

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.48 of 1996

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Against the Judgment of conviction and the order of sentence dated 27.01.1996 passed Sri Devi Dayal Prasad, 9th Additional Sessions Judge, Ara, in Sessions Trial No. 96 of 1993, arising out of Tarari P.S. Case No. 60 of 1992.

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- 1. Jamindar Ram (Abated vide order dt. 25-02-2026) S/o Late Sheo Lochan Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur
- 2. Raja Ram (Abated vide order dt. 25-02-2026) S/o Late Sheo Lochan Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur
- 3. Chhauratan Ram S/o Raja Ram @ Ram Niwas Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur
- 4. Gorakh Ram S/o Dularchand Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur
- 5. Budhan Ram S/o Pannalal Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur
- 6. Chhatho Ram S/o Pannalal Ram R/o vill - Barakagaon, P.S.- Tarari, Distt.- Bhojpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with
CRIMINAL APPEAL (DB) No. 71 of 1996

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Pannalal Ram, son of Sheolochan Ram, Resident of Village – Barakagaon, P.S. Tarari, District – Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) No. 48 of 1996)

For the Appellant/s : Ms. Smriti Singh (Amicus Curiae)

For the Respondent/s : Mr. Sujit Kumar Singh, Addl. P.P.

(In CRIMINAL APPEAL (DB) No. 71 of 1996)

For the Appellant/s : Ms. Smriti Singh (Amicus Curiae)

For the Respondent/s : Mr. Sujit Kumar Singh, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE ALOK KUMAR



JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR)

Date : 10-08-2026

Heard Ms. Smriti Singh, learned *Amicus Curiae*
for the Appellants and Mr. Sujit Kumar Singh, learned counsel
for the State.

2. The present appeals have been preferred against the Judgment of Conviction dated 27.01.1996 and Order of Sentence dated 27.01.1996 passed by the learned 9th Additional Sessions Judge, Ara, in Sessions Trial No. 96 of 1993, arising out of Tarari P.S. Case No. 60 of 1992, whereby the appellants were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The appellants as well as other accused were also convicted under section 452 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for one year. In addition to the above, the appellant Panna Lal Ram (Appellant in CRIMINAL APPEAL (DB) No. 71 of 1996) was further sentenced to undergo R/I for one year under section 27 of the Arms Act.

3. The prosecution case, as unfolded in the fardbayan of the informant, Raj Kumari Devi, wife of Late



Triloki Ram, recorded at her residence by S.I. M.A. Khan O/C Tarai P.S., District- Bhojpur on 25.07.1992 at about 7:00 A.M., is that on the alleged night of occurrence Raj Kumari Devi was sleeping separately on a cot with her one year old child and her husband deceased, Triloki Ram was sleeping on a bed spread on the floor in the same room and one Diya was burning in the room and the door of the room was open due to intense heat. At around 12:15 at night, the accused (1) Panna Lal Ram S/o Shiv Lochan Ram, carrying a country-made small gun, (2) Chhathu Ram S/o Panna Lal Ram, carrying a fasuli [a type of axe], (3) Budhan Ram S/o Panna Lal Ram, carrying a fasuli, (4) Gorakh Ram S/o Dular Chandr Ram, carrying a pali [stick/rod], entered into her room. Thereafter, the accused Budhan Ram caught hold of both the legs of her husband, whereas the accused Chhathu Ram caught hold of both his hands upon which the informant Rajkumari Devi woke up as well, she further alleged that her husband, who was being held by the above-mentioned people, was trying to free himself and she even got up and wanted to go to her husband, but at that moment Chhathu Ram came and stood in front of the cot and said to her that if she got up, he would cut her with the “fasuli”. Out of fear, she lay back down on the cot. In the meantime she saw that the accused Panna Lal



Ram fired at the right side of the neck of her husband with his small country made gun and after doing so all the aforementioned accused escaped from the front door of the room. Thereafter, when she got down from the cot and rushed to her husband saw that he had a wound on his neck and was bleeding and within moments of struggling he breathed his last. Afterwards, she raised the alarm and as such from the nearby dhaba her father-in-law (P.W. 1) came and informed her that he was also confined in his Dhaba by the accused, Chhauratan Ram, Raja Ram and Jamindar Ram being armed with fasuli. It is further alleged that, on the alarm, her elder brother-in-law Krishna Ram also came running from the neighbouring house, and he said that while coming to her house he saw seven accused: (1) Panna Lal Ram (2) Chhathu Ram (3) Chhauratan Ram (4) Raja Ram (5) Jamindar Ram (6) Gorakh Ram & (7) Budhan Ram and that under the torch light he saw that all of them were running away while carrying a country-made small gun, fasuli etc. Upon hearing the commotion the neighbours also reached there. It is also alleged that there the reason behind the occurrence is the previous litigation between the parties.

