

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.2304 of 2023**

Arising Out of PS. Case No.-84 Year-2003 Thana- BRAHMPUR District- Buxar

=====

HARESH YADAV S/O LATE NAGA YADAV R/O Village- (Soa) Lali Ke  
Dera, P.S- Krishna Brahm, Distt.- Buxar.

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Umesh Kumar Singh, Advocate  
For the Respondent/s : Mr. Usha Kumari 1, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**  
**ORAL JUDGMENT**

**Date : 22-08-2025**

Heard the parties.

2. The present appeal has been directed against the judgment of conviction dated 29.03.2023 and order of sentence dated 05.04.2023 passed by learned Additional District and Session Judge-I cum Special Judge SC/ST (P.O.A) Act, Buxar, in SC/ST case no. 173/2021, arising out of Brahmpur (Krishna Brahm) P.S. case no. 84/2003 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 324, 307, 452 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(i)(xi) of SC/ST (P.O.A) Act and has been sentenced to undergo seven years imprisonment alongwith



fine of Rs. 25,000/- (Twenty five Thousand) under Section 307 of I.P.C. and in default of payment of fine, appellant will have to suffer additional imprisonment for six months. Appellant has further been sentenced to undergo two years imprisonment under Section 324 I.P.C. and to undergo imprisonment for four years alongwith fine of Rs. 10,000/- (Ten Thousand) under Section 452 of I.P.C. and in default of payment of fine, appellant will have to suffer additional imprisonment of four months. Appellant has further been sentenced to undergo imprisonment for three years alongwith fine of Rs. 2000/-(Two Thousand) under Section 27 of Arms Act and in case of default of payment of fine, appellant will have to suffer additional rigorous imprisonment for two months. Appellant has further been sentenced to undergo imprisonment of two years alongwith fine of Rs. 5,000/- (Five Thousand) under Section 3 (i) (xi) of SC/ST (P.O.A) Act and in default of payment of fine, the appellant will have to suffer additional imprisonment of two months. The learned trial court ordered that all the sentenced shall run concurrently except the default sentences.



3. As per prosecution case, informant has narrated the story that while he was sleeping alongwith his family in the intervening night of 25/26.05.2003 near about 12:30 AM, he woke up and saw 3 – 4 persons entered in the house of informant. When informant asked them about their identity, they asked the informant to remain silent and go to sleep, as a result of which informant got afraid. In the meanwhile, informant's wife woke up after hearing the noise and she also enquired about the persons. It is alleged that informant identified one person as younger son of late Naga Yadav of Lalee Ke Dera (Soa) village but informant does not know the name of the said person. It is further alleged that when the informant turned on the torch, he identified the face of the said person but he did not know the name of the said person and the said miscreant fired bullet which hit upon arm and chest of informant's wife and blood started oozing out. It is further alleged that informant was also hit by bullet in his left arm and blood started oozing out.

4. On the basis of fardebayan of informant (P.W.2), Brahmpur (Krishna brahm) P.S. Case No. 84 of



2003 has been instituted under Section 324, 448, 307, 34 of IPC and 27 of the Arms Act against younger son of late Naga Yadav of village – Soa, Lalee Ke Dera (appellant herein). During the course of investigation, charge sheet has been submitted against the appellant under Sections 452, 324, 307, 34 of IPC and 27 of the Arms Act alongwith Section 3(i)(xi) of SC/ST (P.O.A.) Act and cognizance has been taken under the aforesaid sections. Charge has been framed on 04.08.2006 against the appellant under Sections 324, 307, 452, of the I.P.C. and Section 27 of the Arms Act and Section 3(i)(xi) of SC/ST (P.O.A.) Act. Thereafter the charges have been read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused person, prosecution has examined altogether seven witnesses as P.W. 1- Sunita Devi (wife of informant/injured witness), P.W. 2- Binod Kumar Ram (informant), P.W.3- Vishwanath Ram, P.W.4- Virendra Ram, P.W.5- Ramesh kumar Ram, P.W.6- Ram Kripal Mahto (Investigating officer) and P.W.7- Kamal Kishore Ojha (Doctor).



