

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.666 of 2013

Arising Out of PS. Case No.-203 Year-2006 Thana- MAHUA District- Vaishali

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1. Fudenia Devi, Wife of Sri Muneshwar Singh.
 2. Vidya Devi, Wife of Sri Vinod Kumar Singh.
 3. Sangeeta Devi, Wife of Sri Ram Kishan Singh Alias Krishna Prasad Singh.
All resident of Village Parmanandpur, Chakdara, P.S. Mahua, District-
Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 668 of 2013

Arising Out of PS. Case No.-203 Year-2006 Thana- MAHUA District- Vaishali

-
1. Muneshwar Singh, Son of Late Rampat Singh.
 2. Ram Kishun Singh @ Krishna Prasad Singh, Son of Sri Muneshwar Singh.
 3. Vinod Kumar Singh, Son of Muneshwar Singh.
All resident of Village - Parmanandpur, Chakdara, P.S - Mahua, District –
Vaishali.
 4. Chunchun Singh @ Munna Kumar, Son of Jagdish Mahto, Resident of
Mohalla and P.S. Agamkuan, District – Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 666 of 2013)

For the Appellant/s : Mr. Bindeshwar Prasad Singh, Advocate
Mr. Rudra Deo, Advocate

For the Respondent/s : Mr. A. M. P. Mehta, APP

(In CRIMINAL APPEAL (SJ) No. 668 of 2013)

For the Appellant/s : Mr. Bindeshwar Prasad Singh, Advocate



For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 29-10-2024

Heard Mr. Bindeshwar Prasad Singh, learned counsel for the appellants and Ms. Anita Kumari Singh, learned APP for the State.

2. The present appeal have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the Judgment of conviction dated 04.09.2013 and order of sentence dated 07.09.2013 passed by the learned Sessions Judge, Vaishali at Hajipur (hereinafter referred to as the learned 'trial Court') in Sessions Trial No. 205 of 2008 arising out of Mahua P.S. Case No. 203 of 2006, instituted for an offence punishable under Sections 147, 148, 149, 323, 324, 307, 325, 504 and 379 of the Indian Penal Code and only appellants, namely, Ram Kishun Singh @ Krishna Prasad Singh and Sangeeta Devi have been charged under Section 379 of the Indian Penal Code whereby and whereunder appellants, namely, Fudenia Devi, Vidya Devi and Sangeeta Devi are hereby sentenced with simple imprisonment for one month under Section 341 of the Indian



Penal Code and simple imprisonment for three years and fine of Rs. 1000/- each under Section 307 read with Section 34 of the Indian Penal Code and both sentences shall run concurrently and if the aforesaid guilt persons shall fail to pay the aforesaid fine, shall undergo for simple imprisonment of 15 days further and other accused persons namely Muneshwar Singh, Ram Kishun Singh @ Krishna Prasad Singh, Vinod Kumar Singh and Chunchun Singh @ Munna Kumar are hereby sentenced to undergo simple imprisonment for one month under Section 341 of the Indian Penal Code and simple imprisonment for seven years and fine of Rs. 2000/- each under Section 307 read with Section 34 of the Indian Penal Code and both sentences shall run concurrently. If the guilt persons shall fail to pay the said fine, they shall be liable to undergo for simple imprisonment of one month.

3. The brief facts leading to the filing of the present appeals are that as the case was lodged on the basis of Complaint Petition No. 1867 of 2006, filed on behalf of the informant injured Ramrup Singh and as per the prosecution case in brief is that on 30.7.2006 at about 4 P.M. the informant went to see his land where the mango wood logs was kept but he found that the said wood logs was not there and the accused



persons wanted to construct a *palani* (hut) thereon with intention to take possession over the said land. On objection raised by the informant, the accused Ram Kishun Singh ordered other accused persons to kill him and thereafter all the accused persons restrained him and co-accused Chunchun Singh caught hold both hands of the informant and co-accused Vinod Singh assaulted the informant by blow of *Garasa* with an intention to kill him and caused injury on his head and thereafter he repeated second blow of *Garasa* on his head but the informant defended second blow from his hand, cut injury was caused thereon. When the wife and daughter of the informant, namely, Nitu Kumari came there to save the informant, appellant Ram Kishun Singh assaulted her by blow of *Dav* on her head with an intention to kill her and other remaining accused persons assaulted the informant along with his wife and his daughter by means of *Danda* and *Deshi pistol*. Co-accused Sangeeta Singh snatched golden chain worth Rs.12.000/- from the neck of informant's wife and accused Ram Kishun Singh snatched Titan wrist watch worth Rs. 1100/- from the hand of the informant. It has been further stated that the villagers took the informant along with his wife and his daughter at Mahua hospital where they were treated but the police did not come there to record his



fardbeyan and has filed the alleged complaint petition in respect of the alleged occurrence.

