

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION**

**Appellate Side**

**Present:**

**The Hon'ble Justice Rajasekhar Mantha**

**And**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.A. 9 of 2018**

**Babai Sk. @ Papai Sk.**

**Versus**

**The State of West Bengal**

**For the Appellant** : Mr. Saswata Gopal Mukherji, Sr. Adv.  
Mr. B. Samanta, Adv.  
Mr. Debapriya Samanta, Adv.  
Mr. S. Palit, Adv.  
Mr. Samrat Ghosh, Adv.  
Mr. Akash Kumar Chakraborty, Adv.  
Ms. Riya Saha, Adv.

**For the State** : Mr. Debasish Roy, Ld. P.P.  
Ms. Zareen N. Khan, Adv.  
Mr. Md. Kutubuddin, Adv.

**Heard on** : 09.12.2025

**Judgment on** : 11.12.2025

**Ajay Kumar Gupta, J:**

1. The appellant has assailed the judgment and order of conviction dated 06.09.2017 and 07.09.2017 passed by the Learned Additional Sessions Judge, Fast Track Court-I, Lalbagh, Murshidabad in Sessions Trial No. 5(8) of 2015 in Session Case No. 43 of 2015 arising out of G.R. Case No. 82 of 2015.
2. By the said judgment and order, the Learned Sessions Judge convicted the appellant under Sections 324/326/307/302 of the Indian Penal Code, 1860 (in short 'IPC') and sentenced him to suffer rigorous imprisonment for life for the offence punishable under Section 302 of the IPC and to pay a fine of Rs. 5,000/- (Rupees Five Thousand) only, in default, he shall further undergo rigorous imprisonment for one month more. He was also sentenced to suffer rigorous imprisonment for life for the offence punishable under Section 307 of the IPC. Both sentences shall run concurrently. However, the Learned Judge did not pass any sentence for offences under Sections 324 and 326 of the IPC.
3. The brief facts of the case, essential for the purpose of proper and effective disposal of this case, are as under: -
  - a. On the night of 07.01.2015, at about 11:15 PM, the complainant, the complainant/ Nirmal Kumar Dey's son, Subham Dey @ Ganju and his employee Sattya Sarkar were returning home after closing

the shop nearby Lalbagh Hospital. The appellant herein shot Subham Dey @ Ganju and Sattya Sarkar. The complainant tried to apprehend the appellant, but he escaped, hitting him on his face.

- b.** Subham Dey @ Ganju and Sattya Sarkar were taken to the hospital, where the doctor pronounced that Subham Dey @ Ganju had died and Sattya Sarkar was referred to Berhampore hospital for better management. On 08.01.2015, at about 1.15 hours, the complainant lodged the written complaint before the Murshidabad police station, resulting in registration of Murshidabad P.S. Case No. 12 of 2015 dated 08.01.2015 under Sections 325/326/302 of the IPC and Sections 25/27 of the Arms Act, 1959 (in short 'Arms Act').
- c.** After the culmination of the investigation, the investigating officer submitted a charge sheet under Sections 324/326/307/302 of the IPC and Sections 25/27 of the Arms Act against the sole accused, Babai Sk. @ Papai Sk. The trial commenced after framing a charge against him under the aforesaid sections, where the appellant pleaded not guilty and claimed to be tried. After the conclusion of evidence of the prosecution, the appellant was examined under Section 313 of the Cr.P.C.
- d.** During the trial, in order to prove its case, the prosecution has examined 23 prosecution witnesses and also exhibited a number of

documents marked as Exhibit 1 to 16, as well as Materials as Mat I to XV, respectively. The trend of answers given by the appellant during examination under Section 313 of the Cr.P.C. was a total denial of the alleged offence and even the defence case, as appeared from the trend of cross-examination of the prosecution witnesses, that he is innocent and has been falsely implicated in this case. However, the defence has not examined any witness.

- e. The Learned Trial Court, after deliberation and analysis of the evidence brought on record by the prosecution and exhibits, found the appellant guilty of the offence punishable under Sections 302/307/324/326 of the IPC and sentenced as aforesaid.

