

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1064 of 2016

Arising Out of PS. Case No.-101 Year-2012 Thana- TURKAULIYA District- East
Champaran

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1. Pradip Mahto Son of Gopal Mahto
 2. Bhanu Mahto Son of Paltan Mahto
 3. Gopal Mahto Son of Late Nagan Mahto
 4. Jokhan Mahto Son of Late Devnandan Mahto
 5. Sanjay Mahto Son of Jokhan Mahto All residents of village - Lamauniya,
P.S. Banjariya, District - East Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Umesh Chandra Verma, Adv
		Mr. Abhishek Kumar, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

29-08-2019

Vide judgment of conviction dated 14.09.2016 and order of sentence dated 22.09.2016, all the appellants namely, Pradeep Mahto, Bhanu Mahto, Gopal Mahto, Jokhan Mahto, Sanjay Mahto have been found guilty for an offence punishable under Section 147 IPC and sentenced to undergo RI for one year, under Section 148 IPC and sentenced to undergo RI for two years, under Section 341 IPC and sentenced to undergo RI for one month, under Section 307/149 IPC and sentenced to undergo RI for seven years as well as to pay fine appertaining to Rs. 5,000/- and default thereof, to undergo RI for six months,



additionally with a further direction to run the sentences concurrently. Furthermore, convict Pradip Mahto has been independently sentenced to undergo RI for ten years as well as to pay a fine of Rs.10,000/- in default thereof, to undergo RI for six months, under Section 304(Part-I) IPC sentenced to undergo RI for two years, under Section 379 IPC with a further direction to run the sentences concurrently and further the period having undergone during trial to be set of by the XII Additional Sessions Judge-East Champaran at Motihari in Sessions Trial No.496 of 2012 arising out of Turkaulia P.S.Case No.101 of 2012.

2. Makeshwar Ojha (PW-6) filed a written report on 01.03.2012 putting an allegation that on the same day at about 9.45 A.M. his co-villager Gopal Mahto, Pradip Mahto, Dhanu Mahto, Paltan Mahto, Sanjay Mahto and Jokhan Mahto armed with lathi, Kudal, farsa, rod sharing common intention came in the field of his cousin brother and began to cut bamboo from a bamboo cluster. He rushed and forbade them whereupon all the accused persons surrounded him from all sides and on an order of Paltan Mahto, Gopal Mahto gave Daab blow over his head with an intention to kill as a result of which sustained injuries over his head. He fell down. Blood oozed out from the injuries.



On his alarm, his cousin brother Mithilesh came in rescue who was assaulted by Pradip Mahto with the brick-frame (Thapi) as a result of which he also sustained injuries over his head. Blood oozed out. The other accused persons gave indiscriminate lathi, rod blows as a result of which he became unconscious and fell down. His cousin brother Dhrub Narain came in rescue who was assaulted by Sanjay Mahto as a result of which he also sustained injuries over his head. Another cousin brother Rajeshwar Ojha also came in rescue who was assaulted by Manu Mahto with lathi. Manu Mahto also assaulted his another cousin brother Dinanath Ojha. His nephew Ratnesh Kumar was assaulted by Jokhan Mahto with farsa. Rahul was assaulted by Paltan with lathi over his head. During midst thereof, Pradip Mahto snatched away golden chain from Rahul. The villagers intervened and took all the injured to Mothihari where they were admitted at Rahmania Medical Centre, brother Mithilesh happens to be in critical condition.

3. After registration of Turkaulia P.S. Case No.101 of 2012 investigation commenced thereupon. As Mithilesh Ojha died, so there was conversion and addition of Section 302 of the IPC wherein along with other allied Sections, chargesheet has been submitted facilitating the trial meeting with the ultimate



result, subject matter of instant appeal.

4. The case of the defence as is evident from cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that no such type of occurrence as alleged by the prosecution, had taken place rather the accused persons formed an unlawful assembly, raided the house of Pradip Mahto and brutally assaulted Pradip and others in the background of the land dispute whereupon villagers came in rescue, who retaliated resulting injuries/death at the end of prosecution side. It has also been pleaded that although they were treated at Sadar Hospital but, police under the influence of prosecution party did not incline to record fardbeyan, more particularly, in the background of the fact that Pradip Mahto was treated at the hospital as an indoor patient. Then lastly, complaint petition has been filed at the end of mother of Pradip Mahto and to substantiate the same, oral as well as documentary evidence have been adduced.

5. In order to substantiate its case, prosecution has examined altogether nine PWs, who are PW-1 Dhruv Narayan Ojha, PW-2 Rahul Kumar, PW-3, Anil Kumar Ojha, PW-4 Dinanath Ojha, PW-5 Rjeshwar Ojha, PW-6 Mankeshwar Ojha, PW-7 Dr. R.N.Chaudhary, PW-8 Ganesh Ram, PW-9 Dr. Tabrej



Aziz, as well as also exhibited as Ext-1, signature of informant on the written fardbeyan, Ext-2, postmortem report of deceased Mithilesh Kumar, Ext-3, written report, Ext-4, formal FIR, Ext-5 to 5/4, injuries report of respective alleged injured persons, Ext-6, Khatiyani.

6. The defence has also examined DW-1 Dr. Ravi Ranjan, DW-2 Jitendra Singh, as well as also exhibited as Ext-A to A/4, respective injuries report relating to so alleged injured, exhibit-B C.C of complaint petition filed by Dharmawati Devi, mother of Pradip Mahto, Ext-C another C.C. of complaint petition filed by one Mansa Yadav(earlier), Ext-D, S.A of Dharmawati Devi, Ext-E,F,G,H and I are the statements of the witnesses relating thereto, Ext-J, Khatiyani recorded in the name of Teni Mahto father of Gopal Mahto.

7. In order to challenge the findings recorded by the learned lower court, it has been submitted at the end of the learned counsel for the appellants that in the given facts and circumstances of the case, the findings so recorded would not survive on account of following reasons:-

(a) There happens to be initial version that accused/appellant armed variously came at the field of cousin brother of informant PW-6 Mankeshwar Ojha and began to cut



bamboo which was protested by the informant whereupon was assaulted and then, there happens to be appearance of the other members of the prosecution party one by one at the same place where, it has been alleged that all of them sustained injuries at the end of the appellants.

