

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.480 of 2009**

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1. Jawahir Singh Son of Late Kashi Nath Singh Resident of village- Nayka  
Barka Baiju Tola, PS- Rivilganj, Dist- Saran
2. Chandrama singh Son of Late Kashi Nath Singh Resident of village- Nayka  
Barka Baiju tola, PS- Rivilganj, Dist- Saran

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Ms. Priya, Amicus Curiae

For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**  
**ORAL JUDGMENT**

**Date : 19-01-2026**

None appears on behalf of the appellants.

Learned Additional Public Prosecutor for the State.

2. It is noted that the matter is pending  
consideration for about 16 years.

3. It has been requested and Ms. Priya, learned  
counsel, has shown her willingness to assist as *Amicus Curiae*  
in the present matter.

4. Accordingly, learned counsel Ms. Priya, has  
been appointed as *Amicus Curiae* in the present matter.

5. Heard Ms. Priya learned *Amicus Curiae* for



the appellants and learned A.P.P for the State.

6. The present appeal has been preferred for setting aside the judgment of conviction dated 30.05.2009 passed by the Additional Sessions Judge XIth, Saran, in Sessions Trial No. 345 of 2002, whereby the appellants were held guilty for the offence punishable under Section 324 of the Indian Penal Code. However, the appellants were released on probation under the provision of the Probation of Offenders Act upon furnishing a bond of ₹1,000/- with one surety for keeping peace for a period of one year.

7. As per prosecution case, the informant Sitaram Singh (PW-4), was living alone at his house while his sons were residing outside the village. On 02.07.2001 at about 8:00 A.M., the informant was levelling his *sahan* (courtyard) situated in front of his house by filling soil. The soil was being carried from the bank of a river by an ass belonging to Satrudhan Baitha (PW-3) and was being transported through a public lane passing adjacent to the house of the accused persons, which also served as the access road to the informant's house. It is the prosecution case that both the appellants wrongfully obstructed the passage of the ass



through the said public lane, which led to a verbal altercation between the parties. Upon receiving information about the obstruction, the informant reached the spot and objected to the illegal act of the accused persons. It is alleged that during the course of the altercation, appellant no.2 Chandrama Singh, instigated the other to kill the informant and he himself picked up a *bhala* (spear) kept on his *verandah* and assaulted the informant targetting his chest with intention to kill him. In order to save his life, the informant caught the *bhala* with his right hand, as a result of which the *bhala* struck his right palm, causing a grievous injury. It is further alleged that, at the same time, appellant no.1 Jawahar Singh assaulted the informant's head with an iron rod. The informant tried to skip, as a result of which the blow hit his right shoulder causing bone fracture. The informant fell down on the spot and started writhing in pain. On hearing the hue and cry, nearby witnesses assembled at the place of occurrence and intervened, thereby rescuing the informant from further being assaulted. The informant/injured informed his son, who resides in Chapra, about the occurrence, but his son had gone out of Chapra and when he returned on 05.07.2001, he took the informant/injured to Chapra Sadar Hospital for medical



treatment.

8. Thereafter, the informant filed a complaint case bearing Complaint Case No. 1117(C) of 2001 before the learned Chief Judicial Magistrate, Mokam, Chhapra which was converted into Rivilganj P.S. Case No. 97 of 2001 registered under Sections 323, 325, 324, 307 and 34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellants and others under Sections 341, 323, 325, 307 and 34 of the IPC. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant and others under Sections 307 and 341 of the IPC. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

9. In order to bring home the guilt of the accused persons, the prosecution has examined altogether seven witnesses namely, PW-1 Amar Singh, PW-2 Arun Kumar Singh (younger son of the informant), PW-3 Shatrughan Baitha, PW-4 Sitaram Singh (informant/injured),



PW-5 Prabin Kumar Singh, PW-6 Pappu Singh and PW-7 Dr. B.K. Gupta.