6. Prosecution has relied upon following documentary evidence on record:-

Exhibit-1 : Signature of the informant on the Fardbeyan.

Exhibit 2 : Injury Report of Sunita Devi.

Exhibit-2/1 : Supplementary Injury Report of Sunita Devi.

7. Defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial. However, he did not enter into defence.

8. After hearing the parties, the learned trial court was pleased to convict the appellant and to sentence him as indicated in the opening paragraph of the judgment.

9. Learned counsel for the appellant submitted that the Investigating Officer of this case has not been examined and hence the place of occurrence cannot be established. In the present case, the examination of Investigating officer is vital on the point of identification. He further submits that except P.W. 1 and P.W. 2, remaining



witnesses have been turned hostile. He further submits that P.W. 1, who is the wife of P.W. 2, who is claiming to identify the appellant but during the course of cross examination she has specifically stated to Daroga Ji that only her husband has identified the appellant as younger son (chhota ladka) of late Naga Yadav of Lalee Ke Dera (Soa) village. Learned counsel further submits that the Daroga Ji has not taken help in identifying the appellant and same is corroborated by statement of P.W. 2 also. He further submits that on the point of identification, P.W. 1 and P.W. 2 have clarified that Daroga Ji has not taken help for identification of appellant. Even the physical features of appellant has not been pointed out in the FIR, then, question arises how the appellant has been identified? Learned counsel further submits that from the perusal of FIR, it has been reflected that 3-4 persons were entered in the house of informant but there is no any explanation how others have not been identified, though, the father's name of appellant was in the knowledge of P.W. 2 and it was claimed by P.W. 2 that torch was available with him, then, why physical features of the appellant was not pointed out in the FIR?



Learned counsel further submits that P.W. 1 has already clarified that she has never visited the native village of appellant i.e. Lallee Ke Dera. He further submits that P.W. 2 has clearly stated that late Naga Yadav has left behind five sons but how the appellant has been declared as the younger son (chhota ladka) of late Naga Yadav, has not come either in the evidence of P.W. 1 or P.W. 2. He further submits that on the point of identification, examination of investigation officer is very much necessary but investigating officer has not been examined in the present case. Learned counsel further submits that it has not been clarified that whether the name of other accused persons who made entry in the informant's house has been identified or not, as the investigating officer has not been examined.

10. Learned counsel for the State has submitted that the judgment of conviction and order of sentence passed by the concerned court is on the basis of material available on record. Learned counsel further submits that P.W. 1 and P.W. 2 are victims and they have supported the manner of occurrence even though investigating officer has not been examined. There is



accusation against the yonger son (chhota ladka) of late Naga Yadav and the same is corroborated and supported by the P.W. 1 and P.W. 2 who are injured witness.

11. The question which arises for consideration is :-

*Whether the prosecution has proved the case beyond the shadow of reasonable doubt ?*

12. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

13. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Section 307, 324, 452 of IPC and Section 27 of the Arms Act and Section 3(i)(xi) of the SC/ST (P.O.A.) Act.

14. P.W.-1. Sunita Devi, who is victim as well as the wife of the informant and she stated in her examination-in-chief that the occurrence happened about four years and two months ago in the midnight when she and her husband were sleeping in their house. She has





stated that the door of the house was made of Bamboo sticks therefore, when it was opened then they heard some sort of sound and after hearing the sound she woke up and saw that four persons having country made pistol in their hands entered into the house, thereafter, she and her husband identified one of them as Haresh Yadav, younger son of Naga Yadav. Thereafter, P.W. 1 and her husband started raising alarm then the accused, Haresh Yadav, fired at P.W. 1 which hit her on chest and hand and she also showed her injuries in the court on the aforesaid parts of her body. She also stated that when her husband came to rescue, he also sustained gun shot injury on his arm. She also stated that the accused persons came for stealing the pigs. It is further stated that after getting injuries they firstly went to the police station where the statement was recorded by the police regarding the incident and thereafter they went for treatment in the hospital at Dumroan from where they were referred to Buxar for X-ray examination. She further identified the appellant, Haresh Yadav, who was present in the court.

