

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.776 of 2018**

Arising Out of PS. Case No.-49 Year-2016 Thana- PAKARIBARAW District- Nawada

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Madhav Kumar @ Madhav Singh Son of Gopal Singh Resident of Village -  
Diaura, Police Station - Pakribarawan, District - Nawadah.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with  
**CRIMINAL APPEAL (DB) No. 784 of 2018**

Arising Out of PS. Case No.-49 Year-2016 Thana- PAKARIBARAW District- Nawada

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1. Bhopal Singh Son of Surju Singh,
2. Chandan Singh @ Chandan Kumar, Son of Bhopal Singh, Both are resident  
of Village- Diaura, P.S.- Pakribarawan, District- Nawadah.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with  
**CRIMINAL APPEAL (DB) No. 909 of 2018**

Arising Out of PS. Case No.-49 Year-2016 Thana- PAKARIBARAW District- Nawada

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Gopal Singh Son of Surju Singh, Resident of Village- Dioura, Police Station-  
Pakribarawan, District- Nawadah.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (DB) No. 776 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate  
Mr. Arun Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 784 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate  
Mr. Arun Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 909 of 2018)



For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate  
Mr. Arun Kumar, Advocate  
For the State : Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 18-06-2025**

All these appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the common judgment of conviction dated 29.05.2018 and order of sentence dated 05.06.2018, passed in Sessions Trial No. 594 of 2016/391 of 2016, arising out of Pakribarawan P.S. Case No. 49 of 2016, by the Court of learned Additional Sessions Judge-II, Nawada, whereby the learned Trial Court has convicted appellants Gopal Singh and Madhav Kumar for committing the offence punishable under Sections- 302 of I.P.C. Further appellants Bhopal Singh and Chandan Singh have also been convicted for committing the offence punishable under Section-341 and 302/34 of I.P.C. Appellants Gopal Singh and Madhav Kumar have been sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- each for the offence punishable under Section- 302 of I.P.C. Appellants Bhopal Singh and Chandan Singh have been sentenced to undergo imprisonment for life and a fine of



Rs. 10,000/- each for the offence punishable under Section-302/34 of I.P.C. and a fine of Rs. 500/- each for the offence punishable under Section-341 of I.P.C.

1.1. As the present appeals arise out of the common judgment and order, learned advocates appearing for the parties jointly pray that all these appeals be heard together and be disposed of by a common judgment.

2. Heard Mr. Baxi S.R.P. Sinha, learned Senior Advocate, assisted by Mr. Arun Kumar, learned counsel appearing for the appellants in Cr. Appeal (D.B.) Nos. 776 of 2018 and 909 of 2018. As no one appeared for the appellants in Cr. Appeal No. 784 of 2018, we requested Mr. Arun Kumar, learned counsel, to assist the Court in the present matter also. Therefore, we heard Mr. Arun Kumar in Cr. Appeal No. 784 of 2018 also and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent State in all the three appeals.

### **FACTUAL MATRIX**

3. The factual matrix of the present case is as under:-

“P.W. 3, Ramendra Prasad Singh @ Bachchan Singh gave his written report to S.H.O. of Pakribarawan (Nawada) P.S. on 24.03.2016. In the said written report, the



informant has mainly stated that at about 05:45 p.m., exchange of abuses took place between his son Rahul Kumar on one side and his full brother Gopal Singh and nephew Madhav Singh on the other. Thereafter, at about 06:45 p.m., his son was coming to the lane from the southern side. As soon as he reached near the house of Haridwar Singh, accused Gopal Singh, Madhav Singh, armed with a spear and Bhopal Singh and Chandan Kumar came in front of the house of Haridwar Singh and Bhopal Singh and Chandan Singh caught hold of his son and Gopal Singh and Madhav Kumar assaulted him with Bhala (spear) and injured him grievously. On commotion, his daughter Sonam Kumari shouted upon which his wife and village people came there and seeing them the miscreants fled away. When they went nearer, they saw grievous injuries on both the sides of chest, navel and scrotum of his son, caused by spear out of which profuse blood was oozing and his son was writhing in pain. By the time they could manage a vehicle to rush him to the hospital, he succumbed to the injuries sustained by him.”