4. On the direction of the learned Chief Judicial Magistrate, Vaishali at Hajipur to register and investigate the case based on the complaint petition filed on behalf of the informant as stated above, this Mahua P.S. Case No. 203 of 2006 dated 09.12.2006 was registered and Sub-Inspector Ravindra Prasad was deputed to investigate the case. After completion of investigation, charge-sheet no. 43 of 2007 dated 28.02.2007 was submitted against all the seven accused persons under Sections 147, 148, 149, 323, 324, 307, 325, 504 and 379 Indian Penal Code before the court of learned Chief Judicial Magistrate, Vaishali at Hajipur who took cognizance and transferred the case record to the Court of Judicial Magistrate 1st Class, Vaishali at Hajipur for committing the case to the court of Sessions Judge.

5. The charges have been framed under sections 341, 307/34 and 379 of Indian Penal Code against the appellants by the learned Sessions Judge, Vaishali at Hajipur.

6. The prosecution examined altogether six witnesses to substantiate the charges against the accused persons, out of them, PW-1 Ram Haresh Singh, PW-2 Tetari



Devi, PW-3 Nitu Kumari (Daughter of the informant), PW-4 Binda Devi (wife of informant), PW-5 Ramrup Singh (informant) and PW-6 Dr. Anirudh Singh. On behalf of the prosecution, copy of complaint petition has been proved and marked as Ext-1. The formal First Information Report of this case has not been exhibited and injury report of informant Ramrup Singh is marked as Ext-2 and injury report of Binda Devi is marked as Ext-2/1. The defence examined altogether three witnesses to refute the charges levelled against them. DW-1 Yogendra Pd. Singh has proved Ext-B and B/1 of *Kewalas*. DW-2 Ravindra Kumar Sinha has proved Ext-C, the plaint of Partition Suit No. 586 of 2007, as an advocate pleader and DW-3 Prem Prasad has proved Ext-B/2 & B/3, the execution of *Kewalas*. On behalf of the defence, Ext- B/4 & B/5, the sale deed executed by the informant of this case dated 25.03.2000 and 21.02.2003 have been marked on the admission of the prosecution vide order dated 28.07.2011.

7. It is necessary to mention here that in the aforesaid complaint petition/First Information Report of this case, the witnesses named as Satyendra Paswan, Shiv Paswan, Raj Kumar Singh and Ram Sakhi Devi at serial nos. 3 to 6 in the column of name of the witnesses have not been examined along



with the Investigating Officer of this case during course of trial.

8. PW-1 Ram Hareesh Singh, in his examination-in-chief has stated that the incident took place at about two years ago on 30.07.2006 at around 4:00 pm in the evening. At that time, PW-1 was at his door and saw that the land of Ramrup Singh, ten to twelve logs of firewoods were kept. Ram Kishan Singh, Vinod Singh, Muneshwar Singh, Fudeniya Devi, Vidya Devi and Chunchan Singh, all together started burying *Palani* with an intention of encroaching Ramrup Singh's land and when Ramrup Singh tried to stop them from burying *Palani*, Vinod Singh, Ram Kishan Singh and other co-accused persons started abusing the informant. Appellant namely Ramkishun Singh ordered to kill PW-5 (Informant). After that Chunchun Singh hold both the hands of Ramrup Singh (Informant). After that Vinod Singh hit Ramrup Singh on the head by means of *Gadasa*. Due to which, PW-5 got injury on his head. Vinod Singh another *Gadasa* blow which Ramrup Singh stopped with his left hand and while stopping Vinod Singh, two fingers of Ramrup Singh's left hand got cut. After seeing these incidents, PW-1 along with his wife Tetari Devi, Satyendra Paswan, Shiv Paswan came to rescue Ramrup Singh. Thereafter, other co-accused persons began to beat Ramrup Singh with *lathi*. After



this Ramrup Singh's family reached there and his daughter Neetu Kumari also reached there. Ramkishun Singh hit Binda Devi, wife of Ramrup Singh with *Dav* on her head due to which, she sustained injury on her head. After this, Ramkishun Singh snatched the wrist watch of Ramrup Singh and gold chain of Binda Devi, wife of Ramrup Singh, was snatched by Sangeeta, wife of Ramkishun Singh. PW-1 further took Ramrup Singh, his wife along with his daughter on a rickshaw for better treatment at Mahua Hospital.

