

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.616 of 2005**

1. Brij Kumar Pandey, son of Paramhansh Pandey.
2. Rohit Pandey @ Rohin Pandey, son of Paramhansh Pandey.
3. Sheo Kumar Pandey, son of Hansnath Pandey.
4. Hansnath Pandey, son of Hardeo Pandey.
5. Nandjee Pandey, son of Hardeo Pandey.
6. Paramhansh Pandey, son of Hardeo Pandey.
All are residents of Village-Sasamusa P.S. Kuchaikot, Distt. Gopalganj.
... .. Appellant/s

Versus

State of Bihar
... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prakash Chandra Jha, Adv
For the Respondent/s : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 20-12-2025

At the outset, it is submitted that appellant no(s). 1, 4, 5 and 6 namely, Brij Kumar Pandey, Hansnath Pandey, Nandjee Pandey and Paramhansh Pandey died during the pendency of present appeal. Accordingly, present appeal stands abated against them.

2. In view of aforesaid, now this appeal survives against appellant no(s). 2 and 3.

3. The present appeal has been preferred by the appellants-convicts under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 24.11.2005 and order of



sentence dated 26.11.2005 passed by learned Additional District and Sessions Judge (Fast Track Court No. V), Gopalganj in Sessions Trial No. 22 of 1995/151 of 2004, whereby the concerned Trial Court has convicted the appellants under Section 436/34 of the Indian Penal Code (for short 'IPC') and have been sentenced to undergo R.I. for seven years and fine of Rs. 1,000/- each and in default of payment of fine each shall undergo SI for six months.

4. The brief facts of the prosecution case is that on evening of 06.04.1993 informant had gone to attend the nature's call towards north of his house and when he was returning back to his house at about 19:00 hours he saw accused Brij Kumar Pandey, Sheo Kumar Pandey and Rohit Kumar Pandey were sprinkling petrol over the roof of his house and accused Rohit Kumar Pandey set fire with match stick. The other accused persons namely Hansnath Pandey, Param Hans pandey and Nand Ji Pandey were also armed with *bhala* and *farsa* standing near the road. On alarm of informant several villagers arrived at the place of the occurrence whereafter accused persons fled away. Villagers, who arrived at the place of occurrence tried to extinguish the fire, but they did not succeed and therefore property worth Rs. 1,25,000/- was destroyed. The reason behind the setting fire alleged to be



land dispute between the parties.

5. On the basis of informant’s fardbeyan a case was registered as Kuchaikot P.S. Case No. 36 of 1993 for aforesaid occurrence against all above named six accused persons for the offence punishable under Sections 436/34 of the Indian Penal Code.

6. Learned Judicial Magistrate, 1st Class, Gopalganj on the basis of materials collected during investigation took cognizance under Section 436 of the IPC and committed this case to the court of Sessions for its trial and disposal. Learned trial court accordingly framed charges against appellants-accused, which upon explanation to accused/appellants, pleaded as “not guilty” and claimed trial.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 5 witnesses. One defence witness was also examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Shyam Bahadur Singh
P.W. 2	Jang Bahadur Singh
P.W. 3	Subhash Singh
P.W. 4	Prem Narain Singh (informant)
P.W. 5	Gorakh Nath Singh (formal witness)
Defence Witnesses	
D.W. 1	Md. Mustakin



8. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges and certain documents in defence also:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Signature of informant on Complaint Petition.
2.	Exhibit-2	Signature on Vakalatnama.
3.	Exhibit-3	Signature of Binod Kumar on FIR.
4.	Exhibit-4	Signature and writing of M.N. Tiwari S.I. Kuchai Kote on fardbeyan.
Documents from Defence		
1.	Exhibit-A	Certified Copy of charge-sheet of Kuchai Kote P.S. Case No. 37 of 1993.
2.	Exhibit-B	Certified Copy of sale-deed executed by Hardeo Pandey in favour of Shyam Bahadur Singh.
3.	Exhibit-C	Certified Copy of Khatiyan.
4.	Exhibit-D	Compromise petition of Title Suit No. 84/64.

9. The statement of the appellants-accused were recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellants/convict for the offences under Sections 436/34 of IPC and sentenced them in the manner as stated above.



11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellants/convicts have preferred the present appeal.

12. Hence, the present appeal.

Submission on behalf of appellants:

13. It is submitted by learned counsel appearing on behalf of the appellants-accused that initially for the occurrence police case was lodged, which has been registered as Kuchaikot P.S. Case No. 36 of 1993, which after investigation found false and thereafter police submitted final form in this case as no case as alleged found true during investigation against appellants-accused, whereafter upon protest cognizance was taken by learned Jurisdictional Magistrate, deferring with final form without assigning any reason. It is pointed out that admittedly parties are in land dispute, which is the reason for false implication. It is also submitted that I.O. of this case could not be examined during the trial making conviction doubtful as no place of occurrence established and further the appellants-accused could not cross-examine him *qua* contradiction as surfaced during the trial and, therefore, they are deprived from their valuable legal right *qua* their defence. It is submitted that no burnt material was seized by police during the course of investigation. It is also submitted that the major



contradiction *qua* occurrence as surfaced during the trial was also ignored by the learned Trial Court while recording the judgment of conviction, therefore, judgment of conviction must be set aside. It is also pointed out that to establish the case within the meaning of Section 436 of the IPC, it must be established that house in issue was a dwelling unit, which prosecution also failed to establish during the course of trial.