(b). But, when the evidences are gone through, it is apparent that prosecution party was knowing that for their misdeeds they are being prosecuted and further they were also knowing since before that the place of occurrence shown by them could not be substantiated during course of trial, so shifted the place of occurrence from the field wherein bamboo cluster was, to the Darwaja of Chokat and in likewise manner, presence of the members of the prosecution party at one stroke. That means to say genesis of occurrence, manner of occurrence has been completely changed at the ends of the prosecution which probabilizes the defence version.

8. It has also been submitted that from the evidence of PW-6, informant, it is evident that he claimed to have sustained injuries in the field while he was protesting cutting of bamboo, though many bamboos were also cut away and then he reached to Darwaja of Chokat. However, is found completely contradicted by the objective finding of the I.O. as, he had not



found the blood stain in the field nor any bamboo having cut away.

9. It has also been submitted that it is an obligation on the part of the prosecution to substantiate the case beyond all reasonable doubts while on the other hand, in order to discharge the onus the accused is only to plead and substantiate by way of preponderance of probability. During course of appreciation of materials having on the record under the guise of the aforesaid legal mandate, it is crystal clear by way of an admission with regard to counter case having at the end of the mother of Pradip Mahto coupled with examination of DW-1, doctor who had examined all the injured (defence side_ at Sadar Hospital, Motihari and further, admitted Pradip Mahto as an indoor patient on account of gravity of the injury sustained by him. Explaining the event of non-recording of FIR by the police, it has been submitted that it happens to be obligation on the part of the police to record FIR whenever such kind of information is being conveyed from the hospital. Lapses at the end of the police would not cause any sort of deficiency in defence and in likewise manner, would not disreect the defence version. Also submitted that while cross-examining DW-1 Dr. Ravi Ranjan prosecution could not be able to demolish the finding and in the



aforesaid background, it has also been submitted that non-examination of injury having over person of accused is a jolt to the prosecution case which the learned lower court completely overlooked. It has further been submitted that all the material witnesses are family members. Their status as an injured witness has got relevancy which the learned lower court failed to appreciate in the background of shifting of place of occurrence from the field to the Darwaja of Chokat which was purposely, intentionally in order to meet counter version as the prosecution party where the aggressors who after coming to the house of the appellants assaulted four persons severely and so, in worst case, it would have been a case of right of private defence which the learned lower court again failed to perceive. There happens to be consistent judicial pronouncement settling the issue conclusively that even if no plea of private defence has specifically been taken at the end of the accused even then, the court has to trace out in the background of the facts of the case, whether there happens to be substance and if so, it has to be extended in favour of the accused.

10. Furthermore, it has also been submitted that non-examination of an independent witness, in the background of aforesaid eventuality, is an additional factor, more particularly



as, in the evidence of the I.O., PW-8, it is crystal clear that in spite of presence of independent witnesses, he had not recorded statement of any of them whereupon, collusiveness is found duly exposed. That being so, in the facts and circumstances of the case, the judgment impugned would not survive. Hence, the appeal is fit to be allowed.

11. On the other hand, learned APP while controverting the submissions made on behalf of the appellants has submitted that from the objective findings of the concerning P.O., it is evident that the Darwaja of Chokat is not far away from the field where informant was assaulted rather a few steps. It has also been submitted that FIR should not be an encyclopedia giving minute to minute details rather the importance of the FIR is to inform the police regarding commission of an offence irrespective of nature of being cognizable or non-cognizable in order to allow the police to swing into action. Furthermore, it has also been submitted that the place of occurrence has conclusively and consistently been substantiated and so, no infirmity could be drawn on that very score. So far manner of occurrence is concerned, that happens to be also consistent. It has been submitted that the old theory that non-explanation of the injuries sustained by the accused



happens to be hazardous to the prosecution, is found settled at rest to the effect that prosecution is not at all under obligation to explain rather the case has to be seen in the background of the evidence having been so adduced without having the obligation to explain the injuries. If the evidence of the witnesses are consistent, then in that circumstance, conviction has to be recorded. So far this case is concerned, witnesses are consistent over manner as well as genesis of occurrence which the learned lower court has rightly perceived. Hence, this appeal be dismissed.

12. PW-1 is one of the injured who had stated that on the alleged date and time of occurrence, he was at his house. After hearing alarm, he had gone there and found Gopal Mahto, Pradip Mahto, Dhanu Mahto, Paltan Mahto, Sanjay Mahto and Jokhan Mahto armed with Danda, rod, Bhala, Garasa, Daab and were engaged in cutting his bamboo. His cousin brother, Makeshwar Ojha forbade them whereupon, the accused persons encircled him. On an order of Paltan, Gopal gave Daab blow over his head. He rushed therefrom and came at the Darwaza of Chokat where all the accused persons also arrived. When Mithilesh run in rescue, he was assaulted by Pradip over his head by Thapi as a result of which, he sustained injury. Blood



oozen out. Others also assaulted him with rod, lathi. When he intervened, he was assaulted by Sanjay with Lathi over his head. Jokhan gave spear blow causing injury over his left hand. Rajeshwar Ojha and Dinanath were also assaulted by Manu Mahto with lathi. Ratnesh was assaulted by Jokhan with rod over his head. Rahul was assaulted by Pradip who also snatched away his golden chain. Then thereafter, they were lifted to Rahmania Nursing Home for treatment. Mithilesh became unconscious whereupon he was referred to Patna where he died. Identified the accused. The cross-examination happens to be specified with the *inter se* relationship amongst the prosecution party wherein he had stated that Makeshwar Ojha, the informant is his cousin brother while Mithilesh, the deceased was his full brother. The rest of the injured are his brothers and nephew. Then had stated that both the parties were not at all on inimical terms since before the occurrence. Then there happens to be cross-examination over location of house of the prosecution party as well as accused persons covering about 150 Yards. House of Gopal lies south to the house of Jokhan. Both have got northern front. The village comprises more than 100-200 houses. At the time of occurrence none of the villagers came. All the family members are only witnesses of this case. At para-



4, he had stated that he does not know Teni Mahto. He does not know father's name of Gopal. He is unable to disclose the Khata, Khesra number of the land over which bamboo cluster stands. The area happens to be 10-15 Dhurs. The land (khatian) relating thereto is in his possession. He had not placed the same before police official nor has been produced before the court. Then had admitted that accused persons are claiming the aforesaid land since 5-6 months before the occurrence. In para-6, he had stated that Dinanath and Arvind had come to Motihari Sadar Hospital after the occurrence. His treatment was provided at Rahmania Hospital where he was admitted for three days. In para-7, there happens to be contradiction relating to assault over him as well as Mithilesh. Further, also denied to the effect that he had stated before the police that when he reached at the PO, he found Mithilesh lying in an injured condition. He had not seen the assault. In para-8, he had stated that when he reached over the field having bamboo cluster, at that very time only Makeshwar Ojha was present. Till then, the accused persons had cut away four bamboos and had kept the same. Police had not come in his presence. When he reached at the bamboo cluster, accused persons were present. At that place, only Makeshwar was assaulted. Accused persons were armed with weapons.



