

Session Trial No. 670/2024

State Vs. Harish Kumar Shekhar @Tutu Pandey

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District :- Aurangabad (Bihar)

IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS

JUDGE, AURANGABAD

Present :- Rajeev Ranjan Kumar,
Principal District & Sessions Judge,
Aurangabad (Bihar)

Session Trial No. 670/2024
[Mali P.S. Case No.27/2024]

Dated, the 24th day of March, 2026

State through Sanju Devi.....Prosecution

Versus

(1) Harish Kumar Shekhar @ Tutu Pandey.....aged about 27 years
.....Accused person

For the State :- Sri Ajay Kumar, Ld. P.P.

For the Defence :- Shri Arun Kumar Sharma

Date of Offence	04.02.2024
Date of First Information Report	06.02.2024
Date of Charge-sheet	22.06.2024
Date of framing of Charges	21.10.2024
Date of commencement of evidence	18.11.2024
Date on which judgment is reserved	10.03.2026
Date of the Judgment	24.03.2026
Date of the Sentencing Order, if any	02.04.2026

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1	Harish Kumar Shekhar @ Tutu pandey	01.04.2024	NA	302, 120-B of IPC and 27 of Arms Act	Convicted	Section 302 IPC -Life Imprisonment with fine of Rs.Two lakh, Section 120-B - Life imprisonment &	

						Section 27 of Arms Act- Five Years rigorous imprisonment with fine of Rs.10,000/	
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LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Richa Kumari (daughter of informant)	Eye Witness
PW2	Anil Pandey	Other witness
PW3	Akhilesh Kumar Pandey	Other witness
PW4	Dr.Sunil Kumar	Medical Witness
PW5	Subodh Kumar Mandal(Investigating Officer)	Other Witness
PW6	Pradeep Kumar Singh (Investigating Officer)	Other Witness
PW7	Sanju Devi (Informant)	Eye Witness
PW8	Upendra Pandey	Other witness
PW9	Manish Kumar Singh (Investigating Officer)	Other Witness
PW10	Arvind Kumar Mishra(Investigating Officer)	Other Witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	-	-

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH
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		WITNESS, OTHER WITNESS)
CW1	-	-

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext P1 & P1/1	Signature on Inquest report
2	Ext P2	Post-Mortem Report
3	Ext P3	Photocopy of FSL Report
4	Ext P4	Endorsement
5.	Ext P5	Formal FIR
6.	Ext P6, P7, P8	Seizure list on the place of occurrence
7.	Ext P9	Carbon copy of death review report of deceased Kamlesh Pandey
8.	Ext P 10	Seizure list of Mobile of Harish Kumar
9.	Ext P 11	Written report
10.	Ext P 12	Original F.S.L. Report
11.	Ext M1, M2, M3	Three Empty Cartridge
12.	Ext M4	One Chilam
13.	Ext M5	One Plate

B. Defence

Sr. No.	Exhibit Number	Description
1	NA	NA

JUDGMENT

1. The accused person named as Harish Kumar Shekhar @ Tutu Pandey, has been charged for the offence punishable under Sections 302 and 120-B of the Indian Penal Code, 1860¹ and Section 27 of Arms Act, 1959.

¹(hereinafter referred to as "IPC")

2. Brief facts of the case is that on dated 04.02.2024 at about 07:00PM, the husband of informant, named as Kamlesh Pandey had returned home. After reaching home, he said to the informant that people in the village were saying that Harish Kumar Shekhar @ Tutu (accused herein) has hired some persons and planning to create a quarrel with him. Her husband, Kamlesh Pandey, also said that three days earlier, in the threshing field, Harish came and stopped the threshing machine and forcibly took him to his house and he further stated that due to intervention of Satrudhan Pandey, who was already present in the threshing field, reached there and rescued to Kasmlesh Pandey but at that time, Harish Kumar was abusing to Kamlesh Pandey and threatened to kill him. At about 8 PM, on the fateful day, her husband Kamlesh Pandey left home saying that Harish Kumar was at the threshing field along with three-four persons. After some time, she feeling worried that a fight might break out, she also went towards the threshing area with her daughter Richa Kumari, carrying a torch. While she was going towards the threshing area, she heard the sound of gunfire. When she reached the spot, she saw in the light of torch that three-four persons were holding her husband down on the road. Harish Kumar, having a pistol had shot a bullet to her husband- Kamlesh Pandey in his head in front of her. She raised an alarm, thereafter, assailants ran towards the river. After shouting, the villagers came and took Kamlesh to Sadar Hospital for his treatment, where the doctor declared him as dead.

3. On the basis of written report given by the informant, a Mali P.S. Case No. 27/2024 dated 06.02.2024 has been registered against accused person for offence u/s 302 and 120(B) of IPC and section 27 of Arms Act. After investigation, the Investigating Officer (I.O.) has submitted charge-sheet vide No. 66/2024 dated 22.06.2024 against accused person.

4. Thereafter, the Learned Magistrate has taken cognizance on dated 27.09.2024 for an offence u/s 302 and 120(B) of IPC and Section 27 of Arms Act and issued process against accused person. The police papers were supplied to the accused person on dated 07.10.2024 and on the same date, the record of the case was committed to the Court of sessions. The charge against the accused person was framed on dated 21.10.2024 for an offence under Sections 302 and 120(B) of

IPC and Section 27 of Arms Act.

