

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.558 of 2023

Arising Out of PS. Case No.-50 Year-2011 Thana- AANDAR District- Siwan

Rajendra Yadav Son Of Late Chandeswar Yadav Resident Of Village-
Kajipatia, Ps- Hasanpura, Distt- Siwan, State- Bihar

... .. Appellant

Versus

1. The State of Bihar
2. Chandrama Singh Son Of Radha Kishun Singh @ Radhakrishna Singh
Resident of Village- Kajipatiyanw, Ps- Andar (M.H. Nagar), Distt- Siwan,
State - Bihar
3. Vinod Singh Son Of Krishnanand Singh Resident of Village- Kajipatiyanw,
PS- Andar (M.H. Nagar), Distt- Siwan, State - Bihar
4. Srikrishna Singh @ Shri Krishna Singh Son of Late Hawaladar Singh
Resident Of Village- Kajipatiyanw, PS- Andar (M.H. Nagar), Distt- Siwan,
State - Bihar
5. Rajesh Yadav Son Of Parshuram Yadav Resident of Village- Kajipatiyanw,
PS- Andar (M.H. Nagar), Distt- Siwan, State - Bihar

... .. Respondents

Appearance :

For the Appellant/s	:	Mr.Amit Narayan, Advocate Mr. Ketan Dayal, Advocate Mr. Abhigyan Kumar, Advocate Mr. Ashwani Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, APP
For the Respondent Nos.2,3&4:	:	Mr. Prashant Kumar, Advocate
For the Respondent No.5	:	Mr. Sanjeev Kumar, Advocate Mr. Bijay Prakash Singh, Advocate Mr. Sitesh Kashyap, Advocate Mr. Md. Dilshad Alam, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-01-2025

This appeal has been preferred by the informant for
setting aside the judgment of acquittal dated 30.01.2023 passed by
the learned Additional District and Sessions Judge-VIII, Siwan



(hereinafter referred to as the 'learned trial court') in Sessions Trial No.171 of 2012 arising out of Andar (M.H. Nagar) P.S. Case No.50 of 2011. The private respondents in this case were facing charges for the offences punishable under Sections 302 and 307/149 of the Indian Penal Code (in short 'IPC'). In ultimate analysis of the evidence available on the record, the learned trial court has been pleased to hold and declare that there is no reliable and acceptable evidence on the record to prove the prosecution case beyond all reasonable doubts, hence, all the accused persons who were facing charges have been acquitted.

2. The prosecution case is based on the fardbeyan of one Rajdeo Yadav, son of late Chandaswar Yadav of village-Kajipatia, P.S. Hasanpura in the district of Siwan recorded by Sub-Inspector of police Md. Mumtaj Alam of Town Police Station, Siwan on 02.05.2011 at 21.15 hours at Sadar Hospital, Siwan. In his *fardbeyan*, Rajdeo Yadav (hereinafter called the 'informant') alleged that on 02.05.2011 at about 5.30 PM when he was taking bath in his house after finishing the agricultural work and his elder brother Pokhraj Yadav was coming with plant bundle from the field, in the meantime, his co-villagers Chandrama Singh, son of Radha Kishun Singh, Rajesh Yadav, son of Parsuram Yadav, Sri Krishna Singh, son of late Hawaldar Singh, Binod Singh, son of



Sri Krishnanand Singh, Govinda Singh, son of Hari Kishun Singh came there and stated that his family members did not cast their votes in their favour in the election in which Sri Krishna Singh was contesting the election for the member of Zila Parishad and Poonam Devi, wife of Rajesh Yadav was also contesting the election to the post of Mukhiya and for that reason all the accused persons attacked on his house. It is alleged that Chandrama Singh and Rajesh Yadav gave lathi blow on the head of his brother Pokhraj Yadav due to which he suffered injuries on his head and other parts of the body and he fell down. Sri Krishna Singh, Hawaldar Singh and Govinda Singh assaulted the informant by lathi on his head and other parts of the body due to which he suffered injury on his head and fell down. Binod Singh assaulted the informant's elder brother Rajendra Yadav by lathi. It is further alleged that on hulla when the villagers assembled there, all the accused persons fled away. Thereafter, the informant's elder brother Pokhraj Yadav was taken to hospital for treatment with the help of villagers where Pokhraj Yadav died in course of treatment.

3. Upon investigation of the case, police submitted a charge-sheet against five accused persons out of whom one Govind was declared juvenile and he faced the enquiry before the Juvenile Justice Board. The four remaining accused who were



charge-sheeted faced trial in the present case. The prosecution adduced oral as well as documentary evidences whereas the defence examined two witnesses and placed on record some documents which are the certified copy of the FIR bearing Andar (M.H. Nagar) P.S. Case No.51 of 2011 dated 03.05.2011 registered as a counter case of the instant matter lodged by Chandrama Singh (hereinafter called Exhibit- 'A'), certified copy of the charge-sheet bearing no.53/2011 dated 30.06.2011 filed on completion of the investigation in Andar (M.H. Nagar) P.S. Case No.51/2011 dated 03.05.2011 (Exhibit- 'B') and Exhibit- 'C' which is the injury report of the injured Chandrama Singh issued on 03.05.2011 by the Dr. M.R.H. Siddiqui, C.M.O., P.H.C., Andar, Siwan. The treatment related documents of Chandrama Singh in jail have also been marked as Exhibit -X, Y, Y/1 and Y/2 for identification. The description of the witnesses and the Exhibits marked on behalf of the parties are fully described hereunder in tabular form:-