4. On the basis of the aforesaid fardbayan, Tarari P.S. Case No. 60 of 1992, dated 25.07.1992, was registered



against the present appellants along with other co-accused persons for the offences punishable under Section 448, 341, 302, 34 of the Indian Penal Code (IPC) and Section 27 of Arms Act.

5. Upon completion of the investigation, the police submitted charge-sheet no. 60/92 dated 30.10.1992 against the present appellants along with other co-accused persons for the offences punishable under Sections 452/302/34 of the Indian Penal Code and Section 27 of the Arms Act.

6. Thereafter, the learned Chief Judicial Magistrate took cognizance of the offence on 16.11.1992 and then the case was committed to the Court of Sessions. Upon commitment on 22.02.1993, charges under Sections 452, 302 read with section 34 of IPC were framed against the appellants and other six co-accused persons in addition to this charges under section 27 of Arms was also framed against the appellant i.e., Panna Lal Ram. The charges were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

7. The prosecution, in order to substantiate its case, has examined as many as five witnesses and exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form.



List of Prosecution Witnesses:

Prosecution witness no.	Name of witness	Description
1.	Ram Janam Ram	Father of the deceased
2.	Krishna Ram	Brother of the deceased
3.	Ganga Ram	Villager (Seizure list witness)
4.	Upendra Ram	Villager (Seizure list witness)
5.	Murat Ram	Formal Witness

List of Exhibits on behalf of the prosecution:

Exhibit No.	Description of the Exhibit	Date/attested by
1	L.T.I. of Ram Janam Ram on Fardbayan	09.12.1993
2 to 2/1	Signature of witnesses on Seizure List	09.12.1993
3	Fardbayan	18.01.1996
4	F.I.R.	18.01.1996
5	Seizure List	18.01.1996
6	Post-Mortem Report	18.01.1996
7	Inquest Report	18.01.1996

8. After closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure on 18.01.1996. The appellants denied all incriminating circumstances appearing against them in the prosecution evidence and claimed innocence.

Submission on behalf of appellants

9. Learned *Amicus Curiae*, Ms. Smriti Singh, appearing on behalf of the appellants, has, at the outset, submitted that the unexplained delay in lodging the FIR gravely undermined the prosecution's case. Though the occurrence



allegedly took place on the night of 24th July 1992, the fardbayan was recorded only at 7:00 AM the next morning, and the FIR itself was not registered until 8:30 PM that day — despite the police station being barely 3 kilometers away — suggesting that the prosecution story was concocted after deliberation. She further contended that the investigative timeline discloses a glaring anomaly, as per her submission the FIR was ante-timed or the records tampered with.

10. It was next argued that the case was fatally undermined by the prosecution's failure to examine the informant, i.e., the sole purported eyewitness, depriving the defence of cross-examination and warranting an adverse inference. Reliance was placed on the judgment given in *Shivnath Prasad v. State of Bihar*, reported in *2008 (15) SCC 735, Para 3*. Learned counsel further argued that grave prejudice resulted from the non-examination of the Investigating Officer and the Medical Officer — the former foreclosing exposure of investigative lapses, the latter leaving the medical evidence uncorroborated. Reliance was placed on *Kapildeo Sinha v. Kirandeo Prasad & Anr.*, reported in *2008 (14) SCC 658*

11. It was also submitted that the allegations are



inherently improbable: PW1, though allegedly held captive by armed assailants, sustained no injuries, while PW2's claim to have identified all the accused by mere torchlight is rendered doubtful by the total absence of any Test Identification Parade. Learned counsel further pointed out that the investigation is vitiated by the failure to examine any independent witness, the case resting solely on interested and partisan testimony that lacks neutral corroboration.