Makeshwar had not fallen after sustaining assault. He had not run towards his house rather, he rushed towards Darwaza of Chokat. In para-9, he has stated that Darwaza of Chokat lies 20-25 yards away from that place. Even at the Darwaza of Chokat, Makeshwar had not fallen over ground. After assault at the darwaza of Chokat by all the accused persons, then thereafter, Makeshwar fell down on the ground. He was assaulted by Danda, iron rod. He was not assaulted by spear. In para-10, he had stated that he was also assaulted at the Darwaza of Chokat. He was not assaulted by all the accused persons. Though all the accused persons were there. He had not raised alarm while coming to the Darwaza of Chokat from the field having bamboo cluster. Soon after assault, he remained stagnant. Then thereafter, other family members came. When they came at that very time, Makeshwar was lying unconscious. Blood had not fallen over the ground. Blood had also fallen from his wound. 7-8 family members came but they were not armed with any weapon. When they came they had gone near Mankeshwar. At para-11, he had stated that the accused persons chased as were armed with weapons. At the time of chasing no Maar-peet took place. Mithilesh came at the Darwaza of Chokat and was assaulted. Accused had assaulted him from front side. When he



was assaulted by Lathi, then he fell down on the earth. At para-12, he had stated that Mithilesh had sustained injury from the base of brick-frame. He was repeatedly assaulted. Blood had not fallen over the ground. He was assaulted by iron rod as a result of which, he sustained injury over his head. Blood had oozen out. He fell down over the earth. Even then, he was assaulted by lathi. In para-13, he had stated that they have not gone to save Mithilesh. Mankeshwar was lying at that very time. He was assaulted after Mankeshwar and Mithilesh. Rest were assaulted accordingly. Blood had spread over in an area of one hand. In para-15, he had stated that accused persons remained there. They had taken Mithilesh to hospital. They have not seen any kind of injury over person of accused. None had assaulted the accused persons. In para-16, he had stated that Mithilesh was taken to Motihari Hospital. He had not seen Pradip at Motihari Hospital. In para-17, he had stated that he had seen Bhikhari and Chhotelal armed with iron-rod, danda but they had not assaulted anybody. At para-18, he had stated that though they have passed through Banjaria Police Station but, had not informed. He had further stated that police had seen Darwaza of Chokat as well as field having bamboo cluster. Police had not seized blood stained earth. Then had denied the suggestion that they had pounced



upon the accused persons at the Darwaza of Gopal Mandal where they brutally assaulted the accused persons and in retaliation, the villagers came and assaulted, and only to save their skin, got this case filed.

13. PW-2, Rahul Kumar is another injured who had deposed that on the alleged date and time of occurrence, he was at his house. After hearing uproar, he came to Darwaza of Chokat where he had seen Pradip, Gopal, Dhanu Mahto, Paltan Mahto, Sanjay Mahto and Jokhan Mahto armed with Danda, rod, Bhala, Garasa, Daab. They all were assaulting Makeshwar. Mithilesh came in rescue whereupon, Pradip assaulted with brick frame (Thapi) over his head repeatedly, as a result of which, he sustained injury thereupon. Blood had oozen out. Then thereafter, others have also assaulted. He fell down and became unconscious. Dhruv Narayan came in rescue who was assaulted by Sanjay with Lathi followed by others also. Rajeshwar Ojha came in rescue who was assaulted by Manu. Ratnesh came in rescue who was assaulted by Jokhan with Farsa. He was assaulted by Paltan who snatched away his golden chain also. After Maar-peet, the accused persons left the scene. They were taken to Rahmania Hospital. Two persons came at Sadar Hospital. Mithilesh was referred to Patna from



Sadar Hospital where, in course of treatment, died. Identified the accused. Then had stated that on account of forbidding cutting of bamboo, the accused persons had committed the occurrence. During cross-examination at para-5, he had admitted *inter se* relationship. At para-6, there happens to be cross-examination over complaint case filed by Mansha Yadav wherein Gopal Mahto is a witness. At para-7, he had been cross-examined over pendency of a case instituted by Mohan Yadav regarding which, he shown his ignorance. In para-8, he had stated that the house of 5-6 persons lie surrounding the Darwaza of Chokat Mahto. He had further admitted presence of 10-12 villagers at the time of occurrence including, Surendra Yadav, Pappu Yadav, Sadhu Yadav. They had not talked with them. At para-9, there happens to be cross-examination relating to boundary of Chokat. North-house of Shankar Mahto, South-house of Gopal Mahto, East-house of Chokat, West- land of the prosecution party. After his land, the house of different persons also lie. In para-10, he had stated that they have got no dispute with regard to the land over which bamboo cluster lies with the accused persons. Accused persons never cut the bamboo from that place. At that day, the accused persons cut away 4-5 bamboos and took it away at the Darwaza of Chokat. In para-11,



there happens to be contradiction with regard to his previous statement. In para-12, he had stated that when he reached at the Darwaza of Chokat, he had seen only his family members as well as accused persons. He had seen injury over person of his family members. His family members were standing. Blood was oozing out. They have not rushed towards house to save their lives nor taken any recourse. He had not raised alarm. He had not taken out any weapon from his house. When he reached, then Paltan had assaulted him with rod. He was assaulted 2-3 times. In para-14, he has stated that none of his family members had assaulted the accused persons. He had not seen injury over the person of Pancham, Champa, Gopal, Bhikhari, Pradip. Further, stated that they have not informed the police while coming to the hospital. Then had stated that they have shown the police Darwaza of Chokat as well as bamboo cluster. When the police came, the bamboo was lying there. Then had denied the suggestion that while they were assaulting the accused persons, villagers came in rescue and assaulted them but only to save their skin, got this case filed.

