

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1466 of 2018

Arising Out of PS. Case No.-27 Year-2009 Thana- MANPUR District- West Champaran

1. Ramjeet Bin, Son of Late Saryug Bin.
2. Lalji Bin Son of Late Jaggu Bin.
3. Dewanand Bin Son of Lalji Bin.
4. Dafadar Mian Son of Late Haidar Mian.
5. Lal Babu Bin Son of Nathuni Bin.
6. Ramakant Mukhiya @ Ramakant Bin Son of Late Hanuman Mukhiya.

All are resident of Village- Purainiya, Police Station- Manpur, District- West Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 414 of 2019

Arising Out of PS. Case No.-27 Year-2009 Thana- MANPUR District- West Champaran

Bhulan Bin S/O Nathuni Bin, R/O Village- Purainiya, Police Station- Manpur, District- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1466 of 2018)

For the Appellant nos. 1, 5 and 6 : Mr. Bimilesh Kumar Pandey, Adv

For the Appellant No. 3 : Mr. Akhileshwar Kumar Shrivastva, Adv

For the State : Ms. Shashi Bala Verma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 414 of 2019)

For the Appellant/s : Mr. Bimilesh Kumar Pandey, Adv

For the State : Ms. Shashi Bala Verma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-11-2024

At the outset, it is recorded that pursuant to the order dated 18.11.2024, this Court has been informed today by learned Additional Public Prosecutor that as per the report received from

the Superintendent of Police, West Champaran, Bettiah vide his letter no. 608 dated 20.11.2024, the appellant nos. 2 and 4 of Cr. Appeal (DB) No. 1466 of 2018 have died during pendency of the appeal. The report of the Superintendent of Police, West Champaran, Bettiah has been taken on the record. The Criminal Appeal (DB) No. 1466 of 2018 survives on behalf of appellant nos. 1, 3, 5 and 6.

2. Heard Mr. Bimlesh Kumar Pandey, learned counsel for the appellant nos. 1, 5 and 6 in Cr. Appeal (DB) No. 1466 of 2018 and the sole appellant in Cr. Appeal (DB) No. 414 of 2019, Mr. Akhileshwar Kumar Shrivastva, learned counsel for the appellant no. 3 in Cr. Appeal (DB) No. 1466 of 2018 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

3. Both the appeals have been preferred for setting aside the judgment of conviction dated 09.10.2018 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 12.10.2018 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge, F.T.C.-II, Bettiah, West Champaran (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 129 of 2010 arising out of Manpur P.S. Case No. 27 of 2009.

4. By the impugned judgment, all the appellants have been convicted for the offences punishable under Sections

302/149, 323/149, 147 and 148 of the Indian Penal Code (in short 'IPC') and by the impugned order, the appellants have been ordered to undergo life imprisonment with a fine of Rs.5,000/- under Section 302/149 IPC and in default of payment of fine, they have to further undergo rigorous imprisonment for three months. They have also been ordered to undergo one year imprisonment under Section 323/149 IPC and one year rigorous imprisonment under Section 147 IPC as also one year imprisonment under Section 148 IPC. All the sentences are to run concurrently.

Prosecution Case

5. The prosecution story is based on the written application of Ganpat Mukhiya (PW-2). In his written application (Exhibit '1'), he has stated that on 27.10.2009 at about 10:30 AM, he was in his house. At that time, after ploughing the field accused persons, namely, (1) Ramashray Mukhiya, (2) Ramakant Mukhiya, (3) Ramjit Bin, (4) Sukhi Bin, (5) Lal Bihari Bin, (6) Lalji Bin, (7) Devanand Bin, (8) Dafdar Mian, (9) Lalbabu Bin, (10) Bhulan Bin and (11) Radhakishun Bin all armed with lathi, farsa, fatta, garasi came at the house of the informant and started abusing. While abusing, the accused persons entered into the house of the informant and with an intention to kill assaulted Raghuvir Mahto, Jagdish Mukhiya, Arjun Mukhiya and Ganpat Mukhiya and started

throwing bricks and stones. When Daisy Devi, Sugandhi Devi, Fulmati Devi and Lalan Mukhiya went to save them, the accused persons also assaulted them. The informant alleged that some got injury on their head, some on arms and some on legs. Raghuvir Mahto got most of the injuries. Raghuvir Mahto got injuries on his head, neck and all over the body. The informant also alleged that the accused took nose pin from his daughter-in-law Daisy Devi which was worth Rs.2,500/-. The reason behind this occurrence is a land dispute and the accused persons were always indulging in assault. The informant claimed that several persons have seen the occurrence.

