

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.22 of 2009

1. Md. Haroon, S/o Kifayat Nadaf
2. Nemetullah, S/o Rahmatullah
3. Md. Haider Ali, S/o Md. Haroon
4. Md. Ashraf, S/o Late Saheb Jan
5. Rahmatullah, S/o Late Habibullah, All are R/o Kabirabad (Basantganj),
Gullobara, P.O.- GulloBara, P.S.- Nagar Thana, District- Darbhanga.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

with
Criminal Revision No. 444 of 2009

Sone Lal Mandal, S/o Late Bane Lal Mandal, R/o Gullowara (Basantganj)
Kabirabad, P.S.- Town, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rahmtullah @ Hajma, S/o Late Habibullah
3. Md. Ashraf, S/o Late Saheb Jan
4. Md. Haroon, S/o Kifayat Nadaf
5. Nemetullah, S/o Rahamtullah, O.P. No. 2 to 4, all are R/o Gullowara
(Basantganj), Kabirabad, P.S.- Town, District- Darbhanga.

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 22 of 2009)

For the Appellant/s : Mr. Prashant Kumar Singh, Mr. Prabhat Kumar
Singh, Mr. Prem Ranjan Raj, Advocates

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In Criminal Revision No. 444 of 2009)

For the Petitioner/s : Mr. Pankaj Kumar Das, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date : 01-10-2018

Appellants Md. Haroon, Nemetullah, Md. Haider Ali,

Md. Ashraf, Rahmatullah (Criminal Appeal (SJ) No. 22 of 2009)



have been found guilty for an offence punishable under Section 323 of the I.P.C. and each one has been sentenced to undergo S.I. for six months, under Section 324 of the I.P.C. and sentenced to undergo S.I. for two years, under Section 341 of the I.P.C. and sentenced to undergo S.I. for one month, under Section 504 of the I.P.C. and sentenced to undergo S.I. for one year with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 19.12.2008 passed by the Additional District & Sessions Judge, Fast Track Court No.-V, Darbhanga in Sessions Trial No. 317 of 2002.

2. Before coming to main issue, it looks pertinent to mention here that informant Sone Lal Mandal has also challenged the judgment of conviction and sentence, under Cr. Revision No. 444 of 2009, arranged only these appellants as O.P. No. 2 to 5. It is needless to say that by the judgment impugned, the learned Lower Court has acquitted Bibi Noor Jahan and Bibi Saiyada Khatoon. From the lower court record, it is apparent that charge against all the accused (seven in number) were framed under Sections 323,341,504,307/149 of the I.P.C., while appellants/accused Md. Rahmatullah@ Hajma and Md. Ashraf have independently been charged under Section 307 of the I.P.C., Rahmatullah@ Hajma has additionally been charged under Section 325 of the I.P.C., Md.



Ashraf as well as Md. Haidar have been charged under Section 379 of the I.P.C. From the judgment impugned, it is evident that there happens to be no application of Section 149 of the I.P.C. irrespective of the fact that the appellants who have been found guilty are five in numbers and further, they all have been convicted, exonerating the two others. The main grievance having at the end of the informant is that the learned lower court had acquitted the appellants for an offence punishable under Section 307 of the I.P.C., in spite of sufficient material available on the record on account thereof, have been heard together and are being disposed of by a common judgment.

3. As stated above, all the accused persons were charged under Section 307/149 of the I.P.C., furthermore, accused/appellant Md. Rahmatullah @ Hajma and Md. Ashraf have been charged for an offence punishable under Section 307 of the I.P.C.

