

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.506 of 2009

Arising Out of PS. Case No.-117 Year-2002 Thana- CHAINPUR District- Kaimur (Bhabua)

1. Vansh Prakash Singh, Son of Late Jang Bahadur Singh, Resident of village - Nand Gaon, Sahawal, P.S.- Chainpur, Dist.- Bhabhua.
2. Vijay Bahadur Singh, Son of Late Jang Bahadur Singh, Resident of village - Nand Gaon, Sahawal, P.S.- Chainpur, Dist.- Bhabhua.
3. Om Prakash Singh, Son of Late Jang Bahadur Singh, Resident of village - Nand Gaon, Sahawal, P.S.- Chainpur, Dist.- Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Faujdar Yadav, Son of Chedhari Yadav, R/O Village - Nand Gaon (Suhawal), P.S.- Chainpur, Dist.- Kaimur (Bhabhua).

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 552 of 2008

Faujadar Yadav

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 506 of 2009)

For the Petitioner/s : Mr. Vivekanand Vivek, Advocate
Mr. Debesh Kumar Poddar, Advocate
Mr. Rang Nath Pandey, Advocate

For the Respondent/s : Mr. C. Jawahar, APP

(In CRIMINAL APPEAL (SJ) No. 552 of 2008)

For the Appellant/s : Mr. Vivekanand Singh, Advocate
Mr. Naveen Kumar, Advocate
Mr. Nitish Kumar, Advocate

For the Respondent/s : Mr. Nirsingh Kr. Singh, APP
Mr. Vivekanand Vivek, Advocate
Mr. Debesh Kumar Poddar, Advocate
Mr. Rang Nath Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 28-04-2026

1. The present matters arise out of a same judgment



of conviction and order of sentence dated 11.06.2008 passed by the learned Additional District and Sessions Judge, F.T.C.-II, Kaimur at Bhabhua (hereinafter referred to as 'Trial Court') in Sessions Trial No. 8 of 2004/25 of 2008, whereby the opposite party no.2 (appellant in the connected appeal) has been convicted under Sections 325, 452 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo rigorous imprisonment for seven years along with fine.

2. Two proceedings have been preferred against the said judgment—one, a criminal revision filed by the informant (now deceased represented by her legal heirs) against acquittal of accused Fauzdar Yadav under Section 302 of the IPC, contending that the evidence on record clearly establishes the offence of murder; and the other, a criminal appeal filed by the convict challenging his conviction and sentence, asserting false implication and insufficiency of evidence.

3. Since both the revision and the appeal arise out of the same impugned judgment and involve common questions of fact and law, they have been heard together and are being disposed of by this common judgment.

4. Heard learned counsel for the parties as well as the learned APP for the State.



5. The prosecution case, as emerging from the *fardbeyan* of the informant, namely, Dharamshila Devi (P.W.3) is that on the night of 12.12.2002 at about 09:00 P.M., while she was present in her house along with her husband, Jung Bahadur Singh (deceased), and her minor son aged about 8 years (P.W.1), the opposite party no.2/appellant (Faujadar Yadav) allegedly entered into her house. Upon being questioned, the opposite party no.2/appellant assaulted her husband on the head with a *khanti*, causing him to fall unconscious, and also assaulted the informant when she intervened. On her alarm, nearby villagers arrived at the place of occurrence and witnessed the incident. Due to non-availability of conveyance, injured Jung Bahadur Singh was taken for medical treatment on the following day i.e., on 13.12.2002. Also, on the same day, based on the statement of the informant, F.I.R. bearing Chainpur P.S. Case No.117 of 2002 was registered against the accused person (opposite party no.2/appellant) under Sections 323, 325, 452 and 307 of the IPC. Furthermore, injured Jung Bahadur Singh during his treatment at Banaras died on 20.12.2002, whereupon Section 302 of the IPC was added *vide* order dated 04.01.2003 to the F.I.R. which was initially registered under Sections 323, 325, 452 and 307 of the IPC.



6. Upon completion of the investigation, charge-sheet bearing C.S. No.60 of 2003 in connection with Chainpur P.S. Case No.117 of 2002 was submitted under Sections 452, 323 and 302 of the IPC, and the case was committed to the learned Trial Court. Subsequently, charges were framed by the learned Trial Court *vide* order dated 23.01.2004 against the accused person (opposite party no.2/appellant) under Sections 302, 323 and 452 of the IPC, wherein the opposite party no.2/appellant pleaded not guilty and claimed trial.

