

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.544 of 2018

Arising Out of PS. Case No.-120 Year-2016 Thana- KHAJANCHI HAT District- Purnia

Varun Kumar Ravidas @ Barun Ravidas, Son of Sri Ram Bilas Ravidas,
Resident of Village- Milki, P.S.- K.Hat Maranga, District- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anshuman Jaipuriyar, Advocate Ms. Anukriti Jaipuriyar, Advocate Mr. Rajanikant Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 24-06-2025

Heard Mr. Anshuman Jaipuriyar, learned counsel
appearing for the appellant assisted by Ms. Anukriti Jaipuriyar and
Mr. Rajanikant Kumar and Ms. Shashi Bala Verma, learned
Additional Public Prosecutor for the State.

2. The present criminal appeal has been filed by the
appellant Varun Kumar Ravidas @ Barun Ravidas against the
judgment dated 25.01.2018 passed in Sessions Case No. 333 of
2016, C.I.S. No. 340 of 2016, T.R. No. 200 of 2016 by the court of
the 5th Additional District and Sessions Judge, Purnea by which the
appellant has been convicted for the offence under Section 302 of
the Indian Penal Code (in short 'IPC') and vide order dated



30.01.2018 which has also been challenged in this appeal the appellant has been sentenced to undergo life imprisonment for the said offence (Section 302 of IPC) and by the same order a fine of Rs. 5,000/- has been imposed upon him, in case of default in the payment of said fine, he has been directed to undergo additionally simple imprisonment for three months.

Prosecution Story:-

3. As per the informant namely, Jaymala Devi on 21.03.2014 (the said date should be 21.03.2016 in view of the evidences which will be discussed later and the same appears to be a typographical error) her daughter namely, Sarita Devi, wife of Pankaj Ravidas, resident of Milki village under Police Station- K. Hat (Maranga), was assaulted by her daughter's father-in-law namely, Ram Bilash Ravidas, brother-in-law namely, Barun Kumar Ravidas (appellant) and Tetari Devi (mother-in-law) on account of plucking maize (*Bhutta*) by the maternal grandson of the informant and owing to that assault, her daughter remained under treatment at Sadar Hospital, Purnea and on 26.03.2016 in the afternoon, she got the information on her mobile phone that her daughter had returned to her home. Thereafter, on 27.03.2016 at about 4:00 P.M., she and her husband namely, Sarveshwar Ravidas (deceased) went to her daughter's home to meet her where she



stayed for about half an hour and after meeting her daughter, she started retuning back but in the meantime, her daughter's father-in-law (Ram Bilas Ravidas) came and inflicted a *Garasa* blow on her daughter which caused an injury to her daughter's right hand and that act of her daughter's father-in-law was resisted by her and her husband then her daughter's father-in-law, Ram Bilas Ravidas, the appellant Varun Kumar Ravidas and Tetari Devi, all three started assaulting them by means of *lathi*, iron rod and *Garasa*. The informant further alleged that her husband (deceased) was assaulted on his head by an iron rod and due to that assault, her husband became unconscious, upon seeing that her son-in-law Pankaj Ravidas came to rescue them then the appellant inflicted an iron rod blow on his head which caused head injury to her son-in-law and thereafter, she, her husband, daughter and son-in-law were taken to Sadar Hospital, Purnea with the help of villagers and during the course of medical treatment her husband died.

The informant recorded her *fardbeyan* at Sadar Hospital describing the aforesaid prosecution story and the same was recorded by a Sub-Inspector Mukesh Kumar posted at Maranga police station on 27.03.2016 at 23:45 hours, on that basis, the formal FIR bearing K. Hat (Maranga) P.S. Case No. 120 of 2016 was registered for the offences punishable under Sections 341,



7. The prosecution proved some documents in documentary evidence and got them marked as exhibits which are as under:-

Sl. No.	Details of Exhibits and Documents
Ext. 1	<i>Fardbeyan</i> of the informant
Ext. 2	An endorsement made by the concerned police official on the <i>fardbeyan</i>
Ext. 3	The signature of the then S.H.O. of P.S. concerned on formal FIR
Ext. 4	Inquest Report
Ext. 5	Postmortem report of the deceased
Ext. 6	Certified copy of the FIR and <i>fardbeyan</i> pertaining to K. Hat (Maranga) P.S. Case No. 119/2016

8. After the completion of the prosecution's evidence, the statements of the accused, including the appellant, were recorded by the trial court under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.') giving them an opportunity to explain the circumstances appearing against them from the prosecution's evidences in which they denied the said circumstances and claimed themselves to be innocent. However, neither the appellant nor the co-accused took any specific defence in their statements regarding the charges and incriminating evidences.