List of Prosecution witnesses

PW-1	Rajendra Yadav
PW-2	Kapil Kumar Yadav
PW-3	Jinsha Devi
PW-4	Rinku Kumari
PW-5	Ramawati Devi
PW-6	Rajesh Yadav
PW-7	Dr. Ramesh Chandra Thakur
PW-8	Ashok Kumar Ray



List of Exhibits

Exhibit-1	The Postmortem report of the deceased Pokhraj Yadav
Exhibit-2	The injury report of the injured informant Rajdev Yadav
Exhibit-2/1	The injury report of the injured Rajendra Yadav
Exhibit-3	The writing and signature of police sub-inspector namely Md. Mumtaj Alam on the fardbeyan of the informant Rajdev Yadav
Exhibit-3/1	The writing and signature on endorsement of registration of FIR by SHO
Exhibit-4	Inquest report of the dead body of Pokhraj Yadav
Exhibit-5-5/1	Wiring and signature of Md. Mumtaj Alam, S.I. of police on the injury requisition of the injured namely Rajendra Yadav and Rajdev Yadav

Defence Witnesses

DW-1	Dr. Devesh
DW-2	Dr. Manoj Kumar

List of Exhibits

Exhibit-A	Certified copy of FIR bearing Andar (M.H. Nagar) P.S. Case No.51/2011 dated 03.05.2011 registered as a counter case lodged by Chandrama Singh
Exhibit-B	Certified copy of Charge-sheet bearing no.53/2011 dated 30.06.2011 filed on completion of the investigation in Andar (M.H. Nagar) P.S. Case No.51/2011
Exhibit-C	Injury report of the injured Chandrama Singh
Exhibit-X, Y, Y/1 and Y/2	Treatment descriptions of Chandrama Singh in jail

Findings of the learned trial court

4. The learned trial court went through the oral testimonies of the prosecution as well as defence witnesses and the exhibits marked on behalf of the parties. It has been found that in the present case the material witnesses PW-1 to PW-6 are all close relatives of the deceased Pokhraj Yadav. From the FIR and the



fardebayan of the informant Rajdeo Yadav which has been marked Exhibit-3, the learned trial court came to a conclusion that the motive behind the occurrence is non casting of votes in local election as the informant's family did not cast their votes in favour of the accused Sri Krishna Singh who was contesting the election for the member of Zila Parishad and also in favour of Poonam Devi contesting the election to the post of Mukhiya in Panchayat Election. The trial court, however, is of the view that in this case since the prosecution relies upon the direct evidence of PW-1 to PW-6, the motive has got no relevance and it would not be material in the present case.

5. The learned trial court found that according to the prosecution witnesses who are close relatives of the deceased and the injured namely Rajdeo Yadav (PW-6) and Rajendra Yadav (PW-1) and their statements would go to show that the local villagers such as Santosh, Nomi Yadav, Prabhawati Devi, Chameli Devi, Nitesh Singh, Jitesh Singh, Kailash Singh and Santosh Singh had gathered at the time of occurrence and there were so many independent witnesses present at the spot of crime but the prosecution had not examined any of them as an independent witness and no reason for their non-examination has been assigned.



6. In order to rule out any possibility of tainted evidence adduced in the court during trial and to determine as to whether the deposition of PW-1 to PW-6 are consistent and free from infirmities, the learned trial court went through the deposition of the prosecution witnesses. It has been held that PW-1 Rajendra Yadav had no exact information of the occurrence and the statement given by him in his cross-examination is against the FIR and paradoxical to other prosecution witnesses also and his presence at the place of occurrence appears to be doubtful. Inconsistent statements were sufficient to impeach his credibility.

7. As regards the place of occurrence, the learned trial court has examined the testimonies of the prosecution witnesses such as PW-6 Rajdeo Yadav, PW-1 Rajendra Yadav, PW-2 Kapildev Yadav, PW-3 Jinsha Devi, PW-4 Rinku Devi and PW-5 Ramawati Devi. It has been found that these witnesses have not stated with respect to taking bath of the informant Rajdeo Yadav and Pokhraj Yadav's coming to house from the field with plant bundle while the accused persons came to the informant's house i.e. at the place of occurrence. The learned trial court found that the facts described in the FIR are not consistent in the evidence led by the prosecution.



8. The learned trial court has further found that in this case the fardbeyan of the informant (Exhibit-3) is in the writing and signature of S.I. Mumtaj Alam of Town police station, Siwan. He had prepared the inquest report (Exhibit-4) and its first column is blank and with respect to this blankness of first column of the inquest report of the deceased Pokhraj Yadav, PW-8 Ashok Kumar Ray as admitted in his cross-examination that no information was given by the witnesses of the inquest report as to how the deceased's death was caused and the witnesses of the inquest report, namely, Kapil Kumar Yadav and Rajendra Yadav have been examined in this matter as prosecution witness but the officer, namely Md. Mumtaj Alam of Town police station has not been examined by the prosecution during the trial.

9. The learned trial court disbelieved PW-3 Jinsha Devi who is wife of the deceased after taking note of her statement in paragraph '8' of her cross-examination where she has admitted about fleeing away of Chandrama Singh when she arrived at the crime spot and in paragraph '11' she has also admitted about her immediate arrival at her home soon thereafter. She has also claimed herself to be Pardanasin Lady. PW-4 Rinku Kumari who is daughter of Rajendra Yadav has deposed in support of the prosecution case but in her cross-examination she has stated that



Rajesh Yadav had assaulted on the head of Pokhraj Yadav while he was cleaning his hand at the hand pump.