4. The learned counsel for the informant failed to distinguish, whether the individual act of the accused has been identified by the learned lower court by the judgment impugned, or whether all the accused being a member of an unlawful assembly carrying common object while committing murderous attack on the injured have been identified. That means so, the



learned counsel for the appellant could not succeed in placing the submission whether the acquitted accused namely Bibi Noor Jahan and Bibi Saiyada Khatoon were the necessary party or not. More particularly, in the background of the fact that, if it happens to be an individual act then in that circumstance Section 307 of the I.P.C. would be applicable only against Md. Ashraf and Md. Rahmatullah @ Hajma and in the aforesaid background, there was no necessity to implead other three namely Md. Haroon, Md. Nemetullah and Md. Haidar Ali as they could not be attracting Section 149 of the I.P.C. After going through the judgment as well as considering the submission advanced on behalf of the learned counsel for the informant, it is evident that Cr. Revision suffers from inherent defect on account of non-joinder of two acquitted accused namely Bibi Noor Jahan as well as Bibi Saiyada Khatoon and that being so, the Cr. Revision No. 444 of 2009 bereft of merit, accordingly, dismissed.

5. Sone Lal Mandal, (P.W.7), gave his fardbeyan on 21.02.2002, at about 12.00 noon, disclosing, therein, that on the same date at about 11.00 a.m., Md. Rahmatullah @ Hajma, Md. Nemetullah and their other family members began to connect their sewage with his sewage passing over Kheshra No. 16890. It has further been disclosed that there happens to be a passage having



over Kheshra No. 16889. On his protest, Bibi Saiyada Khatoon wife of Md. Rahmatulla @ Hajma and Bibi Noor Jahan wife of late Saheb Jan began to abuse and then, both of them tore his vest. He tried to save himself and during course, thereof, Md. Rahamtulla @ Hajma, Nemetulla, Md. Ashraf, Md. Haidar Ali, Bibi Noor Jahan, Bibi Saiyada Khatoon armed variously came near him and surrounded him. His son Rajesh Kumar, after hearing commotion, reached in order to rescue him who was assaulted by Md. Rahamtullah @ Hajma with iron rod over his head as a result of which, he sustained injury, blood oozen out. Seeing this, his another son Rupesh Kumar came to his rescue, who was assaulted by iron rod over his head by Md. Ashraf causing injury, blood has oozen out. On hue and cry, Ashok Kumar Mandal and Santosh Kumar also reached there. Then thereafter, Md. Ashraf took out Rs. 1500/- from the pocket of Rajesh and Md. Haidar Ali snatched away wrist watch from Rupesh Kumar. Thereafter, Md. Haroon , Md. Haidar Ali and others assaulted his both sons including he himself with lathi and fatta. The mohalla people intervened and rescued them. Then, thereafter, police has been informed. It has also been disclosed that the motive for the occurrence as the accused persons have not been allowed to connect their drain with his drain. It has also been disclosed that his sewage passes through



his personal land. At an earlier occasion also accused have tried to get it connected and for that, damage suit is pending before the court.

6. After registration of Darbhanga Town P.S. Case No. 26 of 2002, investigation commenced and after concluding the same, charge-sheet has been submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

7. The defense case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the I.P.C. is that of complete denial. It has further been asserted that prosecution party illegally encroached upon public passage on account thereof, before institution of this case, a proceeding under Section 133 Cr.P.C. was already drawn up at their behest wherein, prosecution party has been directed to remove their encroachment, against which, title suit has been filed. Then, thereafter, taking the police in their collusion, procuring a forged and fabricated injury report, got this case filed in order to coerce the accused persons to withdraw from the proceeding. To substantiate the same, though, no ocular evidence has been adduced, however, so many documentary evidences have been exhibited.

8. In order to substantiate its case, prosecution had examined altogether 11 P.Ws., who are P.W. 1 Ashok Kumar



Mandal, P.W. 2 Sunil Singh, P.W. 3 Rupesh Kumar, P.W. 4 Rajesh Kumar, P.W. 5 Ramashray Sahni, P.W. 6 Adhin Sahni, P.W. 7 Sonelal Mandal, P.W. 8 Dr. Krishna Kumar Mehta, P.W. 9 Ram Babu, P.W. 10 Dr. Vijay Shankar Prasad and P.W. 11 Dr. Dinesh Kumar Das.

