

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.935 of 2018

Arising Out of PS. Case No.-396 Year-2017 Thana- AGAMKUAN District- Patna

Ravi Kumar @ Singhrwa @ Singhara Son of Brij Kishore Gupta Resident of
Village- HInd Bazar Maharaj Ganj, P.S. Alamganj, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. K. Lal, Sr. Advocate Mr. Madhaw Prasad Yadav, Advocate Mr. Arvind Kumar, Advocate Mr. Pramod Kumar, Advocate
For the Informant	:	Mr. Anil Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 24-09-2026

1. Introduction

(i) This criminal appeal has been preferred by the sole appellant Ravi Kumar @ Singharwa against the judgment of conviction dated 29.06.2018 and the order of sentence dated 05.07.2018 passed by the learned 6th Additional District and Sessions Judge, Patna City, in Sessions Trial No. 40 of 2018 arising out of Agamkuan P.S. Case No. 396 of 2017, whereby and whereunder the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

(ii) By the impugned order of sentence, the



appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹20,000/- (Rupees Twenty Thousand only) for the offence under Section 302 of the Indian Penal Code, and in default of payment of fine to undergo further rigorous imprisonment for one year. He has further been sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹2,000/- (Rupees Two Thousand only) for the offence under Section 27 of the Arms Act, and in default of payment of fine to undergo further rigorous imprisonment for three months. Both the sentences have been directed to run concurrently.

(iii) The appellant was arrested during investigation and has remained in custody since then. After commitment of the case to the Court of Session, charge under Section 302 of the Indian Penal Code and Section 27 of the Arms Act was framed against him on 05.03.2018. The appellant pleaded not guilty and claimed to be tried. Upon conclusion of the trial, the learned trial court convicted and sentenced him as indicated above.

(iv) The present appeal has been filed challenging the aforesaid judgment of conviction and order of sentence.

2. Prosecution Case



(i) The case of the prosecution, in brief, as emerging from the fardbeyan of the informant Annu Gupta (PW-6), wife of the deceased, is as follows:

(ii) The deceased Krishna Prasad @ Pahalwan was running a snack shop under the name and style of “Maa Sheetla Sweet” in front of Sheetla Temple since the year 1996. The brother of the informant, namely Prem Kumar (PW-2), was also associated with the said shop. The appellant Ravi Kumar @ Singharwa had worked in the said shop as a maker of singhara and litti for about ten years but had left the job a few days prior to the occurrence.

(iii) On 25.08.2017 at about 7:00 p.m., the deceased, after closing his work for the day, went to Tulsi Mandi adjacent to the railway line near Sheetla Mandir for getting himself shaved. While returning, he met the appellant. On noticing something in the pocket of the appellant, the deceased searched the same and found a pistol. The deceased questioned the appellant as to why he was carrying a pistol and stated that he would inform the appellant's mother. The appellant became enraged.

(iv) Thereafter, the deceased returned to his shop, consumed bhunja, and after some time started proceeding



towards his house. When he had barely covered a short distance of about fifty yards from the shop, the appellant, who was sitting there armed with a pistol, pointed the same towards the head of the deceased and opened fire. The deceased pushed the appellant and attempted to flee; however, the bullet hit him on the back and he fell down at the spot. The appellant managed to escape from the place of occurrence.

(v) On hearing the sound of the gunshot, several persons including the staff of the shop assembled there. The injured was shifted to Rajeshwar Hospital for treatment. The informant and her son were informed and they reached the hospital. According to the prosecution, the deceased, while undergoing treatment and while still conscious, disclosed that it was the appellant who had shot him. It is further the case of the prosecution that the appellant and his father had taken a substantial amount by way of loan from the deceased and, whenever the deceased demanded repayment, the appellant used to threaten to kill him. The occurrence is alleged to have been committed at the behest of the father of the appellant.

(vi) On the basis of the fardbeyan of the informant recorded at the hospital, Agamkuan P.S. Case No. 396 of 2017 was registered under Sections 341, 324, 307, 504/34 of the



Indian Penal Code and Section 27 of the Arms Act. During the course of treatment, the injured succumbed to his injuries after about two days. Upon completion of investigation, the Investigating Officer submitted charge-sheet under Section 302 of the Indian Penal Code and Section 27 of the Arms Act only against the present appellant. Cognizance was taken and the case was committed to the Court of Session, culminating in the trial that has given rise to the present appeal.