5. During course of trial, the prosecution has produced ten witnesses from its side. The prosecution has also exhibited some documents in support of its case. After completion of examination of prosecution witnesses, the accused person was examined under section 313 of Cr.PC. During examination of accused person u/s 313 of the Cr.P.C., they denied the allegation and stated that he has no role in the said crime and has been falsely implicated in the case.

6. Now the issue before the court is - whether the prosecution has been able to prove the charge leveled against accused person beyond all reasonable doubt.

7. In order to prove its case, the prosecution has examined ten witnesses from its side, whose evidence are as follows: -

PW1 – Richa Kumari (Daughter of deceased) in her examination-in-chief, she stated before the Court that her mother's name is Sanju Devi who has lodged the present case. Her father was murdered in the night on dated 04.02.2024. Her father was shot dead by a bullet injury. He was shot dead by Harish Kumar Shekhar @ Tutu Pandey who is present before the Court and she identified to him. Her father was shot dead near a school. There was a quarrel made between his father and Tutu Pandey two-three days before the date of incident on the point of dust was being gone by a thraser running in her Khalihan. There were paddy crops kept at her Khalihan and her father had gone to see but he didn't return. This witness and her mother had seen the murder of her father and after shout being raised, the accused persons fled away. The accused Tutu was with other accomplices who had caught hold of her father and Tutu had caused bullet injury to the head of her father. The incident was happened in her front. Thereafter, her father was brought to the hospital but the doctor declared him as dead.

During cross-examination she stated that on dated 04.02.2024 she was accompanying to her father who was brought to Sadar Hospital, Aurangabad. The police had come to the Sadar Hospital on the same day but they were not in the

position to give their statement. She had reached to the place of occurrence after hearing the sound of bullet. Her father was lying soaked in blood. This witness and the informant arrived at the place of spot together. There are houses of other persons situated near her house i.e. houses of Shatrudhan Pandey, Pankaj Pandey, and Lakhraj Pandey. There is a gumti of her uncle named as Bhagwat Pandey and a house of Harendra Mistry near the place of occurrence. The shop still exists and has been there since before the incident. Neither this witness nor her mother had given any written report or statement to the police on dated 05.02.2024. The cremation of her father was took place on dated 05.02.2024. Neither this witness nor her mother had lodged any report to the police regarding the incident which took place between her father and the accused person.

PW7- Sanju Devi who is informant in this case, has stated during her examination-in-chief that her husband named as Kamlesh Pandey was shot dead by bullet injury on dated 04.02.2024 at about 08:30PM. She was having a torch in her hand and the accused Harish Kumar had fired a bullet at the head of her husband. There were three-four accomplices with Harish Kumar who had overpowered her husband and put him on the ground. She had seen those persons in the light of torch and she can identify them. Her husband told her in the evening at 07.00 pm on the fateful day that Harish Kumar had threaten him to kill. Three-four days before the date of incident, the accused Harish had stopped her thraser. On the date of incident, at about 8:00 pm, her husband had left the house by stating that he was going to the khalihan. After a short while, this witness and PW1 (daughter of the informant) followed him with a torch. When they reached near the khalihan, they heard the sound of two gunshots. In the light of torch, they saw that three-four persons had overpowered her husband on the ground and Harish shot him on his head. When she raised an alarm, the Harish and the other persons fled away from the spot. The bullet was fired on the head of her husband by close range in her front. Her husband was brought to the Sadar Hospital, Aurangabad where the doctor declared him as dead. She had given a written application to the police station which was written by one Upendra Pandey at her instance. The contents of an application were read out to her and after finding it true, she signed over the application. She had identified the writing and the signature of Upendra Pandey and the signature of her own over written report

which was marked as Ext. P-11. The occurrence took place on dated 04.02.2024. Thereafter, she got engage in performing the last rites of her husband. Subsequently, on dated 06.02.2024, she lodged the present FIR. She identified to the accused Harish Kumar @ Tutu before the Court.

During cross-examination, she stated that She had not lodged the FIR on dated 04.02.2024. Her husband was not died at the place of occurrence. The villagers brought him to the Sadar Hospital, where the doctor declared him as dead. She does not remember whether an inquest of the dead body was conducted or not. Thereafter, on the next day, i.e., on dated 05.02.2024 at about 2:00 PM, the dead body was brought at home. She did not submit any application to the police station on dated 05.02.2024 to lodge an FIR. After performing the last rites of her husband on dated 05.02.2024, she submitted a written application at the police station on dated 06.02.2024. The application was written by one Upendra Pandey, who is still alive. In that application, she had mentioned that she and her daughter had gone out by carrying a torch and she had also given such statements before the police. She had not handed over the torch to the police, as they did not ask for it. She and the PW1 had reached at the place of occurrence together. When she reached at the place of occurrence, she saw that three-four persons were holding her husband and Harish shot him on his head. Before their arrival at the place of occurrence, they heard the sound of two bullets. She was ten-fifteen steps away, when her husband had been given bullet shot. When the bullet was fired, her husband lying on the ground. The gumti of Bhagwat Pandey was closed. She had not seen whether blood was present at the spot or not. Her husband had left the house with empty-handed. The defence had given suggestions on the point that she was not carrying torch at the time of incident, she had not seen the incident and falsely implicated to the accused Harish Kumar by lodging an FIR belatedly but all such suggestions were denied by this witness.