12. Learned counsel highlighted that material contradictions between the depositions of PW1 and PW2 substantially erode their credibility, rendering their inconsistent accounts an unsafe basis for conviction. It was emphasized, further, that the prosecution case is colored by longstanding enmity, lending credence to the submission that the prosecution is retaliatory and malicious.

13. Lastly, it was submitted that the prosecution has failed to establish its case beyond reasonable doubt. Reliance was placed on *Shivaji Chintappa Patil v. State of Maharashtra, 2021 (5) SCC 626 (Paras 31–34)*, and *State of Punjab v. Kewal Krishan, 2023 (13) SCC 695 (Paras 18–23)*, for the proposition that courts must apply strict scrutiny to circumstantial evidence before basing a conviction thereon.



14. Finally, she concluded that the impugned judgment of conviction and order of sentence was fit to be set aside as the prosecution failed miserably to prove its case beyond reasonable doubt and the appellants were entitled to benefit of doubt and consequent acquittal.

Submission on behalf of the Respondents

15. *Per contra*, learned Additional Public Prosecutor, appearing on behalf of the State, while opposing the appeal, submitted that the learned trial court, after considering all the evidence on record and exhibits, has rightly convicted the appellants as the offences alleged against the appellants appear to be serious in nature. It is contended that the prosecution has succeeded in proving the charges beyond reasonable doubt. It was further submitted that any apparent contradictions and inconsistencies in the testimony of the prosecution witnesses are minor and trivial in nature, which do not affect the core of the prosecution case or the overall credibility of the witness. Such discrepancies, it is urged, are liable to be disregarded in the interest of justice.

16. Finally, he submitted that the impugned judgment of conviction and order of sentence do not suffer from any legal infirmity or irregularity warranting interference by this



Court in exercise of its appellants jurisdiction. The appeal is devoid of any merit and fit to be dismissed.

Conclusion

17. I have heard the parties and perused the materials available on records as well as lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

18. It would be apposite to discuss the oral/documentary evidence as available on record to re-appreciate the evidence for just and proper disposal of the present appeal.

19. PW-1 (father of the deceased), in his examination-in-chief, deposed that he knows and recognizes the complainant, Raj Kumari Devi (his daughter-in-law), and the accused in this case. The deceased, Triloki Ram, was his son. He identified the seven accused as Gorakh, Chhanvratan, Budhan, Chhatthu, Pannalal, Raja Ram, and Jimedar Raj. He further stated that the incident occurred approximately sixteen and a half months ago, around 12:30 AM. At that time, he was sleeping on a cot in his dhaba, while his son Triloki and his daughter-in-law were sleeping in the house. He woke up to the sound of a gunshot and heard his daughter-in-law shouting that



her husband had died, upon getting up, he saw the accused Rajaram, Jimedar, and Chhanvratan standing near him, each armed with a sickle (fasuli). He recognized them in the light of a burning lamp and a torch. These three accused threatened to kill him if he got up. Additionally, he saw Pannalal, Chhatthu, Budhan, and Gorakh leaving his daughter-in-law's room. Pannalal was armed with a country-made gun, while Chhatthu, Budhan, and Gorakh were armed with sickles. He also recognized these four in the light of the lamp and torch. All seven accused then fled the scene. He then stated that when he went into the house, he found his son Triloki dead, bleeding from a bullet wound on the right side of his neck, below the beard. His daughter-in-law informed him that Pannalal, Chhatthu, Budhan, and Gorakh had entered the house and that Pannalal had shot Triloki. He asserted that all seven accused collaboratively murdered his son. He then told that the Sub-Inspector (Daroga ji) arrived at their house at 7:00 AM, inspected the scene, and recorded his daughter-in-law's fardbayan (statement) in his presence. The Sub-Inspector read the statement aloud to them, after which both PW 1 and his daughter-in-law affixed their thumb impressions. PW 1 identified his thumb impression, which was marked as Exhibit –



1. The Sub-Inspector seized two blood-stained white rags/tattered clothes, a blood-stained green checked lungi, and blood-stained soil from the scene. The seizure list was prepared in front of two witnesses, Ganga Ram and Upendra Ram, who signed it in his presence. PW 1 recognized their signatures; Upendra Ram's signature was marked as Exhibit - 2, and Ganga Ram's signature was marked as Exhibit - 2/1. The Sub-Inspector then recorded PW 1's statement and sent Triloki's body to Arrah Hospital for a post-mortem. PW 1 confirmed that other witnesses also saw the incident and identified all the accused present in the court as the murderers of his son.