10. Prosecution has relied upon following documentary evidence on record:-

*Ext. 1- Signature of Sitaram Singh on carbon copy of complaint petition.*

*Ext. 2 – Injury Report prepared by Dr. B.K. Gupta.*

11. Defence has not produced any oral or documentary evidence in his support. However, defence of the appellants as gathered from the line of cross-examination of prosecution witnesses as well as from the statement of the accused under Section 313 of the Cr.P.C. is that of total denial.

12. After hearing the parties, the learned trial court convicted the appellants as indicated in the 6<sup>th</sup> paragraph of the judgment.

13. Following submissions have been made on behalf of learned Amicus Curiae for the appellants.

14. Learned *Amicus Curiae* for the appellants has submitted that the entire prosecution case is full of



material contradictions and infirmities and the learned trial court has failed to properly appreciate the evidence on record, resulting in grave miscarriage of justice. It is submitted that there is an unexplained delay of four days in lodging the complaint. The prosecution has not provided plausible explanation for such delay, which creates serious doubt about the authenticity of the prosecution story and indicates the possibility of deliberation, consultation and false implication. It is further submitted that the Investigating Officer has not been examined. In view of serious disputes regarding the place of occurrence, non-examination of the Investigating Officer is fatal to the prosecution case. It is submitted that the statements of prosecution witnesses suffer from material contradictions with regard to the place of occurrence; the nature and the part of body on which injuries were caused; the treatment allegedly given to the injured and the presence of witnesses at the spot. It is submitted that PW-3, who is the most crucial witness for the prosecution, has not supported the prosecution version. The hostility of PW-3 demolishes the gravamen of the prosecution case, and no conviction can be sustained on the basis of the testimony of remaining interested witnesses. It is submitted that the medical evidence does not



support the prosecution case. The alleged X-ray report has neither been proved nor exhibited in accordance with law, rendering the medical evidence unreliable and incapable of corroborating the ocular version. It is submitted that the parties admittedly have a pre-existing land dispute. This prior enmity provides a strong motive for false implication, which has not been duly considered by the learned trial court. It is lastly submitted that the impugned judgment is cryptic and unreasoned. In the light of aforesaid facts and circumstances of the case, the impugned judgment of conviction is not sustainable in the eye of law and is fit to be set aside.

15. Learned A.P.P. for the State has submitted that the informant is the victim of the present case and has stated how he sustained injuries in the alleged occurrence and injuries have also been corroborated by the doctor. Other witnesses have also supported and corroborated the prosecution story. The learned A.P.P. for the State submitted that on 17.07.2003, a petition under Section 311 of the Cr.P.C. was filed by the accused persons seeking recall of PW-3, Satrugan Baitha, for further cross-examination and the said petition stands allowed by the trial court vide order dated 22.07.2003. PW-3 is a material and competent witness, yet he



was declared hostile during examination-in-chief and did not support the prosecution version. Despite being the owner of the ass allegedly used in the occurrence, he denied the prosecution story. Learned APP further submits that the judgment of conviction passed by the concerned court is justified and legal and no interference is required, particularly in the circumstance that the appellants have already been granted the benefit of probation under the Probation of Offenders Act.

16. The question which arises for consideration is:-

*“Whether the prosecution has been able to prove its case under Section 324 of the IPC beyond reasonable doubts or not?”*

17. I have perused the impugned judgment and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

18. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.



19. PW-1/ Amar Singh at para 2 has stated that the injured/victim was treated at Rivilganj Hospital on the alleged date of occurrence. However, on the same point, PW-4 (informant) stated in paragraph 1 that he was treated at Sadar Hospital, Chhapra. In this way, with regard to the place of treatment, the statements of PW-1 and PW-4 are quite contradictory. Further, PW-1 in para 11 has stated that he caught hold of the *bhala* as a result of which *bhala* did not hit the chest of victim. However, at para 12 attention has been drawn regarding catching hold of *bhala* to which he has stated that he had not told *daroga ji* that he had caught hold of *bhala* but as the Investigation Officer has not been examined in the case, the appellants have been prejudiced due to non-examination of I.O. as relevant contradiction in evidence of witness could not be taken on the said point. In this way, on the aforesaid point, the deposition of PW-1 regarding the manner of assault is quite inconsistent. Further, PW-1 stated in para 6 that the house of appellant no.1 Jawahir Singh is situated at a distance of 10 feet east to the house of Sitaram Singh. There was no land of other persons in between the houses of the informant and appellant no. 1 Jawahir Singh, but in paragraph 10 he deposed that in front of Jawahir