PW2- Anil Pandey has stated during his examination-in-chief that the deceased, Kamlesh Pandey, was his cousin. Kamlesh Pandey was murdered. The occurrence took place in the night of 04.02.2024. He reached at the place of occurrence at approximately 8:30–8:45 PM. At the time of occurrence, he was walking near his house. On hearing halla, he reached near the school, where he saw that Kamlesh was lying on the ground and blood was coming out from his

head. Sanju and her daughter Richa were also present at that time. They were shouting that Harish @ Tutu along with three-four accomplices had shot Kamlesh Pandey. Sanju told that her husband had been shot by Harish @ Tutu. Kamlesh was brought to Hospital, where the doctor declared him dead. He also reached to the hospital. The police had arrived and prepared the inquest report of the dead body. This witness has identified his signature and the signature of Arvind Pandey over inquest report which are marked as Ext. P-1 and P1/1 respectively. Sanju had submitted a written application at the police station. The police have taken his statement. This witness has identified to the accused Harish @ Tutu.

During cross-examination he stated that his house is located at a distance of fifty meters from the house of deceased Kamlesh. The school is at far from there, and it will be reached after passing through several lanes. When he reached there, Kamlesh had already been dead. He did not call to the police from there. About an hour after the occurrence, he took Kamlesh to the hospital in the bolero of Budhan Pandey. The houses of Ganesh Paswan and Lalmohan Paswan are near the school. There is a temple near Ganesh Paswan's house, and his cattle shed is also located there. He had heard the noise of women. At the time he heard the noise, he was going from his house towards his cattle shed. On hearing the halla, other men and women of the village had also reached at the place of occurrence. Rajiv, Upendra, and other people also reached there. This witness had not seen the murder. He had seen the police at Sadar Hospital on date 04.02.2024. However, his statement was not recorded by the police at Sadar Hospital on dated 04.02.2024 rather, his statement was recorded on 06.02.2024. The postmortem was conducted on dated 05.02.2024, after that, his statement was recorded by the police on dated 06.02.2024. He had seen the injuries of Kamlesh during preparation of panchnama. Kamlesh was not having disputes with anyone. This witness cannot say whether Harish had fired bullet or not.

PW3- Akhilesh Kumar Pandey (elder brother of deceased) has stated during his examination-in-chief that Kamlesh was his younger brother. His brother was murdered in the evening of 04.02.2024. His brother was killed near the school at Vill- Pandeykarma. On that day, this witness was not present in the village. He resides at Chhattisgarh. At around 9:00–9:30 PM, PW1-Richa had informed him that Harish had shot to Kamlesh and three-four accomplices were

with him who were holding to Kamlesh. After saying this, she started to cry and disconnected the call. After that, he left for his village by his own vehicle at around 11:00 PM. On the way, he received information that the doctor declared to Kamlesh as dead at Sadar Hospital. This witness reached to Sadar Hospital at around 5:00 AM in the next morning. On 05.02.2024, the postmortem was conducted, after which, the last rites of the deceased was performed. After that, the wife of deceased- Sanju had lodged this case. After registration of the case, the police recorded his statement.

During cross-examination, he stated that on dated 05.02.2024 at about 05:00AM, he reached to Sadar Hospital where he saw the dead body was lying on a stretcher near the hospital gate. At that time, the police had also reach there. Police have not recorded his statement on dated 05.02.2024 rather his statement was recorded on dated 06.02.2024. On dated 05.02.2024 at about 04-04:30PM police have reached Vill-Pandeykarma. Forensic Team had also reached at the place of occurrence.

PW4- Dr.Sunil Kumar has stated that on 05.02.2024 at 11:00AM, he was posted as Medical Officer at Sadar Hospital, Aurangabad. On the same day, Dr.Ravi Bhushan Sharma and Dr.Amrit Kumar were also posted there. On that day, a Medical Board was constituted by D.S., Sadar Hospital Aurangabad, consisting of all three doctors namely Dr. Ravi Bhushan Sharma, Dr.Amrit Kumar and this witness, to conduct postmortem on the dead body of Kamlesh Pandey and found the following on the dead body:

2. *Eyes- Both eyes closed. Mouth closed. Rigor mortis present in all limbs.*
3. *Injury No.1- Lacerated wound on forehead, size 1 inch x 1/2 inch x ¼ inch, clotted blood present on left side of forehead, caused by hard and blunt substance.*
4. *Injury no.2 – Entry wound, one lacerated wound on mid head, size ½ inch diameter, margin everted with charing present, clotted blood present around wound, deep to brain cavity, skull bone fracture caused by firearm.*
5. *Internal examination- Skull- Skull bone fracture on mid and also frontal bone fracture,meninge and brain tissue lacerated, blood present in brain cavity, one foreign metallic body present in mid base of brain behind maxillary para nasal bone. Metallic body kept in vial and sealed. Neck-trachea and laryngs intact and congested.*

Chest-Both lungs intact and congested. Heart – both heart chamber right and left are empty. Abdomen- Liver, spleen, bilateral kidney intact and congested. Stomach contents semi digested food particles. Small intestine contents juicy materials. Large intestine contents faecal matter. Urinary bladder contents urine about 30 ml.

6. Cause of death- By medical board opinion above injury no.1 caused by hard substances, injury no.2 caused hemorrhage, neurological shock, C.R. failure ultimately death caused by firearm.

