IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.132 of 1996

CNR No. BRHC010354401996

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1. Vijai Kumar Rai @ Vijay Kumar,
2. Prabhu Narain Rai,

Both son of Late Satya Narain Rai, resident of village Bhawnathpur, Police Station Akbarnagar, District Bhagalpur, at present residing at Mohalla New Punaichak, Police Station S. K. Puri, District Patna.

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

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Arising out of the judgment of conviction, dated 26.03.1996, and the order of sentence, dated 27.03.1996, passed, by Sri J. P. Paul, 5th Additional Sessions Judge, Patna, in Sessions Trial No. 208 of 1986/08 of 1994, arising out of Sri Krishnapuri Police Station Case No. 96 of 1990, dated 25.02.1980.

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur
		Mr. Rajesh Kumar
		Mr. Priyanshu Ranjan
		Mr. R. Pranshu Singh
For the Respondent/s	:	Mr. Sujit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR

JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 30-10-2026

The present appeal has been preferred against the judgment of conviction, dated 26.03.1996, and the order of sentence, dated 27.03.1996, passed by the learned Additional Sessions Judge–V, Patna, in Sessions Trial No. 208 of 1986/08 of 1994, arising out of Kotwali Police Station Case No. 96 of 1980 (sic., Sri Krishna Puri P.S. Case No. 96 of 1990, in the judgment),

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whereby the appellant no. 1, namely, Vijay Kumar Rai, was convicted for the offence punishable under Section 302 of the Indian Penal Code; whereas the appellant no. 2, namely, Prabhu Narayan Rai, was convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code. Pursuant to their conviction, the appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹5,000/- each, and in default of payment of fine, to undergo rigorous imprisonment for one year. The amount of fine, so realized, was directed to be paid to Nirmala Devi, widow of the deceased.

2. The prosecution case, as unfolded by the informant, Gokul Yuvraj Lal, recorded by the police officials of Sri Krishnapuri Police Station, on 25.02.1980, at about 11 AM, is that Shailendra Kumar Pandey, along with his two brothers, namely, Dharmendra Pandey and Buchi, was occupying the lower portion of the house as a tenant; whereas Rai Ji and Vijay were tenants in the upper portion of the house. It is alleged that at about 7:30 AM on the same date, the informant's mother was sweeping the verandah of the house when Shailendra Kumar Pandey came out of his room and objected to the sweeping, stating that the dust was flying, upon which the informant's mother said that she was

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sweeping slowly and he should not have objected to it. Thereupon, Shailendra Kumar Pandey started abusing her. On hearing the abuses, the informant and his father went there and asked him not to abuse her. In the meanwhile, Dharmendra Pandey came downstairs carrying a mosquito-net rod, while Vijay and his elder brother, Rai Ji, also came downstairs armed with rods, sticks and other articles, and Dharmendra Pandey assaulted the informant's father with a stick two or three times, Rai Ji (Prabhu Narayan Rai) also assaulted him with an iron rod, as a result of which informant’s father sustained injuries on his head, ribs and back. On seeing his father being assaulted, the informant intervened and attempted to take him away from the place of occurrence, but he was assaulted on his hand with a stick, as a result of which he sustained bleeding injury in his finger. Thereafter, his sister, Nirmala Devi, came in their rescue, but she was also assaulted with a stick, causing bleeding injury to her palm.

3. It is further alleged that on hearing the commotion, the informant's brother-in-law (jija), Purushottam Prasad, came to the place of occurrence and attempted to take his wife away from there, Vijay, who was armed with a mosquito-net rod, struck him forcefully on the head, as a result of which, Purushottam Prasad sustained injury on his head and became unconscious. Thereafter,

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the informant and his family members started crying. Upon hearing the noise, several persons from the neighbourhood arrived at the place of occurrence and saw the accused persons carrying sticks and rods. On seeing the people, the accused persons allegedly threw away the sticks and rods and fled away from the place of occurrence. The accused persons occupying the lower portion of the house closed their rooms and fled, whereas Rai Ji, who was residing in the upper portion, left his room open and fled from the place. The informant further stated that, as all the members of his family had sustained injuries and the condition of his brother-in-law had become serious, they did not immediately proceed to the police station and instead went to big hospital. There, the doctor administered blood and fluids to his brother-in-law on account of which the informant and his family members were delayed at the hospital. At that time, his brother-in-law was still unconscious. The informant thereafter left one person at the hospital to attend to him and returned to his residence, where he found the police. He then narrated the entire occurrence to the police. The informant further stated that he had brought with him a towel and vest belonging to his brother-in-law from the hospital.

4. The reason behind the occurrence is that the tenants were residing without their families and their conduct and

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character were not good and his family members had, on several occasions, objected their conduct.

5. On the basis of the aforesaid fardbayan, Kotwali Police Station Case No. 96 of 1980, dated 25.02.1980, was registered against the appellants, along with co-accused persons, for the offences punishable under Sections 341, 323, 325 and 34 of the Indian Penal Code. Upon registration of the case, the police proceeded with the investigation.

6. It is pertinent to mention that the informant's brother-in-law, Purushottam Prasad, succumbed to his injuries at about 6 PM on the same day, i.e., on 25.02.1980, while undergoing treatment at the hospital. Thereafter, an inquest report was prepared and his dead body was sent for post-mortem examination.

