

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.85 of 2008

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Brijbhan Sah, son of Rameshwar Sah, resident of Village-Lakhai, P.S. Barhat,
District- Jamui

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (SJ) No. 115 of 2008

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1. Rameshwar Sah, son of Late Santekhi Sah
 2. Ayodhya Sah, son of Late Santekhi Sah @Deepak sah.
 3. Dip Narayan Sah @Deepak Sah, son of Ayodhya Sah
 4. Sanjay Sah, son of Ayodhya Sah
 5. Binod Sah, son of Rameshwar Sah
 6. Pappu Sah, son of Late Kishan Sah
 7. Bablu Sah, son of Brijbhan Sah.
- All resident of Village- Lakhai, P.S. Barhat, District- Jamui

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (SJ) No. 85 of 2008)
For the Appellant/s : Ms. Akansha Malviya, Advocate
For the Respondent/s : Mr. A.M.P Mehta, APP
(In CRIMINAL APPEAL (SJ) No. 115 of 2008)
For the Appellant/s : Ms. Akansha Malviya, Advocate
For the Respondent/s : Mr. A.M.P Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 06-05-2025

Heard Ms. Akansha Malviya, *Amicus Curiae* for
the appellants and Ms. Anita Kumari Singh, learned APP for the
State

2. The present appeal has been filed under



Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the judgment of conviction dated 19.12.2007 and order of sentence dated 20.12.2007 passed in Sessions Trial No. 399 of 2006 in connection with Barhat P.S. Case No. 42 of 2006 passed by learned Additional District and Sessions Judge, F.T.C-V, Jamui whereby and where-under the appellants have been convicted for the offence under Sections 323, 307 read with 149 and 380 of the Indian Penal Code (hereinafter referred as 'IPC') and for the offence punishable under Section 307 read with 149 of the IPC sentenced to undergo rigorous imprisonment for 5 years and for the punishable under Section 380 of the IPC, sentenced to undergo rigorous imprisonment for 3 years and both the sentences shall run concurrently. No separate sentence has been passed under Section 323 of the IPC in view of conviction, sentenced under Section 307 of the IPC.

3. The brief fact leading to the filing of the present appeal on the basis of the written information of the informant, the complainant Urmila Devi gave a written application to the Superintendent in-charge, Jamui that Rameshwar Shah, Ayodhya Sah, Santosh Sah, Brijbhan Sah @ Lalu Sah, Bablu Sah, Vinod Sah, Deepak Sah, Pappu Sah and



Sanjay Sah want to usurp her property, with this intention, two months ago her husband was badly beaten up due to which her husband fell ill, his treatment is still going on in Rajasthan. Three-four days ago, all of them abused her and beat her brutally, information of which was given in writing to the police station in-charge Barhat, then the in-charge of Barhat ordered an investigation and to took action under Section 107. Khata no. 88, Khasra no. 674, area 4 decimal is her residential land, the accused wanted to encroach it forcefully. On the night of 01.05.2006, around 10 labourers and 4 masons forcefully erected a pillar on our land overnight. When they went to ask about it in the morning, Rameshwar Shah picked her up and threw her down and all the members entered our house and started looting in her house. Rameshwar Shah and Bablu Shah together started strangulating them with the intention to killing them. Goda Devi, Sugiya Devi, Binwa Devi and many women came running and saved their life. The accused looted and took away sewing machine, 50 kg rice, 30 kg wheat and brass pitcher and other items.

4. Further on the basis of the written information of the informant, a case was registered in Barhat P.S. Case No. 42 of 2006 dated 02.05.2006 under Sections 341, 448, 323, 504,



307 and 380 read with 34 of the IPC and after completion of investigation, investigating officer submitted the charge-sheet and learned Chief Judicial Magistrate has taken cognizance on 16.07.2006/17.07.2006. Thereafter, the case has been committed to the Court of Sessions on 23.08.2006

5. The prosecution examined altogether 6 witnesses to substantiate the charges levelled against the appellants, who are namely, PW-1 Sugi Sugiya Devi, PW-2 Guda Devi, PW-3 Birwa Devi, PW-4 Urmila Devi, PW-5 Chandrachara Ray (Investigating Officer) and PW-6 Dr. Vasisth Narayan Prasad (Doctor) and on behalf of accused/appellants one defence witness has been examined, DW-1 Suresh Tanti (Office Superintendent of Jamalpur Railway Factory).