9. The appellant did not give any evidence in his defence.

10. The learned trial court acquitted the co-accused, Ram Bilas Ravidas and Tetari Devi, of all the charged offences by the



same impugned judgment. The appellant, Varun Kumar Ravidas, has been acquitted of the charged offences punishable under Sections 341, 323 and 324 read with Section 34 of IPC but he has been convicted for the offence punishable under Section 302 of IPC. He has been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 5,000/-, as detailed in paragraph no. 2 of this judgment.

11. While convicting the appellant for the offence under Section 302 of IPC, the learned trial court placed reliance mainly upon the evidence of the prosecution witnesses PW-1 to PW-5 and deemed them to be eyewitnesses of the commission of the alleged occurrence. The trial court also placed reliance upon the medical evidence given by PW-7 deeming it as corroborative to the allegation of murderous assault.

Submissions by the appellant's counsel:-

12. Mr. Anshuman Jaipuriyar, learned counsel appearing for the appellant has argued that there are serious contradictions in the evidence of the prosecution's witnesses with regard to the time of occurrence, manner of occurrence and place of occurrence. In the FIR, there is no specific allegation against the appellant but later specific allegation of assault by using an iron rod on the head of the deceased by the appellant, was levelled by the prosecution's



witnesses which is not believable. As per the prosecution story, the police did not register the FIR despite having got the knowledge of the incident when the victims went to the police station and on the next day from that date, the FIR was registered which creates a strong probability of manipulation on the part of the police in manufacturing a different prosecution story and further, the prosecution failed to give any medical evidence to prove the injuries on the body of the injured persons, other than the deceased who are also said to have been assaulted by the accused including the appellant by means of *lathi*, iron rod and *garasa* and only the postmortem report of the deceased was exhibited by the prosecution according to which, only one head injury was sustained by the deceased, however, the details of the dimension of the said injury was neither found and nor shown by the prosecution and the same shows the exaggeration of the prosecution story by the informant. Learned counsel has further argued that on the alleged day of occurrence, on the body of Ram Bilash Ravidas, father of the appellant, there were injuries as he also remained under treatment at the same hospital between 27.03.2016 and 29.03.2016 and in this regard, the evidence of the investigating officer is relevant but the injuries being present on his person, were not explained by the prosecution which shows



that the alleged occurrence did not take place in the manner as shown by the prosecution party in the FIR and the same is sufficient to cast a serious doubt upon the first version of the prosecution and the informant did not come with clean hands before the police and trial court. In fact, the deceased accidentally fell down on the septic tank's rings and sustained head injury resulting in his death and thereafter, a false story was fabricated by the prosecution party on account of tensed relation in between both the parties which had been running during the relevant period in between them. It has been further submitted that the investigating officer did not find any blood stain at the alleged place of crime, he did not seize or recover the alleged weapons or instruments which were allegedly used by the accused including the appellant in assaulting the deceased and others and the statements of the independent persons, co-villagers of the informant's daughter who admittedly came at the place of occurrence upon hearing the *hulla*, as per the prosecution story, were not recorded by the investigating officer and all the witnesses of facts produced and examined by the prosecution, are relatives of the deceased and highly interested in the success of prosecution's case. It has been lastly submitted that if the prosecution story is believed even then the alleged act of the appellant does not fall in the purview of the offence of murder



punishable under Section 302 of IPC as the evidence of the prosecution witnesses clearly shows that the alleged occurrence took place in the spur of moment and as per prosecution story, the appellant inflicted only single iron rod blow on the head of the deceased and he did not act in cruel manner and the deceased was an old person at that time, so, the appellant's act will fall within the purview of Part-II of Section 304 of IPC if the prosecution's allegation is taken to be true.

In support of the above submissions the learned counsel has placed reliance upon the following judgments of the Hon'ble Apex Court:-

(i) **Lakshami Singh and Ors. vs. State of Bihar** reported in (1976) 4 SCC 394, relevant referred paragraph is para '12'

(ii) **Mahendra Ram vs. State of Bihar** reported in 2025 (1) BLJ (DB) 525, relevant referred paragraphs are para '11' and '14'

(iii) **Amar Yadav vs. State of Bihar** reported in 2025 (1) BLJ (DB) 542, relevant referred paragraphs are para '20', '21' and 22



Submissions by the Respondent's counsel:-

13. On the other hand, Ms. Shashi Bala Verma, learned APP appearing for the State has vehemently opposed this appeal and argued that admittedly there was not good relationship between the victim's daughter and the appellant. Some days before the alleged occurrence, the informant's daughter had been assaulted by the same accused, for which she remained under treatment and when the deceased and his family members came at the house of informant's daughter to meet her then the accused including the appellant got infuriated and committed the alleged occurrence resulting in death of the deceased. Though the co-accused persons have been acquitted but in respect of the allegation levelled against the appellant, all the prosecution witnesses (PW-1 to PW-5) remained fully consistent to the allegation. Further, the medical evidence given by PW-7 as well as Ext.-5, corroborates the allegation levelled against the appellant and the investigating officer has revealed reasonable explanation for not recording the FIR when the victims went to the police station as at that time, the deceased was in serious injured condition, so he was immediately sent to the hospital by the police and on the next day the FIR was registered when the victim died.



