

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.214 of 2019

Arising Out of PS. Case No.-309 Year-2015 Thana- PURNEA SADAR District- Purnia

Md. Mursalim Son of Late Humau Resident of Village- Miyan Bazar, P.S.-
Sadar, District- Purnea.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 1004 of 2018

Arising Out of PS. Case No.-309 Year-2015 Thana- PURNEA SADAR District- Purnia

1. Md. Matiur Rahman @ Matiur Rahman Son of Late Md. Idrish.
2. Md. Zamilur Rahman @ Jamurul, Son of Md. Anisur Rahman. Both are residents of Village- Mirjapur, Police Station- Sadar, District- Purnea.

... .. Appellants

Versus

The State of Bihar.

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 1009 of 2018

Arising Out of PS. Case No.-309 Year-2015 Thana- PURNEA SADAR District- Purnia

Md. Anisur Rahman @ Anisur Rahman son of Late Md. Idrish, resident of
Village- Mirjapur, Police Station- Sadar, District- Purnea.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

Appearance :
(In CRIMINAL APPEAL (DB) No. 214 of 2019)
For the Appellant : Mr. Amarnath Singh, Advocate
Mr. Kamal Kishor Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : None
(In CRIMINAL APPEAL (DB) No. 1004 of 2018)
For the Appellants : Mr. Anil Singh, Advocate
Mr. Mritunjay Kumar, Advocate
Mr. Amrit Anunay, Advocate



For the State : Mr. Sujit Kumar Singh, APP
For the Informant : None
(In CRIMINAL APPEAL (DB) No. 1009 of 2018)
For the Appellants : Mr. Anil Singh, Advocate
Mr. Mritunjay Kumar, Advocate
Mr. Amrit Anunay, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : None

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 25-07-2024

These appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 10.07.2018 and order of sentence dated 18.07.2018, passed by learned Vth Additional District & Sessions Judge, Purnea in Sessions Trial No.562/2015, 368/2016 (Trial No.01/2016), arising out of Purnea (Sadar) P.S. Case No.309 of 2015 whereby the court has convicted appellants Md. Anisur Rahman @ Anisur Rahman [in Criminal Appeal (DB) No.1009 of 2018] and Md. Mursalim [in Criminal Appeal (DB) No.214 of 2019] for the offences punishable under Sections 324 and 302/34 of the Indian Penal Code and they have been sentenced to undergo R.I. for three years under Section 324 of the Indian Penal Code and R.I. for life under Sections 302/34 of the Indian Penal Code and to pay a fine of Rs.5,000/- and, in



default of payment of fine, they have further been sentenced to undergo S.I. for three months. Appellants Matiur Rahman @ Matiur Rahman and Md. Zamilur Rahman @ Jamurul [Criminal Appeal (DB) No.1004 of 2018] have been convicted for the offences punishable under Sections 324 and 307/34 of the Indian Penal Code and they have been sentenced to undergo R.I. for three years under Section 324 of the Indian Penal Code and R.I. for ten years under Sections 307/34 of the Indian Penal Code and to pay a fine of Rs.5,000/- each and in default of payment of fine, they have further been sentenced to undergo S.I. for three months. The sentences have been directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1 *Fardbeyan* of Md. Nasim Akther came to be recorded on 08.08.2015 at 13:30 hours in Emergency Ward of Sadar Hospital, Purnea wherein the informant has stated that his father Abdul Latif and other relatives purchased 6 *Bighas* of land from Abdul Rashid and his relatives at Mauza Mirzapur in the year 2013 and, after constructing a hut on the said land, they used to guard their field and crops. In the night of 05/06.08.2015, Md. Anisur Rahman along with his companions



set the hut on fire. On 08.08.2015 when the father of the informant along with his relatives were again constructing the hut on the said land, at about 11:30 a.m., Md. Anisur Rahman, Jamirul, Sakirul, Jabedur, Matiur Rahman, Md. Mursalim, Md. Babar, Saiful, Md. Shamsher, Manirul and Ishtiyak came on the said land and started assaulting the persons who were constructing the hut. On the order of Md. Anisur Rahman, Md. Mursalim assaulted the father of the informant, namely, Abdul Latif on his neck by means of Hasua causing grievous injuries on his neck and ear and he fell down on the ground. The father of the informant was brought to the hospital with the help of villagers where the doctor declared him dead. It is further alleged that in the said occurrence, Md. Mojamil Haque, Wakil Ahmad and others also sustained injuries. The occurrence took place due to land dispute.

2.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

2.3 The case was exclusively triable by court of



sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.562/2015, 368/2016.

2.4 During course of trial, the prosecution had examined 10 witnesses, namely, PW-1 Habibur Rahman, PW-2 Md. Wakil Ahmad, PW-3 Md. Mojamil, PW-4 Ahmad Hussain, PW-5 Md. Nasim Akhtar, PW-6 Dr. Prakash Mishra, PW-7 Dr. Brahmdeo Raman, PW-8 Dinesh Kumar, PW-9 Abdul Rashid and PW-10 Mantosh Kumar. The defence had also examined four witnesses, namely, DW-1 Najmul Haque, DW-2 Shish Mohammad, DW-3 Majhar Ali and DW-4 Sajjad Ali. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellants for the aforesaid offences as stated hereinabove.

2.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have filed the instant appeals.

3. Heard Mr. Amarnath Singh and Mr. Anil Singh, learned counsel appearing on behalf of the appellants and Mr. Sujit Kumar Singh, learned APP for the State. None appears on behalf of the informant.



