

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1199 of 2019

Arising Out of PS. Case No.-62 Year-2010 Thana- MOTIHARI MUFASIL District- East Champaran

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1. JAWAHAR SAH @ JAWAHAR PRASAD Son of Late Kishuni Sah. Resident of Village- Lakhaura Bichhla Tola, P.S.- Muffasil Lakhaura, District- East Champaran, Motihari.
 2. Dwarpali Sah @ Dwarpali Prasad @ Prasad, Son of Jawahar Sah @ Jawahar Prasad, Resident of Village- Lakhaura Bichhla Tola, P.S.- Muffasil Lakhaura, District- East Champaran, Motihari.
 3. Hareram Prasad, Son of Gyanchand Sah @ Gyanchandra Prasad Resident of Village- Lakhaura Bichhla Tola, P.S.- Muffasil Lakhaura, District- East Champaran, Motihari.
 4. Mahasundari Devi @ Mahasundri, Wife of Jawahar Sah @ Jawahar Prasad, Resident of Village- Lakhaura Bichhla Tola, P.S.- Muffasil Lakhaura, District- East Champaran, Motihari.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (SJ) No. 1430 of 2019

Arising Out of PS. Case No.-62 Year-2010 Thana- MOTIHARI MUFASIL District- East Champaran

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1. GAMBHIRA SAH @ GAMBHIRA PRASAD @ PRASAD Son of Jawahar Sah Resident of Village - Lakhaura Bichhalal Tola , P.S.- Muffasil Lakhaura, Distt.- East Champaran at Motihari.
 2. Mahesh Prasad @ Mahesh Sah Son of Gyan Chand Sah @ Gyan Chand Prasad Resident of Village - Lakhaura Bichhalal Tola , P.S.- Muffasil Lakhaura, Distt.- East Champaran at Motihari.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1199 of 2019)

For the Appellants	:	Mr. Dr. Rajesh Kumar Singh, Senior Advocate
For the Respondent/s	:	Ms. Abha Singh, APP
For the informant	:	Mr. Umesh Chandra Verma, Advocate
		Mr. Abhishek Kumar, Advocate
		Mr. Rashmi Jha, Advocate



Mr. Hemant Ray, Advocate

(In CRIMINAL APPEAL (SJ) No. 1430 of 2019)

For the Appellant : Mr. Birendra Kumar Singh, Advocate

For the Respondents : Mr. Syed Ashfaq Ahmad, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
COMMON ORAL JUDGMENT**

Date : 24-03-2025

Since both these appeals arise out of the same judgment and order of conviction and the order of sentence, therefore they are being disposed of by this common judgment and order.

2. As the appellant no.4 of Criminal Appeal No.1199 of 2019 has already died, the aforesaid appeal stands abated as against her.

3. In these appeals, the appellants have challenged the judgment of conviction dated 17.01.2019 and the order of sentence dated 07.02.2019 passed by the learned 6th Additional District & Sessions Judge, East Champaran, Motihari, in Sessions Trial No.378 of 2011, arising out of Muffasil P.S. Case No.62 of 2010, whereby the appellants have been convicted under section 307 and 380 read with section 34 of the Indian Penal Code (for short “ I.P.C.”). For the offence under section 307/34 of the I.P.C., the appellants have been sentenced to undergo rigorous imprisonment for ten years and fine of Rs.10,000/- each, in case of default of payment of fine, they will further undergo simple imprisonment for three months.



For the offence under section 380/34 of the I.P.C., the appellants have been sentenced to undergo rigorous imprisonment for five years and fine of Rs.5,000/- each, in case of default of payment of fine, they will further undergo simple imprisonment for two months. Both the sentences were directed to run concurrently.

