

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.29 of 2004

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1. Bhola Yadav son of Chamari Yadav
2. Leela Yadav son of Chamari Yadav
3. Aklu Yadav son of Mangar Yadav
4. Chander Yadav son of Leeldhari Yadav
5. Chamru Yadav @ Chamari Yadav son of Late Rohan Yadav

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Vaishnavi Singh, Amicus Curiae
: Mr.Pranshu Singh, Amicus Curiae
For the Respondent/s : Mrs.Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 13-02-2025

1. The appeal is arising out of the judgment and sentence order dated 12.01.2004 and 13.01.2004 respectively in Sessions Trial No. 172 of 1997/393 of 1995 on the file of Vth Additional District & Sessions Judge, Gaya, wherein all the appellants were convicted for the offence punishable under Section 307 r/w Section 34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to suffer rigorous imprisonment for one year. Further, the appellants were convicted for the offence under Section 326 r/w Section 34 of the Indian



Penal Code and were sentenced to undergo rigorous imprisonment for a period of five years. It is pertinent to mention that all the appellants, were tried for the charges under Section 307 r/w Section 34 of the Indian Penal Code and under Section 326 r/w Section 34 of the Indian Penal Code.

2. The case for the prosecution, as per the fardbeyan, is that on 18.10.1994, at about 7:00 PM, the informant/injured/PW-4 went to see his fields, located two kilometers south of his house, and found his crops being grazed and damaged by an ox belonging to Leela Yadav (appellant no. 2).

3. PW-4 started ousting the ox from the field, whereupon appellant no. 2 started abusing him. In the meantime, the neighbors of the informant, namely Basudeo Yadav (PW-3) and Kesar Yadav (not examined), arrived from their respective fields. Despite this, Leela Yadav did not stop abusing them. PW-4 and the other two persons proceeded to their house, and appellant no. 2 also proceeded towards his house. On the way, there was an altercation between appellant no. 2 and PW-4, which was intervened by other two persons



accompanying the informant. Appellant no. 2 went to his house in haste, and when PW-4 and his companions arrived on the road, in front of the house of Chander Yadav (appellant no. 5) then Bhola Yadav (appellant no. 1) abruptly caught hold of the informant, i.e., PW-4. Appellant no. 5 was armed with a lathi, and appellant no. 2, armed with a khanti, arrived at the place. The other three appellants started assaulting PW-4, inflicting bleeding injuries on his head and left shoulder. Upon hearing the hulla, appellant no. 3/Aklu Yadav and appellant no. 4/Chander Yadav, armed with lathis, arrived and assaulted PW-4. In the meantime, Roop Lal Yadav (PW-1) rushed to rescue PW-4, but all the appellants assaulted PW-1 and injured him. It is further mentioned in the fardbeyan that besides the companions of PW-4, namely Basudeo Yadav (PW-3) and Kesar Yadav (not examined), several villagers, namely Mithilesh Yadav (not examined), Nand Kishore Yadav (PW-2), and others arrived to the place of occurrence, witnessed the incident, and intervened. The informant/PW-4 could not attend the hospital on the said day but attended the hospital the following day.



The incident occurred because PW-4 resisted appellant no. 2's ox from grazing his crop.

4. The statement of the informant was recorded by Sub-Inspector P.K. Singh of Barachatti P.S. on 19.10.1994 at 8:00 a.m. at the Primary Health Care Centre, Barachatti.

5. Based on the Fardbeyan, the Sub-Inspector of Police registered a case against all the five appellants for the offences punishable under Sections 341, 323, 324, 504 r/w Section 34 of the Indian Penal Code and Section 24 of the Cattle Trespass Act. Upon completion of the investigation, a chargesheet was filed vide No. 64 of 1994 dated 28.11.1994, against all the appellants for the offences punishable under Sections 341, 323, 324, 326, 304 r/w Section 34 of the Indian Penal Code and under Section 24 of the Cattle Trespass Act.

6. The Learned Sub-Divisional Judicial Magistrate, Sherghati, Gaya, took cognizance of the case for the aforesaid offences by order dated 22.03.1995 and committed the case to the Court of Sessions vide order dated 16.11.1995. The Learned Sessions Judge, Gaya, transferred the case to the Vth



Additional District & Sessions Judge, Gaya, for trial vide order dated 16.08.1997.

7. The record reveals that the trial court has framed charges for the aforesaid offence against the appellants. The charges were read over and explained to the appellants in Hindi, and all the appellants pleaded not guilty and claimed to be tried.

8. During the course of the trial, the prosecution examined PWs-1 to 7 and marked Exhibits 1 to 4. However, on perusal of the exhibits, it is evident that Exhibit-2 was assigned to two documents, and Exhibit-3 was also assigned to two documents.