8. (i) PW-1 in his cross-examination stated that he is not a relative of the informant in this case. Ramrup Singh is not my *Patidar* or *Gotiya*. PW-1 has stated that his house is situated in the west of the place of occurrence. PW-1 went to the place of the occurrence and saw that two familiar peoples at place of occurrence namely Shiv Paswan and Satyendra Paswan. When PW-1 reached the place of occurrence, he did not see anyone injured and did not see whether other people from the village came or not. PW-1 stayed at the place of the occurrence for eight minutes and after that he went to Mahua to get medicine for his son namely, Roshan Kumar, who was ill. There were blood spots at different places of the occurrence. At the time of the occurrence, the *Palani* was not buried at the site



of the incident. Again, it is said that the *Palani* was buried at the place of the occurrence before the occurrence took place. The *Palani* was approximately five to six feet long and five to six feet wide and was made of straw. The police went to the place of the occurrence in front of him after four months of the occurrence and when the police went to the place of the occurrence *Palani* was not there. PW-1 does not know who uprooted *Palani* and he does not know whether informant and accused persons were involved in land dispute. PW-1 has given his statement to the police regarding the said occurrence and he saw wounds at four or five places on Ramrup Singh's body and saw blood oozing out from wounds on his forehead and hand. There was a stick wound at the back of the PW-5. There was also a black wound on his waist. PW-1 did not tell the police that other persons assaulted Ramrup Singh with *lathi* and *shovel*. On 30.07.2006, PW-1, was not working in Patna as Raj Mishtri, but was in the village itself. It is wrong that PW-1 has given false testimony.

9. PW-2 Tetari Devi, in her examination-in-chief has stated that the occurrence happened two years and five months ago and PW-2 was at home at that time. There were ten to twelve mango logs in the house of Ramrup Singh. They were



picked up by Ramkishun and he took it away. Ramkishun tried to build a *Palani* in Ramrup Singh's field. When Ramrup Singh refused then Ramkishun told others to kill him. At the behest of Ramkishun, Vinod Singh and Chunchun Singh came and caught Ramrup Singh by his arms. After that, Vinod Singh hit Ramrup Singh on the head with a *Gadasa*. Due to which, PW-5 got injury on his head. Vinod Singh hit another *Gadasa* blow which Ramrup Singh stopped with his left hand and while stopping Vinod Singh, two fingers of Ramrup Singh's left hand got cut. When Ramrup Singh's wife and daughter came to rescue him, Ramkishun hit Ramrup Singh's wife on the forehead by *Dav* and after that, Ramkishun snatched the wrist watch from Ramrup Singh's hand and Sangeeta Devi wife of Ramkishun came and snatched the gold chain from Binda Devi's neck and went away.

9. (i) PW-2 in her cross-examination stated that she cannot tell the exact day, month or time of the occurrence. Again, PW-2 has stated that the day of the incident was Sunday and she was at her doorstep. When PW-2 went to rescue, the accused persons hit her with *lathi*. PW-2 was alone in her veranda and went to the place of occurrence from her door. When PW-2 reached the place of occurrence, she did not talk to anyone at the place of occurrence and did not see anyone



unconscious at the scene of the incident. After PW-2 reached the place of occurrence, no other person came and she saw Ramrup Singh lying at the place of occurrence in his *ganji* and clothes were soaked in blood. PW-2, found blood spots at the place of occurrence and cannot tell the details of the land where the occurrence took place. The police came to the *veranda* and questioned her about the alleged occurrence. The police came ten days after the occurrence took place. PW-2, told the police only what she had seen at the place of occurrence and took her statement. The police did not took PW-2 to Ramkishun Singh's house to identify the *garasa* and *dav*. On 30.07.2006, PW-2's husband Ram Haresh Singh was working as Raj Mishtri in Patna. PW-2, did not go to Mahua Pethiya on 30.07.2006 but was at her home in the village.