4. Learned Counsel appearing for the respective appellants have mainly contended that the prosecution has failed to prove the genesis, manner and place of occurrence. Learned Advocates have referred the deposition given by the prosecution witnesses from which it has been pointed out that, as per deposition given by PW-1, when the deceased and other witnesses were constructing the hut in the agricultural field of the deceased, all the accused came at the said place armed with weapons, like, Hasua, Farsa, Lathi and started assaulting the witnesses. At that time, on the order given by accused Anisur, accused Mursalim gave Hasua blow to Latif on his neck as a result of which, he fell down and in the said incident three persons, namely, Md. Jamil, Tajmul and Jamil also sustained injuries. It is submitted that the aforesaid witnesses are brothers-in-law of the deceased. Learned counsel for the appellants would mainly submit that there are major contradictions, inconsistencies and discrepancies in the deposition given by the prosecution witnesses. The prosecution has examined only interested witnesses who are near relatives of the deceased. Further, none of the independent witnesses has been examined by the prosecution. It is further submitted that the statement of the two injured witnesses were recorded after



more than one month from the date of occurrence for which no explanation has been given by the prosecution. It is further submitted that the prosecution has miserably failed to establish the genesis, manner and place of occurrence. Thereafter it has been contended that in the occurrence in question, two accused also sustained injuries and they were also admitted in the hospital. Specific defence was taken by the accused by putting suggestions to the prosecution witnesses with regard to the injury sustained by the accused as well as with regard to the registration of the cross FIR/counter case by the accused persons against the present complainant and others, despite which the prosecution has failed to explain the injury sustained by the accused and thereby suppressed the material fact and genesis of incident. Further, as per deposition given by the Investigating Officer, there are three different place of occurrence and, in fact, from the deposition given by the Investigating Officer, it is revealed that the deceased Abdul Latif sustained injuries in the field of one of the appellants and from the another field of one of the appellants, blood stained Lathi and blood stained slippers were seized but the same have not been sent for analysis to FSL. Thus, from the aforesaid, it can be said that the deceased and injured witnesses were, in



fact, the aggressors and they came at the place of the appellants with a view to take possession of the land and in the said incident when the village people came and resisted, the deceased sustained injuries and thereafter died and two persons also sustained injuries.

4.1. Learned Advocates for the appellants would thereafter submit that in the present case, 11 persons have been implicated as accused and all the 11 persons faced the trial. It is also submitted that charge under Section 302 read with Section 148 of the Indian Penal Code and Section 307 read with Sections 148 and 324 were framed against the concerned accused. However, the Trial Court, after considering the evidence, acquitted 6 accused and appellants, namely, Anisur Rahman and Md. Mursalim have been convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code and the other two appellants, namely, Matiur Rahman and Jamirul have been convicted for the offence punishable under Sections 307 and 34 of the Indian Penal Code. Thus, the Trial Court has not believed the theory of the prosecution with regard to Sections 148 and 149 of the Indian Penal Code. It is pointed out by learned counsel that the informant challenged the order of acquittal passed by the Trial



Court qua the 6 accused by filing acquittal appeal before this Court and this Court rejected the said appeal. Learned counsel, therefore, urged that the Trial Court has committed grave error while partly believing the story of the prosecution qua the present appellants and not believing the story of the prosecution qua the other 6 acquitted accused. Learned counsel for the appellants also contended that while recording the statement under Section 313 of the Code, the Trial Court did not put all the incriminating material/evidence led by the prosecution against the concerned appellants-accused. The statements of the accused under Section 313 of the Code were recorded in a casual manner and thereby serious prejudice has been caused to the present appellants.

4.2. Learned Advocates for the appellants have also placed reliance on the following decisions in support of their case:

- (i) 1980 Supp SCC 249 [V.C. Shukla v. State (Delhi Administration)]
- (ii) 1990 Cri LJ 511 (Ram Swarup & Ors. v. State of U.P.)
- (iii) (1984) 4 SCC 116 (Sharad Birdhichand Sarda v. State of Maharashtra)



(iv) (1978) 4 SCC 371 (Ganesh Bhavan Patel v. State of Maharashtra)

(v) 1989 Cri LJ 1585 (State of Madhya Pradesh v. Ramprakash & Ors.)

(vi) 1991 Supp (2) SCC 396 (State of Rajasthan v. Madho)

(vii) 2023 (1) PLJR 244 (Santosh Kumar Singh vs. The State of Bihar)

(viii) (1980) 2 SCC 84 (Dhanabal v. State of T.N.)

(ix) (1998) 7 SCC 216 (Matadin v. State of Maharashtra)

(x) (1980) 2 SCC 218 (Yogendra Morarji v. State of Gujarat)

(xi) (1991) 1 SCC 253 (Dilavar Hussain v. State of Gujarat)

(xii) (2019) 8 SCC 50 (Anand Ramachandra Chougule v. Sidarai Laxman Chougala)

5. On the other hand, the learned APP for the State has vehemently opposed these appeals. It is submitted that there are two injured eye-witnesses in the incident in question and both the witnesses have supported the case of the prosecution. The doctor who had treated the said injured



witnesses has also supported the version given by the injured witnesses. It is further submitted that there are other eye-witnesses to the incident in question and merely because they are relatives of the deceased, their version may not be discarded. It is further submitted that the doctor, who has conducted the *post mortem* on the dead body of the deceased, has also supported the version of the prosecution. Learned APP would submit that merely because there are minor contradictions and inconsistencies in the deposition given by the prosecution witnesses, benefit of the same may not be given to the appellants-accused. Learned APP, therefore, urged that when the prosecution has proved the case against the present appellants beyond reasonable doubt, the Trial Court has not committed any error while convicting the present appellants and, therefore, these appeals be dismissed.

6. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined ten witnesses. The defence has also examined four witnesses.



7. PW-1 Habibur Rahman has deposed in his examination-in-chief that the occurrence took place on 08.08.2015 at about 01:30 p.m. At that time he was present in his field. Informant Nasim Akhtar, Jamil, Najammul and Maujammil were repairing their hut situated on their land. In the meantime, accused Mursalim, Shamsher, Babar, Saiful, Anisur, Samirul, Jabaidul, Jamirul, Matiur Rahman and Matirul came armed with Hasua, Farsa and Lathi, surrounded them and started abusing and assaulting them. In the meantime, on the order of Anisur, accused Mursalim gave Hasua blow on the neck of Latif causing bleeding injury on his neck and he fell down on the ground. Md. Jammil, Tazamul and Jamil also sustained injuries in the incident and fell down on the ground. It is further deposed that he sat there after seeing blood. After that the villagers brought the injured to Sadar Hospital. He went to his house from there. He came to know about the death of Latif after one hour. This witness claims to have identified all the nine accused persons standing in the dock. This witness further deposed that rest two accused, namely, Shamsher and Jubaidur are not present in court.

