

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.28 of 2004

Sanjay Kumar Sah, S/o Khokha Sah @ Jamuna Prasad Sah, R/v- Chalisa, Hat,
P.S. and District- Katihar.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Allama Abdul Quadir Jamal Faridi Mr. Nasrul Husa Khan, Adv.
For the Respondent/s	:	Mr. Saryendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-11-2025

1. Heard learned counsel appearing on behalf of the parties.

2. The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated and order of sentence dated 16.12.2003 passed by court of P.O. (Fast-Track) Court No. 1 Katihar in Sessions Trial No. 135 of 1989, whereby the concerned Trial Court has convicted appellant under Section 304 part II of the IPC, where appellant sentenced to undergo rigorous imprisonment for six years.

3. The brief facts of the prosecution case as per FIR, which is based upon the information given by injured namely, Sajan Kumar Jagnani who subsequently died "during the course of



treatment” whose statement was recorded by ASI namely, Ram Kumar Prasad Singh of Katihar P.S. on 05.01.1989 at about 11:30 AM in emergency ward of Sadar Hospital that on the same day at about 8 A.M. when informant went to play badminton in nearby vacant plot of his house he was objected to play by one Sanjay Kumar Sah (appellant) aged about 24 years. Upon objection it was said by him that he is playing in vacant plot and not inside his house, whereafter appellant/ accused after picking pointed bamboo assaulted on his left thigh, whereafter his condition deteriorated due to huge bleeding and was brought to Katihar hospital for treatment where his statement was recorded.

4. On the basis of aforesaid information, Katihar P.S. Case No. 10 of 1989 was lodged for the offence punishable under Section 323, 324, and 307 of IPC.

5. After completion of investigation the charge-sheet was submitted before the learned CJM, Katihar, who upon the perusal of material collected during investigation took cognizance of the offence and committed the case before the court of sessions for its trial and disposal.

6. Learned trial court accordingly framed charges on 31.05.1991 against appellant-accused, who upon explanation pleaded as “not guilty” and claimed trial.



7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 12 witnesses. None of the witness examined in defense. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Md. Riyajuddin
P.W. 2	Pradeep Kr. Ray
P.W. 3	Janak Lal Das
P.W. 4	Sita Ram Jagnani (Father of the deceased)
P.W. 5	Deep Narain Jha
P.W. 6	Susila Devi Poddar (Sister of the deceased)
P.W. 7	Dr. P.L. Sah (Doctor)
P.W. 8	Ganga Prasad
P.W. 9	Jaiprakash Mahato
P.W.10	Ashok Singh
P.W. 11	Binod Kr. Jagnani
P.W. 12	Dr. MM Wasim(Medical Officer)

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

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Formal FIR.
2.	Exhibit-2	<i>Fardbeyan</i>
3.	Exhibit-2/1	<i>Fardbeyan</i> of all formal witnesses
4.	Exhibit- 3	Signature of PW-4 on



		seizure list
5.	Exhibit-4	Injury Report
6.	Exhibit-5	Discharge Slip
7.	Exhibit-6	Postmortem Report.
Defence Exhibits		
1.	Exhibit-A	Certified copy of FIR and <i>fardbeyan</i>
2.	Exhibit-B	Certified copy of charge-sheet
3.	Exhibit-C	Certified copy of Judgment

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

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under Section 304 Part II of IPC and sentenced him in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

12. Hence, the present appeal.

13. It is submitted by learned counsel appearing on behalf of the appellant/accused that from the nature of injury and the body part on which the alleged injury was caused i.e., thigh, it



can't be said that appellant was under knowledge that his act might likely to cause death. It is submitted that even the weapon which alleged to be cause the injury was picked up from the spot itself without any planning. It is also pointed out that the informant/ injured died on way for better treatment to Kolkata. It is submitted that the formal FIR even, not appears proved before the Court as same appears to be identified and proved before the Court upon identification of advocate clerks which is not permissible under the law. It is pointed out that non-examination of I.O. in this case is fatal for prosecution and, therefore, the conviction as recorded by learned trial court for the offence punishable under Section 304 Part-II of IPC is completely un-occasioned and same is likely to be set aside. It is pointed out that other prosecution witnesses are interested witnesses and having lot of contradictions in their testimony and on the basis of their testimony it cannot be said that the prosecution established its case beyond all reasonable doubt.

14. Learned APP appearing on behalf of State fairly conceded that the informant was not examined as he died during the treatment but other eye witnesses supported the occurrence and, therefore, the conviction as recorded by learned trial court not appears questionable.



15. Taking counter of aforesaid submissions as advanced by learned APP, it is submitted by learned counsel for the appellant that the FIR itself suggests that at the time of actual occurrence none was present there and only after receiving the alleged injury caused profuse bleeding, the other persons who are interested witnesses and relative of the appellant arrived at the place of occurrence. It is submitted that on the basis of the testimony of examined prosecution witnesses who are interested witnesses being relative of the injured /deceased the conviction as secured by learned trial court is not appearing sustainable under law.

16. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470.***

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

18. It would be apposite to reproduce Section 304 Part-II of IPC, for better understanding of the law:

"304. *Punishment for culpable homicide not*



amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

19. From perusal of record it transpires that the PW-1, PW-2 and PW-3 namely, Md. Riyajuddin, Pradeep Kr. Ray and Janak Lal Das respectively are advocate-clerk who approved formal FIR, *fardbeyan* and endorsement of I.O. of this case over *fardbeyan*, which upon their identification before the learned trial court exhibited as exhibit 1, exhibit 2, exhibit 2/1 respectively. Time and again this Court categorised these type of witnesses as “*Sankat Mochan*”, who appears suddenly before the Court during trial to save the case of prosecution as trouble shorter, when there is no hope for prosecution case to sustain.

