

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 462 of 2025

Arising Out of PS. Case No.-7 Year-2022 Thana- BIKRAMGANJ District- Rohtas

Manju Devi W/o Arun Kumar Singh @ Arun Singh R/o Village- Kharahatand,
PS- Semri, Dist- Buxar At present R/o vill - Mathurapur Colony, ward no. 2,
Dalmia Nagar, P.S. - Dalmia Nagar, District- Rohtas

... .. Appellant/s

Versus

1. The State of Bihar
2. Rockey @ Rohit Kumar S/o Sri Angad Prasad R/o vill - Dolkhili, P.S. -
Durgawati, District- Kaimur
3. Prince Kumar S/o Sri Nand Yadav @ Nagendra Prasad Singh R/o Mohall -
Dalmiyanagar, P.S.- Dehri, District - Rohtas

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr. Babu Nandan Prasad, Adv.
For the State	:	Mr. Satya Narayan Prasad, A.P.P.
For the Respondent No. 2	:	Mr. Sanjay Kumar Tiwari, Adv.
For the Respondent No. 3	:	Mr. Dhaneshwar Prasad Gupta, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 17-12-2025

The present appeal has been preferred under Section 413 of the Bhartiya Nagrik Suraksha Sanhita, 2023 against the judgment of acquittal dated 30.10.2024, passed by the learned Court of District and Additional Sessions Judge-XIX, Sasaram, Rohtas in Sessions Trial No. 527/2022 (arising out of



Bikramganj P.S. Case No. 7/2022), whereby and whereunder the Respondents No. 2 and 3 have been acquitted by the learned Trial Court from the charges levelled against them under Section 307/34, Section 302/34 and Section 120(B) of the Indian Penal Code (hereinafter referred to as “the I.P.C.”) and Section 27 of the Arms Act.

2. By an order dated 17.9.2025, the records of the learned Trial Court were called for, which have duly been received on 08.10.2025.

3. The case of the prosecution in brief, as per the *fardebayan* of Himanshu Kumar @ Pradeep Rao recorded by the Police Inspector-cum-S.H.O., Bikramganj Police Station at 9.05 am on 07.1.2022 at Karuna Hospital I.C.U., Bikramganj, Ara Road is that on the previous day i.e. 06.1.2022 at about 7:30 in the evening, when he was at his house situated at Krishnanagar Ward No. 7, Bikramganj, his deceased friend, namely Rahul Kumar @ Banti, who was resident of the lane, situated in front of Askamini Temple Gate, had come to call him, whereafter he had informed his mother and had gone along with him towards his house and when they had reached near Modern I.T.I, two friends of the deceased, namely Nitish Kumar and Rockey Kumar (Respondent No. 2) had met them, whereupon the



deceased Banty had introduced him to the said Nitish and Rockey (Respondent No.2). The informant has further stated that all the said four persons had then gone to the vacant flat, situated below the flat / house of Banty and started talking to each other. At 9:30 pm, the mother of the informant had rang him and told him to come back to his house but when he started going back, the other persons sitting there did not allow him to go and told him to sleep there. Nitish and Rockey had brought *lassi* along with them, which was consumed by all the four persons and then they started talking to each other, whereafter Banty and the informant fell asleep at about 10:00 in the night. Thereafter, at about 12:30 in the night the informant woke up from sleep and found blood on his face, whereupon he lit his mobile and saw that blood was oozing out from his head and there was one big wound on the head of Banty as also lot of blood had spread near the pillow, whereafter he had tried to wake up Banty, but he did not get up and at that time, Nitish Kumar and Rockey Kumar (Respondent No. 2) were not present, the door was open and they had fled away. The informant had then gone upstairs and raised an alarm and told the mother and sister of Banty about Nitish and Rockey (Respondent No. 2) having shot Banty and fled away.



Thereafter, the relatives of Banty had taken Banty and the informant in an ambulance to Karuna Hospital and had got him admitted, where he is being treated as also he came to know there that Banty has died. The informant has stated that he is of the belief that Nitish Kumar and Rockey Kumar have shot him and injured him as also killed Banty.

4. On the basis of the said *fardebayan* of the informant, namely Himashu Kumar @ Pradeep Rao, Bikramganj P.S. Case No. 7/2022 was registered on 7.1.2022 at 9:45 am under Section 307/302/120(B) of the I.P.C. and Section 27 of the Arms Act against Nitish Kumar and Rockey Kumar (Respondent No. 2). The police, upon investigation had submitted charge-sheet dated 5.4.2022 against Nitish Kumar @ Shubham @ Bholu & Rockey @ Rohit Kumar (Respondent no. 2) as also against one non-F.I.R. named accused, namely Prince Kumar (Respondent No. 3) under Section 307/302/120(B) I.P.C. & Section 27 of the Arms Act. Thereafter, the case was committed to the Court of Sessions, vide order dt. 30.9.2022, passed by the Ld. Additional Chief Judicial Magistrate-II, Bikramganj & was numbered as Sessions Trial No. 527/2022. The charges were framed by the Ld. Trial Court against the Respondent Nos. 2 & 3 on 19.11.2022, to which they pleaded not guilty and claimed to be tried.