7. Upon completion of the investigation, the police submitted Charge-Sheet/Final Form No. 11, dated 08.06.1980, against the appellants and other co-accused persons for the offences punishable under Sections 341/323/325/302/34 of the Indian Penal Code. The learned Chief Judicial Magistrate, Patna, took cognizance of the offences against the appellants and co-accused persons and subsequently, the case was committed to the Court of Sessions for trial on 17.03.1986.

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8. On 31.08.1988, the learned Additional Sessions Judge-X, Patna, framed charges against the appellant Vijay Kumar Rai under Section 302 of the Indian Penal Code and against the appellant Prabhu Narayan and the co-accused persons under Section 302 read with Section 34 of the Indian Penal Code. The charges were read over and explained to the them in Hindi, to which they pleaded not guilty and claimed to be tried.

9. The prosecution, in order to substantiate its case, has examined as many as nine witnesses and exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned herein under in tabular form:

List of Prosecution Witnesses :

P.W.	Name of witness	Description
1.	Jhalia Devi	Mother of the Informant
2.	Saryug Lal	Father of the Informant
3.	Gokul Yuvraj Kumar Lal	Informant
4.	Nirmala Devi	Sister of the Informant
5.	Dr. Ibha Hazari	Doctor who treated PW3 and PW4
6.	Girja Prasad Singh	Formal Witness
7.	Ram Nandan Prasad Singh	Tenant of the house, declared hostile
8.	Baiju Lal	Formal witness
9.	Dr. Om Prakash	Doctor who treated the deceased

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List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date/proved by
1	Signature of Informant on Fardbayan	28.01.1989/PW 3
2	Injury report of Informant	18.02.1989/PW 5
2/1	Injury report of Nirmala Devi	18.02.1989/PW 5
3	Letter written and signed by SHO Dinesh Prasad	18.02.1989/PW 6
4	Challan	23.02.1989/PW 6
5	Entry in Malkhana Register by ASI Sri S. D. Ram	23.02.1989/PW 6
6	Writing of Fardbeyan and signature of ASI, Sri krishnapuri Police Station	02.08.1989/PW 8
7	Formal FIR	02.08.1989/PW 8
2/2	Injury report of Purushottam Prasad (deceased)	09.07.1991/PW 9
8	Bed-Head Ticket	09.07.1991/PW 9

10. After closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 on 07.05.1990, in which the appellants denied all incriminating circumstances appearing

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against them in the prosecution evidence and stated that they have been falsely implicated in the present case.

11. Mr. Ajay Kumar Thakur, learned Counsel for the appellants, argued that the judgment of conviction is against the weight of evidence and has been rendered on mere presumption of guilt. It is contended that the prosecution has failed to prove its case beyond reasonable doubt inasmuch as the testimonies of the prosecution witnesses suffer from material contradictions and inconsistencies inasmuch as the learned Trial Court failed to properly appreciate the evidence available on record and recorded the conviction without considering the material circumstances emerging from the prosecution evidence itself.

12. Learned counsel further submits that the prosecution has failed to establish the place and manner of the alleged occurrence. The material witnesses have not a consistent and reliable account regarding the manner in which the occurrence took place.

13. The Investigating Officer has not been examined, thereby depriving the appellant of an effective opportunity to confront the prosecution witnesses with their previous statements and material contradictions. Due to the non-examination of the Investigating Officer, the inquest report could not not be proved.

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The place of occurrence has also not been proved by the Investigating Officer. As such, the non-examnation of the Investigating Officer has prejudiced the case of the appellants.

14. Further, the doctor, who conducted the post-mortem examination of the deceased Puruhottam Prasad, has also not been examined, due to which the post-mortem report could not be proved. In the absence of proof of reliable medical evidence, the prosecution has failed to establish the nature and cause of death and whether the injuries were caused in the manner alleged.

15. It is also significant that the prosecution has failed to establish any reliable evidence showing that the appellants assaulted the deceased with a sharp-edged weapon. The prosecution has also failed to examine the doctor who conducted the post mortem on the dead body of the deceased.

16. These circumstances were material and required proper consideration by the learned Trial Court, but these aspects have been completely overlooked while recording the conviction.

17. It is further submitted that the very same set of prosecution evidence was relied upon against the other co-accused, who were acquitted. The learned Trial Court was therefore required to carefully examine whether the same set of evidence

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could, without any legally sustainable distinction, constitute proof beyond reasonable doubt against the present appellants.

18. Lastly, it is respectfully submitted that the failure of the prosecution to establish the genesis, nature and manner of occurrence strikes at the very root of its case. When the foundational story of the prosecution itself is doubtful, the subsequent attribution of the alleged overt act to the appellant cannot safely be relied upon for recording a conviction.

19. The cumulative effect of the non-examination of the Investigating Officer and the doctor, who conducted the post-mortem examination, non-proof of the post-mortem and the inquest reports, absence of reliable medical evidence connecting the weapon used by the appellants, material contradictions in the prosecution evidence and acquittal of the co-accused persons creates a clear and substantial doubt over the tetimonies of the prosecution witnesses. The appellants are therefore entitled to be accorded at least benefit of doubt and the impugned conviction and sentence deserve to be set aside.