10. PW-3 Neetu Kumari (daughter of the informant), in her examination-in-chief has stated that the incident took place at about two and a quarter years ago around 5:00 pm. PW-3 was at her door at that time. Ramrup Singh is my father. Ramkishun Singh took away the logs. There were seven people including Vinod Singh, Chunchun Singh, Ramkishun Singh, Muneshwar Singh, Vidha Devi, Sangeeta Devi along with Fudenia Devi. All the above accused persons



started digging the land of Ramrup Singh. When her father opposed then Chunchun Singh hold both the hands of her father and Ramkishun Singh ordered to kill him. Then Vinod Singh, who was holding a *garasa*, hit her father on the head with an *garasa* and blood started oozing out. When Vinod Singh used the *garasa* again, PW-5 stopped him, due to which the finger of PW-5 left hand got cut. Ramkishun Singh snatched the wrist watch from her father's hand. Sangeeta Devi snatched the gold chain from her mother's neck. All the accused persons are from her village and later accused persons started hitting her with *lathi* and got injured on her head.

10.(i) PW-3 in her cross-examination stated that she cannot tell the exact area of the land on which the fight took place. PW-3 can only tell its boundaries. PW-3 cannot even tell the length and breadth of that land. Ramkishun Singh make false claims on that land. She can investigate the boundaries of the land which Ramkishun Singh claims. At the east is Ramrup Singh's house and disputed land, to the west is Devendra Singh's banana's land and house, to the north is a road and to the south is also a road. This incident happened on the road. At the time of the incident, it was a solid road and PW-3 has been looking at that road ever since, she became conscious. The accused persons



picked up the moss from the botanical garden and took it to Ramkishun Singh's house. Three or four men took the stick. Police had gone to the place of occurrence three to four months after the occurrence took place and questioned PW-3 about the occurrence. Accused Person's house is next door from her house. When PW-3's mother and PW-3 herself went to the place of occurrence to rescue her father, her father was not unconscious. He was not lying on the ground. When she went to save her father, at that time her father's blood was oozing from the forehead. At the time of the occurrence, her father was wearing a *vest*, *lungi* and a towel and all the clothes were soaked with blood. PW-3 saw her father lying on the ground on the day of the occurrence. PW-3's mother was wearing a green coloured *blouse* at the time of the occurrence and she does not know what colour *saree* her mother was wearing. Her mother's forehead was soaked in blood. There was no blood on her mother's *saree*. PW-3 was wearing a salwar suit and her clothes were not soaked in blood as there was a little blood on her head. She told the police that Vidya Devi hit her with a *lathi* due to which her head got fractured.

11. PW-4 Binda Devi (wife of the informant), in her examination-in-chief has stated that the occurrence took



place two to five months ago and she was at her door at that time. Her mango plant was in her land. Ramkishun Singh, Muneshwar Singh, Vinod Singh, Chunchun Singh, Fudeniya Devi, Sangeeta Devi and Vidya Devi took it away. When her husband came and asked why they took away mango tree then Ramkishun Singh ordered to kill her husband. Then Vinod Singh hit Ramrup Singh on the left side of his forehead with a *garasa*. When PW-4 went to rescue her husband Ramrup Singh with her daughter, Ramkishun Singh hit her with a *gada* and injured her head. Vidya Devi and Fudeniya Devi also hit Neetu Kumari with a *lathi* due to which her head got fractured. When she went to save her, Vidya Devi took away her gold chain and Ramkishun Singh snatched the watch from her husband's wrist.