20. In his cross-examination by the prosecution, PW-1 stated that his village comprises people of all castes and is not a Naxalite area (lacking a police camp). He provided a detailed geographical location and noted a three-hand-span wide alley between his house and his elder son Krishna's house (which lies to the east of PW 1's house). He deposed his mud and tile house has an eastern exit with no door. It consists of two rooms: a northern room where he lives, and a western room with a door where his son lives. The courtyard measures four hands east-west and five hands north-south. He clarified that the complainant (his daughter-in-law) owns no land. He detailed



that his deceased son, Triloki, had been married twice (first in Katariyan, second in Muanv). The second marriage occurred two years after the first because Triloki did not like his first wife, who subsequently returned to her maternal home. The second marriage took place three years prior to the incident. Regarding his sleeping arrangements, PW 1 stated that the palani (thatched shed) he mentioned is actually his dhaba, which is located outside the main northern door. The dhaba has a tiled and bamboo roof, is enclosed by mud walls on three sides, and is open to the south. The roof slopes from a height of ten feet in the west to five feet in the east. He was sleeping in this dhaba on a cot measuring seven spans by five spans, laid north-south with his head toward the south. No one was sleeping in the second courtyard room.

21. He further deposed that on the night of the incident, the accused who surrounded him stood to the east of his cot, directly adjacent to it, with their faces uncovered. He remained in bed because they threatened him not to get up. He noted that the accused fled five minutes after the shooting. PW 1 stated that there was no lamp burning where he slept, but a small lamp (dhibri) was lit in Triloki's house, kept on a niche (takha) two fingers away from the wall (leaving no soot). Triloki



was sleeping in the middle of the room, positioned north-south with his head to the south, wearing only underwear (his lungi and vest were removed and placed near his head). Triloki's bedding was soaked in blood but not smeared. He noted that the accused fled through the east main door toward the south. He clarified his timeline, stating he had eaten at 6:00 PM, while his son and daughter-in-law ate around 8:00 PM. He smoked ganja and went to sleep. Because he had no watch, he could not specify the exact time but estimated the incident occurred at 12:00 AM. PW 1 stated that after the accused fled and his daughter-in-law raised an alarm (which he stated woke him up), neighbors gathered, including Ganga Ram, Itwaru Ram, Birbal Ram, Shivchand Ram, Kamlu Ram, Nageshwar Ram, and Upendra (Ganga and Upendra being witnesses). Immediately after, his brother Shivchand, his son Krishna, and the chowkidar Rameshwar went to the Tarari police station, which is less than a mile away. The police arrived at 7:30 AM. His daughter-in-law gave her statement twice: once that morning, and a second time eight days later when the Superintendent of Police (S.P.) visited. The Sub-Inspector also took statements from Krishna, Ganga, and Upendra. He noted that he did not hand his torch over to the Sub-Inspector.



22. He acknowledged that prior to this incident, the accused Pannalal had filed a criminal case (under Section 324/34) against PW 1, Ganga Ram, Krishna Ram, Ramji Ram, Etwaro Ram, Shivchand Ram, and Lakhvichand Ram for allegedly assaulting Raja Ram with a spear. This case was still pending. Due to their bail being canceled in that case, PW 1 and the others had spent 18 days in jail and were released on bail just eight to ten days before Triloki's murder.

23. In his cross-examination by the defence PW- 1, denied several suggestions made by the defense during cross-examination. He denied failing to tell the police about the specific weapons held by the accused, recognizing them by torch/lamp light, or that Pannalal shot his son while the others assisted in the murder. He denied that his son Triloki had a bad character, or that there was a dispute with his first wife's family over his character. He strongly denied that Triloki was actually murdered in a field (badhar) and his corpse subsequently moved inside the house. Finally, he completely denied framing the accused with a fabricated case due to the existing enmity, and denied giving false testimony before the court.