15. In her cross-examination, P.W. 1 stated



that her husband was sleeping having a torch with him. It is further stated that she woke up five minutes prior to her husband. She further stated that at the time of firing she was behind her husband. She also stated that on the day of occurrence, she did not know the name of the appellant but she recognized him. She told Daroga Ji that younger son (chhota ladka) of Naga Yadav fired bullet upon them which hit her on chest and arm. P.W. 1 stated that she told Daroga Ji that her husband identified the younger son (chhota ladka) of late Naga Yadav who is resident of Lalee Ke Dera (Soa). She also stated that she did not visit Lalee Ke Dera village. She also stated that the test identification parade was not done in this case. She lastly stated that the appellant had made two firing and her husband was injured from the first shot and thereafter she was injured from the second shot.

16. P.W.-2, Binod Kumar Ram who is informant in this case and he stated in his examination-in-chief that the occurrence took place near about four years and three months ago in the midnight when he was sleeping with his wife. It is further alleged that his wife woke up



after hearing the sound of opening the door, four accused persons barged into the house and they all had given threatening to remain silence otherwise she would be killed. Thereafter, the informant also woke up and he and his wife shouted for help and he identified one of them in the light of his torch but did not know the name of the said person. Later on, he came to know that the name of accused is Haresh Yadav. He further stated that the appellant made two rounds of firing. He stated that the he sustained gun shot injury in his left arm and the said bullet also hit his wife. He again stated that the first bullet hit his wife on her chest and second bullet hit her on left arm. It is further stated by him that after sustaining injuries they went to the Krishna Brahm police station at first where they got their case registered and he further identified his signature on the fard-beyan which has been marked as Exhibit-1 in this case. He further stated that he went to the hospital at Dumraon after registering the case in the police station and they were treated in the hospital. He also stated that they were also sent for X-ray examination at Buxar. He further identified the accused, Haresh Yadav, present in the court.



17. On his cross-examination, P.W. 2 stated that Naga Yadav has five sons and out of five two are residing outside and rest three are residing in the village. The police had taken his fard-beyan at Krishna Brahm police station in the night and there is no any other fard-beyan except that fard-beyan. Thereafter the police came in the hospital and took his signature. He further stated that the police had not asked any question regarding the identity of the accused. He also stated that he came to know about the name of appellant when reached his house from hospital after four days of occurrence and then he approached the police station to tell the name of the accused, Daroga Ji told that the name has been revealed. The I.O. has not conducted the test identification parade in this case. He further stated that there is no any previous enmity with the accused. He further mentioned the description of boundaries of his house and he also stated that there is no separate place for keeping the pigs and there was only four rooms in his house.

18. P.W.-3 (Vishwanath Ram), P.W.-4 (Virendra Ram), P.W.-5, (Ramesh Kumar Ram) and P.W. 6, (Ram Kripal Mahto) have not supported the case of



prosecution and they have been declared hostile.

19. P.W.-7. Dr. Kamal Kishore Ojha stated that on 26.05.2008 at 4:00 AM he examined Sunita Devi, w/o- Binod Kumar Ram, village-Sowa, P.S- Krishna Brahm, and found following injuries on her person:-

(i) Lacerated wound size 1/2"x1/2"x1/2" over upper part of left forearm 1 /2" below elbow on inner aspect. Surrounding area of wound was black due to burn.

(ii) Lacerated wound 1/2" x 1/2" x 1/2" over upper part of left forearm 1 /2" below elbow on outer aspect. Surrounding area of skin was scorched and black due to burn.

(iii) 1 /4" Circular wound depth not asses. Left breast surrounding area of skin was black due to burn.

(iv) 1 /8" Circular wound just below left breast surrounding area of skin was black due to burn.

(v) Lacerated wound 1" x 1/2" x 1/2" lower part of left arm on inner aspect surrounding area of skin was black due to burn.

Age of Injury-within 06 hours.

Nature of injury- opinion reserved because



patient referred Sadar Hosptial, Buxar for x-ray of forearm area, AP and lateral view and X-ray of chest.