#### **ARGUMENTS ON BEHALF OF THE APPELLANT**

- 4. Mr. Mukherji, learned senior counsel representing the appellant, vehemently argued and submitted as under:
  - a. It is contended that the Learned Trial Court has mechanically and whimsically overlooked the evidence of the prosecution and convicted the accused under the aforesaid sections. However, the learned Trial Court acquitted the appellant of the charges under Sections 25/27 of the Arms Act for want of necessary sanction. Nevertheless, it is submitted that the prosecution failed to establish that the firearm, allegedly recovered from a confined place, was the weapon used in the offence since, as per the

Ballistic report, the bullet recovered from the head of the deceased did not match with the firearm in question.

- b.** It was further submitted that the prosecution miserably failed to prove the nexus of the revolver with the crime. The revolver was allegedly recovered and seized from a concealed location, based on the appellant's disclosure under section 27 of the Evidence Act, 1872. The ballistic report categorically states that the bullet extracted from the victim's skull did not match the barrel or calibre of the recovered firearm. It unequivocally states that the fatal gunshot was not fired from the recovered revolver, which negates the evidentiary value of the theory of recovery. The report clearly indicates that the gunshot was not made from the said firearm, which was recovered and seized by the investigating agency.
- c.** It was next argued that the whole case of the prosecution is essentially based on the testimonies of two injured eye witnesses i.e. P.W 16 and P.W. 19, who were allegedly present at the place of occurrence i.e. near the shop of Nirmal Kumar Dey. The prosecution, however, has failed to establish the actual place of occurrence. There are discrepancies regarding the place of occurrence, casting serious doubt on the prosecution case. Moreover, P.W.16 and 19 made contradictory statements as regards the nature of injuries sustained, negating the reliability of

the testimonies. It is, therefore, the contention of the counsel for the appellant that in these circumstances, the benefit inevitably must go to the accused. Neither eye witnesses are at all reliable because they did not disclose the actual incident and suppressed many vital facts.

- d.** Further, it was submitted that the injuries suffered by P.W. 19 do not corroborate the prosecution's version. While both P.W. 16 and P.W. 19 deposed that the accused assaulted the latter with the butt of a firearm, the injury report shows that P.W. 19 suffered knife injuries on his face. This glaring inconsistency between the ocular testimony and medical evidence renders both witnesses wholly unreliable.
- e.** No knife was seized in the present case, despite medical evidence indicating injuries caused by a sharp cutting weapon.
- f.** Although P.W. 16 claimed that a bullet hit his right jaw and broke three teeth, medical examination revealed no bullet residue or corresponding injury, undermining the credibility of his testimony.
- g.** Prosecution also failed to seize or produce motorcycles, allegedly the complainant, his son and employee were about to leave the place of their business to their residence, further weakening the case of the prosecution.

- h.** Lastly, learned counsel emphasised that no independent witnesses have corroborated the prosecution case. Most of the witnesses declared hostile as such prosecution case should fail, and the impugned judgment and order of conviction are liable to be set aside.
- i.** The learned counsel has placed reliance on the following judgments to bolster his submission.
  - 1. ***Manjunath and others v. State of Karnataka***<sup>1</sup>
  - 2. ***Ram Narain Singh v. State of Punjab***<sup>2</sup>
  - 3. ***Naresh v. State of Haryana***<sup>3</sup>
  - 4. ***Puran Singh v. State of Uttaranchal***<sup>4</sup>

#### **ARGUMENTS ON BEHALF OF THE STATE**

- 5.** Per contra, the learned counsel appearing on behalf of the State countered the argument of the learned counsel appearing on behalf of the appellant and submitted that the prosecution has been able to bring the charges against the appellant. Two vital injured eyewitnesses deposed evidence against the appellant. Therefore, the Trial court rightly convicted and sentenced him accordingly. He

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<sup>1</sup> **2023 SCC OnLine 1421**

<sup>2</sup> **(1975) 4 SCC 497**

<sup>3</sup> **(2023) 10 SCC 134**

<sup>4</sup> **(2008) 3 SCC 795**

deserves such a sentence since he committed such a heinous offence, in which one person died, and two other persons sustained injuries.

6. Learned counsel further drew the attention of the Court to the oral evidence of PWs, who supported the prosecution case.