6. PW-1 in her examination-in-chief stated that the alleged occurrence occurred 7 to 8 months ago at approx 7:00 to 8:00 AM. in the morning she reached at the place of occurrence after the fight started and saw that Vinod Sah, Sanjay Sah, Bablu Sah started assaulting the victim. Further she stated that they tried to strangle her by neck, Rameshwar Sah and Bablu Sah were strangulating her. A cloth sewing machine operated by leg, Rice, utensils, wheat was stolen. Deepu Sah, Pappu Sah, Vinod Sah, Sanjay strangled her and took away all



the items.

6.i. In his cross-examination, she stated that Santoshi Sah was her grandfather-in-law, Vanshi Sah and Santoshi Sah were brothers. Dasrath Sah is her son and he was at home at the time of alleged occurrence. The sons of Santoshi Sah are accused persons in this case. A title suit was going on before this case. She is not a party in that case. She further stated that when she went at the place of occurrence, she found Urmila Devi lying down and she also saw injuries on her throat and other body part also particularly at three part. Blood was oozing out from her mouth. She lifted Urmila Devi and took to her home. She did not had any conversation with Urmila Devi. she went to her home after leaving her at her home.

6.ii. She also stated that the Police had recorded her statement after four days of the alleged occurrence at her home. At 7:00 AM. in the morning and she had stated before the Police that she reached at the place of alleged occurrence after the fight had started and saw that Vinod Sah, Sanjay Sah, Bablu Sah were assaulting Urmila Devi. Rameshwar Sah and Bablu Sah tried to strangulate her. After that they took away cloth sewing machine, rice, wheat, utensils and Deepu Sah, Pappu Sah, Vinod Sah, Sanjay Sah strangled the victim and took away



all the items. Brijbhanu Sah was present on the day of the incident not gone on duty.

7. PW-2 in her examination-in-chief stated that the alleged occurrence occurred eight months ago in the morning and she was at her house when she heard the noise came from Urmila's door. She stated that Rameshwar Sah, Bablu Sah, Brijbhan Sah, Vinod Sah, Ayodhya Sah, Sanjay Sah, Pappu Sah were started abusing and assaulting Urmila. The accused persons tried to strangulate Urmila Devi. They took away cloth sewing machine, one sack each of wheat and rice, utensils.

7.i. In her cross-examination, she stated that Sugiya Devi is the wife of Ramcharan and witness in this case. Pappu, the son of Kishun, Rameshwar, Sons of Rameshwar Brijbhan and Vinod and Bablu, the son of Brijbhan all are accused in this case. She also stated that a land dispute is going on between the two parties. Her village is a settlement of about 5-6 hundred houses, people of all castes live there. Houses of Phagu Yadav, Dinesh Modi, Brahmdeo Goswami, Phulan Yadav, Ramji Goswami is nearby her house. These people live with their family and children in their houses.

7.ii. She further stated that the noise continued



for sometime and her house is at distance. There are around 5-7 houses between her house and Urmila's house. She reached at the place of occurrence after 4-5 hours since she heard the noise. She saw Urmila Devi in her own house. She did not had any conversation with her and returned home after that. She had recorded her statement before the Police after ten days.

8. PW-3 in her examination-in-chief stated that The incident occurred eight months ago at 8:00 AM. in the morning, that time she was at her house and went to the place of alleged occurrence when she heard fighting and abuses. She saved Urmila Devi the victim when Bablu and Rameshwar assaulted and tried to strangle the victim. They took away wheat and rice. She ran after Urmila shouted when they tried to strangle her.