6. On the basis of this written application, Manpur P.S. Case No. 27 of 2009 dated 27.10.2009 was registered under Sections 147, 148, 149, 448, 341, 323, 324, 325, 307, 379 and 504 IPC and after the death of Raghuvir Mahto, Section 302 IPC was also added. Upon investigation, Police submitted chargesheet bearing No. 03 of 2010 dated 24.01.2010 against (1) Ramjeet Bin, (2) Lalji Bin, (3) Devanand Bin, (4) Dafadar Mian, (5) Lalbabu Bin, (6) Ramashray Mukhiya, (7) Ramakant Mukhiya and (8) Bhulan Bin for the offences under Sections 147, 148, 149, 448, 341, 323, 337, 324, 325, 307, 302 and 504 IPC. On the basis of this chargesheet, learned Chief Judicial Magistrate took cognizance of

the offences vide order dated 10.02.2010. Finding that the offence under Section 302 IPC is triable by court of Session, learned Magistrate committed the records to the court of sessions on the same day. After receiving the records, Sessions Case No. 129 of 2010 was registered. Charges were read over and explained to the accused in Hindi which they denied and claimed to be tried. On 07.05.2010, charges were framed under Sections 302/149, 147, 148, 452/149, 324/149 and 307/149 IPC against eight chargesheeted accused.

7. In course of trial, the prosecution examined as many as ten witnesses and exhibited several documents to prove the prosecution case. The defence also exhibited several documents. The names of the prosecution witnesses and the exhibits marked on behalf of the parties are being shown hereunder in tabular form:-

List of Prosecution Witnesses:-

PW-1	Kanti Devi
PW-2	Ganpat Mukhiya
PW-3	Lalan Mukhiya
PW-4	Fagu Mukhiya
PW-5	Bhukal Mukhiya
PW-6	Surendra Bin
PW-7	Fulmati Devi Fulwanti
PW-8	Sugandhi Devi
PW-9	Uday Mahto
PW-10	Dr. Ashok Kr. Chaudhary

List of Exhibits on behalf of Prosecution Witnesses

Exhibit ‘1’	Written Application
Exhibit ‘2’	Signature of Surendra Bin (PW-6) of the Inquest report
Exhibit ‘2/2’	Signature of Uday Mahto (PW-9) on the Inquest Report
Exhibit ‘3’	Post-mortem Report

List of Exhibits on behalf of Defence Witnesses

Exhibit ‘A’	CC of FIR of Manpur P.S. Case No. 17 of 2009
Exhibit ‘B’	CC of Chargesheet Manpur P.S. Case No. 17 of 2009
Exhibit ‘A/1’	CC of FIR of Manpur P.S. Case No. 28 of 2009
Exhibit ‘B/1’	CC of Chargesheet of Manpur P.S. Case No. 28 of 2009

Findings of the Learned Trial Court

8. Having analysed all the materials available on the record, the learned trial court found that there is a clear evidence on the fact that when the deceased was going to work with paddy crop he met the accused party and he was assaulted. He ran away to save his life but due to severe injuries on his person he fell near the door of Ganpat Mukhiya where the accused party by forming unlawful assembly armed with deadly weapon and in furtherance of common object of unlawful assembly brutally assaulted the deceased and also to the members of the rescuing party. They have been examined and their presence cannot be discarded. Learned trial court found that there is no dispute that the first doctor who

initially examined the injured persons and the deceased have not been examined but the fact that the stitched wounds were found at the time of post mortem is indicative that the deceased was initially treated elsewhere. Learned trial court also found that despite the fact that earlier statement of PW-3 was not recorded by the police but his evidence is not liable to be discarded merely on this ground when it is consistent, natural and probable in the light of the rest of the evidences.

