

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.541 of 2003

Arising Out of PS. Case No.-92 Year-1990 Thana- SINGHESHWAR District- Madhepura

1. Dev Naraian Yadav S/o Late Chua Prasad Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
2. Muso Yadav S/o Late Mahabir Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
3. Subhash Yadav S/o Maheshwar Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
4. Maheshwar Yadav @ Maheshwari Yadav S/o Late Babuan Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
5. Bhumi Yadav S/o Dev Narain Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
6. Durakha Yadav S/o Late Mahabir Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
7. Gajendra Yadav S/o Durakh Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
8. Raghuni Yadav S/o Late Rameshwar Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
9. Bijendra Yadav S/o Durakh Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
10. Gurakh Yadav @ Gurak Yadav S/o Anirudh Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
11. Kamaleshwari Yadav S/o Late Mitai Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
12. Sabur Dutt Yadav @ Murdal Yadav S/o Late Bhogilal Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
13. Raneshwar Yadav S/o Late Jagdish Pd. Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
14. Upendra Yadav S/o Anirudh Prasad Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
15. Ram Bahadur Yadav S/o Dev Narain Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura
16. Shiv Narain yadav S/o Late Dunni Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura (Case against the appellant was abated vide Honourable Court Order dated 30-01-2025)
17. Milu Yadav S/o Sabur Dutt Yadav R/o vill - Sukhasan, P.s.- Singheshwar, Distt.- Madhepura



18. Sublal Yadav S/o Sabur Dutt Yadav R/o vill - Sukhasan, P.s.- Singheshwar,
Distt.- Madhepura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dharam Deepak Vishwas, Amicus Curie
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 27-02-2025

1. The appeal is arising out of the judgment of conviction and order of sentence dated 02.12.2003, passed by the Additional District and Sessions Judge, Fast Track Court No. 2, Madehpura, in Sessions Trial No. 207 of 1993, arising out of Singheshwar P.S. Case No. 92 of 1990, wherein all the appellants were convicted and sentenced to undergo simple imprisonment for a period of six months for the offences punishable under Section 323 r/w Section 149 of Indian Penal Code and appellant No. 12, Sabur Dutt Yadav, alone was sentenced to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 436 of Indian Penal Code.



2. The case of prosecution, in brief, is that on 16.08.1990, at about 6:00 A.M., all the appellants (18 in numbers) armed with lathi, danda, bhala, and farsa, reached the house of informant, Surendra Rishideo (P.W. 9), and started assaulting him along with Yogendra Rishideo (P.W. 7), Bouku Rishideo (P.W. 4), one Fulia Devi (not examined) and others. The informant ran towards his house; however, the accused entered the house of the informant, and later appellant No. 12, Subur Datt Yadav @Murdal Yadav, set fire to the house of Sitaram Rishideo. The fardbeyan of P.W. 9 dated 16.08.1990 at about 9 A.M which was recorded by ASI D.N. Prasad at village-Sukhasan Simrastola, Singeshwar police station, at state hospital in Singeshwar.

3. Basing on the said fardbeyan, a criminal case No. 92 of 1990 was registered against all the 18 accused/appellants for the offences punishable under Sections 147, 148, 149, 342, 448, 323, 324, 307 and 436 of Indian Penal code. Upon completion of the investigation, a charge-sheet was laid against all the appellants for the offences punishable under



Sections 147, 148, 149, 324, 323, 341, 342, 448, 307 and 436 of Indian Penal Code. The Learned Sub-Divisional Judicial Magistrate, Madhepura took cognizance for the said offences and committed the case to the Court of Sessions Judge, for trial on 10.05.1993. During the course of trial, the trial Court framed charges against all the appellants for the offences punishable under Sections 307 r/w 149 of Indian Penal Code and against appellant No. 12 alone, for the offence punishable under Section 436 of Indian Penal Code. The charges were read over and explained to the appellants in Hindi, to which the appellants pleaded not guilty and claimed to be tried.