7. During the trial, the prosecution has examined altogether ten witnesses, including the informant and other alleged eye-witnesses, as well as medical and formal witnesses, to prove charges against the appellant, who are as under:

P.Ws.	Names
P.W.1	Vansh Prakash Singh (Minor son of the deceased Jung Bahadur Singh)
P.W.2	Pritam Gosai (Co-villager of the deceased)
P.W.3	Dharamshila Devi (Informant/wife of the deceased)
P.W.4	Kameshwar Singh (Father-in-law of the deceased/formal witness)
P.W.5	Anil Kumar Singh (Formal witness)
P.W.6	Dr. Indrajit Prakash (Doctor who examined injuries of the informant and the deceased at Primary Health Centre, Chainpur and issued Injury Report)
P.W.7	Deo Kumar Singh (Formal witness)
P.W.8	Imanwel Tirki (I.O. of the case)
P.W.9	Dr. J.P. Tripathi (Doctor who has conducted <i>postmortem</i> of the deceased.)
P.W.10	Rajendra Singh (Formal witness)



8. Moreover, in support of their case, the prosecution has exhibited following documentary evidence:

Exts.	Particulars
Ext.1	Inquest Report
Ext.1/1	Signature of Anil Kumar Singh on Inquest Report
Ext.2 to 2/1	Injury Report of the Informant and the deceased
Ext.2/2 to 2/3	Forwading letter of the injured persons
Ext.3	Letter by Sir Sundarlal Hospital to O/C Lanka, Varanasi
Ext.4	Police Form No.13
Ext.5	<i>Postmortem</i> Report
Ext.6	Fardbeyan of the Informant Dharamshila Devi
Ext.7	F.I.R.

9. In order to have a clear understanding of the case, it would be apposite to notice the testimony of the prosecution witnesses.

10. P.W.1, Vansh Prakash Singh, who is the son of deceased Jung Bahadur Singh (aged about 8 years at the time of occurrence), has deposed that the occurrence took place at about 8:00-9:00 P.M. when he was sitting in the *verandah* of his house along with his parents, while his cousins Sachida and Manoj (both not examined) were in the upper room. He stated that at that time the accused Fauzdar entered their house, whereupon his father questioned him as to why he was entering. In the light



of a lamp burning in the *verandah*, he identified the accused. He further deposed that when his father went to apprehend the accused, the accused dragged his father into the *dalan*/room and assaulted him with a “*khanti*”, causing injuries on his head by striking twice, and when his father fell down, he further assaulted him on the back. He and his mother raised alarm, and when his mother tried to intervene, the accused also assaulted her with the *lathi* of that *khanti* on her stomach and head. Upon their alarm, Pritam (P.W.2), Manoj and Sachida arrived and witnessed the assault. Thereafter, the accused fled away and his father became unconscious. He further stated that on the next morning, his father was taken by villagers to Chainpur Hospital and thereafter referred to Banaras University Hospital, where after about eight days, his father succumbed to the injuries.

In cross-examination, P.W.1 stated that the accused Fauzdar had not been visiting his house prior to the date of occurrence. He described the structure of his house, stating that it is a *pucca* house having 11-12 rooms (*kothri*), with a northern entrance, *dalan*, courtyard (*angan*), *verandah* and rooms (*kothri*), and that the door is usually closed by his mother at about 9:30 P.M. everyday, though at the time of occurrence the door was open. He reiterated that at the time of occurrence, he



and his mother were in the *verandah* and the lamp was burning there. He stated that his father, upon asking “*kaun hai*”, went towards the accused and was dragged on the ground into the *dalan* where he was assaulted. He further stated that on raising alarm, initially no one from the neighbourhood came, but after the accused fled, some villagers arrived. He deposed that he and his mother went to the *dalan* and saw his father lying injured with bleeding head injuries and in unconscious condition, and thereafter, with the help of Pritam, Sachida and Manoj, shifted him to a cot. He also stated that Sachida and Manoj had gone to call a doctor but returned saying that the accused was standing armed with a *katta*. He stated that his mother informed the villagers, but no one came immediately, and they tied the injury with a *gamchha*. He further stated that in the morning, his father was taken to the doctor by Pritam Gosai (P.W.2) and others, while he himself did not accompany them. He denied the suggestion that he has falsely deposed at the instance of others or that the accused had not committed the occurrence and that some unknown person had assaulted his father.