Learned APP has further argued that though the investigating officer could not recover the alleged weapons but the said defect cannot be deemed to be fatal to the prosecution's case, as the ocular evidence of PW-1 to PW-5 is sufficient to substantiate the prosecution's allegations concerning the appellant. Hence, there is no merit in this appeal and the learned trial court has rightly convicted and sentenced the appellant for the offence under Section 302 of IPC.

Consideration and Analysis of the Evidences:-

14. We have heard both the sides, perused the judgment and order impugned, gone through the evidences and statement of the appellant available on the record of the trial court and also have given our thoughtful consideration to the aforesaid submissions advanced by both the sides.

15. At first, we would like to discuss the evidence of the prosecution's witnesses in a brief manner to find out the substance in the aforesaid submissions advanced by both the sides as well as to find the sustainability of the trial court's conclusion with regard to the conviction of the appellant for the offence of murder under Section 302 of IPC.

16. Prosecution witnesses PW-1, PW-2, PW-3, PW-4 and PW-5 claimed themselves to have witnessed the entire occurrence



and they are said to be eyewitnesses of the commission of the alleged assault resulting in death of the informant's husband (hereinafter referred to as 'deceased').

17. PW-1, Subodh Ravidas, son of the informant, deposed in his examination-in-chief that on 27.03.2016 at about 4:30 p.m. he went to Milki, the village of his sister Sarita Devi, along with his father Sarweshwar Ravidas (deceased), mother Jaimala Devi and brother-in-law Rameshwar Ravidas to see his sister as his sister's father-in-law Ram Bilash Ravidas, mother-in-law Tetari Devi and Varun Ravidas (appellant) had assaulted his sister on 21.03.2016. After meeting his sister and her husband, they were about to return back then the said in-laws including the appellant, out of whom, the father-in-law was equipped with *garasi*, mother-in-law was equipped with *lathi* and the appellant was having an iron rod, came and exhorted to kill him while saying that it was he who had lodged a case against them at the police station. Thereafter, his sister's father-in-law Ram Bilash Ravidas inflicted a *garasi* blow on her sister Sarita Devi. When his father went to save his sister then the appellant inflicted an iron rod blow on the head of his father, causing serious head injury to his father. Consequently, his father became unconscious and started bleeding and when his sister's husband (Pankaj Ravidas) tried to save them



then the appellant inflicted an iron rod blow on his head, resulting in head injury to him. The witness further deposed in his examination-in-chief that his father died at Sadar Hospital, Purnea in the night at about 11:00 p.m. during the course of medical treatment and the Daroga Ji (S.H.O.) came in the hospital and did necessary paper work near the dead body and on the basis of *fardbeyan* of his mother, the case was registered. He further deposed that his sister's marriage with Pankaj Ravidas took place in the year 2012 and after 2 - 2.5 years of the marriage, his sister and her husband were separated by the accused and her in-laws and the accused were not interested to give them any share in the land due to which a dispute was prevailing in between them. He further stated that before the commission of the alleged occurrence of the present matter, the accused had quarreled with his sister and her husband for which a police case had been lodged at K. Hat Maranga police station on 27th. PW-1 was cross-examined at length in respect of all the relevant facts and he has stated in paragraphs nos. 7, 8, 9, 10 and 11 of his cross-examination that the alleged occurrence took place at the door of Pankaj Ravidas (husband of the sister of this witness) and according to him, the appellant, his father and mother used to abuse his sister and her husband and on the day of alleged occurrence, he and his parents went to his



sister's home to meet her and he himself witnessed the occurrence. At the time of the commission of the occurrence, the appellant was present at the place of occurrence with an iron rod and his father and mother were armed with *garasa* and lathi and at that time his sister and her husband were having nothing in their hands. According to this witness, initially the accused started a dispute with his sister and her husband but during the course thereof, first *garasi* blow was inflicted by Ram Bilash Ravidas (father of the appellant) causing injury on the hand of his sister and then his father intervened to save his sister but he sustained injury and at that time, his mother was with him who also witnessed the occurrence. He further stated that upon hearing the *hulla* neighboring people arrived at the place of occurrence. On being cross-examined, he stated that the appellant inflicted an iron rod blow on the head of his father and that rod was 20 mm thick and 2.5 - 3 feet long. The witness denied the suggestion that in the alleged occurrence, the appellant's father and mother also sustained injuries. He also denied the suggestion put forth by the defence that his father sustained injury on account of falling down on the septic tank's ring while intervening. In this way, the evidence of this witness remained fully corroborative to the allegations levelled against the appellant, as well as with regard to the other relevant



facts such as the tensed relation between the deceased's daughter and the accused including the appellant during the relevant period, the presence of the appellant and his relatives and the weapons used in assaulting etc.