14. PW-3 is Anil Kumar Ojha who had deposed that on the alleged date and time of occurrence, he was at his house. After hearing sound of uproar, he rushed and gone to the



Darwaza of Chokat Mahto where he had seen Pradip, Gopal, Dhanu Mahto, Paltan Mahto, Sanjay Mahto and Jokhan Mahto assaulting Makeshwar conjointly. When Mithilesh rushed in rescue, he was also assaulted by the accused persons and during course thereof, Pradip gave a blow with the brick-frame (Thapi) over his head, on account of which, he sustained injury. Blood oozed out. Then other accused also assaulted. Dhruv Narayan Ojha rushed in rescue who was assaulted by Chokat. Jokhan Mahto assaulted with Farsa. Paltan assaulted Rahul with rod. He was assaulted by Chhotelal with Lathi. Rajeshwar was also assaulted with Lathi. Dina Nath was also assaulted with Lathi by Mannu. Mithilesh became unconscious, who along with others, were taken to Rahmania Hospital and from there, Mithilesh was referred to Patna where he died. Other injured were treated at Rahmania Hospital as well as Sadar Hospital. He had made his statement before the police.

15. During cross-examination at para-4, he had stated that neither he nor any family members had informed the police through mobile or other sources. Even during course of going to Motihari, they have not informed the police. At para-5, there happens to be contradiction. At para-6, his attention has been drawn up with regard to earlier cases instituted against his other



family members, at the end of others whereunder, he along with others happens to be an accused. In para-10, he had stated that his house lies north to 'Baswari' at a distance of 200 yards, while house of Gopal Mahto lies 20 hands south, house of Chokat lies 20-25 hands north-west. Road lies south to Baswari running north to south. At para-11, he had stated that the land over which Baswari stood is an area of 8^{ft}x8^{ft} but he is unable to be disclose Khata, Khesra Number. All around the aforesaid land, his own land lies. Khata is in the name of Sadhu Sharan Ojha, his forefather but admitted that he has not seen Khatian. He further stated that Gopal is claiming Baswari and was cutting the bamboo on that pretext. He had advanced claim about 10 days ago but, no dispute ever erupted on that very score. He is unable to say whether any document was shown to the I.O. He had not filed any document relating thereto in the court. At para-12 he had stated that he had not gone to Baswari on the date of occurrence. He is unable to say who had cut the bamboo and where it was taken away. He had shown the Baswari to the Police. 7-8 bamboos were cut therefrom. Then again said that three bamboos were kept at the Darwaza of Chokat while four remained at Baswari. Neither police seized the same nor had taken away. In para-13, he had stated that he had gone to the



Darwaza of Chokat after hearing alarm. None of his family members came thereafter. Before his arrival, seven persons of his family were present there. At para-14, he had stated that when he reached, he had seen injury over the person of Makeshwar. He was standing. Rest family members were also standing. Accused persons had encircled all of them. Only one person out of the accused was armed with Farsa, one was armed with spear. Spear blow was given over Dhruv Narayan. He had seen only one person hurling Farsa. In para-15, he had stated that Mithilesh was not assaulted by Spear/Farsa. He was assaulted 3-4 Lathi blows after fall. When he reached, he had seen Pradip having *Thapi* in his hand. In para-16, he had stated that Mithilesh was assaulted from his right side with *Thapi*. He was assaulted twice. After sustaining blow, Mithilesh fell down. Then thereafter, he was not assaulted by *Thapi*. In para-17, he had stated that they have not apprehended the assailant. Other members of the accused were present. So many villagers including Mukhiya came. They have not snatched weapon from the accused. In para-19, he had stated that when he began to lift Mithilesh, then he was assaulted by Lathi, one blow over head, another blow over back. Other family members were also assaulted. In para-20, he had stated that they have not assaulted



accused persons in retaliation. They have simply protested while accused assaulted. Injured were not taken to house. They were directly taken to the hospital. Accused persons remained there. None of the accused persons were treated. In para-22, he had stated that when they reached at the hospital, they had seen Pradip Mahto. Then had stated that five injured were taken to Rahmania Hospital while three remained at Sadar Hospital. He was also examined at Sadar Hospital. In para-23, he had stated that he is unable to say whether the police had come to Rahmania Hospital or not. Then had denied the suggestion that they have raided the house of Pradip, Bhikhari, Gopal and assaulted them on account of which, villagers came and assaulted in retaliation. Only to safeguard their interest, this case has been instituted.

16. PW-4 had stated that on the alleged date and time of occurrence, he was at his house. He was to take meal. After hearing uproar, he had gone to Darwaza of Chokat where he had seen Pradip, Gopal, Dhanu Mahto, Paltan Mahto, Sanjay Mahto and Jokhan Mahto out of whom, Gopal was armed with Daab, Pradip with *Thapi* and rest were armed with Lathi. Accused persons were engaged in assaulting Makeshwar. They had tried to save him. Firstly, Mithilesh had gone to save who was



assaulted with Thapi by Pradip over his head on account of which, he sustained injury. Rest accused assaulted him with lathi, as a result of which, he became unconscious. He, Ratnesh, Dhruva Narayan, Rahul came in rescue and during course thereof, they also received assault at the end of accused persons with Lathi, spear, rod. He was assaulted by Mannu Mahto. Others also assaulted. All the injured were taken to hospital. Some were admitted at Rahmania and some at Sadar Hospital. Mithilesh was referred to Patna where he died. He further stated that on account of cutting of bamboo dispute arose. Accused persons were engaged in cutting bamboo and on protest, this occurrence has been committed. Then submitted that Pradip snatched away chain from Rahul. Identified the accused.