Prosecution witnesses	Name of the prosecution witnesses
PW-1	Rooplal Yadav
PW-2	Nand Kishore Yadav
PW-3	Basudeo Yadav
PW-4	Balo Yadav
PW-5	Vijay Yadav
PW-6	Pramod Kumar Singh
PW-7	Dr.Dinanath Prasad

Sl No.	Exhibits	Exhibit Details
1.	Exhibit-1	Signature on the fardbeyan of Balo Yadav
2.	Exhibit-2	Medical report of Balo Yadav
3.	Exhibit-3	Medical report of Rooplal Yadav



4.	Exhibit-2	Fardbeyan
5.	Exhibit-3	Injury report of Rooplal Yadav
6.	Exhibit-4	Injury report of Balo Yadav

Further, on behalf of the defence Exhibit-A was marked.

Sl. No.	Exhibit	Exhibit Details
1.	Exhibit-A	Certified copy of judgment passed in Trial No. 249/96 by Judicial Magistrate Ist Class, Gaya on 05.04.2003

The accused were examined under Section 313 Cr.P.C. regarding the incriminating evidence presented by the prosecution. All the appellants were examined before the trial court under Section 313 Cr.P.C. concerning the incriminating circumstances, but they denied the evidence, claiming it to be false.

9. On behalf of the defense, a certified copy of the judgment dated 24.09.1996 in Sessions Trial No. 249 of 1996 on the file of the Sub-Divisional Judicial Magistrate, Sherghati, Gaya, was marked as Exhibit-A.

10. After considering the entire evidence on record, the trial court convicted all the appellants as aforesaid.



11. The points for determination in this appeal are:-

(i) Whether the prosecution is able to prove the guilt of the appellants for the offence punishable under Section 307 r/w Section 34 of the Indian Penal Code and under Section 326 r/w Section 34 of the Indian Penal Code beyond reasonable doubt?

(ii) Whether the trial court has rightly convicted the appellants for the aforesaid offences?

12. In order to determine the aforementioned points, it is necessary to re-appreciate the evidence on record. There is no need to reiterate the entire evidence; only the evidence relevant to the points of the appeal will be discussed.

13. Heard Shri Pranshu Singh and Smt. Vaishnavi Singh, Learned Amicus Curiae for the appellants and Smt. Anita Kumari Singh, Learned Additional Public Prosecutor for the State.

14. It is contended by the Amicus Curiae that there are significant discrepancies in the evidence provided by PWs-1 to 4, who are alleged to be the eye-witnesses/injured in the incident, which goes to the root



cause of the prosecution's case. Therefore, the benefit of the doubt must be extended to the appellants.

15. It is further contended by the Amicus Curiae that for the same set of incidents, both a case and a counter-case were filed. The trial court did not try the case and the counter-case simultaneously, and the counter-case of the appellants was independently decided by the Sub-Divisional Judicial Magistrate, Sherghati, Gaya, wherein the prosecution witnesses were convicted for the offences, despite the fact that this was brought to the trial court's attention by marking Exhibit-A (judgment copy), the trial court did not rightly appreciate the fact that there was no intention on the part of the appellants, to cause grievous hurt to the injured/PW-4 and contended that this is a fit case to set aside the judgment of the trial court, as the trial court did not properly follow the procedure, contemplated by law, in trying the case and counter-case.

16. It is further contended by the Learned Amicus Curiae that there was suppression of the earlier version by the informant, and that the alleged incident



took place at night, at around 7:00 p.m. Additionally, it is argued that the source of identification of the appellants, or the overt acts, were not established by the prosecution by indicating any source of light.

17. It is further contended that the appellants did not have a proper opportunity to explain the circumstances of the case, as the trial court did not question the entire incriminating evidence during the Section 313 examination of the appellants. Therefore, it is prayed that the judgment of the trial court be set aside and that the appellants be acquitted.

18. On the other hand, the Learned Additional Public Prosecutor contended that the injury reports of PW-4 and PW-1 clearly disclose that they sustained grievous hurt and simple hurt respectively, which corroborates the evidence of the prosecution witnesses. Therefore, the Learned Additional Public Prosecutor argued that the trial court has rightly convicted the appellants for the charged offences and prayed for the confirmation of the trial court's judgment, as it requires no interference.



19. The evidence of PW-1/Roop Lal Yadav disclose that on 18.10.1994, at about 7:00 pm, he went to the place of occurrence, on hearing the hulla and witnessed Bhola Yadav (appellant no. 1) holding a lathi in his hand, Chamaru Yadav (appellant no. 5) holding a spear, Leela Yadav (appellant no. 2) holding a lathi, and Aklu Yadav and Chander Yadav (appellant nos. 3 and 4) also holding lathis in their hands. His evidence further disclose that they all beat PW-4, and when he tried to rescue PW-4, Chamaru Yadav (appellant no. 5), holding the spear, hit PW-4 on his head, causing 3 to 4 injuries. He was also attacked with lathis, and sustained pain on his body parts when he tried to rescue PW-4.

