratap Nagar village whereafter he had informed the son of the informant and again proceeded to the place of occurrence where the motorcycle was standing. He claimed that he had seized the motorcycle in presence of two independent persons and had prepared the seizure list. He proved the seizure list as Exhibit '4'.

**29.** It is evident from the deposition of the I.O. (PW-7) that the motorcycle was seized by police on the next day of occurrence at 17:15 hours i.e. after almost 23 hours after registration of the FIR, there is no independent witness to the seizure list. One of the witnesses of the seizure list is Sanjeev Yadav (PW-3) who is brother of the injured. Another witness namely Ranjeet Kumar has not been examined in course of trial. I.O. has described the motorcycle as stolen motorcycle, therefore, the manner in which and the delay with which the motorcycle has been shown seized by



the I.O. (PW-7) creates doubt on the authenticity of the story with regard to the seizure of the motorcycle.

**30.** This Court finds that in his examination-in-chief Sanjeev Yadav (PW-3) was suggested that Nawal Kishore Yadav had lodged Murli Ganj P.S. Case No. 229 of 2020 and Shashi Nath Yadav had lodged Murli Ganj P.S. Case No. 99 of 2020, this witness denied his awareness about those cases. He has stated that he is not literate and can only sign.

**31.** One thing which this Court has noticed from the evidence of PW-1 is that he claims in paragraph '5' of his deposition that he ordinarily lives at Delhi, he is inter pass and he is engaged in a private job. He has stated in paragraph '6' that he had come to his village only on 24<sup>th</sup> November from Delhi and after his arrival from Delhi, a *panchayati* had taken place but the accused persons were not ready to accept the *panchayati*. He has stated that after 10-15 days of his arrival, *panchayati* had taken place. This Court finds that the prosecution has completely suppressed the fact as to what were the subject matter of the *panchayati*, who were the members of the *panchayati* and what decisions were rendered in the *panchayat*. Contrary to the claim of PW-1 that he works in Delhi, his mother, who is informant of this case and has deposed as PW-4, has clearly stated in paragraph '6'



of her deposition that Rajeev (PW-1) does not do any work and he lives in village. PW-4 has admitted in her deposition that the accused persons are her *bhaisur*, co-sharers with whom land disputes are going on. PW-1 is though an injured witness and it is well settled that the evidence of an injured witness cannot be discarded easily but this Court finds that PW-1 is not only suppressing the material facts with regard to his presence in the village, he is also not disclosing the complete fact with regard to the disputes for which *panchayati* had taken place. In this case, the occurrence was not immediately reported to the police station. PW-1 was taken to a private hospital, namely, Uddharan Hospital at Nandlal Chhapra, where he was treated by Dr. Rakesh Kumar but his initial treatment particulars have not been brought on record by the prosecution. The injury report (Exhibit '2') has been prepared after two and half months by Dr. Sunita Kumari (PW-5), who has done nothing but to say that she received injury report with opinion sent by Dr. Rakesh Kumar, M.S., Ortho of Uddharan Hospital, Nandlal Chhapra and the said injury report revealed the following injuries:-

- “(1) Burn out entry wound (1” x 1/2”) over medial side of (R) knee and exit wound (1” x 1/2”) over (L) aspect of knee with badly comunited fracture of supracondyular region of (R) femur.
- (2) Pain and swelling (R) knee and leg, # shaft of (R) tibia
- (3) Headache and generalised bodyache with head injury due to firearm over (R) perital bone (2” x 1/2”)



(4) Pain and swelling (L) leg – fracture of (L) fibula  
Mode of injury – fire arm injury at multiple site.  
Nature of injury – grievous in nature on the basis of  
clinical finding and radiological findings.  
Age of injury – within two hours”

**32.** This Court is of the considered opinion that the fact that the occurrence was not reported to police either by the informant or her other family members immediately and even the private hospital where the injured was taken and treated did not inform this to the police station and with a delay of about 23 hours, the written application was submitted under thumb impression of PW-4, who claims that she cannot say what were written therein, would together prove fatal to the prosecution.

**33.** In ultimate analysis of the entire materials on the record, this Court cannot reach to a finding to conclude that the accused persons, namely respondent nos. 2 to 5, are clearly guilty of committing the offence for which they have been charged. In the case of **H.D. Sundara** (*supra*) what have been laid down by the Hon’ble Supreme Court in paragraph ‘8’ read as under:-

“**8.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment<sup>1</sup> rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of

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1. State of Karnataka v. H.K. Mariyappa , 2010 SCC OnLine Kar 5591



Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised 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.”

34. This court has re-appreciated the entire evidences on the record and finds that the learned trial court has not committed any error in appreciation of the evidences led in this case. No interference is required. This appeal is dismissed.

**(Rajeev Ranjan Prasad, J)**

**(G. Anupama Chakravarthy, J)**

Rishi/-

AFR/NAFR	
CAV DATE	CAV
Uploading Date	25.11.2024
Transmission Date	25.11.2024