20. In support of his submissions, learned Counsel for the appellants has placed reliance on the following decisions of the Hon’ble Supreme Court:-

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(i) **Munna Lal v. State of Uttar Pradesh**, reported in **(2023) 18 SCC 661**;

(ii) **State of Haryana v. Ram Singh**, reported in **(2002) 2 SCC 426**;

(iii) **Niranjan v. State of West Bengal**, reported in **(2010) 6 SCC 525**;

(iv) **Bir Singh v. State of UP**, reported in **(1977) 4 SCC 420**;

(v) **Jaikam Khan v. State of UP**, reported in **(2021) 13 SCC 716**;

(vi) **Kanhai Mishr vs. State of Bihar (AIR 2001 SC 1113)**;

(vii) **Nala Bothu v. State of AP**, reported in **(2014) 12 SCC 261**;

(viii) **Anand Chogule vs Sidarai Chogule**, reported in **(2019) 8 SCC 50**;

(ix) **Parshuram v. State of MP**, reported in **(2024) 12 SCC 322**;

(x) **Syed Ibrahim v. State of AP**, reported in **(2006) 10 SCC 601**.

21. Per contra, learned Additional Public Prosecutor submitted that the judgement of conviction and the order of

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sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It has been submitted that the prosecution witnesses have remained consistent during the course of trial and there does not remain any lacuna in the case of the prosecution. The minor inconsistencies in the testimony of the witnesses cannot be a ground to reject their evidence as a whole.

22. It is further submitted that the testimony of the witnesses stands corroborated in material particulars by the prosecution evidence and the offences alleged against the appellants appears to be serious in nature inasmuch as the prosecution witnesses examined have duly supported its case.

23. Learned Additional Public Prosecutor finally argued that guilt of the appellants has been satisfactorily proved by the evidence adduced during the trial and there is no infirmity in the judgement of conviction passed by the learned trial Court.

24. I have heard learned Counsel for the parties and have perused the materials available on record.

25. It would be apposite to discuss the oral/documentary evidence as available on record to re-appreciate the evidence for just and proper decision of the present appeal.

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26. Out of the nine prosecution witnesses, PW 1 is the mother of the informant, PW 2 is the father of the informant, PW 3 is the informant of this case and one of the injured also, PW 4 is the sister of the informant and one of the injured, PW 5 is the doctor, who examined the informant and his sister, PW 6 and PW 8 are the formal witnesses, PW 7 is one of the tenant of the house, but was declared hostile by the prosecution and PW 9 is the doctor, who treted the decesed when he weas admitted in the hospital.

27. PW 6, Girja Prasad Singh, in his examination-in-chief, has deposed that the prosecution officer has demanded the seizure list and material exhibit in connection with Sri Krishnapuri Police Station Case No. 96 of 1980, but on inquiry, he found that the seizure list and the material exhibit were not available in the police station. According to the material exhibit challan, the same had been sent to the Court Malkhana on 05.02.1982. He produced a letter in the handwriting of the then Officer-in-Charge, Dinesh Prasad Singh, which bears his signature also.

28. In the cross-examination, this witness (PW 6) has deposed that when material exhibits are kept in the police Malkhana, their entry is made in the Malkhana Register. He further deposed that he could not say whether the material exhibits mentioned in the challan were in packets or were kept open.

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29. PW 8, Baijulal, in his examination-in-chief stated that the fardbeyan was in the handwriting of the Sub-Inspector of S.K. Puri, and bore his signature also. He deposed that he was acquainted with the handwriting and signature of Sri Puri and he identified the same. He further stated that the formal First Information Report was in the handwriting of the Officer-in-Charge of Kotwali Police Station and he identified his signature and handwriting .

30. In his cross-examination, PW 8 has deposed that the First Informawtion Report had not been written before him.

31. PW 7, Ramnandan Prasad Sinha, is one of the tenant of the house and is a seizure list witness. He, in his examination-in-chief, has deposed that at about 12 noon, certain articles were seized by the police in his presence and he put his signature on the seizure list. He stated that he had not seen any dead body. He denied having stated before the police that, on coming into the courtyard on hearing the commotion, he had seen the assault taking place and that Dharmendra, with the assistance of his brother Sailendra, was assaulting Saryug Lal, Jhalia, Gokul and Nirmala with a mosquito-net stick holding in his hand, and that when the wife of Purshottam Prasad came there in the meantime, she was also assaulted by them. He further denied having stated

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before the police that Prabhunarayan, Vijay and Sushil had also come from upstairs and joined in the assault. He also denied having stated before the police that when Purshottam Prasad was trying to take his wife away from the quarrel, Vijay struck him on the head with a mosquito-net stick. He denied that he had concealed the true facts in collusion with the accused and had given a false statement.

32. This witness was declared hostile at the instance of the prosecution.

33. PW 5, Dr. Ibha Hazari, is the doctor and at the relevant time, she was posted as Medical Officer-in-Charge of the New Gardiner Road Dispensary and this witness had exmined injured Gokul Lal, son of Saryug Lal, on 25.02.1980, and found one lacerated wound measuring ½" × ⅛" on the right index finger, caused by hard and blunt substance, possibly by a mosquito curtain stick, and the injury was simple in nature.

34. This witness (PW 5) had also examined Nirmala Devi, wife of Purshottam Prasad, and found one bruise with a scratch measuring about ⅛" in length between the little finger of her right hand, caused by hard and blunt substance, possibly a mosquito-net stick, and the injury was simple in nature.

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35. In cross-examination, this witness (PW 5) has deposed that the injuries are superficial and might have been manufactured.