17. During cross-examination at para-4, he had stated that injured were taken on a Tempo to hospital. All were conscious. At para-5, he had stated that Mithilesh was examined/treated at Rahmania Hospital wherefrom he was referred to Patna. Remaining were treated at Sadar hospital. Makeshwar had given Fardbeyan at Banjaria Police Station in his presence. At para-7, there happens to be contradiction. In para-8, he had stated that he had not seen cutting of bamboo. Further stated that bamboo cluster happens to be at northern-



eastern corner from the house of Gopal Mahto. House of Chokat lies north to Gopal. He had not gone over the land over which bamboo cluster lies, after the occurrence. In para-9, he had stated that when the police came, he was not present in the village and so, he had not produced any document relating to the land having bamboo cluster. Then had stated that police had not properly investigated the case. He had further admitted at para-11 that he along with his three brothers, son, nephew are the witnesses. They all are injured. In para-12, he had detailed the same. He had further admitted that Mansha Yadav had instituted one case against his nephew wherein Gopal stood as a witness. Mansha had again instituted a case against him and others wherein also the accused of this case are the witnesses. In para-13, he had further stated that Ratnesh had instituted a case against Mansha and others. In para-14, he had stated that one road lies south to his house. House of Chokat lies 200 yards from his house. House of Gopal lies south to the house of Chokat. Baswari lies east to the house of Chokat. At para-15, he had stated that Survey Plot No. of Baswari happens to be 5318. Khatiyan stood in the name of Ram Bilash, Bhola Yadav and Sadhu Sharan Ojha. He had not shown Khatiyan to the police nor filed in court. He had denied the suggestion that Khatiyan



stood in the name of forefather of accused persons. He had also denied the suggestion that he mentioned wrong Survey Plot number. In para-16, he had admitted that the accused persons have forcibly grabbed the Baswari few months prior to the occurrence but he had not instituted any case. On the date of occurrence, the accused persons had cut away 8-10 bamboos. At that very time, he had gone to bamboo cluster. At that very time, nine accused persons were engaged in cutting bamboos. When he reached, the accused persons had already cut away eight bamboos. After his arrival, they have not cut any bamboo. Before his arrival Makeshwar was present at that very place since before. Gopi Mahto, Pannu, Chokat, Paltan, Pradip were engaged in cutting bamboo while rest were standing armed with weapons. He had not tried to snatch weapon from hands of the accused persons. None of the accused persons have assaulted them at Baswari. Gopi was armed with Daab. He had given repeated Daab blows over Makeshwar. Makeshwar had not fallen in the Baswari. He along with Makeshwar raised alarm from Baswari. All the family members arrived there. At that very time, all the accused persons, were armed with weapon. None other than Makeshwar was assaulted at Baswari. None of the injured fell down in the Baswari. He had not cut away



bamboo rather it was cut away by Pannu and Gopi who took to their house. In para-18, he had stated that they have not protested. He had further stated that he was not assaulted at Baswari. Then they came to Darwaza of Chokat. All the family members came at that very place conjointly. They stayed there for about 20-25 minutes. They have sustained injury at that very place. Villagers came after the occurrence. At para-19, he had stated that none of the family members came armed with weapon at Darwaza of Chokat. Accused persons also came to the Darwaza of Chokat. Female folk had come along with weapon. They were empty hand. They have not tried to escape therefrom seeing the accused persons armed with weapon. The accused persons came within 2-3 minutes. One was armed with Farsa. Rest were armed with rod and Thapi. In Para-20, there happens to be cross-examination over Thapi. He had further stated that there was repeated blow of Thapi. Mithilesh was assaulted by Thapi. As a result of which, he fell down, then thereafter, he was not assaulted. After assault, the accused persons left the place. Blood had oozed out. At para-24, he had stated that he had not gone to inform the police. Some injured had gone to Rahmania Hospital, some had gone to Sadar Hospital. At para-25, he had stated that police had come at



Rahmania Hospital. Then had stated that he had not gone to Baswari. Then had denied the suggestion that they, after forming an unlawful assembly, gone to the place of Gopal Mahto and assaulted his family members. The villagers came in rescue and at whose hand they had sustained injuries. This case has been instituted only to save their skin.

18. PW-5 had deposed that on the alleged date and time of occurrence, he was at his Darwaza. After hearing uproar, he rushed towards his Baswari and during midst thereof, when he reached at the Darwaza of Chokat Mahto, he had seen Makeshwar and Mithilesh. He had also seen Gopal, Jokhan, Sanjay, Bhanu, Pradip, Paltan, Chunnu, Chhotelal, Bhikhari and Chokat who were engaged in assaulting Makeshwar and Mithilesh. It had further been disclosed that when Mithilesh tried to save Makeshwar, Paltan ordered to kill whereupon, Gopal caught hold of him and Pradip assaulted repeatedly by *Thapi* over his head. Rest accused assaulted him with lathi and danda, as a result of which, Mithilesh fell down. Dina Nath, Ratneshwar, Anil, Rahul along with he himself intervened, they were also assaulted by the accused persons. He was assaulted by Mannu Mahto with Lathi. Then thereafter, they all were taken to hospital over vehicle. Mithilesh was examined at Rahmania



Hospital wherefrom he was referred to Patna where he died. Identified the accused.

19. During cross-examination at para-4, he had stated that Makeshwar happens to be his cousin brother. He has eight brothers. All have got independent establishments. House of Gopal lies at a distance of 200 yards south intervened by two persons from his house. House of Gopal is behind the house of Chokat Mahto. Alleged Baswari lies 10-12 steps east to the house of Gopal. In para-6, he had disclosed Survey Plot No. of that Baswari as 5318. he had not seen its Khatiyan. No document has been produced before the I.O. during course of investigation. Gopal has got no possession over Baswari. No Civil Suit is pending relating thereto. In para-7, he had admitted presence of case with others since before wherein, more particularly, filed at the end of co-villager, Mansha Yadav. Gopal is the witness. In para-10, he has stated that all the accused persons are descendants of Teni Mahto. He is unable to disclose total area of Plot No. 5315. House of Chokat and Gopal lies over the same. He had not taken any effort for getting house of those persons removed therefrom. At para-12, there happens to be contradiction. In para-13, he had stated that the house of his cousin brother lies 100 steps north from the P.O. He had not



seen whether any blood had oozen out or not but there was blood over the PO. They stayed at the place of his cousin brother where blood had also fallen. In para-15, he had stated that when he reached at the place of occurrence, he had seen injury over the person of the injured. In his presence Makeshwar was assaulted. He was assaulted before his arrival. Again corrected, after his arrival, he was assaulted with lathi. After his arrival, Mithilesh was assaulted with lathi. Mithilesh was assaulted while he was lying. In para-16, he had stated that when he reached at the house of Chokat, none of the villagers were present save and except his family members. He denied to have assaulted accused persons. He had further stated that he had not informed the police. He had further stated that he had not gone to Baswari. He had further stated that police had not recovered any incriminating article from the Darwaza of Chokat. Then he denied the suggestion that they were aggressors and assaulted the accused persons after raiding their house and only to save their skin this case has falsely been filed.