8.i. In his cross-examination, she stated that she and Urmila Devi are cousin sister-in-laws (wife of husband's brother). Her husband and Urmila Devi's husbands are own brothers. Both the parties are cognates. There is a land dispute between both the parties. This case happened because of that land dispute. She further stated that there are houses of Yadavs, Gosains etc. around her house. At that time, there was no one else at her house. The noise continued for about one to one and



half hours. she went there 5-10 minutes after the noise. She saw the victim lying down when she reached there. She lifted Urmila Devi and took her to her home and sprinkled water on her, after that the victim felt a bit normal after sprinkling of water and regained her consciousness. She did not have any conversation with victim after she regained consciousness. She went to her home after that. She also stated that Brijbhan is employed. She don't know that he works in Railway in Jamalpur. She don't know whether he was in Jamalpur or not on the day of the alleged occurrence. Rameshwar is an old man she had recorded her statement before the Police once.

9. PW-4 in her examination-in-chief stated that The incident occurred about 9 months ago at about 7:0 AM. to 8:00 AM. in the morning she wake up and saw that a pillar was erected at the disputed land. Rameshwar Sah, Brijnath Sah, Vinod Sah, Bablu Sah, Pappu Sah, Dinanath Sah, Ayodhya Sah, Sanjay Sah together erected a pillar. she asked them to whatever they want to with their land leaving her land, on which they started beating her. Rameshwar Sah, Bablu Sah started strangulating her with a Gamchha (towel). Sanjay Sah, Brijnath, Vinod Sah, Pappu entered into house and took away (about 40 kg) rice, Sewing machine, Brass utensils etc. When children



started crying, they ran away. She filed this case. She had given application to SP, which bears her signature. She identify her signature and it was marked as Ext.-1.

9.i. In his cross-examination, she stated that Houses of both parties are at the same place. The accused lives in one part of the house and she live in another part of house of the same house. The separation was not done through measurement. She call the disputed land as her and the accused calls it their. Title suit is already proceeding on this land. She had given application in the Title suit that the accused have erected pillars. She do not know the plot no. of the disputed land. She got the Khatiyani (sale deed) of the land read over to her. The sale deed is in the name of Hemraj Sah and he is the father-in-law of the accused Rameshwar Sah. Other accused persons are brothers, nephews and sons of Rameshwar Sah.

9.ii. She further stated that she did not remember what was the Gamchha (towel) made of and her neck was swollen after being strangulated by the Gamchha. Nothing else happened. She got unconscious after being strangulated. She gained consciousness after water was sprinkled on her face. All the accused persons left when she gained consciousness. She went to Jamui Deputy Superintendent of Police after the



incident and gave an application that Rameshwar Sah and Bablu Sah strangled her with a Gamchha. Rameshwar Sah is an aged man. She cannot tell his age. She didn't go to the Jamui Hospital.

9.iii. She also stated that she narrated about the alleged occurrence to many people in the village but she cannot tell the name of anyone and no villagers helped her. She gave her statement to the police and no statement was taken in Jamui. The Daroga (SI) had come from Barhar Jamui and she had met her and the pillar was shown to the Daroga. The pillar was not built before her.

9.iv. She further stated that Brijbhanu Sah works in Jamalpur and he had not gone to Jamalpur for work on the day of alleged occurrence. It is not true that the land belongs to the accused persons and she had filed false case to usurp the land and had falsely testified. She also has a share in the land and she demand her share. She had filed Title suit for the same, which is undergoing.

10. PW-5 in his examination-in-chief stated that he was posted in the Barhar PS on 2-5-06. The investigation of Barhar PS case no. 47 of 06 was done by PS SHO. The written application was given to SP, which he forwarded to SHO Barhar



along with the informant. he was handed over the charge of investigation by SHO. The formal FIR is in the handwriting and Signature of SHO which he identify and marked as Ext.-2.

10.i. He further stated that after assuming the charge of investigation, he recorded the statement of the informant and prepared the injury report of the injury found on the body of the informant and sent her to the doctor for examination. He inspected the place of occurrence. It was told that the accused persons entered the house of the informant and took away her goods and strangled her and threw her down with the intention to kill her. The boundary of the place of occurrence is on north direction there is rural road, on south there is a scaffold, in east-west there is rural path. He stated that he recorded the statement of witnesses Goda Devi and Binwa devi and arrested the accused. Submitted charge-sheet as per the orders of senior officer.