36. PW 9, Dr. Om Prakash, at the relevant time, was posted in the Emergency of the PMCH and on 25.08.1980, he examined Purshottam Prasad, son of Saryo Prasad, vide P.R.S. No. 1015, and found the following injuries:

(i) an incised wound on the scalp measuring 4" × 1" x bone deep;

(ii) an incised wound on the left wrist measuring 1¼" × ¼" x skin deep.

37. This witness has deposed that the first injury was grievous in nature, whereas the second one was simple in nature, and both injuries have been caused by a sharp cutting weapon.

38. In the cross-examination on behalf of accused-appellants Prabhunarayan and Vijay Kumar, this witness (PW 9) deposed that an iron rod was a hard and blunt substance and the injuries found on the body of the injured were not caused by an iron rod.

39. From the evidence of the doctor (PW 9), it is crystal clear that the decesed sustained injurie by a sharp cutting weapon and not by hard and blunt substance like rod.

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40. Keeping in vew the above finding of the treating doctor, I would now deal with the eye-witnesses to the occurrence, who are closely related to each other.

41. PW 1, Jhalia Devi, is the mother of the informant. She, in her examination-in-chief, has deposed that about eight years ago, at about 6:00 to 7:00 A.M. while she was sweeping the courtyard of her house, Shailendra Kumar Pandey, her tenant, was washing his face, and told her that dirt had fallen upon him and started abusing her. Shailendra Kumar Pandey called his brothers, Dharmendra Pandey and Buchi Pandey, who came there with mosquito-net sticks, and Shailendra Kumar Pandey exhorted them to assault. Thereafter, Buchchi and Dharmendra assaulted her with mosquito-net sticks, whereupon she raised alarm for help. She further deposed that on hearing her alarm, her husband, Saryug Lal (PW 2), her son Gokhul @ Raj Kumar (PW 3) and her daughter, Nirmala Devi (PW 4) came to rescue her, but Shailendra, Dharmendra and Buchi assaulted her husband, son and daughter. In the meantime, Prabhu Narayan and Vijay Kumar came from the upper floor; Prabhu narayan was carrying an iron rod and Vijay Kumar was carrying a mosquito-net stick. Sushil Kumar Singh also came there carrying a knife. This witness further deposed that Dharmendra Kumar overturned the burning stove lying in the

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courtyard on the body of her husband and Dharmendra and Buchi also assaulted her husband and son.

42. This witness (PW 1) further deposed that her son-in-law, Purshottam Prasad, who was washing his face, outside came there on hearing the commotion. Prabhu Narayan and Vijay Kumar assaulted Purshottam Prasad together, Prabhu Narayan with an iron rod and Vijay Kumar with a mosquito-net stick, as a result of which Purshottam Prasad sustained injury on his head by iron rod, upon which Purushottam Prasad fell down at the spot and became unconscious and there was profuse bleeding. Sushil Kumar Singh, however, remained standing there with knife. Thereafter, Prabhu Narayan, Vijay Kumar and Sushil Kumar Singh went to their room on the second floor,left the room open and fled by jumping over the wall. Shailendra, Dharmendra and Buchi also locked their room and fled away. They also left the danda and iron rod there. This witness along with others took the son-inlaw to the hospital where her son-in-law died in the PMCH.

43. In the cross-examination, PW 1 deposed that she had seen Prabhu Narayan assaulting her son-in-law with an iron rod and Vijay assaulting him with a mosquito-net stick from the front. PW-1 further stated that she had not seen anyone assaulting her son-in-law with a sharp-edged weapon and denied the suggestion

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that Prabhu Nnarayan or Vijay had assaulted her son-in-law with any sharp-edged weapon. This witness (PW 1) denied that she had given a false statement. She further deposed that there was no visiting relationship between their families, they used to talk to each other and there was no quarrel, dispute or previous enmity between them. PW-1 further deposed that the Investigating Officer had found three mosquito-net sticks and one iron rod there. PW-1 denied the suggestion that she had not sustained any injury and stated that she had sustained minor injuries. She further stated that she had not got herself medically examined by any doctor.

44. PW 2, Saryug Lal, is the father of the Informant. He, in his examination-in-chief, deposed that on 25.02.1980, at about 6:00 to 6:30 A.M., his wife was sweeping the courtyard. Shailendra Kumar Pandey objected to her sweeping, stating that the dust was falling upon him. Thereafter, an altercation and exchange of abuses took place between them. Shailendra Kumar Pandey called his two brothers, namely, Dharmendra Kumar Pandey and Narender Kumar Pandey @ Buchi, and exhorted them to assault her. Dharmendra and Narender came there carrying mosquito-net sticks and assaulted this witness. This witness attempted to stop the blows with his both hands, as a result of which the skin near the thumbs of both his hands was torn and his

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fingers also sustained injuries. This witness snatched the mosquito-net stick from Narender and threw it away.