20. On perusal of his evidence, it is evident that the witness at one point mentions the time of incident as 7:00 PM and later reiterates the time as 6:00 PM. His evidence further discloses that the appellants fled away from the scene of the offence, and as it was night, they have not gone to the hospital for treatment. The following morning, PW-1, Kesar Yadav, Mithilesh Yadav, and others went to Barachatti by carrying PW-4 on a cot. According to his evidence, they initially went to the



police station, where the Inspector of Police inquired into the matter and subsequently forwarded them to the hospital for treatment. PW-1 specifically testified that PW-4 was unconscious, approximately for 24 hours and he underwent treatment for eight days.

21. During cross-examination, PW-1 admitted that a counter case was filed against them. However, he denied the suggestion that they were found guilty by the Sub-Divisional Judicial Magistrate, Sherghati, Gaya, on 24.05.1994. This witness also admitted that appellant No. 1 had filed a case against them at the police station, and his statement was recorded on 20.10.1994 at his house, by the Inspector of Police. He further testified that no bandage was applied on his body, until they reached the hospital. However, he reiterated that he was beaten with a spear by Chamaru Yadav (appellant No. 5). He also testified that it was winter and the incident occurred approximately after 1^{1/2} hours after sunset.

22. According to PW-1, PW-4 was unconscious, by the time they reached the police station, i.e., between 7:00 AM and 8:00 AM on the following day



morning. They then proceed to the hospital for treatment, where his statement was recorded. The place of occurrence, as stated by PW-1, is located two kilometers south, of their house.

23. The evidence of PW-2/Nand Kishore Yadav disclose that the incident occurred on 18.10.1994 at about 7.00 PM. On hearing the noise, he went to the place of occurrence and saw appellant no. 5/Chamaru Yadav abusing Balo Yadav (PW-4) and appellant no. 4/Chander Yadav arrived and assaulted Balo Yadav. Chamaru Yadav was carrying a spear and a lathi. All the accused assaulted Balo Yadav/PW-4 who sustained a head injury. When they tried to pick up PW-4 in order to bring him home, all the accused stood with sticks and spears and that the reason for the altercation, was grazing of animals in the field.

24. In the cross-examination, PW-2 admitted that a counter case was filed against PW-4 and his father by one Mithilesh Bittu and others. He further testified that PW-4 is his brother and that he has not witnessed the incident. By the time he reached the place of occurrence, the victims were already injured.



25. Therefore, the evidence of PW-2 cannot be as eye-witness as he specifically admitted that he has not witnessed the incident. Furthermore, his presence at the scene of incident is neither mentioned in the fardbeyan nor testified by PW-1. Moreover in the fardbeyan, it is specifically mentioned that this witness arrived the place of occurrence after hearing the hulla.

26. PW-3/Basudeo Yadav also testified that the incident took place at 7:00 p.m. He stated that he had come from the field and saw PW-5/Chamaru Yadav's animal grazing in the field, and that he witnessed the altercation between PW-4 and the accused, and that they have settled the dispute. His evidence further disclose that all the appellants were armed with lathis and spears, and they assaulted PW-4 and PW-1. As a result, PW-4 fell down and sustained a head injury. They then picked up PW-4 up and brought him home. The next day morning, they took PW-4 to the hospital.

27. This witness also admitted about the counter case and that his brother was also arrayed as an accused in the counter case.



28. In cross-examination, he testified that the oxen grazed until 8:00 to 9:00 PM. He identified the place of occurrence as "Tilha Tola" located to the south of the accused house. PW-4 sustained bleeding injuries and blood spilled over the ground and staining his clothes. He also stated that when the Inspector arrived to the place of occurrence, blood stains were found on the ground, and that the Inspector visited the village after eight days of the occurrence. Further, PW-3 stated that the Inspector came to the village in the evening of the incident. PW-3 specifically deposed that PW-4 was unconscious and regained consciousness, after receiving sufficient medical treatment in the hospital, on the same day in the evening hours.

29. The evidence of PW-4/the injured witness disclose that the incident occurred at 7:00 PM. and that he had gone to inspect his pigeon pea field, which was two kilometers away from his house, and saw appellant no. 2, Leela Yadav, grazing his ox in his field. When he confronted appellant no. 2, he started abusing him. At that point, two men from his village intervened, to settle the dispute, after that he returned home. He



further testified that, on his way back to home, appellant no. 2 abused him, and when he had covered half the distance, appellant no. 2 ran to his house, while appellant no. 1 came out of his house and caught hold of his waist. Meanwhile, appellant nos. 5, 2, and 3 also arrived to the place of occurrence. He testified that Bhola Yadav (appellant no. 1), Chamaru Yadav (appellant no. 5), and Aklu Yadav (appellant no. 3) were carrying lathis, while Leela Yadav (appellant no. 2) was holding a spear. Chamaru Yadav (appellant no. 5) struck him on the head with a lathi, and when he tried to run, Leela Yadav (appellant no. 2) then struck him with a spear, causing injuries to the left side of his head. Leela Yadav (appellant no. 2) then struck him with another spear, inflicting an injury on his left shoulder joint. His evidence further disclose that, when he fell down, Aklu Yadav (appellant no. 3) struck him on his leg with a lathi. However, appellant no. 4 did not attack him. Chamaru Yadav instigated the others to kill him. Additionally, his evidence disclose that he was taken to a private hospital and, the following day at 7:00 AM, he went to the police station and gave his statement.