14. While concluding the argument learned counsel for the appellants submitted that statement of appellants/convicts under Section 313 of Cr.P.C. appears recorded in very cryptic and mechanical manner, without putting the relevant evidence as surfaced during the trial against them. It is submitted that such type of statement recording of accused is not permissible under law, in terms of legal report of Hon'ble Supreme Court as available through **Sukhjit Singh Vs. State of Punjab, [(2014) 10 SCC 270]** and therefore judgment of conviction and order of sentence are liable to be set aside.

Submission on behalf of State:-

15. Learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that P.W. 4/informant categorically deposed during the trial that appellant no. 2 Rohit Pandey put his house on fire and appellant no. 3 Sheo Kumar



Pandey was sprinkling petrol. However, learned APP fairly conceded the land dispute and also lodging of criminal case just prior to the occurrence by appellant's side against informant/P.W. 4 and others.

16. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

Deposition of Witnesses

17. **P.W. 1 is Shyam Bahadur Singh**, who turns hostile during the course of investigation and nothing appears during his cross-examination which may appear relevant and corroborating *qua* occurrence.

18. **P.W. 2 is Jang Bahadur Singh**, supported the occurrence and deposed that appellant no. 2 put informant's house on fire. It also appears from his testimony that no attempt was made to control the fire or to extinguish it. It appears from his testimony that he is the nephew of P.W. 4/informant.

19. **P.W. 3 is Subhash Singh**, also supported the occurrence in the same manner as it was testified by P.W. 2. He also testified regarding pending Title Suit No. 95/87 between the parties.



20. **P.W. 4 is Prem Narain Singh**, who deposed that appellant no. 2 caused mischief by fire and he was the person who was in possession of match box. Appellant no. 3 found sprinkling petrol on the house. It was also deposed that petrol was sprinkled for about 2-4 minutes.

21. **P.W. 5 is Gorakh Nath Singh**, is an advocate clerk and formal witness who identified the signature of informant on complaint petition which upon his identification has been exhibited as **Exhibit-1**, he identified the signature of informant on *vakalatnama* which upon his identification has been exhibited as **Exhibit-2**, he identified the signature of S.I. Binod Kumar over the FIR which upon his identification has been exhibited as **Exhibit-3** and he identified the *fardbeyan* of informant which upon his identification has been exhibited as **Exhibit-4**.

22. It would be apposite to reproduce para no(s). **10, 11, 12 & 13** of the legal report of Hon'ble Apex Court in the matter of **Sukhjit Singh Case (supra)**, which reads as under:

*“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in **Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused*



under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. *In this context, we may profitably refer to a four-Judge Bench decision in **Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491]** wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).*

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. *In **Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933]**, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement*



of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. *The aforesaid principle has been reiterated in **Ajay Singh v. State of Maharashtra [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371]** in following terms: (SCC pp. 347-48, para 14)*

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

-: Discussion & Conclusion :-

23. In view of aforesaid factual discussion *qua* evidence as available on record it transpires that I.O. of this case



could not examined during the trial and due to non-examination of trial, seizure of burnt materials and place of occurrence could not established during the trial. Appellants-accused also deprived to avail their defence right by way of contradictions *qua* improved version of P.W. 4/informant and other prosecution witnesses who supported the occurrence during the trial. It also appears from complaint petition, which is the calyx of present criminal prosecution that the complainant himself examined as P.W. 4, but he failed to identify his signature on complaint petition and also signature of his advocate rather same was proved by a formal witness, who is an advocate clerk suggesting that conviction as recorded by learned Trial Court is not appearing convincing on this score alone.

24. The statement of accused persons also appears recorded in very cryptic and mechanical manner without putting all incriminating circumstances to them and therefore same also appears questionable, in view of **Sukhjit Singh Case (supra)**.

25. In view of aforesaid discussion it transpires that there are several doubts as discussed aforesaid which must to be answered by prosecution, but could not answered. In such a circumstance it is not safe to say that prosecution established its case beyond all reasonable doubt and thus, benefit of doubts must



be extended to accused/appellants.

26. Accordingly, the appeal stands allowed.

27. The impugned judgment of conviction dated 24.11.2005 and order of sentence dated 26.11.2005 passed by learned Additional District Sessions Judge (Fast Track Court No. V), Gopalganj in Sessions Trial No. 22/95 and 151/04 is accordingly set aside.

28. The appellants, above-named, are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds. Sureties stands discharged. Fine if any paid, be returned to appellants hence forth.

29. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.12.2025
Transmission Date	24.12.2025