4. On the basis of the written report given by the informant, formal F.I.R. came to be registered on 24.03.2016 at 23:30 hours. After registration of the F.I.R., the Investigating Officer carried out investigation and thereafter filed charge-



sheet against the two accused, namely Madhav Kumar and Gopal Singh. It is pertinent to observe here that the I.O. did not file charge-sheet against the other two accused, namely Bhopal Singh and Chandan Singh and submitted final report in favour of them. However, the concerned Magistrate did not accept the final report submitted by the I.O. in favour of the aforesaid two accused and issued process against the aforesaid two accused also.

5. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Court of Sessions under Section-209 of the Code. Before the Sessions Court, the case was registered as Sessions Trial No. 594 of 2016/391 of 2016.

6. During the course of trial, the prosecution had examined 8 witnesses, whereas the defence had examined 5 witnesses. The prosecution also produced documentary evidence. Thereafter, further statement of the accused under Section-313 of the Code came to be recorded.

7. After conclusion of the trial, the Trial Court passed the impugned judgment of conviction and order of sentence, against which the appellants have preferred the present appeals.



**SUBMISSIONS CANVASSED ON BEHALF OF  
THE APPELLANTS/CONVICTS.**

8. Learned Sr. Advocate appearing on behalf of the appellants would mainly contend that there is a delay in lodging the F.I.R. It has been pointed out from the record that the alleged incident took place at 18:45 hours for which formal F.I.R. came to be registered at 23:30. hours. At this stage, it has been further submitted that though the formal F.I.R. was registered on 24.03.2016, copy of the same has been received by the concerned Magistrate Court on 30<sup>th</sup> March, 2016. Thus, there is a gross delay in sending the F.I.R. to the concerned Court.

9. At this stage, learned Senior Advocate would submit that, in fact, the prosecution has projected P.W. 2 Sonam Kumari as an eye-witness, her deposition is required to be discarded mainly on the ground that she is a near relative of the deceased and she is an interested and related witness. Further, from the other evidence led by the prosecution, it can be said that P.W. 2 is not an eye-witness to the occurrence in question and, therefore, her deposition is required to be discarded. At this stage, it is further submitted that there are major contradictions, improvement and inconsistencies in the deposition of prosecution-witnesses, especially P.W. Nos. 1, 2 and 3.

10. Learned Senior Advocate further submits that



even the medical evidence does not support the version given by the so called eye-witness and, therefore, the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the judgment of conviction and, hence, the same is required to be quashed and set aside.

11. Learned Senior Advocate would further submit that, as per the case of the prosecution, the incident took place near the house of Haridwar Singh and, as per the case of the so called eye-witness, the other village people also gathered at the place of occurrence. However, the prosecution has failed to examine Haridwar Singh or his family members. Further, the prosecution has also failed to examine the other independent witnesses and only produced the interested and related witnesses.

12. Learned Senior Advocate also contended that the prosecution has failed to establish the motive on the part of the appellants, who are near relatives of the informant and deceased, in committing the alleged offences. At this stage, it is also contended that there are discrepancies in the timing with regard to preparing the inquest report. Learned Senior Advocate referred the inquest report produced before the Court and



pointed out that there is overwriting in Column Nos. 1 and 3, from which it can be said that the prosecution has not come with clean hands and has tried to suppress the correct version.

13. Learned Senior Advocate would further submit that from the cross-examination of P.W. 3, informant, it transpires that he informed to the police immediately on his mobile phone with regard to the occurrence in question, the names of the assailants and the manner of occurrence. However, from the deposition given by P.W. 5, I.O., it is revealed that the police got the information on telephone on the basis of which Sanha/Station Diary Entry No. 701/16 came to be registered at 19:02 hours. However, in the said entry there is no reference of the names of the assailants and the manner in which the incident took place. Learned Senior Advocate, therefore, urged that serious doubts have been created with regard to the story put forward by the prosecution and, thereby, the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt.

14. Learned Senior Advocate further submits that even the weapons with which assault was made have not been recovered or discovered by the investigating agency. Learned Senior Counsel also contended that the police officer, namely



Anil Prasad, who has prepared the inquest report, has not been examined by the prosecution, nor the police officer, namely Ram Shankar Dubey, who was sent by the S.H.O. to the place of occurrence, has been examined by the prosecution. Learned Senior Counsel has also contended with regard to character of the deceased and contended that there are all chances that some other person has killed the deceased and the present appellants, who are near relatives of the deceased, have been falsely implicated because of certain property dispute. Learned Senior Advocate, therefore, urged that when the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt, the Trial Court has committed serious error while passing the impugned judgment and order. Learned Senior Advocate, therefore, urged that the impugned judgment and order be quashed and set aside.