11. P.W.2, Pritam Gosai who is a co-villager of the deceased Jung Bahadur Singh, supported the prosecution’s case and deposed that after taking his meal, he was proceeding from his house towards the shop of Ganga Sahu to purchase *bidi* and, on



reaching near the house of Jung Bahadur Singh and the shop, he stopped in the lane to urinate. After a few minutes, he heard shouting (*halla*) from the house of Jung Bahadur Singh, whereupon he went to his door and saw that Jung Bahadur Singh had caught hold of Fauzdar Yadav and the accused was dragging him into the *dalan*. He further stated that the accused was holding a “*khanti*” in his hand and assaulted Jung Bahadur Singh with the said weapon twice on his head, as a result of which he fell down in the *dalan*. He further deposed that when the wife of Jung Bahadur Singh came to rescue him, the accused also assaulted her with the *danda* of the *khanti* on her stomach and head. Even after Jung Bahadur Singh fell down, the accused dealt another blow on his back and thereafter fled away. He stated that apart from him, the occurrence was also witnessed by the son of Jung Bahadur Singh, and his relatives Sachida and Manoj, and his wife. He further stated that a lantern was burning in the *verandah* and in that light, as well as in the light of his torch, he saw the occurrence and identified the accused. He deposed that thereafter Jung Bahadur Singh was lifted and laid on a cot in the *verandah* and the bleeding injury on his head was tied with a cloth. He further stated that during the night, the injured was not taken to hospital as villagers did not come



forward, and in the morning, he took Jung Bahadur Singh to Chainpur Hospital.

In his cross-examination, P.W.2 stated that prior to the occurrence he had visited the house of Jung Bahadur Singh 2-4 times and that Jung Bahadur Singh was a big landholder having about 100–125 *bighas* of land. He stated that his house is situated about 100 yards north of the house of Jung Bahadur Singh. He further stated that it was winter season and in the village there are about 10-11 shops which remain open till about 9:00-9:30P.M. He stated that he had not yet purchased *bidi* and was urinating in the lane adjacent to the shop of Ganga Sahu, and that he had not reached the shop and had not seen who was sitting there. He further stated that at that time no one else was passing through the lane. On hearing the alarm, he went towards the *dalan* door of Jung Bahadur Singh, and stated that when he reached there, he saw injury on the head of Jung Bahadur Singh and that at that time Jung Bahadur Singh was standing and no conversation took place with him. He further stated that when he reached near him, apart from the accused, his wife and two relatives were present and no other villagers were there. He stated that the accused fled towards the west in the lane and that neither he nor the family members chased him. He further stated



that he himself did not raise alarm, but the wife and relatives of Jung Bahadur Singh were raising alarm even before his arrival. He stated that when he reached, some persons were raising alarm and some were lifting Jung Bahadur Singh, and that he also helped in lifting him to the courtyard, after which 10-12 villagers came, though he had no conversation with them. He further stated that he stayed there for about 10-15 minutes and thereafter returned home. He further stated that in the morning, on being requested by the wife of Jung Bahadur Singh, he went to his house and took Jung Bahadur to the hospital and reached Chainpur Hospital at about 07:00 A.M., where the doctor examined him. He stated that from the time of occurrence till 07:00 A.M., no treatment was given. He further stated that police came in the afternoon and his statement was recorded; he met the Investigating Officer in the lane and showed him the house, and that his statement was recorded there. He further stated that at that time only an old woman was present and he does not know whose statements were recorded at the house. He denied that he did not disclose to the Investigating Officer that he had seen the occurrence or that he was a witness. He further stated that he had told the Investigating Officer that he had seen the occurrence in the light of his torch and lantern, though he



did not hand over the torch. He further stated that the *dalan* of Jung Bahadur Singh is closed from all sides with one door leading inside, and that the house is double-storeyed though he had not gone to the upper floor. He also stated that there was no prior enmity between him or Jung Bahadur Singh and the accused. He denied the suggestion that he had not gone to purchase *bidi* or that he had falsely deposed regarding the occurrence.

12. P.W.3, Dharamshila Devi, who is wife of the deceased Jung Bahadur Singh and also the informant in the case, has deposed that at about 9:00 P.M. when she was sitting in the *verandah* of her house along with her husband and her son Vansh Prakash, while her two nephews Sachida and Manoj had gone to the upper room after taking meals. She deposed that at that time the accused Fauzdar entered her house, whereupon her husband caught hold of him and questioned him as to why he was entering the house. She further stated that a lantern was burning on a table in the *verandah* and in its light she identified the accused. She deposed that upon raising alarm by her and her son, Sachida and Manoj came down from the roof and Pritam also came at the door, and in the meantime, the accused dragged her husband into the *dalan* room and assaulted him with a