Later, the police referred him to the government hospital in Barachatti.

30. The chief examination of PW-4 was deferred for further examination on 15.09.2000. However, the record reveals that he was re-examined on 24.02.2001 i.e., after a span of five months, and Exhibit-1/the signature of PW-4 on the fardbeyan, was got marked.

31. In the cross-examination, PW-4 specifically testified that he left the house at 3:30 PM, reached the field at 5:00 PM, and was returning to home at around 7:00 PM. He also admitted that appellant no. 5 had filed a case against him, and in the said case, he, along with seven others, were convicted by the court for the offences punishable under Sections 323, 447, 503 r/w Section 34 of the Indian Penal Code. PW-4 further testified that PW-1 was his cousin. He also deposed that it took him, 45 minutes to return from the field, and that the altercation lasted for 15-20 minutes. He admitted that after sustaining injuries, people brought him home, and deliberations took place among the villagers, during the night. He tied bandages for the injuries and later showed them to the Inspector. It was admitted by



PW-4 that he informed the police that Chamaru Yadav had struck him on the head with a lathi and Leela Yadav attacked him with a spear. PW-4 specifically admitted that he sustained three injuries: i.e., on the head, eye, and on the left side of the shoulder.

32. The evidence of PW-5 disclose an altercation occurred between the appellants and the injured Bhola Yadav. All the accused were armed with lathis and spears. In the said incident PW-4 and PW-1 sustained injuries. However, in cross-examination, it is specifically admitted by PW-5 that by the time he reached the place of occurrence, the fight ended, and he did not witness any of the appellants at the place of occurrence. He specifically testified that there was commotion in the village and a fight between two parties.

33. Moreover, PW-5 was not examined by the police. The demeanor of this witness was observed by the Court, at the request of the defense counsel, and the date of the incident was found to be written with an ink pen on his left palm. When confronted, the witness



deposed that although the date was inscribed on his palm, he had recollected the date from his memory.

34. PW-6 is the Investigating Officer. His evidence discloses that the incident occurred on 18.10.1994 at 7:00 PM, and that he received information about the incident on 19.10.1994 at 7:45 PM. He testified that upon receiving the information that a man was injured and admitted in the government hospital, he proceeded to the hospital and saw PW-4 in an injured condition. His evidence further disclose that he recorded the statement of PW-4, examined the injuries of the informant and the other injured person and prepared injury reports. He later returned to the police station and registered a case. Later, he visited the place of occurrence, which was an unpaved road, and subsequently recorded the statements of PW-3, Mithilesh Yadav (not examined), Kesar Yadav (not examined), Vijay Yadav (PW-5), and other independent witnesses. After receiving the injury reports of PW-1 and PW-4, he laid a chargesheet against the appellants.

35. In cross-examination, he admitted that the charge of investigating Case No. 155 of 1994 on the file



of Barachatti Police Station was also assigned to him by the SHO, Barachatti. After investigating the case, he filed a chargesheet against Balo Yadav, Roop Lal Yadav, Kishore Yadav, Jaglal Yadav, and Basudeo Yadav. He also admitted that after reviewing the contents of the fardbeyan of Chamaru Yadav(appellant no. 5) in the counter case, he discovered that the appellant had been admitted to the hospital. He further stated that the motive for the incident was the destruction of a pigeon pea field by cattle, but admitted that he had not ascertained the actual owner of the pigeon pea field. He further admitted that he did not record who was the aggressor during the altercation.

36. PW-7 /Dr. Dinanath Prasad is the Medical Officer who examined PW-1 and PW-4 and issued the injury reports. The injuries sustained by PW-1 were as follows:-

(i) A cut injury measuring $2\frac{1}{4}$ "X $\frac{1}{4}$ "X $\frac{1}{4}$ " on the mid-region of the scalp and

(ii) A bruise of the size of $2\frac{1}{2}$ "X 1" on the dorsum of the right hand.



The injuries found on Balo Yadav/PW-4 were as follows:-

(i) A cut injury of the size $1\frac{1}{2}'' \times \frac{1}{4}'' \times \frac{1}{2}''$ on the left side of the frontal region of the skull.

(ii) A cut injury of the size of $2\frac{1}{2}'' \times \frac{1}{4}'' \times \frac{1}{4}''$ on the left shoulder joint.

(iii) A cut injury of the size of $1 \times \frac{1}{4}'' \times \frac{1}{4}''$ on the right side of the frontal region of skull and

(iv) A bruise of the size $\frac{1}{2}'' \times \frac{1}{2}''$ below the left eye.

37. PW-7, the Medical Officer, opined that the injuries sustained by PW-1 were simple in nature, whereas the injuries sustained by PW-4 were grievous. Specifically, the Medical Officer (PW-7) testified that PW-1 sustained two simple injuries, while PW-4 sustained four injuries of which injury no. 1 was grievous in nature.

