

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.672 of 2019

Arising Out of PS. Case No.-56 Year-2009 Thana- SOHSARAI District- Nalanda

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1. BIHARI @ SHATRUGHAN AND ANR Son of- Ashok Mistri Resident of Mohalla-Mugal Kuwan Baulipar, P.S.- Sohsarai, District- Nalanda.
 2. Pintu Kumar Son of- Shadanand Tanti Resident of Mohalla-Mugal Kuwan Baulipar, P.S.- Sohsarai, District- Nalanda.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Prasad, Adv.

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

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

Date : 22-07-2025

Heard Mr. Sanjay Prasad, learned counsel for the appellants, as well as Mrs. Anita Kumari Singh, learned Additional Public Prosecutor.

2. The present appeal has been preferred against the judgment & order dated 10.01.2019 passed by the court of Mr Ram Pratap Asthana, the learned 1st Fast Track Court, Nalanda at Bihar Sharif in ST No 478/10 arising out of Sohsarai PS case no. 56/09 whereby and whereunder, the appellants have been sentenced to undergo S.I of six months for the offence u/s 323 of IPC & also, sentenced to undergo S.I of three years & a fine of Rs 5000/ for the offence u/s 325 of IPC and in default of payment of fine, both the accused shall further to undergo of



three months. Both sentence shall run concurrently.

3. According to FIR, the son of the informant, Nitesh Kumar @ Nikki Kumar, went from his house with Mukesh (PW-1) and Sonu Kumar (PW-2). When the informant reached his house at about 09:30 P.M., he came to know that his son was lying in an injured condition near the bridge at *Kishan Cinema, Sohsarai*. He went there and found his son in an injured condition. The injured had suffered injuries on his hand, back and waist and his left hand was fractured. The injured was brought to the hospital. It has been mentioned in the FIR that some days prior to the occurrence, the appellant threatened the injured alleging that the injured had not supplied watermelon to him. The injured sell watermelon on *Thela*.

4. On the basis of the *fardbeyan* of the informant, the formal FIR (Exhibit-3) was drawn up. Thereafter, the investigation was carried out and the investigating authorities submitted the chargesheet on 29.07.2009 against the appellants under Sections 341, 323, 324, 325, 307, 507/34 of the Indian Penal Code. Thereafter, cognizance was taken and the case was committed to the Court of Sessions. The charges were framed against the appellants on 07.04.2011 for the offences punishable under Sections 307/34 and 325/34 of the IPC, to which the



appellants pleaded not guilty and claimed to be tried.

5. In order to substantiate the charges, the prosecution has examined 8 witnesses:-

(i) PW-1 Mukesh Kumar and PW-2 Sonu Kumar are the persons who accompanied the injured, according to statement of the informant in the FIR. Both these witnesses did not support the prosecution case, rather, their evidence is in favour of the appellants. Both these witnesses have stated that Nitish Kumar @ Nikki Kumar never became injured. They have also stated that Nikki Kumar was addicted to liquor and used to quarrel.

(ii) PW-3 Renu Devi is mother of the injured. She is not an eyewitness. She has stated that she heard that her son was lying near *Kishan Cinema*. She went to the place of occurrence with her husband (PW-7) and saw her son in an unconscious state. They brought him to Sadar Hospital, from where he was referred to PMCH, Patna. She has stated further that the appellants were demanding ransom for providing permission to her son to sell watermelon and due to non-payment of ransom, the appellants had threatened her son.

In paragraph no. 3 of her deposition, this witness has stated that during her statement before the investigating



authority, she had stated that the appellants had abused and threatened her son for not supplying the watermelon to him.

(iii) PW-4 Sanni Kumari, who is sister of the injured Nikki Kumar, is also not an eye witness. She heard that the appellants, after assaulting the injured, had dragged him near the Cinema Hall. This witness, along with her mother, father and brother, went to the place of occurrence and found the injured. Firstly, he was shifted to Sadar Hospital. She has stated further that the appellants were in the habit of taking watermelon from the injured without paying money and had also demanded ransom. On demand of money for watermelon, not only they refused to pay but also assaulted the injured.

(iv) PW-5 Manish Kumar is brother of the injured. His deposition before the Court is exactly similar to that of PW-4. He also is a hearsay witness.

