

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.556 of 2025

Arising Out of PS. Case No.-04 Year-2019 Thana- RAIYAM District- Darbhanga

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1. Mishri Lal Yadav @ Mishrilal Yadav S/o late Kunju Yadav R/o Village- Gosaitola Pacharhi, P.s- Raiyam, Dist- Darbhanga
 2. Suresh Yadav S/o Late Shivji Yadav R/o Village- Gosaitola Pacharhi, P.s- Raiyam, Dist- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Umesh Mishra S/o Bhuneshwarv Mishra R/o Village- Samaila , P.s- Raiyam, Dist- Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Manish Kr. Singh No.-2, Advocate Mr. Aryan Singh, Advocate
For the State	:	Mr. Satyanand Shukla, APP
For the Respondent No.2:	:	None

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 18-07-2025

In spite of giving opportunity to the private opposite party, he did not appear to contest the instant revision.

2. The instant revision is directed against a judgment and order of conviction and sentence, dated 23.05.2025, passed by the learned Additional Sessions Judge-III-cum-Special Court (MPs/MLAs), Darbhanga in Criminal Appeal No. 3 of 2025, whereby and whereunder, the appeal filed by the



petitioners/appellants was dismissed, affirming the order of conviction and sentence, passed by the Trial Court for the offence, punishable under Section 323 of the Indian Penal Code and allowing Criminal Appeal No. 6 of 2025, filed by the *de facto* complainant of Raiyam P.S. Case No. 4 of 2019 and thereby convicting and sentencing the petitioners for the offence punishable under Section 506 of the Indian Penal Code for rigorous imprisonment of two years along with fine of Rs.1,00,000/- (Rupees One lakh) and in default of payment of fine, they were directed to suffer simple imprisonment of one month in modification of the judgment and order of conviction dated 21.02.2025 passed by the Learned Special Court-I, MP/MLA-cum-Additional Chief Judicial Magistrate, Darbhanga in Trial No. 864 of 2023.

3. At the outset, it is submitted by the learned Advocate for the petitioners that Criminal Appeal No. 6 of 2025 as filed by the opposite party no.2 was barred by limitation. An application for limitation was filed and the Appellate Court passed an order observing that the application for limitation shall be heard along with the appeal itself. However, the limitation petition was not heard. Criminal Appeal No. 6 of 2025 is still barred by limitation and on such appeal, no order of



conviction can be passed holding the petitioners guilty for committing offence under Section 506 of the Indian Penal Code. Therefore, the order passed in Criminal Appeal No. 6 of 2025 suffers from patent illegality and the order is liable to be set aside.

4. Learned Advocate on behalf of the petitioners, especially criticized the impugned order passed in Criminal Appeal No. 3 of 2025 on the grounds of: (i) non-consideration of material evidence; (ii) Failure on the part of the prosecution to explain the injuries of the accused; (iii) Failure on the part of both the Courts below to discuss the evidence in detail, viz, cross-examination of the witnesses on behalf of the prosecution was not at all discussed and some of the witnesses were shown as eye witnesses though from the cross-examination it is ascertained that they are not eye witnesses; (iv) Evidence of PW-3 was not considered in as much as she is not an independent witness and she does not have any shop near the place of occurrence; (v) Lastly and most importantly, the evidence on record shows that there was fighting between two sides on the date and time of occurrence and even the petitioners were injured. The Courts below failed to consider as to whether the petitioners or the *de facto* complainant and his main



allegiance were the aggressors who first abused and assaulted the petitioners. It is also submitted in this regard that the Court of appeal failed to assess the case properly in relation to Section 334 of the Indian Penal Code coming to a conclusion as to whether the alleged incident is a result of grave and silent provocation or not.

5. If the alleged incident is a result of grave and silent provocation and there is a mutual fighting between two parties, order of conviction and sentence against the petitioners under Section 323 of the Indian Penal Code cannot stand for the reason: (a) There might be a possibility that the accused had inflicted the injuries on members of the prosecution party in exercise of right of self-defence, (b) It makes the prosecution version of the occurrence doubtful and the charge against accused cannot be held to have been proved beyond any reasonable doubt and (c) It does not affect the prosecution case at all.