5. During the trial, the prosecution has examined altogether four witnesses i.e. P.W.1 Vaibhav Kumar, P.W.2 Chandani Kumari @ Pooja Kumari (sister of the deceased), P.W.3 Muskan Kumari (sister of the deceased) and P.W.4 Kushum Kumar Keshari (Investigating Officer).

6. The prosecution, by way of documentary evidence, had proved the following documents, which were marked as Exhibits during the course of the trial.

Exhibit Number	Description
P.W.1	Signature of P.W.1 on his statement recorded under Section 164 Cr.P.C on 10.01.2022
P.W.2	Attestation on the fardbeyan
P.W.3	Attestation of S.H.O. on fardbeyan
P.W.4	The inquest report of the deceased
P.W.5	Seizure list of suspected blood, fired bullets and two country made pistol from the place of occurrence
P.W.6	I-phone of Respondent No. 3.
P.W.7	Charge-sheet bearing S.L.No. 130/2022, filed against accused persons.

7. We find from the records that despite notice, the Doctor had failed to appear before the Ld. Trial Court on several dates, whereupon the learned counsel for the defence had submitted before the learned Trial Court that accused is languishing in custody since the month of January, 2022 and except Doctor, the



prosecution's evidence is over, whereupon the learned Trial Court, vide order dated 7.10.2024 had issued fresh non-bailable warrant against the Doctor and had directed the S.H.O to file an execution report by next date of hearing, failing which the Court would take action against him as per law and the case was directed to be listed on 19.10.2024 for evidence, however the prosecution filed a petition on the said date to close its case as all the prosecution witnesses on fact have turned hostile and there is no use of prolonging the case, inasmuch as the fate of the case is clear and the said petition was allowed by the learned Trial Court by an order dated 19.10.2024 and the case of the prosecution was closed. Thereafter, the statement of Respondents No. 2 and 3 were recorded under Section 313 Cr.P.C. on 22.10.2024 for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed to be innocent.

8. The learned Trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial has acquitted the accused persons i.e. the Respondents No. 2 and 3, by observing that all the non-official witnesses adduced by the prosecution have turned hostile, no postmortem report has been exhibited, which raises a presumption against the prosecution under



Section 114(g) of the Indian Evidence Act, 1872, the occurrence as alleged in the *fardbeyan* / F.I.R. is wholly doubtful, as far as the connection of the accused persons with the alleged crime is concerned, even the factum of the deceased having died on account of bullet injuries is doubtful as also the factum of the accused persons having fired bullet upon the deceased is also doubtful, hence the prosecution has miserably failed to prove the case beyond all reasonable doubts.

9. The learned counsel for the appellant has submitted that the learned Trial Court has erred by not ensuring examination of two important witnesses, i.e. the Doctor and the mother of the deceased, namely Manju Devi, who is also the appellant in the present case. Reference has also been made by the learned counsel for the appellant to paragraphs no. 15 and 16 of the evidence of P.W.2, namely Chandni Kumari to submit that when the said witness was asked by the Court that if guarantee of safety is given to her whether she would speak the truth, whereupon the said witness had become silent and her eyes got filled with tears, nonetheless she said that whatever she has disclosed is the truth & further upon the Court having suggested that she is not doing justice with her brother, the said witness kept quiet, but shook her head to say 'No'. It is contended that



the Investigating Officer has conducted defective investigation. Thus, it is submitted that the judgment of acquittal rendered by the Ld. Trial Court is erroneous and fit to be set aside.

10. *Per contra*, the learned counsel for the State and the learned counsel appearing for the Respondents No. 2 and 3 have jointly submitted that there is no perversity and the view taken by the learned Trial Court cannot be said to be completely unsustainable and not a probable view, apart from the fact that the prosecution has failed to prove the guilt of the accused persons before the learned Trial Court.

