

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1291 of 2018**

Arising Out of PS. Case No.-121 Year-2011 Thana- RAJPUR District- Buxar

Ramesh Rai Son of Late Ranjeet Rai Resident of Village-Sarenja,P.S.
Rajpur,Distt.-Buxar

... .. Appellant

Versus

1. The State of Bihar
2. Ashok Yadav, son of Baliram Yadav, Resident of Village-Sarenja P.S.
Rajpur, Distt.-Buxar.
3. Jitendra Yadav, Son of Hira Yadav, Resident of Village-Kathtar, P.S.
Rajpur, Distt.-Buxar.
4. Sanjay Yadav, Son of Suryanath Singh Yadav, Resident of Village-
Taranpur,P.S. Rajpur,Distt.,-Buxar.
5. Hridaya Yadav, Son of Chaidrika Yadav, Resident of Village-
Ekdar,P.S. Rajpur,Distt.-Buxar.
6. Ramashish Yadav, Son of Amar Yadav, Resident of Village-
Marniya,P.S. Rajpur,Distt.-Buxar.
7. Bihari Yadav, Son of Late Suchit Singh, Resident of Village-
Taranpur,P.S. Rajpur,Distt.,-Buxar.
8. Baliram Yadav, Son of Late Ramdeo Yadav, Resident of Village-
Sarenja P.S. Rajpur, Distt.-Buxar.
9. Sukhraj Devi, Wife of Ram Suresh Yadav @ Langa Yadav, Resident
of Village-Sarenja P.S. Rajpur, Distt.-Buxar

... .. Respondents

Appearance :

For the Appellant/s	:	Mr.Ajay Kumar Thakur, Advocate Mr.Nilesh Kumar, Advocate Mr.Rajeev Ranjan, Advocate
For the Respondent/s	:	Mr.Sri Ashwani Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 08-07-2026

Heard Mr. Ajay Kumar Thakur, learned counsel
appearing on behalf of the appellant-original informant and



learned A.P.P. for the State.

2. The present appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') by the appellant-original informant against the impugned judgment and order of acquittal dated 29.08.2018 passed by learned Additional District and Sessions Judge-VI, Buxar in Sessions Trial No. 97 of 2012 arising out of Rajpur P.S. Case No. 121 of 2011, whereby and whereunder learned trial court has been pleased to acquit the respondent Nos. 2 to 9 from the charges leveled against them under section 302/34 and 120B/34 of the Indian Penal Code and Section 27 of the Arms Act.

Brief facts of the case

3. The brief case of the prosecution as it speaks through statement of Ramesh Rai (appellant/informant/PW-3) that on 01.11.2011 at about 4:45 P.M., while he was returning to his home from his rice mill and came at Sarenja main road, he saw Ram Suresh Yadav @ Langa Yadav, son of Baliram Yadav, Ashok Yadav, son of Baliram Yadav, both resident of village + Post – Sarenja; Jitendra Yadav, son of not known (Hira Yadav); resident of village – Kathtar. P.S. - Rajpur, District – Buxar, and seen equipped with rifle in their hand, fired upon his father



Ranjeet Rai before him and further alleged that Sanjay Yadav, son of not known, R/o – village Taranpur, Hirdaya Yadav, son of not known, R/o – village Ekdar, Ramashish Yadav, son of not known, R/o – village Maraniya, Bihari Yadav, son of not known, R/o – village Taranpur, Umesh Yadav, son of Dipa Yadav, R/o – village Jagpurva. All are of Rajpur police station, District – Buxar and were equipped with rifle in their hand, shouting to kill his father. It is also alleged that Baliram Yadav, son of Ramdeo Yadav, resident of Rajpur, district – Buxar directed to fire upon him and after firing they were fled away in western side, thereafter, he came at his house and called his family members. The reason behind the occurrence is that in panchayat election Mukhiya Sukhraj Devi defeated the wife of elder brother of deceased namely, Shail Kumari Devi, further motive was also assigned saying that there are litigation between the parties in Buxar court, which was forced to settle/compromise. It is also stated that Mukhiya Sukhraj Devi, wife of Ram Suresh Yadav @ Langa Yadav was shouting on road that to kill his father, otherwise she would again contest the panchayat election. The aforesaid statement was read by the informant and was also read over to him, whereafter he signed on the statement in presence of his villagers, namely, Shashi Bhushan Rai (PW-



1), Jatashankar Rai and Brijmohan Rai (PW-7), son of Raghubansh Rai.