9. Accordingly, learned trial court found that the prosecution has proved its case beyond all reasonable doubts, hence, the accused persons are held guilty of the offences under Sections 302/149, 323/149, 147 and 148 IPC.

Submissions on behalf of the Appellant Nos. 1, 5 and 6

10. Mr. Bimlesh Kumar Pandey, learned Advocate has led the arguments on behalf of the appellants. It is his submission that all the prosecution witnesses have stated that Police reached the place of occurrence, however, it is not known as to how the police had reached the place of occurrence on its own. The evidence of the prosecution witnesses would only show that Police had received some information with regard to the occurrence prior to leaving for the place of occurrence, however, that first information which was received by the Police has not been

brought on record. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Allarakha Habib Memon and Others v. State of Gujarat** reported in **(2024) 9 SCC 546**, learned counsel submits that since Police has suppressed the first information received by them, the FIR lodged in this case would be hit by Section 162 Cr.P.C.

11. Learned counsel submits that the I.O. of the case has not been examined which has caused serious prejudice to the defence. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Munna Lal versus State of Uttar Pradesh** reported in **2023 SCC OnLine SC 80** (paragraphs 38, 39 and 40).

12. Learned counsel submits that even as some of the prosecution witnesses have stated that they had received injuries in the occurrence but no injury report of any of the so-called injured has been proved by the prosecution. The submission is that the prosecution witnesses are highly inconsistent with regard to place of occurrence and manner of occurrence as well, they being interested witnesses, their testimonies would not be wholly reliable. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Periyasamy versus State, represented by the Inspector of Police** reported in **2024 SCC OnLine SC 314**. Learned counsel submits that PW-3 and PW-5

were not examined by the I. O. and they have deposed for the first time in the court. PW-1 and PW-8 both have though given first hand impression that they are the eye witnesses to the occurrence but on a complete reading of their deposition, it would appear that they cannot be put in the category of eye witnesses.

13. It is also submitted that the first doctor who had treated the deceased has not been examined and the initial injury report of the deceased has not been proved in course of evidence.

14. Learned counsel submits that in this case the defence has proved the counter case (Exhibit 'A/1') and the chargesheet filed against the prosecution as Exhibit 'B/1'. The evidences on record would show that perhaps there was a free fight between the two groups and the kind of injuries suffered by the deceased who was leading the mob gives an impression that someone had hit him from the backside by brick or stone causing injury on the backside of his head. This being an admitted case of land dispute and prior enmity between the parties, the evidence of the prosecution witnesses would be falling in the category of interested witnesses would be required to be examined with all circumspection and care.

15. According to learned counsel for the appellants, different prosecution witnesses have given different place of

occurrence. Attention of this Court has been drawn towards the written application submitted by Ganpat Mukhiya (PW-2) which is the basis of the first information report in which he has clearly stated that the place of occurrence is inside the house of Ganpat Mukhiya. In course of his evidence, however, PW-2 has changed the place of occurrence and for the first time, he has stated in his examination-in-chief that Ramashray Mukhiya, Ramakant Mukhiya, Ramjeet Mukhiya, Bhulan Mukhiya, Radhakrishan Mukhiya, Dafadar Mukhiya, Lalbabu Bin, Lalbihari Bin, Lalji Bin, Devanand Bin and all 11 persons were returning after ploughing the field, they were armed with *garasi*, *lathi*, *fatta* and *farsa*, they all assaulted Raghubir Mahto (the deceased) under the Semal Tree. Thus, in course of his evidence, he has stated that the first place of occurrence is the semal tree where Raghubir was assaulted, thereafter, this witness has stated that Raghubir fled but fell down at the door of Sanad Mukhiya where again all the accused persons came and assaulted him. Thus, PW-2 has given a second place of occurrence in his deposition which is the door of Sanad Mukhiya. It is further pointed out that PW-7 who claims herself as an eye witness has stated that she was in the house of her father and had seen that Lalji Mukhiya, Ramjeet Mukhiya and about 10-12 persons were assaulting Raghubir at the door of her house.