4. The informant, in his written application, has stated that on 17.04.2010 at 9:30 A.M while he was going to repair his old *Berhi* (bamboo made grain house) which was situated in front of his house, his agnates i.e. the appellants herein opposed the same and started abusing the informant. In the meantime, the appellant - Mahesh Prasad came from his house holding *lathi* and threatened to kill him and thereafter assaulted Ram Binay Kumar with *lathi*. Thereafter, the wife of appellant - Jawahar Sah came out from her house holding *lathies* and *bhala* and gave the same to the appellants namely, Jawahar Sah, Gambhira Prasad, Dwarpali Prasad and Hareram Prasad and ordered them to kill the informant. Upon which, all the accused persons entered into the house of the informant and assaulted him. When the wife of informant namely, Chandrawati Devi came to save the informant, all the accused persons assaulted her with *lathi* and Gambhira Prasad assaulted the wife of the informant with *Bhala* with an intention to kill her.



Thereafter, all the accused persons assaulted the informant with *lathi*. When the villagers assembled upon hearing the *hulla*, the appellants broke the lock of iron box and took away ornaments and cash. It is stated that Nageshwar Prasad, Munsif Sahni, Sunil Kumar and other villagers have seen the occurrence. It is further stated that thereafter written application to the police for lodging the F.I.R.

5. On the basis of the aforesaid written complaint, Muffasil P.S. Case No.62 of 2010 for the offences under sections 341, 323, 324, 307, 380, 448, 504 and 506/34 of the I.P.C. was registered on 18.04.2010. Upon completion of the investigation, charge-sheet dated 30.06.2010 was submitted against the appellants under sections 147, 148, 149, 447, 504, 341, 323, 324, 307, 380 and 506 of the I.P.C.

6. After submission of the charge-sheet, the learned Magistrate took cognizance against the appellants under the aforesaid sections. Thereafter, the case was committed to the Court of Sessions on 18.05.2011. By order dated 21.02.2012, all the appellants were charged for the offence under section 307/34 of the I.P.C. whereas, appellant Gambhira Prasad and Mahesh Prasad were further charged for offence under section 380 of the I.P.C.



7. During the course of trial, altogether seven witnesses were examined in support of the prosecution case, which are as under :-

P.W.-1	Sunil Kumar (son of the informant, eye witness)
P.W.-2	Ram Vinay Kumar (son of the informant and injured)
P.W.-3	Nageshwar Prasad
P.W.-4	Chandrawati Devi (wife of the informant and injured)
P.W.-5	Paras Sah (informant)
P.W.-6	Dr. Arsad Zeb Md. Kamal
P.W.-7	Devendra Prasad Singh (Investigating Officer)

8. Apart from the oral evidences, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows:-

Exhibit- 1	Signature of Paras Sah on written application
Exhibit- 1/1	Signature of Sunil Kumar over written application
Exhibit- 1/2	Signature of Nageshwar Prasad over written application.
Exhibit- 2	Police requisition of Chandrawati Devi
Exhibit- 2/1	Police requisition of Paras Sah
Exhibit- 2/2	Police requisition of Ram Binay Kumar
Exhibit- 3	Injury report of Chandrawati Devi
Exhibit- 3/a	Injury report of Paras Sah
Exhibit - 3/b	Injury report of Ram Binay Kumar

9. During the course of trial, the defence has examined one Magni Rai as D.W.-1, who is a formal witness and has proved the certificate of attendance issued by Mukhiya as Exhibit-G.



10. The defence has also produced the following documents :-

Exhibit-A	Admission Card of Dwarpali Kumar
Exhibit-A/1	Photocopy of programme of T.D.C. part -I & II examination, 2010.
Exhibit- B	Photocopy of letter no.234 dated 28.04.2009 of District Jan Sikayat Kosang.
Exhibit-B/1	Photocopy of report of the Block Development Officer, Motihari vide letter no.56 dated 19.01.2009.
Exhibit-B/2	Photocopy of application no.1510980/02.
Exhibit-C	Certified copy of ordersheet dated 09.12.2010 passed in T.S. No.74 of 2009 by Munsif, Sadar Motihari.
Exhibit-D	Certified copy of ordersheet dated 16.01.2012 passed in Misc. Appeal No.02 of 2011.
Exhibit-D/1	Certified copy of ordersheet dated 20.08.2011 passed in Misc. Appeal No.02 of 2011.
Exhibit-E	Certified copy of Commissioner report in T.S. No.74 of 2009.
Exhibit-F	Certified copy of informatory petition no.4743M /2009.
Exhibit-G	Letter no.09 dated 19.04.2010 issued by Mukhiya Gram Panchayat Raj Akadari-7.
Exhibit-H	Marksheet of Dwarpali Kumar and signature of I.O. Upendra Sah Vidyarthi on written petition marked as “X” for identification.