11.(i) PW-4 in her cross-examination stated that she has seen the land where mango logs were kept. A month before the occurrence took place, the mango logs were kept on that same land. Accused persons carried the logs away and kept it at their door. The police went to the place of occurrence to investigate the case after three months. When her husband asked why they came and took away mango logs, the accused persons started assaulting her husband over this issue. That land does not belong to accused persons and it belongs to us. After the



occurrence took place, we were taken to the hospital and we stayed there for ten days. PW-4 cannot say whether the land involved is her husband's property or has been transferred to her by deed. Again, she says that the land is her property. At that time, when the occurrence took place there were many people except her husband and PW-4 but due to fear no one came there. Even after the incident, no one was present at the place of occurrence. Her husband and PW-4 did not fall on the ground due to the assault. He was wearing a *Gamcha*, *Dhoti* and a *Ganji*. The *Gamcha* was red in colour, the *dhoti* was white and the *Ganji* was also white. The *Gamcha* and the *Ganji* were soaked in blood. The *dhoti* was not soaked in blood. PW-4 was wearing a *blouse* and a *saree* at the time of the incident. The *blouse* was green in colour and the *saree* was red in colour. The *blouse* was soaked in blood but the *saree* was not soaked in blood. There were blood stains over the *saree*. Police complaint regarding this incident was lodged at our doorstep three months after the occurrence took place. There is no enmity between her husband and the accused persons before whom this case has been lodged. PW-4 does not have any dispute with the accused persons regarding the land.

12. PW-5 Ramrup Singh (informant), in his



examination-in-chief has stated that it has been almost two and a half years since the occurrence took place. It was Sunday around four o'clock in the evening. He had gone to see his land. There was a mango tree in that land and the mango wood for firewood was also missing. On reaching there, he saw that Muneshwar Singh, Vinod Kumar Singh, Ramkishun Rai @ Krishna Prasad Singh, Chunchun Singh, Fudeniya Devi, Sangeeta Devi and Vidya Devi, all were taking away the logs and saplings from his land. The accused persons had taken away the mango saplings at night and were taking away the mango logs. All the accused persons were putting bamboo poles in his land to make a *Palani* and when he opposed the same, then all the accused persons started abusing him and Ramkishun Singh ordered to kill him, after this Chunchun Singh hold both his hands, Vinod Singh hit him on his forehead with a *gadasa* which caused a cut on the left side of his forehead, Vinod Singh used the second *gadasa* on his neck with an intention to kill him, which he stopped with his hand due to which two fingers of his right hand got cut. PW-5's wife Binda Devi and daughter Neetu Kumari came to rescue him then Ramkishun Singh hit his wife Binda Devi on the back of her head with force due to which her head got cut and his daughter Neetu Kumari was hit



with a *lathi* by Vidya Devi due to which her forehead got fractured. Ramkishun Singh snatched away his Titan Quartz watch worth Rs. 1000/- and when his wife came forward to save us, Sangeeta Devi and Vidya Devi snatched her gold chain worth about Rs. 12000/-. He along with his wife Vinda Devi, his daughter Neetu Kumari and his younger son who is about 12 years old, all went to Mahua Hospital for treatment. No police came to Mahua Hospital. We stayed in Mahua Hospital for a total of nine days. Meanwhile, after two days, he came to Hajipur Court on the doctor's advice and contacted Anand Kishar Singh, Advocate and told him about the incident. He wrote the incident as per his instructions and got it typed by Bhuneshwar Babu (typist). After getting the typed copy, he took that paper to the lawyer on which he signed and the lawyer also signed on that paper. Then the complaint petition was filed in the Court and that complaint was sent to the police station by the Chief Judicial Magistrate, Vaishali at Hajipur. When the case was registered, the police came to his place and took his statement and he showed the police his blood stained *vest* and *towel*. The police did not confiscate those clothes after seeing them. He can present both the clothes in the Court, if required. PW-5 has brought the above mentioned two clothes in the



Court. On the request of the lawyer of the prosecution, both the documents were produced with objection. Further one of the witnesses Lalpari Devi incorporated with the accused persons.

12.(i) PW-5 in his cross-examination stated that accused Muneshwar Singh is his uncle. His father had separated from his uncle Muneshwar Singh about 30 years ago. In that partition, PW-5 got one acre and eighteen decimals of land and his uncle also got one acre and eighteen decimals of land. PW-5 and his father have not bought any land and it is not that they have sold all the lands except the land upon which the house is built. His father has not sold any land in his lifetime. His father Ramanand Singh has left eighteen decimals land, new Khesra No. 21 situated at Parmanandpur in the hands of Smt. Phuni, wife of Muneshwar Singh. PW-5 filed Partition Case No. 586 of 2007 in the Court of Sub-Judge-1st. PW-5 filed a partition case against Muneshwar Singh on that one acre and eighteen decimals of land. All the persons to whom PW-5 had sold the land have taken their possession on it. He can tell about the Khata and Khesra number of the land on which the wooden logs were kept as its Khata No. is 223 and Khesra No. is 255 and total area is 6 decimals. That land is registered in the name of late Rammant Singh, father of Muneshwar Singh. The receipt of