20. Considering the fact that these witnesses are advocate-clerks as discussed aforesaid having no occasion to work with I.O. of this case who recorded statement of the injured who died subsequently and also the endorsement over *fardbeyan* same cannot be said proved legally before the court of law and,



therefore, factual aspect of this trial categorically speaks that FIR which is basis of crux of the entire implication not appears approved by learned trial court.

21. It also appears that PW-8 is Ganga Prasad who is seizure list witness of the blood stained full pant and garment of the injured/ deceased which was seized by the police but those items were not produced by the learned trial court before him. It also appears from his testimony that he testified before the court that he witnessed one injury on the thigh of the injured/ deceased.

22. In view of the fact that this witness is the seizure list witness, therefore, any deposition *qua* occurrence is not appears relevant out of his testimony.

23. PW-5 namely, Deep Narain Jha who turned hostile and didn't supported the case of prosecution and upon cross-examination nothing transpired which may said relevant for the purpose of contradiction or corroboration of the testimony of other prosecution witnesses, who appears supporting the case of prosecution.

24. PW-9 namely, Jaiprakash Mahato who is inquest report witness and categorically stated before learned trial court that the inquest was not prepared before him.

25. PW-10 namely, Ashok Singh who is also one of



the seizure list witness, who categorically stated before the learned Trial Court that the police did not seized any blood mixed soil on the gray portion of *bhala* in his presence, though he identified his signature over seizure list but merely on the basis of identification of signature it cannot be said that the seizure list was proved before the learned trial court during the trial.

26. PW-4 namely, Sita Ram Jagnani who is the father of the deceased and claimed himself to be an eye witness of the occurrence. It appears from the testimony that upon raising alarm his daughter and another son and also one Deep Narain Jha came over there. It transpires from the record that PW-6 namely, Susila devi who is sister of the deceased, PW-11 namely, Binod Kr. Jagnani who is another brother and son of PW-4 namely, Sita Ram Jagnani supported the actual occurrence of inflicting *bhala* injury on the thigh of the injured/ deceased by appellant. But taking note of testimony of PW-4 who is none but the father of the deceased it appears that these two witnesses arrived at place of occurrence after *halla*. In view of same and being all three witnesses as immediate family members of the injured/ deceased, their interest *qua* outcome of the case against the appellant-accused cannot be ruled out.

27. It would be apposite to refer **para Nos. 32 and**



33 of the legal report of Hon'ble Supreme Court in the matter of ***Nand Lal (supra)***, which reads as under:-

"32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:

"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

33. It could thus be seen that in the category of "wholly reliable" witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of "wholly unreliable" witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a "wholly unreliable" witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial."

28. PW-7 and PW-12 are doctors who examined the informant/ deceased. PW-7 namely Dr. PL Sah who examined injured/ deceased namely, Sajjan Jagnani found one lacerated



wound on his left thigh which upon examination found grievous in nature and was caused by sharp weapon like *bhala*. It was deposed by him that he issued discharge slip transferring him to some another institution which was exhibited during the trial as exhibit-4 and 5.

29. The testimony of this witness suggest categorically that there was single injury which found upon the none vital part of the body and instead of referring to the higher institute for better treatment, he discharged informant/deceased and handover injured to his family members.

30. The another doctor who conducted postmortem upon the deceased at Sadar Hospital, Purnea is PW-12 namely, Dr. MM Wasim who found one punctured wound with clear cut edges elliptical, muscle and bone deep vertically placed on the medical aspect of left thigh. The edges were extended both upward and downward. The cause of death was found as shock and hemorrhage caused by sharp pointed and heavy substance may be *bhala*.

31. It also appears from the deposition of PW-7 as discussed aforesaid that he nothing deposed about the seizure and nature of injury while recording his examination-in-chief but during cross-examinations he categorically stated that the dimension of



injury was 1"x1/4" inch simply caused by blunt substance and another injury which he found was abrasion on knee region simple caused by blunt substance which is related with one Sanjay Kr. Sah who also examined by PW-7 *qua* same occurrence but the witness Sanjay kr. Sah was not examined during the trial. It also appears from his testimony that no dimension of injury was mentioned which was found by PW-12 while conducting postmortem.

32. Considering the aforesaid as IO of this case was not examined by learned trial court, where the *fardbeyan* and formal FIR, also not appears duly proved to extent to accept the same as dying declaration and, further the examination of witnessed who supported the occurrence cannot be relied wholly being immediate family members, accordingly, it can be safely said that prosecution failed to answer certain doubts during the trial and benefit of which must be extended to the appellant-accused.

33. Accordingly, the appeal stands allowed.

34. The impugned judgment of conviction and order of sentence dated 16.12.2003 passed by court of P.O. (Fast-Track) Court No. 1 Katihar in Sessions Trial No. 135 of 1989 is accordingly set aside.

35. The appellant, above-named, is acquitted of the



charges levelled against him by giving him the benefit of doubt.
Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged. Fine if any paid, be returned to appellant hence forth.

36. I.A., if any, shall be disposed off.

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

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	28.11.2025
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