15. Learned Senior Advocate for the appellants has also referred the depositions given by the defence witnesses and mainly placed reliance upon the deposition given by D.W. 1 who is father of the informant as well as two of the appellants. It is submitted that from the deposition given by D.W. 1 itself, it transpires that the prosecution has suppressed the correct version and though P.W. 2 is not an eye-witness, she has been



projected as an eye-witness to the occurrence in question.

**SUBMISSIONS      CANVASSED      ON**  
**BEHALF OF THE STATE.**

16. On the other hand, learned A.P.P. has opposed all the three appeals. Learned A.P.P. would mainly contend that P.W. 2, sister of the deceased, is the eye-witness to the occurrence in question. She was present at the place of occurrence and when she shouted, P.W. 1 and P.W. 3, who are her parents, immediately came to the place of occurrence. All the aforesaid three witnesses have supported the case of the prosecution. Though P.W. 4 is a hearsay witness, he has also supported the case of the prosecution. From the deposition given by P.W. 1 to P.W. 3, it can be said that the prosecution has proved the manner of occurrence and also given the details with regard to the manner in which occurrence took place. Similarly, names of the assailants were also disclosed. Learned A.P.P. would further submit that, as per the case of the prosecution, the occurrence took place at 06:45 hours and when police reached at the place of occurrence at about 08:00 p.m., immediately written complaint/report was given by the informant to the S.H.O. On the basis of the said written complaint/report, formal F.I.R. came to be registered at 11:30 p.m. Thus, there is no delay in lodging



the F.I.R. and the informant, who reached to the place of occurrence immediately, has disclosed the names of the assailants and the manner in which the occurrence took place. Thus, when the F.I.R. was immediately lodged, it cannot be said that the appellants have been falsely implicated, as contended by the learned Senior Counsel appearing for the appellants.

17. Learned A.P.P. would further submit that even the medical evidence also supports the version given by the eye-witness. Two penetrating wounds were found on the dead body of the deceased and the doctor has explained with regard to the injury sustained by the deceased. It is the specific case of the eye-witness that the appellants used *Bhala* (spear) while committing the alleged offence.

18. Learned A.P.P., therefore, urged that merely because the independent witnesses have not been examined by the prosecution, it cannot be presumed that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Learned A.P.P. would submit that the Trial Court has not committed any error while passing the impugned judgment and order of conviction and sentence. He, therefore, urged that all the three appeals be dismissed.

19. We have considered the submissions canvassed



by learned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined eight witnesses. At this stage, we would like to appreciate the entire relevant extract of the depositions of the prosecution-witnesses.

### **ANALYSIS OF ORAL EVIDENCE**

20. P.W. 1 Shaila Devi is the mother of the deceased. She has stated in her examination-in-chief that the incident of exchange of abuses took place a year ago, at about 05:45 p.m. Her son Rahul Singh went to Gopal Singh to call him for milking the cow at which Gopal Singh and Madhav Singh abused him. However, the matter was pacified. Thereafter, her son went on walk towards southern side. After some time, accused Gopal Singh, Madhav Singh, Chandan Singh and Bhopal Singh came in front of the house of Haridwar Singh abusing. Gopal and Madhav were having spear in their hands. Chandan and Bhopal were empty handed. Bhopal and Chandan caught hold of her son abusing him and Madhav and Gopal started assaulting him with spear. All the four accused together flung her son on the ground. Her daughter Sonam



Kumari shouted upon which PW-1 and her husband came there. The miscreants fled away on seeing them. Before they could manage a vehicle, her son succumbed to the injuries. Thereafter, she informed to the concerned police station and Daroga came at the place of occurrence and he took the dead body of her deceased son for post mortem examination. After post mortem, dead body was returned to her. She identifies all the four accused present in the Court.

20.1. In her cross-examination of PW-1 stated that before she reached the place of occurrence on hulla, two to four unknown persons had already reached there. In all, 10 nearby residents came at the place of occurrence. She has denied the suggestion that her husband had set the house of Gopal Singh on fire. She has also denied the suggestion that her son was having a bad character and used to molest local women and girls and there were several enemies in the locality out of who someone secretly killed him. She has also denied the suggestion that because of enmity, she has given false testimony with the intention to implicate the accused persons in this case. She has further denied the suggestion that she had not stated before the police that she along with her husband reached at the place of occurrence when her son was writhing in pain and that they



tried to catch the accused. She has further denied the suggestion that no incident as described by her had taken place. She has further stated that her husband was on leave on the relevant date. Her family members stayed at the place of occurrence for 10-15 minutes.