that land is issued in the name of Muneshwar Singh. Late Somari Singh's land is in the north and after that the border of another village starts, his house is in the south, Muneshwar Singh's land is in the east and there is a road in the west, which is the place of occurrence. When he went to the village from the hospital a few days after the occurrence, he saw that the *Marhee* of the accused persons was buried and that *Marhee* is buried on that land till date. There were twelve mango trees on that land. PW-5 had got the mango tree cut four to five months before the occurrence took place and he cannot say how old that mango tree was ? PW-5's grandfather had planted those trees as he cannot provide any documentary proof that there was a mango tree in Khata No. 254 and written permission was taken to cut that mango tree. In his presence the police went to the land where the occurrence took place. He had told the police that it was the same land whose Khesra number is 255 and the accused persons had buried the *Marhee* and they had taken away the logs from the same land. He had shown the police the mango sapling which the accused persons have kept near their house.

13. PW-6 Dr. Anirudh Singh, in his examination-in-chief has stated that he was posted at P.H.C. Mahua on 30.07.2006. and on that day at 6 PM, he examined Ramrup



Singh, son of Late Ramanand Singh of village Parmanandpur Bujurg, Pak Chakdara, P.S. Mahua, District Vaishali, and the following injuries were found on the person: -

1. Incised wound 22 X 1/2 X Bone deep on left parietal region of scalp.

2. Fracture upper head of left hand. middle phalanx or index finger of left hand

Injury no. 1 is simple in nature caused by sharp cutting weapon and injury no. 2 is caused by hard substance grievous in nature. Age of injury within six hours.

The same day, PW-6 examined Binda Devi, wife of Sri Ramrup Singh, village Parmanandpur Bujurg P.S. Mahua, District Vaishali at 6.02 P.M. and following injuries were found on her: -

1. Incised wound 2" x 1/2" x bone deep on occipital region of scalp.

2. Defused swelling with bruise on lower part of right side of back.

All the injuries were simple in nature. Injury no. 1 is caused by sharp cutting weapon and injury no. 2 is caused by hard and blunt substance. Age of Injury within six hours.

Both the injuries reports are in my pen which bears by signature,



which has been marked as Ext.2 and 2/1 respectively.

13.(i) PW-6 in his cross-examination stated that Bone deep injury means up to bone. On occipital region and parietal region, there are skin and thin muscle. He cannot say about the thickness between skin and bone deep. Incised wound can be possible by sharp cutting weapon and sharp-edged weapon. He cannot say whether the edge of sharp cutting is less than 20 cm. The size of injury no. 1 of Ramrup Singh is 1/2" width. The size of injury no. 1 of Binda Devi is also 1/2" width. He has seen *Garasa* and *Dav* but cannot say what is the edge of *Garasa* and *Dav*. Injury no. 1 on the person of Ramrup Singh is possible by *garasa*. It is not a fact that injury no. 1 Ramrup Singh cannot be caused by edge of *Garasa*. Injury no. 1 of Binda Devi is possible by *Dav*. It is not a fact that injury no. 1 of Binda Devi cannot be caused by *Dav*. He has not mentioned size of injury no. 2 of Binda Devi. The aforesaid injury was defused swelling. *Garasa* and *Dav* are heavy weapons. Both injury reports were available in the hospital and has brought both the injury reports in Court on the instruction of Public Prosecutor. It is not a fact that there was no injury on Ramroop Singh and Binda Devi on 30.07.2006.

14. Defence has produced three witnesses i.e.



DW-1 Yogendra Pd. Singh has proved Ext. B and B/1, *Kewalas*. D.W.2 Ravindra Kumar Sinha has proved Ext.C the plaint of Partition Suit No. 586/2007, as an advocate pleader and D.W.3 Prem Prasad has proved Ext. B/2 & B/3, the execution of *Kewalas*. On behalf of the defence Ext. B/4 & B/5 the sale deed executed by informant of this case dated 25.3.2000 and 21.2.2003 have been marked on the admission of the prosecution vide order dated 28.7.11.