38. In cross-examination, PW-7 admitted that the injured persons were not hospitalized and had not examined the X-ray plate of PW-4 before rendering his medical opinion. Furthermore, he acknowledged that the injury report did not specify whether the sharp-cut injuries were muscle-deep or bone-deep and confirmed that he prepared the injury reports based solely on his



physical examination. Additionally, PW-7 admitted that the Injury Reports do not disclose the presence of swellings and that both the injured/individuals were bandaged at the time of their examination.

39. Upon perusal of the entire evidence, it can be understood that the incident took place on 18.10.1994, after 7:00 PM. The testimony of the prosecution witnesses suggests that the altercation initially took place in the field of PW-4 at around 7:00 PM. and later continued in the village which was two kilometers, distance from the place of altercation.

40. As per the evidence of PW-4, it can be considered that it takes approximately 45 minutes to travel from the field to the village. If that is so, the incident in the village could not have occurred before 7:45 PM. on 18.10.1994. The genesis of the prosecution story itself is found improbable, as cattle such as, cows, buffaloes, or oxen do not typically graze in fields at night. The prosecution has failed to explain as to why PW-4 went to his fields, at such an unusual hour. The evidence on record further reveal that an altercation took place between the prosecution witnesses and the



appellants, leading to filing of case and counter-case at Barachatti P.S. These cases were registered as FIR No. 153 of 1994 and FIR No. 155 of 1994. The present case pertains to Crime No. 153/1994 of Barachatti P.S. The evidence of the prosecution witnesses further disclose that in the counter case Crime No. 155 of 1994 ended the prosecution witnesses were convicted.

41. In order to support their contention, the defence has submitted Exhibit-A, a certified copy of the judgment, in Crime No. 155 of 1994 on the file of the Sub-Divisional Judicial Magistrate, Sherghati, Gaya. The judgment reveal that the Learned Sub-Divisional Judicial Magistrate convicted the prosecution witnesses but released them on probation invoking Section 3 of the Probation of Offenders Act. None of the witnesses (PWs-1 to 6) deposed about the source of light, that would have enabled them to identify the appellants on the dark night. The evidence of PW-1 and PW-4 (the injured person) indicates that they initially went to the police station, before seeking medical treatment. However, the fardbeyan does not disclose the fact that they initially went to the police station or that PW-4's



statement was recorded there. The evidence of PW-1 and PW-3 contradicts the testimony of PW-4. Specifically, PWs-1 and PW-3 testified that PW-4 fell unconscious and only regained consciousness after receiving medical treatment at the hospital. If that is the case, the version of PW-1, stating that PW-4 was taken to the police station, before going to the hospital is highly doubtful. Alternatively, other witnesses may have given false testimony before the Court by stating PW-4 was first taken to the police station before being treated for his injuries. This discrepancy is a significant one, which is fatal to the prosecution's case.

42. At this juncture, the Learned Amicus Curiae placed relied on the judgment of the Hon'ble Apex Court in **Mohan Lal Vs. State of Rajasthan** reported in **1999 (9) SCC 209** wherein their Lordships have held as follows:-

"2. It is contended before us by the Learned counsel for the appellants that the evidence of Moti Lal PW-7 bristles with infirmities, omissions and contradictions with reference to the earliest version



recorded under Section 161 Cr.P.C and is inconsistent with the other evidence on record and therefore, the said witness by no stretch of imagination can be said to be wholly reliable witness on whose testimony the conviction can be based in serious charge of murder. That apart, the learned counsel also contended that there are several other infirmities in the prosecution case as inferred from the evidence of the aforesaid witnesses which brings serious doubt about the entire prosecution case. According to the evidence of this witness he had gone to the police station from his house and gave a report whereafter Thana Babu had gone to the place of occurrence and at the place of occurrence the written report was given. But the prosecution has suppressed the so-called earlier report alleged to have been given by the witness at the police station. This has got some significance from the suggestion that was



put to the effect that in the earlier version it had not been stated by the witness either that he had seen the occurrence or these accused persons assaulted the deceased. The place where the occurrence took place and the place where ultimately the dead body of the deceased was found and post-mortem report was conducted are also at variance and the prosecution has not offered any explanation as to how the dead body was brought from the place of occurrence near the well to the babool tree near the school where the post-mortem was conducted.

XXX XXX XXX."