4. On behalf of the prosecution, P.Ws. 1 to 9 were examined, and three exhibits were marked.

Prosecution witness No.	Prosecution witness name
P.W. 1	Amar Kumar
P.W. 2	Jiwachh Rishideo
P.W. 3	Yogeshwar Rishideo
P.W. 4	Bouku Rishideo
P.W. 5	Dr. Krishna Ballabh Yadav
P.W. 6	Deoki Nandan Prasad
P.W. 7	Yogendra Rishideo
P.W. 8	Kokoi Rishideo



P.W. 9	Surendra Rishideo
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Sl. No.	Exhibit	Exhibit Details
1	Ext. 1	Signature of Police In-charge Singeshwar, Deoki Nandan Prasad on the formal FIR
2.	Ext. 2	Injury report of Bouku Rishideo
3.	Ext. 2/1	Injury report of Kokai Rishideo
4.	Ext. 2/2	Injury report of Yogeshwar Rishideo
5.	Ext. 2/3	Injury report of Surendra Rishideo
6.	Ext. 2/4	Injury report of Yogendra Rishideo
7.	Ext. 2/5	Injury report of Jiwacch Rishideo
8.	Ext. 2/6	Injury report of Fuliya Devi
9.	Ext. 3	Signature of informant Surendra Rishideo on the fardbeyan
10.	Ext. 3/1	Signature of witness Hari Narayan on the Identification
11.	Ext. 3/2	Signature of witness Jiwacch Rishideo on the fardbeyan

5. On behalf of the defence, two witnesses were examined i.e. D.W. 1/ Janardan Prasad Yadav and D.W. 2/ Upendra Yadav.

6. On appreciation of the entire oral and documentary evidence on record, the trial Court convicted all the appellants for the offences punishable under Sections 323 r/w 149 of the Indian



Penal Code, and appellant No. 12 alone, was convicted under Section 436 of IPC as stated (supra).

7. Heard Mr. Dharam Deepak Vishwas, the Learned Amicus Curiae and Mrs. Anita Kumari Singh, the Learned Additional Public Prosecutor.

8. The points for determination in this appeal are (i) Whether the prosecution was able to prove the guilt of the appellants for the offences punishable under Section 323 r/w Section 149 of Indian Penal Code and for the offence punishable under Section 436 of Indian Penal Code against appellant No. 12. (ii) Whether the trial Court was right in convicting the appellants for the charged offences.

9. It is pertinent to mention that, as this is one of the oldest appeals pending on record. This Court sought information vide order dated 08.01.2025 from Superintendent of Police, Madhepura through the Learned Additional Public Prosecutor regarding status of the appellants. Accordingly, the Learned Additional Public Prosecutor received a letter from the Superintendent of Police,



Madhepura which clearly disclose that appellant No. 1 Deo Narain Yadav, appellant No. 4 Maheshwar Yadav, appellant No. 5 Bhumi Yadav, appellant No. 6 Durakh Yadav, appellant No. 12 Sabur Dutt Yadav and appellant No. 16 Shiva Narain Yadav died, and the rest of the appellants are alive. This Court has already abated the criminal appeal against the deceased appellant Nos. 1, 4, 5, 6, 12 and 16 vide its order dated 30.01.2025.

10. It is also important to note that this Court could not secure the presence of the Learned counsel for the appellants and was constrained to appoint as Amicus Curiae.

11. The point was framed as to whether the prosecution was able to prove the case against appellant No. 12 for the offence punishable under Section 436 of Indian Penal Code. However, the said point need not be discussed in this appeal, as the criminal appeal was abated against appellant No. 12. Further, as far as appellant Nos. 1, 4, 5, 6 and 16 are concerned, this Court need not discuss about their



overt acts in the present appeal, as the criminal appeal was also abated against them.

12. It is argued by the Learned Amicus Curiae that the incident took place on 16.08.1990 at 6:30 AM, and the FIR was registered at about 8:00 AM by P.W. 9 at the State hospital. However, there is no information as to how, the police came to know about treatment of the injured persons in the hospital. It is further contended that, as per the fardbeyan, one Fulya Devi was also injured in the same incident, but neither her oral evidence nor her injury report was placed before the Court to conclude that she also sustained injury in the said incident. He further contended that, according the evidence of P.W. 4, there are only six injured persons but according to fardbeyan and evidence of other witnesses, there were altogether seven injured persons in this case which indicates a discrepancy in the prosecution's evidence. It is also contended by the Learned Amicus Curiae that the FIR was marked through P.W. 1, an advocate clerk, who is a formal witness and did not have any knowledge about the



incident, which is fatal to the case of the prosecution. Therefore, prayed to set aside the judgment and order of conviction passed against the appellants.