11. After completion of prosecution evidence on 17.12.2016, the statement of the appellants were recorded under section 313 of the Code of Criminal Procedure on 04.01.2017, in which the appellants denied the allegation and stated that they are innocent and has falsely been implicated in the present case.

12. The trial court, upon appreciation of the



evidences adduced at the trial, has found the appellants guilty of the offences and has sentenced them to imprisonment and fine, as noted above, by its impugned judgment and order.

13. Learned Senior Counsel for the petitioners submits that as per the prosecution case, the occurrence is said to have taken place on 17.04.2010 at 9:30 A.M. but the F.I.R has been lodged lodged on 18.04.2010 at 10:15 A.M. He further has drawn the attention of this Court to the depositions of P.Ws.1, 2, 4 and 5. P.W.-1 Sunil Kumar has stated in his deposition at paragraph no.2 that soon after the occurrence the injured persons were taken to the Police Station where the written report was handed over to the Police. P.W.-2 Ram Binay Kumar has stated in his deposition at paragraph no.2 that he had given the statement at the police station. P.W.-4 Chandrawati Devi has stated in her deposition at paragraph no.7 that her statement was recorded at the police station. The informant namely, Paras Sah (PW-5) has stated in his deposition at paragraph no. 2 that when they all reached the police station it was P.W.-I Sunil Kumar who had prepared the written report.

14. Learned Senior Counsel for the petitioners has further drawn the attention of this Court to the deposition of the Investigating Officer (P.W.-7), who in his deposition at



paragraph no. 6 has stated that he had received the written report at 10:30 A.M. at the place of occurrence and has further stated that the written report was prepared/written by P.W.-1 Sunil Kumar, who is none other than the son of the informant. However, P.W.-1 Sunil Kumar in his deposition at paragraph no.11 has completely denied to be the author of the said written report. He has further stated that he does not know who had written the aforesaid written report.

15. It has been submitted by learned Senior Counsel for the appellants that the prosecution witnesses have stated that the written report was handed over to the Police in the police station itself but the Investigating Officer (P.W.-7) has stated that he received the written report at 10:30 AM at the place of occurrence and further P.W.-2 and P.W.-4 have not even whispered about the written report but have stated that their oral statements was recorded at the police station.

16. Therefore, it is emphasized by the learned Senior Counsel that the moot point is that if the written report was prepared and handed over to the police on 17.04.2010 then why the formal FIR was lodged on 18.04.2010. However, the F.I.R. was received in Court on 21.04.2010 i.e. after delay of 3 days without any justification and therefore, the learned Senior



Counsel argues that the present F.I.R. appears to be ante-timed and ante-dated and under the aforesaid circumstances, the authenticity and genuineness of the F.I.R. is doubtful.

17. Learned Senior Counsel for the appellants has relied upon the decision of the Hon'ble Supreme Court rendered in the case of *Marudanal Augusti vs. State of Kerala* reported as *1980 SCC (Cri) 985* to drawn strength for his argument that while deciding a case which involves a question of delayed dispatch of an F.I.R. to the Magistrate, such delay would throw serious doubts on the face of the prosecution.