10.ii. In his cross-examination, he stated that the informant did not show the land related papers. He demanded the papers from her. Further he stated that on seeing the written application from which it was known that there is a land dispute. The place of occurrence was told by the villagers, but it is not mentioned in the case diary. He did not prepare the map of the



house of place of occurrence. He did not mention the details of inside of the house of the informant and did not mention that the goods were taken from which part of the house.

10.iii. He also stated that he did not record the statement of Darbari. It is not written that Darbari Yadav was inquired. Statement of any independent witness was not recorded, it is adjacent to the PS. He received the injury report of the informant but did not mention it in the case diary. The injury report was received on 10.05.06. It was received from office clerk. His name has not been mentioned. It is mentioned in para 30 that the supervision of this case shall be done by police inspector. The inspector did not supervise this case.

10.iv. He further stated that Sugiya Devi did not state before him that she reached when a fight broke out. It was also not stated that Vinod sah, Sanjay Sah, Bablu Sah started beating Urmila, neither it was said that Rameshwar Sah and Bablu Sah were strangulating. It was not said that Sewing machine, rice, wheat etc were taken. It was not said that Deepu Sah, Pappu Sah, Vinod Sah, Sanjay Sah took the goods.

10.v. Goda Devi did not state that while she was at home, she heard commotion from the house of Urmila Devi. Goda Devi did not take the name of the accused person before



him. She also did not state regarding taking away of one sack of wheat, Plate, Lota (small round utensil).

11. PW-6 in his examination-in-chief stated that on 02.05.2006 he was posted at Additional PHC Badhat as Medical Officer In-Charge as well as Medical Officer. On that day, at about 3:50 PM. he examined Smt. Urmila Devi Lakhot PS Badhat and District Jamui. On investigation of wound following injuries were found on her body

i) One buries 2.5x ½ lying obliquely just below left scapula on the back.

ii) One buries on right side of neck ½ x ½ at 3/2 ,, posterior right angle of mandible.

iii) One bruise on left side of neck ½ x ¼ at 5/2 above mid clavicular point.

Opinion- all injuries have been caused by hard and blunt substance and are simple in nature. Age of injuries within twenty-four hours. M.I.- An old wound scare on left leg.

The injury report is in his pen and signature marked as Ex-3.

11.i. In his cross-examination, he stated that bruise is reaction any mark over the skin by some object. The bruise are possible by fall. The injury no. 2 and 3 may be self inflicted injuries. All the injuries are superficial in nature. The age of injury depend upon change of color. I have not mentioned the color of injury.



12. DW-1 in his examination-in-chief stated that he know Brajbhanu Sah s/o- Rameshwar Sah, r/o- Lakhait, PS-Badhat, District- Jamui. He works on the post of helper in Jamalpur Railway workshop. He further stated that had received a notice issued by the court. Brajbhanu Sah was present on his duty at Railway workshop Jamalpur from morning 7 am to 1600 (4 pm) on 02.05.2006. This is the attendance register of 02.05.2006. The attendance register of 02.05.2006 is in the handwriting and signature of Shri Kamleshwari Ravidas, Junior Engineer which I recognize. It is marked as Exhibit-A. Brajbhanu Sah was on leave from 03.05.2006 to 06.05.2006 after performing his duties on 02.05.2006, which is mentioned as L.A.P. he have been authorized and sent from the workshop.

12.i. In his cross-examination, he stated that Facility of both train and bus are available to travel from Jamalpur workshop to Jamui. He cannot tell the distance of Jamalpur from Jamui. It takes about 2 hours by train to travel from Jamalpur to Jamui. Shri Kamleshwari Ravidas is currently working in the workshop. The attendance in the attendance register (Exhibit-A) was not marked before him. Work order is filled on the attendance register which is written by employees of the office. Work order is filled before work.