20. From the perusal of FIR, it is evident that name of the appellant has not been mentioned and physical features of the appellant has not been reflected. There were no identifying features provided regarding the four accused persons—such as whether they were thin or fat—yet the informant is said to have claimed that he identified the appellant in the light of a torch. The informant/P.W. 2 did not describe about the name of appellant rather he described the appellant as younger son (chhota ladka) of the late Naga Yadav of Lalee Ke Dera (Soa) village. It is also crystal clear that though there are presence of four accused persons who made entry into the house of informant, informant has not identified any of the other three miscreants and he has also not pointed out physical feature though, he is claiming that he has identified the appellant through the light of torch.

21. From the perusal of statement of P.W. 1, Sunita Devi, who is claiming to identify the appellant is quite shaky as she has never visited resident village of appellant and she has not pointed out any physical features



of any of the accused persons who were present at the place of occurrence. P.W. 1 has stated in paragraph 4 of her cross examination that her husband was quite ahead of her when the firing took place and she was behind her husband. From the perusal of FIR, it appears that the gunfire hit the chest of P.W. 1 who is the wife of P.W. 2. On this point, version of FIR is found totally contradictory that if P.W. 1 is behind her husband at the time of firing, then, how the firing hit on chest of P.W. 1 ?

22. From the perusal of statement of P.W. 2, it is crystal clear that though he is claiming to be injured witness but no injury report is available on record. So, his statement is totally inconsistent with the prosecution story. So far as the identification of appellant is concerned, P.W. 2 has himself admitted in paragraph 7 of his cross-examination that he cannot point out the description of physical features of five sons of late Naga Yadav. On the point of identification of appellant, P.W. 2 further stated that he came to know about the name of appellant when he reached his house from hospital after four days of occurrence and then he approached the police station to tell



the name of the accused on which Daroga Ji told that the name has been revealed.

23. From the perusal of evidence of P.W. 2 it is crystal clear that the evidence of P.W. 2 is quite shaky with regard to the identification of appellant. P.W. 2 has not whispered about the source from where he came to know about the name of appellant. During the course of investigation how the name of appellant came to fore and it further put question mark as to what is the source of identifying the appellant except the name of father of appellant who is having five sons.

24. From the perusal of P.W. 1, it is evident that P.W. 1 is injured witness who has no knowledge about the residence of appellant as she has never visited the said place. The identification of P.W. 1 is totally based on identification of P.W. 2. P.W. 1 has not pointed out anything as to how she linked the identification of appellant segregating the identification of other four sons of late Naga Yadav. There are four accused persons who made intrusion into the house of informant, then, why their identifications have not been revealed during the course of investigation. It





is admitted by P.W. 1 and P.W. 2 that Daroga ji has not put the appellant on TIP.

25. In the light of the aforesaid fact, it is necessary to cite the judgment delivered by Hon'ble Supreme Court in the case of ***Wahid Vs State of Govt. of Nct Of Delhi*** reported in ***(2025) 3 Supreme Court Cases 341 : 2025 SCC OnLine 234*** The Hon'ble Supreme Court, in paragraph 26 and 27 of the aforesaid judgment has held as follows:-

*“26. Normally, where accused persons are unknown and are not named in the FIR, if the prosecution case as regards the manner in which they were arrested is disbelieved, the Court should proceed cautiously with other evidence and objectively determine whether all other circumstances were proved beyond reasonable doubts. In this light we shall now consider the evidence relating to identification of the accused persons. Admittedly, this is a case of night incident.*

*27. Though seven eye witnesses of the incident were examined*



*by the prosecution, only three (i.e., PW-1, PW-5 and PW-6) identified the accused in court. Out of the remaining four, three including the driver categorically stated that the accused persons are not those who robbed the passengers that night. The fourth one stated that it was too dark, therefore, he is unable to recognise. PW-1, at whose instance the arrest of the accused persons was allegedly effected, during cross-examination, stated that he saw the accused persons first on the date of the incident and second on the date fixed in the case. Admittedly, no test identification parade was conducted and the statement of PW-1 was recorded in court on 28.05.2013, that is, after 16 months of the incident. In such circumstances, not much reliance can be placed on his statement.”*

26. As far as dock identification by two prosecution witnesses is concerned, they identified the accused persons during their deposition in the learned trial Court in the year 2007 i.e. nearly after four years and two months of the incident. The question arises that if the name



of appellant has not been revealed in the FIR, then, how the name of appellant came to fore during the course of investigation and how it is determined that appellant is the person who is the perpetrator of the said crime though FIR denotes the intrusion of four persons and informant is claiming to identify the accused/appellant in the light of torch. Omission of denoting the physical features of any of the accused persons who are the perpetrators of crime clearly indicates that there was no light and on the said point whether light was available or not ?, torch was seized or not? ,the examination of Investigating Officer has not taken place.

