

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.86 of 2004

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UPENDRA RAI Son of Mahendra Rai Resident of village- Muktapur, PS-
kalyanpur, Dist- Samastipur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Gyan Prakash, Advocate

Mr. Parul Priya, Advocate

For the State : Mr. Anita Kumari Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 22-11-2025

Heard the learned counsel for the appellant and
learned Addition Public Prosecutor of the State.

2. The present appeal has been directed against the judgment of conviction and order of sentence dated 18.12.2003 passed by learned Additional District and Sessions Judge – IV, Fast Track Court, Samastipur in Sessions Trial No. 105/1996/105/2002 arising out of Kalyanpur P.S. Case No. 55 of 1994 registered under Section 341, 342, 323, 324, 307/34 of IPC whereby and whereunder the appellant has been convicted for the offence punishable under Sections 323, 341, 342, 326 of the IPC and has been sentenced to undergo rigorous imprisonment for five years along with fine of rupees two thousand (Rs. 2,000/-) for the offence under Section 326 of IPC and in case of default of payment of fine, appellant has to



further undergo rigorous imprisonment for six months. The appellant has further been sentenced to undergo rigorous imprisonment for six months for the offences under Section 323 of IPC. The appellant has further been sentenced to undergo rigorous imprisonment for one month for the offence under Section 341 of IPC. The appellant has further been sentenced to undergo rigorous imprisonment for six months for the offence under Section 342 of IPC. All the sentences shall run concurrently.

3. According to fardbeyan of informant/Upendra Rai @ Bageria, on 27.07.1994, he was returning home from Kushaiya after seeing fair with Manoj Paswan on his bicycle. It is alleged that when they reached near the road of the house of co-accused Maheshwar Rai, at around 4 PM in the evening, co-accused Maheshwar Rai pulled informant off the bicycle and caught hold of informant by his collar and brought the informant to his door, tied his hand and leg with rope in pillar and assaulted the informant with stick, and closed the informant inside the house and put lock from outside. It is further alleged that again at around 7 PM, co-accused Maheshwar Rai and appellant took the informant out from the room and assaulted him. It is further alleged that at around 12:00 o'clock in the



night the above mentioned two persons thrashed the informant down on the ground and the appellant opened both eyes of informant and co-accused Maheshwar Rai with the intention to kill and blind the informant, poured acid into both eyes due to which informant was unable to see from both eyes. It is further alleged that appellant exploded three bombs near the *Bar* tree in Pethiya and co-accused Maheshwar Rai started dragging the informant and started making noise as *dacoit-dacoit*. Many people from village came after hearing noise. Co-accused Maheshwar Rai said that 10-12 people came to his house to commit *dacoity*, they chased and caught the informant and other people ran away. It is alleged that this is how co-accused Maheshwar Rai framed fake *dacoity* case against the informant and exploded bomb. It is further alleged that, owing to previous enmity, the informant has admitted that he was falsely implicated, apprehended, assaulted, blinded, and that acid was poured into both of his eyes.

4. On the basis of fardbeyan of the informant, Kalyanpur P.S. Case No. 55 of 1994 was instituted for the offences punishable under Sections 341, 342, 323, 324, 307/34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of



investigation, charge sheet has been submitted against the appellant and other under Sections 341, 342, 323, 324, 307 of the IPC. Thereafter, the learned trial court took cognizance against the appellant. The case was committed to the court of sessions after following due procedure. The learned trial court has framed charges against the appellant under Sections 307/34, 323, 326, 341 and 342 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused persons, prosecution has examined altogether twelve witnesses. PW-1 Agnu Paswan, PW-2 Maheshi Rai (father of the informant), PW-3 Dharma Devi (mother of informant), PW-4 Upendra Rai @ Bagairiya (informant), PW-5 Garib Paswan, PW-6 Md. Mustafa (Investigating Officer), PW-7 Laxman Prasad Rai, PW-8 Devendra Prasad Rai, PW-9 Harishchandra Thakur, PW-10 Ram Krishna Choudhary, PW-11 Dr. Fanindra Mohan Mishra, PW-12 Dr. Md. Sharfuddin Ahmad, PW-13 Pawan Kumar Choudhary.