15. Learned counsel for the appellants Mr. Bindeshwar Prasad Singh, at the outset, submits that the trial Court erred in convicting the appellants for the charges, inspite of having no material available on record, except for the oral evidence of six prosecution witnesses. He next submits that all PW's have been examined by the prosecution and further vide order dated 25.08.2011, a correction was made regarding the month of the alleged occurrence and thereafter the charge has further been framed against the appellants and thereafter all aforesaid witnesses PW-1 to PW-5 have been re-examined on recall. PW-6 Dr. Anirudh Singh doctor, who found simple injury on the head of informant and his wife Binda Devi. For that the doctor has found only one incised wound on the head of informant and similarly one incised wound on the head



of Binda Devi and he opined that injury no. 1 of Binda Devi and informant are simple in nature. There is no medical report of PW-3 Neetu Kumari. For that no independent witness has been examined by the informant. Named witnesses in complaint petition has also been not examined by the prosecution. Further, the Investigating Officer were also not examined in the case so as the to prove the offences, and therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt.

16. On the other hand, learned Additional Public Prosecutor Ms. Anita Kumari Singh has vehemently opposed the appeals and submits that there is direct allegation against the present appellants for assaulting the informant and his family members with *lathi*, *dav* and *garasa* to commit murder of the informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

18. As per the Criminal jurisprudence, the burden is always on the prosecution to prove the guilt of the accused



beyond all reasonable doubt and the accused shall be presumed to be innocent till the guilt is proved. It is necessary to scrutinize the evidence of PW-3, PW-4 and PW-5 who are said to be the injured in the case. PW3 Neetu Kumari stated in Para 10 of her deposition stated that place of occurrence is on road and there was a soling on the said road which was constructed by government. She also stated in para 6 of her deposition that there was no *Marhee* of Ramkrishun Singh at place of occurrence. There is so many contradictions in paras 24 to 31 of her deposition. PW- 4 Binda Devi stated in para 26 of her deposition that at present *Marhee* of accused persons is on said land earlier logs were on the said land and occurrence also took place on the same land. Soling road is situated East to the place of occurrence. In para 18 of her deposition PW-4 admitted that PW-1 Ram Haresh Singh and PW-2 Tetari Devi are family members of this witness as they are interested witnesses. There is vital contradiction from paras 42 to 48 but the Investigating Officer of this case has not adduced his evidence in Court.

19. The intention of the accused persons also not established before the trial Court. On the one hand, complaint petition disclose that there was a land dispute between the family members of the informant and that of the accused, since



long time. It is for the prosecution to establish the intention, motive, or the knowledge in order to attract the offence under Section 307 of the Indian Penal Code. Admittedly, no weapons were recovered in this case. Section 307 of the IPC would be applicable in a situation where the accused has intention, knowledge and that the said act may cause death or hurt to the informant.

20. Admittedly, the nature of weapon used or the severity of the blows inflicted were also not established by the prosecution to prove the guilt of the appellants. It is also relevant to note that under Section 313 of the Cr.P.C. examination of the accused persons only these common questions were asked which reads as follows: -

Question I. Have you heard the statement of the witness?

Question II. There is an allegation on you that you along with the other accomplice tried to take away the wooden logs, what do you say?

Question III. What do you say defence?

Except the said questions, nothing else was put to the accused persons with regard to incriminating evidence against the appellants.

21. In *Indra Kunwar Vs. State of Chhattishgarh*



reported in **2023 SCC OnLine SC 1364**, their Lordships have evolved principles to be followed while framing questions under Section 313 of the Cr.P.C. examination which reads as follows: -

35. On perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when construing such statements.

35.1. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2. The intent is to establish a dialogue between the Court and the accused. The process benefits of the accused and aids the Court in arriving at a final verdict.

35.3. The process enshrined is not a matter of procedural formality but is based on the cardinal principles of natural justice i.e. audi alterum partem.

35.4. The ultimate test when concern with the complaints of the section is to inquire and ensure whether the accused got the opportunity to say his piece.

35.5. In such a statement, the accused may or may not admit involvement or



any incriminating circumstance or may even offer an alternative version of events or interpretations. The accused may not be put to prejudice to any omission or inadequate questioning.