18. It has next been argued by learned Senior Counsel for the appellants that as per the F.I.R. the appellant - Gambhira Prasad assaulted Chandrawati Devi (P.W.-4) with a *bhala* which pierced her right hand and came out from the other side and thereafter, second blow of *bhala* was inflicted on her head. Further, P.W.-1 Sunil Kumar has stated in his deposition at paragraph no.1 that Gambhira Prasad had assaulted P.W.-4 with *bhala* on her hand. However, this witness i.e. P.W.-1 has not even whispered about repetition of blow on the head of P.W.-4.

19. The learned Senior Counsel has also adverted to the deposition of P.W.-2 Ram Binay Kumar, who has stated in para 1 of his deposition that Gambhira Prasad assaulted P.W.-4



with *bhala* on her hand but this witness has deposed regarding the assault that all the accused persons have assaulted P.W.-4 on her head.

20. The learned Senior Counsel for the appellants has emphasized that P.W.-3 Nageshwar Prasad has in fact come up with a different story and has stated in paragraph no.1 of his deposition that it was Dwarpali Prasad, who had assaulted P.W.-4 with a *bhala* on her hand and has not stated anything about repetition of *bhala* blow.

21. Learned Senior Counsel for the appellants has also drawn the attention of this Court to the deposition of P.W.-4 Chandrawati Devi, who has stated at paragraph no.1 of her deposition that it was Jawahar Prasad who had assaulted her with *lathi* on her head and it was Gambhira Prasad who had assaulted with *bhala* on her hand. The P.W.-5 (informant) has stated at paragraph no.1 of his deposition that it was Jawahar Prasad, who assaulted his wife with *lathi* on her head and it was Gambhira who inserted the *bhala* in her right hand.

22. Learned Senior Counsel for the appellants has next submitted that in this case Dr Arsad, has been examined as P.W.-6, who has found a total of four injuries on the body of P.W.-4 Chandrawati Devi. This witness has stated at



paragraph no.1 of his deposition that injury no.1 is lacerated wound on right perito temporal region caused by hard and blunt substance whereas, injury nos.2 to 4 are on the right forearm, which are incised wounds caused by sharp cutting substance. All the four injuries were found to be simple in nature.

23. Learned Senior Counsel for the appellants has laid emphasis on the fact that as per the prosecution story, there was no use of any sharp cutting object by any of the appellants in the alleged occurrence. However, the Doctor who has examined P.W.-4 has found as many as 3 injuries sustained by a sharp cutting weapon. Even, the manner of occurrence as stated by the prosecution witnesses suffers from serious infirmities.

24. Learned Senior Counsel for the appellants has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ram Narain Singh vs. The State of Punjab*** reported as ***1975 SCC (Cri) 571*** wherein it has been held that if the evidence of the witness for the prosecution is inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. Therefore, it has been submitted that in the present case also, there is an inconsistency



between the evidence adduced by the witnesses and the medical evidence, such incongruity would be fatal for the case of the prosecution.

25. The next submission of learned Senior Counsel for the appellants is that all the prosecution witness i.e. P.W. 1 to P.W.-5 have consistently stated in their evidence that blood was oozing out from the body of the injured persons and blood had spilled at the place of occurrence. P.W.-2 Ram Binay Kumar has made a specific statement at para 10 of his deposition that a pool of blood from the three injured persons had spilled at the place of occurrence.

26. Learned Senior Counsel for the appellants has adverted to the deposition of P.W.-7 Devendra Prasad Singh (Investigating Officer), who in his evidence has not stated anything about the presence of even a single drop of blood at the place of occurrence. There is no seizure list of blood-soaked earth soil or bloodstained clothes of the injured. Further, the Investigating Officer, who had reached the place occurrence soon after the occurrence had taken place, has not found any mark of violence at the aforesaid place of occurrence. He has not even made any seizure in respect of the broken lock. Hence, the prosecution has miserably failed to prove the place of



occurrence.

