

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.740 of 2011**

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1. Ramesh Kumar, Son of Bishundeo Mandal.
 2. Ranjan Kumar, Son of Bishundeo Mandal.
Both residents of village-Raghopur, P.S. Parbatta, District- Bhagalpur.
 3. Rajesh Kumar, Son of Shibrath Mandal, Resident of Village-Shankarpur,
P.S. Parbatta, District- Bhagalpur.
 4. Dinesh Kumar, Son of Late Harish Chandra Mandal, Resident of Village-
Bari Alalpur, P.S. Parbatta, District-Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr. Ranjan Kumar Jha, Advocate
	:	Mr. Sanjee Kumar @ Deepak Sahay, Advocate
	:	Ms. Kumari Neetu, Advocate
For the State	:	Mr. A. M. P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 03.07.2025

Heard learned counsel for the appellants and
learned APP for the State.

2. This present appeal has been filed under Section 374(2) of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code') passed against the judgment and order of conviction dated 09.06.2011 / 15.06.2011 passed by the learned Additional Sessions Judge, Fast Track Court- Vth, Bhagalpur in Sessions Trial No. 20 of 2007 whereby and where under, the appellants have been convicted under Sections 365, 379, 147 148 and 149 of the Indian Penal Code (hereinafter referred as 'IPC') and sentenced to undergo rigorous imprisonment for five years and fine of Rs. 5,000/- for



the offence punishable under Section 365 of the IPC, rigorous imprisonment for three years for the offence punishable under Section 379 of the IPC, rigorous imprisonment for one year for the offence punishable under Section 147 of the IPC and rigorous imprisonment for two years for the offence punishable under Section 148 of the IPC. All the sentences are directed to be run concurrently.

3. On the basis of the written report of informant namely Ghanshyam Yadav, the case of the prosecution in brief is that informant and his staffs Subhash Yadav, Vinod Yadav, Pankaj Raj, and Vasuki Dhar Mandal, who work as *Munshi* of Ghat Collector. They give tickets to those who go from one side to the other. On 18.11.1994 at around 9:00 AM, 60-70 peoples armed with sticks, revolvers and iron rods came from Ratnesh Babu's ship from the other side. Rajesh Kumar took stick in his hands and led them towards the counter of these people (Informant and others). Informant and others got scared that the same boy was not paying the ticket money yesterday and had created a hassle, all these people were coming to kill the informant and his staffs, so he (Informant) ran towards the east from the counter, from behind his friends Pankaj Ram, Vinod Ram, Javed Miyan and Subhash Yadav, who were near the



money at the counter, also ran away. The informant turned back and saw that Rajesh Kumar was carrying a stick in his hand, Ranjan Kumar Jaiswal was carrying a revolver, Dinesh Kumar was carrying a rod, Ramesh Kumar was carrying a whip made of electric wire and the other two were carrying weapons. He recognized Subhash Yadav running towards the east of the counter and everyone surrounded him and started beating him. The rest of the people were chasing the other companions of the informant. He (the informant) was watching from the ditch next to the banyan tree that the counter was being destroyed. They took Rs 3500/- from the box. When they failed to catch the other staffs, they beat up Subhash and took him to the ship. It is possible that he may kill him and drown him in the Ganges.

4. On the basis of the above written report, Kotwali Sadar Bhagalpur police station case number was registered as 570 of 1994 and the investigation of the case was given to the Investigating Officer, who after investigation found the case to be true and registered under Sections 147, 148, 149, 364, 365, 385 and 379 of the IPC against the accused and Sections 25 (1-B), 26 and 35 of the Arms Act. Charge sheet was submitted and cognizance of the crime was taken by the Chief Judicial Magistrate transferred the case to the Court of the



Judicial Magistrate for trial, who handed over the said case to the Court of Sessions.

5. On behalf of the prosecution altogether three witnesses has been examined; out of them, PW-1 Subhash Yadav, PW-2 Pankaj Kumar and PW-3 Mohd. Javed and on behalf of the defense, 3 defense witnesses has been examined out of them DW-1 Ashish Thakur, DW-2 Chhote Lal Singh and DW-3 Sanjay Singh. PW-2 and 3 were declare hostile by the prosecution.

6. PW-1 Subhash Yadav in his examination-in-chief stated that the alleged incident took place 13 years ago at 9:00 AM. He used to book tickets at the ghat. A day before the occurrence he had a fight with the accused persons with respect to the ticket amount. Accused Rajesh Kumar, Rahul Kumar, Dinesh Kumar, Ramesh Kumar came with 60-70 men and started beating him up and took him across the Ganges. Ramesh Kumar had an electric whip in his hand, Ranjan Kumar had a pistol, Dinesh Kumar had a stick and Rahul had an iron rod in his hand. The accused also took away Rs. 3,500/- which has been collected from the tickets. Bada Babu of Parvata police station rescued him.

6.i. In his cross-examination, he stated that he



already knew the accused and they used to cross each other. Rahul Kumar picked up the money box, the box was not locked. There was already money for the ticket in the box and it was not locked. On the day of occurrence there was around Rs1,000/- and there was no half ticket that too was looted. He further stated that 60-70 persons were came to attack them but there was no blood stain on their cloth.

7. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the present case.

8. DW-1 Ashish Thakur in his examination-in-chief stated that the alleged occurrence took place 16 years ago at 9:00 AM. He saw that there was noise and disturbance regarding ticket booking. He further stated that his statement has not been given before the police. In his cross-examination, he stated that he was not familiar with both the parties in the dispute and he denied that the appellants along with 50-60 men, armed with weapons, came to ghat, and the informant along with his companions started running away. He further stated that this is not the fact that the accused caught Subhash Yadav, beat



him up, injured him and took him to the other side of Ganga.