(v) PW-6 Nitish Kumar @ Nikki Kumar is the injured himself. He deposed that the appellants had demanded ransom from this witness. Due to non-payment of ransom, some hot discussion had taken place and they assaulted the injured. He suffered a fractured injury in his hand and also suffered injuries in his waist, abdomen, etc.

During his deposition in the Court, he displayed



the marks of injury on his person to the Court.

(vi) PW-7 Bechan Prasad is father of the injured, and informant of this case. He has stated that he went to the place of occurrence with his wife, son Manish Kumar, daughter Sanni Kumari, and some villagers. He saw his son lying beneath a bridge in an injured condition. The injured was brought to the hospital and after regaining consciousness, he disclosed that the appellants had assaulted him.

(vii) PW-8 Dhirendra Kumar Pandey is the then SHO of Police Station Sohsarai, in whose handwriting Exhibit-1, the formal FIR, was drawn up. This witness proved his signature on the formal FIR.

(viii) Sole witness, DW-1 Brahmadeo Tanti has been examined on behalf of the defence, who stated that the injured suffered the injury in course of escaping by falling from the roof.

6. After conclusion of the prosecution witnesses, the statement of the appellants was recorded under Section 313 of the CrPC on 12.09.2018. They pleaded their innocence and denied the incriminating materials and the evidence adduced by the prosecution during the trial.

7. Learned counsel for the appellants has submitted



that almost all the witnesses, except PW-6, are hearsay witnesses. The informant (PW-7), in his *fardbeyan*, has stated that the injured went from his house with PW-1 Mukesh Kumar and PW-2 Sonu Kumar, and soon thereafter, he was found beneath a bridge near the Cinema hall in injured condition. PW-1 Mukesh Kumar and PW-2 Sonu Kumar did not support the prosecution case; rather, their evidence is against the prosecution itself. Both these witnesses stated that Nitish Kumar @ Nikki Kumar never suffered any kind of injuries. They have also stated that Nikki Kumar was addicted to liquor and used to quarrel with persons of the locality. The second submission of the learned counsel is that the injury report has not been brought on the record by the prosecution, which was essential for substantiating the charges levelled against the appellants. He has further submitted that the co-ordinate Bench of this Court, in the case of *Jai Govind Singh & Ors. Vs. State of Bihar (Cr. Appeal (SJ) No. 251 of 1995)*, has held that in absence of the x-ray report, the injury suffered by the victim was not proved. His further submission is that there are material contradictions in the statements of the witnesses; some witnesses have stated that the appellants were demanding ransom from the injured, whereas some witnesses have stated that the appellants were in the habit



of consuming watermelon by taking them from the *Thella* of the injured. He has next submitted that the investigating officer has also not been examined in this case. He has also relied upon the judgment of co-ordinate Bench of this Court *in the case of Ram Bilash Rai and Ors. Vs. State of Bihar (Cr. Appeal (SJ) No. 197 of 1998)*. At paragraph no. 12 of the judgment, the co-ordinate Bench has held that neither the injury report has been proved nor the place of occurrence has been established, and the non-examination of the I.O. has caused prejudice to the defense. The case of Ram Bilash Rai (supra) is on exactly similar footing to the present case.

8. On the other hand, Mrs. Anita Kumari Singh, learned APP for the State has submitted that the witnesses are consistent in deposing that the appellants had assaulted and made Nitesh Kumar @ Nikki Kumar badly injured, and he suffered fractured injuries but, the learned APP fairly conceded the fact that the injury report was not brought on the record and non-examination of the doctor seriously prejudices the appellants. There is no eyewitness and the persons, who are said to have accompanied the appellants, did not support the prosecution case. The guilt of the appellants is not proved beyond all shadows of reasonable doubts and they are entitled to



the benefit of doubts.

9. Considering the above-mentioned facts and circumstances and taking into account the submissions advanced on behalf of the parties, the judgment of conviction and order of sentence dated 10.01.2019 passed by Sri Ram Pratap Asthana learned Ist Fast Track Court, Nalanda at Biharsharif in S.T. No. 478/10 arising out of Sohsarai P.S. Case No. 56/09 are set aside and consequently, the appeal is allowed.

10. Since the appellants are already on bail, they are discharged from the liabilities of their bail bonds.

(Nawneet Kumar Pandey, J)

Nirmal/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	24.07.2025
Transmission Date	24.07.2025