### **DEPOSITION OF THE PROSECUTION WITNESSES**

7. P.W. 1, Arun Kumar Mondal (Scribe), stated in his deposition that he came to know from Nirmal Kumar Dey two Months prior to the incident that the latter had a dispute with Babai regarding the construction of the boundary wall between their hotels. Babai threatened them with dire consequences. In hospital, Nirmal Kumar Dey also told him that due to the boundary dispute, Babai killed his son. As per the instruction of Nirmal Kumar Dey, he scribed the written complaint. However, the prosecution failed to bring any evidence, either oral or documentary, to prove such facts of the construction of the boundary wall in between their hotels. The site plan shows no boundary wall constructed by the appellant in between their hotels. No shop or hotel of the appellant was indicated in the site plan prepared by the investigating officer.
8. P.W. 2, P.W. 3 and P.W. 4 deposed that they heard about the incident from Nirmal Kumar Dey that Babai killed his son, Subham. His employee also received injuries. PW.4 signed the inquest report.



- 9.** P.W. 6 deposed that on 08.01.2015, he was posted at Murshidabad PS and served as ASI of police. One constable Kalimuddin brought the wearing apparels and some other articles after performing the PM examination of the deceased and handed it over to the I/O of the case while he was present, and he became a witness to that seizure.
- 10.** PW. 7 deposed that on 08.01.2015, he was attached with Murshidabad PS and served as Civic Volunteer personnel. On that day, the I/O of the case seized some wearing apparels and some articles from one constable of that PS, namely, Kalimuddin brought after PM examination of the deceased and the I/O seized the same when he was present and became witness to the seizure putting his signature. Signature of the witness on the seizure list be marked as Ext. 4/1. Both PWs 6 and 7 did not depose anything about the incident of murder.
- 11.** P.W. 9 deposed that at the relevant point of time, he was engaged in painting at City Hotel at Murshidabad. On that day, owner of that hotel, Jinder Sk. took him to the paint shop to purchase paint and at that time, the latter took him to PS as he had some business there. He accompanied him at the PS while police obtained his signature on a document. Jinder also put his signature on that document. He did not know why police took his signature. Signature of the witness on the seizure list be marked as Exbt. 5.

- 12.** P.W. 10 deposed that he run a hotel business having facilities of food and lodging at Motijheel more, near petrol pump. About 6/7 months back, probably he had been to the PS as he had to attend there to make the periodical report of staying of various boarder in his hotel. On that occasion, police obtained his signature in the document but police did not inform him why they required his signature there. Signature of the witness on the seizure list be marked as Ext. 5/1. Both PWs 9 and 10 did not mention the incident. Rather they demolished the case of the prosecution by saying they signed the paper without knowing anything. Police took their signature without disclosing anything.
- 13.** P.W. 11 deposed that about 6/7 months back, he had been to the river Ganges for taking bath, near the land of his uncle Chandrabali Chowdhury, at about 1 pm. On that day, nearby that place, I/C, Murshidabad PS along with other police personnels had been there with police vehicle and seeing his presence there, he called him and asked his name and further asked him to put his signature upon a document. He further disclosed that they went there to cause survey to open a jetty-ghat there. He enquired from him the plot number nearby of their suggested ghat but he could not supply them the information as the plot of land belongs to his uncle. As police requested him, he put his signatures upon two documents.

Signatures of the witness on the seizure list be marked as Ext. 6 and 7.

14. P.W. 12 deposed that one day, about 6-7 months back, he had been to Bhagirathi River for bathing at the ghat near the plot of Chandrabali Chowdhury, at about 1.30 pm. Like him, Lalu Ghosh, Udit Chowdhury and some other persons were also there. While they were returning, he noticed I/C, Murshidabad PS along with other police personnels had been there with police vehicle and seeing their presence, he called them and asked them to put their signatures on a document. He further disclosed that they had been there to cause the survey to open a jetty-ghat there. And as such, their signatures were required. Accordingly, he signed some documents. Like him, Udit Chowdhury and Lalu Ghosh also put their respective signatures there.
15. P.W. 14 deposed that on 17.01.2015, he served as Village Police under Murshidabad PS. On that day, at about 2.25 pm, as per direction of the then I/C of Murshidabad PS, he accompanied him to a duty. Several other police personnel also accompanied him. He along with the force, took an accused under police custody, whose name he learnt as Papai. I/C took all of them with that accused, to the ghat of river Bhagirathi, at Nashipur locality where they noticed some people were bathing at the ghat. Near that bathing ghat,

beneath a palm tree at an agriculture field, after digging earth, as said accused Papai showed him that place, brought out a plastic packet. In that packet, they found a pistol. At the time of recovery of the pistol, accused Papai confessed about it.