45. This witness (PW 2) further deposed that Narendra picked up one of the small iron rods kept in the courtyard for construction of the house, and thereafter Dharmendra and Narender assaulted him with the same, as a result of which his head was injured and started bleeding. At that time, his wife raised an alarm and calling others to rescue. His daughter Nirmala, son-in-law Purshottam, and the tenants Ramesh Singh and Ramanand came there. The tenants residing on the upper floor, namely Prabhunarayan Rai and his younger brother Vijay, also came there, and all of them reached the courtyard. Some persons persuaded Shailendra Pandey to leave the house. PW 2 further deposed that his daughter and son-in-law, Purshottam, took Prabhu Narayan Rai and Vijay towards the staircase leading to the upper floor. Prabhu Narayan and Vijay assaulted Purushottam with an iron rod and a mosquito-net stick respectively. Purshottam sustained an injury on his head and fell down and became unconscious. Thereafter, the family members took him to the hospital. By that time, all five accused persons had fled from the place of occurrence. PW-2 took his son-in-law to Patna Medical College and Hospital, where

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treatment of both, this witness, and his son-in-law commenced, but at about 6:00 P.M., his son-in-law, Purshottam, died.

46. In the cross-examination, this witness (PW 2) deposed that none of the accused had assaulted his son-in-law with any sharp-edged weapon and he had not seen Prabhu Narayan or Vijay assaulting his son-in-law with any sharp-edged weapon. He further stated that he had received treatment at PMCH and denied the suggestion that the occurrence had not taken place in the manner disclosed by him, or his son-in-law had not been assaulted with an iron rod. He also denied that he had given a false statement. He stated that he could not tell the Court the reason why Prabhunarayan and Vijay had assaulted his son-in-law. He further stated that on the night of the occurrence itself, the police recorded his statement at his residence. He had stated before the police that Shailendra had called his two brothers, who came with mosquito-net sticks, and that after he snatched the mosquito-net stick from Narender, thereafter Narender picked up an iron rod lying in the courtyard and assaulted him. He had also stated before the police that thereafter both brothers assaulted him, as a result of which his head was injured. PW 2 stated that he had shown the iron rod lying in the courtyard to the daroga ji. There were four or five small iron rods lying there. The mosquito-net stick which he had snatched

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from Narender had been thrown by him in the courtyard, and he could not say whether the daroga ji had seized the same. He could not state how many blows by the rods or sticks had been inflicted upon him, as he had not counted them. He sustained injuries on both palms, the region of the thumbs, his head and both ribs. He had no injury on his legs. Blood had oozed out of his head and had stained his clothes. He had shown all his injuries to the doctor. His shirt was also stained with blood, but daroga ji did not take the shirt into custody. PW 2 further stated that some persons had also gone to Gardiner Road Hospital, but he did not know who were they. Seeing the serious condition of his son-in-law, he accompanied him to Patna Medical College and Hospital.

47. PW 3, the informant himself, in his examination-in-chief, deposed that the occurrence was of 25.02.1980, at about 6:30 to 7:00 A.M. At that time, he was present in his house. On hearing the alarm, he came to the courtyard and saw his mother sweeping the courtyard and Shailendra Kumar Pandey objected to the sweeping, stating that dust was falling upon him. Thereupon, Shailendra Kumar Pandey exhorted the others to assault her using filthy language. Immediately thereafter, Dharmendra Kumar Pandey, Narender Kumar Pandey, Prabhunarayan Rai, his brother Vijay Kumar Pandey and their friend Sushil Kumar Pandey came

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into the courtyard from upstairs. Dharmendra was carrying a mosquito-net stick, Prabhunarayan was carrying an iron rod, Vijay Kumar was carrying a mosquito-net stick and Sushil Kumar was carrying a knife. PW 3 deposed that while they were all in the courtyard, the accused persons started assaulting them. His father, Saryug Lal, was assaulted by Dharmendra, Prabhu Narayan and Vijay Kumar, as a result of which he sustained injuries on his ribs, head, hands and back. PW 3 himself sustained an injury on his right hand, but he could not see who had assaulted him. His sister, Nirmala, also came there and was assaulted, sustaining an injury on her right hand. On hearing the commotion, his brother-in-law, Purshottam Prasad, intervened and tried to pacify the accused persons and took Prabhu Narayan Rai, Vijay Kumar and their friend Sushil Kumar towards the staircase leading upstairs. When Purshottam Prasad was coming back downstairs, Prabhu Narayan, Vijay Kumar and Sushil Kumar were present there, Sushil Kumar having a knife pointed at Purshottom Prasad waist. Thereafter, Vijay Kumar and Prabhunarayan assaulted Purshottam Prasad, Prabhu Narayan with a mosquito-net stick and iron rod respectively, striking him on his head. As a result, Purshottam Prasad fell down and became unconscious and profuse bleeding started from the injury. Thereafter, Prabhunarayan, Vijay Kumar

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and Sushil Kumar went upstairs to their room. On seeing Purshottam Prasad lying injured, Shailendra, Dharmendra and Narender locked their room and went away. Prabhu Narayan, Vijay Kumar and Sushil Kumar left their room open and fled by jumping from the adjoining side. PW 3 stated that they took Purshottam Prasad to PMCH, where he died in the evening. PW 3 further stated that the police recorded his fardbeyan at his house. After the same was read over and explained to him, he found it to be correct and put his signature thereon.

