

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.7 of 2011**

1. NANNKU @ NANKU SAH Late Jangali Sah R/O,Vill.-Selar Kala, P.S.-Fulwariya, Dist.Gopalganj
2. Manager Sah, Son of Late Jangali Sah, R/O Vill.-Selar Kala, P.S.-Fulwariya, Dist.- Gopalganj
3. Kanhaiya Sah @ Kanhaiya, S/o Dwarika Sah, R/O Vill.-Selar Kala, P.S.-Fulwariya, Dist.-Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rudra Pratap Singh, *Amicus curiae*
For the Respondent/s : Mr.S.N.Prasad, APP.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 10-03-2026

The appeal was admitted on 17.01.2011, on which date, the provisional bail granted to the appellants was confirmed and since then no one has appeared on behalf of the appellants in spite of the adjournments granted by this Court on 19.01.2017, 27.03.2025, 03.07.2025, 17.07.2025 and 03.02.2026.

2. Taking into consideration the conduct of the appellants and the fact that this Court is clogged with old criminal appeals, this court appoints Mr. Rudra Pratap Singh as *Amicus Curiae* .

FACTS OF THE CASE

3. The present appeal has been filed under Section 374



(2) of the Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 02.12.2010 passed by the learned Additional District and Sessions Judge cum Fast Track Court-I, Gopalganj in Sessions Case No. 229/2005/155/2009, arising out of Fulwariya P.S. Case No. 09 of 2002, G.R. No. 228/02 whereby the learned trial court convicted the appellants for the offence punishable under Section 323/34 of the Indian Penal Code and sentenced them to undergo S.I. for 9 months.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants.

5. The prosecution case, in brief, is that Fulwariya P.S. Case No. 9/2002 was instituted on the basis of a written report submitted by the informant, Raghubar Sah. In his report, the informant alleged that at about 4:00 P.M., while he was present at his Bathan, all the accused persons named in the F.I.R. arrived there, began abusing him, and questioned why he had sold the



land. Thereafter, the accused persons allegedly started assaulting the informant with lathis. During the occurrence, accused Kanaiha Sah caught hold of the informant and instigated others to kill him, whereupon Jangali Sah and Nanhaku Sah allegedly assaulted the informant on the head, as a result of which he sustained injuries on his head and his left hand was fractured. The alleged cause of the occurrence was stated to be a dispute relating to land.

6. On the basis of the written report of the informant, Fulwariya P.S. Case No.9 of 2002 was instituted under Sections 341, 323, 325 and 307/34 of the Indian Penal Code. After investigation, the police submitted charge sheet under Sections 341, 323, 325 and 307/34 of the Indian Penal Code. The learned Magistrate took cognizance of the offence and committed the case to the court of sessions. Charge against the accused persons was framed under Sections 341, 323, 325 and 307/34 of the Indian Penal Code. Charges were read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

ARGUMENT ON BEHALF OF APPELLANT

7. Learned *Amicus curiae* appearing on behalf of the appellants submitted that the impugned judgment of conviction



passed by the learned trial court is wholly illegal, perverse and not sustainable in the eyes of law as the same has been passed without proper appreciation of the evidence available on record. It is submitted that the alleged occurrence is said to have taken place due to a land dispute between the parties which clearly indicates that the appellants have been falsely implicated in the present case on account of previous enmity. It is further submitted that the prosecution witnesses are interested witnesses and their evidence suffers from material contradictions and inconsistencies. Moreover, two prosecution witnesses namely Mansi Mian and Lalan Rai did not support the prosecution case and were declared hostile, which creates serious doubt about the credibility of the prosecution story.

8. Learned counsel further submitted that the prosecution has also failed to prove the injuries in accordance with law as the injury report was proved only through a formal witness and the doctor who allegedly examined the informant was not examined before the court, thereby depriving the appellants of the opportunity to cross-examine the medical officer regarding the nature and cause of injuries. It is also submitted that there is no specific and reliable evidence regarding the overt act of each of the appellants and the



evidence on record is vague and omnibus in nature. The learned trial court itself did not find sufficient evidence to sustain the charges under Sections 341, 325 and 307/34 IPC and ultimately convicted the appellants only under Section 323/34 IPC, which clearly shows that the prosecution case was not proved in its entirety. Therefore, the appellants are entitled to the benefit of doubt and the impugned judgment and order of conviction are liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

9. *Per contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences.

ANALYSIS AND CONCLUSION

10. I have perused the lower court records and proceedings and also taken note of the argument made by learned *Amicus Curiae* and learned APP for the State.

11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of Conviction dated 02.12.2010 for the offences under Section 323/34 of the IPC.



12. During the trial, the prosecution has examined altogether seven witnesses, namely:

- (i) P.W.-1 - Ramdeo Sah
- (ii) P.W.-2 - Shyamdeo Sah
- (iii) P.W.-3 - Subedar Mian
- (iv) P.W.-4 - Mansi Mian
- (v) P.W.-5 - Lalan Rai
- (vi) P.W.-6 - Umesh Rai
- (vii) P.W.-7- Ainul Huque

13. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Injury Report (Exhibit-1)
- (ii) Signature of Officer in Charge Fulwariya P.S. (Exhibit-2).

14. On the basis of materials surfaced during the trial, the appellants/accused were examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and show their complete innocence.

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the



present appeal.

16. It would be appropriate to reproduce the provisions of Section 323/34 of the IPC for the sake of convenience and better understanding of the facts, which are as under:

“323. Punishment for voluntarily causing hurt.—
Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

17. Having perused the materials available on record, the sole ground for interfering with the impugned judgment is that the appellants were roped in a false case due to enmity with the informant and the material witnesses like the informant, investigating officer and the medical officer have not been examined to corroborate the prosecution case. The appellants were all along on bail during the whole period of trial and had never misused the privilege of bail granted in their favour.

18. The records disclose that neither the Investigating Officer nor the Medical Officer was examined during the course of trial. Undoubtedly, both are material witnesses, the former being essential to explain the manner in which the investigation was conducted and the steps taken during investigation, and the



latter to prove the medical evidence relating to the nature and cause of injuries. Their examination also affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination. However, it is well settled that the mere non-examination of the Investigating Officer or the Medical Officer does not ipso facto vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused; and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in **(2013) 3 SCC 791** is reproduced hereinafter:

“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had



examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."

19. I find that the trial court has failed to consider that the informant was the eye witness who has alleged that incidence has taken place in his presence while he has failed to examine himself in course of trial. As a result of vital infirmity in the impugned judgment, it appears that the prosecution has miserably failed to establish the charges levelled against the appellants/accused during the trial.

20. Accordingly, the present appeal is allowed.

21. The impugned judgment of conviction and sentence dated 02.12.2010, passed by learned Additional District and Sessions Judge cum Fast Track Court-I, Gopalganj in Sessions Case No. 229/2005/155/2009, arising out of Fulwariya P.S. Case No. 09 of 2002, G.R. No. 228/02 is hereby set aside. Consequently, the above-named appellants/accused are acquitted from all the charges levelled against them. Since the appellants are on bail, as such, they are discharged from the



liability of their bail bonds. The fine deposited by the appellants, if any, shall be refunded to them.

22. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand) to Mr. Rudra Pratap Singh, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service for disposal of the present appeal.

23. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2026
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