10. The defence pleaded that death of Pokhraj Yadav was caused accidentally as he was fell down on the handle of hand pump and suffered injury which resulted in his death. The learned trial court found that PW-4 Rinku Kumari speaks about washing his hand at hand pump by Pokhraj Yadav at the time of incident and PW-8 who conducted the investigation of the case has deposed that the place of occurrence is near the house of the informant and it is the land where hand pump and guava tree were in existence. He has stated in his cross-examination in paragraph '21' about quarrel between both the parties at the place of occurrence and such statement of quarrel between both the parties have been given by villagers, namely, Mahesh Singh and Ram Ekbal Bhagat present at the crime spot whose statements have been recorded under Section 161 Cr.P.C. by the investigating officer (PW-8) but these two witnesses who are direct witnesses have not been examined by the prosecution side during the trial. The learned trial court was of the view that by not producing these two direct witnesses, serious prejudice has been caused to the defence and it has resulted in impairing the credibility of the prosecution case. In ultimate analysis, it has been held that the place of



occurrence/crime spot has been shifted by the prosecution witnesses from one place to another and there has been no crime spot map/sketch map prepared during investigation of the case. The witnesses deposed about falling of blood at the place of occurrence but the I.O. (PW-8) has stated in his cross-examination that he did not find any blood or any sign of crime being committed at the crime spot while making an inspection of the crime spot. This shifting of crime spot from one place to another place creates doubt with regard to place of occurrence.

11. The learned trial court has considered Exhibit-A which is the counter case instituted by the defence that the occurrence had taken place on 02.05.2011 at 6.00 PM at 'Brahm Asthan' in village Kajipatiyanw. The learned trial court found that the counter case was lodged by Chandrama Singh against the prosecution party and Chandrama Singh had also sustained injury which is Exhibit 'C' and after his arrest in the present case his treatment was done in jail as per deposition of DW-2 Dr. Manoj Kumar who is the jail doctor and with respect to his treatment, the medical documents have also been marked as Exhibit-'X', 'Y', 'Y/1' and 'Y/2' respectively. The learned trial court found that the FIR (Exhibit-'3') and the Exhibit 'A' are two different versions of the same incident resulting in two criminal



cases which are case and counter case arising out of one affair and each party in both the FIR has represented himself as having been innocent.

12. As discussed above, the learned trial court having examined the entire evidence on the record reached to a conclusion that the prosecution had failed to establish its case beyond all reasonable doubts.

Submissions on behalf of the appellant

13. In appeal before us, learned counsel for the appellant has submitted that the learned trial court could not appreciate the evidences brought on the record by the prosecution. There are some admitted facts such as death of the deceased and identification of the body of deceased in the postmortem report. It is also submitted that there are some undisputed facts of the prosecution which are (1) deceased was taken to hospital on 02.05.2011 in the evening (2) the place from where the deceased was taken to the hospital (3) the vehicle in which the deceased was taken to the hospital (4) the persons who took the deceased to the hospital and (5) the treatment of deceased in Sadar Hospital, Siwan. Learned counsel has taken us through the various paragraphs of the deposition of the prosecution witnesses to submit that those oral testimonies of the prosecution witnesses



would establish the prosecution case beyond all reasonable doubts. It has been submitted that the injury reports of Rajendra Yadav (PW-1) and Rajdeo Yadav (PW-6) are very relevant. They are injured witnesses of this case and their testimonies cannot be discarded only because they happened to be closely related to the deceased. In his submissions, learned counsel has submitted that the fact that the defence has lodged a counter case of the same occurrence would go a long way to show that the occurrence had taken place.

14. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Iqbal and Anr. Vs. State of Uttar Pradesh** reported in (2017) 3 SCC (Cri) 854; **Juman and Anr. Vs. State of Bihar** reported in (2017) 3 SCC (Cri) 847; **Susanta Das & Ors. Vs. State of Orissa** reported in (2016) 2 SCC (Cri) 287; **Om Prakash Vs. State of Haryana** reported in (2014) 2 SCC (Cri) 710; **Nand Kumar Vs. State of Chhattisgarh** reported in 2015 (1) SCC 776; **Rishiraj @ Tutul Mukharjee & Anr. vs. State of Chhattisgarh** reported in AIR 2022 (SC) 2427 and **Harendra Rai Vs. State of Bihar & Ors.** reported in AIR 2023 (SC) 4331. In course of hearing, however, learned counsel has mainly submitted that in the case of **Iqbal** (*supra*), the Hon'ble Supreme Court has held that where the moot



question is as to whether there was common objective, if that is proved, then, in any case, the separate roles played by all the accused persons need not be examined as all the members of unlawful assembly would be vicariously liable for the acts done by the said assembly. It is submitted that in the present case, the prosecution witnesses have deposed that the accused persons came at the place of occurrence and they assaulted the deceased as well as the two prosecution witnesses who have deposed as PW-1 and PW-6.

15. Learned counsel submits that in the case of **Juman and Anr.** (*supra*), the Hon'ble Supreme Court has held that where the prosecution witnesses have vividly deposed about genesis of the occurrence, participation and involvement of the accused persons in crime, non-examination of witnesses, who might have been there, would not make the prosecution case unacceptable. Submission is that conviction can be based on testimony of sole witness, if the same inspires confidence and evidence of interested witnesses cannot be rejected merely on the ground of enmity with implicated persons.

Submissions on behalf of the Respondent Nos. 2 to 4

16. The appeal has been contested by learned counsel for the respondent nos. 2 to 5.



17. Mr. Prashant Kumar, learned counsel for the respondent nos. 2 to 4, submits that in this case, the genesis of occurrence as stated in the FIR has not been proved by the prosecution witnesses. Contrary to the FIR, the witnesses have given a totally different story about how the occurrence took place. The improvement, contradiction and omission would go to the root of the matter. Some of the material improvements and contradictions made by the prosecution witnesses have been appropriately taken by drawing attention of the witnesses and putting the same before the I.O. Attention of this Court has been drawn towards various paragraphs of the deposition of the prosecution witnesses.