6. Prosecution has relied upon following documentary evidence on record:-

Ext. 1 – Case diary of the case



Ext. 2 - Fardebayan

Ext. 3 – Formal FIR

Ext. 4 – The signature of Dr. Alka Jha,
Ophthalmology department on the letter no. 7 dated 12.4.2001

Ext. 5 – Pagination on fardebayan

Ext. 6 – The prescription issued by Dr. Md.
Sharfuddin Ahmad in the name of Upendra Rai (informant).

Ext. 7 – Signature of Shailendra Kumar on the ed
head ticket of Upendra Rai.

Ext. 8 – Order sheet of Kalyanpur P.S. Case No.
56 of 1994, T.R. No. 826 of 1994.

7. In this case, in support of its case, the defense
side has examined altogether six witnesses. DW-1 Umesh Sada,
DW-2 Sudama Rai, DW-3 Subodh Rai, DW-4 Phonu Paswan,
DW-5 Surendra Prasad Singh, DW-6 Suresh Rai.

Defence has relied upon following documentary
evidence:-

Ext. A- Formal FIR of Kalyanpur PS Case No.
153/92

Ext. A/1- Formal FIR of Samastipur Town PS
Case No. 141/93,

Ext. B - Order sheet of Samastipur Town PS



Case No. 141/93, G.R 434/93,

Ext. C - The charge sheet No. 25 dated 28-3-93

Ext. C/1 - Charge sheet No. 53/93 dated 30-4-93.

Ext. D - Certified copy of GR Register of
Kalyanpur PS Case No. 32/94.

Ext. E- Order sheet of TR No. 1487/2003 dated
26-11-94.

Ext. E/1 - Order sheet dated 28-3-95

Ext. E/2 - Order sheet dated 13-6-95

Ext. F - Charge Sheet No. 72/94 dated 10.10.94.

8. However, defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

9. After hearing the parties, the learned trial court has convicted the appellant and sentenced him as indicated in the second paragraph of the judgment.

10. Learned counsel for the appellant has submitted that the very manner of occurrence clearly reveals that the occurrence of robbery has taken place at the house of co-accused Maheshwar Rai for which the case of robbery was instituted by the co-accused Maheshwar Rai and in the said



case, charge sheet has also been submitted under Section 393 of IPC and DW 2 (Sudama Rai) & DW 3 (Subodh Rai) were made charge sheet witness in the said case. They have also admitted that on the same date of occurrence, the informant was apprehended by the people and 200-300 persons gathered there and informant was assaulted and the acid was put in the eyes of the informant/victim of the present case and the case which was filed on the same date of occurrence in which during the course of apprehending, some injuries have been sustained by the informant. Learned counsel for the appellant has further submitted that injury report of the victim has not been brought before the court nor the same has been exhibited and the doctor who has treated the injured has not been brought in the court. Learned counsel for the appellant submits that injury report is neither produced nor exhibited rather it was a forwarding letter. Dr. Alka Jha who has treated the victim, has not been produced as prosecution witness. He further submits that several formal witnesses are examined as P.W. 11, 12 and 13 and their evidences are contradictory on the point of signature on the prescription. PW. 13 who is a compounder, who at the relevant time was working under Dr. F.M. Mishra, has stated that on the dictation of Dr. F.M. Mishra, PG student Shailendra Kumar



signed on prescription which is marked as Ext. 7. Ext. 7 has clearly falsified the statement of formal witnesses P.W. 11 and P.W. 12, who have stated that the prescription was signed by Registrar (P.W. 12). In this way, statement of P.W. 11 and P.W. 12 are totally contradictory to each other though they are formal witnesses. Learned counsel has submitted that there is no eye witness of the occurrence, except the victim(P.W. 4) and all other witnesses have stated that they have not seen the occurrence. One of the witness, namely, Garib Paswan (PW-5) who accompanied with informant, has projected himself to be eye witness of some portion of the occurrence but the very statement of Garib Paswan is very divergent with the statement of P.W. 4 on the point that he was accompanied with informant but the statement of Garib Paswan (PW-5) clearly reveals that he was not accompanied with informant. In this way, the statement of accompanying the informant is totally divergent. From the statement of P.W. 4, he has clearly stated that co-accused Maheshwar Rai poured acid in his eyes. He further submits that there are several divergent statements given by the other prosecution witnesses which shatters the story of prosecution. The manner in which the occurrence has been narrated by the informant clearly indicates that some occurrence