20. PW-6 is the informant. He had stated that on the alleged date and time of occurrence while he was going towards his field, heard some sound coming from Baswari whereupon, he had gone there and had seen Gopal engaged in cutting



bamboo whereupon, he forbade. On this, Paltan ordered to kill. Pradip, Mannu, Sanjay, Paltan, Bhikhari, Chokat, Chhotelal were there. Then Gopal in order to kill inflicted Dabia blow causing injury over his head. He ran therefrom and came at the Darwaza of Chokat where the accused persons also arrived and began to assault. When his brother Mithilesh came in rescue, Pradip assaulted him with Thapi over his head causing injury thereupon. Others have also assaulted him with Lathi as a result of which he fell down and became unconscious. Dhruv Narain came in rescue who was assaulted by Sanjay with rod over his head. Chokat gave Barchhi blow. Rajeshwar came in rescue who was assaulted by Mannu Mahto with lathi. Rahul, Dinanath Prasad, Ratnesh came who were also assaulted. Pradip snatched away golden chain from Rahul. Then thereafter, they were taken to Rahmania Hospital wherefrom Mithilesh was referred to Patna where during course of treatment, he died. Police came while he was admitted at Rahmania Hospital where recorded his Fardbeyan (exhibited his signature). Identified the accused.

21. During cross-examination at para-7, he had stated that whoever came in rescue, all happens to be the family members. They had also sustained injury. During course of the occurrence, neither any neighbour nor any villager came.



Further stated that he had furnished written report before the police. Then his attention has been drawn up towards the written report to the effect that he had mentioned in the written report that after sustaining injury at Baswari, he fell down. In para-8, his attention has been drawn up with regard to inconsistency, exaggeration having during course of evidence in consonance with the written report. In para-9, he had further stated that he is not remembering whether he had mentioned the fact in the written report that he came at the Darwaza of Chokat from Baswari. In para-10, he had stated that Baswari lies 100 yards south-east to his house. His land lies north to that Baswari while land of Rameshwar lies south to the aforesaid Baswari. House of Gopal lies 10-15 steps west to the Baswari. The house of Chokat lies west to Baswari. He is not remembering the plot number of Baswari. He had seen the document relating thereto. Survey is recorded in the name of Sadhu Sharan Ojha. He is not remembering whether he had placed any document before the I.O. during course of investigation. He is not remembering whether any document has been filed in the court. Then had denied the suggestion that the aforesaid land is recorded in the name of father of accused persons, Teni Mahto and Mukund Mahto. In para-12, he had admitted that since before occurrence



they are on litigating terms with Mansha Yadav but he is not remembering that Gopal and Chokat are the witnesses in that case. In para-13, he had stated that after hearing rattling sound coming from Baswari, he had gone there empty hand. At that very time, only one person, Gopal was engaged in cutting bamboo with Dabia. Three bamboos were already cut since before his arrival. After his arrival, not even a single bamboo has been cut. He engaged in an altercation with Gopal Mahto, and during course thereof, Gopal inflicted Dabia blow, whereupon he called his family members. He had not fallen down after sustaining injury rather, ran therefrom and came at the Darwaza of Chokat. At that very time blood was oozing from his body. Road is at the Darwaza of Chokat. At that very time 7-8 persons were at the Darwaza of Chokat armed with rod, lathi and Farsa. In para-14, he had stated that none was assaulted with Farsa. Gopal followed him to the Darwaza of Chokat but he had not assaulted. All the accused persons have encircled him. He was assaulted only once by Lathi. Even then he had not fallen. Later on he fell down. Before that his family members came but were unarmed. In para-15, he had stated that accused persons have not assaulted any of his family members over road. They were assaulted at the Darwaza of Chokat.



However, they were encircled in front of Darwaza of Chokat. He remained lying. All the accused persons assaulted and during course thereof. Ratnesh was assaulted with Farsa only once. Dhruv Narain was assaulted with Barchhi. In para-16, he had stated that he met with Mithilesh at the Darwaza of Chokat. At that very time, Mithilesh was alone. Accused had encircled him. He was not assaulted by the accused. He was not assaulted with Farsa and Barchhi. He had not counted as to how many Lathi blows were given to him. He had not seen whether any Lathi, rod blow was given over his head or not. In para-17, he had shown how frame of Thapi was being prepared. None other than Mithilesh was assaulted with Thapi. Pradip had assaulted with Thapi with his both hands. He was assaulted 3-4 times. Blood had oozen out and then Mithilesh was assaulted with Lathi whereupon, Mithilesh fell down on the road. Blood had spread over the ground. In para-18, he had stated that none of the villagers came. They have not assaulted Pradip and his family members. He had further stated that after assemblage of the villagers, the accused persons fled away. At para-19, he had stated that first of all they were taken to house and wherefrom to hospital. In para-20, he has stated that during course of assault at Baswari, he had not raised alarm rather, he ran therefrom.



None of the family members came at Baswari. He had not rushed towards his house from Baswari rather at the Darwaza of Chokat. When he reached at the Darwaza of Chokat, 10-15 persons were present since before. All of them were co-villagers. Within 4-5 seconds, his other family members also arrived. Till then, the accused persons remained over road. In para-21, he had stated that accused persons were armed with weapon. Maar-peeet took place for 5-7 minutes. Mithilesh, Dhruv Narain, Ratnesh, Dina Nath, Rajeshwar and other family members had sustained injuries over the road. All the accused persons had encircled them over the road itself and then they were assaulted. Pradip was there at a distance of one yard from Mithilesh. In para-22, he had stated that Pradip had assaulted 3-4 Thapi blows over the head of Mithilesh. As a result of which, he fell down. Thereafter, he was assaulted by Lathi. In para-23, he had stated that they have not defended themselves. They have not assaulted accused persons in defence. They have not seen injury over accused persons. They were assaulted over the road in front of Darwaza of Chokat. In para-24, he had stated that police had come at the hospital and had gone to Baswari. He had shown the Baswari wherefrom bamboo was cut. He had also shown the PO, road in front of Chokat. Then had denied the



suggestion that the land of Baswari does not belong to them as it belongs to the accused persons, recorded in the name of their forefathers. Then had denied the suggestion that no occurrence took place at the Darwaza of Chokat rather they have assaulted Gopal, Pradip and others after raiding their house over which villagers reiterated and during course thereof, they have sustained injury. He further denied that after taking the police in their collusion got this case filed.