3. Trial Court Findings

(i) The learned trial court, upon appreciation of the evidence adduced during the trial, recorded the following material findings:

(a) The prosecution examined seven witnesses in all. PW-1 Dr. Mukesh Kumar is the Autopsy Surgeon who conducted the post-mortem examination on the dead body of the deceased on 27.08.2017 and proved the post-mortem report (Ext. 1). PW-2 Prem Kumar (brother of the informant and associated with the shop of the deceased), PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti were examined as witnesses to the occurrence. PW-4 Anchit Raj is the son of the deceased and PW-6 Annu Gupta is the informant and wife of the deceased. PW-7 Suchit Kumar is the Investigating Officer



of the case.

(b) On behalf of the defence, one witness (DW-1 Kashi Nath Chandravansi) was examined and certain documents relating to a prior criminal case against the deceased were marked as exhibits.

(c) The learned trial court held that PW-2 Prem Kumar is an eye-witness to the occurrence. According to the trial court, this witness had seen the appellant threatening the deceased with a pistol, the deceased attempting to flee, the appellant opening fire, the bullet hitting the deceased on the back, and the deceased falling down. The trial court further held that PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti reached the place of occurrence immediately on hearing the sound of firing; PW-5 specifically claimed to have seen the appellant running away from the spot. The evidence of these witnesses was found to be consistent and reliable.

(d) The learned trial court placed significant reliance on the oral dying declarations alleged to have been made by the deceased. It held that the deceased, while still conscious, had disclosed to PW-2, PW-3, PW-4 and PW-6 that it was the appellant Ravi Kumar @ Singharwa who had shot him. These statements were held to be relevant and admissible



under Section 32(1) of the Indian Evidence Act, 1872, and were found to be consistent and free from doubt.

(e) The medical evidence of PW-1 was held to corroborate the prosecution version. The post-mortem report disclosed an ante-mortem firearm entry wound on the left side of the back of the chest with blackening and tattooing, and the cause of death was opined to be haemorrhage and shock due to the chest injury caused by a firearm.

(f) The trial court accepted the motive suggested by the prosecution, namely that the appellant and his father had taken a substantial loan from the deceased and that the appellant had earlier threatened the deceased with death when repayment was demanded.

(g) As regards the discrepancy in the date of occurrence (some witnesses having stated the month as October instead of August), the learned trial court observed that witnesses cannot be expected to possess a photographic memory and that the said discrepancy stood clarified by the fardbeyan and the endorsement thereon, both of which clearly mentioned the date as 25/26.08.2017. The discrepancy was therefore held to be minor and immaterial.

(h) The trial court further referred to the



confessional statement of the appellant (Ext. 6) recorded by the Investigating Officer. The defence evidence seeking to establish the criminal antecedents of the deceased was held to be irrelevant to the determination of the guilt of the appellant in the present case.

(i) On the basis of the above findings, the learned trial court concluded that the prosecution had successfully proved the charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act against the appellant beyond reasonable doubt, and accordingly convicted and sentenced him as noted earlier.

4. Submissions on behalf of the Appellant

(i) Learned counsel appearing on behalf of the appellant assailed the impugned judgment of conviction and order of sentence on several grounds.

(ii) It was firstly submitted that the learned trial court committed a serious error in recording a finding of guilt against the appellant when none of the prosecution witnesses can be said to be reliable eye-witnesses to the actual occurrence. Learned counsel contended that a careful reading of the evidence of PW-2 Prem Kumar, PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti would show that their presence



at the precise moment of firing is either unnatural or not free from doubt. It was argued that the evidence of these witnesses, even if accepted at face value, is largely in the nature of post-occurrence testimony and that the trial court erred in treating PW-2 as a wholly reliable eye-witness.