43. It is also the contention of the Learned Amicus Curiae that the incident took place at 7.30 PM in the dark and none of the witnesses mentioned the source of light that enabled the identification of the accused. The Learned Amicus Curiae further relied on the case of **Kanhai Mishra vs. State of Bihar**



reported in **2001 (3) SCC 451** wherein their Lordships have held which read as follows:-

“7. Firstly, the informant — Ram Sunder Jha (PW 3) stated in his evidence in court unequivocally that he along with Indra Mohan Jha (PW 7) went to Pratap Ganj Police Station and narrated the occurrence before the Officer in charge of the police station and thereafter, they returned with him to the village where in the house of the informant the Sub-Inspector of Police — Chitta Ranjan Shit (PW 10), who was Officer in charge of the police station, recorded his fardbeyan at 11 o'clock. During the cross-examination, the witness stated that he arrived at the police station on that day at about 9 o'clock, stayed there for 10 to 20 minutes and thereafter returned to the village. This witness has nowhere stated that he disclosed the name of the appellant before the Officer-in-charge at the police station, which was the first version of the



occurrence unfolded by him. When the witness had gone to the police station, we do not find any reason as to why fardbeyan was not recorded there at 9 o'clock but recorded at the house of the informant after two hours at 11 o'clock which goes to show that there was inordinate delay in recording the fardbeyan. This further shows that by the time the informant was at the police station he did not suspect complicity of the appellant with the crime and subsequently, after due deliberations, fardbeyan was given by the informant at his house alleging therein that the appellant had complicity with the crime. Thus the evidence of this witness makes the prosecution case showing complicity of the appellant with the crime doubtful.

8. *Secondly, from the aforesaid statement of PW 3 it is clear that he went to the police station, narrated the occurrence to the Office-in-charge (PW 10), who thereafter*



left for the village, but it appears that the investigating officer (PW 10) has suppressed this fact as in his evidence he has come out with a case that he received confidential information at the police station at 8.30 a.m. on the date of occurrence that someone had been murdered in the village of occurrence on the basis of which Sanaha Entry No. 368 dated 27-7-1995 was entered at the police station and he proceeded to the village to verify the information and this shows that the prosecution case is suffering from the vice of suppressio veri on material point."

Similarly in the case of **Ashoksinh Jayendrasinh vs. State of Gujarat** reported in **2019 (6) SCC 535** their Lordships have held as follows:-

"12. The occurrence was of 23-11-1997 at 9.00 p.m. in the agricultural field of complainant-Somabhai Rupabhai (PW 3), where it was dark. The panchnama of the scene of occurrence (Ext. P-73) shows no



indication of the electric light either in the animal shed situated behind the house of complainant or that there is any electric pole anywhere in the vicinity or that there is a light on the well which is supplying water. Case of prosecution is that the appellant and six other co-accused surrounded the complainant party and there were three gunshots fired. The injured witness (PW 6) in his cross-examination has admitted that he had not stated anything about the burning light either in the animal shed or anywhere in the vicinity. In the absence of any evidence as to the light aspect, the possibility of identifying the accused in the darkness of the agricultural field of the complainant, particularly at 9.00 p.m. becomes doubtful. It is also to be pointed out that there is no evidence as to whether there was moonlight on 23-11-1997 and complainant has also not stated that he has identified



the appellant or other co-accused with the help of moonlight. In the absence of evidence as to the availability of sufficient light, the identification of the accused and the overt act attributed to the appellant becomes doubtful.”

44. The above citation squarely applies to the present facts and circumstances of the case. PW-4 himself admitted in his evidence that he went to the police station at 7.00 AM and gave a statement to the police and he was referred to the government hospital at Barachatti. Subsequently, the Inspector arrived at the hospital and recorded his statement. If the statement of PW-4 was indeed recorded at the police station at 7.00 AM, it should have formed the primary basis for registering the FIR. However, his initial statement has not come to light till date. Instead the subsequent statement recorded by the Inspector while PW-4 was undergoing treatment at the hospital was used as the basis for registering the case in Crime No. 153 of 1994 at Barachati Police Station. This clearly



indicates that the earlier version was suppressed by both the police and the witnesses.

45. The alleged incident took place on 18.10.1994 at approximately 7:30 PM. on an unpaved road in the village. PW-6, the investigating officer, corroborated this fact that the place of occurrence was indeed an unpaved road. However, none of the witnesses provided any details regarding the availability of lighting or the possibility of identifying the appellants in the darkness at 7:30 PM. This omission casts significant doubt on the prosecution's case. Furthermore, while PWs-1 to PW-4 describe alleged overt acts, their testimonies are inconsistent. The evidence of PW-2 did not even mention the presence of PW-1 at the scene, and the overt acts described by the witnesses contradict one another.

Key discrepancies in witness testimonies are:

(i) As per the fardbeyan Bholu Yadav allegedly caught the informant. Chamaru Yadav was armed with a lathi and Leela Yadav was armed with a spear and all the appellants assaulted PW-4.



(ii) As per the version of PW-1, Bhola Yadav was armed with a lathi. Chamaru Yadav was armed with a spear and Leela Yadav was armed with a lathi. Chamaru Yadav allegedly struck Balo Yadav with a spear on the head. However, as per the fardbeyan, it was Leela Yadav who struck PW-4 with a spear.

(iii) Another significant discrepancy arise from the evidence of the prosecution was that PW-4 fell unconscious as stated by all the prosecution witnesses except PW-4 himself.