18. Prosecution witness PW-2, Rameshwar Das who is stated to be the son-in-law of the informant has deposed that the alleged occurrence took place on 22.03.2016 at about 4:30 p.m. He, along with his father-in-law (deceased), mother-in-law (informant) and brother-in-law (Subodh Ravidas) went to the village of Sarita Devi who is his sister-in-law to meet her because the appellant and his parents had assaulted Sarita Devi on 21.03.2016. After having met her, they were going to return back and went some steps away then the appellant equipped with an iron rod, Ram Bilash Ravidas equipped with a *garasi* and Tetari Devi equipped with a *lathi* asked them to return back and said that they would make his sister understand and thereafter, appellant's father Ram Bilash Ravidas inflicted a *garasi* blow on Sarita Devi, causing a cut injury on her leg and then her husband intervened to save her but appellant's father-in-law inflicted a *garasi* blow upon him also causing head injury to him and when the deceased intervened to save them then the appellant inflicted an iron rod blow on his head resulting in serious injury being inflicted on his head. He further deposed that



at first they took the victim to the police station from where they went to the Sadar Hospital where during the course of treatment, the victim died and Daroga Ji (officer in-charge) came to the hospital and prepared the necessary papers. Regarding these facts, the witness was cross-examined at length on behalf of the appellant. In his cross-examination, the witness stated that regarding the *factum* of Sarita being hospitalized, he got the information in the morning of 21st March, 2016 then he left his home at 6:00 p.m. and reached out to the hospital at 6:30 p.m. and at that time, the informant's daughter Sarita Devi was talking and her condition was good and thereafter, he returned back. He further stated that after Sarita Devi returned from the hospital, they went to her home at about 3:00 p.m. and at that time, his brother-in-law, father-in-law and mother-in-law were with him and he met his father-in-law and mother-in-law at Milki Chowk and they all went to see Sarita and stayed there for 10-15 minutes and at that time, Sarita Devi told them about the ill treatment being meted out to her by her father-in-law and mother-in-law, whereafter they asked her to adjust herself and at that time, they did not talk with her father-in-law and mother-in-law. He further stated that when they were returning back from Sarita's house and were hundred steps away from her home, the appellant and his mother Tetari Devi shouted



and said that how long they would come to save her (Sarita). He further deposed that the appellant's father Ram Bilash Ravidas inflicted a *garasi* blow on Sarita which caused a cut injury on her shoulder, whereafter she started crying and at that time, they were standing on the road and upon hearing her cry, her husband rushed to her and at that time, the nearby people were also watching. He denied the suggestion that no one assaulted the deceased rather he himself fell down on a pillar and tank which resulted in his death. He deposed in his cross-examination that after the occurrence, they firstly went to the police station with the deceased by a tempo along with his mother-in-law, brother-in-law and his wife (Sarita) where they stayed for 15 minutes and then they were asked to go to the hospital.

19. Regarding the manner of occurrence, alleged act of the appellant, time and place of occurrence, PW-3, PW-4 and PW-5 testified almost on similar lines, similar to the evidence of the aforesaid witnesses and they were also cross-examined at length on behalf of the accused including the appellant. In cross-examination PW-3, Pankaj Kumar Ravidas deposed that at the time of commission of the alleged occurrence, he was present at his home. On that day, his father-in-law, mother-in-law, brother-in-law and husband of his sister-in-law came to his home to meet his wife,



where they stayed for 2-3 hours. After about 3 hours the father-in-law and mother-in-law of PW-3 had come out of the house for going back to their home and had travelled ten steps from the house when the occurrence took place. The evidence of this witness is very important as he is the real brother of the appellant and his presence at the time of the commission of the alleged occurrence at the alleged place, was very natural as his house is said to be situated at some steps away from the house of the appellant and he revealed that on the alleged date and time of occurrence, he was present at his home. PW-3 has denied the suggestion that his father-in-law (deceased) died due to falling down on a septic tank's ring. He has also stated that at the time of the alleged occurrence, the villagers residing at nearby places had also arrived at the place of occurrence but he could not recall their names and on the alleged day of occurrence, his father (appellant's father) did not sustain any kind of injury.