(iii) It was next submitted that the evidence of PW-4 Anchit Raj and PW-6 Annu Gupta (the informant) is purely hearsay in character insofar as the actual act of firing is concerned. Learned counsel urged that these witnesses were admittedly not present at the place of occurrence and reached the hospital only after receiving information. Their testimony, therefore, could not have been used to establish the identity of the assailant except to the limited extent of the alleged oral dying declarations.

(iv) Strong reliance was placed on the contention that the alleged oral dying declarations do not satisfy the requirements of Section 32(1) of the Indian Evidence Act, 1872. It was argued that the statements attributed to the deceased were made only to highly interested witnesses (wife, son, brother-in-law and a close associate), that there is no contemporaneous record of such statements, and that the prosecution has failed to establish that the deceased was in a



fit state of mind and body at the time of making the alleged declarations. Learned counsel submitted that the trial court mechanically applied Section 32(1) without subjecting the alleged dying declarations to the close scrutiny required by law.

(v) It was further contended that the medical evidence of PW-1, while establishing a homicidal death by firearm, does not corroborate the precise manner and genesis of the occurrence as projected by the prosecution witnesses. The non-recovery of the weapon of offence and the bullet was also highlighted as a significant lacuna.

(vi) Learned counsel pointed out material discrepancies in the prosecution evidence, particularly with regard to the date of the occurrence (some witnesses having deposed the month as October instead of August), the exact time, the sequence of events, and the presence of various persons at the spot. It was submitted that these discrepancies, when viewed cumulatively, go to the root of the matter and render the prosecution version unreliable.

(vii) Attention was also invited to the fact that the confessional statement of the appellant (Ext. 6) recorded by the Investigating Officer is hit by Section 25 of the Indian



Evidence Act and could not have been relied upon even for limited purposes. The investigation was described as defective on account of non-examination of independent witnesses, delayed recording of statements, and failure to collect material scientific evidence.

(viii) It was lastly submitted that the appellant is a first offender, that the evidence on record does not establish the charges beyond reasonable doubt, and that the impugned judgment of conviction and order of sentence are liable to be set aside. In the alternative, a prayer was made for suspension of sentence and grant of bail during the pendency of the appeal.

5. Submissions on behalf of the State

(i) Learned Additional Public Prosecutor appearing on behalf of the State supported the impugned judgment of conviction and order of sentence and submitted that the appeal is devoid of merit.

(ii) It was contended that the learned trial court has correctly appreciated the evidence on record and has recorded concurrent findings of fact which do not warrant interference in appellate jurisdiction. Learned counsel submitted that PW-2 Prem Kumar is a natural and reliable eye-witness to the



occurrence. His presence at the shop of the deceased, with whom he was associated in business, is fully explained. According to the State, this witness has given a consistent account of having seen the appellant armed with a pistol, the deceased attempting to flee, the appellant opening fire, and the bullet hitting the deceased on the back.

(iii) It was further submitted that the evidence of PW-2 finds material corroboration from the testimony of PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti. Both these witnesses reached the place of occurrence immediately on hearing the sound of firing. PW-5 has specifically deposed that he saw the appellant running away from the spot. Their presence is natural as they were associated with the shop of the deceased, and their evidence lends assurance to the version of the eye-witness.

(iv) Strong reliance was placed on the multiple oral dying declarations made by the deceased. Learned Additional Public Prosecutor submitted that the deceased, while still conscious and soon after sustaining the injury, clearly named the appellant as the assailant before PW-2, PW-3, PW-4 and PW-6. These statements, being consistent and made at the earliest opportunity, fully satisfy the requirements of Section



32(1) of the Indian Evidence Act, 1872, and constitute relevant and reliable evidence pointing to the guilt of the appellant.

(v) The medical evidence of PW-1 was described as fully corroborative of the ocular account. The post-mortem report establishes an ante-mortem firearm entry wound on the back of the chest with blackening and tattooing, which is consistent with the prosecution version that the deceased was shot from behind while trying to escape.

(vi) As regards the discrepancy in the month of the occurrence (August/October), it was submitted that the same is minor and stands clarified by the contemporaneous documents, namely the fardbeyan and the endorsement thereon. Such discrepancies are natural and do not go to the root of the prosecution case.