“*khanti*” by giving two blows on his head, causing his head to split open. She further stated that even after her husband fell down, the accused assaulted him with the handle of the *khanti* on his back. When she tried to rescue her husband, the accused assaulted her also with the handle of the *khanti* on her stomach and head. She stated that after the assault, her husband fell down unconscious and the accused fled away. She further deposed that the occurrence was also witnessed by Sachida, Manoj, Vansh Prakash and Pritam. Thereafter, her husband was lifted and laid on a cot in the *verandah* and his injuries were tied with a *gamchha*. She further stated that Sachida and Manoj went to call villagers for taking her husband to the hospital but no one came due to fear of the accused, who was stated to be hiding with a *katta*. She also stated that on the next morning, her husband was taken on a cot to Chainpur Primary Health Centre, where the doctor examined both her and her husband and advised that his condition was serious and he be taken to Banaras. She stated that thereafter she returned to the village with Sachida and Manoj to arrange money and clothes, met the police officer who made inquiries and was shown the place of occurrence, and thereafter her husband was taken to Banaras University Hospital, where after 7-8 days, he died. She identified the



accused present in Court.

In her cross-examination, P.W.3 stated that her husband was an influential person in the village and had no enmity with anyone. She further stated that she is *pardanashin* and has limited interaction outside her house and that no outsider used to enter inside the house, rather people would meet in the *dalan*. She stated that the accused Fauzdar had never visited her house earlier and she does not know his family members. She further stated that Pritam Gosai never used to come inside her house and she had no conversation with him earlier. She described the structure of her house, stating that there are about 13 rooms around the courtyard and four rooms on the upper floor, and that there is no electricity connection and on the date of occurrence a lantern was burning. She further stated that the main door of the house opens towards the east and leads to the *dalan* and then to the lane, and that the *dalan* has rooms on both sides and is surrounded by a boundary wall. She stated that at about 9:00-9:30 P.M., when they were sitting on the cot, all the doors including the main gate and *dalan* door were open. She further stated that she heard a knocking sound from the *dalan* side and her husband went towards it asking “*kaun hai*”, and on hearing his alarm she rushed there. She



stated that when she reached, Pritam Gosai was already present and thereafter her nephews came. She further stated that apart from Pritam, there were about 10 other persons present but due to night she could not recognise them. She stated that the entire occurrence took place within about a minute and the assailant fled away, and that he had a *katta* tucked at his waist. She further stated that her nephews did not catch hold of the accused or his weapon. She further stated that after the occurrence, villagers and Pritam remained there for about half an hour and that Pritam told her that the assailant was Fauzdar Yadav. She stated that her husband had 3-4 bleeding injuries on his head. She further stated that in the morning at about 7:00-8:00 A.M., her husband was taken to the doctor at Chainpur on a cot by four persons and she accompanied him, and the doctor declared his condition serious and referred him to Banaras, where he was admitted in B.H.U. Hospital, though she does not know the name of the doctor who treated him. She denied any suggestion of false implication.

13. P.W.4 and P.W.5, Kameshwar Singh and Anil Kumar Singh respectively are formal witnesses who have signed and proved the *panchnama* which has been marked as Ext.1.

14. P.W.6, Dr. Indrajit Prakash, who is M.O. at



Primary Health Centre, Chainpur, has deposed that on 13.12.2002 at about 09:10 A.M., he examined Dharamshila Devi and found the injury on her person as “A swelling over right perital region of the head 1”x 1”. The injury was opined as simple in nature caused by hard blunt substance (Injury report marked as Ext.2). P.W.6 further deposed that on the same day he also examined Jung Bahadur Singh at about 09:00 A.M. and found following injuries on his person (Injury report marked as Ext.2/1):

“(I) A lacerated wound on the upper part of the head 1.5” x 0.2” skin deep.

(II) Three abrasions on the dorsal surface of the right head 0.3”x 0.2”.

(III) An abrasion on the left knee laterally 0.5” x 0.4”.

Patient was unconscious and so referred to PMCH Patna or Sir Sundarlal Hospital, BHU, Varanasi for investigation, treatment and opinion.”

In his cross-examination, P.W.6 stated that on police requisition he examined the injured persons. He stated that on the police requisition it was mentioned that the injured Dharamshila had stomach ache and red abrasion on her back, which after examination he did not find such injury on her body. Moreover, he stated that the injuries of Jung Bahadur Singh were possible due to hard and blunt substance. He stated that he



found injury only on the head of Jung Bahadur Singh and after providing medical treatment he referred him to Higher Hospital.