24. PW-2 (brother of deceased), in his examination-in-chief, deposed that he is acquainted with the informant, Raj



Kumari Devi, and the accused persons in the case. He stated that his brother, Triloki Ram, was murdered approximately one year and nine months prior to his testimony. On the night of the incident, at approximately 12:00 midnight, he was sleeping in his room when he awoke to noises made by his father and sister-in-law. Upon taking a torch and stepping outside, he identified several individuals in the torchlight, specifically Chhauratan Ram, Raja Ram, Gorakh, Jamindar, Pannalal, Chhathu, and Budhan. He testified that Pannalal was armed with a country-made gun, while the other individuals carried fasulis (a type of sickle). He discovered his brother, Triloki, lying dead in his room with a gunshot wound on the right side of his neck. Raj Kumari Devi informed him that Pannalal, Chhathu, Gorakh, and Budhan had committed the murder, with Pannalal firing the shot. He noted that his father had informed him that Raja Ram, Jamindar, and Chhauratan had restrained him (the witness's father). The witness confirmed that his statement was recorded by the Daroga ji (Police Sub-Inspector) and identified all seven accused persons present in the court.

25. In cross-examination, PW-2 stated that his father, had three brothers. He deposed that his father, Ram Janam Ram, had two sons: the witness himself and the deceased



(Triloki). He clarified that while he lived in the same house with his father and deceased brother, their eating arrangements were separate. However, the deceased and their father lived and ate together. The witness mentioned that his deceased brother had a son from his second wife.

26. He further testified that he lived in the southern room of the house with his family. His deceased brother lived in the western room with his wife and child, while his father lived in the dhaba. He described the dhaba as being located inside the main exit door. He confirmed that the main exit faces east. The witness stated that Lakhichandra Ram had three sons. He added that Shivchandra Ram has one son, who is still a child.

27. He also testified that LakhiChandra Ram and his sons, Suresh, Naresh, and Ramesh, arrived at the scene after the incident occurred. He saw the accused fleeing toward the east; their faces were not covered and he did not follow them. He affirmed that he had informed Darogaji about seeing the accused.

28. PW-2 recounted that his sleep was broken by the sound of gunfire and screaming of his sister-in-law. He stated that he immediately went outside upon hearing the scream. He testified that the dead body was lying inside the



house, positioned flat on its back (supine), with the feet pointing north and the head pointing south. Regarding the deceased's clothing, he initially stated that his brother was wearing a white checked lungi. He subsequently corrected this, stating that the deceased was wearing a purple checked lungi, black briefs (kachha), and a black vest. He noted there was nothing placed near the head of the deceased. He clarified that the deceased had been sleeping on the ground on top of two ledras (mattresses), while the deceased's wife had been sleeping on a cot. The witness observed that a single bullet had struck the right side of the deceased's neck and exited through the back. He testified that there was no bullet hole in the ledra (mattress) or in the ground, but blood had pooled on both surfaces.

29. The witness deposed that he went to sleep between 8:00 PM and 9:00 PM on the night of the incident. He stated that his deceased brother also went to bed between 8:00 PM and 9:00 PM, and fell asleep after the witness had already gone to sleep. He testified that the accused were running away, and he identified them in the light of his torch. He confirmed that he had informed the villagers about seeing the accused fleeing. Specifically, he stated that he told Suresh, Shivchandra, Upendra, Ganga and others that he had seen the accused running



away.

30. The witness stated that his house faces east. He added that his father's house is located within the same courtyard and faces south. He testified that his statement to the police was recorded at his doorstep. He noted that the statement of an individual whose name he did not know was recorded first, followed by his own statement. He further clarified that his father's statement was recorded before his own, and that no one else's statement was recorded at that time. He described that the ledra (mattress) in his brother's room was soaked with blood. He stated there were blood spatters on the ledra as well as inside the room, including on the walls. He also stated that there was no police camp in Barkagaon.

31. PW-2 further deposed that his deceased brother's first wife had left him and his brother married for the second time two to three years after his first wife left. He explicitly denied the suggestion that his brother had a bad character and that this was the reason his first wife left him. He stated that Barkagaon is a Naxalite area. He testified that the second wife of the deceased does not own any agricultural field near the place of occurrence.