35.6. The right to remain silent or any answer to question which may be false shall not be used to his detriment being the sole reason.

35.7. This statement cannot found the sole basis of conviction and is neither a substance to or a substitute piece of evidence. It does not discharge but reduces the prosecution burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8. This statement is to be read as a whole. One part cannot be read in isolation.

35.9. Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of Indian Evidence Act, 1872, however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10. The circumstances not put to



the accused while rendering his statement under Section R to be excluded from consideration as no opportunity has been offered to him to explain them.

35.11. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defense. The defense so articulated must be carefully scrutinized and considered.

35.12. Non-compliance with the section may cause to the prejudice to the accused and may impede the process of arriving at a fair consideration.

22. In ***Prem Chand Vs. State of Maharashtra*** reported in **2023 5 SCC 522** their Lordships also evolved the guidelines for examination of the accused under Section 313 of Cr.P.C. which reads as follows: -

15. What follows from these authorities may briefly be summarized thus:

15.1. Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.



15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313



statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defense and proffers any alternative version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure takes a defense the accused's explanation of incriminating circumstances, in a case, may vitiate the trial and/or endanger the conviction.

23. Bearing the well-settled principles of mind, every criminal court proceedings under Clause (b) of Sub-section (1) of Section 313 of the Cr.P.C. has to shoulder the



onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstances in the evidence that could be used against him.

24. After reading and perusal of the entire case record as well as evidence, it is clear that the incident occurred on 30.07.2006, and the FIR was registered on 09.12.2006 in the police station after receiving the information, i.e., about five months later, that too, on the basis of the complaint, which was made before the Chief Judicial Magistrate, Vaishali at Hajipur. The informant did not go to the police station and gave reason that when the police did not come to the hospital to record the statement, then he filed the complaint case. In this manner, the informant-cum-injured-cum-complainant approached the Court, and didn't go to the police station. This action of the informant puts the entire case under the purview of serious doubt. Secondly, the place where the doctor examined and prepared the injury report (exhibits-2 and 2/1) and also not informed to the police about the occurrence. Whereas, if it's true that occurrence took place then it comes under cognizable offence. It is the duty



of the doctor to inform the police immediately and prepare the injury report after receiving the requisition of the police and the same has not been followed by the doctor. The doctor admitted directly and prepared the injury report, neither gave any paper regarding what kind of treatment was done. Therefore, the entire injury report also comes under the purview of serious doubt because the investigation itself started after five months. In such a scenario, this case and this injury report are completely under the purview of serious doubt.

25. Further the Investigating Officer has not been examined in this case and all the prosecution witnesses have stated that the accused Chunchun Singh caught hold of both hands of the informant-cum-injured Ramrup Singh and Vinod Singh hit informant's head with a *Gadasa* (sharp edged weapon) due to which left side of his head got cut and when Vinod Singh hit him again with the *Gadasa* (sharp edged weapon) then Ramrup Singh (PW-5, informant) stopped it with his left hand due to which his finger got cut. This statement of the informant creates doubt in itself that when both of his hands were under hold, then how did he stop the *Gadasa* (sharp edged weapon) with left hand. In this circumstance, informant's statement seems unreliable. It is nowhere mentioned in the entire evidence that



how was the original injury report (exhibits-2 and 2/1) placed on record of the Court and who placed it on record. The Investigating Officer has not been examined in this case who can state that how the injury report was placed on record and neither told who produced it, this also creates serious doubt. Although, it has been written by the Investigating Officer in para-7 of the case diary that the complainant showed the photocopy of the report at two instances and has mentioned the facts of the report in the case diary, but the original injury report has not been mentioned. So, it is not clear from the entire evidence that injury report was produced by whom, which creates serious doubt in itself to the prosecution version of the case.

26. In the present case, it does not appear from the records that the incriminating evidence was put to the appellants. Taking into consideration the entire material on record it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellants. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused/appellants for the charges levelled against them.



27. Hence, the impugned judgment of conviction and order of sentence dated 04.09.2013 and 07.09.2013 passed by the learned Sessions Judge, Vaishali at Hajipur against the appellants is set aside and the appellants are acquitted from the charges leveled against them. As the appellants are on bail, they are discharged from their liability of their bail bonds.

28. Accordingly, these appeals are allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

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