(vii) Learned counsel for the State further submitted that the motive of the occurrence, i.e., the outstanding loan and the prior threat held out by the appellant, stands established through the evidence of the informant and other witnesses. The non-recovery of the weapon, though a lacuna, is not fatal in the face of reliable ocular and dying-declaration evidence. The confessional statement recorded by the



Investigating Officer was referred to only as a supporting circumstance.

(viii) It was lastly contended that the prosecution has proved the charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act against the appellant beyond reasonable doubt. The learned trial court has assigned cogent reasons for convicting the appellant, and the impugned judgment does not suffer from any perversity or infirmity warranting interference by this Court. The appeal, it was prayed, deserves to be dismissed.

6. Points for Determination

On the basis of the rival submissions advanced on behalf of the parties and upon perusal of the impugned judgment and the evidence available on record, the following points arise for determination in the present appeal:

(i) Whether the prosecution has been able to prove beyond reasonable doubt that the appellant, Ravi Kumar @ Singharwa, intentionally caused the death of the deceased Krishna Prasad @ Pahalwan by firing at him with a firearm on 25.08.2017?

(ii) Whether the oral statements attributed to the deceased, alleged to have been made shortly after the



occurrence and naming the appellant as the assailant, constitute reliable and admissible dying declarations under Section 32(1) of the Indian Evidence Act, 1872, and whether they inspire confidence?

(iii) Whether the evidence of PW-2 Prem Kumar (claimed to be an eye-witness) and the evidence of PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti (immediate post-occurrence witnesses) is natural, consistent, reliable and sufficient to establish the complicity of the appellant?

7. Analysis of Evidence

(i) The prosecution has examined seven witnesses. PW-1 is the doctor who conducted the post-mortem; PW-2, PW-3 and PW-5 are witnesses concerning the occurrence and its immediate aftermath; PW-4 and PW-6 speak principally about what was allegedly disclosed by the deceased; and PW-7 is the Investigating Officer. The defence has examined one witness, DW-1.

(ii) The evidence, therefore, has to be considered in its proper compartments. The medical evidence establishes the nature and cause of death; the question of identity of the assailant rests upon the ocular and surrounding circumstances; and the alleged statements made by the deceased require



separate consideration under Section 32(1) of the Indian Evidence Act, 1872.

A. Medical Evidence (PW-1)

(i) PW-1 Dr. Mukesh Kumar conducted the post-mortem examination on the body of Krishna Prasad @ Pahalwan on 27.08.2017 and proved the post-mortem report (Ext. 1). The external examination disclosed an ante-mortem firearm entry wound measuring $\frac{1}{4}" \times \frac{1}{4}"$ over the left side of the back of the chest, one inch away from the mid-line at the level of the fifth thoracic vertebra, with inverted margins and surrounded by blackening and tattooing over an area of 8" $\times$ 7". There were also surgical stitched wounds. On dissection, the chest cavity contained about 500 ml of blood and blood clots. The projectile had pierced the fifth thoracic vertebra and the apical area of the right lung. No metallic object was recovered from the body. The doctor opined that the cause of death was haemorrhage and shock due to the chest injury and that Injury No. 1 was caused by a firearm. The time since death was estimated at 6 to 18 hours.

(ii) The medical evidence thus establishes that the deceased sustained a fatal firearm injury from behind and that the death was homicidal in nature. It lends medical support to



the prosecution version that the deceased had been shot in the back.

(iii) At the same time, the evidence of PW-1 has definite limits. The doctor does not identify the assailant. The non-recovery of the projectile is also part of the medical record. Consequently, while PW-1 establishes the nature and cause of death, the identity of the person who fired the shot has to be determined from the remaining evidence.

PW-2 Prem Kumar

(i) PW-2 Prem Kumar is an important witness because he claims to have been present at the time of the occurrence. According to him, on 25.08.2017 at about 8:00 p.m., while he was at the shop, the deceased proceeded ahead and, after covering about 50 steps, the appellant Ravi @ Singharwa took out a pistol, threatened him and fired. The deceased sustained injury on the back, fell down, and was thereafter taken for treatment. PW-2 has identified the accused in Court.