9. Side by side, the prosecution had also exhibited ext. 1, signature of informant over the fardbeyan, ext. 2 injury report relating to Rupesh Kumar and Rajesh Kumar respectively, ext. 3 formal FIR, ext. 4 fardbeyan, ext. 5 series supplementary injury report relating to Rupesh Kumar and Rajesh Kumar respectively, ext. 6, injury report in the pen of P.W. 11, ext. 7 the order-sheet of Title Appeal No. 37 of 2006, ext. 8 discharge ticket relating to injured Rajesh Kumar Mandal (for identified photo-copy of the injury report of Rajesh Kumar Mandal).

10. Defence had also exhibited, ext. A- Judgment and decree of Title Suit No. 48 of 2001, ext. B- order of A.S.O. Darbhanga, objection registrar, ext. C- order passed by the S.D.O. relating to the Misc. Case No. 46 of 2000.

11. Learned counsel for the appellants while challenging the judgment impugned has raised proprietary of the same. The first and foremost happens to be with regard to defective framing of charge and further, on the basis thereof, the appellants found



very much confused in defending the appellants. Further, elaborating on that very score, it has been submitted that as per initial prosecution version, there was an unlawful assembly carrying common object and if the status of unlawful assembly is properly conceived, then, in that circumstance, charge would have been under Section 147 of the I.P.C., under Section 148 of the I.P.C. and in likewise manner, the charge relating to Section 323 of the I.P.C. would also be framed with the aid of the Section 149 of the I.P.C., coupled with other Sections in the background of the fact that all the appellants including the two acquitted accused were charged under Section 307/149 of the I.P.C. That means to say, when the learned lower court has rejected the prosecution story, acknowledging presence of an unlawful assembly having a common objective, then in that circumstance, there should have been proper identification of activity of each and every accused/appellant and that being so when the evidence of witnesses more particularly, P.W. 3, P.W. 4 both injured along with informant P.W. 7 is taken together, there happens to be no occasion left for Md. Haroon, Md. Nemetulla and Md. Haidar Ali to be convicted for an offence punishable under Sections 323,324,341 and 504 of the I.P.C. In likewise manner, it has also been submitted that there happens to be no material to justify the conviction and sentence for



an offence punishable under Section 504 of the I.P.C. in the background of the fact that no provocation was there which could have laid provocation, to the prosecution party to indulge in commission of an offence affecting public tranquility. Now, coming to status of Md. Ashraf and Md. Rahamtulla @ Hajma, it has been submitted that when their activity as alleged is taken together with the evidence of the doctor, P.W. 8 , P.W. 10 and P.W. 11, the falsity of the prosecution case is found duly exposed.

12. It has also been submitted that I.O. has not been examined. Due to non-examination of the I.O., interest of the appellant is found highly prejudiced as, the objective finding of the I.O. relating to the place of occurrence and further parallel scrutiny of genuineness of the prosecution version with regard to origin of the case and further, as per evidence of P.W. 3, the I.O. firstly forwarded the injured to the hospital and then, recorded fardbeyan, would have been properly tested along with the finding whether there was presence of blood stain at the place of occurrence, as well as, there was any sign exposing the activity of the appellants, forcibly trying to connect their sewage with the sewage of the informant.

13. In the aforesaid facts and circumstances of the case, the non-examination of the I.O. has caused severe dent in the



prosecution case, affecting its reliability credibility, whereupon, prosecution case is fit to be rejected.

14. Furthermore, it has also been submitted that other inmates of the house has not come forward to defense. P.W. 9 is the part I.O. who had simply submitted charge-sheet. P.W. 3, P.W. 4 and P.W. 7 are the father's and sons, while P.W. 1, P.W. 2, P.W. 5, P.W. 6 are the own henchmen which is evident from their conduct properly exposed from their evidences.

15. So, considering the evidence of the witnesses, as well as, the infirmities persisting on the record, it is fit case whereupon the judgment impugned recorded by the learned lower court is fit to be set aside.