20. PW-4, Sarita Devi who is the daughter of the deceased, has stated in her examination-in-chief that the accused had assaulted her on 21.03.2016 and after gaining knowledge about the said incident, her parents, brother and brother-in-law came to see her on 27.03.2016 and after having met her, while they were about to return back then her father-in-law Ram Bilash Ravidas,



mother-in-law Tetari Devi and brother-in-law Varun Ravidas (appellant) started abusing them as also said that they would kill the deceased as he comes again and again. She has further stated that her father-in-law was having a *garasa* in his hand, mother-in-law was having *lathi* and the appellant was having an iron rod, whereafter her father-in-law inflicted a *garasa* blow upon PW-4, which resulted in a cut injury on her right hand and when her husband came to rescue her then the appellant inflicted an iron rod blow on his head which caused head injury to him and thereafter, his father was assaulted with iron rod on his head resulting in him falling down and becoming unconscious. In her cross-examination, PW-4 has stated that the appellant and his parents had separated her from the family as also had asked her to bring 3 to 4 lakh rupees from her parents, however since the said demand could not be fulfilled by her, she was ousted by them from their house, whereupon she was living in a house made of straw. She has further stated in her cross-examination that the accused had assaulted her on 21.03.2016 for which K.Hat (Maranga) P.S. Case No. 119/2016 was also lodged regarding which she informed her parents on 23.03.2016. On 27.03.2016, her parents etc. came to her home at about 3:00 to 4:00 p.m. She has further stated that her parents, her brother and brother-in-law stayed at her home for about half an



hour and after meeting her, they came out of her home and had gone just ten hands away from her home, when the occurrence took place and at that time she was also along with them. She has further stated that all three accused came to her home and at that time, she and her parents did not say anything to them and her father-in-law, Ram Bilash Ravidas was armed with *garasa*, who inflicted a *garasa* blow on her head and while escaping from that blow, she sustained injury on her hand and at that time, her parents and brother etc. were on the road and she cried, whereafter firstly her husband came who was also assaulted by the accused by using an iron rod resulting in him sustaining head injury. She has further stated that the appellant was having an iron rod in his hand and upon hearing *hulla*, her father rushed to save her then the accused said that her father should be killed. She further stated in paragraph no. 16 of her cross-examination that her father was assaulted by all the three accused and the appellant assaulted her father with an iron rod. In this way, the evidence of this witness fully supports the prosecution's allegation concerning the appellant and her evidence remained consistent to the relevant facts emerging from the prosecution story, such as the presence of the appellant, the means which was used by him in assaulting the deceased, the arrival of the informant, deceased, informant's son and son-in-law at the house of



informant's daughter to meet her on account of an incident of assault having taken place previously with the informant's daughter, for which she remained under treatment and also with regard to the tensed relation existing in between the appellant's family and the daughter of the deceased.

21. Similar evidence like the aforesaid witnesses was given by the informant, i.e., Jaimala Devi (PW-5) and except some minor contradictions which are ignorable, we do not find any reason to disbelieve her evidence.

22. PW-7 is the Doctor, who conducted the postmortem examination of the dead body of the deceased and he has stated that upon external examination, he found a stitched wound on the head of the deceased and according to him, the cause of death of the deceased was due to hemorrhage and shock as a result of the said head injury caused by hard and blunt substance. Though the appellant has taken the defence that the deceased fell on a septic tank's ring and sustained head injury and in this regard reference has been made to the statement of PW-7, as mentioned in paragraph no. 3 of his examination in which he has simply stated that the head injury of the deceased was possible if he had fallen on a hard and blunt substance. However, regarding this defence, neither there is any evidence on record nor the appellant succeeded



in eliciting any fact by cross-examining the aforesaid prosecution witnesses to support his defence and these witnesses fully denied the suggestion put forth by the appellant with regard to the said defence and the medical expert (PW-7) simply revealed the probability of infliction of head injury, in case the deceased had fallen on a hard and blunt object.

23. From the evidence of the prosecution's witnesses as discussed above, it is clearly evident that during the relevant time when the occurrence had taken place, good relation was not existing in between the informant's daughter and the appellant on account of a past incident of assault and they were living separately but their houses were situated near to each other and the *factum* of medical treatment undergone by the informant's daughter some days before the commission of the alleged occurrence of the present matter at Sadar Hospital, has not been denied by any of the prosecution's witnesses and in this regard, Ext.-6 pertaining to K. Hat (Maranga) P.S. Case No. 119/2016 lodged by the daughter of the informant is also relevant. Further, the appellant has not brought on record any material or evidence to rebut the said medical treatment of the informant's daughter, thus, there was reason for the informant, her husband (the deceased), her son and son-in-law to come and meet the informant's daughter who had



been discharged from the hospital just few days before the commission of the alleged occurrence as also all the prosecution's witnesses remained fully consistent for the said cause as well as their arrival at the house of the informant's daughter to meet her. All the aforesaid witnesses stated that after meeting the informant's daughter, when they were about to return back and had stepped out of the house of the informant's daughter and had moved some steps away from the house then the accused including the appellant came and committed *marpit* (assault) with the prosecution party including the deceased. Though with regard to the allegation of assaulting the informant's daughter by the father of this appellant by *garasa*, the prosecution has failed to give any medical evidence but merely by this fact, the allegation of assaulting the deceased by the appellant by using an iron rod, cannot be disbelieved mainly in the presence of medical evidence which fully corroborates the said allegation.