7.1. During cross-examination, the said witness has stated about the place of occurrence in paragraph-2. It is



stated by this witness that he does not know Khata and Khesra number of his land and the land on which the occurrence took place. Abdul Latif had purchased this land and he was cultivating the land for one year. Abdul Latif and Anisur Rahman are cousins. Latif had purchased the land from Rashid. He did not know that the land was Khatiyani land of Rashid and Anisur Rahman which was purchased by Rashid. He is brother-in-law of deceased Latif. He has no knowledge about the cases going on regarding the said land. He had seen the neck of Latif. He had not seen any injured accused. He had not seen Matiur Rahman, Jabaidur and Sakilur in injured condition. He has no knowledge about any title suit relating to this land. He has no knowledge about the case numbered as Sadar P.S. Case No.311/2015 filed by the accused. This witness has further stated that the house of Latif was situated 1 k.m. away from the place of occurrence and his house is situated at a distance of 100 feet from the place of occurrence. The house of accused Anisur Rahman is situated at a distance of 100 feet from the place of occurrence. Anisur Rahman and Abdul Rashid are his cousins. He went to his field after half an hour. It is not true that due to land dispute between him and the accused, he has falsely deposed. It is not true that he neither



saw the occurrence nor was he present there.

8. PW-2, Md. Wakil Ahmad has deposed in his examination-in-chief that the incident took place on 08.08.2015 at 11:30 a.m. He was called by Latif. Mojammil and Tajmul were also with him. Latif was also present there. At that time, Anisur, Matiur, Jimrul, Sakirul, Jabaidur, Babar, Mursalim, Shamsheer, Saiful, Matirul and Ishtiyak came there. They surrounded them and started abusing and assaulting them. Anisur ordered to kill Latif on which Mursalim gave Hasua blow on the neck of Latif. When he went to save, Matiur and Manirul assaulted him by means of Lathi causing injuries on his head and hand. He became unconscious. He regained his consciousness at Sadar Hospital. The police had recorded his statement in Sadar Hospital. After regaining his consciousness, he saw the dead body of Latif. Tajamul and Mojammil also sustained injuries in the said incident and they were also treated in Sadar Hospital.

8.1. During cross-examination, this witness has stated that he was unconscious on the day of occurrence. He regained his consciousness on that day at 09:00-10:00 p.m. He reached at the place of occurrence on the date of occurrence at 09:00 a.m. The accused came abusing and killed Latif. He



could not escape. All accused persons fled away after killing Latif. The police had recorded his statement after four days. He knows Matiful Rahman and Sakilur Rahman. He has no knowledge whether they sustained injury or not. It is not true that Latif was broker of the land and on the day of occurrence, he also went to the place of occurrence to take possession of the land and they assaulted Matiur Rahman and Sakilur Rahman.

9. PW-3 Md. Mojammil has deposed in his examination-in-chief that occurrence took place on 08.08.2015 at 11:30 a.m. At that time, he, Latif, Tajammul, Wakil and Nashim were making a hut at the place of occurrence. At that time, from the eastern side, Babar, Murusali, Shamsher, Saiful, Ansur, Matiur, Jamirul, Jabaidul, Manirul and Ishtiyak came armed with Hasua, rod, Farsa and Lathi and started abusing and assaulting them. In the meantime, Ansur instigated to kill Latif on which Mursalim gave Hasua blow on the neck of Latif causing bleeding injury. He went to catch Latif then Samirul assaulted him on his head by means of Farsa. He had also sustained bleeding injury on his head and he fell down after becoming unconscious. He regained his consciousness in the evening at Sadar Hospital and he came to know that Latif died.



He was treated in the hospital for eight days.

9.1. During cross-examination, PW-3 stated that Latif was his brother. He has no knowledge about the fact that Sakirul Rahman lodged Sadar P.S. Case No.311/2015 against them. They went to the field on the day of incident for the purpose of making hut. He was called by Latif. No one came there within two hours after starting the work. He was own brother of Latif. It is further stated by this witness that he became unconscious after being assaulted. What happened thereafter, he did not know. He regained his consciousness in the evening at hospital. The police had recorded his statement after five days at Sadar Hospital. This witness has admitted to have stated before the police that the accused persons came and surrounded them and started assaulting and abusing. He has also stated before the police that Ansur ordered to kill Latif. This witness has denied the suggestion that Latif was a land broker and they went to take possession of the land of Hamirul forcefully and the villagers protested due to which occurrence took place and members from both sides sustained injuries and after that Latif died.

10. PW-4 Ahmad Hussain has deposed in his examination-in-chief that occurrence took place on 08.08.2015



at 11:30 a.m. He was cutting grass in his field. At a distance of about 30 feet from there, a hut was being constructed by Latif. Wakil, Tajammul and Mojamml were working with the labourers. Latif was also present there. In the meantime, from the eastern side, Ansur Rahman, Matiur, Sakrul, Jamal, Jabdur, Babar, Nursalim, Shamsher, Saiful, Ishlakh, and Matirul came there and surrounded them. The accused were armed with Hasua, Farsa, Sariya and Lathi. The accused started abusing. Thereafter Ansur Rahman ordered to kill Latif and Mursalim gave Hasua blow on the neck of Latif, as a result of which Latif sustained bleeding injury on his neck. After seeing the blood, this witness fled away from there towards his house out of fear. After 01:30 hours, he went again to his field to bring the grass and saw the police there. The police recorded his statement also. Later, he came to know that Latif had died.

10.1. The said witness stated in his cross-examination that deceased Latif Miyan was his uncle (Fufa). After two months of the death of Latif, this witness was married with his daughter Tamanna Khatoon. It is further stated by this witness that earlier the field on which the occurrence took place belonged to him. His father sold the land to Latif. He has no knowledge with regard to filing of any title suit



between his father Rashid and Aniurrahman relating to this land. This witness has further stated in his cross-examination that he saw the incident from the forest and he fled away from there towards his house out of fear. He again went to the field at 01:00-01:30 p.m. where his statement was recorded by the police. The police did not bring the dead body with them in his presence. He has denied the suggestion that Latif was a land broker and he alongwith his companions went to take possession of the land forcefully and Latif sustained injuries in the incident, as a result of which he died. He has also denied the suggestion that he has deposed falsely to save himself from the counter case.