16. Learned counsel points out that PW-3 Lalan Mukhiya is the son of the informant (PW-2). He has stated in his deposition that he was taking meal in his house at 10:30 am. Raghubir was being assaulted by the named accused persons who were 11-12 persons and they were assaulting by lathi, fatta, farsa, garasi, brick and stone. According to him, Raghubir had fallen down at his door. He has stated that when his father who is the informant of this case went to ask them to abstain, he was also assaulted by all the accused persons by lathi, fatta and garasi. PW-3 has stated that when he, his bhabhi Daisy Devi and niece Fulwanti Devi went to save then they were also assaulted by brick, stone and lathi. He has stated that Raghubir was given a cut on his neck by a farsa and thereafter his head was smashed by a big piece of stone. Thereafter, police came and took away him, Raghubir, his father Jagdish Mukhiya, Bhabhi and niece. They were taken to Mainatad Hospital where they were treated. Raghubir was referred from that hospital to Bettiah and from there, he was referred to Patna but Raghubir died on way.

17. Learned counsel for the appellants submits that PW-3 has also given the description of boundary of his house. It is stated that the house of PW-7 is not in the boundary of the house of PW-3, therefore, it is evident from the depositions of PW-3 and

PW-7 that both are claiming that the occurrence took place at their door but they are not in the boundary of each other.

18. Attention of this Court has also been drawn towards the statement of PW-7 where she has stated that the assault had taken place at only one place. Learned counsel submits that a cumulative reading of the deposition of the prosecution witnesses, who claimed themselves to be the eyewitnesses of the occurrence, would give rise to suspicion about their testimonies and it cannot be safely held that they were present at the place of occurrence. Pointing out to the importance of proof of place of occurrence, learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Munuwa @ Satish and Others vs. State of Uttar Pradesh** reported in **(2023) 1 SCC 714** (paragraphs '20' and '21').

19. Learned counsel further submits that the learned trial court has while appreciating the evidences on the record has not even thought it proper to discuss the evidence of PW-6, PW-7 and PW-8. The learned trial court has simply recorded in paragraph '13' of its judgment that PW-6, PW-7 and PW-8 have also supported the prosecution version in detail and they were also members of the rescuing party and had sustained injuries at the instance of the accused party. This finding of the learned trial court

has been assailed saying that in this case not a single injury report has been proved on behalf of the prosecution. PW-6 has stated that when he was returning from his field after working at 10:00 AM, he had seen on the road which is in front of the house of Ganpat Mukhiya, Raghubir was assaulted by stone, brick, spear and *garasi*. Raghubir was lying on the road. This witness has stated that he had seen several injured persons including Ganpat, Daisy, Arjun, Jagdish and wife of Raghubir. According to this witness Raghubir died on way. He had signed as a witness on the Inquest Report. It is submitted that if the evidence of PW-6 is taken into consideration, it would appear that he has given a completely different place of occurrence as according to him, Raghubir was assaulted on the road in front of the house of Ganpat. This witness has not stated that in his presence, Ganpat and other persons, whose names he has stated in his deposition, had received injuries. He had seen Raghbir lying on the road, therefore, he is not an eyewitness to the occurrence. In his cross-examination, he has stated that at the place of occurrence, he had seen only one person lying in injured condition and he was unconscious, he had not seen any injured lying there. He had stayed there only for two minutes. He has stated that the accused persons had also lodged case but he was not aware as to how many persons were arrested on the date