16. On the other hand, the learned Additional P.P., assisted by learned counsel for the informant has submitted that there happens to be no infirmity in the judgment impugned, as the defect over framing of charge as canvassed is found properly taken cared of under Section 215 of the Cr.P.C. coupled with Section 464 of the Cr.P.C. Furthermore, the appellants failed to show that they faced severe prejudice to their interest. Apart from this, the appellants failed to take such plea at the initial stage, so would not be permitted it to raise at the appellate stage.



17. Then, it has been submitted that although, there happens to be some sort of deficiency at the end of the prosecution, in the background of the fact that the doctor who had conducted operation at P.M.C.H., has not been examined, the witness Rajesh Kumar Mandal, one of the injured has stated in his cross-examination that at the instance of broker, he got CT Scan, for want of non-examination of the doctor who has conducted CT Scan, failed to show its connectivity, but the fact remains that P.W. 4 was admitted at P.M.C.H. where he was operated upon and remained there for 17 days, which is found duly corroborated by the evidence of P.W. 11. Furthermore, P.W. 10 is the doctor, who had examined the P.W. 4 on account of development of new symptom due to assault having over his person by the accused persons and P.W. 8, is the doctor who had examined both the injured i.e. P.W. 3 and P.W. 4 on the date of occurrence itself. So, submitted that the evidence of injured witnesses coupled with the evidence of P.W. 7, duly found corroborated by the remaining facts, proves the prosecution case. Accordingly, the judgment of conviction and order of sentence is fit to be confirmed.

18. P.W. 8 is the doctor who had examined P.W. 3 and 4 on 21.02.2002 at 1.00 p.m. as well as 1.10 p.m. respectively and found the follows:-



(A). Rajesh Kumar, - one lacerated wound 3"x1"x1/2" over left parietal region, x-ray, A. P. lateral view (plate no.- 432) no fracture lesion, simple in nature, caused by hard and blunt substance, time within six hours.

(B). Rupesh Kumar, one lacerated wound 1/2"x1/4"x1/4" over the right parietal region. Nature simple, caused by hard and blunt substance, time elapse six hours.

19. During course of cross-examination, this witness has stated that injury report was issued on 15.03.2002. He had further stated that it was copied from injury register kept in the hospital. Both injury report were sent to police station by the office on 09.04.2000. He has further stated that the injury report has not been sent by him as the Registrar of the Surgery Department. It does not bear the seal of the D.M.C.H. He has also stated that the injury may be caused on fall over hard surface. This witness has not been suggested that his injury report is false. This witness has not been suggested that none was an injured. This witness has not been suggested that subsequently, the injury report were prepared malafidely. The defence has failed to test his finding by calling injury register. So, from his evidence, it is crystal clear that presence of simple injury over the respective injured has been duly



substantiated mere delay will not cast doubt over genuineness unless and until so averred.

20. In the aforesaid background, now the evidence of injured witnesses have to be seen. P.W. 3 had stated that occurrence is of dated 21.02.2002 at about 11.00 a.m. At that time he was at his house. After hearing sound of commotion, his brother Rajesh Kumar Mandal rushed to place of occurrence followed by him. They saw that Bibi Noor Jahan and Bibi Saiyada Khatoon were engaged in pulling vest of his father and by such process, they tore, when Rajesh intervened, Md. Haroon, Md. Nemetulla, Md. Haidar Ali, Bibi Noor Jahan, Bibi Saiyada Khatoon and Roshan armed variously intervened and began to assault with lathi, fatta and iron rod. Then stated that Md. Abdullah had assaulted Rajesh with iron rod over his head with an intention to kill, as a result of which, he sustained injury and fell down, blood began to ooze out, whereupon he intervened. He was assaulted by Md. Ashraf with iron rod over the head with an intention to kill causing injury thereupon. Blood oozed out. He also fell down. Then thereafter, Md. Ashraf took out cash, from the pocket of his brother, while Md. Haidar snatched away his wrist watch, his sandal was taken away by Md. Roshan. Then, thereafter, Md. Rahmtulla, Md. Haroon, Md. Nemetulla, Md. Ashraf, Md. Haidar,



Bibi Noor Jahan, Bibi Saiyada Khatoon, Md. Roshan assaulted both the brothers with lathi and fatta and thereafter, escaped therefrom. On an intervention Ashok, Sunil, Rama, Adhin and others. Police came at the house and then forwarded both the brothers to the hospital. After treatment, condition of his brother deteriorated, whereupon, he was referred to P.M.C.H. where he was admitted for 17-18 days. Identified the accused.