has been committed which was not revealed in the story of prosecution rather same was reflected in FIR of Kalyanpur P.S. Case No. 56 of 1994 in which chargesheet has been submitted. Even the Investigating Officer (P.W. 6) has stated that on 28.07.1994, he got information that some criminals had committed an incident in Muktapur, he registered sanha and proceeded Muktapur for verification of crime committed. He further submits that only the person who has suffered injuries has stated that co-accused Maheshwar Rai has poured acid in the eyes of informant. None of the witnesses is the eye witness of the occurrence. Even, Investigating Officer has admitted that he reached to the place of occurrence on the basis of rumor/information. For verifying that as to whether the occurrence of robbery was committed or not, suggestion has already been given by the defence side that during the course of apprehending accused, some injuries have been caused and 200-300 gathered at the place of occurrence and some mishappening have been done and appellant cannot be held guilty for the same. He further submits that the informant has reason to implicate the appellant and co-accused Maheshwar Rai as the informant was himself accused in a case which was lodged by co-accused Maheshwar Rai on the same date of



occurrence regarding the commission of robbery in the house of co-accused Maheshwar Rai.

11. Learned APP for the State submits that P.W. 4/ informant is the victim of the case, who has supported the alleged occurrence of pouring of acid in his eyes and there is no reason to disbelieve the statement of victim/informant. Apart from that, despite being several inconsistencies and discrepancies other witnesses have also supported and corroborated the story of prosecution. In this way, the prosecution has proved the case and the judgment of conviction and order of sentence passed by the concerned court is justified and legal and, hence, no interference is needed.

12. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

13. The question which arises for consideration is :-

“Whether offence under Sections 323, 341, 342, 326 of the IPC is made out in the light of given facts and circumstance of the case or not?”

14. It is necessary to evaluate and analyze the



evidences of prosecution witnesses adduced before the trial court.

15. P.W. 1 (Agnu Paswan) has stated that he has no knowledge regarding the incident. He has been declared hostile.

16. P.W. 2 (Mahesi Rai) is the father of the informant and he has stated that when he reached near the house of co-accused Maheshwar Rai at Muktapur, the appellant and others caught hold his son (informant) and took him to the door and tied his hand and feet and started assaulting and poured acid in both eyes of his son. He stated that his son lost his eye sight due to pouring acid and became blind by the appellant and others. The aforesaid matter was intimated to P.W. 2 by the mill workers. He identified the accused present in dock and claimed to identify others also. During the course of cross examination, in para-2 P.W. 2 has stated that his son lost his eye sight on account of pouring acid and he was treated at Laheriya Sarai and all accused persons participated in the alleged occurrence. In para 3 he has clearly stated that he has not seen the occurrence rather the information of alleged incident was given by the mill workers. A suggestion was given by the defence side which was denied by this witness that his son was involved in a



bicycle theft case and his eye sight damaged for which Samastipur P.S Case No. 141 of 1993 was registered which was denied by this witness. A suggestion was also given that his son shot Joginder Singh on 10.05.1994 and in this regard Samastipur Town P.S. Case No. 32 of 1994 was registered against his son and his son sent to jail. Again on 28.03.1993 his son went to jail in road robbery for which Samastipur P.S. Case No. 153 of 1992 was registered which was denied by this witness. At para 6 PW-2 has admitted that co-accused Maheshwar Rai has filed a case of robbery against his son numbered Kalyanpur P.S. Case No. 56 of 1994 but in the said case his son did not go to jail and same is still pending. At para 5 PW-2 has stated that said occurrence came in the knowledge of this witness next day after the occurrence and he reached early in the morning at the house of co-accused Maheshwar Rai where police was also present. A suggestion was given by the defence counsel that victim always involved in the cases of theft, dacoity in which he sustained injury upon his eyes and false case has been instituted which was denied by this witness.

