

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.154 of 2004

Santosh Kumar Singh S/o Late Akraj Singh, R/o Village Kesaria Tola, P.S. Kesaria, District-East Champaran.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shakti Suman Kumar, Adv.
	:	Ms. Maria Nazir, Adv.
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 06-02-2025

1. The Criminal appeal is arising out of the judgment in Sessions Trial No. 324/1995 vide judgment dated 23.02.2004 and order dated 25.02.2004 for the offences punishable under Sections 364 r/w 34, 379 r/w 34 and 120B r/w 34 of IPC and the appellant/ Santosh Kumar Singh was sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5000/- (Five Thousands Only) for the offence punishable under Section 364 r/w 34 of IPC and further



sentenced to rigorous imprisonment for one year for the offence punishable under section 379 r/w 34 of IPC. However, no separate sentence was passed for the offence punishable under Section 120-B r/w 34 of IPC, despite the trial Court finding him guilty. Furthermore, the trial Court directed that in default of payment of fine, the appellant shall undergo rigorous imprisonment for another one year.

2. There are two accused before the trial Court namely appellant Santosh Kumar Singh and one Suresh Pandey. The trial Court acquitted Suresh Kumar Pandey of all the offences charged against him.

3. Heard Ms. Maria Nazir, the Learned counsel for the appellant as well as Mrs. Anita Kumari Singh, the Learned Additional Public Prosecutor for the State.

4. The Learned Counsel for the appellant contended that despite the absence of material evidence, the trial Court convicted the appellant, which is liable to be set aside. She also contended that the Court cannot convict one accused while



acquitting the other based on the same facts and circumstances of the case. She further contended that the non-examination of the Investigating Officer creates a material lacuna in the prosecution's case, leading to a reasonable doubt. She further contended that neither common intention nor criminal conspiracy can be established, if one of the accused has been acquitted and, thus, convicting the appellant for the offence punishable under Sections 120-B r/w 34 of IPC is unsustainable. As if the co-accused has been acquitted of conspiracy and common intention charges, and that the appellant alone cannot be held guilty.

5. Moreover, the Learned counsel for the appellant also relied upon the judgments of the Apex Court which are as follows:-

(I). Yogarani vs. State represented by Inspector of Police, reported in **2024 SCC OnLine SC 2609.**

(II). Javed Shaukat Ali Qureshi v. State of Gujarat reported in **(2023) 9 SCC 164**



(III). Ghanshyam Gene Vs. State of Orisa reported in **2003 Cri. LJ, 4794.**

(iV). Munna Lal Vs. the State of UP reported in **(2023) 3 SCR 224.**

6. On the other hand, the Learned Additional Public Prosecutor for the State contended that the prosecution witnesses, P.Ws. 1 to 2 admitted that the appellant had taken the P.W. 3/ Sunil Kumar along with him. Therefore, the trial Court was right in convicting the appellant for the offence punishable under Section 364 of IPC and, accordingly, prayed to confirm the judgment of the trial Court.

7. The case of the prosecution, as per the fardbeyan, is that on 06.10.1994 at about 01:00 P.M., the appellant/Ashok Kumar Singh took away P.W. 3/ Sunil Kumar, i.e. the son of the informant/ P.W. 1/ Ram Naresh Prashad, from the informant's house on the pretext of purchasing a motorcycle. However, P.W. 3 did not return home. Further on 07.10.1994, a relative of the *Chaukidar* namely, Pati Dusadh came to the village and informed the son of the chaukidar,



namely, Sheo Nath Paswan, that he had seen a boy being taken by some persons through the *Bandh* (dam) and that the boy was assaulted by them in the village of Mohmmadpur under Kesaria Police Station. After receiving this information, P.W. 1, lodged a report to the Police Station. Basing on the fardbeyan of the informant, P.S. Case No. 80 of 1994 was registered against the appellant at Kesaria Police Station for the offence punishable under Section 364 r/w 34 of IPC. After due investigation, a charge-sheet was filed against two of the accused namely, the appellant/Santosh Kumar Singh and one Suresh Pandey, for the offences punishable under Sections 364, 379 and 120B r/w 34 of IPC.

8. On 05.06.1995, cognizance was taken and later, the matter was committed to the Sessions Court for trial. On 20.07.1995, the Court of Sessions transferred the case to the Additional District and Sessions Judge "Fast Track Court No. 4", East Champaran, Motihari for conducting trial.

9. On 18.08.1998, charges were framed against the appellant and Suresh Pandey for the



offences punishable under Sections 364 r/w 34, 379 r/w 34 and 120B r/w 34 of IPC. The charges were read over and explained to both of them to which they pleaded not guilty and claimed to be tried.