18. It is submitted that in this case, no material has been brought on record to show that the accused persons had formed an unlawful assembly rather, it appears that Chandrama Singh was unaccompanied at the relevant time. Attention of this Court has been drawn towards paragraph '6' and '8' of the deposition of PW-3 and paragraph '75' of the deposition of PW-6.

19. Learned counsel has further submitted that the prosecution in this case has not proved the place of occurrence beyond all reasonable doubts. According to him, the place of occurrence is not the door of the informant. In this connection, he



has drawn the attention of this Court towards paragraph '9' and '11' of PW-3, paragraph '15', '17', '18' and '25' of PW-5, paragraph '26', '27' and '74' of PW-6 and paragraph '17' of PW-8.

20. Learned counsel further submits that in this case, the prosecution witnesses have suppressed the genesis of the occurrence in material terms. Their testimony becomes unsafe to rely upon and their version can be discarded if independent witnesses were withheld by the prosecution. It is submitted that though examination of independent witnesses is not a *sine qua non* for proving guilt of the accused, the fact remains that in the present case, the prosecution witnesses have stated about gathering of villagers at the alleged time of incident but none of them has been examined. Prosecution has given up independent charge-sheet witnesses, namely, Mahesh Singh and Ram Ekbal Bhagat without assigning any reason. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Krishnegowda and Ors. Vs. State of Karnataka** reported in **AIR 2017 SC 1657** (paragraph '20', '21', '25', '26' and '30').

21. Learned counsel submits that in this case, the accused-respondent no.2, namely Chandrama Singh sustained grievous injury. The injury report dated 02.05.2011 prepared at Andar Primary Health Centre at 10:00 PM and other treatment



papers have been brought on record. The order dated 04.05.2011 of the learned Magistrate remanding Chandrama Singh to custody would show that while recording his injuries on his head and leg, the learned Magistrate directed for his medical treatment. The I.O. (PW-8) has deposed in paragraph '14' of his testimony that Chandrama Singh was in an injured condition when he was arrested on 03.05.2011. DW-1 and DW-2 have proved that grievous injuries were sustained by Chandrama Singh for which he has received treatment during his custody. It is submitted that the failure/denial of the prosecution witnesses to explain the grievous injuries inflicted upon the accused-respondent no. 2 could raise a serious doubt over the veracity of the prosecution witnesses who are the family members of the informant. In this regard, learned counsel has referred paragraph '4' of PW-1, paragraph '4', '14', '15' and '32' of PW-2, paragraph '5' of PW-3, paragraph '10', '11' and '14' of PW-4, paragraph '8' of PW-5 and paragraph '35' and '36' of PW-6 to submit that all these witnesses have denied and failed to explain the grievous injury over the person of Chandrama Singh which would suggest that these witnesses are trying to suppress the real fact. The witnesses are suppressing the genesis/vital part of the occurrence, therefore, it would be hazardous to place reliance on the testimony of such witnesses



who are lying on material particulars. In this regard, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Lakshmi Singh vs. State of Bihar** reported in **(1976) 4 SCC 394**, **Babu Ram vs. State of Punjab** reported in **AIR 2006 SC 1260** and **State of Rajasthan vs. Madho & Ors.** reported in **AIR 1991 SC 1065**. It is further submitted that PW-1 and PW-6 cannot be put in the category of injured witnesses. The Doctor (PW-7) has clarified in his deposition that the injury to PW-1 Rajendra Yadav was not caused on the same day and time of injuries to Rajdev Yadav (PW-6) and Pukhraj Yadav (the deceased). The age of injury of PW-1 was stated to be within 72 hours. In such circumstance, it is submitted that it further clouds the authenticity of the prosecution version and renders their evidence unreliable.

Submission on behalf of Respondent No.5

22. Mr. Sanjeev Kumar, learned counsel for respondent no. 5 has further strengthened the submissions of learned counsel representing respondent nos. 2 to 4. It is submitted that the prosecution witnesses are not reliable. The informant (PW-6) has improved upon his earlier version in the *fardbeyan* only to fall in line with the postmortem report of the deceased. The definite prosecution case has been given a complete go by. Learned



counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Haryana v. Md. Yunus** reported in **AIR 2024 SC 579** (paragraph '17') to submit that when the statements of the prosecution witnesses are contrary, facts are twisted and improvements are made, no reliance can be made upon such statement.

23. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Harijana Thirupala & Ors. vs. Public Prosecutor, High Court of A.P., Hyderabad** reported in **AIR 2002 SC 2821** (paragraph '15') and **Jaikam Khan Vs. State of Uttar Pradesh** reported in **(2021) 13 SCC 716** (paragraph '69'). He has also relied upon Section 114(g) of the Indian Evidence Act to submit that the evidence which could be and is not produced, would, if produced, be unfavourable to the person who withholds it, this Court may draw an adverse inference from the fact that two independent charge-sheet witnesses have been withheld by the prosecution.

24. Learned counsel submits that so far as respondent no. 5 Rajesh is concerned, the prosecution has not proved motive against him. PW-1 has stated that wife of Rajesh Yadav had never come to request to vote for her. At the same time, there are reasons for his false implication. In this connection, it would appear from



paragraph '3' of the deposition of PW-1 that grandmother of Rajesh had got property of her father in the village where Rajesh had settled down. Her maternal grandfather was a co-sharer of the informant. PW-6 was suggested in course of his evidence that Rajesh was falsely implicated due to land dispute.