(ii) The importance of PW-2's evidence lies in the fact that, unlike PW-4 and PW-6, he does not derive his knowledge of the identity of the assailant solely from a statement allegedly made by the deceased at the hospital. His



account is presented as direct observation of the occurrence itself. He has further stated that the deceased, while being taken to the hospital, was still conscious and was naming the person who had shot him. At the same time, he does not claim personal knowledge of the alleged monetary transaction or of the precise conversation which allegedly took place between the deceased and the accused before the firing.

(iii) His evidence has to be tested for naturalness of presence, consistency with the evidence of PW-3 and PW-5, consistency with the medical evidence, and consistency with the earliest version recorded during investigation. The material question is whether his account of the actual firing withstands scrutiny when read as a whole.

PW-3 Dilip Kumar Gupta

(i) PW-3 Dilip Kumar Gupta states that he was a friend of the deceased and had accompanied him for shaving. After returning to the shop, the deceased started for home. PW-3 thereafter heard the sound of firing, went to the spot along with others, and found the deceased lying on the ground with a firearm injury on the back. He participated in taking the injured to the hospital and has deposed that the deceased disclosed the name of the appellant as the assailant.



(ii) PW-3 is not an eye-witness to the actual act of firing. His direct observation begins from the point when he heard the gunshot and reached the place of occurrence. The portion of his testimony relating to the identity of the assailant is based on the statement attributed to the deceased and must therefore be evaluated under Section 32(1) of the Evidence Act.

PW-4 Anchit Raj

PW-4 Anchit Raj, the son of the deceased, has candidly admitted that he was not present at the place of occurrence. He received information from PW-2, went to the hospital, and has deposed that his father, while conscious, told him that Ravi had shot him. His evidence is relevant only as a recipient of the alleged oral dying declaration and cannot be treated as ocular evidence of the firing.

PW-5 Sudhir Kamti

(i) PW-5 Sudhir Kamti states that he was at the shop when he heard the sound of firing. He reached the spot within about 2-3 minutes, saw the deceased lying injured, and saw the appellant running away from the place. He also helped in taking the injured to the hospital.

(ii) PW-5 does not claim to have seen the actual



firing. His evidence is circumstantial in nature: he heard the shot, reached the spot almost immediately, found the deceased injured, and saw the appellant fleeing. The circumstance of the accused being seen running away shortly after the firing is relevant and proximate in time, but it cannot by itself be equated with proof of the act of firing. His evidence can consequently provide corroborative circumstances, but the fact of fleeing cannot by itself be equated with proof of the actual firing.

PW-6 Annu Gupta (Informant)

(i) PW-6 Annu Gupta, the wife of the deceased and the informant, has stated that on the night of the incident, she received information from her brother (PW-2) and went to the hospital with her son. According to her, the deceased was conscious and told her that Ravi had shot him. She has, however, clearly admitted in cross-examination that neither she nor her son had witnessed the occurrence.

(ii) Her evidence regarding the identity of the assailant is therefore dependent on the alleged oral dying declaration. The trial court noticed that she had at one place stated the date of occurrence as 25.10.2017 instead of 25.08.2017. While the contemporaneous documents such as



fardbeyan and endorsement consistently mention August 2017, the discrepancy remains a relevant factor to be weighed while assessing the overall reliability of the prosecution version.

PW-7 Investigating Officer

(i) PW-7 Suchit Kumar has proved the formal steps of investigation, the fardbeyan, endorsements, charge-sheet and other documents. His cross-examination, however, brings out several omissions: non-recovery of the weapon and the projectile, non-examination of independent public witnesses, and certain deficiencies in the recording of statements.

(ii) These lapses assume significance because the identity of the assailant is the central issue. An investigation is not to be discarded for every omission, yet omissions that could have provided objective corroboration or contradiction cannot be ignored.

(iii) The confessional statement of the appellant (Ext. 6) recorded by the Investigating Officer when the appellant was apprehended in a different case is hit by Section 25 of the Indian Evidence Act and cannot be used as substantive evidence against him.

