
Sabir Alam Vs The State of Jharkhand

Criminal Appeal (D.B.) No. 959 of 2007

Court: Jharkhand High Court

Date of Decision: Sept. 21, 2014

Acts Referred:

Arms Act, 1959 " Section 27#Criminal Procedure Code, 1973 (CrPC) " Section 313#Penal Code, 1860 (IPC) " Section 147, 148, 149, 302, 324

Citation: (2015) 1 AJR 356 : (2015) 1 JLJR 440

Hon'ble Judges: Rakesh Ranjan Prasad, J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Reyaz, Advocate for the Appellant

Judgement

Rakesh Ranjan Prasad, J.

This appeal is directed against the judgment of conviction and order of sentence dated 01/06/2007 and

04/06/2007 respectively passed in Sessions Trial No. 343 of 2002/11 (A) of 2005, whereby and whereunder the appellant having been found

guilty for committing murder of Nazma Khatoon and Sahnaz Khatoon, was convicted for the offences under Sections 302/ 149 & 148 of the

Indian Penal Code and also under Section 27 of the Arms Act, and thereby, he was sentenced to undergo R.I. for life and to pay fine of Rs.

10,000/- for the offence under Section 302 read with Section 149 of the Indian Penal Code and in default of payment of fine to undergo R.I. for

two years. Further he was sentenced to undergo R.I. for two years and three years for the offence under Section 148 of the Indian Penal Code

and Section 27 of the Arms Act respectively. Both the sentences were directed to run concurrently.

2. It is the case of the prosecution that on 18/10/2001 at about 12.30 P.M., the informant Sher Khan (PW-4), his brother-in-law Imdad @

Guddu (PW-1), his mother Nazma Khatoon and Mausi (mother's sister) Sahnaz Khatoon, left home for coming Sabji Patti Purana Bazar for

doing shopping. After purchasing vegetables, when they were returning home reached near Diamond Crossing, the informant (PW-4) and Imdad

@ Guddu (PW-1) stopped there at one Gumti (Kiosk) for purchasing Pan Parag. They asked Nazma Khatoon and Sahnaz Khatoon (both

deceased) to go ahead and they will be following them soon after taking Pan Parag. After they purchased Pan Parag, they suddenly saw that eight

accused persons including this appellant Sabir Alam coming from the side of Bhuli More Diamond Railway Crossing. All armed with firearms,

surrounded Nazma Khatoon and Sahnaz Khatoon. Immediately thereafter the appellant fired shot upon Nazma Khatoon, the mother of the

informant, whereas accused Babu Alam fired shot upon his Mausi Sahnaz Khatoon as a result of which both of them fell down on the ground and

died. Thereafter, the appellant and four other accused named in the FIR boarded on a Maruti Van bearing registration No. BR 17 K 2188 and

fled away towards Diamond Crossing Bhuli Road. Two other accused persons, who have also been named FIR, fled from Hero Honda

Motorcycle and one Minhaz alongwith two and three unknown persons fled from there on their foot. Thereupon, when the informant (PW-4) and

his brother-in-law Imdad (PW-1) came over there they saw both of them dead.

3. When the informant and his brother-in-law Imdad were at the place of occurrence, Gopinath Tiwary (PW-9) Officer-in-Charge posted at Bank

More Police Station, on getting information reached at the place of occurrence alongwith police party. He recorded fardbeyan (Ext.-7) at 2.45

PM, which was sent before the police station for registration of the case. On the basis of the said fardbeyan, Dhanbad Bank More P.S. Case No.

564 of 2001 was registered against eight accused persons including this appellant under Sections 147, 148, 149, 341, 342, 324 and 302 of the

Indian Penal Code. Meanwhile, he took over the investigation of the case. During that course, he held inquest on the dead bodies of Nazma

Khatoon and Sahnaz Khatoon and prepared inquest report (Exts. 3 and 3/1). The Investigating Officer seized one country made pistol with fired

empty cartridge as well as one live cartridge, two pairs of ladies slippers and also soil stained with blood. Seizure list was prepared. Thereupon,

the Investigating Officer after preparing dead body chalans (Exts. 3/4 & 3/5), sent the dead bodies for Post Mortem examination. On receiving

dead bodies Dr. Chandra Shekhar Prasad (PW-6) posted at PMCH, Dhanbad did autopsy on the dead bodies of Nazma Khatoon and found

following antemortem injuries on her person:-

(i) Firearm wound of entrance; 1/4" x 1/4" diameter with inverted margin and thin abraded colour around the margins situated on right temporal

region just above the top of pinna of right ear. No evidence of burning, synging or blackening were found at the sight of injury but tattooing was

present all over the right temple.