48. In the cross-examination, this witness (PW 3) deposed that prior to the recording of his fardbeyan, Shailendra had instituted a criminal case on the same day against him, his father, his mother and his sister, alleging that they had assaulted him and thrown his belongings out of the house. He further deposed that he had not given any statement either at the police station or at the hospital. Though he had gone to the hospital, he had not gone to the police station and had returned from the hospital while his brother-in-law was still undergoing treatment. He himself had sustained some injuries, but neither had he shown his injuries nor received treatment at the PMCH; rather, he had been treated at Gardiner Road Hospital. PW 3 further stated that he had not seen his brother-in-law being assaulted with any sharp-

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edged weapon and had not seen any sharp-edged weapon in the hands of Prabhu Narayan or Vijay. PW 3 denied the suggestion that the occurrence had not taken place in the manner stated by him or that, out of fear of one tenant, he had falsely implicated another tenant. PW 3 further stated that before the arrival of the police, he had discussed the occurrence with his sister and others. At that time, about ten to fifteen persons were present there, out of whom four were eyewitnesses. One of them, Ramanandan Singh, had arrived in the middle of the occurrence,

49. PW 4, Nirmala Devi is the sister of the informant and one of the injured also. She, in her examination-in-chief, stated that the occurrence was of 25.02.1980, at about 6:30 to 7:00 A.M. When she came into the courtyard, she saw that her father, Saryug Lal, was being held by Shailendra Kumar Pandey, while Dharmendra Kumar Pandey and Narender Kumar Pandey were assaulting him. Her mother, Jhalia Devi (PW 1), raised an alarm. Ramesh Ji and Ramanandan came there and tried to separate the persons involved in the quarrel. PW 4 also intervened to separate them and in the process, she sustained injury on her left hand. When her husband Purshottam came from outside, Vijay and Prabhu Narayan assaulted Purshottam on his head with a mosquito-net stick and an iron rod respectively. After sustaining

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the blows, Purshottam fell down and started bleeding. The family members took him to the hospital, where he died in the same evening.

50. In the cross-examination, this witness (PW 4) deposed that she had not seen her husband being assaulted with any sharp-edged weapon. She had not seen any sharp-edged weapon in the hands of Vijay or Prabhunarayan and had not seen either of them assaulting her husband with any such weapon. She further deposed that her husband was not present at the beginning of the quarrel and had arrived after the initial quarrel had ended. When her husband arrived, Prabhunarayan and Vijay were on the staircase. She denied the suggestion that the occurrence had not taken place in the manner stated by her or that she had not witnessed the assault upon her husband. She further stated that she had not accompanied her husband to the hospital. She had deposed before the police that Shailendra was holding her father and Dharmendra and Narender were assaulting him. She had also stated before the police that, on her mother's raising an alarm, Ramesh and Ramanandan came and tried to separate the persons involved in the quarrel and that she sustained injury on her hand while attempting to separate them. She denied the suggestion that she had not made such a statement before the police regarding the

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assault by Dharmendra, Sailendra and Narender. She further denied the suggestion that she was naming these persons for the first time in Court after being tutored.

51. Having carefully re-appreciated the entire evidence on record, this Court proceeds to examine whether the prosecution has succeeded in proving the guilt of the appellants beyond reasonable doubt.

52. At the outset, it is necessary to observe that the prosecution case rests wholly upon the ocular testimony of PW 1 Jhalia Devi, PW 2 Saryug Lal, PW 3 Gokul Yuvraj Lal and PW 4 Nirmala Devi. All these witnesses are closely related to the deceased. However, where the witnesses are interested or closely related, their evidence requires careful scrutiny, particularly where the same is confronted with the medical evidence and the surrounding circumstances.

53. On such scrutiny, this Court finds that there are material inconsistencies in the evidence of the eye-witnesses regarding the precise manner in which the deceased was assaulted. PW 1 stated that Purshottam was assaulted on the staircase and that both Prabhu Narayan and Vijay Kumar were also on the staircase. According to her, the assault was made from the front. PW 2, however, stated that the assault upon Purshottam was made

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from behind. PW 3 also stated in cross-examination that Vijay Kumar and Prabhu Narayan assaulted Purshottam from behind. PW 4 similarly stated that the blows were given from behind, but according to her, Purshottam was standing on the ground immediately in front of the staircase whereas the assailants were on the staircase.

54. These discrepancies, if considered in isolation, cannot be regarded as variations arising from the lapse of time. However, they cannot be viewed in isolation in the present case because the medical evidence introduces a much more serious contradiction concerning the very nature of the weapon used and the injuries sustained by the deceased.

55. According to PW 1, PW 2, PW 3 and PW 4, the deceased Purshottam was assaulted by the present appellants with an iron rod and a mosquito-net stick. The attribution of the weapons is broadly consistent in their examination-in-chief, although the witnesses differ regarding the precise position from which the blows were delivered. PW 1 attributed the iron rod to Prabhu Narayan and the mosquito-net stick to Vijay Kumar. PW 2 also stated that Prabhu Narayan used an iron rod and Vijay Kumar used a mosquito-net stick. PW 3 and PW 4 similarly attributed the two weapons to the appellants.

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56. The medical evidence, however, stands on an entirely different footing. PW 9, who examined Purshottam Prasad at the PMCH Emergency Ward, found that the injuries were caused by sharp cutting weapon. Most importantly, when specifically cross-examined, PW 9 stated that an iron rod is a hard and blunt substance and that the injuries found upon the deceased were not caused by an iron rod.

57. Thus, the medical evidence does not merely disclose a minor variation from the ocular version, it directly contradicts the prosecution case regarding the weapon allegedly used by Prabhu Narayan. The prosecution witnesses say that Prabhu Narayan assaulted the deceased with an iron rod, whereas the medical witness states that the injuries were incised and were caused by a sharp cutting weapon and were not caused by an iron rod.