11. PW-5 Md. Nasim Akhtar has deposed in his examination-in-chief that the occurrence took place on 08.08.2015 at about 11:30 a.m. He, his father and three labourers were constructing a hut on their land. After some time, from the eastern side, Mursalim, Babar, Saiful, Shamsher, Anisur, Matibur and Mainirul came and surrounded them. Mustlim was armed with Hasua, Babar was armed with Lathi and Hasua, Saiful was armed with Farsa and others were armed with Lathi, Farsa and Bhala. All came and started abusing and assaulting them. When Wakil and Mojamir came to save, they



were also assaulted. In the meantime, Anisul ordered to kill Latif. Mursalim gave Hasua blow on the neck of his father causing bleeding injuries on his neck and ear. It is further stated by this witness in his examination-in-chief that he shouted and Hibjul and many others came there. Wakil and Mujmir brought his father to the hospital. Wakil and Mujmir were treated in Sadar Hospital. Daroga Ji came at the hospital and recorded his *fardbeyan* (Ext.1).

11.1. During cross-examination the said witness stated that the land was purchased by his father from Abdul Rashid. Accused Anisur Rahman is cousin of Abdul Rashid. He has no knowledge whether land dispute was going on between them or not. Accused Anisur Rahman was his maternal uncle. One month after the death of his father, the land was registered in the name of his mother. Before constructing the hut, some money was given for the land and agreement was prepared. After the agreement, they were cultivating the land. The hut was set on fire on 06.08.2015. At about 11:30 a.m., he, his father, Wakil, Mujmil and Tajmur went to construct the hut. The accused were at a distance of 4-5 cubit when they were seen for the first time. The accused started abusing and no one came after hearing the abusees. The accused firstly assaulted



his father. He has no knowledge whether any accused sustained injury or not. Sakilur Rahman lodged a case against his father and others regarding this incident. It is not true that they went there and a scuffle took place in which Matiur and Jaukhart Rahman became injured. This witness has denied the suggestion that the land is the ancestral land of Anisur Rahman and his father was a land broker. This witness has also denied the suggestion that his father along with others wanted to take possession of the land due to which scuffle took place and Jabedur and Matiur became injured and his father died. He has further denied the suggestion that they have lodged this false case to save himself from the case lodged by Sakirur Rahman.

12. PW-6 Dr. Prakash Mishra has examined and treated the injured persons and deposed in his examination-in-chief that injured Muzammil Haque has sustained one incised wound 6" x 1/4" x bone deep on the front of the scalp. He also sustained abrasion 1" x 1" over left palm dorsal aspect and one abrasion with swelling 1" x 1" over right shoulder. This witness has found the injuries sustained by Muzammil Haque simple in nature. He has also examined Md. Wakil and found one lacerated wound 2" x 1/4" x bone deep on the back of scalp and one lacerated wound 1/2" x 1/2" over the ulner aspect of right



arm above wrist. PW-6 has found injury no.1 sustained by Md. Wakil simple in nature and injury no.2 grievous in nature.

12.1. The doctor PW-6 has stated in his cross-examination that Md. Muzammil sustained simple injuries and injury no.1 can be caused due to fall on a sharp cutting weapon made of stone or wood. Injuries no.2 and 3 can be caused due to fall. PW-6 has further stated in his cross-examination that injury no.2 sustained by Md. Wakil can be caused due to rub against a hard substance.

13. PW-7 Dr. Brahmdeo Raman, who has conducted *post mortem* on the dead body of the deceased, namely, Abdul Latif, has found following *ante mortem* injuries on his body:

2. I. *Rigor Mortis* present in all four limbs.

II. Incised wound extending from lower part of right ear lobule to about 3 c.m above medial border of left clavicle.

III. 1-1/2" width deep to muscle and great vessels. The great vessels of left side was muscle cut and contracted at neck on left side and wound full of blood and blood clots.

IV. Helix of left ear lacerated.

V. Lacerated wound on left wrist 2"inch x 1" inch



into deeped to skin.

3. On Dissection:-

I. Head- Blood and cloth in cranial cavity.

II. Neck- Wound as described above.

III. Chest- blood in both side of chest cavity.

IV. Lungs- Pale.

V. Heart- All chambers are empty.

VI. Abdomen- Stomach contain semi digested food material, Large and small intestine contained faecal matter and gases. Liver, spleen and kidney are pale. Urinary bladder empty.

4. Time elapse since death- within 24 hours

5. Cause of death- Haemorrhage and shock due to above mentioned injury.

13.1. The said witness has stated in his cross-examination that he did not discuss about any weapon in his *post mortem* report. He has not mentioned in his report about the colour of injury or colour of the body. He has also found injuries on the body besides muscle cut injury and the injuries were on left wrist. The doctor has found injury on the left ear. He has not found any injury besides the injuries on left ear, neck, right ear and left wrist. All the three injuries cannot be



caused by a single blow.

14. PW-8 Dinesh Kumar, the Investigating Officer, has deposed in his examination-in-chief that he was posted as Sub-Inspector in Sadar Police Station, Purnea on 08.08.2015. He took charge of investigation of this case on 08.08.2015. Thereafter he noted the *fardbeyan* in case diary. Thereafter inquest report was noted in the diary. The inquest report was prepared by Bhanutosh Kumar, Sub-Inspector, K. Hat P.S. Thereafter he proceeded to the place of occurrence and inspected the same. It is further deposed that the second place of occurrence is the field of accused Anisur Rahman where the deceased sustained injuries which is situated 20 metres away from the first place of occurrence in the south direction. Blood stained Lathi and blood stained slippers were seized in presence of two independent witnesses from the field of accused Anisur Rahman and seizure list (Ext.4) was prepared. He prepared seizure list on 08.08.2015 bearing signatures of two independent witnesses. He has recorded the statements of witnesses, namely, Habibur Rahman and Ahmad Hussain. Thereafter he arrested accused Md. Shamsheer and informed his relatives. He again went to the place of occurrence and recorded the statement of Abdul Rashid. He proceeded to Sadar