15. P.W.7, Deo Kumar Singh is a formal witness who has proved Ext.3.

16. P.W.8, Imanwel Tirki, who is Investigating Officer (I.O.) of this case, has deposed that he recorded the *fardbeyan* of Dharamshila Devi at Primary Health Centre, Chainpur, and he identified the *fardbeyan* to be in his handwriting and bearing his signature, which has been marked as Exhibit-6. P.W.8 further deposed that after recording the *fardbeyan*, he got examined the injuries of Dharamshila Devi and her husband Jung Bahadur Singh and issued forwarding letter of the injury reports, which are in his handwriting and bear his signature, and identified the same, which have been marked as Exhibits 2/2 and 2/3 respectively. He further deposed that thereafter the investigation was entrusted to him, during which he again recorded the statement of the informant and inspected the place of occurrence. He deposed that he recorded the statements of witnesses, namely Pritam Gosai, Vansh Prakash Singh, Manoj Kumar and Sachchidanand Singh, who supported the occurrence. He also deposed that during the course of investigation, injured Jung Bahadur Singh died on 20.12.2002 at



about 8:30 P.M. in B.H.U., Varanasi, whereupon he submitted application for conversion of the case from Section 307 to Section 302 of the Indian Penal Code and obtained the inquest report and *postmortem* report.

In his cross-examination, the witness stated that when he recorded the *fardbeyan* at the Primary Health Centre, Dharamshila Devi as well as Jung Bahadur Singh were present and the latter was in unconscious condition. He stated that the occurrence took place on 12.12.2002 at about 9:00 P.M. and the *fardbeyan* was recorded on 13.12.2002 at about 10:15 A.M., i.e., after about 12 hours, and that in the meantime no such information had reached the police station. He further stated that though both injured had been given dressing, he did not remove the bandage to examine the injuries, and Dharamshila Devi had only ointment applied. He stated that the doctor did not refer the injured to Banaras in his presence and he did not make any recommendation for such referral, nor has he recorded in the case diary as to when the injured was referred to Varanasi. He further stated that he did not go to Banaras and came to know about the death of Jung Bahadur Singh after about 12 days, on 04.01.2003, when the informant herself came to the police station and informed him. He stated that the *postmortem* report



was received through the Superintendent of Police by post, but the same has not been entered in the case diary, and he did not verify the *postmortem* report, though he denied the suggestion that it was not verified because it was forged. He further stated that he did not ascertain the name of the doctor who treated the deceased at B.H.U., nor did he collect any admission or treatment papers. He further stated that he inspected the place of occurrence on 13.12.2002 in presence of the informant, and at that time he seized blood-stained soil from the place of occurrence and prepared a seizure list, though the same has not been attached, and the seized soil was not sent for chemical examination and is lying in the *malkhana*. He further stated that though the occurrence took place at night and the source of light was a lantern, he did not seize the said lantern. He further stated that he did not seize the cot, mattress or quilt from the *dalan*, stating that there was no blood on them as per the informant. He further stated that he did not investigate whether the accused had broken open the door or had entered otherwise, as no witness had stated so. He further stated that he made inquiry regarding the criminal antecedents of the accused but did not find any such history.

17. P.W.9, Dr. J.P. Tripathi is the doctor who



conducted *postmortem* of the deceased Jung Bahadur Singh. He has deposed that death of Jung Bahadur Singh occurred due to coma resulting from a grievous injury on the head. He stated that the *postmortem* report is in his handwriting and bears his signature, which he identifies. He further deposed that the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death.

In his cross-examination, P.W.9 stated that there was one injury on the head of the deceased, apart from that, there was one injury on the left knee and a bedsore on the back below the waist. He stated that the injury on the left knee was a superficial abrasion caused by friction and not by *lathi* blow. He further stated that the head injury was so severe that, in absence of proper treatment, it could cause death. He explained that upon opening the skull, there was subdural and extradural hematoma, and such hematoma causes pressure on the brain. He denied the suggestion that the report given by him is incorrect or not in accordance with medical science.

18. P.W.10, Rajendra Singh is a formal witness who has deposed that the signature appearing on the formal First Information Report is that of Sri Surendra Prasad Singh, the then Sub-Inspector of Chainpur Police Station, which he



identifies. The said document has been marked as an exhibit.

In cross-examination, he stated that the said document was not signed in his presence and that he has no personal knowledge regarding the contents of the case.

19. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 on 11.12.2006 wherein he denied the allegations and pleaded innocence. However, in his defence, the appellant has not adduced any oral or documentary evidence.