- 16.** PW.15 Niyati Ghosh, a lady constable of police stated that on 17.01.2015 at about 2.30 PM she along with SI Ratan Chowdhury (PW.23), Constable Sanjay Naskar (Not examined) and Subrata Halder (PW.14) took accused Papai @ Babai Sk to Nashipurghat of the river Bhagirathi. As shown by the appellant they went near a palm tree standing there and after digging the spot as shown by the appellant, a polythene bag containing a revolver was found inside and it was seized in her presence. She proved the seizure list.
- 17.** P.W. 20 Kalimuddin Saikh deposed that one 08.01.2015, SI Ratan Chowdhury performed inquest over the dead body of Subham Dey. He took the dead body to police morgue at Lalbagh Sub-Divisional Hospital for post Mortem examination. After post mortem examination, he collected wearing apparels of the deceased from the Doctor. SI Ratan Chowdhury seized the same. The Bullet, which was removed by the doctor during post-mortem examination, was also seized in his presence.
- 18.** P.W.22, Dr. Sudhir Kumar Sarkar held Post mortem examination over the dead body of Subham Dey @ Ganju Dey at Lalbagh Sub-

Divisional Hospital on 08.01.2015 from 2 PM to 3 PM. He opined that the cause of death was due to laceration of the brain matter. The cause of injury, as it appeared to him, was due to fire from close contact.

- 19.** One of the vital witnesses, i.e. P.W. 16, an employee of the complainant Nirmal Kumar Dey, deposed in his evidence that Nirmal Kumar Dey caught hold of the appellant at the time of the incident and started scuffling, thereby in between them. During scuffling, the appellant hit Nirmal on his nose with his pistol and thereby two bullets from that pistol fell down. After assaulting Nirmal, Babai fled away therefrom. At the same time, he stated that due to a gunshot injury, he suffered injury in his right cheek, the bullet entered in his mouth, and thereby three teeth of his right lower jaw were badly damaged. He was initially treated by the doctor in the Lalbagh hospital and, thereafter, he was referred to Berhampore hospital that night for better treatment. Three teeth of his right lower jaw were uprooted and discharged after repairing the injury, but such facts have not been corroborated by the doctor or the injury report. The manner of assault by the appellant does not match the injury report or the evidence of the doctor, who treated him.
- 20.** The P.W. 19 also stated in his evidence that he apprehended Papai and caught hold of him, and scuffling ensued between them. During

the scuffle, the magazine of his pistol fell down, and he was assaulted by the appellant with the butt of that pistol, on the right side of his nose and fled away. His statement also does not match or corroborate the injury report or medical document.

- 21.** P.W. 21, Dr. Shyamal Chatterjee treated both Sattya and Nimal. After examination, he prepared two injury reports. During the examination, he enquired about the injured person, namely, Sattya Sarkar, who had stated that he received the injury as he was shot with a revolver beside his left side of his oral cavity. Nowhere in the injury report does it reflect that he suffered a broken tooth. During cross-examination, the Doctor clarified that he did not find any sign of bullet injuries in his jaw either.
- 22.** At the same time, the Doctor deposed that another patient, namely, Nirmal Kumar Dey, himself mentioned that he was physically assaulted by a knife, resulting cut injury over his right lateral side of his nose and right cheek. The doctor found that both patients were conscious at the time of their treatment. He had a conversation with them with regard to the injuries they suffered. So, the total story of the assault on Nirmal is shifted from butt of revolver to a knife. So, these two eye-witnesses, however, cannot be wholly reliable. During the conversation with the Doctor, they did not even mention the name of the person who had inflicted injury upon them, albeit they