Hospital, Purnea from there where the named accused of this case, namely, Md. Makiur Rahman, Sakiur Rahman and Jabeur Rahman were being treated. He arrested accused Md. Matiur Rahman and Jabudur Rahman and informed their relatives. He recorded the *fardbeyan* of injured Sakiur Rahman in the hospital and on the basis of which, Sadar P.S. Case No.311/2015, dated 10.08.2015 was instituted for the offences punishable under Sections 147, 148, 179, 323, 341, 504, 506 and 307 of the Indian Penal Code. It is further deposed by this witness in his examination-in-chief that due to the said incident, proceedings under Sections 107 and 144 of the Code was initiated and both the parties were prohibited from going to the land. On 11.08.2015, the doctor discharged injured Matiur Rahman from the hospital. The injured was produced before the court. On 17.08.2015, accused Sakilur Rahman and Jabaidur were discharged from the hospital. On 25.08.2015, he had recorded the re-statement of the informant. On 11.09.2015, he had recorded the statements of Wakil Ahmad, Mojmil and Tajamul Haque.

14.1. The said witness has stated in his cross-examination that he was also the Investigating Officer of the case bearing Case No.311/2015. He has submitted charge-sheet



in both the cases. He has written about the first place of occurrence in para-8 according to the information given by the informant and the witnesses. He has not written about the description of hut in para-8. When he visited, the hut was broken. The second place of occurrence is situated 20 meters away.

15. PW-9 Abdul Rashid has deposed in his examination-in-chief that occurrence took place on 08.08.2015 at about 13:30 hours. He had gone to Khushkibad. After return, when he reached near his house situated near Puran Devi Temple, he saw Abdul Latif, Mujmil, Wakil Ahmad, Nasim, Hebjul and the tempo driver coming in a tempo. Nasim informed that when they were repairing the burnt hut, Anisur Rahman, Jimrul, Matiur, Sakirul, Jabedur, Baba, Sursalim, Shamsheer, Saiful, Eshtak and Manirul surrounded them and started abusing and assaulting. Anisur ordered to kill Latif upon which Mursalim gave Hasua blow on the neck of Latif. This witness claims to have seen the neck. Mujmil and Wakil Ahmad also sustained injuries on their head. He claims to have identified the accused.

15.1. The said witness has stated during his cross-examination that whatever he deposed in the court, he stated



the same before the police. The informant of the case is Nasim Akhtar. There is land dispute between both the sides. The land was registered 4-5 days after the occurrence. The dispute was with regard to 6.5 Bighas of land. Title Suit No.363/2014 was going on in the court of Sub-Judge. The title suit was filed against him and others by Abdul Samad. It is further stated by this witness that Latif is not involved in sale and purchase of the land. No other case was lodged against Latif. The police had recorded his statement after five days in his house. This witness has denied the suggestion that he and Latif are land brokers and tried to take possession of the disputed land. He also has denied the suggestion that they assaulted the accused for which Case No.311/2015 is going on. This witness has further denied the suggestion that due to protest of the villagers, Latif sustained injuries and died.

16. PW-10 Mantosh Kumar has stated in his examination-in-chief that on 08.08.2015, he was posted as Sub-Inspector in K. Hat Police Station, Purnea. On that day, he recorded the fardbeyan of Nasim Akhtar in Sadar Hospital, Purnea which is in his pen and signature. He had prepared the inquest report of deceased Abdul Latif in Sadar Hospital, Purnea.



16.1. The said witness has stated in his cross-examination that whatever the informant stated, he has written the same in *fardbeyan*. He prepared the inquest report after examining the dead body. He found five injuries on the person of the deceased. Two independent witnesses, namely, Md. Tajmul and Mitaur Rahman had put their signature on the inquest report.

17. The defence has also examined four witnesses. DW-1 Najmul Haque has deposed in his examination-in-chief that the occurrence took place 08.08.2015. He was present in his field at 11:30 a.m. The field of Anisur Rahman is situated 200 metres away in the North direction from his field. Anisur Rahman along with his children was working in the field. Many people came there and quarrel took place. This witness saw Sakilur there in injured condition. He did not recognize the people.

17.1. The said witness has stated in his cross-examination that he knows both sides. Abdul Ratif has been killed. Accused Anisur Rahman is his brother-in-law. This witness has denied the suggestion that he has deposed falsely as he is brother-in-law of Anisur Rahman.

18. DW-2 is Shish Mohammad who has deposed



in his examination-in-chief that the occurrence took place on 07.08.2015 at 11:00 a.m. He was present at his home. He heard that quarrel took place on the disputed land in which Latif, Sakirul and Habedur sustained injuries. He came out from his house and saw Sakirul, Jabedur, Abedur in injured condition.

18.1. This witness has stated in his cross-examination that he does not know the Khata and Khesra number of the disputed land. It is further stated that he and Anisur Rahman were in Purnea Jail in connection with Sadar P.S. Case No.78/83 lodged under Section 302 of the Indian Penal Code. He came to know that Latif has been killed. He has denied the suggestion that as he is a friend of Anisur Rahman, he has deposed falsely.

19. DW-3 is Majhar Ali who has deposed in his examination-in-chief that the occurrence took place on 08.08.2015. At the time of occurrence, he was working in a nearby field and he saw that Latif, Mantu and 50 others forcibly took possession of the land belonging to Ansur. It is also deposed by this witness that he did not see as to how Latif was murdered. He came to know that a case is going on with regard to the disputed land.

19.1. This witness has stated in his cross-



examination that he does not know as to in whose name the disputed land stands. Ansur and Shish Mohammad were accused in Sadar P.S. Case No.78/1983, registered under Section 302 of the Indian Penal Code.

20. DW-4 is Sajjad Ali who has deposed in his examination-in-chief that on 08.08.2015, he was returning to his house from Khuskibagh Market. Sakilur, Matiur and Jabedul are his co-villagers. He saw these persons in injured condition. The disputed land belongs to Anisul Mandal. Abdul Rashi and Anisul Rahman are brothers. A case is going on between them.