During cross-examination, he has stated that first page of postmortem report in Column-C, it is mentioned that P.M. commenced at 11 PM on 05.02.2024 but at the second page at para 33 mentioned date on Postmortem at 11 AM on 05.02.2024. PM report was not prepared at postmortem house. Everted margin shows exit of wound by firearm. Gun powder and vad were not found in Postmortem report. Charring hair was not taken and was not sent to FSL. No blood sample was taken from the dead body of deceased. Exact time of death cannot be ascertained. No injury was found on the person of deceased except on head.

PW5 is Subodh Kumar Mandal, who was posted as a Sub-Inspector at Mali Police Station on 06.02.2024. He stated that informant- Sanju Devi had submitted a written report regarding murder of her husband. He identified his handwriting and signature over formal FIR which is exhibited as P-5. Upon receiving the report, he went to the place of occurrence and recovered one empty cartridge of 7.65 KF, for which he prepared a seizure list. On dated 06.02.2024, he again recovered two empty cartridges marked 7.65 near the western wall close to the place of occurrence and prepared another seizure list which is exhibited as P-7. On dated 04.02.2024, he recovered a chilam near the western wall adjacent to the place of occurrence and seized it accordingly. This witness further deposed that on dated 04.02.2024 at about 9:43 PM, he received an information that a person had been shot dead at Vill- Pandey Karma. When he reached to the place of occurrence, he saw the blood on the kacha road. The people present there informed him that Kamlesh Pandey had been shot at that very place, and his family members had taken him to Sadar Hospital. During the search at the place of spot, he recovered one empty cartridge. Thereafter, this witness

reached to Sadar Hospital where he came to know that Kamlesh Pandey had been declared dead. Postmortem was conducted on dated 05.02.2024. On dated 05.02.2024, Forensic team had reached at the place of occurrence and took samples of blood in two separate envelope. He had recorded the re-statement of informant and the statement of witnesses named as Upendra Pandey and Akhilesh Pandey. The place of occurrence was inspected. During the inspection, two empty cartridge shells were recovered about 10 meters from west of the stage behind the place of occurrence, the same were seized and a proper seizure list was prepared. Blood was found at the place of occurrence, which was dried. On 04.02.2024 at 11:30 PM, the inquest report was prepared. Statements of witnesses named as Richa Kumari and Anil Pandey were recorded. Raids were also conducted. After that, he handed over the charge of this case to the then Station House Officer, Pradip Kumar Singh.

During cross-examination, this witness has stated that the written report was registered on 06.02.2024 at 14:20 hours. Before the registration of an FIR, the inquest report of the dead body had already been prepared and the postmortem was conducted. At the time of preparation of inquest report, informant was also present. The inquest report was prepared on 04.02.2024 at 23:30 hours, whereas the FIR was registered on 06.02.2024 at 14:20 hours. After preparation of the inquest report, the postmortem could not be conducted during the night, it was carried out on the next day at 8:00 AM. The postmortem was conducted approximately 9 hours and 30 minutes after the preparation of the inquest report. In the intervening period, none of the relatives of the deceased disclosed, either in writing or orally, the name of persons responsible for committing the occurrence. On the date of occurrence, the people present in and around the place of occurrence did not disclose anything about the person who had fired the bullet upon the Kamlesh Pandey. This witness admitted that he did not prepare the sketch map of the place of occurrence. He has not recorded the statements of persons residing nearby the place of occurrence. During the course of investigation, neither the informant nor her family members handed over any torch to him. This witness further stated that after two days of occurrence, he recorded the statements of witnesses. He also admitted that neither the inquest report nor the dead body challan bears the signature of either the informant or her daughter Richa Kumari (PW1). When he reached to Ranchi to arrest the accused,

at that time he had already handed over the charge of the case, and he had not informed the other investigating officer about his visit to Ranchi. Further, there are details of two mobile numbers as mentioned in paragraph 15 of the case diary,, but at the time of arrest of the accused Harish Kumar, none of those mobile numbers were recovered from his possession.

PW6- Pradip Kumar Singh, who was posted as SHO at Mali Police Station on dated 11.02.2024. This witness during his examination-in-chief has stated that Mali P.S. Case No. 27/24 was being investigated by Subodh Kumar Mandal, S.I. (PW5 herein), prior to 11.02.2024. On dated 11.02.2024, Subodh Kumar Mandal had handed over further investigation of the case to this witness. Till that time, no accused person had been arrested. The postmortem report was received thereafter. Accused Harish Kumar Shekhar was arrested and brought from Ranchi by Subhod Kumar Mandal, S.I. The mobile phone seized from Harish Kumar Shekhar had been deposited in the malkhana. The statement of Harish was recorded.

During cross-examination, this witness has stated that in the formal FIR, it is mentioned that information regarding an incident was received by Mali Police Station on 04.02.2024 at 10:05 PM. On that day, no FIR had been lodged against any known or unknown person in relation to the matter. As per Para 107 of the case diary, Harish Kumar was arrested from Ranchi. He had not arrested to accused. He had sent to Subodh Kumar Mandal to Ranchi to arrest the accused. Deceased and the accused are from the same village. From the commencement of the investigation till its conclusion, the torch mentioned in the FIR was not found. He admitted that he had not prepared the sketch map at the place of occurrence. He further stated that during course of investigation, no weapon used in the occurrence, was recovered.