32. PW-2 confirmed that he had gone to the police



station and stated that the Daroga (Police Sub-Inspector) seized soil, a ledra (quilt), a ganji (vest), a lungi, and other items. He specified that the police scraped and collected the soil from the house. He testified that Srichand and Chowkidar Tapeswar Ram accompanied him to the police station. He added that he went to the police station at 6:00 AM and noted that the journey takes approximately 10 minutes.

33. The witness asserted that he had informed the police that Pannalal was carrying a country-made gun in his hand. He denied the defense's suggestion that he had not told the police about the blood flowing from the country-made gunshot wound on the right side of his brother's neck. He also denied the suggestion that he had not told the police that his father informed him about Rajaram, Jamindar, and Chhauratan restraining him (the father). He explicitly denied giving false testimony in court. Furthermore, he vehemently denied the defense's suggestions that the deceased, Triloki, had a bad character; that he had an ongoing dispute with his first wife's family; that he was murdered elsewhere due to his bad character and his body was subsequently brought into the room; and that the accused were falsely implicated due to an old, ongoing case against them.



34. PW-3 (Seizure Witness), in his examination-in-chief, deposed that on July 25, 1992, at approximately 8:45 AM, the Sub-Inspector (Daroga) of the Tarari Police Station visited the house of Ram Janam Ram. He stated that, in his presence, the police seized two plain white ledras (mattresses) and one green lungi, all of which were stained with blood. He deposed that the police also took custody of the dead body of Triloki Ram. He further noted that the police seized blood-stained earth from the scene. The witness confirmed that a seizure list was prepared by the police in his presence, which bears his signature and had been previously marked as Exhibit 2/1.

35. In cross-examination, PW-3, clarified that there were indeed two ledras, and both were white in color. He observed that blood was smeared all over the ledras and noted that the blood on them was still wet. He stated that, in contrast, the blood found on the seized earth was dry. He concluded his testimony by confirming that the seized lungi was stained with blood and was completely drenched in it.

36. PW-4 (Seizure Witness), in his examination-in-chief, deposed that on July 25, 1992, at approximately 8:45 AM, he was present at the house of the deceased, Triloki Ram. He stated that the Sub-Inspector (Daroga) of the Tarari Police



Station seized two white blood-stained ledras (mattresses), one blood-stained checked lungi (green coloured), and blood scraped from the ground, in his presence. He testified that the police prepared the seizure list in his presence and made him a witness to it. He identified his signature on the seizure list, noting that it had already been marked as Exhibit 2. He added that he had also seen the dead body of Triloki Ram.

37. In his cross-examination, PW-4, testified that he went to the scene of the incident after the police had arrived. He affirmed that he affixed his signature to the document voluntarily. He specified that he signed the seizure list at a spot 10 feet to the east of the dead body. He concluded by stating that he had gone to the scene upon hearing the commotion and he also deposed that the Police Sub-Inspector (Daroga) did not record his statement after that.

38. PW-5 (Formal Witness), in his examination-in-chief deposed that he recognizes the fardbayan (statement), which is in the handwriting and signature of the then Sub-Inspector (S.I.) Mahmood Anwar Khan, who was the Station House Officer of Tarari. This document was subsequently marked as Exhibit 3. He further identified the formal First Information Report (FIR), stating that it is also in the



handwriting and signature of Anwar Khan. This was marked as Exhibit 4. He testified that he recognizes the seizure list, which is in the handwriting and signature of Munshi Mahmood Anwar Khan. This was marked as Exhibit 5. He identified the post-mortem report, noting that it was prepared using a carbon process and is in the handwriting and signature of Dr. Vijay Raushan from Sadar Hospital, Ara, which he recognizes. This document was marked as Exhibit-6. He concluded his chief examination by identifying the inquest report (mrityu samiksha report), confirming it is in the handwriting and signature of Mahmood Anwar Khan, which he recognizes. This was marked as Exhibit 7.