(ii) Firearm wound of exit 1/2" diameter with averted lacerated margin situated on the outer angle of left eye whole left eye was found lacerated.

No evidence of burning, syning and tattooing or abraded colour was found.

(2) Abrasion:- 1" x 1" just outside the outer angle of left eye.

(3) On dissection, it was found that the bullet entered into the cranial cavity through the injury no. (I) i.e. firearm wound of entrance. There was a

hole in the right temporal bone of size 1" x 1/4" with multiple linear fractures radiating from it and the longest linear fracture was of right parietal

bone about three and half inch long going across the right parietal eminence. The bullet lacerated the brain and meninges extensively broke the left

orbital plate and came out from the cranial cavity through injury no. (ii) i.e. firearm wound of exit, producing multiple fractures of frontal bone left

side radiating from the sight of exit in the left orbit.

Doctor prepared Post Mortem examination report (Ext.-2) with an opinion that the death was instantaneous due to aforementioned bullet injury of

head and brain. According to him, time elapse since death within six hours.

4. The Doctor also held autopsy on the dead body of Sahnaz Khatoon and found following antemortem injuries on her person:-

(i) Firearm wound of entrance 1/4" diameter with inverted margin and thin abraded colour all around the margins situated on the back of lower

portion of the right side of neck. No evidence of burning, synzing and tattooing was found

(ii) Firearm wound of exit- 3/4" x 1/2" with averted lacerated margins situated on the middle portion front of left side of neck. No evidence of

abraded colour, burning seining, blackening and tattooing was found.

(2) Lacerated wound 1/2" x 1/2" x bone deep with evidence of burning on the root of left little finger.

On dissection, it was found that bullet at first injured the little finger of left hand and then entered into the neck through injury no. (I) i.e. firearm

wound of entrance. The injury indicates that at the time of assault deceased had placed her left hand on the right side of neck for the purpose of

defence. The bullet lacerated the soft tissues of neck alongwith carotid artery and thyroid on left side and then came out of the body through injury

no. (ii) i.e. firearm wound of exit. The bullet also broke the 7th cervical and first thoracic vertebra while passing through the track from right to left

side of neck and in the process spinal cord was also lacerated.

Doctor issued a Post Mortem report (Ext. 2/1) with an opinion that the death was caused due to aforementioned close shot bullet injury of neck.

5. The Investigating Officer, after completion of the investigation submitted charge sheet against eight named accused persons, upon which

cognizance of the offence was taken and the case was committed to the Court of Sessions. The matter was fixed for framing of the charges, but six

accused persons did not turn up and, therefore, the case was separated from the case of this appellant and one Javed Alam, against whom charges

were framed. Subsequently, Javed Alam also jumped the bail when the judgment had been fixed.

6. In course of trial, prosecution examined as many as eight witnesses, of them PW-1 Imdad Ahmad and PW-4 Sher Khan the informant, are the

eyewitnesses, whereas PW-2 Md. Sonu Khan, PW-3 Md. Basir @ Majanoo and PW-5 Md. Ishad Alam are the hearsay witnesses, who came

to know about the occurrence from PW-4 the informant. Pws. 5, 7 and 8 are the witnesses to the inquest. Upon closure of the prosecution case,

question with respect to incriminating materials appearing against the appellant was put under Section 313 Cr. P.C., which the appellant denied.

However, at the same time, it was stated in his defence that on the day of occurrence, i.e. 18/10/2001, he was not present at Dhanbad, rather he

had come to High Court, Ranchi alongwith his Body Guard in connection with hearing of some case, where he has had abdominal pain associated

with vomiting and, as such, he came to Sadar Hospital, Ranchi for treatment where he was admitted on 18/10/2001 at 4.45 P.M. And was

discharged on 19/10/2001 at 10.45 AM.