20.1. This witness has stated in his cross-examination that he met the three injured in village. Matiur is his cousin and Sakilur and Jabedul are his nephews. Accused Anisur is his own cousin. He does not know Khata and Khesra number of the disputed land. The police did not record his statement. This witness has denied the suggestion that he has deposed falsely as he is a relative of the accused.

21. We have re-appreciated the evidence led by the prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties. From the evidence led by the prosecution, it transpires



that the prosecution has projected PW-1 to PW-5 as eye-witnesses to the incident in question, out of whom, as per the case of prosecution, PW-2 and PW-3 are injured eye-witnesses. PW-5 is the informant who is also projected as an eye-witness. It is not in dispute that all these witnesses are near relatives of the deceased and interested witnesses. It is the specific contention raised by learned counsel for the appellants that though independent witnesses were available, they have not been examined by the prosecution. Thus, we have to examine evidence given by the eye witnesses who are near relatives closely. As per the deposition given by PW-1, when the deceased and other witnesses were constructing the hut in the agricultural field of the deceased, all the accused came at the said place armed with weapons, like, Hasua, Farsa, Lathi and started assaulting the witnesses. At that time, on the order given by accused Anisur, accused Mursalim gave blow with Hasua to Latif on his neck, as a result of which he fell down and in the said incident three persons sustained injuries. All the three witnesses are brothers-in-law of the deceased. PW-2 is the injured witness. As per his deposition, when he tried to save Latif, accused Matiur and Manirul assaulted him by means of Lathi causing injuries on his head and hand and, therefore, he



became unconscious. He regained consciousness on the date of incident at 09:00 to 10:00 p.m. However, surprisingly, his statement was recorded by the police, as per his deposition, after four days. However, it is revealed from the evidence of PW-8 (Investigating Officer) that the statement of two injured witnesses were recorded after more than one month from the date of occurrence for which no explanation has been given by the prosecution.

22. It is revealed from the evidence and more particularly from the deposition given by the Investigating Officer that there are three different places of occurrence. It is further revealed that deceased Abdul Latif sustained injuries in the field of one of the appellants. Further, from another field of one of the appellants, blood stained Lathi and blood stained slippers were seized. However, the same have not been sent for analysis to the FSL. It is the specific defence taken by the appellants-accused that the deceased and injured witnesses were, in fact, the aggressors and they came at the place of appellants with a view to take possession of the land and in the said incident when the village people intervened and resisted, the deceased sustained injuries and died and two persons also sustained injuries.



22.1. At this stage, it is also relevant to note that it is alleged by the prosecution that accused Anisur gave order to kill Latif and thereafter accused Mursalim gave blow with Hasua on the neck of Abdul Latif. However, there are different versions given by the prosecution witnesses with regard to the same. PW-1 stated that, on the order of Anisur, accused Mursalim gave blow with Hasua to Latif. PW-2 has deposed that Anisur told that kill Latif, everything will be clear whereas PW-3 has deposed that Anisur told that Latif is the main person, hence, kill him. Thus, it appears that prosecution witnesses projected different stories with regard to the words stated by Anisur. It is also relevant to note that if the appellants-accused came at the place with intention to kill Abdul Latif then there was no question of giving order by one of the accused to another accused to kill a particular person.

22.2. At this stage, we would also like to examine the injury sustained by the deceased Abdul Latif. PW-2 and PW-3, who are claiming to be the eye witnesses, have deposed that Mursalim gave blow with Hasua on the neck of Latif. However, from the deposition given by PW-7 (Dr. Brahmdeo Raman), it is revealed that four external injuries were found on the dead body of the deceased. During cross-examination, the



doctor has specifically admitted that all the three injuries could not be possible if only one blow was given. Thus, we are of the view that medical evidence also does not support the version given by eye-witnesses.

22.3. Further, from the deposition given by PW-5, who is also claiming to be an eye-witness, it is revealed that the said witness has deposed that witnesses Wakil and Mujmir had brought the father of the witness (Abdul Latif) to the hospital. However, it is relevant to note that PW-2 Md. Wakil Ahmad has stated in his deposition that he had also sustained injury in the incident in question and he became unconscious at the place of incident and he regained consciousness in the hospital. Similarly, PW-3 Md. Mojamil has also deposed that after he sustained injury on his head, he became unconscious at the place of incident and he regained consciousness in the evening when he was in the hospital. Thus, we are of the view that there are major contradictions, inconsistencies and discrepancies in the deposition given by the so called witnesses and their presence at the place of occurrence was doubtful.

22.4. Even the conduct of PW-4 was also unnatural. PW-4 has stated that he has seen the incident in question. However, he had seen the incident from forest and out



of fear he ran away towards his house.

22.5. It is further revealed from the record and more particularly from the deposition given by the Investigating Officer that the cross FIR/counter case was filed by the accused persons against the present complainant and others and in the incident in question, two accused also sustained injuries and they were also admitted in the same hospital. Specific defence was taken by the accused by putting suggestions to the prosecution witnesses with regard to the injury sustained by the accused as well as with regard to registration of the cross FIR despite which the prosecution has failed to explain the injuries sustained by the two accused. Thus, it can be said that the prosecution has suppressed the material fact and the genesis of the incident. Thus, we are of the view that the prosecution has failed to prove the place of occurrence, genesis of the incident and the manner in which the same had taken place.

23. At this stage, it is pertinent to note that in the present case, 11 persons have been implicated as accused and all the 11 accused faced trial. Charge was framed under Section 302 read with Section 148 of the Indian Penal Code as well as under Section 307 read with Sections 148 and 324 of the Indian



Penal Code against the concerned accused. However, it is not in dispute that the Trial Court, after considering the evidence produced by the prosecution, acquitted six accused whereas the appellants herein have been convicted for the relevant offences as stated hereinabove. The Trial Court did not believe the theory of prosecution with regard to Sections 148 and 149 of the Indian Penal Code. It is also not in dispute that against the order of acquittal passed by the Trial Court qua the six accused, the informant filed acquittal appeal before this Court and this Court dismissed the said appeal. Thus, it appears from the record that the Trial Court did not believe the theory of the prosecution qua six accused whereas the Trial Court believed the story of the prosecution in part qua rest of the accused, i.e., appellants herein.