Singh's house, there is an east-west public road about 3-4 feet wide, which creates inconsistency regarding the place of occurrence. PW-1 has stated in para 10 that the place of occurrence was the 3-4 feet wide road situated in front of the house of appellant no. 1/ Jawahir Singh. On the other hand, PW-4, in paragraph 8 of his deposition, stated that the place of occurrence was on the road situated in front of the door of Baban Singh. Therefore, there is a clear and material contradiction between the statements of PW-1 and PW-4 on the point of place of occurrence. PW-1 has stated that the injured was treated at Rivilganj Hospital. Further, PW-4 (the informant) has stated that the injured was treated at Sadar Hospital, Chapra. In this way, on the point of treatment, the statements of PW-1 and PW-4 are quite inconsistent and contradictory.

20. PW-2/ Arun Kumar, who is the son of the informant, stated in paragraph 1 that at the time of the occurrence he was inside his house. However, PW-4 stated in paragraph 1 that his son Arun Kumar (PW-2) was with him when he went to the place of occurrence. Thus, the statements of PW-2 and PW-4 are contradictory with respect to the presence of PW-2 at the place of occurrence, which creates



serious doubt about the prosecution version. Further PW-2 stated in paragraph 3 of his evidence that appellant no. 2, Chandrama Singh, was armed with a bhala and attacked with the intention to kill the informant and his father jerked the bhala with his right hand, causing an injury to the left hand. In the meantime, appellant no.1 Jawahir Singh brought an iron rod from his house and gave a blow, which hit the left shoulder of informant/PW-4. However, the informant (PW-4) himself categorically stated in paragraph 1 of his evidence that he sustained injuries on his right hand and right shoulder. In this way, the statement of PW-2 and PW-4 is quite contradictory on the crucial point of place of injury. PW-2 has categorically admitted in para 16 of his deposition that the police was not informed about the occurrence. This admission clearly establishes that immediately after the alleged occurrence, no report was made to the police. Such conduct of the informant casts a serious doubt on the authenticity of the prosecution version. PW-2 has stated that the informant received injuries on the left hand and left shoulder, but PW-4 (informant) has stated that he himself received injuries on the right hand and right shoulder. In this way, the statement of PW-2 is inconsistent with the statement of PW-4, who is the



victim. PW-2's statement is also contradictory on the point of his presence at the time of occurrence. At one point, he stated that he was present at the place of occurrence, but in paragraph 1 he stated that at the time of occurrence he was inside his house.

21. PW-3 Satrudhan Baitha, whose name has been mentioned in the FIR and whose ass was allegedly being used for carrying the soil at the relevant time, is the most competent witness to prove the genesis of the occurrence, but he has not supported the prosecution case on the point of assault, which creates a serious doubt on the prosecution story and makes the prosecution story highly doubtful.

22. PW-4, Sitaram Singh, who is the informant as well as victim of the case, has stated in paragraph 10 of his testimony that upon being assaulted he fell down, and at that time Arun Singh, Pappu Singh (PW-6), and Arun Kumar Singh (PW-2) reached the place of occurrence. However, the names of these witnesses have not been mentioned in initial version of prosecution story and he has improved upon the said version by adding the names of said persons. In this way, the presence of the aforesaid witnesses at the place of occurrence is doubtful. Further, PW-



4 (informant) stated in paragraph 1 of his deposition that he was treated at Sadar Hospital, Chapra. However, on the same point, PW-1/Amar Singh in para 2 has stated that the injured/victim was treated at Rivilganj Hospital on the alleged date of occurrence. In this way, with regard to the place of treatment, the statements of PW-1 and PW-4 are quite contradictory and divergent. Further, the informant (PW-4) has categorically stated in paragraph 1 of his evidence that he sustained injuries on his right hand and right shoulder. However, PW-2, in paragraph 3 of his evidence, has stated that the informant sustained injuries on his left hand and left shoulder. In this way, the testimonies of PW-2 and PW-4 are quite contradictory on the crucial point regarding the place of injury.