25. Learned counsel has further pointed out that the prosecution has miserably failed to prove the place of occurrence in this case. While PW-1, PW-5 and PW-6 have stated that blood had fallen at the door of the house or on road, the I.O. (PW-8) has given the description of the place of occurrence as the *Sahan Jameen* of the informant. PW-8 did not find any blood or any incriminating material indicating commission of crime at the place of occurrence. The inquest report (Exhibit '4') was prepared by S.I. Mumtaz Alam, who has not been examined. Column '6' of Exhibit '4' has not been filled up. It is submitted that acquittal of an accused strengthens the presumption of innocence. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others vs. State of Karnataka** reported in **(2023) 9 SCC 581** wherein the principles governing an appeal against acquittal have been reiterated by the Hon'ble Supreme Court.



26. Learned counsel submits that in the present case, the findings recorded by the learned trial court cannot be said to be perverted and even if this Court forms a different opinion, the same need not be substituted in place of the opinion of the learned trial court.

Submissions on behalf of the State

27. Learned Additional Public Prosecutor for the State has endorsed the submissions of learned counsel for the respondent nos. 2 to 5 and has defended the judgment under appeal. It is submitted that the kind of conclusion reached by the learned trial court on the basis of the evidence available on the record, the appellate court may not find it possible to reach to an irresistible conclusion that the impugned judgment is perverted and the same would require to be interfered with. Submission is that the appeal is liable to be dismissed.

Consideration

28. Having heard learned counsel for the parties, learned Additional Public Prosecutor for the State and upon perusal of the records, we find that the present case is based on the *fardbeyan* of Rajdeo Yadav. He has been examined as PW-6 and in our considered opinion, he would be the most important witness whose testimony would be required to be considered at first instance.



29. According to him, the occurrence took place on 02.05.2011 at about 5:30 PM when he was taking a bath in his house after returning from his field. His elder brother Pokhraj Yadav (since deceased) was returning with the bundle of crops/plants from the field, in the meantime, the five named accused persons including respondent nos. 2 to 5 came at the house of the informant and said that the informant and his persons had not given vote to him. Shri Krishna Singh was a candidate in Zila Parishad Election, wife of Rajesh Yadav (Respondent No.5) was a candidate for Mukhiya post. According to the informant, all the accused persons together assaulted the informant and his brother Pokhraj Yadav. Chandrama Singh and Rajesh Yadav both assaulted Pokhraj on his head and on other parts of his body as a result whereof he fell down. Informant was assaulted by Shri Krishna Singh, Hawaldar Singh and Govinda Singh by *lathi* and he sustained injury on his head and on other parts of his body whereafter he fell down. His brother Rajendra Yadav (PW-1) was assaulted by Vinod Singh by *lathi* and he also suffered injury on his body. On *hulla*, the villagers started assembling whereafter on seeing them coming, the accused persons fled away. With the help of the villagers, the injured persons were brought to Sadar



Hospital, Siwan where in course of treatment, Pokhraj Yadav died and the informant and his brothers were getting treatment.

30. It is evident from the *fardbeyan* of the informant (PW-6) that according to him, the place of occurrence is his house and there was a hand pump where he was taking bath. It is this place where he along with his brothers were assaulted. The informant also admits that as a result of the assault, Pokhraj (the deceased) fell down. In course of trial, PW-6 has changed the place of occurrence. In his examination-in-chief, he has stated that on the date of occurrence, at about 5.30 pm, he was sitting with his brother at his *darwaja*. His elder brother Pokhraj and Rajendra Yadav were also sitting. At this point of time, the accused persons namely Chandrama, Shri Krishna, Rajesh, Govind and Vinod came, they were having *lathi* and they were abusing the informant for not casting vote in their favour. While in his *fardbeyan*, the informant clearly alleged that Chandrama Singh and Rajesh Yadav both had assaulted Pokhraj Yadav on his head and other parts of the body but in his examination-in-chief, he has stated that Chandrama Singh assaulted Pokhraj on his head by *lathi* and Rajesh Yadav assaulted Pokhraj on his shoulder. This is an improvement by PW-6 in course of his evidence in order to fall in line with the findings of the Doctor in the postmortem report.



31. As regards the place of occurrence, there are vital differences in the deposition of the prosecution witnesses. PW-3, who is wife of the deceased, has stated that the place of occurrence is a PCC road which is made of brick and there was plaster on the bricks. She was in the house and she is a *pardanashin* lady. She came to the place of occurrence but she did not stop there. In paragraph '6' of her deposition, she has stated that on the shoutings of Chandrama Singh, Sri Krishna, Govind, Vinod and two other persons came. Rajesh also came. She has stated that she was not aware of the case lodged by Chandrama Singh. 'Braham Asthan' is at a distance of 10/15 steps and the house of Chandrama Singh is at a distance of less than 200 steps. According to this witness, blood had fallen at the place of occurrence and it had spread around one hand. This witness was suggested by defence that there was a deadly attack on Chandrama Singh in which he had received injury but she had suppressed this fact and came to falsely depose. In fact, it has been noticed by this Court that in paragraph '5' of her deposition, PW-3 has stated that she had seen Chandrama Singh at the place of occurrence but denied the suggestion that his head was fractured. She has stated that Chandrama Singh had not received any injury. It is with reference to this deposition of PW-3 that it has been contended before us and



we agree with the same that this witness being wife of the deceased is suppressing the fact that Chandrama Singh was badly injured in the said occurrence. The witness becomes an interested witness and it would not be safe to rely upon her testimony. We find from the evidence of PW-3 that she has given a different place of occurrence and manner of occurrence. It is also found from her evidence that all the accused persons had not come together as alleged by PW-6 and it was only after Chandrama Singh (respondent no.2) shouted, the other persons had assembled.