Defence Evidence



DW-1 has proved documents (bail bond relating to an earlier Alaganj Police Station case and connected signatures/documents) relating to a prior criminal case against the deceased. Even if the deceased had criminal antecedents, that circumstance does not, by itself, constitute a defence to the present charge or establish that the appellant was not the assailant. The defence evidence does not point to any alternative assailant or offer any substantive explanation for the fatal firearm injury.

Statement under Section 313 Cr.P.C.

(i) The appellant was examined under Section 313 of the Code of Criminal Procedure. All the material incriminating circumstances appearing in the prosecution evidence were put to him. The appellant denied the allegations and the incriminating circumstances. He did not offer any specific explanation or alternative version of the occurrence, nor did he lead any substantive evidence in defence beyond the formal evidence of DW-1 regarding the antecedents of the deceased.

(ii) It is well settled that the statement of an accused recorded under Section 313 Cr.P.C. is not substantive evidence. It can be taken into consideration only to the limited



extent of explaining the circumstances appearing against him or for the purpose of appreciating the truth or otherwise of the prosecution version. The burden of proving the guilt of the accused never shifts to the accused and remains always on the prosecution.

(iii) In *Reena Hazarika v. State of Assam*, reported in *(2019) 13 SCC 289*, the Supreme Court emphasised that the object of Section 313 is to afford the accused an opportunity to explain the circumstances appearing against him, and that a false explanation or a false plea may, in appropriate cases, be considered as an additional link in the chain of circumstances. However, the Court cautioned that the absence of a satisfactory explanation cannot by itself fill up the gaps in the prosecution evidence or relieve the prosecution of its primary burden.

Alleged Oral Dying Declarations

(i) The prosecution relies upon oral statements attributed to the deceased and made to PW-2, PW-3, PW-4 and PW-6, naming the appellant as the person who shot him. There is no dying declaration recorded by a Magistrate. The evidentiary value of these oral statements depends on whether they are found to be voluntary, consistent, and made while the



deceased was in a fit condition.

(ii) It must also be kept in mind that PW-3, PW-4 and PW-6 (and to some extent PW-2) are recounting what they claim the deceased told them. Their evidence on the point of identity derives from the same source. While consistent oral dying declarations can lend assurance, they cannot be treated as multiple independent eye-witness accounts.

Date and Time Discrepancies

The documentary record and the majority of the evidence place the occurrence on 25.08.2017. The reference to 25.10.2017 by the informant (and at places by PW-4 and the IO) has been treated by the trial court as an error of recollection. There is also a minor variation in the exact time (approximately 7:30 p.m. to 8:00 p.m.). These discrepancies have to be evaluated in the light of the overall consistency of the prosecution case rather than in isolation.

Synthesis

(i) The medical evidence establishes that the deceased died as a result of a firearm injury sustained on the back. The occurrence of a fatal shooting is therefore not in doubt.

(ii) The prosecution seeks to connect the appellant



with the act of firing primarily through:

- (a) the direct account of PW-2;
- (b) the immediate post-occurrence evidence of PW-3 and PW-5 (including the circumstance of the appellant being seen fleeing);
- (c) the oral dying declarations alleged to have been made to PW-2, PW-3, PW-4 and PW-6; and
- (d) the surrounding circumstances, including motive.

(iii) The principal aspects that require careful judicial scrutiny are: the reliability and naturalness of PW-2's presence and version; the weight to be attached to the oral dying declarations made to interested witnesses; the corroborative value of PW-5's evidence of fleeing; the effect of non-recovery of the weapon and projectile; the investigative omissions; and the cumulative impact of the discrepancies regarding date and time.

(iv) The trial court accepted the prosecution evidence, treated the date discrepancy as immaterial, relied upon the ocular account, the oral dying declarations and the medical evidence, and held that the charges stood proved beyond reasonable doubt. Whether that conclusion is



sustainable on a proper appraisal of the evidence is the question that now falls for determination by this Court.

8. Legal Principles to be Applied

Before proceeding to the final evaluation of the evidence, it is necessary to recapitulate the settled legal principles that govern the determination of the present appeal.