10. During the course of trial, P.Ws. 1 to 7 were examined and Exhibits 1 to 3 were marked on behalf of the prosecution, which are as follows:-

Prosecution Witness No.	Prosecution Witness Name
P.W. 1	Ram Naresh Prasad
P.W. 2	Kailash Prasad
P.W. 3	Sunil Kumar
P.W. 4	Raj Bansi Devi
P.W. 5	Bhola Prasad
P.W. 6	Ramnath Prasad
P.W. 7	Kailash Sahni

Sl. No	Exhibit	Exhibit Details
1.	Exhibit-1	Signature of Kamlesh Prasad in FIR
2.	Exhibit-2	Signature of Sunil Kumar statement under section 164
3.	Exhibit-3	Fardbeyan (entire) under Section 294 Cr.P.C.

11. Upon completion of the trial, the accused persons were examined under Section 313 of the Cr.P.C. regarding the incriminating material evidence



found against them and they denied the evidence of prosecution. However, the trial Court convicted the appellant for the aforesaid charges and acquitted Suresh Pandey.

12. The points for determination in this appeal are as follows:- (i). Whether the prosecution was able to prove the guilt of the appellant for the offences punishable under Section 364 r/w 34, Section 379 r/w 34 and under Section 120-B r/w 34 beyond a reasonable doubt ?

(ii). Whether the trial Court rightly convicted the appellant for the aforesaid offences?

13. In order to determine the aforesaid points, it is just necessary to re-appreciate the entire evidence on record.

14. P.W. 1/ Ramnaresh Prasad is the brother of the victim boy/ P.W. 3 and also the son of the informant. His evidence disclose that three years ago at about 01:00 P.M. when he was at a shop, the appellant Santosh Kumar Singh took his brother P.W. 3/ Sunil Kumar to Sundarpur on his bicycle. Further the appellant dropped his brother at Sundarpur, from



where his brother returned. He further testified that the appellant handed over his brother to some criminals.

15. In the cross examination, he testified that P.W. 3 and the appellant studied in the same school and had passed out together. On the date of incident, neither of them were studying at the school. He also stated that there were no prior disputes between them. Further, he admitted that he did not inform the police that the appellant had taken his brother to Sundarpur and that he did not witness the criminals. He further testified that he later came to know that his brother had been handed over to criminals and that even prior to the incident, the appellant used to take his brother on a bicycle and bring him back.

16. The evidence of P.W. 1 cannot be given much importance as he did not witnessed the incident and his evidence is a hearsay.

17. P.W. 2/ Kailash Prasad is the father of the victim and informant in this case. His evidence disclose that on the date of incident, his son had



gone to Kesariya Pattidar's shop and he later received an information that the appellant had called his son and took him to Sundarpur. However, his son did not return that day. On the same date, the son of the *Chaukidar* from his village, went to his in-laws house and saw some people were assaulting a man while taking him towards *Diyara*. The *Chaukidar* later came to know that the boy belonged to his village and informed him. He further testified that as he was unable to locate his son, he lodged a report to the police, and the fardbeyan is Exhibit-1. He further testified that after five days, his son returned to home and informed him that Suresh Pandey, Santosh Pandey and some unknown criminals had kidnapped him.

18. During the cross-examination, P.W. 2 testified that the name of the accused Suresh Pandey was not mentioned in the fardbeyan. He did not witness the incident and when his son returned home, he still had his watch with him. The appellant used to visit his house before the incident, but never demanded ransom from him. Furthermore, there was



no dispute between the appellant and victim/Sunil Kumar and he identified Santosh Kumar Singh as he used to visit his house.

19. On perusal of the evidence of P.W. 2, it can be construed that he preferred the fardbeyan after receiving the information from the *Chaukidar*/ Patti Dusadh and his son Shiv Nath Paswan, who informed him that a boy was assaulted by a group of people. It is pertinent to mention that P.W. 2 is not an eye-witness of the incident, and his evidence is also a hearsay evidence.

20. It is also important to note that in order to prove that P.W. 3 was taken away by some unknown offenders, the prosecution made no effort to examine Patti Dusadh or Shiv Nath Paswan to confirm whether the boy who was assaulted was indeed the victim i.e. P.W. 3 or not.

21. P.W. 3/ the victim/ Sunil Kumar, stated that at the time of giving his evidence, his age was mentioned as 22 years. However, the fardbeyan does not disclose the victim's age and the evidence of P.Ws. 1 and 2 is also silent on this aspect.