21. P.W. 2 Sonam Kumari has stated in her examination-in-chief that the occurrence took place on 24.03.2016 at 05:45 p.m. She has supported the manner of occurrence as deposed by P.W. 1. She has further stated that all the four accused caught hold of Rahul Kumar and flung him to the ground and Gopal Singh and Madhav Kumar started assaulting Rahul Kumar with the spear they were having. She was present at the place of occurrence and she raised alarm. On her alarm her parents and 2-4 villagers came to the place of occurrence. Her brother had received grievous spear injuries on both sides of his chest. She also saw spear injuries in his navel and scrotum. Before they could manage a vehicle to take him to hospital, her brother succumbed to the injuries within 2-4 minutes. Then the police was informed upon which police came on the spot at 08:00 p.m. and her father gave a written application to the police which bears her signature also. Thereafter, inquest report was prepared on a printed form



through carbon process at the place of occurrence which also bears her signature (Ext-1/1). She and her father gave their statement to the police at the place of occurrence itself. Thereafter, the dead body was sent for post mortem examination at 11:00 p.m. to Nawada. She and her father had gone with the dead body to Nawada and reached Nawada Hospital at 12:00 hours when the post mortem room was closed. The post mortem was conducted next day at 08:30 a.m.

21.1. In her cross-examination, she has stated that she does not know the names of the persons who came at the place of occurrence on her *Hulla*. Her father, at his own, gave the written complaint to the police and she had not helped him in the process. She with her parents was present in the house from morning to 06:00 p.m. on the date of occurrence. She had not gone with her brother on the relevant date and, therefore, she does not know as to which places her brother had gone on the date of occurrence. She only saw him going towards South direction. She saw the accused fleeing with spear in their hands from a distance of 2-3 steps. She did not see whether blood was spread on the spear or not. She saw her brother fallen on the ground and writhing in pain due to which blood had spread upto 1-2 steps around. She has further stated that they did not tell the



villagers that the miscreants have fled away after assaulting and to catch the miscreants and recover the spears. Police saw the dead body in the light of electric bulb and torch light. The electric bulb was glowing in the bungalow of Haridwar Singh. She had briefed her father before he prepared the written complaint. She has denied the suggestions that she had not stated before the police that all the four accused persons caught hold of Rahul Kumar, flung him on the ground and accused Gopal Singh and Madhav Kumar started assaulting him with their spears when she was present there and upon alarm raised by her, her parents and other 2-4 village people came to the place of occurrence. She has further denied the suggestion that because of the bad character of her brother, his wife had deserted him and solemnized a second marriage. She has further stated that previously also a quarrel had taken place with the accused persons of which day, date, month and year she does not remember. It was a family feud.

22. P.W. 3 Ramendra Prasad Singh @ Bachchan Singh is the informant and father of the deceased. He has also supported the manner of occurrence as stated by P.W. 1 and P.W. 2. He has further stated that he had seen the accused catching hold of his son Rahul Kumar, flinging him and assaulting with



spear with his own eyes. The police was informed and the police reached at 08:00 p.m. at the place of occurrence. He wrote down the written report on a plain paper and submitted it to the police at the place of occurrence itself. He has identified his writing and signature on the written report which was marked as Ext.-2. He has stated that his son was killed by hatching conspiracy for grabbing the movable and immovable property. He has identified the three accused present in the Court and claimed to identify all the accused persons by face.