of occurrence. This witness knew that both the parties had land dispute. Learned counsel submits that it is evident from the materials available on the record that Raghubir received injury in the occurrence in which stones and bricks were being thrown by the mob. Referring to the injuries noted by the Doctor in the postmortem report, learned counsel submits that the Doctor had found one stitched wound on the left side of the head behind ear, there was another stitched wound over middle of head of size 1" x ¼" x up to bone and there was swelling over left elbow. On opening of the head, the Doctor found depressed fracture of right parietal bone and on further dissection, the Doctor found Hemorrhagic contusion over right temporal region of brain, overlying meninges were found lacerated. It is submitted that the stitched wound found in the external examination only shows that the deceased was treated somewhere but his initial treatment particulars have not been proved. The Doctor who has been examined as PW-10 in this case has proved the postmortem report. He has stated that on 31.10.2009 he was posted at M.J.K. Hospital as Civil Surgeon and had conducted the postmortem at 4:15 PM. In his cross-examination, he has stated that the time elapsed since death is within 24 hours. He has clearly stated that no injury report with respect to the previous examination by any Doctor was sent

to him at the time of postmortem. He had not given the time of death. The Doctor has opined that if the deceased would have been treated within right time, he could have been saved.

20. Learned counsel submits that in this case even the inquest report has been prepared on 31.10.2009 at 7:30 PM, therefore, it appears from the evidence on the record that Raghubir Mahto had not died on 27.10.2009 i.e. the date of occurrence. He died within 24 hours of the date and time when the autopsy was conducted on the dead body. It seems that the prosecution has either suppressed the initial treatment particulars of the deceased or it may be possible that the deceased had not been taken to any hospital. The story of PW-3 that after the occurrence, police had come from police station and had taken away him, Raghubir, his father and others to Mainatad hospital where they were treated and Raghubir Mahto was referred to Bettiah Hospital from where he was referred to Patna but died on the way would not inspire confidence.

21. At this stage, learned counsel submits that the evidence of the I.O. as regards the visit of police, information received in the police station and then taking up the victims of the occurrence to the hospital would have been important. The true

story could have surfaced if the I.O. would have been examined in course of trial.

22. Mr. Akhileshwar Kumar Shrivastva, learned Advocate who represents appellant no. 3 in Cr. Appeal (DB) No. 1466 of 2018 has endorsed the submissions of Mr. Bimlesh Kumar Pandey, learned counsel who has led the arguments on behalf of the appellants.

23. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has opposed the appeals. Learned APP submits that the learned trial court has held that the prosecution has been able to prove the place of occurrence as well as the manner of occurrence and having considered the evidence on the record convicted the appellants. According to her, the judgment of the learned trial court needs no interference.

Consideration

24. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused the learned trial court's record. In order to examine the judgment of the learned trial court, we would re-appreciate the evidences of the prosecution witnesses firstly as regards the date, time and place of occurrence. In his written application (Exhibit '1'), the informant (PW-2) has stated that on 27.10.2009 at 10:30 am, he was in his house, at that time, eleven named accused persons came after ploughing the field, they had formed unlawful assembly, were armed with lathi, farsa, fatta and garasi, entered into the house hurling abuses and attacked Raghubir

Mahto. Jagdish Mukhiya and Arjun Mukhiya started assaulting Ganpath Mukhiya (PW-2) and they were throwing bricks and stones. On seeing this, the informant, Daisy Devi (not examined), Sugandhi (PW-8), Fulwanti Devi (PW-7) and Lalan Mukhiya (PW-3) went to save Raghubir whereupon they were also assaulted and they suffered injury on their head, hand and leg. Raghubir had suffered more injuries. It is alleged that the accused persons had taken away the nose pin from the nose of the daughter-in-law of the informant, namely, Daisy Devi (not examined). In his written application, the informant has stated that the cause of occurrence is a land dispute and the accused persons were always indulging in assault. The informant claimed that several persons have seen the occurrence.

25. From the written application of PW-2, it is evident that the place of occurrence is his house and the occurrence had taken place after entering into the house. When the informant came to depose in course of trial, he has stated that at the time of occurrence at 10:30 am, he was at his door when eleven named accused persons returned after ploughing the field and they assaulted Raghubir under the Semal Tree which he had seen from his door. PW-2 has further stated that Raghubir fled from there and fell down at the door of Sanadh Mukhiya where again the accused persons assaulted him. In his examination-in-chief, PW-2 has stated that the accused persons were assaulting Raghubir by lathi,

farsa, fatta and garasi. He has stated that when he and other members of his family went to save Raghubir then they were also assaulted. He has stated that he had got written the application with regard to the occurrence by one person and had put his signature thereon. He has further stated that he was treated in Mainatad Government Hospital and Raghubir was referred from there to Bettiah Hospital from where he was referred to Patna but died on way.