23. PW-5/ Pravin Kumar Singh and PW-6/ Pappu Singh are witnesses of the occurrence; however, they have stated that they have no knowledge of the alleged assault. Consequently, they have been declared hostile.

24. PW-7/ Dr. B.K. Gupta has examined Sitaram Singh (informant) on 18.05.2005 in injured condition and has found the following injuries:

(i) Lacerated wound 2" x 1/3" x skin deep on



right from arm.

(ii) Bruise on back 2" x ½"

(iii) Pain, swelling and tenderness on right clavicular region. X-ray from Uphar X-ray Chapra dated 06.07.2001 found fracture in middle clavicular region right side.

24.1 PW-7 has opined that injury nos. 1 and 2 were simple in nature, whereas injury no. 3 was grievous. However, the opinion regarding grievous injury was based solely on an alleged X-ray report said to be of Uphar X-ray Centre. Admittedly, the said X-ray report has neither been produced nor exhibited on record. PW-7 has further stated in paragraph 2 of his cross-examination that he had not advised X-ray examination and the injured himself got his shoulder X-rayed without any medical advice and subsequently produced the report before him on 30.07.2001. The doctor has also admitted that while assessing the age of the injury, he did not record the colour of the bruise. In this way, the medical opinion regarding grievous injury remains unsupported.

25. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.



26. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

*"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."*



27. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

28. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."

29. From perusal of evidence of prosecution witnesses, it is evident that PW-1 has stated that the injured was treated at Revelganj Hospital, whereas PW-2 has stated that the injured was treated at Chapra. Further, PW-4 (the informant) has stated that the injured was treated at Sadar Hospital, Chapra. In this way, on the point of treatment, the



statements of PW-1, PW-2, and PW-4 are quite inconsistent and contradictory. On the point of the place of occurrence, there is a contradiction in the versions of PW-1 and PW-4, which is not corroborated by any prosecution witness. If the place of occurrence is not proved, it is fatal to the prosecution case, especially when the Investigating Officer has not been examined on the said point. The prosecution has miserably failed to prove the place of occurrence. PW-4 has stated in paragraph 1 that he went to inquire about the matter and his son Arun Kumar Singh (PW-2) came behind him, but he further deposed that after falling he sustained injuries, Amar Singh, Arun Kumar Singh (PW-2) and Pappu Singh came there. However, in the FIR there is no specific mention as to who was present at the time when the occurrence took place. In this way, PW-1 and PW-2 have falsely claimed that they witnessed the occurrence. PW-2, in paragraph 16, has stated that the police were not informed about the occurrence, which clearly shows that the informant did not inform the police about the incident and lodged the complaint before the learned CJM after a lapse of four days. It has already been admitted by the informant that there was a land dispute between the parties, and in cases of land disputes, facts are generally



exaggerated to make the offence graver. The injury report of the doctor appears to be collusive in nature, as although the doctor examined the injured on 05.07.2001, the final injury opinion was given on 30.07.2001. This clearly indicates that there was delay at multiple stages on account of deliberation, and the prosecution has developed a suitable story to falsely implicate the appellants in the present case. Even the trial court has not mentioned how the witnesses were found reliable to reach the conclusion of conviction. In the present case, the occurrence took place on a 02.07.2001 and it has come to light in the deposition of the prosecution witnesses that the police was not informed. Without availing the remedy of lodging a police case, the complainant resorted to file a court complaint, which appears to be a calculated device to frame allegations against the appellants. On the point of the place of occurrence, the statement of the Investigating Officer was essential, but in the present case the Investigating Officer has not been examined. I.O. is the competent witness to point out the boundaries of the place of occurrence and the authenticity of the prosecution case depends upon how the place of occurrence is established. In the present case, on the point of the place of occurrence , the statements of the