9. DW-2 Chhote Lal Singh in his examination-in-chief stated that the alleged occurrence took place 16 years ago at 9:00 AM. He stated that he had seen the quarrel but nothing more than altercation has took place there. His statement has not recorded before the police. In his cross-examination, he stated that this is not the fact that 50-60 people came with the intention to fight and kill the Ghanshyam Yadav and Subash Yadav, Pankaj Yadav and Md. Javed

10. DW-3 Sanjay Singh in his examination-in-chief stated that the alleged occurrence took place 16 years ago at 9:00 AM. Near that Ghat, he run a *pan* stall. He stated that on the day of occurrence there was only verbal altercation during booking of the ticket and nothing else. In his cross-examination he stated that this is not the fact that his statement was recorded before the police. He further stated that this is not the fact that on that day 50-60 people came at ghat with the intention to fight and denied the prosecution story.

11. Learned counsel for the appellants submitted 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 and from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the prosecution's case is false and fabricated.

11.i. Learned counsel for the appellants further submitted that in the present case neither the Investigating Officer nor the informant have been examined which is fatal for the prosecution case. The prosecution has not examined police officials namely Mallick, S.H.O. Parbatta police station who has rescue the PW-1 Subhash Yadav the victim, so question of Kidnapping could not be established by the prosecution. He also submitted that the learned trial Court has convicted the appellants only on the basis of deposition of PW-1 who is known to the appellants. The learned trial Court ought to have considered that not a single eye witness has supported the prosecution version, contrary view taken is not sustainable in the eye of law. The learned trial Court has convicted the appellants only on the basis of single witness which is not sustainable in the eye of law and erroneous in law.

11.ii. He further submitted that the prosecution has not produced any injury report if any in connection with injury sustained by the victim (PW-1) and neither the blood stained clothes could be seized by the Investigating Officer nor



the doctor has been examined in this regard. The prosecution has also not produced any counter folio of the money receipt hence allegation of theft also could not be provided by the prosecution. He also submitted that the persons who were well present at the place of occurrence with PW-1 namely Pankaj Kumar, Md. Jawed Khan has been examined as PW-2 and 3 respectively has not supported the case of prosecution nor they have identified any of appellants and ultimately both the witnesses have been declared hostile. No independent witnesses has been examined in support of prosecution as occurrence is said to be happened in public place in presence of large people.

11.iii. He further submitted that 3 defence witnesses have been examined in this case and they have also not supported the case of prosecution nor they have identified any of the appellants. Defence witnesses cannot be discarded and its testimony should be tested in the same way as it of prosecution witness. He also submitted that the informant has not registered any complaint regarding earlier dispute on a day prior to the alleged occurrence. The Informant of the present case could not examined as he died in course of trial.

11.iv. Learned counsel for the appellants lastly contended that in view of the aforesaid facts and circumstances,



the prosecution has failed to prove beyond shadow of all reasonable doubts. Hence, the prosecution case against the appellants fails on the above mentioned grounds. So, the appellants should have been acquitted from the conviction as sentenced against them.

12. 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. 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.

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

14. On deeply studied and scrutinized all evidences, it is evident to note that in the present case neither the Investigating Officer nor the informant have been examined which is fatal for the prosecution case. The prosecution has not



produced any injury report if any in connection with injury sustained by the victim (PW-1) and neither the blood stained clothe could be seized by the I.O. nor the doctor has been examined in this regard. The persons who were well present at the place of occurrence with PW-1 namely Pankaj Kumar, Md. Jawed Khan has been examined as PW-2 and 3 respectively has not supported the case of prosecution nor they have identified any of appellants and ultimately both the witnesses have been declared hostile. No independent witnesses has been examined in support of prosecution case in spite of the fact that occurrence happened in public place in presence of large number of people. Moreover, there was substantial inconsistency in the deposition of PW-1 in para no.1 of his deposition he stated that the amount present in the money box is Rs. 3,000/- and in para no.2 he stated that there was Rs. 1,000/- in money box.

15. The Investigating Officer has not been examined during the course of trial and non-examination of Investigating Officer is fatal to the case of the prosecution. The Supreme Court in **Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475** pointed out that-

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is



essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission. A police Jamedar in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

16. The Hon’ble Apex Court in the case of **Munna Lal Vs. State of Uttar Pradesh**, reported in **2023 SCC OnLine SC 80** whose relevant paragraph Nos.- 28 and 39 of the said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law.’ These are:

(a).....



(b).....

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

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

(e).....

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



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

17. Further, Investigating Officer has also not been examined during the course of trial as it was fatal since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case and 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.

18. The Investigating Officer would have stated about the nature of the weapon used and the severity of the injuries inflicted. It is highly improbable that the dispute has arose on such a petty issue, therefore the investigating officer would have brought the real cause for the altercation and the assault. Therefore, the Investigating Officer's testimony was crucial for establishing the facts of the case, including the collection of the evidences, the credibility of the witness's statement and overall integrity of the investigation. the prosecution has not succeeded in proving the charges against the appellants reasonably and beyond shadow of all reasonable doubts.

19. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubts, therefore, in such circumstances, the benefit of doubt inclined in the favour of appellants it may not be proper to convict the appellants 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 and order of conviction dated 09.06.2011 / 15.06.2011 passed by the learned Additional



Sessions Judge, Fast Track Court- Vth, Bhagalpur in Sessions Trial No. 20 of 2007, 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 liability of their bail bonds.

21. Accordingly, this appeal stands allowed.

22. 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)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	24.06.2025
Uploading Date	03.07.2025
Transmission Date	03.07.2025