27. In the light of the aforesaid fact, it is necessary to cite the judgment delivered by Hon'ble Supreme Court in the case of ***Wakil Singh and Ors. Vs. State of Bihar*** reported in ***1981 (Supp) SCC 28***, the Hon'ble Supreme Court, in paragraph 2 of the aforesaid judgment has held as follows:-

*“In the instant case we may mention that none of the witnesses in their earlier statements or in oral evidence gave any*



*description of the dacoits whom they have alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz., stature of the accused or whether they were fat or thin or of a fair colour or of black colour. In absence of any such description, it will be impossible for us to convict any accused on the basis of a single identification, in which case the reasonable possibility of mistake in identification cannot be excluded. For these reasons, therefore, the trial court was right in not relying on the evidence of witnesses and not convicting the accused who are identified by only one witness, apart from the reasons that were given by the trial court. The High Court, however has chosen to rely on the evidence of a single witness, completely over-looking the facts and circumstances mentioned above. The High Court also ignored the fact that the identification was made at the T.I. parade about 3 months after the dacoity and in view of such a long lapse of time it is not*



*possible for any human being to remember, the features of the accused and he is, therefore, very likely to commit mistakes. In these circumstances, unless the evidence is absolutely clear, it would be unsafe to convict an accused for such a serious offence on the testimony of a single witness.”*

28. In the case of ***Vishwanatha Vs. State of Karnataka*** reported in ***2024 SCC Online SC 1658***, the Hon’ble Supreme Court, in paragraph 17 and 19 has held as follows:-

*17. Another fact which casts a doubt on the identity of the present appellant, is that there is no description in the FIR of 'Vishwanatha' except that his name is mentioned. He then becomes the first of the two to be arrested by the police. Learned counsel of the appellant would submit that there were six persons by the name of 'Vishwanantha' in Kudupu village at the relevant point of time, a fact which was placed by the defence during trial, which has not been*



*confronted. In such a situation, it was the duty of the prosecution to show as to how and on what basis, the appellant came to be apprehended by the police....*

*19. In view of the above, we allow this appeal and acquit the appellant in this case by giving him the benefit of doubt.*

29. In the light of the aforesaid fact, dock identification has no meaning at all where the Investigating Officer has not been examined and TIP is not available on record. Dock identification by few witnesses is not reliable.

30. P.W. 1 and P.W. 2 have not even pointed out the physical features of any of the sons of late Naga Yadav without knowing the name of the appellant coupled with without segregating any physical features how they have come to conclusion that appellant is the perpetrator of the alleged crime. Though, there was a dead silence of night and through the light of torch, it is beyond the stretch of imagination of prudent person that without knowing the physical features of person, P.W.1 and P.W. 2 are identifying the person only as the younger son (chhota ladka) of late



Naga Yadav, though, physical features of the any of the sons of Late Naga Yadav is not known by them. Both (P.W.1 and P.W.2) witnesses had admitted that Daroga has not taken any help in identifying the appellant during the course of investigation. P.W. 1 and P.W. 2 only identified the appellant as younger son (chhota ladka) of late Naga Yadav. P.W. 2 has admitted that he sustained gun shot injury and his wife also sustained gun shot injuries but the injury of P.W. 2 has not been found on record.

31. From the perusal of statement of P.W.-7, it is clear that he has examined P.W. 1 who sustained five injuries and her presence at the place of occurrence cannot be denied. It is also quite evident that occurrence has taken place but the question arises as to who has committed the said occurrence. From the perusal of FIR, it appears that there are two injured persons, P.W. 1 and P.W. 2. but injury report reflected that only P.W. 1 is the injured person as doctor has examined P.W. 1 and she sustained five injuries. Injury of P.W. 2 is not available on record. So, from the record, the claim of P.W. 2, who is injured person, is not supported by any injury report. So, he cannot be put in the



category of injured person as is claimed by the prosecution story.

