IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.725 of 2024

Arising Out of PS. Case No.-277 Year-1994 Thana- ARA NAGAR District- Bhojpur

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Saif Ahmad S/O Late Mumtaj Ahmad R/O Village- Singhi Kala, P.S- Ara Town, Distt.- Bhojpur.

... ... Appellant/s

Versus

1. The State Of Bihar
2. Alamgir S/O Late Nurul Hoda R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
3. Safi Rijwan S/O Late Raiyasat Hussain R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
4. Firdos Ahmad S/O Late Sarafat Hussain R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
5. Arsad Hussain @ Dadu S/O Late Badaruddin R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
6. Fasi Rijwan S/O Late Raiyasat Hussain R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
7. Abdul Manaan S/O Late Anamul Haque R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
8. Jubair Akhtar @ Jibbu S/O Late Layakat Hussain R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
9. Ansar Ahmad S/O Late Badaruddin R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
10. Sana Jamal @ Sannu S/O Late Raiyasat Hussain R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.
11. Aslam Jamal S/O Late Anamul Haque R/O Sakin Badki Singhi, P.S- Ara Nagar, Distt.- Bhojpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Anuj Kumar, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, Spl PP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 16-10-2025

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Order No. of order dated 26.06.2025 has wrongly been mentioned as ‘107’ in place of ‘8’.

2. Let the same be read as Order No. ‘8’ in place of Order No. ‘107’.

3. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment of acquittal dated 22.04.2024 passed by the learned District and Sessions Judge, Bhojpur, Ara in Sessions Trial No. 137 of 2001, arising out of Ara Town P.S. Case No. 277 of 1994, whereby Respondent Nos. 2 to 11 have been acquitted by the learned Trial Court from the charge of Sections 302/149, 148 of Indian Penal Code and Section 27 of the Arms Act.

4. The prosecution case, as per the F.I.R. in brief, is that on 21.12.1994 at about 11:00 am, the informant was sitting and talking with Safdar Ahmad, Faiz Ahmad, Haider Ahmed and Farid Ahmad in his room and the deceased Safdar Ahmad was standing near the window of the same room and having breakfast. At about 11:15 am, Riyasat Hussain, Safi Rijwan, Fasi Rijwan *alias* Tunnu, Sannu *alias* Sana Jamal, Aslam, Abdul Manaan, Junaid Ahmad, Alamgir, Firdos Ahmad, Ansar Ahmad, Arshad *alias* Dadu, Isthiyak Ahmad and Jibbu, all armed with

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weapons such as pistols, and country made guns, came to the informant's door. Upon arriving, Riyasat Hussain said to all the persons accompanying him, "This is a good opportunity, everyone is gathered together, kill them." After saying this, Riyasat Hussain fired a shot from his which hit the informant's brother Safdar Ahmad, the deceased, who was standing near the window eating breakfast.

5. It is further alleged that, Fasi Rijwan, Aslam, Junaid Ahmad, and Arshad *alias* Dadu, who were all armed with guns, fired indiscriminately on the informant and his brother. The informant further states that the rest of the people hid in the room to save their lives. The informant's brother, Safdar Ahmad, was badly injured by the gunfire and fell on the bench inside the room. Seeing this, Riyasat Hussain said, "Run, the job is done," and they fled. By then, Asif Ahmad, Sajid Ahmed, Imran Alam, Sakin Daulatpur, and many other people from the neighborhood came running and witnessed the incident and the fleeing of the accused. The informant and others then brought his brother to Sadar Hospital, Ara for treatment, where informant's brother, Safdar Ahmad, died. The informant claims that all the above mentioned accused, acting in collusion, killed the informant's brother and fatally attacked the informant and others, who saved

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their lives by hiding in the room. This statement of the informant was recorded on 21.12.1994 at 1:30 pm on the veranda of the medical ward in Sadar Hospital, Ara.