39. In his cross-examination, PW-5, admitted that the fardbayan was not written in his presence. He further stated that he does not have any personal knowledge regarding the facts written in it. He testified that the formal FIR was also not written in his presence. He admitted that the seizure list, post-mortem report, and inquest report were not prepared or written in his presence either. He clarified that he had never worked in the office alongside the Daroga (Sub-Inspector), nor had he worked with the doctor. He concluded by stating that he possesses no personal knowledge concerning the post-mortem.



40. Having carefully examined the entire evidence available on record, this Court finds that conviction was based on the testimony of PW1 and PW2 who are father and brother of the deceased respectively. The PW1 and PW2 admittedly are not eyewitnesses to the actual assault and their evidence is confined to having seen the appellants mainly away from the place of occurrence after hearing the gunshots.

41. The principal question as discussed earlier for determination is whether the prosecution has succeeded in proving beyond reasonable doubt, that it was the appellants who are responsible for the deceased's death.

42. It is significant to note that Raj Kumari Devi, the informant, admittedly the only person who witnessed the actual assault upon her husband from within the room, has not been examined as a witness at the trial. Her fardbayan forms the very foundation of the prosecution case — every other witness merely repeats what the informant had told them about the occurrence. Her non-examination, without any explanation whatsoever on record, deprives the defence of the opportunity to test the foundational account of the occurrence through cross-examination, and squarely attracts the principle laid down by the Hon'ble Supreme Court in *Takhaji Hiraji v. Thakore Kubersing*



Chamansing, (2001) 6 SCC 145, wherein it was held under para 19, which reads as under:

“if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case”

(Emphasis Supplied)

43. It is important to point out that there is material contradiction in the deposition of PW-1 and PW-2. The PW-1 in paragraph 8 of the deposition has described the place of occurrence by giving the topography of the place. As per his statement, the second room of the house was vacant, whereas PW-2 in paragraphs 1 and 4 of his deposition has stated that he was sleeping in the southern room of the house in the same courtyard. This is a major contradiction and leads to a doubt regarding the presence of P.W-2. Further, there is also contradiction in the statement of P.W-1 in respect of the identification of the accused as in para - 1 he deposes that he



identified the 3 accused in light of diya and torch, whereas in para - 10 of his deposition he states that there was no diya in the room where he was sleeping.

The above contradiction in the deposition of the PW1 and PW2 leads to doubt about the prosecution story. Needless to say, PW1 and PW2 happens to be the relative of the deceased and related witness their deposition cannot be considered as gospel truth in view of the contradiction in deposition.

44. The above-mentioned infirmity is compounded by the fact that neither the Investigating Officer nor the Doctor who conducted the post-mortem examination were examined and as such neither has stepped into the witness box, and no explanation for their absence appears anywhere on the record. It is pertinent to note that the non-examination of the Investigating Officer has deprived the defence of any opportunity to confront the witnesses with their statements recorded under Section 161 of Cr.P.C., to test the manner and timing of the seizure. The non-examination of the doctor leaves the post-mortem findings, i.e., Exhibit 6, unproved except through the formal witness, PW-5, who candidly admitted that he had no personal knowledge of its contents. This very combination of defects was considered fatal



to the prosecution in *Kapil Deo Sinha v. Kirandeo Prasad & Anr. (2008 (14) SCC 658)*, where the Hon'ble Supreme Court upheld an acquittal recorded by a Division Bench of this Court on the ground that the non-examination of the Investigating Officer and the doctor, taken together with unreliable ocular evidence, caused serious prejudice to the accused. Because of the nature of evidence, which is available on record, the least, which ought to have been done by the learned Trial Court, was to accord the benefit of reasonable doubt to the appellants inasmuch as I am clearly of the view that in the light of the evidence on record, which I have discussed above, it was dangerous to convict the appellants. The benefit of such a situation ought to have been given to the appellants.

The Infirmities in the Prosecution's Case which Lead to Reasonable Doubt are flaws that fail to meet the "beyond a reasonable doubt" standard. "Beyond a reasonable doubt" is the ultimate standard of proof in the legal system. It means that the prosecution must prove guilt conclusively, such that no reasonable or rational person could arrive at another explanation based on the evidence.