prosecution witnesses are inconsistent, particularly when compared with the testimony of PW-4. There is no independent witness to corroborate the place of occurrence, which is fatal to the prosecution case. In no paragraph of the judgment has it been mentioned how the witnesses were reliable or how credibility was reposed in their statements, no reasons have been recorded by the trial court. The trial court has merely reached the conclusion that the appellants are guilty under Section 324 of the I.P.C. Further, the statement of PW-4 (the informant) is contradictory with regard to the medical treatment allegedly received. He stated that he was treated at Sadar Hospital, Chapra, whereas PW-1 stated that the treatment was provided at Revelganj Hospital. The statements of PW-4 and PW-1 regarding the place of occurrence, which is a vital aspect of the prosecution case, is also quite contradictory. In this way, the informant, who claims to be the victim, has given inconsistent statements on the vital aspect of the story of prosecution. In light of the facts and circumstances of the case, his testimony is neither tenable nor sustainable. Although he sustained injuries on 02.07.2001 but the complaint was filed after a delay of four days. PW-1 has not categorically stated that the occurrence was reported



to the police. Instead of lodging a police case, the informant preferred to file a complaint case and in that situation due deliberation cannot be negated. PW-3/ Satrugan Baitha, whose ass was allegedly hired for carrying soil, has not supported the prosecution case even during his examination-in-chief. Additionally, the manner in which the injury report was prepared raises serious doubts. The doctor did not advise an X-ray, yet the informant himself proceeded for an X-ray examination. The final injury report was prepared on 30.07.2001 which is much later than the initial medical examination dated 05.07.2001. From the initial version of the prosecution story to the completion of the injury report, all the steps are inferring that some deliberation has been made. Further, PW-4, who is victim and the informant, has narrated the manner of occurrence by stating that he was levelling his sahan (courtyard) and for the purpose of carrying soil, an ass was being used which belongs to PW-3/ Satrugan Baitha, and the soil was being transported through a public lane passing adjacent to the houses of the accused persons including informant. According to the informant, the accused persons wrongfully obstructed the passage of the ass through the said public lane, which led to a verbal altercation between



the parties. During the course of the altercation, the informant was assaulted and sustained injuries. The alleged occurrence is said to have taken place on 02.07.2001; however, the complaint was filed on 06.07.2001, after delay of four days and no plausible explanation for this delay has been offered by the informant in the initial version of the prosecution story. Moreover, PW-2 has categorically admitted in paragraph 16 of his evidence that the police was not informed about the occurrence. Such unexplained delay in setting the criminal law into motion casts serious doubt upon the authenticity and credibility of the prosecution case. In the initial version of the prosecution story, the informant did not specifically name any person who was present at the place of occurrence. However, during the course of adducing evidence before the court, he specifically mentioned several names as being present at the place of occurrence. In this way, the informant has subsequently introduced the names of persons who were not narrated in the initial version of the prosecution story. Such subsequent introduction of names, which find no mention in the initial version of the prosecution case, amounts to a clear improvement and casts serious doubt on the credibility of the informant's testimony. It is cardinal principle of criminal



jurisprudence that that the prosecution has to prove its case beyond reasonable doubt. The evidence of all the factual witnesses, namely PW-1 to PW-6, are neither trustworthy nor convincing and the place of occurrence has also not been proved, as discussed in foregoing paragraphs. Hence, the contention of learned *Amicus Curiae* is quite tenable and sustainable in the light of aforesaid facts and circumstances of the case. In this way, the prosecution has failed to prove the case beyond reasonable doubt.

30. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, the impugned judgment of conviction is hereby set aside and this appeal stands allowed.

31. Since, impugned judgment of conviction is hereby set aside, this appeal stands allowed and appellants are acquitted, the very foundation of probation order disappears. Consequently, the probation bond automatically loses its legal basis and the bond becomes infructuous and the accused/appellants stand discharged from the liability of



probation bond.

32. The interlocutory application, if any, also stands disposed of.

33. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

34. The records of this case be also returned to the concerned trial court forthwith.

35. Before parting with the judgment, I appreciate the legal assistance rendered by Ms. Priya, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (rupees five thousand) to Ms. Priya, learned *Amicus Curiae*, as consolidated fee for the legal assistance rendered by her, within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

Nilmani/-

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