32. The another witness who has deposed on the point of place of occurrence is Ramavati Devi (PW-5) who is the daughter-in-law of the deceased. According to her deposition, her father-in-law Pokhraj Yadav, Rajendra Yadav, Rajdev and Kapil Muni were sitting at their *darwaja* where the occurrence took place but in her cross-examination, she has stated in paragraph '15' that she had not seen the PCC road but she had seen the blood fallen on the same and the blood was spread on road at a distance of two steps. She has also stated in paragraph '16' that she had seen 'Braham Baba' place which is adjacent to the road and the way of the accused persons are the said PCC road. She has stated that at the time when *hulla* was raised, lighting had not taken place in the village. From the deposition of PW-5, it is evident that she has not



withstood the test of cross-examination. Initially, she came with the statement that the occurrence took place at the *darwaja* but later on she has stated that she had seen blood fallen on the PCC road which is adjacent to '*Brahm Baba Asthan*' and she has also stated that her house is situated at a distance of five *laggi* (one *laggi* is equivalent to three and half hand) from '*Brahm Baba Asthan*'.

33. The I.O. (PW-8) has proved the *fardbeyan* which was recorded by Md. Mumtaz Alam (not examined) and the same has been marked Exhibit '3'. He has proved the endorsement made by him on the *fardbeyan*. He had sent the same to Andar Police Station where ASI Satyanarayan Pal had made endorsement for the second time on the same. He has proved signature of ASI Satyanarayan Pal which has been marked 'Exhibit 3/1'. He has deposed that the inquest report of Pokhraj Yadav was prepared by Md. Mumtaz Alam on which Kapil Kumar Yadav and Rajendra Yadav are the witnesses. This has been marked Exhibit '4'. He had visited the place of occurrence. In paragraph '3', he has stated that the place of occurrence is the *sahan land* near the house of the informant where there is a hand pump and a tree of guava. As per his description of the place of occurrence, in east there is a land of the informant and his house, in west there is Hasanpura and



Raghunathpur Road, in north is house of Vijay Sah and in south there is a *parti* land of the road. He had recorded the statement of witnesses Rajendra Yadav, Rajdev Yadav, Kapil Kumar, Rinku Kumari, Prabhavati Devi, Jinsa Devi and Ramavati Devi at the place of occurrence. He had received the injury report of the injured Rajdev Yadav and Rajendra Yadav on 04.05.2011 and had also received the postmortem report of Pokhraj. It is important to note that in his examination-in-chief, PW-8 has stated that he had recorded the statement of independent witnesses Mahesh Singh and Ram Iqbal Singh and they are charge-sheet witnesses of this case but in course of trial, both the independent witnesses have been withheld by the prosecution. From the evidence of PW-8, we find that he has given a different place of occurrence. In his cross-examination, he has clearly stated that the villager at the place of occurrence, namely, Mahesh Singh and Ram Iqbal Singh both had stated that both the parties had a quarrel at the place of occurrence in which Pokhraj had received injury. The I.O. has stated that he had arrested Chandrama Singh near Kanhauli village and at that time, Chandrama Singh was in injured condition, he was returning from somewhere after receiving treatment and these facts have been recorded by him in paragraph '17' of the case diary. Chandrama Singh had also lodged a case under Sections 323, 379,



504/34 IPC which is mentioned in paragraph '31' of the case diary. The I.O. was suggested that Chandrama Singh was arrested in course of his treatment in hospital. In paragraph '17' of his deposition, he has stated that at the place of occurrence, he had not found any blood or any mark of commission of crime.

34. From the deposition of the I.O. (PW-8) it is evident that he has not supported the prosecution as regards the place of occurrence and has given altogether a different place where the occurrence is said to have taken place. He had interrogated independent witnesses but they have been withheld and the I.O. clearly says that he had not found any blood mark at the place of occurrence.

35. At this stage, this Court would discuss the defence case based on the *fardbeyan* of Chandrama Singh recorded by ASI Satyanarayan Pal of Andar Police Station on 03.05.2011 at 13:00 hours at Primary Health Centre, Andar. In his *fardbeyan*, Chandrama Singh has alleged that on 02.05.2011 at 6:00 PM, when he was going from his house to Kajipatiya Bazar by his bicycle and had reached near '*Brahm Asthan*' in his village, Pokhraj Yadav, Son of Chandeshwar Yadav abused him saying that he had not given vote to Mukhiya candidate Kamlavati Devi, wife of Late Harendra Singh. On this he asked him to refrain from



abusing whereafter Pokhraj Yadav assaulted him on his head by a *farsa* as a result whereof his head was fractured and he started bleeding. It is alleged that his wrist watch and gold ornament was snatched and in the meantime, Rajdev Yadav, Rajendra Yadav and Kapil Yadav reached there. Pokhraj told them “*kya dekhte ho, saale ko jaan maar do*”. On this Rajdev Yadav assaulted the informant on his left leg by iron rod causing fracture of his leg. Rajendra Yadav and Kapil Yadav assaulted him by *lathi* and *danda* causing injury on his neck and backside. The informant claimed that he started weeping and crying whereafter neighbours came, thereafter the accused persons fled away. On the basis of the *fardbeyan*, Andar P.S. Case No. 51 of 2011 dated 03.05.2011 was registered on 03.05.2011 at 17:45 hours. The FIR has been marked Exhibit ‘A’ on behalf of the defence.