58. The contradiction becomes still more significant because none of the eye-witnesses have attributed the use of a sharp-edged weapon to the present appellants. On the contrary, PW 1 specifically denied having seen anybody assault Purshottam with a sharp weapon and denied that Prabhu Narayan or Vijay had used any sharp weapon. PW 2 similarly stated that no sharp weapon was used and that he had not seen either appellant assault Purshottam

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with a sharp weapon. PW 3 also categorically stated that he had not seen Purshottam being assaulted with a sharp weapon and had not seen any sharp-edged weapon in the hands of Prabhu Narayan or Vijay. PW 4 likewise stated that she had not seen any sharp weapon in the hands of either appellant.

59. Therefore, the medical evidence establishes injuries caused by a sharp cutting weapon. No prosecution witness explains who possessed or used the sharp weapon which, according to the doctor, caused the injuries. There is also no evidence connecting any sharp-edged weapon with either of the appellants.

60. The second injury found by PW 9 was an incised wound on the left wrist. This injury has not been satisfactorily explained by the prosecution. None of the eye-witnesses has stated that either Vijay Kumar or Prabhu Narayan caused an injury to the wrist of Purshottam with a sharp weapon. The prosecution has also not brought on record any evidence explaining the circumstances in which this incised injury was sustained. The absence of such explanation assumes significance because the prosecution relies upon the same occurrence as the cause of death.

61. More importantly, even assuming that an iron rod and mosquito-net sticks were seized during investigation, there is no medical or scientific evidence connecting those articles with the

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injuries found upon Purshottam. The medical witness has specifically excluded the iron rod as the cause of the injuries. Thus, the alleged recovery of the blunt weapons does not resolve the fundamental contradiction between the ocular and medical versions.

62. Another important circumstance is the non-examination of the Investigating Officer. It is true that non-examination of the Investigating Officer is sufficient by itself to demolish the prosecution case. The effect of such non-examination depends upon the facts of each case and, particularly, upon whether prejudice has been caused to the accused.

63. In **Behari Prasad v. State of Bihar,** reported in **(1996) 2 SCC 317**, the Supreme Court observed that although the non-examination of the Investigating Officer is not invariably fatal, the Court must examine whether prejudice has been caused to the accused. If the defence is deprived of an effective opportunity to establish contradictions, challenge the investigation or test the veracity of the prosecution witnesses, the omission assumes importance while appreciating the prosecution evidence.

64. In **Kapil Deo Sinha v. Kirandeo Prasad and Another**, reported in (2008) 14 SCC 658, the Hon'ble Supreme Court upheld an acquittal recorded by a Division Bench of this

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Court on the ground that the non-examination of the Investigating Officer and the doctor, taken together with unreliable ocular evidence, caused serious prejudice to the accused.

65. In the present case, however, the Investigating Officer was a material witness. The cross-examination of PW-1 to PW-4 contains several references to what they allegedly stated before the police. PW-3, in particular, has given a detailed account of what he claims to have told the police regarding the position of the deceased, the weapons used, the direction from which the assault was made and the role of the appellants. There are also questions concerning the exact place of occurrence, the staircase, the position of the witnesses and the alleged seizure of weapons. In such circumstances, the absence of the Investigating Officer has deprived the defence of an effective opportunity to establish the alleged omissions and contradictions by reference to the case diary statements and to prove the manner in which the investigation was conducted.

66. The prejudice caused by non-examination of the Investigating Officer is, therefore, not merely theoretical. It assumes significance because the prosecution witnesses themselves have given materially different descriptions of the position of the deceased and the assailants at the time of assault.

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The Investigating Officer could have thrown light upon the physical features of the place of occurrence, the staircase, the position of the alleged witnesses and the actual articles seized from the spot.

67. This Court is, therefore, of the considered opinion that the non-examination of the Investigating Officer has caused serious prejudice to the defence. The appellant was denied the valuable right of effectively proving contradictions, testing the fairness of the investigation, and confronting the prosecution witnesses with their previous statements. In the peculiar facts of the present case, non-examination of the Investigating Officer further weakens the prosecution case.

68. Equally significant is the non-examination of the doctor who conducted the post-mortem examination of the deceased. The prosecution has examined PW 9, who examined Purshottam in the emergency ward, but the doctor who conducted the post-mortem examination has not been examined. The post-mortem report and the inquest report have also not been duly proved through the competent witness.

69. The omission assumes considerable importance in the peculiar facts of the present case. The deceased admittedly died several hours after the alleged assault. Therefore, the prosecution

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was required to establish, through reliable medical evidence, the exact cause of death and the nature of the injuries responsible for death. The emergency examination by PW 9 establishes that the deceased had sustained two incised injuries, but it does not, in the absence of the post-mortem evidence, satisfactorily establish which injury ultimately caused the death or whether the injuries attributed to the appellants were sufficient to cause death.

70. It is also relevant that the bed-head ticket has been exhibited, but PW 9 himself stated that the second page was not a duplicate or attached copy in the ordinary sense, despite the report referring to an attached copy. This circumstance further requires caution in placing reliance upon the documentary medical material without the evidence of the appropriate treating/post-mortem doctor.

71. The Court is conscious that medical evidence is generally corroborative and that where credible ocular testimony is available, a mere inconsistency with medical evidence may not necessarily result in acquittal. But the present case is materially different. Here, the medical evidence does not merely fail to corroborate the prosecution; it specifically contradicts the alleged weapon attributed to one of the appellants and identifies a different nature of weapon altogether.