24. At this stage, we would like to refer the decisions upon which reliance has been placed by learned counsel for the appellants. In the case of Dilavar Hussain (supra), the Hon'ble Supreme Court has observed in paragraph-3 as under:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of



why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.”

24.1. In the case of Sharad Birdhichand Sarda (supra), the Hon’ble Supreme Court has observed in paragraphs-119 and 143 as under:-

“**119.** Thus, it will be difficult for us to rely on the evidence of such a witness who had gone to the extent of making wrong statements and trying to appease both Birdhichand and the prosecution, and, therefore, his evidence does not inspire any confidence.

143. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Hate Singh Bhagat Singh v. State of Madhya Pradesh* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] this



Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In *Shamu Balu Chaugule v. State of Maharashtra* [(1976) 1 SCC 438 : 1976 SCC (Cri) 56] this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

24.2. In the case of Ganesh Bhavan Patel (*supra*), the Hon’ble Supreme Court has observed in paragraphs-15 and 29 as under:-

“15. As noted by the trial court, one unusual feature which projects its shadow on the evidence of PWs Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 of the CrPC were recorded on the following day. Welji (PW 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. Delay of a few hours, *simpliciter*, in recording the statements of eyewitnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it



may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.”

29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the ‘FIR’ and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.”

24.3. In the case of State of Rajasthan (supra), the Hon’ble Supreme Court has observed in paragraph-2 as under:-

“2. According to the prosecution, on April 13, 1973 around noontime when PW 1 — Gouri Lal was getting a well dug, the dug up earth was thrown on the adjoining land to which the accused protested. The two respondents abused PW 1 and thereafter Kanwari attacked him and gave lathi blows to PW 1. On hearing an alarm, PW 2 — Lal Chand and the deceased rushed to the site. The respondent Madho struck a farsi blow on the leg of PW 2 which resulted in fracture. The deceased removed PW 2 to the house of Bapu Chamar at a short distance from the field. The prosecution case is that the two respondents and the other four acquitted accused persons followed the deceased and PW 2; the two respondents entered the house of Bapu Chamar and gave farsi blows on the head of the deceased to which he ultimately succumbed. Thus the prosecution case is divided in two parts, namely, the incident which took place in the field where PW 1 was getting a well dug and the incident which took place at the house of Bapu Chamar. So far as the first part of the



incident is concerned, both the courts came to the conclusion that the prosecution version that Kanwari launched the assault on PW 1 and the other three ladies also attacked him is not worthy of acceptance. As regards the second part of the incident the trial court came to the conclusion that the two respondents were not entitled to any right of private defence because they had actually followed PW 2 and the deceased when the latter was removed by the former to Bapu Chamar's house and had belaboured the deceased there. Therefore, even though the respondents had sustained injuries they were not entitled to right of private defence as they were the aggressors. In this view that the trial court took it convicted the two respondents as stated earlier. The High Court on a reappraisal of the evidence came to the conclusion that the prosecution witnesses were guilty of shifting their stand and had failed to explain the serious injuries on the two respondents. So far as PW 1 is concerned, the High Court noticed that he had changed his version from the one stated in the first information report as well as his evidence before the committing court. Before the committing court he had stated that after he received injuries he became unconscious and had not noticed the assault on PW 2 as well as the deceased. The High Court further noticed that on his own showing he has gone to his residence from the field for drinking water and by the time he reached Bapu Chamar's house the deceased had fallen on the ground with injuries. In other words PW 1 cannot be said to be an eye-witness of the second part of the incident. So far as PW 2 is concerned we find that according to his version he received an injury on the leg when he went to the rescue of PW 1. His version that PW 1 was belaboured by the ladies has not been accepted by both the courts. Even in regard to that version he is found to have shifted his stand. He deposes that after he was lifted to the house of Bapu Chamar the



respondent and their companions followed them and belaboured the deceased after he was laid on the 'otle'. According to his statement thereafter the deceased went over to the road where he was belaboured by the respondents. Now this witness was engaged to the daughter of the deceased. As stated earlier his evidence regarding the involvement of the ladies has been rejected by both the courts and in our opinion rightly. In his cross-examination he stated that he could not say if the accused persons kept on following and throwing stones, a statement which casts a doubt on his version that the accused had followed the deceased after the latter had lifted him to the 'otle' of Bapu Chamar and had thereafter belaboured him. He was unable to explain how the two respondents sustained injuries. If we turn to the injuries sustained by the two respondents which have been set out in paragraph 25 of the trial court judgment, we find that the respondent Kishna had sustained as many as six injuries, five of them on the skull region. The respondent Madho too had sustained six injuries, two on the skull region, two on the scapular region, one on the forehead and one on the right index finger. Thus some of the injuries were on exposed parts of their bodies and we would expect the prosecution witnesses to explain how the two respondents sustained the said injuries. No explanation worth the name is forthcoming. The trial court, however, brushed aside this infirmity by pointing out that in the cross case filed at the behest of the respondent Kishna the evidence disclosed that there was no farsi blow and, therefore, the defence theory was not acceptable. Counsel for the respondents, however, questioned the admissibility of the said evidence. Be that as it may, mere acquittal of the accused (prosecution side herein) in that case does not render the defence version false. The defence version has to be evaluated on the basis of the prosecution evidence tendered in the present case.



The fact remains that both the respondents had sustained serious injuries, Kishna mainly on the skull whereas Madho on the skull as well as scapular region. If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two respondents in the course of the same transaction, the respondents were entitled to the benefit of doubt as it was hazardous to place implicit reliance on the testimony of the injured PW 2.”