46. Accordingly, as per the evidence of PW-1, PW-4 regained to consciousness only after 24 hours which could be approximately 7:45 PM. on 19.10.1994. However, the fardbeyan indicates that PW-4 gave his statement to the Sub-Inspector of Police, at the Primary Health Care Centre, Barachatti, at 8:00 AM. on 19.10.1994. Furthermore, the evidence of PW-4 contradicts this, as he stated that he gave his statement to the police at 7:00 AM. at the police station. These discrepancies are significant and undermine the credibility of the prosecution case.



47. According to the evidence of PW-3, all the accused, armed with lathis and spears, attacked PW-4. His testimony also confirmed that it was a dark night. Yet, there is no mention of Chamaru Yadav using a spear against PW-4. In contrast PW-4's testimony indicates that Bhola Yadav, Chamaru Yadav, and Aklu Yadav were carrying lathis, while Leela Yadav carried a spear. Chamaru Yadav struck PW-4 with a lathi on his head after which Leela Yadav struck him with a spear on his head and on his left shoulder joint.

48. The overt acts described by each of the witnesses contradict each other, and none of the witnesses (as stated above) mentioned identifying the appellants in the darkness and the overt acts attributed to the appellants create significant doubt regarding the prosecution's version of events.

49. The Hon'ble Apex Court in **Criminal Appeal No. 135 of 2001** in **Sudhir Ors. vs. State of M.P.** along with **Criminal Appeal No. 136 of 2001** **State of M.P. vs. Lavkush and Ors.** has held as follows:-



“7.The above two orders passed by the High Court are being challenged now in separate appeals by special leave, and both these appeals were heard together and they can be disposed of together by a common judgment now.

8. It is the salutary practice, where two criminal cases relate to same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases or compendiously called “case and counter case” by some High Courts and “cross-cases” by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (Goriparthi Krishtamma, In re) that “a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court; and



each party would represent themselves as having been the innocent victims of the aggression of the other”.

50. The Hon'ble Apex Court while disposing of the aforementioned two criminal appeal also relied upon the judgment in **Nathi Lal and Ors. vs. State of UP** reported in **1990(Supp) SCC 145** on the principle of case and counter case. Their Lordships have held as follows:-

2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two



separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in the particular case. The evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

Admittedly, in the present case also, there was a case and a counter case arising out of same incident, further record reveals that two FIRs have been lodged against the same incident by each of the party in Crime No. 153 of 1994 and Crime No. 155 of 1994. However, Crime No. 155 of 1994 was disposed of the Sub-Divisional Judicial Magistrate,



Sherghati, Gaya on 24.09.1996. As per the principles enunciated a case and a counter case has to be dealt with by the same Judge by having separate trial and the judgment has to be pronounced on the same day. In this case, the trial court did not follow the said principle.

51. If evidence, along with surrounding circumstances, convinces the court of its wholly reliable nature a finding can be made based on a high degree of probability similarly, if the evidence is found to be wholly unreliable, it must be discarded. However, when evidence fall into the third category- neither wholly reliable, nor wholly unreliable, it requires corroboration, the court must take note of the contradictions and inconsistencies present in the record. The principle of law has been laid down by the Hon'ble Apex Court in the landmarks decision of **Vadivelu Thevar vs. State of Madras** reported in **1957 SCR 981** in which their Lordships have held as follows:-

"In view of these considerations, we have no hesitation in holding that the contention



that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well-recognized



maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the



court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*



In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court



naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is



the only reliable evidence in support of the prosecution.”

52. The evidence of PW-4 comes under the third category i.e. neither wholly reliable nor wholly unreliable.

53. The last point which was urged by the Learned Amicus Curiae is on the aspect of 313 examination. On perusal of 313 examination of the appellants it can be understood only two questions have been asked to them which reads as follows:-

Question: Have you heard the statements of the witnesses?

Answer: Yes

Question: The evidence against you that on 18.10.1994, in village Dewaniya P.S.-Barachatti, District-Gaya, an attempt was made to kill Balo Yadav and Roop Lal Yadav by hitting him with lathis spears in collusion with other other accused.

Answer:No. I did not beat.

Question: There is also evidence against you that on 18.10.1994, in village-Dewaniya, P.S.-Barachatti, you, in collusion with the other accused,



caused serious injuries to Balo Yadav and Roop Lal Yadav.

Answer: No. I have not injured anyone.

Question: What do you say in your defense?

Answer: I am innocent.

Apart from the specific incriminating evidence attributed to each of the witness no direct questions were put to the appellants during their examination under Section 313 of Cr.P.C. This omission raises concern regarding the fairness of the trial, as the accused must be given a proper opportunity to explain the circumstances appearing against them.

In this context, it is relevant to discuss judicial precedents concerning the examination under Section 313 Cr.P.C, which emphasize that failure to put material evidence to the accused may vitiate the trial.