4. On the basis of aforesaid fardbeyan, a formal First Information Report being Rajpur P.S. Case No. 121 of 2011 dated 01.11.2011 was registered, and police after investigation submitted charge-sheet against the respondent Nos. 2 to 9 and after commitment, all the respondents were put on trial, which ended in their acquittal from the charges leveled against them.

5. Before the Trial Court, the prosecution had examined eight (8) prosecution witnesses such as:

PW-1 – Shashi Bhushan Rai

PW-2 – Umesh Rai

PW-3 – Ramesh Rai

PW-4 – Dr. Ram Kumar Gupta

PW-5 – SI Shyam Bihari Rai

PW-6 – Ranglal Chauhan

PW-7 – Brij Mohan Rai

PW-8 – Braj Kishore Singh

6. The prosecution has also produced following documentary evidence:

Exhibit '1' – Signature of informant on fard-e-beyan

Exhibit 1/1 – Page number on FIR

Exhibit '2' - Post-mortem report.

Exhibit '2/1' & '2/2' - Signature of Dr. Ram Kumar Gupta and Dr. H.C. Hari on Post-mortem report.



Exhibit '3' – Formal FIR

Exhibit '4' - Seizure List.

**Exhibit '5', '5/1' & '5/2' – Signature of the witness
Ranglal Chauhan and Achyutanand Rai on death
supervision report.**

Exhibit '6' – Sanha

Exhibit '7' & '7/1' – F.S.L. Report.

7. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of respondents/accused persons were recorded under Section 313 of the Cr.P.C., which was denied by them in totality by claiming his complete innocence and false implication.

8. Upon perusal of the evidence surfaced during the trial and hearing the parties, learned trial court acquitted all the respondents for the offences punishable under section 302 of the IPC and section 27 of the Arms Act and passed the order of acquittal as mentioned aforesaid. Being aggrieved with, the present appeal has been preferred by the appellant-informant/PW-3.

9. Hence, the appeal.

Argument on behalf of the appellant-informant

10. Learned counsel appearing on behalf of the appellant assailed the judgment of acquittal dated 29.08.2018 primarily on the ground that the learned Trial Court failed to



appreciate the ocular as well as medical evidence in its proper perspective and acquitted the respondent nos.2 to 9 on wholly untenable and hyper-technical considerations.

11. It has been further submitted by the learned counsel for the appellant that the prosecution case consistently discloses that the deceased, Ranjeet Rai, was intercepted at Sarenja Main Road by the accused persons, whereupon accused Ram Suresh Yadav @ Langa Yadav, Ashok Yadav and Jitendra Yadav opened fire inflicting injuries on the body of the deceased, resulting in his death at the place of occurrence itself. It is further submitted that the other accused persons were actively participated in the alleged crime in question by surrounding the deceased and they were variously armed with rifles and were exhorting the assailants to kill the deceased. Moreover, Specific allegation has also been attributed against accused Sukhraj Devi that she was instigating the assailants to eliminate the deceased owing to previous political rivalry arising out of Mukhiya election dispute.

12. Mr. Thakur further submitted that the learned Trial Court erred in treating minor discrepancies and omissions as material contradictions. According to the impugned judgement, merely because every minute detail was not incorporated in the



fardbeyan, the prosecution version has been discarded, however the same should not have been done. It has been also argued that the evidence of P.W.1, P.W.2, P.W.3 and P.W.6 are consistent with the prosecution case and substantially corroborates each other regarding the manner of occurrence, participation of the accused persons and the motive behind the occurrence.

13. It is further contended that the medical evidence fully supports the ocular version since firearm injuries were found on the person of the deceased and even the F.S.L. report supports recovery of bullet from the body of the deceased. It has also been argued that the learned Trial Court committed serious error in doubting the presence of witnesses only because independent shopkeepers or Chhath-vratists were not examined, though the occurrence admittedly took place in a public place during evening hours of Chhath festival when people generally avoid coming forward due to fear and local pressure.