In order to establish the case, taken in defence, five witnesses were examined. DW-1 is the Body Guard, who has testified in the same manner as

has been stated above. DW-2 happens to be an Advocate. According to him, on 18/10/2001 at 3.30 to 3.45 PM, while he was about to go home

after doing work in the High Court, he saw a person vomiting and with whom one constable was there, to whom he advised to take him to hospital

and on their request, he also accompanied them to hospital where the said person was first treated in the emergency ward and then he was

admitted. DW-5 Dr. Santosh Kumar Srivastava has proved the entry of the Admission Register as Ext. E, showing name of Md. Sabir at Sl. No.

330 being admitted in the hospital. He has proved the discharge slip being in his writing as Ext. E, showing the date of discharge 19/10/2001 at

10.45 A.M. DW-4 happens to be a Hand Writing Expert. According to him, when he compared the signature of the informant Sher Khan (PW-

4), appearing on the photo state copy of the fardbeyan and the seizure list, with the signature appearing in the photo state copies of the depositions,

he did find that the signature are not tallying. DW-3 Hari Lal Yadav, who at the relevant point of time was posted as Sub-Inspector in the CID has

testified that one Inspector Anil Kumar had also inquired into the matter under the direction of Additional Inspector General and had submitted its

report to him, copy of which, containing signature of Anil Kumar is there, has been proved.

7. The trial court upon placing reliance on the testimonies of the eyewitnesses PWs- 1 and 4, which according to him, got corroboration from the

medical evidence and disbelieving the testimonies of the witnesses examined in defence, did find the appellant guilty and, thereby, convicted and

sentenced him as aforesaid. Being aggrieved with the said judgment and order of sentence, this appeal has been preferred.

8. Mr. Neyaz, learned counsel appearing for the appellant submits that admittedly all the witnesses including PWs.-1 & 4, the eyewitnesses, are

related to each other and also with the deceased and one of the eyewitness PW-1 does have the criminal background and as such, testimonies of

the eyewitnesses be evaluated with caution and circumspection as not a single independent witness has been examined and, therefore, the

evidences of PWs.-1 & 4 need to be scrutinized carefully and cautiously, in view of the ratio laid down in a case of Dahari and Others Vs. State of

U.P., and in a case of ""State of U.P. -versus- Farid Khan [2004 (3) Est. CrI. Cases 229 SC]"".

In furtherance of his submissions, it was pointed out that if the strict scrutiny is made of the testimonies of the eyewitnesses, it would appear, that

the story, which has been propounded on behalf of the prosecution of going to market for purchasing vegetables by four persons; two deceased

and two eyewitnesses, PWs.-1 & 4, is quite improbable as it is not expected in a normal situation that the informant PW-4 and his mother Nazma

Khatoon deceased residing at one place, whereas PW-1 and the other deceased Sahnaz Khatoon residing at other places would join together for

coming to market for purchasing vegetables that too in a small quantity, which would never cater the need of four families. Not only that vital

discrepancies are there which would go to cast serious doubt over the truthfulness of the testimony of the eyewitnesses. In this regard, it was

submitted that as per the evidence of PW-1, all the four persons left home at 12.30 P.M. for going to Purani Bazar for shopping where they did

shopping till 1 "O"Clock and then proceeded to home, which, according to the testimony of the witnesses may have consumed 4 to 5 minutes

thereby if we would go by his version the occurrence may have taken place at about 1.00 P.M. or 1.05 P.M. but according to PW-4, the incident

took place at 2.15 P.M., which discrepancy in the facts and circumstances where the parties are inimical and the witnesses are related to each

other and that not a single independent witness has been examined, can be said to be serious one. Discrepancy is there in the deposition of PW-4

vis-a-vis fardbeyan as PW-4 testified that as soon as he turned around after taking Pan Parag, he saw accused persons surrounding his mother and

Khala (mother's sister), whereas in the fardbeyan statement had been made that he saw accused persons coming from the direction of Diamond

Crossing Bhuli Road. This discrepancy in the normal circumstances may appear to be insignificant but in the context of the matter stated above, it

becomes quite serious.