27. It is next argued by learned Senior Counsel for the appellants that from the statement of the appellants recorded under section 313 Cr.P.C. it appears that exactly the same set of questions/circumstances have been put to all the appellants. No specific questions regarding which weapon was used, who assaulted whom, which part of the body was assaulted, about the place of occurrence, the genesis of occurrence and also the manner of occurrence have been put to any of the appellants. Hence, the appellants were not put to incriminating questions and they were denied the opportunity to give plausible explanation regarding the same.

28. On this point, learned Senior Counsel for the appellants has relied upon the following decisions of the Hon'ble Supreme Court:-

(i) *Sujit Biswas vs State of Assam* reported as (2013) 12 SCC 406;

(ii) *Indrakunwar vs State of Chattisgarh* reported as 2023 Live Law (SC) 932;

(iii) *Anand Ramachandra Chougale vs. Sidarai Laxman Chougale* reported as (2019) 8 SCC 50.



29. Lastly, it has been submitted by learned Senior Counsel for the appellants that the false implication of the appellants cannot be ruled out as admittedly, the informant and appellants side are close agnates and are from same family and share a common ancestral house, which is apparent from the deposition of P.W.-3 Nageshwar Prasad. Further, P.W.-1 has stated at para 3 of his deposition that the dispute is not of the land where *Berhi* is situated but of Khesra No.3009. This fact has also been reiterated by P.W.-2 Ram Binay Kumar in his deposition. He has additionally admitted that house of the appellants is also in Khesra No. 3009 and both the parties have share in Khesra No.3009. The P.W.-3 Nageshwar Prasad has stated at para 3 of his deposition that the dispute is of *Berhi* land. The P.W.-5 Paras Sah (informant) has stated at para 7 of his deposition that total area of ancestral house in Khesra No. 3009 is 2 *Katha* and 3 *Dhur* and his share is only 1.5 *dhur* in Khesra No.3009.

30. Moreover, it is admitted by the prosecution that for the same occurrence, one Gyan Chand had also filed a counter-case against the prosecution side. There is absolutely no investigation on the point of ownership of *Berhi*. Not a single independent witness of the village has been examined in the



present case. The appellants Dwarpali Prasad and Gambhira Prasad are in Government service and they have been maliciously dragged in this case by the informant side for wreaking vengeance. In fact, the appellant Gambhira Prasad was not even present at the place of occurrence at relevant time for which, D.W.-I Mangani Rai has been examined who has proved Exhibit-G.

31. Learned APP for the State and learned counsel for the informant have supported the impugned judgment of conviction and order of sentence by submitting that the offences have been proved beyond reasonable doubt and therefore, there is no occasion for this Court to interfere with the impugned judgment of conviction and order of sentence.

32. I have considered the submissions of the parties and perused the materials on record.

33. It is not in dispute that the written report was prepared on 17.04.2010 and the formal F.I.R. was lodged on 18.04.2010. The F.I.R. was received in the Court below on 21.04.2010 i.e. after a delay of three days and there is no justification or explanation for the same forthcoming from the prosecution.

34. The Hon'ble Supreme Court in the case of



Marudanal Augusti vs. State of Kerala (supra) has held that delayed dispatch of the F.I.R. to the Magistrate would throw serious doubt on the case of the prosecution since any unexplained delay could cast apprehension for the Court to consider the possibility of improvement or distortions to the case of the prosecution. Therefore, where the F.I.R. appears to be ante-dated the entire fabric of the prosecution case would crumble and collapse.

35. In my opinion, the F.I.R. is ante-dated and ante-timed because in the present case the written report was prepared on 17.04.2010 and the formal F.I.R. was lodged on 18.04.2010 and the F.I.R. was received in the Court below on 21.04.2010 i.e. after a delay of three days. Since the delay remains unexplained, this unexplained delay to dispatch the F.I.R. to the Magistrate together with the conflicting statements of the witnesses regarding the written report and registration of the F.I.R casts serious doubts on the case of the prosecution which could not be brushed aside.