24. While referring to the observation made by the Hon'ble Apex Court in the case of **Lakshmi Singh and Ors. vs. State of Bihar** reported in (1976) 4 SCC 394 in paragraph no. 12 thereof, the learned counsel for the appellant has vehemently argued that on the alleged day of occurrence, the appellant's father was under treatment at the same hospital where the deceased was



taken for treatment and the appellant's father remained under treatment for three days which is sufficient to show that there were injuries on his person and the same have not been explained by the prosecution. In this regard, the evidence of the Investigating Officer (PW-6) is relevant and further the failure of the prosecution to offer any explanation in that regard makes the prosecution story doubtful and the prosecution has concealed the genesis of the occurrence and revealed a different story due to which the appellant is entitled to get the benefit of doubt. The relevant paragraph of the aforesaid cited judgment is being reproduced as under : -

"12...The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of PW 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probalised. Under these circumstances the prosecution had a duty to explain those injuries ... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants.

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalise the plea taken by the appellants. The



High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. State of Punjab* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] which was also a murder case, this Court, while following an earlier case, observed as follows: [SCC p. 531 : SCC (Cri) p. 621, para 20]

In *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] one of us (Untwalia, J.) speaking for the Court, observed as follows: [SCC p. 13 : SCC (Cri) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four-corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:



(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”



25. After having gone through the evidences, we find no substance in the aforesaid contention of the appellant's counsel. Although it has come in the evidence of the investigating officer that the appellant's father was under medical treatment at the concerned hospital between 27.03.2016 and 29.03.2016 but there is nothing to show the reason for which the appellant's father remained under medical treatment and the same can be deemed to be in the special knowledge of the appellant which could have been easily proved by adducing the relevant medical papers of his father's treatment but in this regard, no step was taken by the appellant. Further, it is not the defence of the appellant that the appellant's father was assaulted by the prosecution party during the relevant time of commission of the alleged occurrence nor in this regard, any supporting fact was revealed by any of the prosecution witnesses either in his/her examination-in-chief or cross-examination and there might be many reasons for medical treatment of the appellant's father during the relevant period of the occurrence at the concerned hospital and furthermore, if the appellant's father had been assaulted by the prosecution party during the same time of the commission of the alleged occurrence then definitely some legal action would have been taken by them but no such action was taken, which also goes against the



appellant's said defence. Accordingly, the principle laid down by the Hon'ble Apex Court in the aforesaid judgment does not help the appellant in any manner.

26. The appellant's counsel has vehemently argued that the investigating officer did not find any blood spot or stain on the alleged place of occurrence. His evidence clearly indicates that he did not seize any relevant material, such as, blood stained clothes of the victims, who are relatives of the deceased and are said to have been assaulted by the accused including the appellant. Furthermore, the alleged *garasa*, iron rod and *lathi* which were allegedly used in assaulting the victims, were also not recovered by the investigating officer during the course of investigation. It has been further submitted that from the evidence of prosecution's witnesses, it is clearly evident that the deceased was first taken to the police station when he was in injured condition by his relatives including the informant but the police did not take any pain to lodge an FIR despite having got the information of the commission of the alleged occurrence, so on these aspects, the investigation conducted in the present matter remained completely faulty which goes against the prosecution. After having gone through the evidences particularly, the evidence of investigating officer (PW-6), we find no force in the aforesaid argument. Though, the



investigating officer did not find any blood stain at the place of the alleged occurrence where the assault with the victims took place, it is not the case of the prosecution that the investigating officer visited and inspected the place of occurrence immediately after the registration of the FIR. So, the delay in inspecting the place of occurrence might be a reason for not finding the blood stains at the crime scene. So far as the recovery of the weapons or instruments allegedly used by the accused in assaulting the deceased and others is concerned, though the evidence of the investigating officer shows that no recovery of these articles was made by the I.O. and on this aspect, the investigating officer remained negligent and also, some negligence took place on the part of the concerned police officials in not registering the FIR at the time when the victims along with others had reached at the police station. In this regard, there is some explanation as according to the evidence of prosecution witnesses, the deceased who was in an injured condition at that time, was asked to be taken to the hospital first which might have been the reason for non registration of the FIR at that time. However, in view of the ocular testimony of the material witnesses of the prosecution in the present matter as discussed above, the defects in the investigation as pointed out by the appellant's counsel, do not appear to be so fatal to the prosecution,