6. Under such circumstances, it is open for the Court to draw inferences that the prosecution has suppressed the genesis and origin of the occurrence and has thus not presented the true version. Secondly, the witnesses, who have denied the presence of injury on the person of the accused are lying on a



most material point, and therefore, there evidence is unreliable and thirdly in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable as to throw doubt on the prosecution case. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in *Lakshmi Singh and Ors vs. State of Bihar* reported in **1976 SC 2263**.

7. The learned Advocate on behalf of the petitioners submits that at the time of evidence the defence examined the Medical Officer who medically treated them on the date of occurrence immediately after the incident. He found lacerated injury on the head of petitioner no.2 and other bodily injuries. He also found pain and swelling on the person of the petitioner no.1. The injury reports were marked as Exhibit A and A/1. Neither the Trial Court nor the Court of Appeal considered the injury reports of the accused persons. They did not come to a finding as to whether they received the injuries first or it was inflicted as a self-defence by the informant. In the absence of such a finding, it is unwarranted for the Courts below to hold the accused persons guilty for committing offence under Section 323 of the Indian Penal Code.

8. The decision of Lakshmi Singh (supra) was



subsequently followed by the Hon'ble Supreme Court in ***Nandlal and Ors. vs. The State of Chattisgarh*** (Criminal Appeal No. 1421 of 2015) decided on 14.03.2023. The view taken by Lakshmi Singh for appreciation of evidence in case of unexplained injuries on the part of the accused in a case under Section 302 of the Indian Penal Code was taken into consideration by the Hon'ble Supreme Court in the above mentioned decision and the Apex Court allowed the appeal setting aside the order of conviction and sentence passed by the Division Bench of the High Court of Chattisgarh at Bilaspur. The same principle was laid down in ***State of M.P. vs. Mishrilal & Ors.*** reported in ***AIR 2003 SC 4089***.

9. It is submitted by learned Advocate on behalf of the petitioners that both the Courts below failed to consider the cross-examination of the witnesses on behalf of the prosecution. It is needless to say that the evidence is to be read as a whole. If the evidence-in-chief is only relied on and cross-examination is deleted by the Court, it will not be decided as to whether the witnesses withstood the litmus test of cross-examination.

10. In support of his contention, the learned Advocate for the petitioners refers to the evidence of the witnesses who claimed himself as eye witnesses of the occurrence in their



examination-in-chief but in cross-examination stated in unequivocal terms that they appeared and thereafter the occurrence so they are not the eye witnesses. Thus, it appears that except the *de facto* complainant there is no other witness of the occurrence.

11. It is needless to say that in a case under Section 323 of the Indian Penal Code, the Trial Court as well as the Court of Appeal are entitled to hold the accused guilty on the basis of sole testimony of the *de facto* complainant and the Medical Officer, if the evidence of the said two witnesses do not suffer from any contradiction. I am also not unmindful to note that the Trial Court can in his wisdom ignore minor contradictions and omissions. However, if there is material contradictions, the order of conviction cannot be sustained.

12. This Court finds on perusal of the impugned judgments that neither the Courts below examined the evidence adduced by the witnesses as a whole taking together both the examination-in-chief and cross-examination. Secondly, from the entire conspectus of the incident, it is ascertained that there was a mutual fighting between the parties. The prosecution was not given opportunity to explain the injuries inflicted by the accused persons. Both the Courts below committed palpable



error in deciding the case on the basis of evidence-in-chief of the witnesses.

11. At the same time, this Court is not unmindful to note that in a revision the Court cannot assess the evidence on record except in one circumstance where the examination of witnesses was absolutely perverse.

12. In the instant case, I find that both the Courts below took extreme pain to discuss the evidence, but somehow misplaced their duty to assess the evidence of the witnesses on the basis of both evidence-in-chief and cross-examination.

13. In view of such circumstances, this Court is of the view that the instant case ought to be sent on remand for decision afresh.

14. Accordingly, the judgments, passed by the Trial Court as well as the Appellate Court in Trial No. 864 of 2023 and Criminal Appeal No. 3 of 2025 as well as Criminal Appeal No. 6 of 2025 are set aside.

15. The Trial Court Court is directed to write down the fresh judgment in the light of the observation made herein above on the questions of law and the points to be determined by the Trial Court within three months from the date of this order.



16. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.07.2025
Transmission Date	