36. As per the version, as narrated in the F.I.R., it was appellant Gambhira Prasad who assaulted Chandrawati Devi (P.W.-4) with a *bhala* which pierced her right hand and second blow was given on her head. Sunil Kumar (P.W.-1, son



of the informant and eye witness) has said that appellant Gambhira Prasad had assaulted Chandrawati Devi (P.W.-4) with a *bhala* on her hand however, this witness did not say anything about the second blow of *bhala* on the head of the injured. Ram Binay Kumar (P.W.-2), son of the informant and injured, has said that appellant Gambhira Prasad had assaulted Chandrawati Devi (P.W.-4) with *bhala* on her hand however, this witness thereafter states that it was all the accused persons who had assaulted Chandrawati Devi (P.W.-4) on her head. However, Nageshwar Prasad (P.W.-3) has come up with a different version and states that it was appellant Dwarpali Prasad who had assaulted Chandrawati Devi (P.W.-4) with *bhala* and this witness has also not said anything about any repetition of *bhala* blow by appellant Dwarpali Prasad on P.W.-4. Pertinently, Chandrawati Devi (P.W.-4), the injured witness, herself had said that it was appellant Jawahar Prasad who had assaulted her with *lathi* on her head and appellant Gambhira Prasad had assaulted her with a *bhala* on her right hand. Dr. Arsad (P.W.-6), who had examined the injured, has said that the injury no.1 on the right perito-temporal region was caused by a hard and blunt substance whereas, injury nos. 2 to 4 on the right forearm are incised wounds caused by sharp cutting substance and most



importantly all the injuries were found to be simple in nature.

37. According to the injury report, the injuries have been caused by sharp cutting weapon and if *bhala* is treated to be a sharp cutting weapon but only simple injuries are alleged to have been caused by the accused persons. Moreover, different witnesses have given conflicting versions of the prosecution story. They have improved upon the version in the trial. There are discrepancies in the statement of the witnesses regarding specific assailant who had assaulted P.W.-4, weapon used by the appellants as well as the place of injury sustained by P.W.-4.

38. The Hon'ble Supreme Court in the case of *State of Uttarakhand vs. Darshan Singh* reported as (2020) 12 SCC 605, after considering various precedents on the question of conflict between medical evidence and ocular testimony, including the case of *Ram Narain Singh (supra)* has held as follows:-

“43. In *Abdul Sayeed v. State of M.P.* [*Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262], this Court discussed elaborately the case law on the subject of conflict between medical evidence and ocular evidence: (SCC pp. 272-74, paras 32-39)

“*Medical evidence versus ocular evidence*

32. In *Ram Narain Singh v. State of Punjab* [*Ram Narain Singh v. State of Punjab*, (1975) 4 SCC 497 : 1975 SCC (Cri) 571] this Court held that where the evidence of the witnesses for the prosec-



ution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case.

33. In *State of Haryana v. Bhagirath* [State of Haryana v. Bhagirath, (1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

‘15.The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.’

- 34.Drawing on *Bhagirath* case[State of Haryana v. Bhagirath, (1999) 5 SCC 96 : 1999 SCC (Cri) 658], this Court has held that where the medical evidence is at variance with ocular evidence,

‘it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the “variable” keeping the medical evidence as the “constant”.’

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for



its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

'21. ... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.'

[Vide Thaman Kumar v. State (UT of Chandigarh) (2003) 6 SCC 380 : 2003 SCC (Cri) 1362 and Krishnan v. State (2003) 7 SCC 56 : 2003 SCC (Cri) 1577 at SCC pp. 62-63, para 21.]

36. *In Solanki Chimanbhai Ukabhai v. State of Gujarat (1983) 2 SCC 174 : 1983 SCC (Cri) 379 this Court observed: (SCC p. 180, para 13)*

'13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.'

37. *A similar view has been taken in Mani Ram v. State of U.P. 1994 Supp (2) SCC 289 : 1994 SCC (Cri) 1242, Khambam Raja Reddy v. Public Prosecutor (2006) 11 SCC 239 : (2007) 1 SCC (Cri) 431 and State of U.P. v. Dinesh (2009) 11 SCC*



566 : (2009) 3 SCC (Cri) 1484] .