12.ii. He further stated that he cannot tell the reason due to which Brajbhanu Sah has been on leave since 02.05.2006. It is not true that Brajbhanu Sah was not present in the workshop on 02.05.2006 and he and Kamleshwari Ravidas have made false entry in the register in connivance with Brajbhanu Sah. It is not mentioned that how many pages are in total in Exhibit-A, neither it bears signature or seal of any officer. The attendance register (Exhibit-A) is from June-2005 to June-2006. The name of workers is mentioned on the page after this, but the attendance register is blank. The names of workers Umashankar Prasad, Subodh Das, Gautam Sen Gupta, Ranjit Sen Gupta is mentioned and work order of one day is written, rest all pages are blank. It is also in the handwriting of Kamleshwari Ravidas. He also stated that each worker of the workshop has a G.A. (General attendance) card. Time Punching is done at the time of entry on which time and date is written and the time and date of exit from the workshop is also mentioned on the G.A. card. Timing of G.A. Card of each worker is in the office. The punching on the card is done by the machine and Punch card can be produced in the court. He further stated that this over-writing Register dated 02.05.2006 is related to Brajbhanu Sah. Register is in the signature and



handwriting of R.K. Singh, Junior Engineer which I identify, it is marked as Exhibit -B. He have also brought General Attendance Card, which is related to Brajbhanu Sah. The number of this card is 24604. This is in the handwriting and signature of Jawahar Lal Sah, Head clerk which he recognize.

13. Learned *Amicus-Curiae* Ms. Akansha Malviya submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the place of occurrence in this case has not been shown by the prosecution. It has not been established and there is contradiction in the statements of witnesses regarding the place of occurrence. She further submitted that PW-1 in her deposition stated that she came at the time when fight took place whereas in her cross-examination, she stated that when she reached at the place of occurrence, she found the informant unconscious and found injury on her body and on neck. Similarly, PW-2 stated in examination-in-chief that she heard some hulla and reached at the place of occurrence and saw accused/appellants strangling



and hitting the informant. But in her cross-examination, she stated that she reached at the place of occurrence after 4-5 hours after shouting started and saw informant at her house. PW-3 also stated in her examination-in-chief that she reached at the place of occurrence and saved the informant whereas in her cross-examination she stated that when she reached at the place of occurrence the informant was unconscious. PW-1, 2 and 3 have admitted the fact there is land dispute ongoing between the informant and appellants.

13.i. She further submitted that investigating officer of the present case (PW-5) in his deposition clearly stated that he did not took the statement of any independent witnesses and there was delay of 8 days in preparing the injury report of the informant. PW-5 further stated that informant did not gave the documents of the land and no pillar has been found at the house of informant. He further stated in his deposition that while recording the statement, none of the prosecution witnesses have narrated the story as alleged by the prosecution. She further submitted that PW-6 (Medical Officer) stated in his cross-examination that the injury is simple in nature and injury no. 2 and 3 may be self-inflicted and all the injuries are superficial in nature. She further submitted that at the time of



occurrence the appellant namely Brij Bhan Sah was present in the Railway Factory and attended his duty which has been certified by the competent authority.

13.ii. Learned Amicus-Curiae further submitted that all the witnesses are interested witnesses and no independent witness has been examined by the prosecution. It is admitted fact that there is land dispute going on between the appellants and informant and entire family has been made accused in false concocted case due to land dispute. As this appeal is of the year 2008 and occurrence is of the year 2006, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 19-20 years. So, the appellants should have been acquitted from the conviction as sentenced against them.

13.iii. Learned Amicus-Curiae has relied upon the judgment of the Hon'ble Apex Court in the case of '*State of Maharashtra v. Kashirao and Ors.*' (2003) 10 SCC 434, where the Apex Court had laid down the essential ingredients required to be proved in case of an offence under Section 307 of IPC. The relevant portion of the judgement reads as under:

“20..... The essential ingredients required to be proved in the case of an offence under



Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as.

(a) the accused knew to be likely to cause death; or

(b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause

(a) death, or

(b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

13.iv. Further she relied upon the judgment of the Hon'ble Apex Court in the case of ***State of M. P. V. Saleem (2005) 5 SCC 554***, where Hon'ble Apex court has categorically held that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case, Relevant portion of the judgement



reads as under:

"16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury...."