21. During course of cross-examination, his attention has been drawn towards the dispute prevailed amongst the parties resulting institution of so many cases over which, he has shown, ignorance. In paragraph 12 he has stated that when he reached at the place of occurrence at that very time, Bibi Noor Jahan and Bibi Saiyada Khatoon were engaged in quarreling with his father over sewage as, Bibi Noor Jahan and Bibi Saiyada Khatoon were engaged in affixing the iron pipe for flow of sewage. In paragraph 13 he has stated that 10 minutes after tearing of the vest, Rajesh Kumar arrived and two minutes thereafter, he, arrived when he reached at the place of occurrence, he had not seen sign of assault over his father. In paragraph 14, he has stated that first of all, his brother was assaulted. In paragraph 15, he has stated that Md. Rahamtulla and Md. Ashraf were armed with rod while Md. Haroon, Md Nemetulla, Bibi Noor Jahan, Bibi Saiyada Khatoon



and Md. Roshan were armed with farsa, again corrected Md. Nemetulla was armed with lathi. In paragraph 16, he has stated that Md. Nemetulla had assaulted him as well as his brother with lathi but he is unable to say how many times. He has further stated that blow was given over back of his brother but no injury was caused. Rajesh Kumar was assaulted by Bibi Noor Jahan and Bibi Saiyada Khatoon and Md. Haroon with fatta over his back but he had not seen any injury. His brother was assaulted with only one rod blow. Then has stated that his brother was assaulted by giving ten blows. In paragraph 17, he has stated that he was assaulted by lathi by Md. Nemetulla as well as by other three accused with fatta. He sustained blows but no injury was found. When he was lying over the ground at that very moment he was assaulted. When he fell down none had assaulted with rod. In paragraph 18, he has stated that his brother sustained injury over his head and in likewise manner, he had also sustained injury over his head. At paragraph 22 and 23, there happens to be contradiction relating to his previous statement but after going through the same, it is evident that those are not at all material. In paragraph 24, he has been suggested that as his family members have encroached upon the road as well as drain and for that Md. Haroon instituted a case on account thereof, this false case has been registered.



22. P.W. 4 is the another injured. He has stated that on the alleged date and time of occurrence, he was at his house. After hearing noise he came out from his house and had seen Bibi Noor Jahan and Bibi Saiyada Khatoon engaged in assaulting and abusing his father. They were pulling his father's vest and at that very time Md. Rahmatulla was armed with iron rod, Md. Ashraf was armed with hammer, Md. Nemetulla with fatta, Md. Haroon danda Md. Rahmatullah had assaulted over his head with rod causing injury thereupon, blood began to ooze out. Rupesh intervened who was also assaulted by Md. Ashraf over his head causing injury thereupon. Blood began to ooze out. Then thereafter, he along with Rupesh became unconscious. Md. Ashraf took away some documents as well as Rs. 1500/- from his pocket and while Md. Haider had taken away wrist watch from the hand of Rupesh. On the intervention of neighbours accused persons fled away. Then thereafter, police came and prepared injury report and sent them to hospital. After treatment, he returned back. After two days, there was swelling over his face thereupon, again visited D.M.C.H. After x-ray, he was referred to P.M.C.H. He came to P.M.C.H., there was CT scan, wherefrom, fracture of head bone was traced out. He was operated upon. After 17-18 days he was discharged. He has further stated that this occurrence has been