22. P.W. 3 testified that the incident occurred on 06.10.1994 at about 01:00 P.M. when he went out to purchase medicines, at Kesaria Pitambar Chowk, where he met the appellant/Santosh Kumar Singh. The appellant requested him to accompany him to Sundarpur village to purchase a motorcycle, and he voluntarily went with him on a bicycle. When they reached near the ring dam, he saw Suresh Pandey and was shocked to see him as he had previously seen him at Pitambar Chowk, Kesaria. He further testified that he became suspicious and informed both of them that he needed to defecate and under this pretext, he moved ahead and started running. At that moment, both accused along with another individual, whose face was covered with a cloth, caught hold of him and directed him to go towards *Diyara*. The accused whose face was covered with cloth had a *Nalkatti* (a local weapon with iron pipe) and a lathi and Suresh Pandey had a knife in his hand. Suresh Pandey then inflicted an injury on him with the knife. Subsequently, the accused took him across river. Upon reaching the river bank, they tied



his legs and hands from behind and an unknown persons whose face was covered with cloth snatched Rs. 31.50 from him. There were three more unknown persons at the river bank, who took him to *Diyara*, confined him in a hut and feed him corn flour with salt and without chilies. When he noticed that the man guarding him had fallen asleep, he escaped from the place and reached home and informed his parents about his kidnapping. He further testified that his statement was recorded by the Magistrate, under Section 164 of Cr.P.C. which is Exhibit-2.

23. During the cross-examination, P.W. 3 deposed that he left home with Santosh Kumar Singh at about 03:00 P.M. and did not meet anyone on the way between the canal and his house. When they reached the canal, some strangers whose faces were covered with cloths arrived. He stated that he could not identify them and that Suresh Pandey was not among them. When he attempted to escape in fear, those persons chased and caught hold of him. His evidence further disclose that he never had any dispute with the appellant and that the appellant



never demanded money from him and he did not inform the villagers about involvement of Santosh Kumar and could not name the other persons who had kidnapped him at night. Upon returning home after the incident, he was extremely worried, nervous and scared and he gave his statement to the police in an abrupt state of mind.

24. Upon appreciating the evidence of the victim, it is evident that he voluntarily accompanied the appellant and did not state anything incriminating against him. However, in his chief-examination, he made allegations against the other accused, Suresh Pandey. His evidence clearly disclose that some unknown persons whose faces were covered had weapons and a *lathi* and that Suresh Pandey inflicted an injury upon him.

25. This Court cannot reappreciate the evidence against a person, who was acquitted by the trial Court particularly when the prosecution has not preferred any appeal against such acquittal. As per the evidence of the victim boy, no incriminating material is found against the appellant.



26. P.W. 4/ Raj Bansi is the mother of the P.Ws. 1 and 3 and wife of P.W. 2 and her evidence is also a hearsay evidence. She stated that the appellant who is the friend of P.W. 3 came to her house at about 01:00 P.M. and on the date of the incident called P.W. 3 to accompany him to purchase a motorcycle. However, her son did not return home and she gave her statement to the police on 08.10.1994.

27. During cross-examination, she testified that the incident occurred during Durga Puja and she neither saw her son with anyone nor witnessed the appellant calling her son or taking her son away.

28. The evidence of P.W. 4 does not support the case of the prosecution. There is a major discrepancy between the testimonies of P.Ws. 1 to 4. While the fardbeyan and the evidence of P.W. 4 disclose that the appellant came to the house on the date of the incident and called the victim to accompany him on the pretext of purchasing a motorcycle, however, the evidence of P.Ws. 1 to 3 suggest that the appellant met P.W. 3 near Kesaria



Pitamabr *Chawk* and was asked to accompany him which contradicts with the fardbeyan i.e. Exhibit-1. None of the witnesses stated that the appellant kidnapped the victim. Instead, they consistently testified that the victim voluntarily accompanied the appellant.

29. **Section 364 of IPC** defines kidnapping as follows:-

Kidnapping or abducting in order to murder-whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to put in danger of being murdered, shall be punished with (imprisonment for life) or rigorous imprisonment for a term which may extend to ten years, and shall also liable to be fined.

30. As per the above definition, the offence of kidnapping must be committed with the intent to murder the victim. The evidence of P.Ws. 1 to 4 does not establish in any manner that victim was kidnapped for the purpose of murder. In fact P.W. 3 did not make any allegations against the appellant but stated that the other accused i.e. Suresh Pandey



assaulted him and inflicted injuries with a knife. However, the trial Court acquitted Suresh Pandey despite of specific evidence against him.