14. Per contra, learned counsel appearing on behalf of respondent nos.2 to 9 supported the impugned judgment and submitted that the learned Trial Court, upon meticulous appreciation of the entire evidence available on record, rightly arrived at the conclusion that the prosecution failed to establish the charges beyond all reasonable doubts.



15. It has been submitted that substantial improvements were made by the prosecution witnesses during the trial, which materially affected the substratum of the prosecution case. Learned counsel submitted that though in the *fardbeyan* there was omnibus allegation of firing by three accused persons, during trial specific attribution regarding firearm injuries over different parts of the body was subsequently introduced, thereby rendering the prosecution version doubtful.

16. It has further been argued that the learned Trial Court has extensively discussed the inconsistencies *inter-se* amongst the prosecution witnesses regarding the manner of occurrence, place from where the witnesses allegedly witnessed the occurrence and participation of the accused persons. The presence of several eyewitnesses itself was found doubtful by the learned Trial Court for cogent reasons. It is also submitted that despite the occurrence allegedly taking place at a busy market area, no independent witness was examined by the prosecution.

17. Learned counsel for the state/respondents has further submitted that the learned Trial Court has already taken one possible and plausible view based upon evidence available



on record. Moreover, once an order of acquittal has been recorded, the presumption of innocence in favour of the accused persons gets further strengthened by the acquittal recorded by the Trial Court. Therefore, unless the findings are perverse or wholly unreasonable, interference in appeal against acquittal is unwarranted.

18. We have heard and considered the rival submissions of the parties and perused the materials available on record.

19. **P.W.1, Shashibhushan Rai**, has been projected by the prosecution as an independent eye witness to the occurrence. In his examination-in-chief, he stated that on 01.11.2011 at about 4:45 P.M., he was proceeding towards his shop situated on the main road at Sarenja. He deposed that when he reached near the Pakad tree situated adjacent to the road, he noticed four motorcycles parked there and around ten persons assembled, all armed with rifles. He identified amongst them, Ram Suresh Yadav @ Langa Yadav, Ashok Yadav, Baliram Yadav, Sukhraj Devi, Jitendra Yadav, Umesh Yadav, Ramashish Yadav, Sanjay Yadav, Hriday Yadav and Bihari Yadav. The witness further stated that while he was standing at a tea shop situated approximately 45 feet away from the place of occurrence, he



saw informant Ramesh Rai (appellant/PW-3) coming on motorcycle along with deceased Ranjeet Rai seated thereon as pillion rider. According to him, accused Ramashish Yadav first fired in the air. Thereafter, Ashok Yadav and Jitendra Yadav dragged Ranjeet Rai from the motorcycle and Ram Suresh Yadav @ Langa Yadav fired upon the head of the deceased from behind, resultantly he fell to the ground. He further deposed that Ashok Yadav and Jitendra Yadav thereafter fired upon the chest of the deceased. The witness also stated that thereafter indiscriminate firing was resorted to and accused Sukhrajo Devi was exhorting the assailants not to spare Ramesh Rai alive.

19.1. In the opinion of this court, the testimony of P.W.1, though elaborate, suffers from material improvements vis-à-vis the original prosecution version. In the *fardbeyan*, there is no detailed attribution regarding dragging of the deceased from the motorcycle or separate specific firing by Ashok Yadav and Jitendra Yadav upon the chest of the deceased. Such detailed embellishments surfaced for the first time during deposition before the Court. Further, though P.W.1 claimed himself to be present merely 45 feet away from the place of occurrence, no explanation appears as to why despite indiscriminate firing, he remained completely unharmed and no



independent tea shop owner or customer was examined to corroborate his presence. The witness also claimed that around ten persons armed with rifles were assembled at the place of occurrence prior to arrival of the deceased, which appears somewhat unnatural considering the fact that the occurrence allegedly took place at a public place during Chhath festival hours. The learned Trial Court rightly treated such embellishments cautiously. The evidence of P.W.1 further appears inconsistent regarding sequence of firing and exact role attributed to each accused person when compared with other prosecution witnesses.