11. Having heard the learned counsel for the appellant, the learned A.P.P. for the State and the learned counsel appearing for the Respondents No. 2 and 3, we find that this Court is required to consider as to whether the impugned judgment of acquittal requires any interference by this Court. We have perused the impugned judgment of the learned Trial Court, the entire materials on record including the evidence led by the prosecution and have given a thoughtful consideration to the rival submissions made by the learned counsel for the parties. We find that four witnesses have been examined by the learned Trial Court, however all the non-official prosecution's witnesses i.e. P.W.1 Vaibhav Kumar, P.W.2 Chandani Kumari @ Pooja



Kumari and P.W.3 Muskan Kumari have been declared hostile. While P.W.1 Vaibhav Kumar has stated in his evidence that neither he has got any knowledge about the occurrence in question nor the Police Inspector had recorded his statement regarding the occurrence. P.W.2 Chandani Kumari @ Pooja Kumari has stated in her cross-examination that she had not seen anyone firing gunshot on her brother and the informant had not told them about the person, who had fired gunshot on the deceased as also she cannot say as to on the fateful day how many people were sleeping downstairs. P.W.2 Chandani Kumari @ Pooja Kumari has also stated that they had heard the sound of gunshot firing at about 11:00 pm in the night and after 10 minutes of the same, the informant (Himanshu) had come to meet them, however he was not hit by gunshot, but blood was oozing out of his head and he had not gone to the hospital along with them. In paragraph no. 13 of her cross-examination, P.W.2 Chandani Kumari @ Pooja Kumari has stated that the informant had told her that the persons, who had fired gunshot on her brother had hit him on his head by revolver resulting in blood oozing out of his head, however he had not disclosed the name of the person, who had hit him.

12. P.W.3 Muskan Kumari has also been declared hostile and



she has stated in her answer to the Court question that she neither knows nor recognizes Rockey and Nitish. In paragraph no. 8 of her cross-examination, P.W.3 Muskan Kumari has stated that she suspects that the informant (Himanshu) had killed his brother since he had not come to give his statement on the date of occurrence. As far as the Investigating Officer, namely Kusum Kumar Keshari (P.W.4) is concerned, he has though proved the fardbeyan, F.I.R., inquest report, seizure list of suspected blood sample, fired bullet and two country made pistol as also one I-phone belonging to Prince Kumar (Respondent No. 3) and charge-sheet dated 5.4.2022, however in cross-examination, P.W.4 Kusum Kumar Keshari has stated that neither he had recorded the statement of the neighboring persons staying near the place of occurrence nor he had seized anything from the place of occurrence. In paragraph no. 14 of his cross-examination, P.W.4 Kusum Kumar Keshari has stated that the informant, namely Himanshu Kumar and the deceased Rahul Kumar used to send vulgar WhatsApp messages to sister of Prince (Respondent No. 3) and the informant is having a criminal antecedent.

13. We find, upon having examined the evidence led by the prosecution that none of the witnesses are eye-witnesses to the



alleged occurrence and the non-official prosecution's witnesses i.e. P.W.1 Vaibhav Kumar, P.W.2 Chandani Kumari @ Pooja Kumari and P.W.3 Muskan Kumari have turned hostile, nonetheless a bare perusal of the evidence of P.W.2 Chandani Kumari @ Pooja Kumari and P.W.3 Muskan Kumari would show that though the informant was witness to the firing of gunshot on the deceased and has alleged that he was assaulted by butt of country made pistol, but he did not disclose to the said witnesses, the name of the person who had either shot the deceased or hit him by the butt of country made pistol, thus the likelihood of the informant not speaking the truth cannot be ruled out. In fact, P.W.3 Muskan Kumari has suspected the informant to have killed her brother, which also stands substantiated from the disclosure made by the Investigating Officer i.e. P.W.4, who has stated in paragraph no. 14 of his cross-examination that the informant and the deceased used to send vulgar *WhatsApp* messages to the sister of Prince. Another aspect of the matter is that it is difficult to envisage that in case the accused persons had killed the deceased and hit the informant by butt of the pistol then why they had left two country made pistol at the place of occurrence while fleeing away and secondly, as to why they had left the informant alive



to become a witness to their crime. Thus obviously, there is something more than what meets the eye and the informant appears to have cooked up a story, far from the truth and has in the process suppressed the actual version, pertaining to the mode and manner of occurrence. As far as the Respondent No. 3, namely Prince Kumar is concerned, his name nowhere finds place in the entire *fardebayan* of the informant, which has led to registration of the F.I.R., apart from the fact that even the witnesses examined by the prosecution have not named him much less the Respondent No. 2 Rockey @ Rohit Kumar, hence there is virtually no evidence on record, which may prove the guilt of the Respondents No. 2 Rockey @ Rohit Kumar and the Respondent No. 3 Prince Kumar, beyond all reasonable doubts.