were acquainted with the appellant. The doctor further admitted during cross-examination that he did not find presence of remnants of a bullet at the wound of Sattya Sarkar. The cut injury received by Nirmal maybe caused by sharp cutting weapons. So, from the above vital contradictory statements, particularly statements of P.W. 16 and P.W. 19, it cannot be fully relied upon their oral evidence though the prosecution case is that they were eye-witnesses and they were present at the place of occurrence. It is the duty of the prosecution to prove its case beyond reasonable doubt, and until then, the accused would be considered innocent. If any confusion or doubt is created from the evidence of the prosecution witness, even eyewitness, the Court will be leaning towards acquittal of the accused because it is settled law that if any doubt is created about the involvement of the appellant in the crime, he must get the privilege of benefit of doubt.

- 23.** Apart from that, no independent witnesses supported the prosecution witnesses. Particularly, P.W. 2, P.W. 8, P.W. 13 and P.W. 17 have declared hostile witnesses. Nothing was gathered from their evidence against the present appellant, although the prosecution cross-examined them extensively.

#### **FINDINGS AND ANALYSIS OF THIS COURT**

- 24.** Upon meticulous perusal of the evidence, both oral and documentary, the prosecution has tried to project that the appellant committed

offence of murder of Subham Dey on 07.01.2015 by inflicting bullet injury and also inflicted injury to the father of Subham Dey and the employee, Sattya Sarkar. The prosecution also tried to convince the court that the firearms recovered after digging under a palm tree, on the basis of the statement of the appellant recorded under Section 27 of the Evidence Act, 1872 was the same one used by the appellant to commit the murder, but this court was unable to be convinced with the prosecution case since it creates doubt on the following reasons: -

- i.** The doctor (PW 21) and the injury reports do not support the case of the prosecution that the two injured witnesses, i.e. PW nos. 16 and 19 suffered injuries as narrated.
- ii.** Bullet found from the skull of the deceased, Subham Dey is not matched with the arms recovered from the place shown by the appellant under his leading to recovery statement recorded under Section 27 of the Evidence Act, 1872. The ballistic report categorically states that the bullet extracted from the victim's skull did not match the barrel or calibre of the recovered firearm. It unequivocally states that the fatal gunshot was not fired from the recovered revolver, which negates the evidentiary value of the theory of recovery. The report clearly indicates that the gunshot was not made from the said firearm, which was recovered and seized by the Investigating agency.



- iii.** No remnant of the bullet found in the injury of P.W.16, Sattar Sarkar.
  - iv.** The Injury report suggests that PW.19 suffered injury in his nose and face by a knife, but no knife was recovered in the present case.
  - v.** No motorcycles were recovered or seized from the place of occurrence, though the PWs 16 and 19 categorically stated that they were about to leave the place of business to their respective residence by motorcycle, but the incident occurred.
  - vi.** Site plan does not indicate the place of business i.e. hotels of either Nirmal Dey or Appellant.
  - vii.** Nothing brought on record in connection with boundary wall as claim by the prosecution for the reason for murder and/or physical assault.
  - viii.** No public witnesses supported the prosecution.
  - ix.** There are several contradictions, variations and inconsistencies amongst the prosecution witnesses.
  - x.** No sufficient incriminating materials or evidence transpires from the record that the prosecution has been able to prove the case of offence as alleged beyond reasonable doubt.
- 25.** Benefit of doubt is a substantive safeguard that originates from the presumption of innocence. Reasonable doubt is not an imaginative conjecture. It is a real and substantial uncertainty founded upon

deficiencies or contradictions in the prosecution evidence. Reliance is placed in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**<sup>5</sup> :-

**“162.** Moreover, in *M.G. Agarwal case* [AIR 1963 SC 200: (1963) 2 SCR 405, 419: (1963) 1 Cri LJ 235] this Court while reiterating the principles enunciated in *Hanumant case* [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129] observed thus:

*“If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt.”*

In *Shankarlal* [(1981) 2 SCC 35, 39: 1981 SCC (Cri) 315, 318-19: (1981) 2 SCR 384, 390: 1981 Cri LJ 325] this Court reiterated the same view thus: [SCC para 31, p. 44: SCC (Cri) p. 322]