22.1. In his cross-examination he has stated that he has the degree of M.A., B.Ed and was posted as an assistant teacher in Upgraded Middle School, Kazichak, P.S. Rajauli. He has further deposed that the incident took place on the day of Holi. On alarm being raised by him Jai Nandan and another neighbour came to the place of occurrence. Sonam had not informed him about the assault being made by spear. Neither he nor police nor any of the villagers recovered the spear from the house of the accused persons. His daughter shouted that the accused have come to kill. At this no one went out with any weapon. They just tried to pacify the matter. He does not know as to how many times the deceased was assaulted by spear. He again states that four times his son was assaulted by spear. The



accused persons first flung his son and then started assaulting with spear. The police was informed on mobile phone two minutes after the death of the deceased describing the manner in which his son was killed. He identifies the 6-10 villagers present at the place of occurrence, but does not know their names. He had not taken any help in drafting the written report. He had arranged the paper for preparing the report from a shop, but he does not want to disclose the name of the person who brought the paper from the shop. The inquest report was not prepared at the place where he drafted the written report. He has further stated that he has also mentioned in the written report that when they reached near the deceased, they saw the deceased having grievous injuries on both the sides of his chest and on navel and scrotum and he had stated verbatim the same before the police. He has denied the suggestion that his daughter-in-law had deserted his son because of his bad character. He has denied the suggestion that no occurrence had taken place in the manner as stated by him. He has also denied the suggestion that his father saw the dead body of Rahul in the evening and upon being informed by him he, his wife and daughter saw the dead body and then informed the police on phone without disclosing the names of the accused. He has also denied that at the first



instance he had not disclosed the names of the accused persons, but later on, with the connivance of police, submitted another application which is the F.I.R. He has denied the suggestion to have given false evidence.

23. P.W. 4 Poonam Kumari is a hearsay witness. She has stated in her deposition that she got information that her uncle Gopal Singh, Bhopal Singh, Madhav Singh and Chandan all together assaulted her brother Rahul with spear causing grievous injuries causing his death. Such information was given by her parents and sister who had seen the occurrence. She had seen the dead body of deceased Rahul Kumar after post mortem. She saw spear injuries on both the sides of chest, on navel and scrotum. She identifies all the four accused present in Court.

23.1. In her cross-examination she has stated that the incident is of 24.03.2016. It was Holi festival day. Her father informed her about the incident on telephone. On 25.03.2016, she went to her parents' house and did not go to hospital. She went to the place of occurrence on 25.03.2016. Bhopal Singh is her uncle and Chandan is her cousin brother. She has denied that they were not involved in the incident. She has also denied that Bhopal and Chandan are innocent and due to the land dispute her father has implicated them and that she has given false



evidence.

24. P.W. 5 Pramod Kumar has stated that on 24.03.2016 he was posted at Pakribarawan P.S. He got information about the incident on mobile phone at 07.02 p.m. that a person in village Diyora has been brutally assaulted and has received grievous injuries. He proceeded to the place of occurrence with other police officials and armed force and reached at the place of occurrence at about 08:00 p.m. Informant Ramendra Singh and his family members were present there. He found a person dead in pool of blood. The inquest report was prepared by A.S.I. Anil Prasad and a written report was received from informant Ramendra Prasad Singh @ Bachchan Singh. He took over the charge of investigation himself and on reaching the police station he registered the formal F.I.R. Four injuries were found on the body of the deceased Rahul Kumar, which are mentioned in the inquest report. A white *dhoti* with blood stains and a blue Jeans were recovered from the house of accused Gopal Singh on 25.03.2016. He prepared the seizure list in his pen and signature on 25.03.2016, wrongly mentioned as 25.03.2015 in the seizure list, which is a clerical mistake.

24.1. In his cross-examination, he has stated that he has produced the Station Diary Sanha No. 701/16 dated



24.03.2015 from his custody which is in his pen and signature (Ext.-A). He received only one call based upon which he registered Sanha. He did not receive any call either before or after the same. The informer of Sanha did not either disclose the names of the accused persons or names of witnesses of the occurrence. He stayed at the place of occurrence for about two hours and forty-five minutes during which he recorded the statement, but did not record the Fardbeyan. First of all, he recorded the statement of the informant. As soon as he reached the place of occurrence, the informant gave him a written report. He does not know as to where the informant prepared the written report. The four injuries which he mentioned in Court was based on the inquest report which was not prepared by him. The inquest report was prepared by A.S.I. Anil Prasad whose statement was not recorded. The time mentioned in Column Nos. 1 and 3 of the inquest report has not been changed from 17:15 to 20:15, rather it is 20:15. He has denied the suggestion that to cover the forgery committed in the inquest report, only the family members were made witnesses and no independent person was made a witness. He has further stated that he did not mention at any place as to when the F.I.R. was sent to the Court. It was seen by the learned Magistrates on 30.03.2016 whereas