26. PW-2 has stated that he had lodged the case at the police station prior to death of the injured. According to this witness, the house of the deceased Raghubir cannot be seen from his house. In his cross-examination, he has stated that the assault was given at two places. The disputed land is situated at a distance of one kilometer North to his house. He had gone to police station with 10-15 persons. He had not seen the assault made upon Jagdish Mukhiya and his daughter-in-law but all of them had gone to police station together. He has admitted that a case has been lodged against 11 persons of his side in which Section 307 IPC and other Sections have been imposed. This witness has further stated that members of both the sides were arrested at the police station. He has named the persons who had gone to jail in connection with this case. This witness has stated that Manpur P.S.

Case No. 17 of 2009 and Manpur P.S. Case No. 18 of 2009 was registered. A proceeding under Section 107 CrPC and a civil suit in respect of the disputed land was also going on. In his further cross-examination, he has stated that he had not given any information to police but he has stated that people from his party may have gone. He has stated that the land of the place of occurrence is the land of Ramnagar which he had purchased earlier, he had papers of that land which he would produce in court. According to this witness, the accused persons were claiming the land purchased by him. He has further stated that all the injured persons had received assault at the verandah and door of his house. At his door, he and his two sons Lalan and Arjun were assaulted and at the *osara*, Daisy and Fulwanti was assaulted. He had received only one lathi whereafter he had become unconscious. In his further cross-examination, PW-2 has stated that the written application which he had given at the police station is not in his writing and he had not read what were written there. Someone at the police station who is a person of the police station had written the application. It appears from the deposition of PW-2 that at the police station, no person had given his statement. At the place of occurrence, he had not given any statement to police. He has stated that the stone was thrown from the Western direction but how many stones were thrown, he had

not counted and he cannot say that from how much distance the stones were thrown. He has further stated that from the Southern side of the two houses, stones were thrown and many people were involved in throwing the stones. He has stated that he had not seen the assault which had taken place near the Semal Tree. He has further stated that he was not together with Raghubir for treatment after Mainatand Hospital. It appears that the defence has also drawn the attention of this witness towards his previous statement made before police wherein he had not stated that Raghubir was being assaulted by the accused persons in the falling condition by *lathi*, *farsa*, *fatta* and *garasi*. This witness denied this suggestion. He has stated in his cross-examination that Fulwanti was assaulted by *lathi*, in the meantime, the police arrived. His attention was also drawn towards his previous statement made before police in which he had not stated that Raghubir had injuries at three different places by *farsa* and *lathi* at his kanpatti.

27. From the evidence of the informant (PW-2), it appears to this Court that in his examination-in-chief, he has completely changed the place of occurrence. In his examination-in-chief though he had stated that he had seen from his door that Raghubir was assaulted by the accused persons under the semal tree but in his cross-examination, he has clearly stated that he had

not seen the assault on Raghubir near the Semal Tree. Regarding the persons who received injuries at his verandah, Osara and Darwaja, he has stated that he and his two sons were assaulted at the Osara whereas the lady members Fulwanti and Daisy were assaulted at the darwaja of her house. Thus, in his cross-examination, he has not stated that Raghubir was assaulted inside his house. It also appears that this witness has stated about throwing of stones from Southern direction after two houses and several people were allegedly throwing the stones. The land dispute is admitted between the parties. The prosecution has failed to prove injury report of any of these witnesses in course of trial. Even the initial injury report of Raghubir has not been brought on the records.

