

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.63 of 2005

Shyam Sunder Prasad, S/o Dhanushadhari Prasad, Resident of Village-
Ebrahimpur, P.S.-Bind, District-Nalanda

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satish Kumar Sinha, Advocate
For the State	:	Mr. Zeyaul Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL JUDGMENT

Date : 20-09-2025

The present appeal is filed under sections 374(2) and 389(1) of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.'), arising out of the judgment of conviction and order of sentence dated 07.01.2005 passed by the learned Additional District & Sessions Judge, F.T.C-I, Nalanda in connection with Sessions Trial No. 36 of 1997, arising out of Asthawan (Bind) P.S. Case No. 168 of 1996, whereby and whereunder the appellant was found guilty and convicted for the offences punishable under Section 324 of the Indian Penal



Code, 1860 (for brevity 'the IPC') and appellant was sentenced to undergo rigorous imprisonment for three (3) years and fine of Rs. 5,000/- and in default of payment of fine, the appellant was further directed to undergo simple imprisonment for a period of nine months.

2. The prosecution's case is that on July 24, 1996, at around 4:30 PM, the appellant – Shyam Sundar Prasad, who belongs to the same village as that of the informant – Sadanand Prasad, arrived at a disputed piece of land and asked the informant to remove bricks from a boundary wall which he claimed was constructed on his land. Upon the informant's refusal, the accused allegedly attacked him using a *Phasuli* upon his neck, which hit to his right side of the head, and blood started oozing out. Thereafter, appellant cut the web (*gansa*) of his left hand by *Phasuli* , and also hit his left arm thereby by rendering him injured completely. Appellant also injured him on his both cheeks by the infliction of aforesaid *Phasuli* blows.

2.1 On the basis of the *Fardbeyan* of the informant, Asthawan (Bind) P.S. Case No. 168 of 1996 was registered against the appellant for offences punishable under Sections 307, 324 & 341 of the IPC.



2.2 After investigation, the police submitted charge sheet under Sections 307, 323 & 341 of the IPC, whereupon cognizance was taken by the learned Chief Judicial Magistrate, Nalanda on 27.09.1996 and case was transferred to the Court of Judicial Magistrate, 1st Class, Biharsharif, which committed the case to the Court of Sessions on 28.01.1997 and the case was further transferred to the Additional Sessions Judge 5th, Nalanda for speedy disposal and which ultimately came to the Court of Additional Sessions Judge, F.T.C.-I, Nalanda, where charges were framed under sections 307, 323 & 324 of the IPC on 23.03.1998, where the same was registered as Sessions Trial No. 36 of 1997.

3. During the trial, four prosecution witnesses were examined: P.W.1 – Girish Prasad (nephew of the informant), P.W.2 – Rameshwar Prasad (uncle of the informant), P.W.3 – Sadanand Prasad (the informant himself), and P.W.4 – Dr. Prabhat Keshav, the medical officer who treated the injuries of the informant. Thereafter the statement of the appellant under section 313 of the Cr.P.C. came to be recorded, wherein he pleaded not guilty and claimed to be tried. After conclusion of the Trial, the Trial Court convicted the appellant in the manner



stated above.

4. Heard Mr. Satish Kumar Sinha, learned counsel for the appellant and Mr. Zeyaul Hoda, learned APP for the State.

5. Learned counsel for the appellant contended that the testimony of the prosecution witnesses does not inspire confidence as all the three eyewitnesses were closely related to the informant, raising legitimate concerns regarding impartiality. Although the prosecution claimed that 15–20 villagers were present at a nearby Devi Asthan (place of occurrence), who were only 8 to 10 bamboo lengths away, no independent witness was examined. No explanation was provided for this omission, which seriously weakens the prosecution's case. Reliance in this regard is placed on a decision of the Hon'ble Apex Court in the case of *Tahsildar Singh v. State of U.P.*, since reported in (*AIR 1959 SC 1012*), wherein it was opined that failure to examine available independent witnesses can be fatal to the prosecution.

6. The appellant's counsel further submitted that the medical evidence critically undermines the prosecution's version as all three eyewitnesses consistently stated that the weapon used was a *Phasuli*, a sharp-edged tool, whereas, the Medical Officer (P.W.4) categorically deposed that the injuries



were caused by a blunt weapon/substance. This direct contradiction between medical findings and ocular evidence casts grave doubt on the prosecution's story. Learned counsel in support of his argument drew the attention of this Court to a decision of the Hon'ble Supreme Court in case of ***Ram Narain Singh v. State of Punjab***, since reported in (AIR 1975 SC 1727), wherein the Hon'ble Apex Court has held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, the same is the most fundamental defect in a prosecution case and unless reasonably explained, it is sufficient to discredit the entire case.

7. Learned counsel for the appellant next submits that a further shortcoming in the prosecution case is the complete failure to examine the Investigating Officer (I.O.) as his testimony was vital to establish the place of occurrence, recover physical evidence such as the weapon, and ascertain whether bloodstains or signs of struggle were present or not. The omission is not merely procedural but substantive, as it deprives the accused of the opportunity to test the prosecution case on fundamental aspects. The place of occurrence itself remains shrouded in doubt. The informant admitted that the land in question was under dispute, with both sides claiming ownership



of an area called *Bharabat*. Yet, the prosecution failed to produce a site map, photographs, or land records to prove ownership or the exact location of the incident.