the F.I.R. was registered on 24.03.2016. He has not mentioned any reason for the said delay, but it might have been caused as the office remained closed on the occasion of Holi. The seized Dhoti and Jeans are not before him in Court. The Jeans was not having blood stains, but having colour on it. He had not got the Dhoti examined by a chemical examiner or Serologist. He has further stated that the dead body was put in the vehicle by Chaukidar. Witness Shaila Devi had stated about the accused abusing her son, but had not stated that her son had gone to call Gopal Singh for milking the cow upon which Gopal Singh and Madhav Singh abused him. He has further stated that Shaila Devi had not stated that when they reached at the place of occurrence her son was writhing in pain and continued writhing for 2-4 minutes. Witness Sonam Kumari had stated that all the four accused caught hold of deceased and flung him on the ground, but she has not stated that she was present during that period. She further stated that on hearing commotion she and her parents and other villagers reached at the place of occurrence. She did not state that she had also gone with the dead body to Nawada for its post mortem. He has further stated that the informant stated that on hearing commotion his daughter shouted, but did not mention about hearing any abuses.



The informant had not stated before him that upon reaching the place of occurrence he saw Gopal and Madhav catching hold of Rahul, flinging him on the ground and assaulting him with spear. Witness Poonam Kumari had not stated before him that information about the occurrence was given by her parents and sister who had seen the occurrence. She had seen the dead body of deceased Rahul Kumar after post mortem. She saw spear injuries on both the sides of chest, on navel and scrotum. He has denied the suggestion that he changed the original application which was tallying with the Sanha and to prove it genuine, he showed wrong seizure and drafted a concocted an F.I.R. and that is the reason why he did not send the F.I.R. to the Court before 30.03.2016. He had rather submitted the F.I.R. in the Court on 25.03.2016 itself. As no independent witness disclosed any complicity of accused Bhopal and Chandan in the incident, he did not submit charge-sheet against them. Any incriminating article was also not recovered or discovered from their houses. Accused Bhopal and Chandan were found not guilty in his investigation. The informant, his wife and daughter had though stated about Bhopal and Chandan catching hold of the deceased but had not stated to have seen it with their eyes. He has lastly stated that he conducted proper investigation with regard to



Bhopal and Chandan.

25. PW-6 Dr. Bipin Kumar Choudhary has stated in his examination-in-chief that on 25<sup>th</sup> March, 2016, at 08:10 a.m., he conducted the *post mortem* examination of the deceased Rahul Kumar Singh at Sadar Hospital, Nawada and noted the following:-

“2. External appearance of dead body:- Normal built, Fair colour, No decomposition, Rigor Mortis present all over the body.

3. External Examination:-

(i) Incised wound 2.5”x1”x cavity deep over left side of chest, one and half inch below left nipple with one rib bone cut. This injury is ante mortem.

(ii) Incised wound 2.5”x1/2”x cavity deep over right side of chest, 2” above and medial right nipple with one rib bone cut (ante mortem).

(iii) Bruise forehead right side 1’x1” (ante mortem).

(iv) Bruise lateral to left eye size- 1”x1/2’ (ante mortem).

On dissection:-

(I) Chest cavity full of blood and blood clots, both lungs ruptured, heart punctured and empty. Abdomen contains three ounce fluid and partially digested food materials. Urinary bladder empty. All viscera intact and pale.

Cause of death- Shock due to haemorrhage due to above mentioned injuries caused by sharp penetrating object.

Time elapsed since death- Six to Thirty Six hours.



25.1. In his cross-examination, he has stated that he has seen Sword, Spear, Knife, Gandasa during his studies. He cannot say whether the injuries were caused by the weapon mentioned by him above. He has further stated that except the injuries mentioned by him (in his examination-in-chief), he did not find any other injury either on the navel or scrotum of the dead body.

26. P.W. 7 Sanjay Kumar is a police official and P.W. 8 Ashok Kumar Rajak is an office clerk in the office of learned C.J.M., Nawada. Their depositions need not be gone into in detail as they have not stated anything about the occurrence.

27. D.W. 1 Surju Singh has not supported the prosecution case. He has stated in his examination-in-chief that his eldest son is the informant of this case. He has divided his property among his sons. On the incident he was at the house of the informant. At 04:30 p.m. he had gone to the village road and saw Rahul Singh, son of the informant, lying dead near the house of Haridwar Singh. He did not see anyone else near that place or fleeing from that place. He went running to the house of Ramendra Singh and informed him about the incident. Police had also come to the place of occurrence and he had briefed the



police about the incident. He has further stated that Bachchan Singh had falsely implicated the accused persons due to jealousy. He identifies the informant and all the accused persons as they are his family members. Accused persons were not present at the place of occurrence.