28. This Court further finds that PW-2 has stated in his cross-examination that when Fulwanti was being assaulted, in the meantime police had arrived. He has also stated that he had not made any statement before police at the place of occurrence and the prosecution witnesses had not made their statement at the police station. He further says that he had not informed police about the occurrence but the members of his party may have informed. It is, thus, evident that the police had got information about the occurrence and had arrived at the place of occurrence but

the first information which was received by police has been suppressed by the prosecution. The fact that neither the informant made any statement before police at the place of occurrence and the witnesses also did not make any statement at the police station would further show that the prosecution story was being discussed and deliberated upon before submission of a written application in the police station.

29. PW-2 got written a written application through a person present in the police station whose name has not been disclosed by him. The scribe of the written application did not put his signature and has not even mentioned his name. In these circumstances, the chances of concoction of prosecution story cannot be ruled out. The evidence of PW-2 clearly shows that he had changed the place of occurrence and the manner of occurrence as well.

30. On a cumulative reading of the evidence of the prosecution witnesses as regard the place of occurrence, this Court finds substance in the submission of learned counsel for the appellants that the prosecution witnesses are highly inconsistent in giving the place of occurrence. This Court has taken note of the deposition of the prosecution witnesses earlier. Apparently, PW-2 has changed the place of occurrence. In course of his evidence, he

firstly stated that the first place of occurrence is the semal tree where Raghuvir was assaulted. According to him, the second place of occurrence is the door of Shanad Mukhiya where Raghuvir Mahato had fallen down while trying to flee away. In his own deposition, however, PW-2 could not remain consistent and he has stated in course of his cross-examination that he had not seen the assault on Raghuvir near the semal tree. The other prosecution witnesses such as PW-3, who is son of PW-2 and PW-7, would show that they have given different description of the place of occurrence. PW-3 and PW-7 both are claiming that the occurrence took place at their door but they are not in the boundary of each other.

31. In the case of **Munuwa @ Satish and Others** (*supra*) after appreciating the inconsistencies in the evidence of the prosecution witnesses in the said case, the Hon'ble Supreme Court observed in paragraph '21' as under:-

“**21.** Cumulatively, the abovementioned contradictions give rise to suspicions about the eye-witness testimony of PW-1. Whether he was present at the place of occurrence or accompanied the deceased to the police station at all, are in doubt as his statements relating to the circumstances surrounding the place of occurrence and the recording of the FIR have been found to be untrue, and his conduct unnatural.”

32. In this case, the I.O. has not been examined. This Court would agree with the submissions of learned counsel for the appellants that the evidence of the I.O. would have thrown light as regards his visit to the place of occurrence, information received in the police station and taking up the victims of the occurrence to the hospital. In absence of the evidence of the I.O., serious prejudice has been caused to the defence.

33. This Court further finds that although it is stated that the deceased was taken to Mainatand Hospital for treatment and then he was taken to Bettiah Sadar Hospital but the prosecution has not produced the initial treatment particulars of the deceased Raghuvir Mahato. No doctor either from the Mainatand Hospital or Bettiah Sadar Hospital who could have claimed to have treated the deceased has been examined by the prosecution. Similar is the position with regard to the so-called injured witnesses. No injury report has been produced by the prosecution of any of the injured witnesses, therefore, the injured witnesses have failed to establish their presence at the place of occurrence and finding that the manner of occurrence as disclosed by them are also not consistent, they cannot be put in the category of wholly reliable witnesses.

34. This Court further finds that so far as PW-6, PW-7 and PW-8 are concerned, the learned trial court has not discussed

their evidence but has recorded that they have also supported the prosecution version. A perusal of the evidence of PW-6 Surendra Bin would show that according to him when he was returning from his land and reached in front of the house of Ganpat Mukhiya, he saw that on the road in front of the house of Ganpat Mukhiya, Raghubir was assaulted by brick, spear and *garansa*. Raghubir had fallen on the ground. He had seen many people in injured condition. In his cross-examination, however, he has stated that at the place of occurrence he had seen only one person lying injured in unconscious condition. He had seen 5-6 persons in injured condition but had not talked to anyone of them. He had not seen the injured persons thereafter and had not taken them to hospital. Fulwanti Devi (PW-7) has stated that Lalji, Ramjit and 10-12 persons were assaulting Raghubir at her *darwaja*. The occurrence took place at about 10-11:00 AM and at that time, she was in the house of her father. According to this witness, she was treated in the hospital of the *bazar*. She claims that she had seen Raghubir dead in the hospital. She claims that she had also received injury but her injury has not been proved by any cogent evidence. Sugandhi Devi (PW-8) has also deposed on the same line and claimed that she had also received injury but her injury report has not been proved. She has stated that the occurrence had taken place