22. PW-7 is the doctor who had conducted postmortem over the dead body of Mithilesh on 03.03.2012 and found the following:-

(1) One lacerated wound size 1"x 1/2"x Scalp deep on right mid parietal region of head. On dissection:- underlying the soft tissue of whole scalp was contused with haematoma. There was communitied fracture of frontal and both temporal perietal bone. There was extra-dural and sub-dural hematoma seen on both cerebral hemisphere of brain tissue.

Opinion:- Death resulted from intracranial haemorrhage and shock due to aforementioned head injuries caused by hard and blunt force object. The time elapsed since death was within 18 to 24 hours from the time of postmortem examination.

23. PW-8, is the IO who had investigated after registration of the Turkaulia PS Case No. 101/2012, exhibited all the documents relating thereto. He further deposed that during course of investigation further statement of the informant



was recorded, visited the place of occurrence which happens to be *Baswari* lying in front of house of accused, Gopal and open space lying in front of house of Chokat Mahto. Then had also identified another place 50 yards away therefrom near a Neem Tree having granery at its eastern boundary while at western flank, the road lies and this road is the place of occurrence. He had also recorded statement of another injured, procured injury report, postmortem report and then, on account of transfer, handed over investigation to I.O. During cross-examination at para-6, he had stated that he had not received any information on 01.03.2012 from 7:00 AM to evening hour regarding the occurrence. In para-7, he had stated that he took up investigation at 01.03.2012 at about 7.30 PM. He proceeded to PO from PS at 7:40 PM. He is unable to disclose as to who had shown the PO. Again said that he had inspected the PO as pointed out by the informant. He had recorded further statement of the informant before inspection of the PO but he had not mentioned the fact in the case diary with regard to presence of injury over the person of informant. In para-8, he had further admitted that he had not mentioned area of *Baswari*. He had not mentioned how many bamboos were standing. He had not mentioned how many bamboos were cut. He had not mentioned with regard to



recovery of the bamboos. In para-9, he had stated that neither he demanded document nor he produced before the court. He had stated that he had not found sign of blood at the place of occurrence in front of house of *Chokat*. He had not mentioned presence of injury relating to other injured. He had not prepared requisition relating to injury of any of the injured. In para-11, he had stated that when he had gone to Sadar Hospital, Motihar on 05.03.2012, he had found accused Pradip admitted as an indoor patient. He had interrogated doctor and found Pradip in injured condition, admitted, so he had deputed Chowkidar as being an accused. In para-12 he had admitted presence of head injury over accused Pradip Mahto. In para-14, he had stated that he had not prepared requisition relating to injury over the person of Pradip. He had not mentioned the aforesaid fact in his case diary, but had remanded him. In para-15 he had stated that he had not found sign of trample over the place of occurrence. As he had not found blood stain so he had not mentioned the same. In para-17, he had stated that he had not found injury over the person of Makeshwar, Dinanath, Rahul on account thereof no requisition was prepared relating to them. In para-19 he had stated that on information given by the informant, he had filed requisition for adding Section 302 of the IPC. In para-21, he had



admitted that superior police officials had directed him to see whether there happens to be sign with regard to recent cutting of bamboo and in compliance thereof, he had seen the bamboo cluster wherefrom he had not found sign of recent cutting of bamboo. In para-22, he had stated that the place of occurrence happens to be the Darwaja as well as *Baswari* of the accused. In para-23, he had stated that he had not recorded statement of an independent witness. In para-24, he had stated that in spite of his hectic search from 01.03.2012 to 04.03.2012, he could not be able to locate whether informant and his family members had gone for treatment. Then, at para-24, 25 he had disclosed that witness Dhrubnarayan was not an eye witness to the occurrence. Likewise status happens to be that of witness Dinanath (paragraph-26), Anil (paragraph-27). In para-28 there happens to be admission with regard to statement relating to Rajeshwar Ojha relating to commission of an occurrence at the Darwaja of *Chokat* rather disclosed regarding falling. In para-29, he had further admitted that Makeswar had not disclosed before him during course of further statement that he had seen Pradip assaulting with *Thapi*. In para-30, he had admitted that while proceeding with investigation he found statement of witnesses have already been recorded. In para-32, he had stated that he



had not taken any effort to find out the ownership of the *Baswari*.

24. DW-1 is Dr. Ravi Ranjan who had examined Pradip Mahto on 01.03.2012 as well as also Bhikhari Mahto, Gopal Mahto, Manu Mahto, Champa Devi, out of them, Pradip Mahto was carrying head injury, was admitted and was discharged on 06.03.2012. He had found following injuries over the persons of the respective injured.

(1) Pradip Mahto – (i) Incised wound on the left side of occipital region size 2 1/4” x 1/4” x skin deep.

(ii) Abrasion on left side III Metacarpal region. Nature of injury simple caused by (i) sharp cutting and (ii) injury by hard blunt substance.

(2) Bhikhari Mahto – (i) Swelling over left side elbow joint. Nature of injury simple caused by hard blunt substance.

(3) Champa Devi – (i) Swelling pain on left side leg, complain in pain over body. Nature of injury simple caused by hard substance.

(4) Gopal Mahto – (I) Abrasion on left side ankle joint size 1 1/2” x 1/2”. Pain of whole body. Nature of injury simple caused by hard blunt substance

(5) Manu Mahto – (i) Swelling over right face 2”x2”. Nature of injury simple caused by hard blunt substance.

25. DW-2 Jitendra Singh, Advocate clerk who had exhibited Khatian (certified copy), complaint petition, statement of witnesses, (certified copy).