54. The Hon'ble Apex Court has elaborated on this principle in several landmark judgments. In the case of **Indrakunwar Vs. State of**



Chhattisgarh reported in **2023 SCC OnLine SC 1364** wherein their Lordships have held:-

34. Keeping in view the understanding of the principles of privacy and the propositions of law in regard thereto, we now travel to what, by law, may be required of the convict-appellant in her statement under Section 313 Cr.P.C.

35. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the



cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading



evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his



defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

In the case of **Kalicharan & Ors. Vs. State of Uttar Pradesh** reported in **(2023) 2 SCC 583** the Hon'ble Apex Court held as follows:-

24. At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-

"313. Power to examine the accused. -

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;



(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection (1)

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.



[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]"
(emphasis supplied)

In the case of **Naval Kishore Singh Vs. State of Bihar** reported in **(2004) 7 SCC 502** their Lordships have held as follows:-

5. Counsel for the appellant pointed out that the Sessions Court committed serious error in not properly examining the accused under Section 313 Cr.P.C. Our attention was drawn to the statement taken from the present appellant. Only three questions were put to the appellant. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say



anything in defence. The questioning of the accused under Section 313 Cr.P.C was done in the most unsatisfactory manner. Under Section 313 Cr.P.C the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to



explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. In various decisions of this Court, the importance of questioning the accused under Section 313 CrPC was given due emphasis, e.g. Rama Shankar Singh v. State of W.B. [AIR 1962 SC 1239 : (1962) 2 Cri LJ 296], Bhalinder Singh v. State of Punjab [(1994) 1 SCC 726 : 1994 SCC (Cri) 462], State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] and Lallu Manjhi v. State of



Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544].

6. In the present case, the appellant had not raised any contention in the High Court that he was seriously prejudiced by the way in which the Section 313 questioning was done. If this defect in procedure under Section 313 CrPC had been pointed out, the High Court could have very well remitted the case to the Sessions Court for a proper examination. At this stage, we are not inclined to accept this contention of the appellant especially when the accused was not able to show that he was in any way prejudiced by such irregular procedure.

In the case of **Sanatan Naskar and Another Vs. State of West Bengal** reported in **(2010) 8 SCC 249**, the Lordships of Apex Court have held:-

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all



incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other



party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by



the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.



24. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence. In Vijendrajit Ayodhya Prasad Goel v. State of Bombay the Court held as under: (AIR p. 248, para 3)

“3. ... As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused’s statement and excluded the exculpatory part does not seem to be correct. The statement under Section 342 did not consist of two portions,



part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

25. In the light of the abovestated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement



recorded under Section 313 Cr.P.C. In both these circumstances the Court would be entitled to draw adverse inference against the accused.

29. So, the first and the foremost question that this Court has to examine in the present case is, whether the prosecution has been able to establish the chain of event and circumstances which certainly points out towards the involvement and guilt of the accused. Even, before we enter upon adjudicating this aspect of the case, it will be appropriate to narrow down the controversy keeping in view the admissions, if any, made by the appellants. The accused, after having known the entire case of the prosecution, is required to be examined under Section 313 Cr.P.C. All the material evidence has to be put to the accused and he has to be awarded the fair opportunity of answering the case of the prosecution, as well as to explain his



version to the court without being subjected to any cross-examination. As already noticed, the answers given by the accused can be used against him in the trial insofar as they support the case of the prosecution.

In the case of **Premchand Vs. State of Maharashtra** reported in **(2023) 5 SCC 522** the Lordships of Apex Court have held as under:

15. What follows from these authorities may briefly be summarised thus:

15.1. Section 313 CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any



circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).



15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.



55. All the above cited precedents squarely apply to the present facts and circumstances of the case.

56. It is important to note that the prosecution has miserably failed to establish the pre-arranged plan or meeting of minds among the appellants in order to attract Section 34 of the Indian Penal Code, and also has the prosecution miserably failed to prove the appellant acted with the intention to murder the injured person. None of the witnesses have deposed that the attack was the result of a premeditated arrangement or that the accused intended to cause the victim's death. In the absence of such evidence on record, it would be improper to convict the appellant under Section 307 r/w Section 34 of the Indian Penal Code.

57. Based on the above discussion and taking into consideration the circumstances, this Court is of the opinion that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt for the offence punishable under Section 307 r/w Section 34 of the Indian Penal



Code and Section 326 r/w Section 34 of the Indian Penal Code. Furthermore, the testimonies of PWs-1 to PW-5 do not corroborate with each other, and it would not be safe to convict the appellant.

58. In result, the criminal appeal is allowed, and the conviction and sentence recorded by the Vth Additional District & Sessions Judge, Gaya, in Sessions Trial No. 172 of 1997/393 of 1995, dated 12.01.2004 and 13.01.2004, against appellants No. 1 to 5 for the offences punishable under Section 307 r/w Section 34 and Section 326 r/w Section 34 are hereby set aside. The appellants are acquitted of the said offences.

59. The record reveals that the appellants were enlarged on bail on 03.03.2004. Accordingly, the bail bonds of appellants No. 1 to 5 shall stand cancelled. Miscellaneous application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

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