14. It is a well-settled law that unless and until the finding of the learned Trial Court is found to be perverse or illegal / impossible, it is not permissible for the appellate Court to interfere with the same and in order to reverse a finding of acquittal, the view taken by the learned Trial Court must be held to be completely unsustainable and not a probable view. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of *Nikhil Chandra Mondal vs. State of West Bengal*, reported in (2023) 6 SCC 605 as also



to the one rendered by the Hon'ble Apex Court in the case of ***Vijay Singh @ Vijay Kumar Sharma vs. The State of Bihar***, reported in ***2024 SCC Online SC 2623***.

15. It would be apt to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Rajesh Prasad vs. State of Bihar & Anr.***, reported in ***(2022) 3 SCC 471***, paragraphs No. 22, 25, 27 to 29 and 31 whereof are reproduced herein below:-

“22. In Atley v. State of U.P. [AIR 1955 SC 807], the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715]:-

“9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : AIR 1934 PC 227 (2)] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons” are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to



come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

The need for the aforesaid observations arose on account of observations of the majority in Aher Raja Khima v. State of Saurashtra [AIR 1956 SC 217] which stated that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial court was wrong.

25. *This Court in Ramesh Babulal Doshi v. State of Gujarat [(1996) 9 SCC 225], spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:-*

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.”

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.



27. This Court in Ramesh Babulal Doshi v. State of Gujarat [(1996) 9 SCC 225] observed vis-à-vis the powers of an appellate court while dealing with a judgment of acquittal, as under:

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.

28. This Court in Chandrappa v. State of Karnataka [(2007) 4 SCC 415], highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.

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 v. State of Karnataka, (2007) 4 SCC 415]:-

“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.

31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarised as follows:



31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai, (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P.S.R. Sadhanantham, (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh, 1991 Supp (1) SCC]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse:

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. v. Shanker, 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of



relatives, living in the same house as the victim, were discounted on the ground that they were “interested” witnesses.[State of UP v Hakim Singh, (1980)3SCC 55]

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam v. P.S.R. Sadhanantham, (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of “implicit proof” rather than that of “proof beyond reasonable doubt” and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram, (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish “motive”. [State of



A.P. v. Bogam Chandraiah, (1986) 3 SCC 637]

31.2.2. *Where acquittal would result is gross miscarriage of justice:*

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh, 1989 Supp (1) SCC 288] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu, (1983) 3 SCC 502].

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610]

16. In the case of ***Babu Sahebagouda Rudragoudar & Others vs. State of Karnataka***, reported in ***(2024) 8 SCC 149***, the Hon'ble Apex Court, after referring to the relevant precedent, has observed in paragraph No. 41, 41.1 to 41.3 and 42 as follows:-

“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.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.”

17. Now coming back to the present case, we find upon having examined the evidence led by the prosecution that none of the witnesses are eye-witness to the alleged occurrence and the non-official prosecution's witnesses i.e. P.W.1, P.W.2 and P.W.3 have been declared hostile, nonetheless a bare perusal of the evidence of P.W.2 Chandani Kumari and P.W.3 Muskan Kumari would show that though the informant was witness to the firing of gunshot on the deceased and has alleged that he was assaulted by butt of country made pistol, but he did not disclose to the said witnesses, the name of the person who had either shot the deceased or hit him, thus the informant has suppressed the actual version, pertaining to the mode and manner of occurrence resulting in the fardbeyan / F.I.R. being rendered wholly doubtful. In fact, P.W.3 Muskan Kumari, in her evidence has stated that she suspects that the informant has



killed her brother. We also find that no postmortem report has been exhibited, which raises a presumption against the prosecution under Section 114(g) of the Indian Evidence Act, 1872 and moreover, even the factum of the deceased having died on account of bullet injuries has not stood proved in absence of there being any evidence on record to the said effect. As far as the Respondent No. 3, namely Prince Kumar is concerned, his name is nowhere to be found in the entire fardbeyan, apart from the fact that even the witnesses who have been examined by the prosecution have not named either the respondent No. 2 or the respondent No. 3 to be perpetrators of crime, hence there is no evidence on record, which goes to prove the guilt of the Respondents No. 2 Rocky @ Rohit Kumar and the Respondent No. 3 Prince Kumar, beyond all reasonable doubts.

18. Therefore, we find that neither the finding of the learned Trial Judge is either perverse or impossible nor there is any omission to consider material evidence on record nor the findings of the learned Trial Court are manifestly erroneous much less demonstrably unsustainable nor there are substantial and compelling reasons much less good and sufficient grounds for interfering with the impugned judgment of acquittal.



19. Having regard to the facts and circumstances of the case and for the foregoing reasons, we do not find any illegality or perversity in the findings recorded by the learned Trial Court in the impugned judgment dated 30.10.2024, hence the present appeal is dismissed.

20. Let the learned Trial Court records be sent back to the concerned Court.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.12.2025
Transmission Date	17.12.2025