*“Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment.”*

**163.** We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram v. State of Himachal Pradesh* [(1973) 2 SCC 808: 1973 SCC (Cri) 1048: AIR 1973 SC 2773: (1974) 1 SCR 722: 1974 Cri LJ 1] this Court made the following observations: [SCC para 25, p. 820: SCC (Cri) p. 1060]

*“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*

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<sup>5</sup> (1984) 4 SCC 116

*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.”*

- 26.** Courts ordinarily rely on injured eyewitnesses; however, where ocular account is inconsistent with medical or forensic evidence, or where the very genesis or place of occurrence becomes doubtful, the testimony must be scrutinised with heightened caution. Medical and ballistic evidence, though corroborative, assumes decisive significance when it directly contradicts the prosecution’s version.
- 27.** Recovery under Section 27 of the Evidence Act is admissible only to the extent of the fact thereby discovered. However, such recovery holds little probative value when the seized weapon is forensically unrelated to the crime. Equally, where the prosecution fails to establish the place of occurrence with certainty, the entire case becomes inherently doubtful, as has been laid down in the case of ***Sujit Biswas v. State of Assam***<sup>6</sup>:-

*“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere*

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<sup>6</sup> (2013) 12 SCC 406

*conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71: AIR 1952 SC 343: 1953 Cri LJ 129], State v. Mahender Singh Dahiya [(2011) 3 SCC 109: (2011) 1 SCC (Cri) 821: AIR 2011 SC 1017] and Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777: (2012) 2 SCC (Cri) 905])”*

- 28.** The above principles guide this Court’s appreciation of the evidence in the present case.

**A. Ballistic Evidence and the Recovered Firearm**

- 29.** A fundamental pillar of the prosecution case is that the appellant shot the deceased and PW-16 with a revolver. The firearm was allegedly recovered from a “secret place” based on the appellant’s

disclosure under Section 27 of the Evidence Act. However, the ballistic report categorically states:

- i.** The bullet recovered from the deceased does not match the barrel characteristics and calibre of the recovered firearm; and
- ii.** The recovered weapon could not have fired the bullet extracted from the victim.

**30.** This is not a minor discrepancy. It directly contradicts the prosecution's core allegation that the appellant used a firearm to shoot the victims. Thus, the prosecution's case regarding the use of a firearm by the appellant is rendered wholly unreliable.

#### **B. Contradictions in Eyewitness Testimonies**

**31.** The conviction is primarily grounded on PW-16 and PW-19, both claimed to be injured eyewitnesses. However, upon close scrutiny, their evidence reveals material and irreconcilable contradictions:

##### **i. Nature of Injuries:**

- PW-16 claims a gunshot wound to the jaw with fractured three teeth and those were uprooted.
- No bullet, pellet, or metallic fragment was recovered from his injury.
- Medical records do not reflect radiological evidence of a gunshot wound. No supporting evidence of uproot of teeth of PW.16

**ii. Injury to PW-19:**

- PWs claim he was hit with the butt of a firearm.
- Medical evidence indicates he narrated appellant assaulted him by knife, Doctor stated a sharp-cut injury, consistent with a knife.
- No knife was recovered.

**iii. Sequence of Events:** The two eyewitnesses narrate dispersions of how and where the assault occurred. Their estimations of distance, lighting, and positions vary significantly.

- 32.** These contradictions are not peripheral but go to the root of the prosecution story. The inconsistencies in the present case generate reasonable doubt about whether the eyewitnesses observed the actual assailant or have suppressed the true genesis of the incident.
- 33.** This Court would like to appreciate the judgments relied upon by the Counsel for the Appellants relevant in these circumstances. In the cases of ***Manjunath (Supra)*** as well as ***Naresh (Supra)***, the Hon'ble Supreme Court held that the evidence of an eyewitness should be of very sterling quality and calibre, and be capable of being taken at face value.