Appreciation of evidence of related and interested witnesses

(i) It is well settled that the evidence of a related or interested witness is not to be discarded merely on the ground of relationship or interest. In State of *Rajasthan v. Kalki*, reported in *(1981) 2 SCC 752*, the Hon'ble Supreme Court held that a related witness is not necessarily an interested witness and that the evidence of such a witness cannot be rejected on the mere ground of relationship. The real test is whether the evidence is credible and trustworthy. The relevant paragraph of the said judgment is reproduced below:

“7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a “highly interested” witness because she “is the wife of the deceased”, and (2) there were discrepancies in her evidence. With respect, in our opinion,



both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an “interested” witness. She is related to the deceased. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested”. In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents.”

(ii) The evidence of a related witness should be scrutinised with care, but if it is found reliable after such scrutiny, it can form the basis of conviction. The same principle has been consistently followed in later decisions, including **Raju v. State of T.N., (2012) 12 SCC 701.**

Oral dying declarations



(i) A statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is relevant under Section 32(1) of the Evidence Act.

(ii) In the classic decision of *Khushal Rao v. State of Bombay*, reported in *AIR 1958 SC 22*, the Hon'ble Supreme Court held that a dying declaration can form the sole basis of conviction if it is found to be voluntary and reliable. No particular form is prescribed, and an oral dying declaration is admissible.

(iii) The guiding principles were further elaborated in *Paniben v. State of Gujarat*, reported in *(1992) 2 SCC 474*. The Court must be satisfied that:

- (a) the declarant was in a fit state of mind;
- (b) the statement was voluntary and not the result of tutoring or prompting;
- (c) it is consistent in material particulars; and
- (d) it inspires confidence.

(iv) For the sake of elaboration, the relevant paragraph of the said judgment is reproduced below:

“18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has



no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of



M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] ; Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164]).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994]).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with



regard to it is to be rejected. (Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617])

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505])

(ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P.



[1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519])”

(v) In cases of oral dying declarations, greater caution is required. In State of M.P. v. Ramjan Khan, 2024 SCC OnLine SC 3070, the Hon’ble Supreme Court flagging case-specific infirmities, such as uncorroborated, omitted from FIR/Section 161 CrPC statement, interested witness etc. emphasised that when an oral dying declaration is made before close relatives or interested persons and is not recorded contemporaneously, the Court must examine it with closer scrutiny. The relevant paragraph of the said judgment is reproduced below:

17. Through the evidence of PW8, the mother of the deceased, who is also the informant, the prosecution has attempted to establish the existence of an oral dying declaration. It is to be noted that dying declaration itself is not a strong piece of evidence and therefore, when it is verbal and that too, allegedly



made to a close relative (in this case allegedly to the mother), evidence of mother about the oral dying declaration was to be treated with care and caution. To show that the trial Court dealt with the same without due care and caution self-evident from paragraph 32 of the judgment of the Trial Court, which reads thus:-

“32. During the arguments, ld. Counsel for the accused argued that complainant Sitara Bi has stated in her court statement that when she reached at well, at that time, her son Naseem Khan told her that all the three accused Ramjan Khan, Musab Khan and Habib Khan have caused his murder after beating him with sickle, axe and lathi. Though, this fact is not written in the police statement Exh. D-3 of Sitara Bi that when he reached, at that time, accused Naseem had told her to be beaten by accused persons, even thereafter, I don't find it proper to give it's benefit to the accused persons because I don't find any reason to disbelieve the statement, which has been given by her before the court.”

(vi) Consistency among multiple witnesses recounting the same oral declaration may lend assurance, but



such consistency cannot be treated as independent corroboration of the same quality as that of an unrelated eye-witness.

Non-recovery of the weapon of offence and the projectile

(i) It is equally well settled that non-recovery of the weapon of offence or the bullet is not necessarily fatal to the prosecution case if the ocular evidence or the dying declaration is found to be reliable and receives corroboration from medical evidence. In *Rakesh v. State of U.P.*, (2021) 7 SCC 188, the Hon'ble Supreme Court observed that the absence of the weapon does not ipso facto demolish the prosecution version when the other evidence is trustworthy. The relevant paragraph of the said judgment is reproduced below:

“12. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the



accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1



and PW 2.”

(ii) At the same time, the non-recovery remains a relevant circumstance, particularly when the identity of the assailant is seriously disputed and scientific evidence could have provided objective support.