32. There are several latches and flaws in the evidence of P.W. 2 that he is claiming to be informant as well as victim/injured person but there is no injury report is available on record. P.W. 2 has identified the person whose name is not mentioned in FIR but he is also claiming that he has identified the accused as younger son (chhota ladka) of late Naga Yadav. P.W. 2 has not pointed out physical features of any of the sons of late Naga Yadav and he has himself admitted in his cross examination that he came to know about the name of the appellant when he reached his house from hospital after four days of occurrence.

33. The occurrence is about intrusion of 3-4 persons into the house of informant and they are alleged to have made firing causing injury to informant and his wife and FIR has been lodged against younger son (chhota ladka) of informant.

34. In the light of the discussions made above, it is necessary to find out as to whether the appellant





has participated in the alleged occurrence. On the said point, the evidence of P.W. 1 and P.W. 2 is quite shaky. The prosecution story does not reflect about which younger son (chhota ladka) of late Naga Yadav has participated in the alleged occurrence and the said question is also decisive when the witness P.W. 2 has stated that late Nago Yadav has five sons, then, how appellant has been identified as perpetrator of the said crime. From the perusal of material available on record, it is crystal clear that appellant has not been put on TIP, as admitted by P.W. 1 and P.W. 2 on the basis of materials available on record. If appellant is younger son of late Naga Yadav how the appellant has been segregated from other sons puts question mark. Physical features of any of the sons of late Naga Yadav has not been pointed out either by P.W. 1 and P.W. 2. They have given bald statements and FIR has been lodged against younger son (chhota ladka) of late Naga Yadav without knowing physical features of the son of late Naga Yadav. There is nothing on record to establish age wise description indicating that appellant is the younger son (chhota ladka) of Naga Yadav. Furthermore, non examination of



Investigating Officer (I.O.) also casts doubt upon the story of prosecution. There is no material on record which indicate that appellant has been identified at any particular point of time either by I.O. or by P.W. 1 and P.W. 2 thorough identification parade by putting all the sons of late Naga Yadav. P.W. 1 has also herself stated that she has not visited the place of resident from where sons of late Nago Yadav belongs, then, how appellant has been identified as the younger son (chhota ladka) of the late Nago Yadav as there is no material on record which indicates that appellant is the younger son (chhota ladka) of late Nago Yadav. No identification parade has been initiated by I.O. as P.W. 1 and 2 have clarified in their evidences. It has not been mentioned in the FIR about the physical features of body of appellant which helps in identifying him as the younger son (chhota ladka) of late Nago Yadav. On the point of identification, nothing is available on record which clearly indicates that appellant is one of the accused who have participated in the alleged occurrence and there is nothing on record which entails that there are other persons who were also participated in the alleged occurrence alongwith



appellant. The evidence of P.W. 1 is not inspiring confidence as to how all of a sudden she came to know about name of appellant after three or four days from the date of occurrence.

35. These are the basic flaws in identifying the appellant. On the point of identification, prosecution has measurably failed to prove the case against the appellant.

36. It is the cardinal principle of criminal justice system that prosecution has to prove the case beyond the shadow reasonable doubt. In the present case, the investigating officer has not been examined which clearly reflects that the place of occurrence has not been specifically proved and the appellant has been prejudiced thereby. On the point of identification, both witnesses has admitted that the investigating officer has not taken any help for identifying the appellant during the course of investigation. How the story of prosecution is jumped upon the conclusion that appellant is the perpetrator among others who has committed the alleged occurrence. There was no any physical features pointed out by any of the witnesses



either in the FIR or in the deposition of P.W.s that the appellant is the person who is perpetrator of the alleged crime, as pointed out in the story of prosecution.

37. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, the judgment of conviction dated 29.03.2023 and order of sentence dated 05.04.2023 are hereby set aside and this appeal stands allowed. The appellant is in custody. Let the appellant be released forthwith, if he is not warranted in any other case.

38. The interlocutory application, if any, also stands disposed of.

39. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

40. The records of this case be also returned



to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

alok/-

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