31. The other witnesses in this case are P.Ws. 5 and 6, However, they turned hostile, therefore, their evidences is nowhere helpful for the prosecution.

32. P.W. 7/Kailash Sahni is alleged to be an eye-witness of the incident. His evidence disclose that he came to know about the victim's kidnapping and on that particular day, when he was in the field, he saw three men walking along the road. Further, he stated that he could not identify them. P.W. 7 identified Suresssh Pandey who was later acquitted by the trial Court but he did not identify the appellant.

33. The documentary evidence includes the 164 statement of the victim i.e. P.W. 3. In his statement under Section 164 he deposed that the appellant took him to *Diyara* and later Suresh Pandey and another fat man brought him from *Diyara* to the dam and the other person accompanying Suresh Pandey had his face covered with a cloth. When the



victim tried to escape from the clutches of Suresh under the pretext of defecating, both of them caught hold of him. When he confronted the appellant, he stated that he does not know anything. Further, the statement under Section 161 of Cr.P.C. disclose that when the victim attempted to escape from the clutches of Suresh Pandey and another person, Suresh struck him near his right eye, tied his hands from behind, snatched Rs. 31.50 from his pocket, and confined him a hut. He was guarded by three fishermen including Suresh and remained confined there for four days. The unknown persons beat him, forced him to change his cloths and made him to wear a *lungi*. They also threatened him with a gun and assaulted him if he refused to walk. When he noticed that only one person was guarding him and had fallen asleep, he escaped and reached the police station. The unknown persons had also asked him to write a letter and further Suresh also threatened him.

34. On perusal of the entire statement under Section 164 of Cr.P.C., it is evident that P.W. 3 described about wrongful confinement by Suresh



Pandey and some unknown persons but did not make any allegations against the appellant. However, a statement of the victim recorded under Section 164 of Cr.P.C. does not constitute substantive evidence, it must be corroborated by the victim's testimony.

35. In the present case, there are several omissions in the evidence of the victim are found compared to his statement recorded under Section 164 of Cr.P.C.. On comparison of the evidence of P.W. 3 with that of 164 statement (Exhibit 2), it is evident that no allegations were made against the appellant. The prosecution has miserably failed to prove that P.W. 3 was kidnapped or abducted with an intention to commit murder or to put him in danger.

36. Therefore, this Court is of the considerable opinion that the charge under Section 364 of IPC ought not to have been framed by the trial Court, especially when the Investigating Officer was unable to identify the unknown persons alleged to have kidnapped the victim boy. Section 364 of IPC can be invoked if several persons commit a criminal act in furtherance of a common intention. However,



there is nothing on record to establish a common intention between the appellant and Suresh Pandey and the unknown persons to commit the offence of kidnapping. In the absence of such evidence, the trial Court ought not to have convicted the appellant for the offence under Section 364 of IPC.

37. Admittedly, the trial Court acquitted Suresh Pandey despite of having sufficient material evidence before the Court. Though, the charges were framed under Section 34, the trial Court ought to have convicted only for the major offence and not under Section 34. Furthermore, the charge under Section 379 of IPC pertains to the theft of a watch and Rs. 31.50. The evidence of the informant clearly disclose that P.W. 4 returned home with his watch on hand. Additionally, the evidence of P.W. 3 indicates that Suresh Pandey snatched Rs. 31.50 from his pocket and not the appellant. Therefore, the conviction under Section 379/34 is also liable to be set aside.

38. **Section 120-B of IPC** defines as:-
(Punishment of criminal conspiracy):-



(1). Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2). Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

39. It is essential for atleast two persons to agree to commit an illegal act of a legal act by illegal means. Such an agreement constitutes the crime for criminal conspiracy.

40. In the present case, there is no evidence on record that the appellant Santosh Kumar Singh, Suresh Pandey and others have conspired together to commit an offence under Section 364 of IPC.



Therefore, the trial Court ought not have to have framed the charge under Section 120-B of IPC and conviction cannot be sustained for the said offence.

41. In the case of **Yogarani Vs. State represented by Inspector of Police**, reported in **2024 SCC OnLine SC 2609**, their Lordships have held at Para-10 which reads as follows:-

10. *The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v. State of Gujarat reported in 2023 INSC 829, this Court has held that:-*

“15. When there is similar or identical evidence of eye-witnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

42. In the case of **Javed Shaukat Ali Qureshi v. State of Gujarat** reported in **(2023) 9**



SCC 164, their Lordships have held at Para 15 which reads as follows:-

***15.** When there is similar or identical evidence of eye-witnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.*

43. The Learned counsel for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of **Munna Lal Vs. State of Uttar Pradesh**, reported in **2023 SCC OnLine SC 80**, at Paragraph Nos. 28, 39 and 40 which reads as follow:-

***28.** Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals.*



Needless to observe, such principles have evolved over the years and crystallized into 'settled principles of law'. These are:

(a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to



be circumspect and look for corroboration of any material particulars by reliable testimony. direct or circumstantial, as a requirement of the rule of prudence.