The ultimate benchmark of "beyond a reasonable doubt" upholds the presumption of innocence in the legal



system that we follow. The presumption of innocence is the absolute bedrock of a fair criminal justice system. It protects individuals from wrongful, arbitrary imprisonment by requiring the State to bear the burden of proof and to establish guilt beyond a reasonable doubt, rather than placing the burden on the accused to prove his innocence. It is pertinent to discuss here the landmark judgment of ***Kali Ram v. State of Himachal Pradesh, (1972) 2 SCC 808***, which is a cornerstone of Indian criminal jurisprudence for its emphasis on the ‘presumption of innocence’ and ‘the strict standard of proof in criminal trials’, and hence one of the most celebrated judgments on the ‘benefit of doubt’ and the ‘presumption of innocence’ in Indian legal history. The said judgment was rendered by a three-Judge Bench of the Hon'ble Apex Court, wherein, in para 25, the Court held that:

“Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly



*been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of **State of Punjab v. Jagir Singh 1974 3 SCC 227** a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of*



witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures”.

(Emphasis Supplied)

45. Further even more doubt is cast upon the identification of the accused by the fact that PW-1 and PW-2 claim to have recognized all seven accused persons in the light of a diya, and a torch, in the middle of the night and in circumstances of considerable confusion. This doubt is deepened, rather than allayed, by the admitted history of prior litigation as PW-1 himself had conceded that a cross-case was instituted earlier by the appellant, Panna Lal Ram, against PW-1 and others, in which they had remained in custody for about 18 days and had obtained bail only shortly before the present occurrence. This constitutes a live and proximate motive for false implication, one that assumes even greater significance where, as in the present case, the identification of the accused is not otherwise free from doubt.

Prior Enmity, as is well settled, is a double-edged weapon — it may furnish motive for the offence, but equally



furnish motive for false implication, and both possibilities must be weighed with equal circumspection. The Hon'ble Supreme Court, in *Aslam alias Imran v. State of Madhya Pradesh, 2025 INSC 403*, while acquitting the accused of a charge under Section 302 IPC, held:

"It is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellant being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellant is entitled to benefit of doubt."

(Emphasis Supplied)

Given the proximate cross-case and custody suffered by PW-1 at the appellant's instance, coupled with the doubt already noted regarding identification, the possibility of false implication cannot be ruled out. This circumstance, too, ensures to the benefit of the appellants.

46. Having examined the evidence as a whole, this Court finds that the prosecution case suffers from a number of defects, each significant in itself and, when taken together, can be fatal to the conviction: (i) the informant, being the sole



witness to the actual assault, has not been examined; (ii) The two available witnesses, PW-1 and PW-2, contradict each other on material particulars, thereby rendering their testimony unreliable and unsafe to found a conviction thereon. (iii) neither the Investigating Officer nor the post-mortem doctor has been examined, without any explanation whatsoever; and (iv) the identification of the accused, resting on torch-light and diya; and (v) proximate motive for false implication based on prior enmity stands admitted on record.

47. In the facts and attending circumstances of the present case, the appellants ought to have been accorded benefit of reasonable doubt in as much as the prosecution had failed, in the light of the discussion of the evidence on record, to bring home the charges against the appellants beyond all reasonable doubt.

48. In the result and for the foregoing reasons, this appeal is allowed. The impugned conviction of the appellants and the sentence passed against them by the judgment and order, under appeals are hereby set aside. The Appellants are not found guilty of the offence, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

49. Since the appellants are on bail, their bail bonds



are hereby cancelled and their sureties shall stand discharged.

50. I put on record words of appreciation for the able assistance rendered by Ms. Smriti Singh, learned *Amicus Curiae*, to this Court in arriving at the proper conclusion for deciding the instant appeal. We direct the High Court Legal Services Authority to pay an amount of Rs. 10,000/- to Ms. Smriti Singh, learned *Amicus Curiae*, for service rendered by her.

51. The Registry shall, forthwith, send a copy of this Judgment and order to the Learned Trial Court along with the Lower Court's Records.

(Alok Kumar, J.)

Anil Kumar Sinha, J.:– I agree.

(Anil Kumar Sinha, J.)

Manish/-

AFR/NAFR	A. F. R.
CAV DATE	29.06.2026
Uploading Date	10.08.2026
Transmission Date	10.08.2026