Further, it was submitted that the witnesses have testified that after resorting to firing the accused persons including the appellant went away in the

Maruti Van but from the evidence of PW-9, it would appear that one has to leave vehicle at Sabji Bazar and then walk down to the place of

occurrence. The evidence of Investigating Officer is in the context of reaching to the place of occurrence from Bazar side, whereas one can also

come to the place of occurrence from Bhuli side. But from the evidence of PW-1 as testified in para-62, it would appear that one has to come

from foot to Bhuli More to Sabji Bazar through the railway line. In such situation, the entire case of the prosecution gets falsified.

9. The case of the prosecution also becomes suspicious for the reason that the Jhola in which the vegetables are being carried was never found at

the place of occurrence nor the Investigating Officer could locate Pan Parag shop from where Pws-1 & 4 have claimed to have seen the accused

persons committing offence. The version of the eye-witnesses becomes surrounded with the doubt on account of the fact that the oral testimony of

the witnesses never gets corroboration from the medical evidence as apart from gun shot injury, other injuries have also been found on the persons

of the deceased. Thus it was submitted that the prosecution has not been able to prove its case beyond all reasonable doubts. But, if the Court any

how finds that the prosecution has been able to establish its case, then the Court is required to consider meticulously the plea of alibi and the

witnesses examined to prove the plea of alibi are entitled to equal treatment and equal respect as that of the witnesses adduced on behalf of the

prosecution.

Learned counsel in this respect has referred to a decision rendered in the case of State of Haryana Vs. Ram Singh, , but the trial court on the flimsy

ground has discarded the testimonies of the witnesses examined to prove the plea of alibi and on account of this also trial court can be said to have

committed illegality in recording the order of conviction and sentence and, hence, the judgment passed by the trial court is fit to be set aside.

10. As against this, learned counsel appearing for the respondents submits that the evidences of the eyewitnesses PWs-1 & 4 claiming therein to

have seen the appellant and other committing murder have remained intact. Nothing has been elicited on behalf of the defence to discredit the

testimonies of the witnesses. Furthermore, ocular evidence gets corroboration completely from the medical evidence and, thereby, the testimonies

of those eyewitnesses are never shrouded with doubt even if the witnesses are related to each other and to the deceased. Further it was submitted

that the submissions advanced on behalf of the appellant to the effect that the place of occurrence, i.e. Jharia Line is not accessible to vehicle is in

the context of the evidence of the Investigating Officer, who has categorically deposed that if one comes to the place of occurrence from Sabji

Market then one has to leave vehicle before the market and has to come down on foot to the place of occurrence, but from the evidence of PWs-

1 & 4 it would appear that the place of occurrence was accessible to vehicle and that there may be minor discrepancy in the testimonies of the

eye-witnesses with respect to time of occurrence and on other point but that is not very vital and never goes to the root of the prosecution case

and, thereby, it will have no bearing on the veracity of the testimonies of the witnesses.

So far the plea of alibi taken on behalf of the appellant to the effect that on the date of occurrence he was at Ranchi has rightly been disbelieved by

the trial court as that plea never seems to have been proved meticulously on behalf of the defence and, hence, the plea of alibi is fit to be rejected.

11. Admittedly, the prosecution has projected PW-1 Imdad Ahmad @ Guddu and PW-4 Sher Khan, the informant, as eye-witnesses related to

each other and also to the deceased as PW-4 happens to be the son/step son of the deceased Nazma Khatoon, whereas PW-1 is the brother-in-

law of PW-4. Simply for the reason that the witnesses are related to the deceased, the testimonies of those witnesses never warrant to be

discarded out rightly, rather the settled principle is that the Court should scrutinize their evidences carefully and cautiously before accepting their

testimonies. As per the evidence of PWs-1 and 4 they alongwith Nazma Khatoon and Sahnaz Khatoon (both deceased) had come to Bhuli more

on a Rikshaw and thereafter, after crossing the railway line they came to vegetables market. After purchasing vegetables, when they were returning

home, PWs-1 and 4 stopped at Pan Parag shop for taking Pan Parag and asked the deceased to go ahead. When the deceased reached over the