36. Exhibit ‘B’ is the Final Form No. 53 of 2011 dated 30.06.2011 from which it would appear that police chargesheeted Rajdev Yadav, Rajendra Yadav and Kapil Yadav. Pokhraj Yadav has been shown deceased, therefore, no charge-sheet has been filed against him. While Rajdev Yadav has been chargesheeted under Sections 341 and 323 IPC, Kapil Yadav and Rajendra Yadav were chargesheeted under Sections 341/323/325/379/504/34 IPC. Therefore, in course of investigation, the occurrence alleged by



Chandrama Singh has been found true and police had submitted charge-sheet. According to the defence case, the occurrence took place near '*Braham Asthan*' which is situated adjacent to the road.

37. The defence has also proved the injury report of Chandrama Singh as Exhibit 'C'. The injury report would show that Chandrama Singh was examined by Dr. M.R.H. Siddiqui, the Chief Medical Officer. His signature has been identified by Dr. Devesh (DW-1) who was also posted at Primary Health Centre, Andar and had worked with Dr. M.R.H. Siddiqui. On his identification, the signature of Dr. Siddiqui on the injury report has been marked Exhibit 'C'. In his cross-examination, he has stated that Dr. M.R.H. Siddiqui is now no more. Dr. Manoj Kumar (DW-2) is the Jail Doctor who brought the X-ray plate and the treatment slip of Sadar Hospital, Siwan. He has stated that Chandrama Singh had received treatment in jail as it appears from the documents. According to the report of the Doctor, Chandrama Singh had sustained head injury and had stitch on the same, his leg had been fractured. He proved the OPD Register of the Jail Hospital, the date of admission of Chandrama Singh in the jail hospital and this witness has stated that during his incarceration, Chandrama Singh was in injured condition. He had brought the OPD Register from jail in the capacity of In-charge.



38. From Exhibit 'A', 'B' and 'C', it is evident that Chandrama Singh had sustained serious injuries in the alleged occurrence which took place at the '*Braham Asthan*' but when the prosecution witnesses were being cross-examined and their attention was drawn towards the injury sustained by Chandrama Singh, they simply feigned ignorance and unawareness. PW-1 Rajendra Yadav has stated in paragraph '4' of his deposition that he had seen Chandrama Singh at the place of occurrence but he had not seen the injuries on the person of Chandrama Singh. He has further stated in the same paragraph that he had not seen with whom Chandrama Singh had come at the place of occurrence and with whom he had gone from there.

39. The defence while cross-examining Kapil Kumar Yadav (PW-2) put him specific question with regard to the injuries on the body of Chandrama Singh. In paragraph '4' of his deposition, he has stated that he had seen Chandrama Singh at the place of occurrence but he had not seen blood falling from the injury sustained by him on his head. He has stated that he had seen the fractured leg of Chandrama Singh.

40. Jinsa Devi (PW-3) has also admitted in paragraph '5' of her deposition that she had seen Chandrama Singh at the place



of occurrence but she has stated that his head was not injured and he had not sustained any injury.

41. Rinku Kumari, who is daughter of Rajendra Yadav, has been examined as PW-4. Her statement was recorded by I.O. after 2-3 days. She has also stated that she had seen Chandrama Singh at the place of occurrence but had not seen blood oozing out of the injury of Chandrama Singh. She has stated that her family members were east to the soaling. In paragraph '11', she has stated that in her statement before Police, she stated that Pokhraj had returned from his field and was washing his hand at the hand pump, she had not stated that he was taking bath at the hand pump.

42. Ramavati Devi (PW-5) is the daughter-in-law of the deceased, who has also stated that she had seen Chandrama Singh but she was not aware till date that his head was injured and leg was fractured.

43. We have noticed from the pattern of cross-examination of the prosecution witnesses that all of them were specifically put this question as to the presence of Chandrama Singh at the place of occurrence and the injury sustained by him but all the prosecution witnesses who are family members of the deceased have denied that Chandrama Singh had sustained injury. These witnesses have failed to explain the grievous injuries over



the person of Chandrama Singh. We would, therefore, agree with the submissions of learned counsel for respondent nos. 2 to 5 that these witnesses are shying away from the reality and it would raise serious doubt over the veracity of their statement. In the case of **Lakshmi Singh** (*supra*), the Hon'ble Supreme Court has observed in paragraph '11' *inter alia* as under.

“..... It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai vs. State of Bihar 1968 Cri LJ 1479 tried to brush it aside on most untenable grounds.....”

The Hon'ble Supreme Court further observed thus:- “This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabalise the plea taken by the appellants.”

44. In paragraph '17' of the judgment, in the case of **Lakshmi Singh** (*supra*), the Hon'ble Supreme Court observed that one of the most important points arising in a criminal trial is the



non-explanation of the injuries on the person of the accused by the prosecution.

45. In the case of **Babu Ram** (*supra*), the Hon'ble Supreme Court referred and relied upon the judgment of **Lakshmi Singh** (*supra*) and reiterated paragraph '18' that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

- “1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

46. In paragraph '19' of the judgment, it has been observed that omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.



47. In the present case, we have dealt Exhibit 'A', 'B' and 'C' which give the defence version and in our opinion, the defence version is competing in probability with that of the prosecution case. We have found that the prosecution is failing in establishing the place of occurrence as well as the manner of occurrence.