20. Considering the facts and circumstances of the case, upon perusal of the materials available on record and after a detailed appreciation of the oral and medical evidence on record, came to a categorical finding that the prosecution had failed to establish the ingredients necessary to constitute offences under Sections 302, 307 and 304 of the IPC. The learned Trial Court observed that neither the intention nor the knowledge requisite for attracting the offence of murder or culpable homicide could be safely inferred from the materials available on record. It was further held that even the charge under Section 326 of the IPC was not made out, as the nature of injuries and the manner of assault did not satisfy the statutory



requirements thereof. However, the learned Trial Court found that the evidence of the eye-witnesses, to the extent it proved assault by the accused upon the deceased, was reliable and stood corroborated by the medical evidence insofar as it established that the deceased had sustained grievous injury on the head. On such reasoning, the learned Trial Court concluded that the act of the accused squarely fell within the ambit of Section 325 of the IPC and accordingly recorded conviction thereunder. The learned Trial Court further held that the prosecution had succeeded in proving that the accused had voluntarily caused simple hurt to the informant (P.W.3), thereby attracting Section 323 of the IPC, and that his act of entering the house of the informant with preparation for assault constituted the offence under Section 452 of the IPC. Moreover, on the point of sentence, the learned Trial Court taking into account the nature of the offence proved, imposed rigorous imprisonment for seven years along with fine of Rs.10,000/- under Section 325 of the IPC, with a default stipulation, and awarded similar sentence under Section 452 of IPC, while directing all sentences to run concurrently and awarding no separate sentence under Section 323 of the IPC.

21. Being aggrieved by the impugned order of



conviction and sentence, the opposite party no.2/appellant filed appeal before this Court bearing Criminal Appeal (SJ) No.552 of 2008 and the petitioner filed the present revision petition.

22. Having noticed the findings recorded by the learned Trial Court, this Court proceeds to consider the submissions advanced on behalf of the parties in the connected revision as well as the appeal.

23. Learned counsel for the petitioner in revision submitted that the impugned order suffers from manifest illegality inasmuch as the learned Trial Court has failed to properly appreciate the consistent and cogent ocular evidence of the eye-witnesses, namely P.W.1 and P.W.3, the latter being an injured witness. It is submitted that the presence of these witnesses at the place of occurrence is natural and fully established, and their testimonies clearly prove that the accused entered the house armed with a *khanti* and inflicted a forceful blow on the head of the deceased, which ultimately resulted in his death. It is submitted that the evidence of P.W.1, a natural witness and son of the deceased, fully corroborates the version of the informant (P.W.3), and both have consistently supported the prosecution case with regard to the manner of assault. Learned counsel further submitted that their ocular version



stands further corroborated by the medical evidence of P.W.6 and P.W.9, particularly the *postmortem* report (Ext.3), which establishes fracture of the skull and opines the cause of death to be head injury. It is thus submitted that once the assault by the accused and the resulting fatal injury are proved beyond doubt, there was no justification for the learned Trial Court to dilute the offence to one under Section 325 of the IPC, especially when the injury was inflicted on a vital part of the body with a dangerous weapon inside the house of the deceased.

24. Learned counsel for the petitioner further submitted that minor inconsistencies or embellishments in the testimonies of certain witnesses, particularly with respect to presence of other villagers, do not go to the root of the prosecution case and ought to have been ignored. In this regard, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in *Bhaskarrao and Ors. v. State of Maharashtra*, reported in (2018) 6 SCC 591, following *Tahsildar Singh and Anr. v. State of Uttar Pradesh*, reported in 1959 SCC OnLine SC 17; AIR 1959 SC 1012, wherein it has been held that the Court must separate truth from embellishments. Further reliance is placed on *Balakrishnan and Ors. v. State of Tamil Nadu*, reported in (2018) 14 SCC 55;



AIR 2018 SC 1153, wherein it has been held that minor contradictions do not affect the core of prosecution case. Learned counsel also relied upon the decision of the Hon'ble Apex Court in *Stalin v. State (Represented by Inspector of Police)*, reported in *(2020) 9 SCC 524* to submit that even a single blow on a vital part like the head, if inflicted with sufficient force and intention, can attract Section 302 of the IPC. Additionally, reliance has been placed upon the judgment in *Kunhimammed @ Kunheethu v. State of Kerala*, reported in *2024 SCC OnLine SC 3618*, wherein the Hon'ble Apex Court has held that where ocular evidence of reliable eye-witnesses stands corroborated by medical evidence, the same is sufficient to sustain conviction for murder. On the strength of these submissions, it is submitted that the accused be convicted under Section 302 of the IPC.