at the *darwaza* of Ganpat, at that time, she was at her own *darwaza* and it is the backside of Ganpat's house which may be seen from her house. The defence suggested that she had not received any injury, she had not gone to the place of occurrence and had not been treated in any hospital which this witness denied. On a cumulative reading of the evidence of PW-6, PW-7 and PW-8, this Court finds that these witnesses have though claimed that they have seen the occurrence but in their cross-examination, they have not withstood the test and in ultimate analysis, they cannot be relied upon as eye-witness to the occurrence. Learned counsel for the appellants is correct in saying that not a single injury report has been proved on behalf of the prosecution. These witnesses have also given different place of occurrence. They do not claim to have seen the occurrence which took place at the semal tree.

35. This Court finds from the deposition of the prosecution witnesses that according to them, police reached the place of occurrence, however, it is not known as to who informed police about the occurrence. PW-2 has categorically stated that he had not given information to police. It is also evident from the deposition of PW-2 that when police came at the place of occurrence, he had not given any statement before police. He has further stated that no person had given his statement. From the evidence of PW-2 there would be no iota of doubt that the source of information to police and

what was the first information given to police on which police reached the place of occurrence has not been placed on record by way of evidence. The fact that PW-2, who is informant of this case, did not make his statement before police on arrival at the place of occurrence and nobody had made statement at that point of time would create doubt on the sanctity of the prosecution story. This has to be seen coupled with the fact that according to PW-2 the written application was prepared by a person who was there in the police station but who was that person is not known and he has not been examined by the I.O.

36. In this case, admittedly there is a land dispute between the parties and both parties have lodged cases being Manpur P.S. Case No. 17 of 2009 and Manpur P.S. Case No. 18 of 2009. They were also facing proceeding under Section 107 CrPC and a civil suit in respect of disputed land. The evidences available on the record would show that the alleged occurrence took place at several places in which brick and stones were thrown on the prosecution side in which deceased Raghubir Mahato received the fatal injury and succumbed to the injuries. The kind of injuries suffered by him could not be proved because the prosecution has proved only postmortem report of the deceased and not the initial treatment particulars and the injury reports etc.

37. In the kind of materials discussed hereinabove, it is evident that the first version of the prosecution story has been suppressed by the prosecution, the FIR was written at a belated stage even as the informant and other witnesses did not make statement before police when police arrived at the place of occurrence, all this would prove fatal to the prosecution case particularly the I.O. who could have thrown some light on these aspects of the matter has not been examined.

38. In the opinion of this Court, it would not be safe to convict the appellants on the basis of the evidences which are available on the record. The prosecution could not establish the prosecution case beyond all reasonable doubts by adducing cogent and reliable piece of evidence.

39. Accordingly, both the appeals are allowed. The impugned judgment and order of the learned trial court as regards the appellant nos. 1, 3, 5 and 6 in Cr. Appeal (DB) No. 1466 of 2018 and the appellant of Cr. Appeal (DB) No. 414 of 2019 are set aside and they are acquitted of the charges giving them benefit of doubt. Appeal on behalf of appellant no. 2 and 4 stands abated

40. The appellant nos. 1, 3, 5 and 6 in Cr. Appeal (DB) No. 1466 of 2018 and the appellant of Cr. Appeal (DB) No. 414 of 2019 are on bail, hence, they and their sureties are discharged from the liability of bail bonds.

41. Let a copy of the judgment and the trial court records be sent back to the trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/Rishi-

AFR/NAFR	
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