26. From the evidence available on the record, it is abundantly clear that (a) there happens to be admission by way of suggestion at the end of the appellant regarding assault having over the person of prosecution party and for that an explanation has been offered that while they were assaulting Pradip and his family members at their *Darwaja*, the villagers came and retaliated (b) the place of occurrence as per defence version is the *Darwaja* of the Pradip and *Chokat* (c) neither any of the accused/his family members nor any witness has been produced as DW on that very score (d) though suggested but there happens to be no admission nor explanation with regard to injury over the person of Pradip as well as others as deposed by DW-1 in consonance with admission of the I.O. witnesses who had seen Pradip at Sadar hospital admitted for treating of his injury, and being an accused, Chowkidar was deputed and after discharge, remanded. Non-explanation of injury over the person of accused is a delicate issue and at an earlier occasion the inconsistency prevailed whereupon the matter has been settled at rest in ***Rajendra Singh v. State of Bihar*** as reported in (2000) 4 SCC 298, observing that mere non explanation of injury having over the persons of accused will not cast any kind of dent over prosecution version, on the other hand, the matter has



to be decided over the nature of evidence having on record.

27. While considering Rajendra Singh's case (supra) along with other, in ***Gurwinder Singh and Ors. vs. State of Punjab and Ors.*** reported in ***(2018) 16 SCC 525***, it has been held as follows:-

11. It cannot be held as an invariable proposition that as soon as the Accused received the injuries in the same transaction, the complainant party were the aggressors-it cannot be held as a Rule that the prosecution is obliged to explain the injuries and on failure of the same, the prosecution case should be disbelieved. It is well settled that before placing the burden on the prosecution to explain the injuries on the person of the accused, two conditions are to be satisfied: (i) the injuries were sustained by the Accused in the same transaction; and (ii) the injuries sustained by the Accused are serious in nature.

12. This Court considered the effect of non-explanation of injuries sustained by the Accused person in Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors. (2001) 6 SCC 145 and held as under:

17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the Accused persons. In Rajender Singh v. State of Bihar (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar : (1998) 7 SCC 365 and Vijayee Singh v. State of U.P. (1990) 3 SCC 190, all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a Rule that whenever the Accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the Accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the



Accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where

the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the Accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

28. It is needless to say that FIR should not contain minute to minute details. It should not be an encyclopedia of the occurrence. The purpose for registration of FIR is to roll the ball in case, there happens to be commission of cognizable offence and so far non-cog case is concerned, the police has to proceed after taking permission from the Magistrate, but it happens to be initial version of the occurrence and so has got primacy. True it is that the FIR happens to be subject of corroboration or contraindication relating to the evidence of the informant only but, it has got relevancy, as the prosecution case has to be seen in the background thereof. Any deviation therefrom, without any legal cogent explanation, is a circumstance which is bound to play vital role during course of adjudication.

29. So far evidence of injured witnesses are



concerned, that has got primacy as well as authenticity, more particularly, presence of injury is suggestive of the fact that there was presence of witness at the spot and further, proper identification as an eye witness to the occurrence. In ***Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288** observing as follows: “28. 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 an in-built 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.”

30. In the background of aforesaid legal principle when the evidence is being scrutinized, it is evident that though I.O. PW-8 was not at all cross-examined on what basis he had arrived at Rahmania hospital, irrespective of the fact that some of the so alleged injured, had admitted that they were at Sadar hospital but neither I.O. on his own disclosed nor any injury report having been issued at the end of Sadar hospital has been exhibited. In order to trace out the mode of information to the



I.O. all the witness including that of I.O. kept silence how the police arrived at the Rahmania hospital and got the written report. During cross-examination, irrespective of examination of PW-9, Doctor, wherein he had deposed with regard to injuries over the person of the respective injured but, the I.O. PW-8 during course of his cross-examination at para-17 had stated that during course of recording statement of Rahul, Anil, Dinanath, Dhruv Narain, Makeswar Ojha, he had not found injuries over their person and so, no requisition was issued relating thereto and on that very score, I.O. was not at all recalled at the end of the prosecution to explain the same.

31. It is further evident that initially prosecution version identified the Baswari to be the place of occurrence which during course of trial has been shifted to the *Darwaja* of *Chokat*, is a circumstance which ought to have been properly explained as, manner whereunder members of the prosecution party came in rescue of Makeswar Ojha, the informant is another circumstance, which cast doubt over genuineness of the prosecution version, more particularly, when some of the witnesses have stated that they arrived one by one and in similar way they fell victim while some have stated that they all arrived jointly.



32. I.O. during course of inspection of place of occurrence had admitted that it was shown by the informant and as per paragraph-4 of his examination-in-chief, he had shown three PO's, the first one is *Baswari*, the second one is open place laying north to the house of *Chowkat* and third one is the place near *Neem* tree at the distance of 50 yards from that place and in the aforesaid background, having silence at the end of prosecution cast serious doubt over the genuineness of the prosecution version, more particularly, in the background of the fact that (a) no cutting of bamboo was found by the I.O. during course of inspection of the place of occurrence, (b) no trampling mark was found either at the *Baswari* or at the Darwaja of *Chokat*, so alleged place of occurrence as disclosed by the prosecution witness, (c) no blood stain was found at the alleged P.O., in front of house of *Chokat*.

33. The most surprising feature is that in spite of the fact that Pradip Mahto was admitted at the Sadar hospital in an injured condition where the I.O. found him, being an accused in this case, Chowkidar was deputed there but the reason best known to the I.O., he had not cared to record his statement.

34. The Khatian having been adduced at the end of defence, has not been controverted (Ext-A) at the end of



prosecution by way of producing any legal authentic evidence. Moreover, the I.O. completely disowned to have the document shown to him relating to Baswari. So, the prosecution ought to have produced such evidence to connect plot no.

35. In *Digamber Vaishnav and Ors. vs. State of Chhattisgarh* as reported in (2019) 4 SCC 522, it has been held as follows:-

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the Accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in *Jaharlal Das v. State of Orissa*, (1991) 3 SCC 27, has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to Rule out a reasonable likelihood of the innocence of the Accused.



16. *****

17. In *Varkey Joseph v. State of Kerala*, 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an Accused is condemned as a convict, and the basic and golden Rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the Accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.



36. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is not at all found sustainable in the eye of law. Hence, the same is set aside. The appeal is allowed. Appellants are under custody, hence directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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