17. P.W. 3 (Dharma Devi) is the mother of victim. She has narrated the prosecution story that the victim was returning from Pethiya which is totally inconsistent with the



deposition made by P.W. 2, who is father of the informant and same is also inconsistent with the initial version of prosecution story narrated by P.W. 4 that he was returning from Kursaiya. In para 5 of cross examination, she has stated that she was not present at her home on the day of the occurrence and she came to know about the alleged occurrence in the next morning. She does not speak anything regarding the appellant. She only made statement against Maheshwar Rai.

18. P.W. 4 (Upendra Rai @ Bageria) is the informant of the present case. While narrating the story of prosecution in initial version, he has stated that he was returning from Kushaiya after seeing fair with Manoj Paswan on his bicycle by sitting in the front and while giving deposition in court, he has stated that he was returning home with Garib Paswan on cycle, which was totally inconsistent with the initial version of prosecution story. On the point of time of occurrence, the initial version of prosecution story narrated by informant indicates that occurrence took place at 12 midnight in which the acid was poured in both eyes of the informant but during the course of adducing evidence before the Court, the statement of informant was totally inconsistent regarding time of occurrence as he stated that occurrence took place at 7 PM. In para 12 of



the cross examination, it is admitted by the PW-4 (informant) that co-accused Maheshwar Rai filed a case of robbery against him regarding the incident which took place on the same date. In para 18, he has not stated to the police that he was coming with Manoj Paswan. It is stated informant had been caught and blinded upon which co-accused Maheshwar Rai raised alarm of bandit and he has not stated anything with regard to the appellant. In para 24, he has stated that informant's family member came after the arrival of police at 6 AM and it was admitted by the victim/informant that co-accused Maheshwar Rai called the police and accused persons had not apprehended his companion Garib Paswan. In para 27, he has admitted that he went to jail for two times and he was in jail sequel to the case lodged by co-accused Maheshwar Rai and apart from this case, two more cases were registered against him. In para 28, a suggestion was given by the defence counsel that he was caught red handed, stealing a cycle at Samastipur Sadar Hospital for which Samastipur P.S. Case No. 141 of 1993 was registered which was denied by him. He also denied the suggestion that people had severely assaulted the informant at that instant as a sequel to which victim eyes were damaged. He is unable to tell that alleged incident took place on 06.04.1993.



19. P.W. 5 (Garib Paswan) has stated that he was returning from village Kusaiya and when he reached near the house of co-accused Maheshwar Rai, he saw that co-accused Maheshwar Rai was holding the collar of informant and took him to his house. He has stated that when he reached home, he came to know that co-accused Maheshwar Rai had poured acid in the eyes of victim. In this way, he is not eye witness of the alleged occurrence as has already stated that he came to know regarding the incident from others.

20. P.W. 5 is claiming to be the eye witness of some portion of the occurrence which is totally inconsistent with the initial version of prosecution that when informant was stated himself that he was alongwith Manoj Pawan. During the course of cross examination, he projected himself to be the eye witness of some portion of the alleged occurrence and he saw that co-accused Maheshwar Rai was holding the collar of informant and when he reached the house, he came to know that co-accused Maheshwar Rai had poured acid in the eyes of the Bageria(informant). Co-accused Maheshwar Rai had said to informant/victim that he would break his hand and legs. He has stated that he has informed no one about this.

21. P.W. 6 (Investigating Officer) has stated that



on 28.07.1994 he was posted as In-charge of Kalyanpur Police Station and on the same day at 5 PM he got an information that some criminal had committed an incident in Muktapur. Thereafter, he proceeded Muktapur for the verification of the crime committed. When he reached Muktapur, he found injured Upendra Rai @ Bageria in the *Baithka* of Maheshwar Ray and his hands and legs were tied. He further stated that victim had given statement that acid was poured in his eyes at 12 o'clock midnight by both the accused persons but P.W. 4 (informant/victim) has stated that co-accused Maheshwar Rai has poured acid in the eye of victim at 7 PM. In para 11, he has stated that informant put thumb impression upon hearing the statement. He has stated that in presence of witnesses Reet Lal Ray and Sita Ram Ray of Muktapur, he seized the soil where the acid had fallen but Reet Lal Ray and Sitaram Rai were not produced as seizure list witnesses. In para 28, he has admitted that no one has come to inform him rather he came to village on the basis of rumor. In para 21, he has stated that the injured was treated in the clinic of Dr. R.S. Srivastava and injury report was received.