Jharia line, the appellant and 7 others named accused persons, as well as some others accosted them. The appellant shot dead Nazma Khatoon,

whereas accused Babu Alam shot dead Sahnaz Khatoon, which the witnesses saw as soon as they turned around after taking Pan Parag. Their

presence has been doubted on behalf of the defence by taking a plea that it may not be possible for all the four persons living at different places to

gather together and to come to vegetables market for purchasing vegetables not for all as it was in a very small quantity which would not have cater

the need of all the members of the family. This is one way of looking a thing. Thing may occur in different manner also which depend upon the

circumstances which may not be know to other and, therefore, one would be not right in saying the thing should occur in a particular manner. Here

in the instant case, what the fact which has come in the evidence of PW-4 is that one of the deceased Nazma Khatoon was living in Kamar

Makdumi road, whereas the other deceased was living at wasseypur Nishant Nagar, whereas PW-1 was living with his mother at Kamarmakdumi

and PW-4 was living at Alihnagar. Alinagar never happens to be far way from Kamar Makdumi, rather as per the evidence of PW-4, it is only

200 yards away. Similarly, Nishant Nagar where one of the deceased Sahnaz Khatoon was living is only 150 yards away from the house of PW-

1.

Thus, it is evident that all the four persons were living in the area which is in vicinity of each other. In that event, it never appears to be improbable

that they gather together and then wishing to go of market for purchasing vegetables. Thus, four persons gathering together going to market for

purchasing vegetables can never be said to be a situation of improbabilities.

12. Further criticism is that the evidence of PW-1 is not consistent with the evidence of PW-4 with respect to timing of the occurrence. It was

highlighted that as per the evidence of PW-1, occurrence took place at 1 "O" Clock, whereas according to PW-4, it took place at 2.15 P.M.,

which in the facts and circumstances, that the witnesses are closely related to the deceased can be treated to be serious one. It is true that such

discrepancy does exist, but in our view it can hardly be taken to be inconsistent with each other as normally if one tells about the timing he may not

be so meticulous in saying so as normally in the circumstances appearing in the case one would tell about the timing by guess.

Furthermore, according to the evidences of PWs- 1 & 4, they left the house of the deceased Nazma Khatoon at 12.30 P.M. They as per the

evidence of the witnesses, have to come down to some distance for taking Rikshaw and from there if one comes to Bhuli More on Rikshaw,

Rikshaw Puller charges Rs. 6/- and the distance is in between half and quarter kilometer and it takes 8-10 minutes as per the evidence of PW-4.

That area as per the evidence of PW-1 is quite busy. In that event, if the Rikshaw takes much more time than 10 minutes one would not be

surprised. From Bhuli More it takes 5 minutes as per the evidence of PW-1 to come to Sabji Market. In purchasing some vegetables sometimes

must have been consumed and from there if one comes to Bhuli More then again 4-5 minutes would have been consumed. In this manner 1 hour

would have been consumed, which would be proximate with the timing given by PW-4. Even if, there has been some margin in timing that is not

going to affect the prosecution case in any manner as we have already said that one tells about the timing by guess.

13. Going further in the matter, it be stated that both the witnesses have stated that the appellant as well as other accused persons after committing

murder went away on a Maruti Car, which had been parked near the Jharia Railway Line. According to the counsel appearing for the appellant,

that place was not accessible to motor car but he has said so in the context of the evidence of PW-9, the Investigating Officer, who has stated so

but according to him, place is not accessible if one comes from the side of vegetables market. But the place was accessible to motor car if one

comes from the side of Bhuli More, which is evident from the evidence of PW-4 as testified in Para-135. He has also said that the accused

persons fled from there towards Bhuli More. Thus, there remains no doubt that the place of occurrence was accessible to motor car. Much

emphasis, by referring to the evidences of PWs-1 & 4, was given that one narrow lane, which bends somewhere leads to vegetables market from

railway line and in that event, PWs-1 and 4 would not have been in position to see the occurrence from the Pan Parag shop. It appears to be

simple imagination on the part of the defence to say that the place of occurrence may not be visible from Pan Parag shop. We are tempted to say

so as no cross-examination has been made on this point nor there has been even any suggestion to this effect. In that event, if the witnesses PWs-1

& 4 are testifying so convincingly that they saw the appellant and other accused persons committing murder of Nazma Khatoon and Sahnaz

Khatoon, why their testimonies be disbelieved particularly when PW-4 has testified that they had stayed at Pan Parag Gumti only for 1-1 1/2

minutes, which does suggest that Gumti is not far away from the place of occurrence.