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72. The Court also notices that PW 2 stated that before Purshottam was assaulted, the initial quarrel had already been pacified and the persons involved had been separated. He further stated that thereafter Sailendra, Dharmendra and Buchi did not assault anyone. This part of the evidence indicates that the alleged assault upon Purshottam was a subsequent and distinct episode. The prosecution was consequently required to establish with particular clarity what happened during this second episode and what exactly was done by each appellant.

73. PW 3 stated that Purshottam had attempted to pacify the quarrel and had taken Prabhu Narayan, Vijay and Sushil towards the staircase. According to him, while Purshottam was returning downstairs, the appellants assaulted him. PW 4, however, stated that her husband had arrived only after the initial quarrel had ended and that he was standing on the ground when the appellants assaulted him from the staircase. PW 1 gave yet another version regarding the relative positions. These variations, coupled with the medical contradiction, create a reasonable doubt regarding the precise manner of the fatal assault.

74. The Court also takes note of the fact that the prosecution witnesses themselves denied the use of a sharp weapon. This is not a case where the witnesses have simply failed

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to mention the weapon. They have positively stated that no sharp weapon was used by the appellants. Thus, the medical opinion that the injuries were caused by a sharp cutting weapon creates an affirmative conflict with the prosecution's ocular account.

75. The prosecution has not examined any witness who could explain the presence of the sharp weapon or identify the person who used it. The alleged knife carried by Sushil Kumar appears in the testimony of PW 1 and PW 3, but both witnesses do not attribute the stabbing or cutting injury to him. More importantly, there is no evidence establishing that the incised wounds found by PW 9 were caused by that knife or by any weapon connected with the present appellants.

76. So far as Vijay Kumar is concerned, the prosecution attributes a single blow with a mosquito-net stick to him, but the medical evidence does not establish that the injuries upon the deceased were caused by such a blunt object. So far as Prabhu Narayan is concerned, the prosecution attributes a single blow with an iron rod to him, but PW 9 expressly rules out an iron rod as the cause of the injuries. Thus, the prosecution has failed to establish a reliable nexus between the overt acts attributed to either appellant and the injuries responsible for the death.

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77. It is also material that the learned Trial Court acquitted the other co-accused persons, who were alleged to have participated in the same occurrence. The acquittal of the co-accused does not, as a matter of law, automatically entitle the present appellants to acquittal. Nevertheless, where the entire prosecution story arises from one occurrence and substantially the same witnesses constitute the basis of the case against all the accused, the Court must examine whether the evidence against the appellants is qualitatively different and substantially stronger.

78. On such examination, this Court does not find any independent circumstance which provides a safe and legally sustainable basis for distinguishing the case of the present appellants from the weaknesses inherent in the general prosecution version. The same witnesses who attributed various overt acts to the other accused have not been found sufficiently reliable by the Trial Court to sustain their conviction. The evidence against the present appellants also remains uncorroborated on the material question of the fatal injury.

79. It is a settled principle of criminal jurisprudence that the prosecution must stand on its own legs and must prove the charge beyond reasonable doubt. The accused is not required to establish his innocence. If the evidence admits of two reasonably

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possible views, the one favourable to the accused must ordinarily be adopted.

80. At the same time, the Court is mindful that the death of Purshottam Prasad is not in dispute. The fact that he sustained injuries and subsequently died is also substantially established. The real question, however, is not whether Purshottam died an unnatural death after an occurrence, but whether the prosecution has proved beyond reasonable doubt that the injuries causing his death were inflicted by Vijay Kumar and Prabhu Narayan in the manner alleged.

81. The prosecution has also failed to produce any independent witness who allegedly arrived at the place of occurrence on hearing the alarm. According to the prosecution case itself, many persons had assembled after the occurrence. Yet, none of those independent persons have been examined to corroborate the alleged assault.

82. It is true that non-examination of independent witnesses is not, by itself, fatal to the prosecution case if the evidence of the witnesses examined is otherwise wholly reliable. However, in the present case, the evidence of the principal witnesses is itself subject to material contradictions and is not adequately corroborated by medical, forensic or other independent

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evidence. Therefore, the non-examination of independent witnesses assumes significance.

83. In the circumstances indicated above, it was impossible to place implicit reliance on the evidence of the prosecution evidence. In the absence of any other evidence, supporting the description of the occurrence given by the eye witnesses, coupled with the medical evidence, one has no option, but to hold that none of these witnesses can be treated or held to be wholly reliable, and their evidence would fall in the category of wholly unreliable.

84. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be wholly unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

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85. In the facts and attending circumstances of the present case, I am of the view that the prosecution has failed, in the light of the discussion of the evidence on record, to bring home the charges against the appellants beyond all reasonable doubt.

86. In the result and for the foregoing reasons, this appeal is allowed. The impugned conviction of the appellants and the sentence passed against them by the judgment and order, under appeal, are hereby set aside. The appellants are held not guilty of the offence, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

87. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

88. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

89. The Court records the valuable assistance rendered by Mr. Ram Lal Sharan and Mr. Atul Kumar, Law Assistants, attached with this court.

(Anil Kumar Sinha, J.)

Vikash Kumar, J.:- **I agree.**

(Vikash Kumar, J.)

Prabhakar Anand/-

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