13. On the other hand, the Learned Additional Public Prosecutor contended that the oral evidence of the P.W. 9/informant, P.Ws 2, 3, 4, 7 and 8 corroborates with the injury reports of the injured persons, who were treated by the doctor/P.W. 5. Further, the oral evidence of the injured witnesses corroborates with the testimony of the doctor, and hence, the trial Court has rightly convicted the appellants, for the said offences.

14. It is not necessary to re-appreciate the entire oral and documentary evidence. However, the evidence will be discussed to the extent required to determine the points of the appeal.

15. As contended by the Learned Amicus Curiae, P.W. 1 is an advocate clerk through whom, the FIR was marked. His evidence clearly disclose that Exhibit 1 is the formal FIR which was signed by Devki Nandan Prasad, who was in-charge of police station, Singeshwar. He specifically admitted in his



evidence that he had no personal information about the case and that the signatures of Devaki Nandan Prasad were not made before him.

16. It is pertinent to mention that followings are criteria for marking a document:-

In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:-

"It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :

(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and



(e) The document has been appropriately stamped, if so required by law.

17. *(i). In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.*

(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. 19 The mere production of a document is not sufficient for the document to be marked as an exhibit.

(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.

(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of



document alone will not give any right to read the contents of the documents or about the admissibility of the documents.”

18. Furthermore, Rule 58 of the Criminal Rules Of Practice and Circular Orders, 1990 envisages about marking of exhibits which reads as follows:-

“58 Marking of exhibits:-

(1) Exhibits admitted in evidence shall be marked as follows:-

(i) if filed by the prosecution with the capital letter ‘P’ followed by a numeral, P1, P2,P3 and the like;

(ii) if filed by defence with the capital letter ‘D’ followed by a numeral, D1, D2, D3 and the like;

(iii) in case of Court exhibits with the capital letter ‘C’ followed by a numeral C1, C2, C3 and the like;

(2) All the exhibits filed by the several accused shall be marked consecutively.

All material objects shall be marked in Arabic numbers in continuous series as M.O. 1, M.O.2 and M.O.3 and the like, whether exhibited by the prosecution or the defence or the Court.”



19. Admittedly, the trial Court did not follow the procedure and Rule 58 of Criminal rules of Practice while marking Exhibit 1

20. At this juncture, it is relevant to rely on the judgments of Hon'ble Division Bench of this Court in the case of **Sukhi Yadav v. The State of Bihar** reported in **2014 SCC OnLine Pat 5721** wherein their Lordships have held as follows:-

"9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as "Sankat Mochan witness". What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate



evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of Section 172(2) of the Code of Criminal Procedure (for short 'Cr.P.C.'), which clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. What the trial court has done is using it as evidence, making it as evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under Section 145 of the Evidence Act is to apply but that does not mean that diary can become



evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under Section 161 of the Cr.P.C. are proved as evidences or other materials in the case-diary are proved as evidence and marked as exhibits. This is a practice that should end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate, who has nothing to do in the case, has been permitted by the trial court to prove the entire case-diary and mark it as exhibit. This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, which absence has to be explained, a person familiar with the handwriting of the author can only prove the



document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."

21. The above citation squarely applies to the facts of the present case. Their Lordship have held that a person who is author of the document, or in absence of the author, (whose absence has to be explained), a person familiar with the hand-writing of author can prove the document. Their Lordships have further held that the procedure adopted by the trial Court is unknown to law, and such practices have to be discontinued. Therefore, this Court is of the considerable view that the FIR cannot be marked through an advocate clerk.

22. P.Ws 2 to 4 and 7 to 9 are the injured/ witnesses in the incident. They all, in one voice, stated that at the time of the incident, 18 people, i.e. the appellants, came and Maheswari Yadav holding a spear, Ram Bahadur Yadav was holding farsa and the other accused persons were holding lathis. They all abused and assaulted them. In the said incident,



they all got injured along with one Fuliya Devi, and later appellant no. 12 set fire to the house of Sitaram Rishideo, as a result of which, all the clothes and foodgrains were burnt. As far as the evidence of the injured witnesses is concerned, there are no discrepancies regarding the over acts or the narration the incident. In cross examination, P.W. 4 stated that six persons were injured in the incident. This cannot be considered a major discrepancy so as to rule out the case of prosecution. They all, in one tone, stated that appellant No. 12 set fire to the house of Sitaram Rishideo.