14. It would be worthwhile to note here that the Investigating Officer has not drawn any sketch map showing distance/directions of the place of

occurrence from Pan Parag shop. According to the counsel this discrepancy is serious one, which may prove fatal for the prosecution case. In this

context, learned counsel has referred to a decision rendered in a case of State of Gujarat Vs. Kishanbhai etc., observing therein that whether or

not the above sequence of events could have taken place in the time referred to above, would have been easily overcome if the prosecution had

placed on record a sketch map providing details with regard to the distance between the different places.

The fact of the case seems to be as such which prompted Their Lordships to observe like that as number of the events seem to have taken place

simultaneously.

15. But, here in the instance case, as we have already observed that it was the single point from where both the witnesses did see the occurrence.

It be reiterated that nothing has been elicited from the eyewitnesses to even suggest remotely that the place of occurrence was not visible from Pan

Parag Gumti and under the circumstances sketch map being not drawn by the Investigating Officer hardly affect the case of the prosecution.

16. Regard being had to all the facts and circumstances, we do find that both the eyewitnesses PWs-1 & 4 are trustworthy. Their testimonies also

get corroboration from the medical evidence whereby Doctor found one gun shot injury on the person of the deceased Nazma Khatoon. At the

same time, one abrasion over the outer angle of left eyes has also been found. Since the abrasion has also been found, criticism is being made that

the testimonies of the eyewitnesses is not in consonance with the medical evidence, but this assertion is never acceptable as the position of would

of entry and wound of exit is as such which suggest that it may have been caused by the bullet while coming out of the body or even on account of

fall on the ground.

17. Relating to plea of alibi, whenever, such plea is taken by the accused an obligations is cast on the Court to weigh the evidence adduced by the

prosecution in proving of the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi in the same scale. If the

evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his

presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the

prosecution leaves any slot available to fit therein the defence of alibi. While weighing the prosecution case and the defence case, pitted against

each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to benefit of reasonable doubt

which would emerge in the mind of the Court.

18. It be reiterated that it is the case of the defence that on the date of occurrence, i.e. 18/10/2001, the appellant was not present at Dhanbad,

rather he had come to the High Court, Ranchi along with his Bodyguard (DW-1) in connection with hearing of some case where he has had

abdominal pain associated with vomiting and, as such, he came to the Sadar Hospital for treatment where he was admitted on 18/10/2001 at 4.45

P.M. and was discharged on 19/10/2001 at 10.45 A.M.

19. To establish the case, the prosecution has examined his Bodyguard as DW-1. According to DW-1, he alongwith the appellant came to Ranchi

on 17/10/2001 by Intercity Express. After reaching Ranchi they went to the place of the uncle of the appellant. At about 3.30 P.M., they had

come to railway station Hatia where new trains Baidyanath Dham Express and Rajdhani Express were to be flagged off by the then Railway

Minister. After attending the said ceremony, they came at gun shop at about 4.30 P.M., where the appellant gave his gun for repairing. In lieu of

that a receipt was handed over. On 18/10/2001, he alongwith the appellant came to High Court, where they got gate pass issued and they came to

first floor of the building. Appellant entered into the Izlas, whereas he kept waiting for him to come out. The appellant came out of the Izlas at 2.30

P.M. and took some lunch. Thereafter the appellant started making complaint of stomachache. There one Advocate Delip Kumar incidentally

came and suggested to take the appellant to Hospital. He acted upon it and brought him to the Sadar Hospital, where at 4.45 P.M. he was

admitted. Treatment was extended. For the whole night he stayed with the appellant. On 19/10/201, when the appellant was discharged he was

taken to his uncle's house. The appellant has proved the signature appearing in the photocopy of the receipt granted by the Proprietor of the gun

shop and has been marked as Ext.- X/7 for identification. Similarly, signature appearing on the gate pass has also been proved and has been

marked as Ext. X/8 for identification. He has also proved discharged slip as Ext.- X/9 for identification.