13.v. In the case of ***Hari Mohan Mandal v. State of Jharkhand (2004) 12 SCC 220***, relevant portion of the same reads as under:

"17. The first injury was certainly on vital part and taking into account the injuries on the various parts of the body, Section 307 IPC has been rightly invoked. The accused has been rightly convicted for offences punishable under Section 307 IPC. However, taking into account the fact that the altercations took place at the time of husking paddy and there was no premeditation or planning of the attack, custodial sentence of five years would meet the ends of justice. It is to be noted that scope for consideration in the appeal was limited to the nature of offence and consequently the sentence."

13.vi. In the case of ***Jai Narain Mishra and Ors. v. State of Bihar (1971) 3 SCC 762***, relevant portion of the same reads as under:



"11.Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death. In the present case, however, three injuries are of a simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC, but Section 326 IPC his conviction, therefore, under Section 307 IPC is set aside...."

13.vii. In the case of *Amar Singh v. State of Punjab (1987) SCC 679*, has held that in case an inconsistency in medical report and testimony of witnesses has not been explained the entire prosecution case is discredited. In this regard, reliance is placed on the following part of the judgement:

"10. It is next contended on behalf of the appellants that the learned Additional Sessions Judge and the High Court were not justified in placing any reliance upon the evidence of PW 5 Smt Veero, which is totally inconsistent with the medical evidence. It has been already



noticed that all the accused persons were armed with sharp weapons. It is the evidence of PW 5 that Amar Singh, son of Bachan Singh, and Rattan Singh were each armed with a sua, Lakha Singh was armed with a barchi, Harbhajan Singh was armed with a kulhari and Amar Singh, son of Isher Das, was armed with a kirpan. She said: "Then all the accused except Bachan Singh accused surrounded my son Piara Singh (deceased). Then Lakha Singh accused gave a barchi-blow on the left knee of my son. Then Piara Singh (deceased) fell down and all the accused then gave injuries to him with their respective weapons." In her cross-examination she said that the accused persons gave quite a number of blows with their respective weapons after they had overpowered him, and that many of the blows fell on the ribs and abdomen of deceased Piara Singh. But not a single incised wound was found on the body of the deceased by PW 2 Dr Verma. Moreover, the medical report shows that there was no injury on the ribs and abdomen of the deceased. We are unable to accept the evidence of PW 5 that although a number of blows were given by the accused with their weapons on the ribs and abdomen of deceased, yet such blows did not produce any mark of injury. The medical report submitted by PW 2 shows that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by PW 5. If her evidence that all the accused inflicted injuries on the deceased with their respective weapons has to be accepted, then



there would be incised wounds all over the body of the deceased, but the medical report shows that not a single incised wound was found on the body of the deceased. Thus the evidence of PW 5 is totally inconsistent with the medical evidence. This Court in Ram Narain Singh v. State of Punjab [(1975) 4 SCC 497: 1975 SCC (Cri) 571: AIR 1975 SC 1727] has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of PW-5 and the medical evidence."

14. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained

15. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and aforesaid judgments referred by the Amicus Curiae



as well as given thoughtful consideration to the submissions advanced by both parties.

16. On deeply studied and scrutinized all evidences, it is evident to note that the instant case is a case of no evidence and is not sustainable in the eye of law. The prosecution version does not seem to be true in the background of the facts of the case as PW-4 (informant) in her deposition has contradicted her statement by stating a new story that Rameshwar Sah and Bablu Sah pressed her neck with the 'Gamcha' while in the FIR she stated that accused/appellants pressed her neck from the hand. The informant herself admitted the fact that there is ongoing land dispute between her and appellants for which title suit is pending prior to the occurrence. PW-4 in para-5 stated that from pressing the neck by *gamcha*, the neck bulged out except that there is no injury received and in para-8 of her deposition she stated that she demanded her share from the disputed land. From perusal of other prosecution witnesses' deposition, it is evident to note that all witnesses are interested and related witnesses and no independent witnesses have been examined during the course of trial.