25. Learned counsel for the opposite party no.2/appellant submitted that the impugned judgment, even to the extent of conviction under Sections 325, 452 and 323 of the IPC, is unsustainable in law as the prosecution has failed to establish its case beyond reasonable doubt. It is submitted that the entire prosecution story suffers from material inconsistencies and contradictions, particularly with regard to the identity of the



accused and presence of alleged eye-witnesses at the place of occurrence. It is further submitted that as per the earliest version in the *fardbeyan* of P.W.3, only she, her husband and her minor son (P.W.1) were present at the time of occurrence, however, during trial, attempts have been made to introduce additional witnesses as eye-witnesses, which creates serious doubt regarding the veracity of the prosecution case. Learned counsel further submitted that even P.W.2, who is projected as an eye-witness, has not actually witnessed the occurrence and reached the place only after the alleged assault. It is further submitted that important independent witnesses named in the *fardbeyan*, namely Munna Singh, Manoj Singh and Sachidanand Singh, have not been examined by the prosecution without any explanation, which gives rise to adverse inference against the prosecution case.

26. Learned counsel for the opposite party no.2/appellant further submitted that the medical evidence does not conclusively establish that the death of the deceased was solely attributable to the alleged assault by the appellant, particularly in view of the delay in taking the injured to the hospital and intervening circumstances during treatment. The defence of the appellant has consistently been one of total denial



and false implication due to prior enmity, and the prosecution has failed to establish any clear motive for the alleged occurrence. It is submitted that the learned Trial Court itself has disbelieved the prosecution case insofar as the charge under Section 302 of the IPC is concerned, thereby indicating serious doubt in the prosecution version. However, despite such doubt, the learned Trial Court has erred in convicting the appellant under lesser offences on the same set of evidence, which is legally impermissible. It is thus submitted that in view of the contradictions, non-examination of material witnesses, doubtful nature of evidence and failure of the prosecution to prove the case beyond reasonable doubt, the appellant is entitled to benefit of doubt and consequent acquittal from all the charges.

27. Learned APP for the State supported the impugned order of conviction and sentence and submitted that the learned Trial Court has rightly appreciated the evidence on record and recorded conviction of the appellant under Sections 325, 452 and 323 of the IPC. It is submitted that the occurrence and the role of the appellant stand duly proved from the consistent testimonies of P.W.1 and P.W.3, which are corroborated by the medical evidence. It is further submitted that minor inconsistencies or non-examination of some



witnesses do not affect the core of the prosecution case, particularly when the injured witness has supported the case. Learned APP, therefore, submitted that the conviction and sentence require no interference and the impugned judgment deserves to be affirmed.

28. In view of the rival submissions and materials available on record, the sole issue that arises for consideration before this Court is *“whether, on the basis of the evidence adduced by the prosecution, the learned Trial Court was justified in convicting the accused under Sections 325, 452 and 323 of the IPC, or whether the case is made out for conviction under Section 302 of the IPC as contended by the petitioner, or for acquittal as claimed by the opposite party no.2/appellant.”*

29. It is well settled that this Court has power to re-appreciate and reconsider the evidence in an appeal. The act of an accused can be proved by direct evidences or circumstantial evidence. The present case, in the facts and circumstances rests upon direct evidence. In the present case, P.W.1, P.W.2 and P.W.3, are projected by the prosecution as eye-witnesses to the said occurrence.

30. It is noteworthy that the earliest version of the prosecution, as reflected in the *fardbeyan* of P.W.3, clearly



indicates that at the time of occurrence only she, her husband (deceased) and her minor son (P.W.1) were present. However, during trial, both P.W.1 and P.W.3 have introduced additional persons, namely Pritam (P.W.2), Sachida and Manoj, as eye-witnesses to the occurrence. This material improvement creates serious doubt regarding the actual manner of occurrence. Further, P.W.1, being a minor child witness at the time, has made inconsistent statements regarding arrival of villagers and sequence of events, thereby affecting the reliability of his testimony. The conduct of the witnesses also appears unnatural, particularly inasmuch as no effective steps were taken to secure immediate medical aid.