38. *In State of U.P. v. Hari Chand* (2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112, this Court reiterated the aforementioned position of law and stated that: (SCC p. 545, para 13)

‘13. ... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.’

39. *Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.” (emphasis in original)*

39. In the present case, the statements of the witnesses are conflicting to the degree that they become irreconcilable with the medical evidence. Therefore, the inconsistency in the statements of the prosecution witnesses coupled with the medical evidence regarding the injuries create a doubt on the prosecution case, and based on such conflicting statements the appellants could not be convicted. Moreover, from the evidence of the Investigating Officer (P.W.-7), it appears that he has not collected any blood-soaked earth soil or blood-stained cloths of the injured from the place of occurrence. The Investigating Officer has also not seized the weapons i.e. *bhala* and *lathi* (stick) from the accused persons. The broken



lock has also not been seized. Therefore, in absence of such seizure the case of the prosecution further weakens.

40. So far as the statement of the accused persons recorded under section 313 of the Cr.P.C. is concerned, the same set of questions have been put to all the accused persons and specific circumstances with respect to each accused with regard to specific allegation were not put to them.

41. The Hon'ble Supreme Court in the case of ***Raj Kumar vs. State (NCT of Delhi)*** reported as ***(2023) 17 SCC 95*** after considering various judicial precedents had culled out the basic principles of law as under :-

“15. Therefore, we will have to consider the effect of the aforesaid omission on the part of the trial court. The law on this aspect is no longer res integra. Apart from the decisions relied upon by the learned counsel representing the parties, there are other important decisions on this aspect. The first relevant judgment is of a Bench of four Hon'ble Judges of this Court in Tara Singh v. State 1951 SCC 903 : 1951 SCC OnLine SC 49]. The Court considered the provision of Section 342 of the Code of Criminal Procedure, 1898 (for short “CrPC, 1898”). Section 313 CrPC and Section 342CrPC, 1898 are in pari materia. In para 18, this Court held thus:-

“18. It is important therefore that an accused should be properly examined under Section 342 and, as their Lordships of the Privy Council indicated in Dwarkanath Varma v. King Emperor 1933 SCC OnLine PC 11 : AIR 1933 PC 124] ,if a point in the evidence is considered important against the accused and the conviction is intended



to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in the Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of Section 342 should be fairly and faithfully observed."

(emphasis supplied)

16. Again in para 23, this Court held thus :-

"23. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him". Now, it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section."

17. The second important decision on this aspect is the decision of a Bench of three Hon'ble Judges of this Court. This is a decision in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973) 2 SCC 793 : 1973 SCC (Cri) 1033]. In para 16 of the de-



cision, this Court examined the issue of non-compliance with the requirements of Section 342 CrPC, 1898. Para 16 reads thus : (SCC pp. 806-807)

“16.The discovery of incriminating materials pursuant to confessions made by the accused constitutes the third category of evidence. Obviously, the confessions are inadmissible but the discoveries are, provided they are pertinent to the guilt of the accused. So far as Accused 2 is concerned, his statement resulted in the discovery of a knife (Vide Panchnama, Ext. 13). Of course, knives were discovered long ago and not now but this knife lay buried and was recovered by the accused from a pit in the corner of a wall of his house. There was human blood on the blade of the knife, MO 5/1 according to the chemical analyst's report. The second accused's clothes also were picked up by him pursuant to his statement. He had worn a shirt and pants on the day of occurrence and PW 13, a neighbour deposes that the second accused had come to him at about 6 p.m. on the Monday when Hariba died and had mentioned to him that since his own house was locked he might be permitted to keep his clothes in the witnesses house. Thereafter he left his clothes under an empty khokha from where he himself took them out when he later came in the company of the police. There are blood-stains on the clothes and it is found by the chemical examiner that the blood on the pants are of the same blood group as that of the deceased. When the second accused was asked under Section 342 CrPC about the report of the chemical examiner noticing blood stains on the shirt, MO 5/2 and of human blood on the blade of the knife, MO 5/1, he merely answered, “I do not know”. He also described as false the fact