8. Learned counsel for the appellant further contends that while the non-examination of the Investigating Officer (IO) is not per se fatal to the prosecution case, its impact assumes significance where it results in prejudice to the accused. As held by the Hon'ble Supreme Court in *Munna Lal v. State of U.P.*, **(2023) SCC OnLine SC 80**, whether such prejudice has in fact been caused is a question of fact to be determined in light of the circumstances of each case. Where key prosecution witnesses are not found to be wholly reliable, and conspicuous gaps appear in the prosecution version, the testimony of the IO becomes critical to establishing the foundational aspects of the case. In the absence of such testimony—particularly when no cogent explanation is offered for the IO's non-appearance—a material lacuna arises. This omission deprives the Court of potentially corroborative or impeaching evidence, thereby weakening the prosecution's case. In such circumstances, the failure to examine the IO gives rise to reasonable doubt and constitutes a significant factor that may tilt the balance in favour



of the accused.

9. Learned counsel for the appellant lastly submits that taken cumulatively, the prosecution case suffers from fatal infirmities i.e., absence of independent witnesses, contradiction between medical and ocular evidence, non-examination of the I.O., uncertainty about the place of occurrence, improbability of the alleged water-tank incident. These lapses, whether by omission or design, have eroded the credibility of the prosecution beyond repair. In such circumstances, the appellant is entitled to the benefit of doubt.

10. On the other hand, the learned APP for the State has contended that ocular witnesses, being natural witnesses to the occurrence, cannot be stigmatized as “interested witnesses” merely on account of their relationship with the victim. Their testimony carries intrinsic credibility and cannot be discarded solely on their relationship with the informant. There exists no material contradiction in their depositions; the minor inconsistencies highlighted by the defence are inconsequential and, in fact, reflective of the natural course of human testimony rather than indicative of fabrication also the law is now well settled with respect to credibility of interested witnesses.



Learned APP refers to a decision of the Hon'ble Supreme Court in the case of ***State of U.P. vs. Ballabh Das and others*** since reported in ***[(1985) 3 SCC 703]***, wherein it was observed as under:

“The dominant question to be considered in the instant case is whether the witnesses, despite being interested, have spoken the truth and are creditworthy. Once it is found by the court, on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone.”

11. It has further been submitted on behalf of the State that the non-examination of the Investigating Officer has not occasioned any prejudice to the defence. All the prosecution witnesses examined during the trial have withstood the rigour of cross-examination, and their version of events has remained consistent and unimpeached. He further contended that the medical report clearly states that the informant has sustained injuries and which is reiterated by all witnesses examined during the trial and there is no inconsistencies in the statement or the manner in which occurrence took place. He further



contends that although the injuries were caused by hard and blunt object as per medical report, but the same may also be caused by the *Phasuli*, if used in a certain way. Consequently, there is no merit in the present appeal preferred by the appellant, and the impugned judgment of conviction along with the order of sentence warrants affirmation.

12. I have considered the submissions made by learned counsel appearing for the parties and carefully perused the materials available on record, and meticulously examined the evidence led by the prosecution. At this stage, it is pertinent to evaluate the relevant extracts of the testimonies of the prosecution witnesses. The prosecution examined altogether four witnesses.

13. P.W.1 – Girish Prasad in his examination-in-chief has deposed that on the date of occurrence, he, along with Kapil Prasad, Rameshwar Prasad, and 10–20 others, was near the well and Devasthan beside the tank. The informant was sitting by the wall of his *Dallan* when the accused directed him to remove bricks from his land. Upon refusal, a heated exchange took place, whereafter the accused threatened to kill the informant and assaulted him with a *Phasuli*.

14. P.W.2 – Rameshwar Prasad, uncle of the informant



in his examination-in-chief has supported the prosecution's version with respect to the date, time, and manner of occurrence. He stated that the appellant, upon the informant's refusal to remove the bricks, assaulted him with a *Phasuli*, causing injuries to his shoulder, back, left hand, head, and cheek.

15. P.W.3 – Sadanand Prasad, the informant/victim in his examination-in-chief has stated that on 24.07.1996 at about 4:30 PM, while present at the disputed land, the appellant asked him to remove bricks from the boundary wall. Upon his refusal, the appellant assaulted him with a *Phasuli*, causing injuries on the neck and head resulted in bleeding; cutting the web of his left hand, injuring his left arm; and inflicted blows on both cheeks, leaving him seriously injured.