committed in the background of dispute over drainage. During cross-examination, at paragraph 8 he has stated that first of all, he has examined D.M.C.H. on 21.02.2002, on the same day he was discharged. He received discharge slip. X-ray was done on the same day. He has further stated that he had also received injury report. He has further stated that on 25.02.2002, he again visited D.M.C.H., but was not admitted. He was examined as an out door patient and then he was referred to P.M.C.H. Paragraph 9, 10, 11, 12 and 13, there happens to be cross-examination on that very score including over CT scan. In paragraph 14, he has stated that there happens to be door at the southern side of his house. At paragraph 15, he has stated that his baithaka lies at the northern side of his house. The occurrence took place over the public road lying west to his house. He has shown presence of Diwakarjee at southern boundary with whom they are on strain relation but no cross-examination has been made on remaining side. In paragraph 16, he has stated that house of the accused persons lies adjacent north to his house intervened by a wall belonging to the accused. In paragraph 17 he has stated water from the house of the accused fell in a drain lying west to his house but he is unable to say since when. In paragraph 18 he has stated that his family members used to prevent the same since before. In paragraph 19, he has admitted



presence of dispute since before the occurrence with regard thereto. In paragraph 20, he has stated that during course of occurrence, first of all he was assaulted only once over his head, as a result of which, he fell down. He became semi-unconscious, then, thereafter, accused persons assaulted him with fatta, lathi and danda. But no injury was caused. In paragraph 21, he has stated that his father was assaulted by Bibi Noor Jahan, and Bibi Saiyada Khatoon, after their assault, none was assaulted after assault of his father. At paragraph 23 and 24, his attention has been drawn towards his previous statement after going through the same, it is evident that the same is not at all material. At paragraph 26, there happens to be suggestion that they did not want to allow the accused persons to flow water on account thereof, this false case has been lodged.

23. P.W. 7 is the informant, he has stated that on the alleged date and time of occurrence he was at his house. After hearing the kracking sound, he came out from his house, whereupon he had seen Noor Jahan and Saiyada Khatoon engaged in connecting their drain through iron pipe. Md. Rahmatulla, Md. Nemetulla, Md. Haroon, Md. Ashraf and Md. Haider were present having duly armed. On his protest, Noor Jahan and Saiyada Khatoon began to abuse him and rest of the accused persons



encircled him, Saiyada tore his vest, Noor Jahan has also tore the same. They attempted to assault him with fists and slaps and during course thereof, hearing his alarm his sons Rajesh and Rupesh came. Rajesh was assaulted by Md. Rahmatulla with iron rod over his head while Rupesh was assaulted by Md. Ashraf with iron rod over his head, causing injury thereupon, blood oozen out therefrom, Ashraf took away Rs. 1500/- from pocket of Rajesh, Haidar snatched away wrist watch. They have also assaulted Rajesh while he was lying over the ground. He was also assaulted by lathi and fatta. Thereafter, neighbours came on hearing alarm and rescued all of them. Police has come, recorded his fardbeyan, prepared injury report and sent both the injured to the hospital. Then has disclosed with regard to the dispute relating to drainage. Rajesh was referred to P.M.C.H., operated upon, stayed at P.M.C.H. 15-16 for days on account of injury sustained by him during course of occurrence. He had stated that the drain belongs to him, wherein, accused persons were forcibly trying to connect their sewage. During course of cross-examination, at paragraph 17, 18, 19,20 and 21 there happens to be an admission at his end with regard to encroachment over sub-plot 16889, accused Md. Haroon had drawn up litigation, under Section 133 Cr.P.C. and after disposal of the same, he had instituted a title suit.



In paragraph 22, he has admitted that ingress and outgress of the accused persons happen to be through Survey plot no.16889. He has further admitted that there happens to be drainage coming out from the house of the accused over plot no. 16889. He has further admitted that for the last 4-5 years both the parties are on litigating term relating to the plot no. 16889. In paragraph 24, he has detailed the manner of occurrence. In paragraph 25, he has stated that first of all he was assaulted 1- ½ minute thereafter, his sons were assaulted. After reaching of the people accused persons, escaped. At paragraph 27, there happens to be denial at the end of the informant over encroachment of the drain. Further it has been suggested that after preparing forged and fabricated injury report, this false case has been instituted with an intention to grab the public path.