17. Hon'ble Supreme Court in the case of *Tahsildar Singh & Anr. v. State of Uttar Pradesh AIR 1959 SC*



1012: Differentiated between **minor contradictions** (which do not affect credibility) and **major contradictions** (which go to the root of the prosecution case). Minor discrepancies are inevitable in human testimony and should not be given undue importance. However, **contradictions on material particulars can be fatal.**

17.i. In *State of U.P. v. M.K. Anthony* AIR 1985

SC 48: - Some contradictions are natural due to passage of time and stress. But **serious contradictions affecting core facts** may render prosecution unreliable. The Court acquitted the accused due to **material contradictions** in eyewitness testimony.

17.ii. In *Babu v. State of Kerala* (2010) 9 SCC

189: - The Court emphasized that **prosecution evidence must be trustworthy and consistent.** When **witnesses contradict themselves materially**, the benefit must go to the accused. Doubt arose due to discrepancies in the time and sequence of events, leading to acquittal.

17.iii. In *Ramsewak v. State of M.P.* (2010) 1

SCC 439: - Eyewitnesses gave contradictory accounts regarding the location, time, and sequence of attack. Such major inconsistencies led to the collapse of prosecution case.



17.iv. In *Lallu Manjhi v. State of Jharkhand* (2003) 2 SCC 401: - Witnesses contradicted themselves on basic facts (place of occurrence, identity, role of accused). Held: Conviction cannot be sustained when **prosecution evidence is riddled with material contradictions.**

17.v. In *Vikas v. State of Maharashtra* (2008) 2 SCC 516: - Contradictions between FIR and deposition, and between witnesses, were central to acquittal. The benefit of doubt was extended due to **failure of prosecution to prove guilt beyond reasonable doubt.**

18. Further, investigating officer of the present case (PW-5) in his deposition clearly stated that he did not took the statement of any independent witnesses and there was delay of 8 days in preparing the injury report of the informant. PW-5 further stated that informant did not gave the documents of the land and no pillar has been found at the house of informant. He further stated in his deposition that while recording the statement, none of the prosecution witnesses have narrated the story as alleged by the prosecution. As PW-6 (Medical Officer) stated in his cross-examination that the injury is simple in nature and injury no. 2 and 3 may be self-inflicted and all the injuries are superficial in nature. Informant did not remember what was



the Gamchha (towel) made of and her neck was swollen after being strangled by the Gamchha. Informant further did not mentioned anywhere in her entire deposition about the treatment of her injury by any local/government doctor. It is evident that ocular testimony is clearly not supported by medical report. PW-6 stated that bruise is reaction any mark over the skin by some object. The bruise are possible by fall. The injury no. 2 and 3 may be self inflicted injuries. All the injuries are superficial in nature. Considering the fact that at the time of occurrence the appellant namely Brij Bhan Sah was present in the Railway Factory and attended his duty which has been certified by the competent authority, prosecution has failed to substantiate the case against the appellants beyond all reasonable doubt.

19. The learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence and passed absurd judgment. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence and there was on going land dispute between the accused/appellants and informant. Considering this fact, prosecution has failed to establish this



case beyond all reasonable doubt, therefore, in such circumstances, it may not be proper to convict the appellants/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

20. Hence, the Judgment of conviction dated 19.12.2007 passed in Sessions Trial No. 71 of 2008 arising out of Barhat P.S. Case No. 42 of 2006 passed by learned Additional District and Sessions Judge, F.T.C-V, Jamui is set aside and the accused/appellants are acquitted from the charges leveled against them. As the appellants are on bail, they are discharged from their liability of bail bonds.

21. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 8,000/- (eight thousand) to the learned Amicus Curiae, namely, Ms. Akansha Malviya towards honorarium for assisting this Court in the present appeal.

22. Let a copy of first and last page of this judgment be handed over to the advocate Ms. Akansha Malviya, learned Amicus Curiae and Office is directed to proceed further in granting honorarium to him which is to be paid by Patna High



Court Legal Services Committee.

23. Accordingly, this appeal is allowed.

24. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.05.2025
Transmission Date	13.05.2025