PW8- Upendra Pandey who has stated during his examination-in-chief that Kamlesh Pandey (deceased) was his gotiya. On dated 04.02.2024, at about 8:30 PM, he heard the sound of shouting and crying. When he reached there to find that the wife of deceased- Sanju and the daughter of deceased- Richa were saying that Harish had shot to Kamlesh and three-four accomplices were involved in holding to the deceased. Kamlesh was lying on the ground, and blood was

oozing out. Kamlesh was taken to Sadar Hospital, where the doctor declared him dead. Afterwards, the postmortem was conducted and the dead body was handed over to the family. Thereafter, the last rites were performed. At the request of Sanju (Informant), he had written an application. After writing, he read it out to her, and after finding it correct, Sanju signed over it. He had also signed over the written report as Katib. The written report has already been marked as P-11.

During cross-examination he has stated that his house is located about 300 -400 meters in the east from the place of occurrence. The house of Kamlesh is at a distance of approximately 150 -200 meters away. At the time of incident, there were a commotion involving ten-twelve people near the place of occurrence. Rajiv Pandey, Uttam Pandey, Ashutosh Pandey, and Arvind Pandey were present there. When the commotion occurred, no one came from Kamlesh Pandey's house. He is having good relation with the family of deceased Kamlesh Pandey. On the night of incident, he had not come with Kamlesh Pandey to the Sadar Hospital. He remained in the village. The written report has been given to the police on dated 06.02.2024 after performance of the last rites of deceased. Before submitting the application, he did not know where Kamlesh Pandey had been shot. He did not discuss this matter with anyone. He had written the application at the house of deceased.

PW9-Manish Kumar Singh who has stated during his examination-in-chief that he is presently posted at Mali Police Station. As per instructions of officer in-Charge, he had produced three empty cartridges and one chilam before the Court. The sealed packet is still at the Forensic Science Laboratory.

During cross-examination, he stated that none of the three empty cartridges bear the police station case number. The empty bullet shell also does not bear the police station case number. Further, the plastic container in which he produced the cartridges and the bullet also does not bear the police station case number.

PW10- Arvind Kumar Mishra, ASI has stated during his examination-in-chief that he brought the seized items before the court as per directions of the Officer in-Charge. The plastic box was opened, in which a plate was found which is marked as Material exhibit M-5.

During cross-examination, he stated that the signature of the witness of the seizure list is not present on the plastic box. The signature of any independent witness is also not available on the plastic box. The authorization letter, through which he has brought the item for presentation, does not bear his name and signature.

8. After completion of the prosecution evidence, the accused person was examined under section 313 of Cr.P.C. and thereafter, the case was fixed for defence evidence but the defence has not produced any witness from its side. Hence, the case was fixed for argument.

9. Learned P.P. for the State has submitted that the prosecution has successfully established the case against the accused person beyond all reasonable doubt. It is contended that the informant (PW7) is an eye-witness to the occurrence, who has categorically stated that the accused Harish Kumar Shekhar @ Tutu Pandey had caused death of her husband by open fire upon him and she had seen the incident in the light of torch. Her testimony is natural, consistent, and inspires confidence. The presence of PW1 (daughter of the deceased) at the place of occurrence further corroborates the prosecution story. It is further submitted that the medical evidence (PW4) fully supports the ocular version, as the postmortem report clearly indicates a firearm injury on the head, which is sufficient in the ordinary course of nature to cause death. The recovery of empty cartridges from the place of occurrence also lends corroboration to the prosecution case. Learned P.P. has further submitted that minor discrepancies in the testimonies of witnesses are natural and bound to occur, and such inconsistencies do not go to the root of the prosecution case. The delay in lodging the FIR has been reasonably explained, as the informant was engaged in the last rites of her deceased husband. It is lastly submitted that the chain of circumstances, coupled with direct evidence of the informant, clearly establishes the guilt of the accused. Hence, the accused is liable to be convicted for the offence charged. In support of his submissions, learned counsel has placed reliance upon the various judgments passed by Hon'ble Apex Court P. Rajagopal & Ors. vs. State of Tamil Nadu in Criminal Appeal Nos. 820–821 of 2009, Kamal Prasad & Ors. vs. State of Madhya Pradesh in Criminal Appeal No. 1578 of 2012,

10. Learned counsel for the defence has vehemently opposed the submission of Ld. P.P and submitted that the accused has falsely been implicated and the prosecution has failed to prove the charge beyond reasonable doubt. It is argued that the entire prosecution case suffers from serious infirmities and contradictions. The most material aspect is the inordinate delay in lodging the FIR, which was registered on 06.02.2024, whereas the occurrence took place on 04.02.2024. During this period, despite availability of police, no accusation was made against the accused, which creates serious doubt regarding the prosecution story. It is further submitted that although PW7 claims to be an eye-witness, her conduct appears unnatural and her testimony is not corroborated by independent witnesses. PW1, who is projected as another eye-witness, has admitted that she reached the place of occurrence after hearing the gunshot, thereby making her a post-occurrence witness. Learned defence counsel further points out that no independent witness from the locality has supported the prosecution case and the witnesses examined are either related or interested witnesses. PW2 has clearly stated that he did not see the occurrence. PW8 is a hearsay witness. Serious lapses in investigation have also been highlighted. No weapon of offence has been recovered. The alleged torch, which is the basis of identification, was never seized. No sketch map of the place of occurrence was prepared. The seizure of cartridges is doubtful as they do not bear case details and lack proper identification. The forensic evidence has not been properly brought on record. Learned counsel submits that the prosecution has failed to establish a complete and reliable chain of evidence. The benefit of doubt must go to the accused. In support of his submissions, learned counsel has placed reliance upon the various judgments passed by Hon'ble Apex Court in **Allarakhya Habib Memon vs. State of Gujarat (2024 INSC 590)**, and the judgment of the Hon'ble Patna High Court in **Basudeo Yadav vs. State of Bihar in Criminal Appeal (DB) No. 293 of 2001 and in Mangal Singh and five others vs. State of Bihar and Ors. 1990 SCC OnLine PAT 114**