20. **P.W.2 Umesh Rai**, son of the deceased, is a related witness and deposed substantially in support of the prosecution case. He stated regarding previous enmity arising out of Mukhiya election dispute and supported the prosecution allegation that accused persons had motive to eliminate the deceased. The witness stated that the accused persons were armed with rifles and participated in the occurrence resulting in death of his father. He attempted to corroborate the testimony of the informant regarding participation of accused persons and subsequent death of the deceased at the place of occurrence itself.



20.1. The evidence of P.W.2 suffers from inherent limitations being a closely related witness with admitted previous enmity against the accused persons. Though relationship itself is not a ground to discard testimony, yet where political rivalry admittedly exists, the possibility of exaggeration or over-implication cannot be lightly ruled out. The witness made omnibus allegations against several accused persons without clearly specifying individual overt acts attributable to each of them. His testimony also appears to contain improvements over the fardbeyan regarding manner of assault and participation of accused persons. The learned Trial Court rightly noticed that the witness failed to explain satisfactorily the exact role of several acquitted accused persons beyond vague allegations of surrounding and exhortation.

21. **PW-3, Ramesh Rai**, is the informant as well as son of the deceased and the principal witness of the prosecution case. He stated that on the date of occurrence, while returning from his rice mill along with his father on motorcycle, they were intercepted near Sarenja Mode by the accused persons. According to him, the accused persons were already assembled there armed with rifles. The witness alleged that the accused persons resorted firing causing firearm injuries to his father,



who died at the place of occurrence itself. He also deposed regarding previous political enmity arising out of Panchayat election dispute and claimed that accused Sukhraj Dev was instigating the assailants.

21.1. Being the informant and son of the deceased, P.W.3 is admittedly an interested witness. The learned Trial Court, therefore, rightly subjected his testimony to careful scrutiny. The most significant infirmity in his evidence is material improvement during trial regarding specific overt acts of the accused persons. In the fardbeyan, the allegations are comparatively general in nature, whereas during deposition, elaborate details regarding sequence of assault and specific targeting by different accused persons were introduced. Further, though the witness claimed that several accused persons surrounded the deceased while carrying rifles, no clear evidence emerged regarding active participation of each accused person. Omnibus allegations regarding exhortation and presence with firearms were generalized against multiple accused persons. The conduct of the witness after the occurrence also appears somewhat doubtful inasmuch as despite allegedly witnessing brutal murder of his father at close range, independent corroboration regarding his immediate presence was not



forthcoming from any neutral witness.

22. P.W.4 Dr. Ram Kumar Gupta is the medical witness who conducted postmortem examination upon the dead body of deceased Ranjeet Rai. The witness found firearm injuries on the person of the deceased and opined that death occurred due to such firearm injuries. The postmortem report was duly proved by him and marked as Exhibit-2.

22.1. The medical evidence undoubtedly proves homicidal death caused by firearm injuries. However, medical evidence is corroborative in nature and does not itself establish identity or participation of individual accused persons. The medical evidence also does not conclusively support the improved prosecution version regarding exact sequence of firing or attribution of separate firearm injuries to particular accused persons. Thus, while homicidal death stands proved, the evidence of P.W.4 does not eliminate doubts arising from inconsistencies in ocular testimony.

23. **P.W.5 is the Investigating Officer of the case.** He proved the formal aspects of investigation including preparation of seizure list, recording of statements and submission of charge-sheet. He also proved formal documents including seizure list and other investigation materials. The Investigating



Officer failed to produce any convincing independent witness from the locality despite the occurrence allegedly taking place at a busy public place. Further, no satisfactory explanation appears regarding non-examination of independent shopkeepers, passersby or Chhath-vratis who would naturally have been present nearby. The investigation also appears deficient regarding precise forensic linkage between seized materials and individual accused persons.

23.1. The contradictions appearing in statements of prosecution witnesses under Section 161 Cr.P.C. vis-à-vis their depositions in Court also assume significance through the evidence of the Investigating Officer.

24. **P.W.6 Rangalal Chauhan** is a formal witness relating to the death review report. He proved the relevant formal document and signatures thereon. The witness is essentially formal in nature and does not materially advance the prosecution case regarding participation of accused persons. His evidence has limited evidentiary value on the core issue involved in the present appeal.