48. Now coming to the another submission with regard to the non-examination of independent witnesses, we find from the materials on the record that almost all the prosecution witnesses have stated about presence of large number of villagers who had assembled at the place of occurrence. PW-1 stated that Chandan Singh, Nitish Singh, Kailash Singh and Santosh Singh who are the villagers had come. None of these independent witnesses have been examined. PW-2 has stated that at the place of occurrence, the villagers had come and they had taken the injured to the hospital. PW-4 and PW-5 have also stated about presence of independent witnesses at the place of occurrence. The I.O. (PW-8) has stated that he had recorded statement of independent witnesses Mahesh Singh and Ram Ekbal Bhagat. They were also charge-sheet witnesses but they have not been examined by the prosecution. While discussing this aspect of the matter we take



note of Section 114 (g) of the Indian Evidence Act, 1872 which states thus:-

“(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it”

49. In the case of **Krishnegowda** (*supra*), the Hon’ble Supreme Court has observed in paragraph ‘20’ and ‘21’ as under:-

“**20.** Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the court, but if these contradictions create such serious doubt in the mind of the court about the truthfulness of the witnesses and it appears to the court that there is clear improvement, then it is not safe to rely on such evidence.

21. In the case on hand, the evidence of the eyewitnesses is only consistent on the aspect of injuries inflicted on the deceased but on all other factors there are lot of contradictions which go to the root of the matter.”

Further in paragraph ‘25’ and ‘26’ of its judgment, the Hon’ble Supreme Court observed as under:-

“**25.** It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad daylight. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent



witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

26. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, “witnesses are the eyes and ears of justice”. In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused.”

50. We find that in the present case even though the witnesses have stated about presence of independent witnesses from the village, no independent witness has been examined and the charge-sheet witnesses who were in the category of independent witnesses have been withheld, therefore, adverse inference is liable to be drawn.

51. In the present case, the injury reports of Rajendra Yadav (PW-1), Rajdev Yadav (PW-6) and Pokhraj Yadav (the deceased) have been proved by the Doctor (PW-7). The



postmortem report of Pokhraj Yadav is Exhibit '1'. The following antemortem injuries have been found on his person:-

“1. Lacerated Injury size 3” x 3/4” x bone deep at Lt parietal region of scalp with crack area with gap of size 1” x 1/4 x” brain deep.

2. swelling size 1½” x 1” at right (middle region) of forearm medially.”

52. It is evident that Pokhraj had suffered only one injury on the vital part of his body caused by hard and blunt substance. Injury no. 2 of Pokhraj Yadav was not on vital part of the body and according to PW-7, it is possible due to fall on some hard surface. About the age of injury, PW-7 has opined that it is within 6 to 24 hours since death to postmortem.

53. The injury report of Rajdev Yadav has been marked as Exhibit '2'. He had received five injuries on his body which are as follows:-

“(1) Lac. Injury – Size 2” x 1/4” x muscle deep at right parietal region of scalp.

(2) swelling with abrasion size 1” x 1” at right side of abdomen above and anterior superior iliac on lateral part.

(3) Defuse Swelling with tenderness at left forearm distally & dorsally.

(4) Two abrasions each of size about ½” x ¼” at dorsum of left index finger

(5) swelling with tenderness size 3” x 2 ½ ” at left lower leg laterally.”



54. Rajendra Yadav (PW-1) was also examined by Doctor (PW-7) who found the following injuries on his body:-

- (1) abrasion – size $\frac{1}{2}$ ” x $\frac{1}{2}$ ” at right shoulder.
- (2) Swelling size 1” x 1” at right parietal region of scalp.
- (3) Diffuse swelling with tenderness at left thigh laterally.
- (4) Diffuse swelling with tenderness at left distal leg laterally.”

55. All the injuries were simple in nature caused by hard and blunt substance. So far as injury caused to Rajendra Yadav (PW-1) is concerned, the Doctor has opined that the injuries have been caused within 72 hours of the time of examination. This is Exhibit ‘2/1’. On perusal of the injury reports of the deceased on the one hand and those of his two brothers PW-1 and PW-6, it appears that the age of injury of Pokhraj and PW-1 is not of the same day. The Doctor (PW-7) has clearly opined in paragraph ‘15’ and ‘16’ that the injuries on the body of Rajdev Yadav (PW-6) and Rajendra Yadav (PW-1) do not seem to be of same time and of the same day. The injury of Rajendra Yadav and the deceased Pokhraj Yadav are not of the same day. In paragraph ‘18’ and ‘19’ of his deposition, PW-7 has admitted that he has not mentioned the size of injury no. 3 and 4 of Rajendra Yadav (PW-1). To this Court, it appears that Exhibit ‘2’



and '2/1' which are injuries reports of PW-6 and PW-1 respectively do not corroborate the prosecution story as alleged and the prosecution story would become doubtful with regard to the manner of occurrence and the time of occurrence. Referring to this situation, the Hon'ble Supreme Court has observed in the case of **Krishnegowda** (*supra*) that "once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence and clear latches in investigation, then the benefit of doubt has to go to the accused."

56. As a result of the aforementioned analysis of the evidences available on the record, this Court is of the considered opinion that in the present case, the prosecution could not establish its case beyond all reasonable doubts. The learned trial court has analysed the entire evidences on the record and we are satisfied after re-appreciation of the entire evidences that the findings and opinion of the learned trial court are not perverted and it would not require any interference by this Court in appeal.

57. We are conscious of the judicial pronouncements on the subject while dealing with a case of acquittal, it has been the view of the Hon'ble Supreme Court in the case of **H.D. Sundara** (*supra*) that the presumption of innocence gets multiplied in case



of an acquittal by the learned trial court and the appellate court hearing an appeal against acquittal need not interfere with the same unless the appellate court reaches to an irresistible conclusion with regard to the guilt of the accused. Paragraph '8' of the judgment in the case of **H.D. Sundara** (*supra*) is being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

1. State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591



8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

58. In ultimate analysis, we find no reason to interfere with the impugned judgment.

59. This appeal is, therefore, dismissed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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