11. Heard both sides and perused the record.

12. After carefully considered the entire materials available on record, the evidence adduced by the prosecution, and the rival submissions advanced on behalf of both sides, this Court proceeds to determine whether the prosecution has been able to establish the guilt of the accused beyond all reasonable doubt. At the outset, it is evident that the case rests primarily on the ocular testimony of PW7 (informant), who is the wife of deceased. PW7 has categorically stated that she witnessed the occurrence and saw the accused Harish Kumar Shekhar @ Tutu Pandey in the light of a torch while firing upon her husband. Her testimony is clear, consistent and withstands during the test of cross-examination. There is no material contradiction which discredits her presence at the place of occurrence. The presence of PW7 at the place of occurrence appears natural, as she had followed her husband along with PW1. The testimony of PW1, though she reached immediately after hearing the gunshot, corroborates the prosecution case regarding the occurrence and the surrounding circumstances. The medical evidence (PW4) fully supports the ocular version. The postmortem report clearly establishes that the death was caused by a firearm injury on the head, which resulted in hemorrhage and shock. The nature of injury is consistent with the manner of assault as described by PW7. Thus, the medical evidence lends strong corroboration to the prosecution case. So far as, the contention of delay in lodging the FIR is concerned, it would be apposite to refer to the settled position of law laid down by the Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Gian Chand***,² wherein it has been lucidly held that delay in lodging the FIR cannot be treated as a ritualistic formula for doubting the prosecution case or discarding it solely on that ground. The Court observed that such delay merely puts the Court on guard to scrutinize whether the explanation furnished is satisfactory and free from the possibility of embellishment. If the delay stands reasonably explained, it loses its significance as a factor corroding the credibility of the prosecution case. For the sake of brevity, the relevant observation is reproduced herein below:

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the

²Case no: Appeal (Crl) 649 of 1996

*delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. **However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.***”

Applying the aforesaid principle to the facts of present case, this Court finds that the explanation offered by PW7 that she was engaged in performing his last rites is natural and convincing. In rural social settings, immediate priority is often accorded to funeral rites over legal formalities. In cases of such grave nature involving death of a close family member, some delay in approaching the police is quite natural. There is nothing on record to suggest that the delay was utilized for afterthought or false implication. Hence, the delay is satisfactorily explained and does not create any dent in the prosecution case.

13. The Ld. Counsel for defence has further pointed out certain lapses in the investigation, such as non-recovery of the weapon, non-seizure of the torch, and absence of sketch map. While these lapses are indeed noted, it is a settled principle of law that defects in investigation cannot be a ground to discard otherwise reliable ocular testimony. In this regard, it would be profitable to refer to the dictum of the **Hon’ble Supreme Court in C. Muniappan and Others vs. State of Tamil Nadu**,³ wherein the Hon’ble Apex Court explained the law on the very point in the following manner:

*“There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. **The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal.** If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration*

³(2010) 9 SCC 567

*would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. **Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.***”

14. In view of the aforesaid settled legal position, this Court is of the considered opinion that the alleged non-seizure of the torch, non-recovery of the weapon, and other lapses pointed out by the defence are, at best, deficiencies in investigation which do not strike at the root of the prosecution case. The core of the matter lies in the credibility of the ocular testimony of PW7, which remains cogent, consistent, and trustworthy. No material has been elicited in cross-examination to discredit her version. Therefore, such lapses cannot be permitted to overshadow the reliable and convincing evidence available on record. The evidence of PW7 remains cogent and trustworthy. Further, the recovery of empty cartridges from the place of occurrence, though challenged, still provides corroborative value. Even if, there are minor discrepancies in the handling of seized articles, the same are not sufficient to discredit the entire prosecution case. The defence has also emphasized that most of the witnesses are related or interested. However, it is well-settled that the testimony of related witnesses cannot be discarded solely on that ground if it is otherwise reliable and trustworthy. In the present case, the evidence of PW7 and PW1 inspires confidence and there is no reason to falsely implicate the accused leaving the real culprit.