6. On the basis of written report of the informant, Ara Town P.S. Case No. 277 of 1994 was instituted under Sections 302/149, 148 of Indian Penal Code and Section 27 of the Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against respondents, and accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons under Sections 302/149, 148 of Indian Penal Code and Section 27 of the Arms Act to which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined altogether twelve prosecution witnesses i.e. PW1 Haider Ahmad, PW2 Fareed Ahmad, PW3 Imran Alam, PW4 Md. Kafil, PW5 Rajesh Kumar, PW6 Ramakant Mahto, PW7 Kamaldev Kumar Yadav, and PW8 Saif Ahmad (Informant), PW9 Irshad Akhtar, PW10 Dr. Anil Kishore Prasad, PW11 Awdhesh Kumar and PW12 Ramcharitra Prasad. The prosecution has also produced certain documents which were marked as ‘Exhibits’ i.e., Exhibit 1- Death Review Report,

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Exhibit 2- Confiscation list, Exhibit 3- Autopsy Report, Exhibit 4- *Fardbeyan*, Exhibit 4/1- Formal filing, Exhibit 5- Saif Ahmed's signature on the *fardbeyan*, Exhibit 5/1- Signature of Ramcharita Prasad on the *fardbeyan*, Exhibit 6- Signature of Ramcharitra Prasad on the death review report, Exhibit 7- Signature of Ramcharitra Prasad on the seizure list. The defence has also produced certain documents which were marked as 'Exhibits' i.e., Exhibit A- Permit to hold a fair, Exhibit B- Order of the Special Officer of the Agricultural Produce Market Committee to cancel the license to organize a fair, Exhibit C- Report of Camp Incharge, Agricultural Produce Market Committee, Koilwar, Exhibit D- Formal FIR of Ara Nagar P.S. Case No. 137 of 1993, Exhibit E- Formal FIR of Ara Nagar P.S. Case No. 276 of 1994. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

8. The learned trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that the prosecution has completely failed to prove its story, place of occurrence and cause of action beyond a reasonable doubt by

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sufficient, effective, and material evidence. The learned trial Court held that there are contradictions with respect to who shot the deceased. The learned trial Court further held that the manner of the occurrence and the prosecution story are doubtful in the present case.

9. Learned counsel for the appellant has submitted that the learned trial Court has miserably failed to appreciate the fact that the prosecution witnesses as well as the official witnesses have completely supported the prosecution case.

10. The learned counsel for the State has submitted that there is no perversity in the judgment of the learned trial court, and the prosecution has failed to prove the guilt of the accused before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present case.

11. We have heard learned counsel for the appellant and the State, and have also gone through the records of the case.

12. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

13. Upon perusal of records in the present case, the

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place of occurrence in the present case has not been established by the prosecution. The evidence of PW1, 2, 3, and 8 suggests that the place of the alleged occurrence was the house of the informant. However, the evidence of the PW4, 5, 6, and 7 suggests that the place of occurrence was *Satapahadi Mela*. The said *Mela*, as per the evidence of PW1 is organised approximately 300m away from the house of the informant.

14. Further, the informant (PW8) in his evidence has stated that the alleged occurrence took place in the middle room of the ground floor of his house. However, the I.O. (PW12) in his evidence has stated that alleged occurrence took place in the *Uttarwari Kamra* (North Side Room). As such there is a discrepancy in the place of the occurrence, if the evidence of all the prosecution witnesses are read together. Therefore, the prosecution has clearly failed to establish a place of occurrence in the present case. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in ***Syed Ibrahim v. State of Andhra Pradesh***, *reported in* ***(2006) 10 SCC 601***, wherein it was held in Paragraph No. 11 as under:

> *"**11**.....But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his*

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examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version."

15. Four people were said to be present in the room with the informant at the time of the occurrence, and it is alleged that indiscriminate firing took place in the room upon them. However, except the deceased, no one else who was

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present in the room sustained any injuries. Further, the prosecution witnesses who were present in the room, i.e., PW1, 2 and 8 during the trial have stated that the deceased while standing at the window had sustained firearm injury and thereafter he fell down. It is surprising that once a person had fallen down after sustaining a firearm injury which he had received through the window, the subsequent injuries sustained by the deceased goes unexplained which makes the manner of occurrence doubtful as well as the place of occurrence also becomes doubtful. With respect to manner of occurrence the learned trial Court had held the following, relevant paragraph of which is reproduced as under:

> *"**36**. .....*इस आपराधिक वाद में परीक्षित सभी साक्षीगण ने जो स्वयं को चश्मदीद एवं अवसर साक्षी के रूप में बताये हैं, ने अपने साक्षय में अभियुक्तगण के संदर्भ में विस्तृत रूप से वर्णन किया है कि अमुक अभियुक्त अमुक हथियार से युक्त था, जबकि सभी ने दूरी *20-25* फीट बताया है तथा स्वयं को कमरे में बैठा हुआ बताया है। साक्षय से यह भी स्पष्ट है कि गली नीचे है और मकान का नींव उपर है। ऐसी स्थिति में वह जब यह देखे कि शस्त्र लेकर के आ रहे हैं और सुने के सब इकट्ठा है मार दो, तो यह नैसर्गिक नहीं लगता है कि व्यक्ति खड़ा होकर देखेगा, अपितु भाग करके जान बचायेगा। ऐसी स्थिति में साक्षीगण का साक्षय विश्वसनीय

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नही लगता है। स्वयं सूचक अपने मुख्य परीक्षण में कथन किये हैं कि सफदर खिड़की के पास बैठकर नाश्ता कर रहा था, जबकि प्रतिपरीक्षण में कथन किये हैं कि सफदर खिड़की के पास खड़ा होकर नाश्ता कर रहा था। एक स्थित में खड़ा होकर नाश्ता करने पर तो बाहर का दिखाई देखा, लेकिन बैठकर नाश्ता करने पर तो दिखाई भी नहीं देगा, तथा गोली लगने की सम्भावना भी नहीं है। इन सभी दशाओं में साक्षीगण का साक्षय विश्वसनीय नहीं लगता तथा स्वयं सूचक के द्वारा मुख्य परीक्षण एवं प्रतिपरीक्षण में विरोधात्मक कथन किये गये हैं। यही नहीं, जिस कदर शस्त्र के संदर्भ में कथन किया गया है, वह भी सम्भव नहीं लगता। कारण कि यदि *12-13* व्यक्ति शस्त्र लेकर आ रहे हों, तो यह तो कहा जा सकता है, कि उनके हाथ में हथियार था, किन्तु विशिष्ट रूप से यह नहीं कहा जा सकता, कि किसके हाथ में कौन सा हथियार था तथा यह तो कदापि नहीं कि किसके हाथ में किसका लाईसेन्सी हथियार था, यह तथ्य तो पश्चात् की सोंच लगती है। यहाँ यह भी उल्लेखनीय है कि अभियोजन की ओर से बताये कथानक एवं कालांतर में उत्पन्न परिस्थितियों के अनुसार मामले में अस्पताल ले जानेवाले रिक्शाचालक तथा सूचक की माँ, उसकी बहन एवं उसके अन्य भाई इस मामले के महत्वपूर्ण साक्षी थे, जिन्हें अभियोजन की ओर से न्यायालय में परीक्षित एवं प्रतिपरीक्षित नहीं कराया गया है।"

16. There are also material contradictions in the evidence of PW1 and PW2 with respect to who open fired. PW1

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states in his evidence that only four persons open fired, whereas PW2 in his evidence states that all the accused persons open fired. Upon perusal of records of the case, we find that the learned trial Court had correctly found discrepancy in the manner of occurrence. Therefore, on the basis of the discussions made above, the manner of the alleged occurrence has also been not proved by the prosecution in the present case.

17. Upon examination of the medical evidence in the present case, we find that the medical evidence is also inconsistent with the evidence of the prosecution witnesses during the trial. PW1, 2 and 8 who claim to present at the place of occurrence have stated that the shots were fired from a distance of about 20-25 feet. However, the learned trial Court has rightly held that such nature of injuries could only be inflicted if the shots are fired from a close range of 2-3 feet, relying on *Modi's – A Textbook of Medical Jurisprudence and Toxicology*. Further inconsistencies were also found in the medical evidence in the present case; the relevant paragraph of the impugned judgment is reproduced as under:

> *"**36**.* इस आपराधिक वाद में चिकित्सक बतौर साक्षी संख्या *10* डॉ० अनिल किशोर परीक्षित हैं। इन्होंने मृतक का अंत्यपरीक्षण किया है तथा सीने, पेट एवं चेहरे को मिलाकर कुल *53* छर्रा पाया है। चिकित्सक साक्षी के अनुसार जो