Scope of interference in an appeal against conviction

In an appeal against conviction, the appellate court exercises the same power as the trial court to review the evidence, subject to the well-known limitations attending the appreciation of oral evidence. It is under a duty to re-appreciate and re-examine the entire evidence on record, and is not confined to interfering only where the trial court's findings are perverse. Its jurisdiction to reverse a finding of conviction is co-extensive with the trial court's original jurisdiction to render it. This principle has been reiterated in several decisions, including *State of Gujarat v. Bhalchandra Laxmishankar Dave*, (2021) 2 SCC 735, the relevant paragraph of which is reproduced below:

“5.2. The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the learned trial court. Being the first appellate court, the



High Court was required to reappreciate the entire evidence on record and also the reasoning given by the learned trial court while convicting the accused. Non-reappreciation of the evidence on record may affect the case of either the prosecution or even the accused. Being the first appellate court, the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by the learned trial court.”

9. Conclusion and Operative Order

(i) We have carefully considered the rival submissions advanced on behalf of the parties, examined the entire oral and documentary evidence available on record, and applied the settled legal principles discussed above.

(ii) The medical evidence of PW-1 Dr. Mukesh Kumar, supported by the post-mortem report (Ext. 1), conclusively establishes that the deceased Krishna Prasad @ Pahalwan died a homicidal death as a result of a firearm injury sustained on the back of the chest. The occurrence of a fatal shooting is, therefore, not in doubt.

(iii) The principal question for determination is



whether the prosecution has proved beyond reasonable doubt that it was the appellant who fired the fatal shot.

(iv) On a comprehensive and independent appraisal of the evidence, we find that PW-2 Prem Kumar is a natural witness whose presence at the shop of the deceased is fully explained. He has given a consistent account of having seen the appellant armed with a pistol, the deceased attempting to flee, the appellant opening fire, and the bullet hitting the deceased on the back. His evidence finds material corroboration from the testimony of PW-3 Dilip Kumar Gupta and PW-5 Sudhir Kamti, who reached the place of occurrence immediately on hearing the sound of firing. PW-5 has specifically deposed that he saw the appellant running away from the spot within a few minutes of the incident. This circumstance is proximate in time and lends assurance to the version of PW-2.

(v) The oral dying declarations attributed to the deceased and deposed to by PW-2, PW-3, PW-4 and PW-6 are consistent in material particulars in naming the appellant as the assailant. Although these witnesses are related or closely associated with the deceased, their evidence on this aspect has withstood cross-examination and finds support from the



overall circumstances of the case. The medical evidence corroborates the nature and location of the injury. The motive suggested by the prosecution, namely the outstanding loan and the prior threat, provides an additional link in the chain.

(vi) The discrepancies regarding the exact date and time of the occurrence, the non-recovery of the weapon and the projectile, and certain omissions in the investigation, though pointed out with some force, do not go to the root of the prosecution case. They are not sufficient to discard the reliable ocular account and the consistent oral dying declarations. The confessional statement recorded by the Investigating Officer has been kept out of consideration in view of the bar contained in Section 25 of the Indian Evidence Act.

(vii) Having regard to the cumulative effect of the evidence of PW-2, the corroborative circumstances spoken to by PW-3 and PW-5, the consistent oral dying declarations, and the medical evidence, we are of the considered opinion that the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt. The findings recorded by the learned trial court do not warrant interference by this Court.



(viii) In the result, the appeal fails and is hereby dismissed.

(ix) The judgment of conviction, dated 29.06.2018 and the order of sentence, dated 05.07.2018 passed by the learned 6th Additional District and Sessions Judge, Patna City, in Sessions Trial No. 40 of 2018 arising out of Agamkuan P.S. Case No. 396 of 2017 are affirmed. The appellant Ravi Kumar @ Singharwa shall serve the sentence awarded by the trial court.

(x) The trial court records be returned forthwith.

(xi) Before parting with the judgment, this court places on record its deep appreciation for the research and assistance rendered by Mr. Aditya Shekhar and Mr. Ribhava Raj, Legal Researchers attached with this court.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J: I agree.

(Rana Vikram Singh, J)

skm/-

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