22. PW 11 is Dr. Fanindra Mohan Mishra. He has stated that injured was admitted by Registrar of the said



department. He has stated that victim was brought at OPD on 02.08.1994 and case was admitted by him. He has stated that it was a case of acid burn of eyes. He has stated that R.S.O. of the said department has filled BHT and has written injuries and treatments. He has also stated that he examined the patient in-door on 12.08.1994 and advised surgery for skin grafting. He has stated that he has not written any opinion in his writing rather the opinion was written on 12.08.1994 at his dictation.

23. PW – 12 (Dr. Md. Sharfuddin Ahmad) has stated that he was registrar under the unit of Dr. F.M. Mishra, DMCH, Darbhanga under the Ophthalmic Department. He has stated that he has given the first aid and he prescribed medicine. This prescription is in my pen and signature marked as Ext.- 6 In para 2, he has stated that neither identification mark of the patient nor time was mentioned in prescription and only OPD number is mentioned in the prescription and he cannot identify the patient.

24. PW – 13 is Pawan Kumar Chaudhary. He has stated that he was working as compounder for one year in Dr. F.M. Mishra private clinic. On 02.08.1994, injured Upendra Rai was admitted in the injured condition in the said unit. On the instruction of Dr. F.M. Mishra, PG student Shailendra



Kumar used to write prescriptions. Prescription of injured Upendra Rai is in writing and signature of PG student Shailendra Kumar, which is marked as Ext. 7.

25. DW 2/ Sudama Rai & DW 3/ Subodh Rai are charge sheet witness of kalyanpur P.S. Case No. 56 of 1994 which is marked as (Ext. F). DW 2 has stated that robbery was committed at the house of co-accused Maheshwar Rai and several people gathered there and they caught the informant, assaulted him and put something in his eyes.

26. On all counts from the analysis of evidence of prosecution witnesses, it is evident that PW 4 is the victim as well as informant of the case. He has narrated the story of prosecution as to how he was apprehended by the co-accused Maheshwar Rai and the present appellant and he was assaulted as well as acid was poured in the eyes but while adducing evidence before the court his statement is full of contradictions and inconsistencies with regard to the accompanying with the person Garib Paswan (P.W. 5). In initial version of prosecution story, the time of alleged occurrence is 12 midnight but during the course of adducing evidence, he has stated that acid was poured in his eyes at 7 pm, which is totally inconsistent. The statement of victim is not corroborated by any



of the witnesses and the manner in which the occurrence has taken place, two FIRs have been lodged for the same occurrence one is lodged by informant himself who is victim of the present case and co-accused Maheshwar Rai has lodged the another FIR stating that robbery has been committed in his house. Defence has already taken plea that several persons were present at the place of occurrence and informant was apprehended and during the course of occurrence someone has put acid in the eyes of victim and other witnesses are not eye witness of the occurrence. Even the person who has accompanied with the informant has divergent views with regard to the accompanied with the informant. He has stated that he saw that co-accused Maheshwar Rai was holding the informant by collar but during the course of cross examination, he has stated that he has not informed the police. He has informed chaukidar. Prudently and pragmatically, it cannot be possible that if person who is accompanied with a particular person and said particular person was apprehended by someone, he has to inform to thana or some close relatives but the said work has not been done by the said witness. The statement of Garib Paswan is totally unbelievable as no prudent man can think about this. The informant/victim has admitted that he has involved in cases of robbery and



stealing and some of the cases have been filed by the co-accused Maheshwar Rai and the suggestion was clear cut given by the defence counsel that for a particular offence of the same day, the cases was instituted against the informant of present case and robbery has been committed, charge sheet has been submitted against the informant. Defence witness has given the clear cut view that there are several persons who caught the informant of the present case and someone had poured acid in the eyes of the informant and no injury report has been placed on record even doctor has not been examined. Thereby the defence has been prejudiced. There is contradiction in the statement of PW-11 and PW-12 in respect of so called admission of the informant in DMCH, Darbhanga. P.W. 11 has stated that all the contents of prescription is at the dictation of mine but P.W. 12 has admitted that prescription is in his pen and signature. PW 13 has stated that he was working as compounder for one year in Dr. F.M. Mishra private clinic and on the instruction of Dr. F.M. Mishra, PG student Shailendra Kumar wrote prescription of injured Upendra Rai.