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जख्म पाये गये वो *lacerated wound with black margin* पाया गया है। लीवर पेट सब पंक्चर पाया गया है। मृत्यु का कारण *shouck and haemorrhage* पाया गया है। अंत्यपरीक्षण प्रतिवेदन के अनुसार *lacerated wound with black margin* पाया गया है। प्रतिरक्षा के बहस के अनुसार *blackening* तभी पाया जायेगा, जबकि पिस्टल से दो फीट की दूरी से, या बंदूक से तीन फीट की दूरी से जख्म कारित किया गया हो। जबकि सूचक के अधिवक्ता का कथन है कि *25* फीट की दूरी से भी *blackening* हो सकता है. यह बंदूक की बनावट पर निर्भर है। प्रतिरक्षा के द्वारा मोदी का मेडिकल ज्यूरिसप्रूडेंट का पेज *636* दाखिल किया गया है, जिसमें डिस्टेंस ऑफ फायर आर्म्स का विवरण है, जिसे देखते हुए मैं इस निष्कर्ष पर पहुंचता हूं कि प्रतिरक्षा का तर्क कि, दो फीट और तीन फीट की दूरी से ही *blackening* पाया जायेगा, दाखिल मोदी के मेडिकल ज्यूरिसप्रूडेंट से समर्थित होता है। यही नहीं, चिकित्सक के अनुसार *lacerated wound* पाया गया है. जिससे यह स्पष्ट होता है कि ज्यादा मात्रा में रक्तस्त्राव हुआ होगा जबकि सूचक का कथन है कि *ozzing* हुआ होगा। मेरी दृष्टि में जहाँ भी *lacerated wound* होता है, वहाँ काफी मात्रा में खून गिरेगा। वह भी जहाँ *47* और *6* पिलेट छर्रा पाया जाय तथा जमीन पर और आस-पास के क्षेत्र में खून गिरा हुआ मिलेगा, ऐसी स्थिति में प्रतिरक्षा के तर्क में बल प्रतीत होता है कि यदि घर के अंदर गोली चली होती तो फर्श पर खून गिरा होता, चौकी पर खून गिरा होता, केवल चादर पर नहीं और वह भी ऐसा चादर जिसे न्यायालय में प्रस्तुत नहीं किया गया और न ही किसी वैज्ञानिक प्रयोंगशाला में भेजा गया।....."

18. The referred portion of *Modi's – A Textbook of Medical Jurisprudence and Toxicology, 27th Edition* on page 724

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is reproduced as under:

> *"25.7.1.1 Distance of the Firearm*
>
> *If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt/partially burnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed.* ***Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet.*** *In the absence of powder residue, no distinction can be made between one distant shot and another, as far as distance is concerned. Scorching in the case of the latter firearms is observed within a few inches, while some evidence of scorching in the case of shotguns may be found even at one to three feet. Wetting of the skin or clothes by rain reduces the scorching range. Blackening is not affected by wet surface although it can easily be removed by a wet cloth. Blackening with a high power rifle can occur up to about one feet."*

19. Further, it is alleged that indiscriminate firing

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was done by the accused persons at the place of occurrence, and the all the accused persons were armed with pistols/guns/country-made guns. However, upon perusal of records in the present case it is evident that no empty cartridge at the place of the alleged occurrence has been recovered by the police. Also, no weapon has been recovered by police, even though in the FIR specific allegations with respect to ownership and license details of the gun were made.

20. Therefore, we are of the view that the prosecution has been unable to prove the guilt of the accused beyond the shadow of reasonable doubts in the present case. The findings recorded by the learned trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

21. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal

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against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Surajpal Singh & Ors. v. State****, as reported in* ***1951 SCC 1207****:*

> *"**13**. It is well established that in an appeal under Section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."*

22. In ***Chandrappa & Ors. v. State of Karnataka****, as reported in* ***(2007) 4 SCC 415****,* the Supreme Court reiterated this view, and laid down the general principles to followed while dealing with appeal against an order of acquittal. The relevant paragraph of the judgment is reproduced 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*

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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

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should not disturb the finding of acquittal recorded by the trial court."

23. The apex court further reaffirmed this view in the case of ***Ghurey Lal v. State of Uttar Pradesh*** *as reported in* ***(2008) 10 SCC 450****,* Paragraph No. 75 of which reads as under:

*"**75**. .....The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."*

24. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

25. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court.

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26. Accordingly, the present appeal is dismissed.

27. Pending application(s), if any, are also disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Anushka/-

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CAV DATE	NA
Uploading Date	17.10.2025
Transmission Date	

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