24. P.W. 1, P.W. 2, P.W. 5, P.W. 6 have corroborated the same. P.W. 9 is the part I.O. who had simply submitted charge-sheet after receiving the injury report.

25. Injured witness has got primacy as, presence of injury suggest his presence at the place of occurrence and that happens to the reason behind that times without number the Apex Court had reminded that unless and until there happens to be



sufficient material discard the evidence of the injured witnesses, their testimony is to be accepted.

26. In *Mano Dutt and Another vs. State Of Uttar Pradesh* reported in (2012) 4 SCC 79, it has been held:-

"30. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more res integra, as has been consistently stated by this Court in uniform language.

31. We may merely refer to the case of [Abdul Sayeed v. State of Madhya Pradesh](#) SCC pp. 271-72, paras 28-30), where this Court held as under:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court.

Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar*, *Malkhan Singh v. State of U.P.*, *Machhi Singh v. State of Punjab*, *Appabhai v. State of Gujarat*, [Bonkya v. State of Maharashtra](#), *Bhag Singh, Mohar v. State of U.P.* (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan*, [Vishnu v. State of Rajasthan](#), [Annareddy Sambasiva Reddy v. State of A.P.](#)

and [Balraje v. State of Maharashtra](#).]

29. While deciding this issue, a similar view was taken in [Jarnail Singh v. State of Punjab](#), where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) "28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. [In Shivalingappa Kallayanappa](#)



[v. State of Karnataka](#) this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. [In State of U.P. v. Kishan Chand](#) a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v.*

State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law.

This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

27. Non-examination of I.O. in routine manner could not be considered to be a dent in prosecution case. It varies fact to fact of the case. If, there happens to be material development, if there happens to be severe inconsistency, the place of occurrence is found not at all properly identified, then in that circumstance, certainly, the non-examination of I.O. would be a disadvantage to the prosecution otherwise not.

28. In *Lahu Kamlakar Patil And Another vs. State of Maharashtra* reported in (2013) 6 SCC 417, it has been held:-



"It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. [In Behari Prasad v. State of Bihar](#)[14], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. [In Bahadur Naik v. State of Bihar](#)[15], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused."

29. Now, coming to the facts of this case, it is apparent that the witnesses have not been cross-examined, over the place of occurrence. From the cross-examination of informant, it is found admitted that the parties are on litigation since before over passage. From the evidence of P.W. 3, it is evident that water from the house of accused was flowing since before over which there was resistance at their end, even in that background, no cross-examination has been whether at the time of occurrence, accused persons engaged in putting pipe or not and that means to say, the genesis of the occurrence, the dispute having in the background of fixing iron pipe in order to connect the drain is not at all controverted. In likewise manner, so far as manner of assault over the P.W. 3 as well as P.W. 4 are concerned, there happens to be no



discrepancy save and except at the end of the P.W. 7., the informant after his assault, his both sons were assaulted, having no severe repercussion over the prosecution version as the same has not been challenged. However, from the evidence of the witnesses, it is apparent that the manner of assault having at the end of the Md. Rahmatulla as well as Md. Ashraf is only found corroborated with doctor's P.W.8 evidence, and that being so, the conviction and sentence recorded as against them is hereby affirmed. They are on bail, hence, their bail bonds are cancelled, directing them to surrender to serve out the remaining part of sentence within four weeks failing which, the learned lower court will be at liberty to proceed against them in accordance with law. So far, remaining appellants Md. Haroon, Md. Nemetulla and Md. Haidar Ali are concerned, in the background of infirmity over the finding recorded by the learned lower court in consonance with the deficiency in the evidence of the prosecution witnesses that in spite of assault having at their end no injury was caused to the respective injured and further, nothing has been found by the P.W. 8 whereupon, the finding recorded by the learned lower court is set aside consequent thereupon this appeal relating to them is allowed. They are on bail, hence, are discharged from the liabilities of the bail bonds.



(Aditya Kumar Trivedi, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	08-10-2018
Transmission Date	08-10-2018