27. The very role of Investigating Officer (PW-6) is necessary to be discussed alongwith other prosecution witnesses. The Investigating Officer conducted the investigation



in a wholly perfunctory and negligent manner. No incriminating articles were seized, despite the Investigating Officer's (PW-6) own admission that acid was found at the place of occurrence and was allegedly seized in the presence of Reet Lal Ray and Sita Ram Ray. Yet, neither of these witnesses was examined by the prosecution. Moreover, although acid was admittedly detected in the soil, no seizure list has been produced on record. These glaring omissions demonstrate that the Investigating Officer (PW-6) acted in a casual and indifferent manner, falling to investigate the truthfulness of the allegations in accordance with law. The requirement of a truthful and thorough investigation is even more compelling in the present case, as two FIRs have been lodged arising out of the same occurrence—one by the informant, Upendra Rai @ Bageria and the other by co-accused Maheshwar Rai, alleging that 10-12 dacoits had entered his house. A counter-case under Section 393 IPC has accordingly been registered against the present informant, Upendra Rai @ Bageria. The Investigating Officer (PW-6) has further admitted in paragraph 9 that villagers had assembled at the spot and that Maheshwar Rai stated that 10-12 dacoits had entered his house and that he had apprehended Upendra Rai @ Bageria, while the remaining assailants fled. These



circumstances demanded a careful and impartial inquiry, which is conspicuously absent from the record. During cross-examination, the investigating Officer (PW-6) admitted in paragraph 25 that his diary reflects that Manoj Paswan had left for Delhi two months prior to the alleged incident. This directly contradicts the prosecution version, as the informant himself narrated that he was returning home from Kushaiya after visiting a fair along with Manoj Paswan. The informant's initial narration is therefore wholly inconsistent with the findings recorded by Investigating Officer (PW-6), clearly indicating that the informant fabricated a version to falsely implicate the appellant and co-accused in order to suit his own case. Furthermore, in paragraph 27, the Investigating Officer (PW-6) recorded the statement of Umesh Sada (DW-1), wherein it was stated that an alarm of "dacoits" had been raised, and villagers informed that they had apprehended one person who disclosed his identity as Upendra Rai @ Bageria - the present informant. Significantly, Umesh Sada never stated that acid was never poured into the eyes of anyone. These material inconsistencies strike at the root of the prosecution case and demonstrate that the allegations were neither corroborated nor supported by the eye witnesses. In paragraph 29, the Investigating Officer (PW-6)



has noted the recovery of sutli, nails, remnants of an explosive, a tin box, and other materials from near the house of Maheshwar Rai. These recoveries, however, further reinforce that two rival versions were put forth by the opposing sides, each lodging its own FIR arising from the same date, time, and place. While the informant alleges that he was assaulted by the co-accused and appellant and that acid was poured on him, the counter-FIR lodged by co-accused Maheshwar Rai asserts that an incident of robbery was committed by the informant and others at that very same time and location. The Investigating Officer's casual and negligent approach fails to resolve how two mutually inconsistent occurrences could have taken place simultaneously at the same spot, nor does it establish which of the two versions, if any, reflects the true incident. This unresolved factual contradiction fatally undermines the prosecution case. The conduct of the Investigating Officer is gravely questionable. If incriminating articles were in fact recovered, the absence of any corresponding seizure list is wholly unexplained. Likewise, no inference was drawn from the recovery of bomb remnants and related materials-items that clearly indicated the commission of a serious offence. This indifferent and selective approach reveals that the Investigating Officer uncritically accepted the