16. P.W.4 – Dr. Prabhat Kashav, Medical Officer at Sadar Hospital, Biharsharif, in his examination-in-chief has deposed that he examined the informant at 10:00 PM on the same day and found the following injuries:

(i) Lacerated wound on right occipital region – 4"

x 2" scalp deep

(ii) Lacerated wound on occipital region – 3" x

1½" scalp deep



*(iii) Lacerated wound on left side of face – 2” x 1”
x ½”*

*(iv) Lacerated wound on right side of face – 1” x
½” x ½”*

(v) Lacerated wound on left arm – 2” x 1” x ½”

*(vi) Lacerated wound on left hand – 6” x 3” x 3”,
dividing the hand between the third web, with
dislocation of metacarpal bones.*

16.1. He opined that injuries (i) to (v) were simple and caused by a hard and blunt object. The report on injury (vi) was reserved pending X-ray examination. The subsequent X-ray, conducted at Jay X-ray Clinic on 26.07.1996, revealed no bone abnormality of the skull but confirmed dislocation of the third and fourth metacarpo-phalangeal joints of the left hand, rendering injury (vi) grievous.

17. All the Witnesses have reiterated the same version in their cross-examination and they have not differed in their statements.

18. Under Section 3 of the Indian Evidence Act, 1872, a fact is said to be proved when, after considering the evidence, the Court believes its existence or considers its existence so



probable that a prudent man would act upon the supposition that it exists. The Court must determine whether the facts alleged, including the criminal acts attributed to the accused, have been proved in accordance with this standard.

19. It is equally well-settled that the prosecution is not required to prove its case beyond all doubts, but beyond all reasonable doubt. A reasonable doubt is not an imaginary or trivial doubt but a fair doubt based upon reason and common sense as held by the Hon'ble Supreme Court in ***Ramakant Rai v. Madan Rai***, reported in ***(2003) 12 SCC 395***, wherein it was observed as under:-

“Doubts would be called reasonable if they are free from a zest for abstract speculation... A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.”

20. In light of the above legal position, if the allegations against the accused are established beyond reasonable doubt, a conviction can certainly be sustained. However, the standard has not been met in the present case.



21. This Court finds substantial merit in the contention of learned counsel for the appellant that the prosecution's failure to examine the Investigating Officer (I.O.) seriously undermines its case. The I.O.'s testimony was vital to establish material aspects such as the precise place of occurrence, recovery of physical evidence, and any indications of struggle or violence at the scene. His absence from the witness box is not a mere technical lapse but a material omission that affects the credibility and completeness of the prosecution's case.

22. The ambiguity surrounding the place of occurrence is further aggravated by the admitted land dispute between the parties. Despite the nature of the dispute, the prosecution failed to produce any site map, photographs, or official land records to substantiate its version. In the absence of such corroborative material and without the I.O.'s evidence to clarify the investigative steps, the prosecution's version of the incident becomes seriously doubtful.

23. The importance of examining the I.O. has been emphasized by the Hon'ble Apex Court in the case of **Lahu Kamlakar Patil v. State of Maharashtra**, reported in **(2013) 6 SCC 417**, where the Hon'ble Supreme Court held that non-



examination of the I.O. may not always be fatal but becomes so when it leads to gaps in the prosecution's case that cause prejudice to the accused. In the present case, the failure to clarify critical aspects such as scene identification and recovery due to I.O.'s non-examination creates a substantial lacuna.

24. Moreover, the medical evidence presented by P.W.4 – Dr. Kashav, raises material contradictions. While the weapon described by the prosecution is a *Phasuli*, a sharp-edged tool, the nature of the injuries – predominantly lacerated wounds – suggests blunt force trauma, which are not consistent with such a weapon. No incised wounds or injuries caused by a sharp object were found. This discrepancy between the weapon allegedly used and the nature of injuries sustained casts serious and legitimate doubt on the prosecution's version.

25. This Court is of the view that the principle enunciated by the Hon'ble Supreme Court in **Thaman Kumar v. State (UT of Chandigarh)**, reported in [(2003) 6 SCC 380], is applicable here, as the Hon'ble Apex Court held that when there is a material inconsistency between medical evidence and ocular testimony, particularly concerning the nature of the weapon or the manner of assault, the prosecution's version becomes



inherently doubtful.

26. Furthermore, in **Kali Ram v. State of Himachal Pradesh**, reported in (AIR 1973 SC 2773), the Hon'ble Supreme Court laid down the cardinal principle that where two views are possible on the basis of the evidence one pointing to the guilt of the accused and the other to innocence, the view which favours the accused must be adopted. It was further held that suspicion, however grave, cannot take the place of legal proof.

27. Upon an overall evaluation of the evidence led by the prosecution, this Court is of the considered view that the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. I have also carefully examined the reasoning recorded by the learned Trial Court, and I find that the Trial Court has committed a grave error in appreciating the evidence and in convicting and sentencing the appellant. The impugned judgment and order of conviction and sentence, therefore, cannot be sustained in law.

28. Accordingly, the impugned judgment of conviction and order of sentence dated 07.01.2005, passed by the learned Additional District & Sessions Judge, F.T.C- I, Nalanda in



connection with Sessions Trial No. 36 of 1997, arising out of Asthawan (Bind) P.S. Case No. 168 of 1996 are hereby quashed and set aside. The appellant is acquitted of all charges levelled by the learned Trial Court. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.

29. The present appeal is allowed.

(Rudra Prakash Mishra, J)

Alok Verma/
Raj Kishore/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.09.2025
Transmission Date	26.09.2025