25. **P.W.7 Brajmohan Rai**, younger brother of the deceased, supported the prosecution case regarding prior enmity and occurrence. He attempted to corroborate the prosecution



version concerning participation of accused persons and alleged motive arising from Panchayat election dispute. P.W.7 is also a closely related and interested witness. His testimony substantially repeats the prosecution narrative without furnishing independent corroboration regarding specific role of several acquitted accused persons. Material omissions and general allegations regarding exhortation and surrounding of the deceased continue to persist in his testimony as well. The learned Trial Court rightly found that his evidence failed to inspire full confidence so far as respondent nos.2 to 9 are concerned.

26. **P.W.8, Brajkishore Singh, A.S.I.**, is a formal witness who proved formal police papers and procedural documents during trial. The witness is purely formal in nature and does not contribute materially regarding the substantive prosecution allegations against the acquitted accused persons. His evidence does not cure the contradictions and deficiencies appearing in the ocular version of the prosecution witnesses.

27. Before advertng to the appreciation of evidence, this Court deems it appropriate to reiterate the settled legal position governing interference in an appeal against acquittal.

28. It is trite that though the appellate court possesses



full power to re-appreciate and reassess the evidence available on record, yet such power is required to be exercised with great circumspection where the order under challenge is one of acquittal. The reason is not far to seek. Once an accused has secured acquittal after a full-fledged trial, the presumption of innocence available to him under criminal jurisprudence stands further fortified and strengthened by the judicial finding recorded in his favour.

29. The criminal justice system in India proceeds on the foundational principle that every accused is presumed innocent unless his guilt is proved beyond all reasonable doubt. Such presumption is not merely statutory in character but constitutes an integral facet of fair procedure guaranteed under Article 21 of the Constitution of India. Therefore, an appellate court while examining a judgment of acquittal must remain conscious that interference with acquittal has the effect of unsettling a finding which has already reinforced the liberty of the accused.

30. Considering the foregoing discussions, this Court is reminded of the fact that the scope of interference in an appeal against acquittal is now well settled by a catena of decisions rendered by the Hon'ble Supreme Court of India. Few



of which are discussed hereunder: -

31. In *Chandrappa v. State of Karnataka*, reported as (2007) 4 SCC 415, the Hon'ble Supreme Court authoritatively summarized the governing principles and held that where two views are possible on the evidence available on record, the view favouring the accused must ordinarily prevail. The Hon'ble Court further recognized the doctrine of "double presumption" in favour of the accused in cases of acquittal.

"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, reappraise 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.”

32. Likewise, in *Muralidhar v. State of Karnataka* reported as (2014) 5 SCC 730, paragraph 10, the Hon’ble Supreme Court held that unless the conclusions recorded by the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable, the appellate court should be slow in disturbing an acquittal.

“10. Lord Russell in *Sheo Swarup* [*Sheo Swarup v. King Emperor*, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said: (IA p. 404)

“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

The opinion of Lord Russell has been followed over the years.”

33. Further, in *Babu Sahebagoada v. State of Karnataka* reported as (2024) 8 SCC 149 paragraphs 38 and 39 reiterate that interference with acquittal is justified only where the findings of the Trial Court are perverse, wholly



unreasonable or contrary to the material available on record. Merely because another possible view may also emerge from the evidence cannot itself furnish a ground for reversal of acquittal.

“Discussion and conclusion

38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29) “29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (*Chandrappa case* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the



nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in *H.D. Sundara v. State of Karnataka* [*H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

“8. ... 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.”



41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

34. The aforesaid principles are deeply embedded in constitutional criminal jurisprudence. The appellate court is not expected to convert suspicion into proof nor to substitute moral conviction for legal proof. The golden thread running through criminal law is that the prosecution must establish guilt beyond all reasonable doubts and, if any, reasonable doubt survives, the benefit thereof must necessarily enure to the accused.

35. The prosecution, in order to substantiate the charge, examined altogether eight witnesses, amongst whom P.W.2 Umesh Rai, P.W.3 Ramesh Rai and P.W.7 Brajmohan Rai are closely related to the deceased, whereas P.W.1 Shashibhushan Rai has been projected as an independent witness to the occurrence. P.W.4 is the doctor conducting postmortem examination, P.W.5 is the Investigating Officer and P.W.8 is the formal witness.