so as to make the prosecution story to be completely unbelievable. It is a settled principle of law that it would not be right to acquit an accused person solely on account of defective investigation. However, in cases of defective investigation, the court has to be circumspect in evaluating the evidence and in this regard, the observation made by the Hon'ble Apex Court in the case of **Dhanaj Singh @ Shera and Ors. vs. State of Punjab** reported in **(2004) 3 SCC 654** is important and the relevant paragraphs nos. 5, 6, 7 and 8 are being reproduced as under:-

“ 5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

6. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory



investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in Amar Singh case [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in Amar Singh case [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . In the case at hand, no crack in the evidence of the vital witnesses can be noticed.”

27. Learned counsel for the appellant has further argued that in the instant matter, all the non-official witnesses of the prosecution are relatives of the deceased and they were highly interested in the success of the prosecution's case. As per the evidence of prosecution witnesses, co-villagers and neighbours of



the daughter of the informant also reached at the place of occurrence upon hearing *hulla*, but none of them were examined by the investigating officer nor any of them was produced as a witness before the trial court. Though in this matter all the material witnesses of facts are relatives of the deceased and as per their evidence, the neighbours of the informant's daughter also reached at the place of occurrence during the course of occurrence and at the relevant period but as per evidence of investigating officer, none of them agreed to record his/her evidence. It came in the evidence of the prosecution's witnesses that the informant's daughter and the accused are close relatives having the relationship of daughter-in-law and in-laws and at the time of commission of the alleged occurrence, good relation was not prevailing in between them. Six days before the occurrence of the present matter, an occurrence of assault had taken place with the informant's daughter by the same accused of the present matter. So, in view of this circumstance, particularly, in view of bad matrimonial relation in between the informant's daughter and her in-laws, the co-villagers of the informant's daughter might not have come forward before the investigating officer, however, despite not producing and examining the said co-villagers, the prosecution witnesses PW-1 to PW-5 appear to be trustworthy. The evidence of PW-3 can be



deemed to be most reliable as he happens to be the real brother of the appellant. Further, since the alleged occurrence took place near the house of the informant's daughter, so, the presence of PW-4 at the alleged place of occurrence, was quite natural and we find a justifiable reason for the presence of other witnesses (PW-1, PW-2 and PW-5) for coming to the house of informant's daughter as they had come there to meet the informant's daughter who had remained under treatment on account of alleged assault which had been committed with her by the same accused just some days before the commission of the alleged occurrence. Moreover, a related witness cannot be said to be an interested witness merely by virtue of being a relative of a victim and the evidence of such witness cannot automatically be discarded by labeling him as an interested witness, particularly in an offence which has been witnessed by a close relative of the victim whose presence on scene of crime was natural. In this regard, we would like to refer to the principles laid down by the Hon'ble Apex Court in the case of **Laltu Ghosh vs. State of West Bengal**, reported in **(2019) 15 SCC 344**, paragraphs nos. 12, 14 and 15 whereof, containing relevant observations, are being reproduced as under:-

“ 12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim.



This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki* [*State of Rajasthan v. Kalki*, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ; *Amit v. State of U.P.* [*Amit v. State of U.P.*, (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] and *Gangabhavani v. Rayapati Venkat Reddy* [*Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]).

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , wherein this Court observed: (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable,



probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)* [*Jayabalan v. State (UT of Pondicherry)*, (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966] : (SCC p. 213, para 23)

"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

Accordingly, we find no force in the aforesaid contention of the appellant's counsel.

28. Now, we have to examine the important aspect of the trial court's approach in convicting the appellant for the offence under Section 302 of IPC in context of the relevant circumstances emerging from the prosecution's evidences. In an offence of unnatural death a single blow resulting in such death may entail conviction under Section 302 of IPC and in some cases under Section 304 of IPC and in some cases under Section 326 of IPC, thus, the question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case, the nature of injury on the body part upon which such injury has been



inflicted, the weapon used, the circumstances in which the injury has been caused and also the manner in which such injury has been inflicted, are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In this regard, we would like to refer to the judgment of the Hon'ble Apex Court passed in the case of **Muthu vs. State by Inspector of Police Tamil Nadu**, reported in (2009) 17 SCC 433, wherein the conviction under Section 302 of IPC by the trial court was converted into second part of Section 304 of IPC and while arriving at the said conclusion the Hon'ble court took into account the fact that the occurrence had taken place in a sudden fight and in the heat of passion by a sudden quarrel without the accused having taken undue advantage or acted in a cruel manner. The relevant observations made in the paragraphs nos. 14, 16 and 17 are being reproduced as under:-