27.1. In his cross-examination, he has stated that he stays at the houses of his sons for four months each by turn. Before the incident, all his sons were having cordial terms. He had seen injury on the chest of Rahul Singh. He has denied the suggestion that to grab the property of Ramendra Singh, the accused persons killed his only son. He has denied the suggestion of giving false evidence.

28. Other defence witnesses have also not supported the prosecution-case.

### **DISCUSSIONS AND FINDINGS**

29. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the trial court records.

30. From the evidence led by the prosecution, it transpires that P.W. 3 Ramendra Prasad Singh is the informant who gave his written report to S.H.O. concerned. As per the said



written report, the incident took place at 06:45 p.m. If the written report is carefully examined, it is revealed that it is the specific case that when his son reached near the house of Haridwar Singh, accused Bhopal Singh and Chandan Singh caught hold of his son and accused Gopal Singh and Madhav Kumar assaulted him with *Bhala* and injured him grievously. From the written report, it further transpires that the informant is not an eye-witness to the occurrence in question and daughter of the informant, namely Sonam Kumari is projected as an eye-witness. Now, it is required to be observed at this stage that the formal F.I.R. came to be registered at 18.45 hours on 24.03.2016 and the said F.I.R. was received by the concerned Magistrate Court on 30<sup>th</sup> March, 2016. Thus, there is a gross delay in sending the F.I.R. to the concerned Magistrate Court for which the prosecution has failed to give any reasonable explanation.

31. From the deposition given by P.Ws. 1, 2 and 3, who are near relatives of the deceased, it transpires that there are major contradictions and improvement in their version. All the aforesaid witnesses have deposed before the Court that all the four accused together flung the deceased on the ground. However, no such allegation was levelled against the accused in the written report given by P.W. 3, informant. At this stage, it is



also relevant to observe that, as per the case of P.Ws. 1 to 3, the deceased sustained grievous spear injuries on both sides of his chest. He also sustained injuries on his navel and scrotum. However, at this stage, if we examine the deposition of P.W. 6, Dr. Bipin Kumar Chaudhary, who had conducted the post mortem on the dead body of the deceased, it transpires that injury Nos. 1 and 2 are incised wound injuries, whereas injury Nos. 3 and 4 are bruises. During cross-examination, the said witness has specifically stated that, except the aforesaid two injuries mentioned by him in the examination-in-chief, he did not find any other injury either on the navel or the scrotum of the dead body. Thus, we are of the view that the medical evidence does not support the version given by the prosecution-witnesses, namely P.Ws. 1 to 3.

32. As observed hereinabove, P.W. 2 Sonam Kumari is projected as an eye-witness and, therefore, the case of the prosecution rests mainly upon her deposition. It is not in dispute that P.W. 2 is the sister of the deceased and is an interested and related witness. It is well settled that merely because a witness is an interested witness, his/her deposition cannot be discarded only on that ground, however, deposition of such a witness is required to be scrutinized closely.



33. We have carefully gone through the deposition given by P.W. 2 as also considered the deposition given by the other prosecution-witnesses, the doctor and the defence witnesses, more particularly D.W. 1. It is the specific case of P.W. 2, as observed hereinabove, that the deceased sustained four injuries caused by spears and one injury was found on navel and another on scrotum. However, as per the deposition given by P.W. 6, Dr. Bipin Kumar Chaudhary, it is revealed that no such injuries were found on the navel or scrotum of the dead body. Further, D.W. 1 Surju Singh is the father of the informant and also father of two of the accused. From the deposition given by D.W. 1, it is revealed that the said witness has specifically stated that at the time of incident he was at the house of the informant. At 04:30 p.m., he had gone to the village road and saw Rahul Singh, son of the informant, lying dead near the house of Haridwar Singh. He did not see any other person near that place or fleeing from that place. He immediately came to the house and informed Ramendra Singh (informant) about the incident.

34. It is required to be observed at this stage that, as per the case of the prosecution, the occurrence took place near the house of Haridwar Singh. Further, from the deposition given



by P.Ws. 1 to 3, eight to ten people immediately came to the place of occurrence, however, the prosecution has failed to examine any independent witnesses, including Haridwar Singh.