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.



39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye-witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each



case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.

“40. As far as non-obtaining of ballistic report is concerned, it is no



doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained. Although Mr. Giri contended that Munna Lal had a licensed gun, this Court has not been able to trace any evidence in the records in regard thereto. However, nothing turns on it. The failure/neglect to seize the weapons of offence, on facts and in the circumstances of the present case, has the effect of denting the prosecution story so much so that the same, together with non-examination of material witnesses constitutes a vital circumstance amongst others for granting the appellants the benefit of doubt".

44. In the case of **Banshidhar Singh @ Banshi Singh Vs. The State of Bihar** passed in **Cr. Appeal (SJ) No. 38 of 2013**, the co-ordinate Bench of this Court has also relied on the settled principles of **Munna Lal Vs. State of Punjab**.

45. In the Case of **Abdul Sayeed Vs. State of Madhya Pradesh and others reported in**



[2010] 10 SCC 259, their Lordships have held at Para Nos. 32 and 38 which reads as follows:-

32. *In Ram Narain Singh v. State of Punjab this Court held that where the evidence of the witnesses for the prosecution 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.*

38. *In State of U.P. v. Hari Chand 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."

46. In the case of **Bhajan Singh alias Harbhajan Singh and Others Vs. State of Haryana (2011)7 SCC 421**, their Lordships have held at Para Nos. 32 and 38 which reads as follows:-

32. *It has further been submitted on behalf of the appellants that there is contradiction in medical evidence*



and ocular evidence. The trial court has examined this issue and in para 22 of the impugned judgment, observed as under:

"22.... that accused Joga Singh and accused Mukhtiar Singh had attacked the victims with swords whereas accused Nishabar Singh had used 'gandasa' for the purpose, resulting in the deaths of Gian Singh and Nishan Singh and brutal attempt on the life of PW Ajaib Singh. The trial court had further observed that the skull injury attributed to accused Gurdeep Singh does not receive corroboration from the medical evidence on record because such forceful blow was bound to leave some external mark of injury at the site of the impact but no such mark was seen there by the doctor."

The trial court reached the conclusion that it seems that accused Puran Singh was also implicated in this case along with his father Bhajan Singh alias Harbhajan Singh because he is a brother of prime accused Joga Singh. Thus. the



involvement of accused Puran Singh in the incident is also doubtful.

38. *Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallized 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. (Vide Abdul Sayeed.)*

47. The aforesaid citations relied upon by the Learned counsel for the appellant squarely apply to the present facts and circumstances of the case. The Court cannot convict one accused and acquit the other based on the same facts and circumstances, as held by the Hon'ble Apex Court. Further, in the present case also the Investigating Officer was not examined which was vital to the case of the



prosecution, and no grievous hurt or injury was proved by the prosecution to attract Section 364 of the IPC.

48. The Hon'ble Apex Court held that the offence of criminal conspiracy cannot survive the acquittal of other alleged conspirators and the appellant cannot be convicted unless there is proof that he conspired with the persons distinct from co-accused. If the co-accused has been acquitted of the charge of criminal conspiracy, the appellant alone cannot be held guilty.

49. In view of above discussions and observations, this Court is of the considered opinion that the prosecution has miserably failed to prove the guilt of the appellant for the offences punishable under Section 364 r/w 34, 379 r/w 34 and 120-B r/w 34 of IPC beyond a reasonable doubt and the trial Court ought not to have convicted the appellant for the aforesaid charges, therefore, the judgment and order dated 23.02.2004 passed by Additional District and Sessions Judge, (Fast Track Court No. IV), East



Champaran, at Motihari, in Sessions Trial No. 324/1995 is liable to be set aside.

50. In result, the criminal appeal is allowed setting aside the judgment and order dated 23.02.2004 passed by Additional District and Sessions Judge, (Fast Track Court No. IV), East Champaran, at Motihari, in Sessions Trial No. 324/1995 and the appellant is acquitted for the aforesaid offences.

51. The record reveals that the appellant was enlarged on bail by the Court vide order dated 03.07.2007 in I.A. No. 946 of 2007. Hence, the bail bonds of the appellant shall stand cancelled.

(G. Anupama Chakravarthy, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.03.2025
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