The signatures appearing on the aforesaid documents have been marked as Exhibits for identification, but the defence has never taken any care to

get the signature appearing over those documents be verified from the admitted signature of the appellant. If it could have been done then there

would have been some credential. Still doubt would have been there as to whether in fact, the appellant Sabir Alam had attended the Court or

some one else in his place in the name of Sabir Alam had attended the Court. In that event, the testimony of DW-1 is not worth acceptable.

20. Coming to the other witness DW-2 a Lawyer, who has testified that when he found the appellant suffering from stomachache, he suggested his

bodyguard to take him to emergency ward. He, at the request made by the appellant, also accompanied him to hospital where the Doctor admitted

him. As per the evidences of this witness and also DW-1, the appellant had had stomachache only and when he made complaint of it, he allegedly

was taken to hospital where he was admitted in the emergency ward though it was never the case that he on account of repeated vomiting had

reached to the stage of dehydration and, therefore, in absence of the appellant suffering from any dehydration or any other critical disease it is hard

to believe to accept the version that the appellant was admitted to emergency ward. Moreover, as per the evidence of DW-1, the appellant's

uncle was residing at Hindpiri and, therefore, when he made complaint, the attendant normally would have taken to the place of relative so that the

relative in a case of emergency would have taken the person to the hospital.

21. The testimony of DW-2 that he accompanied the appellant to hospital simply on the request does not appear to be believable as one

bodyguard was there with the appellant. Had appellant been alone, testimony of the witness to the effect that he extended help in reaching out the

hospital would have had some credence but where the person is accompanied by the bodyguard and does have local guardian in the City it looks

quite improbable that a Lawyer would have accompanied him to hospital. Under the circumstances, the evidence of DW-2 is also not worth

acceptable.

22. Coming to the evidence of DW-5, Dr. Santosh Kumar Srivastava, he has proved the Admission Register, wherein the name of the disease has

been written as dehydration. According to the Doctor, if the patient is admitted, he is sent to the ward where patient is admitted by the Sister.

According to Doctor, in the Ward Register at Sl. No. 330 name of Sabir Alam is there against whom it has been written as D+ Chest pain. But in

the discharge slip neither Chest pain nor dehydration has been written. He has also admitted that entry made at Sl. No. 330 and 331 of the

Admission Register, neither there has been time nor date but time and date of admission has been given at Sl. No. 329, which relates to a person

named as Sabir Alam. According to Doctor, he had never made any treatment of the appellant.

Thus, we do find that the discrepancy as has been pointed out is there with respect to disease which the appellant was suffering from. Moreover,

one would be surprised to note that how the dehydration was there when the appellant had had vomiting only once in the High Court premises.

Discharge slip also does not speak that the patient had had dehydration. Above all, this witness or any other witness has not come forward to state

that the appellant was the person, who had been admitted as Sabir Alam. In absence of it, it cannot be said with certainty that it was the appellant,

who had been admitted in the hospital.

23. Further, the defence has also examined one Manmohan Naik, a High Court employee as DW-8. According to him, when the gate pass is

issued, entry is made in the register and the last column is filled up by the person in whose name gate pass is issued. He has deposed that on

18/10/2001, a gate pass has been issued in the name of Sabir Alam whose signature is there over the register, but he candidly has said that this

register had never been filled up in his presence. This witness has also proved the signature appearing over the register as Ext.-X/10 for

identification.

24. Again, we would say that the defence did not take care to get the signature verified from the admitted signature of the appellant.

In that event, and also in view of the testimony of this witness that in his presence register had not been filled up, it would never be safe to accept

the proposition that Sabir Alam, on whose name the gate pass was issued, was the appellant.

25. Under the circumstances, we do find that the prosecution has failed utterly to prove the case of alibi, whereas the prosecution has been able to

prove its case beyond any reasonable doubts.

26. Accordingly, we do not find any illegality with the impugned judgment of conviction and order of sentence, passed against this appellant Sabir

Alam, rather the trial court seems to be absolutely justified in recording the order of conviction and sentence, which is hereby, affirmed.

Thus, this appeal stands dismissed.