15. Now, this Court will examine the judgments cited by the learned counsel for the defence and demonstrate why they are distinguishable and not applicable to the facts of the present case. The judgments relied upon are fact-

specific and cannot be applied to the present matter, as the circumstances herein are markedly different:

- In Allarakha Habib Memon (2024 INSC 590), the Hon'ble Supreme Court emphasized caution in cases where identification of the accused was doubtful or uncorroborated, and failed to consistently recognize the accused. In the present case, however, both the informant and her daughter have unequivocally identified the accused at the place of occurrence, and their testimony has remained consistent, credible, and unshaken throughout cross-examination.
- In Basudeo Yadav vs. State of Bihar, the Hon'ble High Court dealt with a case where serious doubts were raised regarding the identification of the accused due to poor lighting conditions at the place of occurrence. Additionally, the prosecution case suffered from material lacunae as the I.O was not examined, thereby depriving the defence of the opportunity to test the fairness and manner of investigation. The recovery of incriminating material was also either absent or not satisfactorily proved, which weakened the prosecution case. On the other hand, in the present case, the occurrence took place under circumstances where identification was clear and reliable, and both eyewitnesses have consistently identified the accused without any ambiguity. Moreover, the I.O has been duly examined, and the investigation stands proved on record. Crucially, material evidence in the form of three empty cartridges has been recovered from the place of occurrence, which corroborates the prosecution version and lends further assurance to the credibility of the eyewitness testimony. Hence, the ratio of the said judgment is wholly inapplicable to the present case.
- Likewise, in Mangal Singh and five others vs. State of Bihar and Ors. (1990 SCC OnLine Pat 114), the Hon'ble Patna High Court analyzed the reliability of identification, where the informant claimed to have identified the assailants by flashing a torch light and, in places, by an electric light. The Court in that case noted that the means of identification (the torch) was not produced during investigation or at trial, and there were contradictory versions regarding the source of light (one witness spoke only of torch light in the FIR while another claimed identification by electric light), leading to serious doubt about the very existence. Furthermore, in that case, the

medical evidence (Doctor) was also inconsistent with the prosecution's case, as the alleged deaths were claimed to be caused by two gunshots, one by rifle and the other by a pistol, but the examining doctor did not find any gunshot injuries corresponding to the second weapon, thereby weakening the prosecution's case. There was also contradictory statements of Informant and one of the witness in that case . On these grounds, the Court found the evidence insufficient to sustain conviction. However, the factual matrix of the present case stands on an entirely different footing. Here, the identification of the accused by the informant and her daughter is clear, consistent, and free from any ambiguity. The witnesses had sufficient opportunity to observe and identify the accused under conditions conducive to reliable identification, and their testimonies have remained cogent and unshaken. Moreover, unlike *Mangal Singh* (supra), the present case is supported by corroborative material evidence, and there is no inconsistency between the ocular and medical evidence. The prosecution case is thus built on a firm foundation of credible eyewitness testimony duly supported by surrounding circumstances.

16. At this stage, it would be well to recall to the memory the weighty observations made by the Hon'ble Supreme Court as early as in the year 1988 relating to appreciation of evidence and the duties expected of a Judge presiding over a criminal trial. In [State of U.P. v. Anil Singh](#),⁴, it is observed as under :

"In the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. It is also not proper to reject the case for want of

4AIR 1988 SC 1998

*corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. **It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.**"*

17. At this juncture, having meticulously examined the entire body of evidence on record and the rival submissions advanced, this Court deems it appropriate to evaluate the culpability of the accused in light of the charges framed against him. The accused stands charged under Sections 302 and 120-B of the Indian Penal Code and Section 27 of the Arms Act. It is trite that in order to sustain a conviction, the prosecution must establish the foundational ingredients of each offence beyond reasonable doubt. Insofar as the charge **under Section 302 IPC** is concerned, the prosecution has succeeded in proving that the death of Kamlesh Pandey was homicidal in nature, caused by a firearm injury on the head of the deceased, as duly corroborated by the medical evidence of PW4. The ocular testimony of PW7, who is an eye-witness, inspires confidence and carries a ring of truth. She has unequivocally deposed that the accused fired at the deceased at close range while the latter was being made captive by other associates. Her presence at the place of occurrence is neither doubtful nor unnatural. The testimony remains unshaken despite incisive cross-examination and finds material corroboration from the surrounding circumstances and from the evidence of PW1. Thus, the act of

accused squarely falls within the ambit of murder, satisfying the essential ingredients of Section 302 IPC. Considering the totality of circumstances and corroboration from medical evidence, the accused is held guilty of murder beyond reasonable doubt. This Court will now consider the charge under **Section 120-B IPC**, which concerns criminal conspiracy. The evidence clearly indicates that the accused did not act alone, three-four persons restrained the deceased while he was shot, reflecting prior planning and common intention. The Court finds that the prosecution has established conspiracy through the conduct of the accused and the sequence of events. Accordingly, the accused is held guilty of criminal conspiracy under Section 120-B IPC. Turning to the charge under **Section 27 of the Arms Act, 1959**, this Court observes that the accused unlawfully employed a firearm in the commission of the offence. The recovery of empty cartridges and the nature of the fatal injury demonstrates that a firearm was indeed used, even though the seizure process had procedural lapses. Therefore, the accused is also found guilty under Section 27 of the Arms Act.

18. Be that as it may, on a careful consideration of the respective contentions and on an overall assessment of the entire conspectus of attendant facts and circumstances of the instant case in an integral manner, this court is of considered opinion that the prosecution has proved the charge framed under Sections 302 and 120-B of IPC and Section 27 of Arms Act against accused person.

19. Accordingly, the accused person named as **Harish Kumar Shekhar @ Tutu Pandey is hereby held guilty for an offence under Sections 302 and 120-B of IPC and 27 of Arms Act** and is hereby convicted accordingly. Fixing this case on **02.04.2026**, for hearing on the point of sentence.