“ 14. In our opinion, throwing waste and rubbish inside the house or shop of somebody is certainly a grave and sudden provocation. Everyone wishes to keep his premises neat and clean, and is likely to lose his self-control in such a situation. The incident in question occurred in a sudden fight and a heat of passion by a sudden quarrel without the appellant having taken undue advantage or acted in a cruel or unusual manner. Hence the appellant is entitled to the benefit of Exceptions 1 and 4 and the case comes under Section 304IPC.



16. In our opinion on the facts of the case the act committed was done with the knowledge that it is likely to cause death but without any intention to cause death or cause such bodily injury as is likely to cause death. Hence the offence comes under Part II of Section 304IPC.

17. For the reasons given above, the sentence awarded by the courts below is substituted by the sentence of five years' simple imprisonment and any period of incarceration in jail which the accused has already undergone shall be deducted from the aforesaid period of five years. The judgments of the courts below are modified accordingly and the appeal stands disposed of."

29. Now, we come to the factual aspects of this matter.

It has come in the evidence of the prosecution's witnesses that the informant's daughter was married to the real brother of this appellant and after lapse of some period of the marriage the relation between the informant's daughter and her in-laws deteriorated and the informant's daughter and her husband were separated from the joint family of the appellant by the accused though informant's daughter and her in-laws were residing at the place situated nearby during the relevant time. It has also come in the evidence that just six days before the commission of the alleged occurrence, the same accused of the present matter had assaulted the informant's daughter for which she remained under treatment at the Sadar Hospital and regarding that incident K.Hat (Maranga) P.S. Case



No. 119/2016 had also been registered by the informant's daughter, FIR's certified copy (Ext.-6), whereof was also produced by the prosecution before the trial court. When the informant's daughter returned back from the hospital, then the deceased, PW-1, PW-2 and PW-5 came to the house of PW-4, daughter of the informant to see and meet her and the said previous incident of assault as well as medical treatment of PW-4 was a justifiable reason for their coming at the house of PW-4 which is said to be the place of occurrence and as per the evidence of prosecution's witnesses upon seeing them, the accused including the appellant got infuriated and came with alleged weapons and firstly started abusing them and thereafter, assaulted them with *garasa*, iron rod and *lathi*. This story clearly shows that the alleged occurrence took place in the spur of moment and the same does not appear to have been committed in a planned manner and the material prosecution witnesses deposed that only single blow, by using an iron rod, was inflicted by the appellant on the head of the deceased, which also gets corroborated from the postmortem report of the deceased as only head injury was found on the body of the deceased which was opined by the medical expert (PW-7) as being the main cause of death of the deceased. Hence, in view of the circumstances in which the alleged occurrence took place, and in the light of a single



blow having been inflicted by using an iron rod, by the appellant on the head of the deceased, who was seventy years old at that time, as is apparent from the postmortem report, the previous tense relation in between both the parties during the relevant period apart from the fact that a previous FIR had been lodged by PW-4 against the accused as also the circumstance regarding the accused being infuriated upon seeing the parental relatives of PW-4 who had come to see and meet her (PW-4) on the alleged date and time of occurrence, we find it justful for bringing the case of prosecution within the ambit of Section 304 Part-II of IPC rather than Section 302 of IPC.

Conclusion:-

30. For the reasons discussed above and in view of the evidences available on the record of trial court, we find no illegality in the conclusion of the trial court in holding the appellant to be responsible for the death of the deceased. However, the conviction under Section 302 of IPC does not seem appropriate in context of the relevant circumstances which have been discussed above. We find sufficient materials to modify the conviction of the appellant under Part-II of Section 304 of IPC. Accordingly, the appellant's conviction is modified for the offence punishable under Part-II of Section 304 of IPC. The appellant has undergone and



served a period of more than nine years in jail, which is sufficient to meet the ends of justice in view of the background of the appellant’s family as well as his age at the time of the commission of the alleged occurrence. Accordingly, the impugned order of sentence dated 30.01.2018 is modified to the period of sentence already undergone by the appellant.

31. Accordingly, the present criminal appeal stands disposed of with the aforementioned modification in the impugned judgment of conviction dated 25.01.2018 and the order of sentence dated 30.01.2018, passed by the learned court of 5th Additional District & Sessions Judge, Purnea in Sessions Case No. 333 of 2016.

32. The appellant is directed to be released forthwith if his custody is not required in any other criminal case.

33. Let the Lower Court Records (LCR) and a copy of this judgment be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
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