23. The evidence of P.W. 5/ Dr. Krishna Ballabh Yadav, clearly disclose that he examined the injured persons on 16.08.1990, starting from 07:30 AM. He found that P.W. 4/ Bouku Rishideo received one simple injury and P.W. 8/ Kokai Rishideo sustained three simple injuries. P.W. 3/ Yogeshwar Rishideo sustained two simple injuries, P.W. 9/ Surendra Rishideo sustained five simple injuries, P.W. 7/ Yogendra Rishideo sustained three simple injuries, P.W. 2/ Jiwachh Rishideo sustained two simple injuries



and one Fuliya Devi (not examined) sustained one simple injury. These injuries are corroborated by the injury reports, which are Exhibits 2, 2/1, 2/2, 2/3, 2/4, 2/5 and 2/6 respectively. However, Fuliya Devi was not examined before the Court.

24. Upon perusal of oral evidence of P.W. 5 and the injury reports, it can be construed that all the above-mentioned injured persons sustained simple injuries in the incident that occurred on 16.08.1990. The evidence of P.Ws. 2 to 4 and 7 to 9 corroborates with the documentary evidence. Therefore, it can be held that the trial Court has rightly convicted the appellants for the aforesaid offences.

25. The appellants have attempted to bring their evidence on record by way of defence i.e., D.Ws. 1 and 2. The evidence of D.W. 1/ Janardan Prasad Yadav disclose that he was a teacher at the point of incident, and as per his information, Sitaram Rishideo's residential house was not built and that the house was one kilometer north of his house. He also stated that there were many groups in the



village and the alleged incident did not occur. However, his evidence is meant to help appellant No. 12. As the appellant No. 12 is no longer alive and the criminal case against appellant No. 12 stood abated, the evidence of D.W. 1 is no way helpful to the remaining appellants.

26. The evidence of D.W. 2/ Upendra Yadav disclose that he was well acquainted with the parties and that the accused persons were not involved in the incident. By occupation, he was the Ward Commissioner of Sukhasan panchayat. His evidence further disclose that the land belonged to appellant Maheshwar Yadav and that the people from the Scheduled Caste/community took possession of the disputed land and when the appellant Maheshwar Yadav protested, all the people hatched a conspiracy and set fire to a house themselves. The evidence of D.W. 2 contradicts the evidence of D.W. 1, as on one hand, D.W. 1 deposed that no house was set on fire in the incident, whereas the evidence of D.W. 2 disclose that the informant and injured persons hatched a plan and themselves set fire to the house.



Therefore, the evidence of D.W. 2 cannot be taken into consideration. The evidence of the injured themselves disclose that it was a government land and that initially, the cattle belonging to the accused, used to graze on the land. The evidence of D.W. 2 further disclose that the land belongs to the accused, but no document was produced before the Court to prove that the land belongs to the appellant Maheshwar Yadav.

27. On considering the entire oral and documentary evidence, it can be construed that the prosecution was able to prove the guilt of the appellants for the offences punishable under Section 323 r/w Section 149 of IPC. However, the offence under Section 323 of IPC envisages punishment as follows:-

323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine



which may extend to one thousand rupees, or with both.

28. As per the above Section, punishment for voluntarily causing hurt is either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

29. As per the record, the incident took place on 16.08.1990. The appeal was filed in the year 2003 and is being taken up for hearing in the year 2025. This Court is of the considered view that a criminal case against any individual, while being tried, causes trauma on the mind of the individuals involved. The trial lasted for approximately 13 long years, during which the appellants were required to appear before the trial Court on every date of hearing. The punishment itself disclose that the appellants can be punished by way of a fine also. A liberal view is being taken, and the judgment of the trial Court for sentencing the appellants to six months' imprisonment is modified by the way of fine. The appellants (who are alive) are sentenced to pay a fine of Rs. 1000/- each.



30. A copy of this judgment shall be sent to the trial Court, for collecting the fine amount from the appellants, as per the procedure laid down under Criminal Procedure Code.

31. With the aforesaid observations, the criminal appeal is disposed of.

(G. Anupama Chakravarthy, J)

Amandeep/-

AFR/NAFR	NAFR
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