Dictated & corrected by me

Dictated by me

(Rajeev Ranjan Kumar)
Sessions Judge
Aurangabad
24.03.2026

(Rajeev Ranjan Kumar)
Sessions Judge
Aurangabad
24.03.2026

HEARING ON THE POINT OF SENTENCE

02.04.2026

20. Learned counsel for the convict has submitted that the convict and the deceased were co-villagers and the unfortunate incident had taken place. It is urged that the occurrence was not premeditated in the strictest sense. Learned counsel has also emphasized that the convict is a young age of 27 years old, being the sole son of his family, and is burdened with the responsibility of supporting his family, including the liability of marrying his unmarried sister. It is submitted that prior to the lodging of the present FIR, the convict had been actively searching for employment. In view of these circumstances, it is earnestly prayed that a lenient view be taken against him while awarding sentence.

21. On the other hand, learned P.P. has vehemently opposed the plea for leniency and submitted that the act of the convict was deliberate and brutal in nature, as he fired at the head of the deceased at close range, resulting in instantaneous death. It is contended that such an offence strikes at the very fabric of society and calls for imposition of appropriate and deterrent punishment. It has further been submitted that the deceased was the sole earning member of his family, and after his death, the family member of deceased is facing severe hardship, with no other male member available to earn their livelihood. Therefore, it is urged that adequate compensation must be awarded to the family of the deceased.

22. The Court has carefully considered the submissions advanced by learned counsel for the convict as well as learned P.P. Admittedly, the convicted person and the deceased are co-villagers but the gravity and manner of the offence cannot be overlooked. The act of firing at the deceased at close range, causing instantaneous death, demonstrates a clear disregard for human life. The calculated nature of the act, coupled with the involvement of multiple persons to restrain the deceased, reflects that the murder was planned and

intentional. Such a crime cannot be treated lightly, as it not only ended a human life but also spreads fear and insecurity within the community, striking at the very foundations of law and order.

23. Before deciding the sentence to be imposed against the convict, let us look at the sentencing principles evolved by the judicial pronouncements of the Hon'ble Supreme Court.

24. Considering the objectives of sentencing **Hon'ble Supreme Court in the case of Alister Anthony Pareira V. State of Maharashtra⁵** has observed thus:-

“Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles; the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

25. Laying down the principles of just punishment for any offence Hon'ble Supreme Court in the case of **Gopal Singh v. State of Uttarakhand⁶** has observed that:-

“Just punishment is the collective cry of the society and while collective cry has to be kept uppermost in mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. Thus, the principle of just punishment is the bedrock of sentencing in respect of a criminal

5[(2012) 2 SCC 648]

6 [(2013) 7 SCC 545]

offence. No doubt there cannot be a straitjacket formula nor a solvable theory in mathematical exactitude. An offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court.”

26. The Hon’ble Supreme Court declared in **Prabhakaran v. State of Kerala**⁷ that:-

“Excessive compassion to inflict insufficient penalty would cause more harm to the judicial system by undermining public trust in the efficiency of law, and society could not long exist under such major challenges. So, it is the obligation of every court to impose appropriate punishment in light of the nature of the offence and the manner in which it was committed.”

27. The Hon’ble Supreme Court in a decision in **Shailesh Jasvantbhai and Another v. State of Gujarat and Others**⁸, opined:-

“The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of “order” should meet the challenges confronting the society.”

28. In **Bachchan Singh Vs. State of Punjab**, AIR 1980 SC 898, Hon’ble Supreme Court while interpreting sections 354(3) and 235(2) Cr.P.C. had held that:-

“the extreme penalty of death (1) need not to be inflicted except in the gravest cases of extreme culpability (2) before opting for death penalty, the circumstances of the offender are also required to be

7 (2007) (8) SCALE 605)

8 [(2006) 2 SCC 359]

considered along with the circumstances for the crime (3) life imprisonment is a rule and death sentence is an exception. Death sentence must be imposed only in cases where after looking at the circumstances of the crime, life imprisonment seems inadequate regarding the extreme penalty to be imposed, the court is required to consider the aggravating and mitigating circumstances in order to strike a just balance between aggravating and mitigating circumstances”.

29. In view of the foregoing discussion, after carefully weighing the aggravating and mitigating circumstances, and taking into account that the convict named as Harish Kumar Shekhar @ Tutu Pandey is of young age of 27 years old and on the other hand, the deceased was the sole earner of his family, whose untimely demise has left his dependents in a state of helplessness. Hence, this Court is of the view that appropriate punishment must balance the interests of justice with the individual circumstances of the convict. Accordingly, the convict **Harish Kumar Shekhar @ Tutu Pandey** is hereby sentenced to life imprisonment for the offence punishable under Section 302 IPC and a fine of Rs.2 Lakh (Rupees Two Lakh) for which he is directed to pay the said amount i.e. Rs. Two Lakh to the family of deceased. Further, the convict is sentenced to life imprisonment for the offence punishable under Section 120-B IPC, and five years rigorous imprisonment and a fine of Rs. 10,000/- for the offence under Section 27 of the Arms Act. All sentences shall run concurrently.

Dictated & corrected by me

(Rajeev Ranjan Kumar)
Sessions Judge
Aurangabad
02.04.2026

Dictated by me

(Rajeev Ranjan Kumar)
Sessions Judge
Aurangabad
02.04.2026