34.1. At this stage, it is also required to be observed that P.W. 5 Pramod Kumar, I.O., has specifically admitted during cross-examination that as no independent witness disclosed any complicity of accused Bhopal Singh and Chandan Singh in the incident, he did not submit charge-sheet against them. He had conducted proper investigation with regard to Bhopal and Chandan. Thus, from the aforesaid version of the prosecution-witness, i.e. the I.O., it is revealed that the aforesaid two accused, though were not present at the scene, have been falsely implicated.

34.2. We are, therefore, of the view that though P.W. 2 is projected as an eye-witness, the version given by her cannot be accepted in view of the other evidence led by the prosecution itself. P.W. 4 is a hearsay and she came to know about the incident in question from P.Ws. 1 to 3.

35. It would further reveal from the evidence led by the prosecution that P.W. 3, informant, has admitted during cross-examination that he informed to the police immediately on his mobile phone with regard to occurrence in question and he



also disclosed the names of the assailants and the manner of occurrence. However, if the deposition given by P.W. 5, I.O., is carefully examined, it is revealed that the said witness got the information on telephone on the basis of which station diary entry No. 701/16 came to be registered at 19:02 hours. However, in the said station diary entry, there is no reference of the names of the assailants and the manner in which the occurrence took place. P.W. 5 has also admitted that he received only one call based upon which he registered the Sanha/Station Diary Entry. He further deposed that he did not receive any call either before or after the same. He has also stated that the informer did not either disclose the names of the accused or the names of the witnesses to the occurrence. Thus, it can be said that when the informant was given to the police on telephone, names of the assailants and the manner of occurrence were not disclosed. Subsequently, when the police came at the place of occurrence at 08:00 p.m., the informant gave written report to the police.

35.1. At this stage, it is also required to be observed that P.W. 3, informant, is the father of the deceased. It is surprising to note that the said witness drafted the written report immediately at the place of occurrence. During cross-



examination, he has stated that he had arranged the paper for preparing the report from a shop, but he does not want to disclose the name of the person who brought the paper from the shop.

35.2. Thus, it is required to be observed at this stage that if P.W. 3, informant, had already disclosed the names of the assailants and the manner in which the occurrence took place to the police on telephone, there was no question of giving the written report to the police.

36. It further transpires from the record that there is discrepancy with regard to the time of preparing the inquest report. Learned counsel for the appellants has specifically stated that there is overwriting in Column Nos. 1 and 3 from which it can be said that prosecution has not come with clean hands and has suppressed the correct version. We have also gone through the inquest report produced before the trial court. It appears that there is overwriting at two places, i.e. Column Nos. 1 and 3.

37. It would further reveal from the evidence that the investigating agency has failed to recover/discover the weapons/spears with which assaults were made. Further, the prosecution did not examine A.S.I. Anil Prasad who has prepared the inquest report. Similarly, prosecution did not



examine police officer Ramshankar Dubey who was sent by the S.H.O. (P.W. 5) to the place of occurrence.

38. Looking to the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt, despite which the trial court has recorded the judgment of conviction and order of sentence.

39. We have gone through the reasoning recorded by the trial court while passing the impugned judgment and order and we are of the view that the trial court has committed grave error while passing the same. Hence, the same are required to be quashed and set aside.

### **CONCLUSION**

40. Accordingly, the impugned common judgment of conviction dated 29.05.2018 and order of sentence dated 05.06.2018, passed in Sessions Trial No. 594 of 2016/391 of 2016, arising out of Pakribarawan P.S. Case No. 49 of 2016, by the Court of learned Additional Sessions Judge-II, Nawada, are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

41. Appellant Madhav Kumar @ Madhav Singh (in Cr. Appeal (D.B.) No. 776 of 2018) and appellant Gopal



Singh (in Cr. Appeal (D.B.) No. 909 of 2018) are in custody.  
They are directed to be released from jail custody forthwith, if  
their custody is not required in any other case.

42. Appellants Bhopal Singh and Chandan Singh @  
Chandan Kumar (in Cr. Appeal (D.B.) No. 784 of 2018) are on  
bail. They are discharged from the liabilities of their bail-bonds.

43. All the appeals stand allowed.

**(Vipul M. Pancholi, J)**

**(Sunil Dutta Mishra, J)**

K.C.Jha/-

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