36. **P.W.3 Ramesh Rai**, being the informant and son



of the deceased, has supported the prosecution version to the extent that while he along with his father was returning from the rice mill on motorcycle, the accused persons intercepted them near Sarenja Mor and firing was resorted to by the accused persons, resulting in death of his father. The witness has also attempted to assign specific overt acts to some of the accused persons during his deposition before the Court.

37. Likewise, P.W.2 Umesh Rai and P.W.7 Brajmohan Rai sought to corroborate the prosecution version regarding prior enmity arising out of Mukhiya election dispute and also supported the allegation that the accused persons were present at the place of occurrence armed with rifles.

38. **PW.1 Shashibhushan Rai**, who has been projected as an independent witness, stated in his deposition that he had seen several accused persons assembled near the place of occurrence and further claimed that accused Ashok Yadav and Jitendra Yadav dragged the deceased from the motorcycle whereafter Ram Suresh Yadav @ Langa Yadav fired upon the deceased. He further stated that indiscriminate firing took place after the occurrence.

39. In the present case, political rivalry arising out of Mukhiya election dispute forms the admitted background of the



occurrence itself. Therefore, possibility of exaggeration or false implication of some accused persons could not have been lightly ignored by the learned Trial Court.

40. The learned Trial Court has rightly noticed that material improvements surfaced during trial. In the *fardbeyan*, there appears omnibus allegation that three accused persons fired upon the deceased. However, during deposition, witnesses attempted to introduce detailed overt acts assigning specific firearm injuries to accused persons. Such embellishments affecting the core structure of the prosecution case assume significance in criminal adjudication.

41. Similarly, allegations against several acquitted accused persons remained largely generalized in nature to the effect that they were surrounding the deceased while armed with rifles and exhorting the principal assailants. The evidence does not consistently establish any overt act attributable individually to each of the acquitted accused persons.

42. In *Chandrappa (Supra)*, the Hon'ble Supreme Court while delineating the principles governing appeal against acquittal held that although the appellate court possesses full power to re-appreciate and re-evaluate the evidence, yet where two views are possible, the view favorable to the accused must



ordinarily be adopted. It was further held that in case of acquittal, there is a double presumption in favour of the accused: firstly, the presumption of innocence available under criminal jurisprudence and secondly, the reinforcement of such presumption by virtue of acquittal recorded by the Trial Court.

43. Similarly, in ***Babu Sahebagouda (Supra)***, the Hon'ble Supreme Court reiterated that unless the findings recorded by the Trial Court are manifestly illegal, perverse or wholly against the weight of evidence, interference with acquittal would not be justified merely because another possible view may also be available.

44. Further, in ***Muralidhar (Supra)***, the Hon'ble Supreme Court succinctly summarized the settled principles governing appeals against acquittal and held that if the conclusions arrived at by the Trial Court are reasonably possible on the basis of evidence on record, the appellate court should not substitute its own view merely because another view is also possible.

45. Upon re-appreciation of the evidence available on record, this Court finds that the learned Trial Court has assigned cogent and plausible reasons while extending benefit of doubt to respondent nos.2 to 9. The prosecution case admittedly rests



substantially upon interested and related witnesses. Though relationship by itself is not a ground to discard testimony, nonetheless their evidence is required to be scrutinized with greater care and caution, particularly where material improvements and inconsistencies appear in the prosecution version. Moreover, from the *fardbeyan*, the allegation appears to be general in nature that accused Ram Suresh Yadav @ Langa Yadav, Ashok Yadav and Jitendra Yadav fired upon the deceased. However, during deposition, specific overt acts were subsequently assigned regarding individual firearm injuries over different portions of the body. The learned Trial Court has rightly noticed such improvements while assessing credibility of the witnesses.

46. Further, the learned Trial Court also noticed inconsistencies regarding the exact manner of occurrence, positioning of witnesses and participation of several accused persons. So far as respondent nos.2 to 9 other than the principal assailants are concerned, allegations appear largely omnibus in nature relating to exhortation and surrounding the deceased. The learned Trial Court found absence of consistent and reliable evidence regarding their active participation.