31. More importantly, the testimony of P.W.3 suffers from a serious infirmity on the aspect of identification of the accused. While in her examination-in-chief she claimed to have identified the accused in lantern light, in her cross-examination she has admitted that she was a *pardanashin* woman and Fauzdar Yadav had never visited her house earlier, and further admitted in para 42 of her cross-examination that it was P.W.2, Pritam Gosai, who disclosed to her that the assailant was Fauzdar Yadav which shows that she herself had not recognized the assailant. In para 25 of her cross-examination she



has also admitted that during the course of occurrence, no co-villager was present there, and on the contrary in para 32 she has stated that when she went to her husband, P.W.2, Pritam Gosai, was already there. Moreover, P.W.2, Pritam Gosai has stated in para 11 of his cross-examination, he has stated that at the time he reached the doors of the deceased, apart from the assailant, he saw wife and two relatives of the deceased Jung Bahadur Singh. P.W.3 stated that she heard the knocking sound from the *dalan* and her husband went there, and on hearing alarm she rushed there. The time she reached *dalan*, Pritam Gosai (P.W.2) was already present and thereafter her nephew came there. These admissions strike at the root of the prosecution case, as the identity of the accused becomes doubtful. Coupled with this, the non-examination of material independent witnesses, namely Manoj Singh and Sachidanand Singh, without furnishing any proper reason, further weakens the prosecution case. In view of such contradictions, improvements and doubtful identification, this Court is of the considered opinion that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt, and the benefit of doubt must necessarily go in favour of the accused.

32. Moreover, in the facts of the present case, the



conduct attributed to Sachida and Manoj, who are close relatives of the deceased, stated to have been present at the time of occurrence, creates serious doubt regarding their actual presence and the veracity of the prosecution version. Despite the prosecution case that they arrived at the place of occurrence during the assault, there is no convincing evidence to show that they made any genuine effort either to intervene and protect the deceased or to immediately arrange for medical assistance after he had sustained grievous injuries and fallen unconscious. Their alleged inaction and passive conduct, particularly in a situation where a close family member was being brutally assaulted, appears wholly unnatural and casts a grave doubt on their presence at the place of occurrence as eye-witnesses. This unexplained and unnatural conduct, therefore, weakens the prosecution case and renders their purported presence highly doubtful.

33. This Court further finds that the I.O. has failed to recover the alleged weapon i.e., '*khanti*' which was alleged to have used by the appellant to commit the crime, though not fatal to the prosecution's case. Also, the soil drenched with blood was neither produced before the learned Trial Court nor was sent for lab examination. Moreover, the admitted delay in providing



medical treatment and the fact that the deceased was taken to hospital only on the following morning and thereafter treated at another hospital for several days before his death, create a reasonable doubt as to whether the death was the direct and proximate result of the alleged assault. In absence of clear and cogent evidence establishing an unbroken chain between the alleged act and the ultimate death, it would be unsafe to hold the appellant responsible for the same. Thus, the medical evidence, instead of lending assurance to the prosecution case, leaves room for doubt, which must enure to the benefit of the accused. It is also pertinent to note that the FIR was registered with a delay of around 12 hours from the time of occurrence and I.O. has admitted that in the meantime no such information had reached the police station. It is noteworthy that the distance from the place of occurrence to the nearest police station, where the F.I.R. was registered is just 5 kilometer, yet it took the informant around 12 hours from the time of occurrence to register the said F.I.R.

34. The Hon'ble Supreme Court in ***Bhaskarrao and Ors. v. State of Maharashtra (supra)*** has held as under:

“54.It is always the duty of the Court to separate chaff from the husk and to dredge the truth from the pandemonium of statements. It is but natural for human



beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [See: Tahsildar Singh v. State of U.P., AIR 1959 SC 1012 : 1959 Cri LJ 1231] .”

35. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has failed to bring home the charges against the opposite party no.2/appellant beyond all reasonable doubts. The findings recorded by the learned Trial Court, even to the extent of conviction under Sections 325, 452 and 323 of the IPC, are not sustainable in the eyes of law, being based on evidence suffering from material contradictions, doubtful identification and lack of reliable corroboration. Accordingly, the impugned judgment of conviction and order of sentence dated 11.06.2008 are hereby set aside and the appellant is acquitted of all the charges. The appeal preferred by the appellant is allowed.

36. Resultantly, the criminal revision preferred by the petitioner seeking conviction of Fauzdar Yadav under Section 302 of the IPC stands dismissed.

37. The appellant, Fauzdar Yadav, is acquitted for the charges leveled against him, since, the appellant is already on bail, he is discharge from the liability of his bail bonds.



38. The Trial Court Records of the instant revision/
appeal be returned to the Trial Court, forthwith.

39. I.A.(s), if any, stands disposed of.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	03.04.2026
Uploading Date	28.04.2026
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