informant's version, despite its inherent improbabilities and contradictions. The informant (PW-4) admitted that Manoj Paswan had not accompanied him, whereas he had earlier narrated the prosecution story by projecting Manoj Paswan as being along with him. Such a materially false assertion, coupled with the manner in which he (informant) narrated the alleged occurrence, indicates that the story was tailored to falsely implicate the appellant and others. PW-4 further admitted that neither family members nor other persons reached the place of occurrence until the police arrived, thereby casting serious doubt on the spontaneity and credibility of the prosecution version. Crucially PW-4/informant also admitted that it was Maheshwar Rai who had called the police. It is wholly implausible that a person allegedly assaulting, beating, and pouring acid on the informant would himself summon the police unless an entirely different occurrence had taken place - an aspect which the Investigating Officer (PW-6) failed to examine. Despite several incriminating articles being recovered, the Investigating Officer drew no logical inferences and proceeded without probing which of the two rival versions reflected the truth, especially when he himself admitted that villagers had apprehended a person who identified himself as Upendra Rai @



Bageria and that Umesh Sada had never stated that acid was never thrown on anyone. PW-4/informant further admitted in paragraph 12 that Maheshwar Rai had lodged a robbery case against him arising out of the same incident. These cumulative admissions, coupled with the Investigating Officer's casual and incomplete investigation, strike at the root of the prosecution case and render the entire narrative highly doubtful. The defence has examined six witnesses in support of its case. Notably, DW-2 and DW-3-both charge-sheet witnesses in the counter case filed by co-accused Maheshwar Rai arising out of the same occurrence-have admitted that, on the date of the incident, the informant was apprehended by villagers, and that 200-300 persons had gathered at the spot. They further stated that the informant was assaulted during his apprehension and that acid was allegedly poured to his eyes. They also confirmed that the counter-case, lodged on the same day, pertained to injuries sustained by the informant during his apprehension. The defence contention is fully sustainable in light of the fact that the prosecution has failed to produce the injury report of the alleged victim, nor has it exhibited any such document. The treating doctor, Dr. Alka Jha, was not examined, and no medical record was brought on the record. Even the testimony of the formal



witnesses (PW-11, PW-12, and PW-13) is contradictory regarding the signatures on the purported prescription. Except for PW-4, none of the prosecution witnesses claim to be eyewitnesses in these circumstances, the defence version appears far more credible. The trial court failed to consider that the evidence strongly supports the defence plea that the real occurrence was one of robbery or dacoity, especially given the recovery of sutli, bomb remnants, and other materials consistent with such an offence. The informant's apprehension at midnight naturally explains the gathering of villagers and the possibility of injuries sustained during the chase. PW-4/informant further admitted in paragraph 29 that he had previously been lodged in jail in Samastipur PS. Case No. 153/92 under Section 392 IPC, and the Investigating Officer (PW-6) also admitted that, as per version of the chowkidar Vishnudev Paswan, the informant had earlier gone to jail in a robbery case. This past history cannot be ignored, particularly when the defence asserts that the informant, along with others, had set out to commit robbery on the very night of the incident - an inference consistent with the recovery, of sutli and bomb materials. Moreover, PW-4's narrative that he was accompanied by Manoj Paswan stands falsified by the Investigating Officer's statement that Manoj



Paswan had been in Delhi two months prior to the incident. His version is further weakened because Manoj Paswan, one of the alleged accompanying persons-was not examined, and even his father did not reach the place of occurrence until after the police arrived. One witness, Gareeb Paswan, claimed to have seen the appellant and others holding the collar of the informant, yet admitted he never reported this to the police-a highly unnatural omission. Considering the overall facts and circumstances of the case, the submissions advanced by learned counsel for the appellant appear wholly convincing. The record reveals several material discrepancies and inconsistencies in the testimony of PW-4/informant as well as other prosecution witnesses. The investigation conducted by the Investigating Officer (PW-6) was perfunctory and indifferent – he failed to produce any seizure list despite claiming recovery of incriminating articles; drew no inferences from the recovery of sutli, bomb remnants and other materials suggestive of a serious offence; and accepted the informant's version uncritically despite clear contradictions, including the absence of Manoj Paswan and the admissions of PW-4 and other witnesses which cast serious doubt on the prosecution narrative. It is the cardinal principle of law that the benefit of doubt goes in favour of accused/appellant.



28. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of his bail bonds.

29. Pending Interlocutory Application(s), if any, shall stand disposed of.

30. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

31. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

alok/shahzad-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08-12-2025
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