47. This Court further notices that though the



occurrence allegedly took place at a busy market area during Chhath festival, no independent witness from the locality or market was examined by the prosecution. Though non-examination of independent witnesses may not always be fatal, yet in the facts of the present case, the learned Trial Court considered the same as one of the relevant circumstances while extending benefit of doubt.

48. The learned Trial Court also discussed contradictions regarding the presence of certain prosecution witnesses at the place of occurrence. Such findings cannot be said to be wholly perverse or impossible view warranting interference by this Court in an appeal against acquittal.

49. It is trite that suspicion, however strong, cannot substitute proof. Criminal jurisprudence mandates that prosecution must establish its case beyond all reasonable doubt and if two views are possible from the evidence available on record, the one favoring the accused must prevail.

50. It is well settled that in criminal jurisprudence, the evidence of related or interested witnesses cannot be discarded merely on the ground of relationship. At the same time, the rule of prudence requires that such evidence must inspire confidence and withstand careful judicial scrutiny. The constitutional



guarantee of fair trial under Article 21 of the Constitution of India obligates the Court to ensure that conviction is not founded upon doubtful, wavering or embellished testimony. The presumption of innocence is not merely a procedural formality; rather, it constitutes a substantive component of criminal jurisprudence flowing from the constitutional mandate of life and personal liberty under Article 21. An accused does not carry the burden of proving innocence. The foundational burden always rests upon the prosecution to establish guilt beyond all reasonable doubt through cogent, reliable and unimpeachable evidence.

51. In the present case, the learned Trial Court noticed that substantial improvements were introduced during trial vis-à-vis the original prosecution version. Though the *fardbeyan* contains general allegations of firing by certain accused persons, the depositions made before the Court introduced further details regarding individual roles and exact manner of assault. Such improvements assume significance in a criminal trial where the liberty of individuals is at stake.

52. The learned Trial Court further found that allegations against several acquitted accused persons were omnibus in nature, primarily confined to exhortation and



surrounding the deceased while carrying firearms. No clear, specific and consistent overt act attributable to each of such accused persons emerged from the evidence. In offences involving unlawful assembly or common intention, mere presence at the place of occurrence, without reliable evidence establishing active participation or sharing of common intention beyond reasonable doubt, cannot automatically become the basis of conviction.

53. The constitutional courts, while dealing with criminal appeals against acquittal, are duty bound to preserve the delicate balance between the rights of victims and the fundamental rights of accused persons. The criminal justice system in India is not conviction-oriented but justice-oriented. The jurisprudential object is not to secure conviction at all costs, but to ensure that conviction follows only upon satisfaction of the judicial conscience through legally admissible and trustworthy evidence.

54. This Court is conscious that the occurrence resulted in loss of human life and that criminal law must respond sensitively to such grave offences. Yet, the solemn duty of a constitutional court is to ensure that conviction rests on legal proof and not on moral conviction alone. Between “may



be true” and “must be true”, the prosecution is required to traverse the entire distance by reliable evidence. If reasonable doubt persists, the benefit thereof must necessarily enure to the accused.

55. The learned Trial Court, after detailed appreciation of ocular and documentary evidence, found the prosecution version doubtful insofar as respondent nos.2 to 9 are concerned and consequently extended benefit of doubt to them.

56. This Court finds that the said view is a plausible and legally sustainable view emerging from the materials available on record and therefore does not warrant interference in an appeal against acquittal. In the considered opinion of this Court, the appreciation of evidence undertaken by the learned Trial Court cannot be termed arbitrary, capricious or perverse. The conclusions arrived at by the learned Trial Court constitute a reasonably possible view emerging from the evidence available on record.

57. Accordingly, keeping in view the settled principles governing interference in appeal against acquittal and the doctrine of double presumption in favour of the accused, this Court does not find any compelling or substantial reason to interfere with the judgment of acquittal dated 29.08.2018 passed



by the learned Additional District and Sessions Judge-VI, Buxar in Sessions Trial No.97 of 2012 arising out of Rajpur P.S. Case No.121 of 2011.

58. The appeal, being devoid of merit, is accordingly dismissed.

(Chandra Shekhar Jha, J.)

Bibek Chaudhuri, J.:- I agree.

(Bibek Chaudhuri, J.)

Rajeev/-

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