of his recovering the clothes and the knife. Bald denial notwithstanding, we are inclined to believe, with the learned Judges of the High Court, that the knife and the shirt have been identified as his and since he had recovered them, thereby making the police discover the fact, there was incriminating inference available against the said accused. We may notice here a serious omission committed by the trial Judge and not noticed by either court. The pants allegedly worn at the time of the attack by the second accused has stains of blood relatable to the group of the deceased. This circumstance binds him to the crime a little clear but it is unfortunate that no specific question about this circumstance has been put to him by the Court. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper



time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342 CrPC, the omission has not been shown to have caused prejudice to the accused. In the present case, however, the High Court, though not the trial court has relied upon the presence of blood on the pants of the blood group of the deceased. We have not been shown what explanation the accused could have offered to this chemical finding particularly when we remember that his answer to the question regarding the human blood on the blade of the knife was "I do not know". Counsel for the appellants could not make out any intelligent explanation and the "blood" testimony takes the crime closer to the accused. However, we are not inclined to rely over much on this evidentiary circumstance, although we should emphasise how this inadvertence of the trial court had led to a relevant fact being argued as unavailable to the prosecution. Great care is expected of the Sessions Judges who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of a long trial the Judge may be a little fagged out."(emphasis supplied)

18. Then we come to the decision of this Court in *S. Harnam Singh v.State (UT of Delhi)*, (1976) 2 SCC 819 : 1976 SCC (Cri) 324] . In para 22, this Court held thus :-

"22. Section 342 of the Code of Criminal Procedure, 1898, casts a duty on the court to put, at any enquiry or trial, questions to the accused for the purpose of enabling him to explain any circumstances appear-



ing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in evidence against the accused is required to be put to him specifically, distinctly and separately. Failure to do so amounts to a serious irregularity vitiating the trial if it is shown to have prejudiced the accused. If the irregularity does not, in fact, occasion a failure of justice, it is curable under Section 537, of the Code.”

(emphasis supplied)

19. Then we come to a decision in *Samsul Haque v. State of Assam*, (2019) 18 SCC 161 : (2020) 3 SCC (Cri) 596] relied upon by the learned counsel for the appellant. In paras 21 to 23, this Court held thus :-

“21. The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to Accused 9, and the statement recorded under Section 313 CrPC. To say the least it is perfunctory.

22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in *Asraf Ali v. State of Assam* (2008) 16 SCC 328 : (2010) 4 SCC (Cri) 278]. The relevant observations are in the following paragraphs

‘21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence



against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. *The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (UT of Delhi) (1976) 2 SCC 819 : 1976 SCC (Cri) 324] while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.'*

23. *While making the aforesaid obser-*



ventions, this Court also referred to its earlier judgment of the three-Judge Bench in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], which considered the fallout of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the accused's attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under Section 313 CrPC, the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed.”

(emphasis supplied)

20. xxxx

21. xxx

22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew



material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.” (emphasis supplied)

42. The prosecution on the aforesaid ground of non-recording of statements properly by not putting specific, distinctive and separate questions to each accused has caused prejudice to the accused by not giving them an opportunity to explain their specific defence.

43. In view of the aforesaid discussions, I am of the view that the prosecution has not able to prove its case



beyond reasonable doubt and therefore, the appellants deserve acquittal.

44. Accordingly, these appeals stand allowed. The impugned judgment of conviction dated 17.01.2019 and the order of sentence dated 07.02.2019 passed by the learned 6th Additional District & Sessions Judge, East Champaran, Motihari, in Sessions Trial No.378 of 2011, arising out of Muffasil P.S. Case No.62 of 2010, is hereby set aside.

45. The appellants are acquitted of all the charges levelled against them. The appellants are discharged from the liabilities of their bail bonds.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
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