34. In the aforesaid judgments, paragraph 22 of the case of **Rai Sandeep v. State (NCT of Delhi)**<sup>7</sup> has been relied upon, where the Hon'ble Supreme Court held as follows:-

**“22. [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.]** . In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution *qua* the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the *factum* of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

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<sup>7</sup> (2012) 8 SCC 21

**35.** In the case of ***Ram Narain Singh (Supra)***, it was held that inconsistency between the evidence of the prosecution witness and medical evidence is a fundamental defect in the prosecution case, which, unless reasonably explained, is sufficient to discredit the entire case.

### **C.Failure to Establish the Place of Occurrence**

**36.** A striking deficiency in the prosecution case is its inability to establish the precise place of occurrence:

- Prosecution failed to establish the exact spot where the shooting allegedly occurred.
- No bloodstains, cartridges, bullet marks, or forensic traces were recovered from any identified location.
- The Investigating Officer did not seize any material indicative of a shooting incident from the vicinity.

**37.** In ***Sujit Biswas (supra)***, the Supreme Court emphasised that uncertainty regarding the locus criminis undermines the entire prosecution case. The present discrepancies create serious doubt about the prosecution narrative.



#### **D. Missing Crucial Objects and Breaks in the Chain of Evidence**

**38.** Several essential items were not seized or proved:

- a. No knife**, despite PW-19's injury being consistent with a sharp object.
- b. No bullet fragments** from PW-16, though he claimed a firearm injury.
- c. No motorcycle** allegedly used by the PW.16 and PW.19.
- d. No independent witnesses or natural witnesses** examined from the place of occurrence, who were reach post occurrence to rescue them.
- e. No Rickshaw puller examined**, who had rescued the injured to the hospital.

#### **E. Acquittal Under the Arms Act and Its Evidentiary Implications**

- 39.** Although the trial court acquitted the appellant under Sections 25/27 of the Arms Act for want of sanction, what is more significant is that **the ballistic report independently negates the use of the recovered firearm**. Hence, even if sanction existed, the prosecution story regarding use of a firearm collapses on scientific grounds.
- 40.** The prosecution offered no alternative theory or corroborative evidence to establish what weapon, if any, was used. Thus, the prosecution has failed to prove the mode of assault, much less the identity of the assailant, beyond a reasonable doubt.

- 41.** An integrated evaluation of the evidence leads to the following conclusion:
- a.** The firearm recovered is scientifically excluded from involvement in the offence.
  - b.** Testimonies of the eyewitnesses suffer from material contradictions and are inconsistent with medical and scientific evidence.
  - c.** The prosecution has failed to establish the place of occurrence.
  - d.** The alleged injuries do not correspond with the alleged weapon.
  - e.** Crucial articles were not seized; no independent or natural witnesses were examined.
  - f.** The chain of evidence is fractured at multiple points.
- 42.** The weaknesses in the prosecution case are not trivial but fundamental; they strike at the root of the conviction. The prosecution has failed to prove its case beyond reasonable doubt, and the appellant is entitled to the benefit of such doubt.
- 43.** In this context, learned counsel for the appellant relied upon the case of ***Puran Singh (Supra)***. In the said case, the FSL report indicated that the cartridge that caused the injury was not fired from the recovered weapon, said to have been used by the appellant therein. Based on such report, the Supreme Court held that the appellant therein was entitled to benefit of doubt.

- 44.** It is the duty of the prosecution to produce the best evidence to prove the case without a reasonable doubt. Failure, on the part of prosecution, ultimately favour the accused/convict.
- 45.** In view of aforesaid discussion and findings, this court is the view that the prosecution failed to bring home the charges against the appellant in positive beyond a reasonable doubts. Therefore, the judgment passed by the Learned Trial Court is required to be set aside and appellant must be given benefit of doubts.
- 46.** The Appellant is acquitted of the offence as alleged.
- 47.** Appeal being **CRA 9 of 2018** is, thus, **allowed**. Connected applications, if any, are also disposed of.
- 48.** Appellant shall be set at liberty forthwith if he is not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure, 1973 corresponding to Section 481 of the BNSS, 2023.
- 49.** Trial Court Records along with copy of this judgment are to be sent down at once to the learned Trial Court for information and necessary compliance.

- 50.** Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

**(Rajasekhar Mantha, J)**

**(Ajay Kumar Gupta, J)**

**P. Adak (P.A.)**