24.4. In the case of Dhanabal (supra), the Hon’ble Supreme Court has observed in paragraph-7 as under:-

“7. We have been taken through the relevant evidence of the witnesses, their statements under Section 164 of the Code of Criminal Procedure and the evidence given by them in the committal Court which was transposed to the record of the Sessions Court under Section 288 of the Code of Criminal Procedure. Before considering the questions of law raised by the learned Counsel, we find that the plea of the learned counsel on behalf of the second appellant has to be accepted. The case for the prosecution is that the two appellants and the third accused went to the scene of occurrence — the first appellant armed with veecharuval, the second appellant with a spade and the third accused unarmed — converged on Rasayal and the first accused gave a cut which resulted in severance of her head. We feel that when the three brothers went to the scene determined to do away with Rasayal, any instigation was most unlikely. The first



accused who actually caused injury is the eldest brother. It is difficult for us to accept that before the actually caused the injury, he needed the instigation of the second appellant. In the deposition of Ramalingam PW 1, which was marked under Section 288 of the Code of Criminal Procedure, Ex. P 2, he stated that first accused came with aruval, A-2 with a spade and along with A-3 went towards Rasayal Ammal. A-1 with the veecharuval cut Rasayal Ammal on her right neck. The other persons were standing there. Thus the instigation attributed by the prosecution to the second appellant is not found in the evidence of Ramalingam. Taking into account the facts and the probabilities of the case, we feel it is most unlikely that the second appellant instigated the first accused as a result of which the first accused caused the fatal injury. The second appellant is entitled to the benefit of doubt. His appeal is allowed and his conviction and sentence are set aside. He is directed to be set at liberty.”

24.5. In the case of Yogendra Morarji (supra), the Hon’ble Supreme Court has observed in paragraph-16 as under:-

“16. The material before the Court to establish such a preponderance of probability in favour of the defence plea may consist of oral or documentary evidence, admissions appearing in evidence led by the prosecution or elicited from prosecution witnesses in cross-examination, presumptions, and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, 1973.”

24.6. In the case of Anand Ramachandra Chougule (supra), the Hon’ble Supreme Court has observed in paragraphs-10 to 13 as under:-



“10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

11. The fact that a defence may not have been taken by an accused under Section 313 CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In *Sunil Kundu v. State of Jharkhand* [*Sunil Kundu v. State of Jharkhand*, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] , this Court observed : (SCC pp. 433-34, para 28)

“28. ... When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt.”

12. The fact that an FIR was lodged by the accused with regard to the same occurrence, the failure of the police to explain why it was not investigated, coupled with the admitted fact that the accused were also admitted



in the hospital for treatment with regard to injuries sustained in the same occurrence, but the injury report was not brought on record and suppressed by the prosecution, creates sufficient doubts which the prosecution has been unable to answer.

13. We find it difficult to concur with the submission on behalf of the appellants that the failure of the prosecution to investigate the FIR lodged by the accused with regard to the same occurrence or to place their injury reports on record was merely a defective investigation. We are of the considered opinion that the failure of the prosecution to act fairly and place all relevant materials with regard to the occurrence before the court enabling it to take just and fair decision has caused serious prejudice to them. A fair criminal trial encompasses a fair investigation at the pre-trial stage, a fair trial where the prosecution does not conceal anything from the court and discharges its obligations in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice concluding with a fairness in sentencing also.”

24.7. In the case of Santosh Kumar Singh v. The State of Bihar (supra), this Court has observed in paragraph-28 as under:-

“28. The purpose of investigation, or, for that matter, prosecution of a person accused of an offence is not confined for ensuring conviction of the person facing prosecution either during the course of investigation or at the trial. There being presumption of innocence of an accused of crime, it is the duty of the prosecuting agency to ensure that all relevant materials worth evidence are collected during the course of investigation to establish its case at the trial beyond all reasonable doubt. In the process



of investigation, the investigating agency cannot completely overlook the interest of an accused from the perspective of his prosecution. As in the present case, it cannot be stated with certainty as to whether the report of the F.S.L., if received, coupled with the examination of the appellant in accordance with Section 53A of the Cr.P.C. would have led investigation to which direction. A circumstance, emerging on the comparison of the scientific result, if obtained, that investigating agency itself could have decided not to proceed against the appellant cannot be completely ruled out. There could also be a circumstance that, based on the result of the test conducted by Forensic Science Laboratory, and the examination of accused under Section 53A of the Cr.P.C., the prosecution could have developed and established a foolproof case before the Court to establish the charge of commission of rape of the victim against the appellant. The benefit of the failure on the part of the prosecution to prove its case beyond all reasonable doubts will surely go to the appellant, in the absence of any statutory presumption.”

25. We have considered the aforesaid decisions upon which reliance has been placed by learned counsel appearing for the appellants. Keeping in view the aforesaid decisions, if the evidences led by the prosecution, as discussed hereinabove, are once again examined, it can be said that the prosecution has failed to explain the injuries sustained by the accused. In fact, the Investigating Officer has specifically admitted about filing of the cross FIR/cross case and the fact that two accused have been admitted in the same hospital who



sustained injuries in the incident in question. The prosecution has failed to prove the genesis, manner and place of occurrence. There are major contradictions and inconsistencies in the deposition of the prosecution witnesses, including the injured eye-witnesses. Further, the medical evidence does not support the version given by the eye-witnesses. Further, all the circumstances against the accused were not put to them while recording statement under Section 313 of the Code.

26. In view of the aforesaid discussions, we are of the view that the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment of conviction and order of sentence against the appellants. Hence, the same are required to be quashed and set aside.

27. Accordingly, the appeals stand allowed. The impugned judgment of conviction dated 10.07.2018 and order of sentence dated 18.07.2018 passed by learned Vth Additional District & Sessions Judge, Purnea in connection with Sessions Trial No.562/2015, 368/2016 (Tr. No.01/2016), arising out of Purnea (Sadar) P.S. Case No. 309/2015 are quashed and set aside and the appellants are acquitted of the charges levelled



against them by the learned Trial Court.

27.1. The appellants of Criminal Appeal (DB) No.1004 of 2018, namely, Md. Matiur Rahman @ Matiur Rahman and Md. Zamilur Rahman @ Jamirul and appellant of Criminal Appeal (DB) No.1009 of 2018, namely, Md. Anisur Rahman @ Anisur Rahman are on bail. They are discharged from the liabilities of their respective bail-bonds.

27.2. Since the appellant of Criminal Appeal (DB) No.214 of 2019, namely, Md. Mursalim is in jail, he is directed to be released from jail custody forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2024
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