

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.30 of 2014

Arising Out of PS. Case No.-150 Year-2008 Thana- SHEKHPURA District- Sheikhpura

1. Mishri Yadav, Son Of Late Tilak Yadav Resident Of Village- Dhankaul, P.S. - Ariyari, District- Sheikhpura.
2. Dinesh Yadav, Son Of Sri Mishri Yadav Resident Of Village- Dhankaul, P.S. - Ariyari, District- Sheikhpura.
3. Sugul Yadav, Son Of Sri Mishri Yadav Resident Of Village- Dhankaul, P.S. - Ariyari, District- Sheikhpura.
4. Indradeo Yadav, Son Of Late Dhanraj Yadav Resident Of Village- Dhankaul, P.S. - Ariyari, District- Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Ajit Kumar Singh, Advocate Ms. Deepmala, Advocate
For the Informant	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. A.M.P. Mehta, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 29-01-2026

Heard Mr. Ajit Kumar Singh, learned counsel for the appellants; Mr. Sanjay Kumar, learned counsel for the informant; and Mr. A. M. P. Mehta, learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred by the appellants against the judgment of conviction dated 16.11.2013 and the order of sentence dated 20.11.2013, passed by the learned Additional Sessions Judge, Sheikhpura, in Sessions Trial No. 404



of 2010 arising out of G.R. Case No. 1073 of 2008, whereby and whereunder the appellants were convicted for the offences punishable under Sections 304 and 323, both read with Section 149 of the Indian Penal Code (hereinafter referred to as 'IPC'). The appellants were sentenced to undergo rigorous imprisonment for a period of seven years each for the offence under Section 304 read with Section 149 of the IPC, and rigorous imprisonment for one year for the offence under Section 323 read with Section 149 of the IPC. They were further directed to pay a fine of Rs. 10,000/- each, and in default thereof, to undergo simple imprisonment for six months. Both the sentences of imprisonment were ordered to run concurrently.

Prosecution Story:-

3. The substance of the prosecution case, as emerging from the FIR, is as follows:—

According to the informant, Kapildeo Yadav, on 27.11.2008, at about 10:00 A.M., he along with his brothers, namely Kailash Yadav, Maheshwar Yadav, and Dular Yadav, was proceeding to their field for bundling the harvested paddy crop. While they were passing near the house of one Rambriksha Bind, their co-villagers, namely Mishri Yadav (Appellant No.1), Bhusan Yadav, Devendra Yadav, Kalendra Yadav, Indradeo Yadav



(Appellant No.4), Dinesh Yadav (Appellant No.2), and Sugul Yadav (Appellant No.3), arrived there, surrounded them, and started abusing and assaulting them. The informant further alleged that during the course of the assault, accused Indradeo Yadav (Appellant No.4) was armed with a spear (bhala), accused Bhusan Yadav with a garasa, accused Mishri Yadav (Appellant No. 1) with an iron rod, accused Devendra Yadav with a tangi, and accused Sugul Yadav (Appellant No.3) was armed with a lathi, while the remaining accused were armed with lathi and danda. All the said weapons were used in assaulting the informant and his brothers. As per the informant, the motive behind the occurrence was a land dispute which had been subsisting between the informant's side and the accused persons. The informant further stated that as a result of the said assault, his brother Kailash Yadav sustained a serious head injury.

3.1. The informant, Kapildeo Yadav, recorded his fardbeyan at Sadar Hospital, Sheikhpura, on 27.11.2008 at 14:45 hours, describing the aforesaid alleged occurrence. On the basis thereof, Ariyari P.S. Case No. 150 of 2008 was registered for the offences punishable under Sections 147, 148, 149, 341, 342, 323, 325, and 307 of the Indian Penal Code. Subsequently, upon the death of the injured Kailash Yadav, Section 302 of the IPC was



also added. The formal First Information Report (FIR) thus set the criminal law in motion, and the investigation was taken up.

4. Upon completion of the investigation, the police submitted a charge-sheet against the appellants and co-accused Bhushan Yadav. However, by the same police report, the co-accused persons, namely Devendra Yadav and Kalendra Yadav, were not sent up for trial, and the investigation was kept pending in respect of certain non-FIR-named accused, namely Ramdeo Manjhi, Surendra Bind, and Rambriksha Bind, in whose case a separate charge-sheet was subsequently filed. On 12.08.2009, the Investigating Officer submitted a second charge-sheet against the non-FIR-named accused, namely Ramdeo Manjhi, Surendra Bind, and Rambriksha Bind. The appellants were charge-sheeted for the offences punishable under Sections 147, 148, 149, 341, 342, 323, 325, 307, and 302 of the Indian Penal Code.

5. At this stage, it is relevant to mention that the co-accused Bhushan Yadav was tried as a juvenile by the Juvenile Justice Board, and, as per the impugned judgment, he was acquitted of the charges.

6. After taking cognizance of the alleged offences, the learned Chief Judicial Magistrate committed the case of the



appellants, along with the co-accused persons, to the Court of Sessions.

7. The appellants and the co-accused persons were charged for the offences punishable under Sections 302 read with Section 149 and 307 read with Section 149 of the Indian Penal Code. The said charges were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

8. Along with the appellants, the three charge-sheeted accused persons, namely Surendra Bind, Rambriksha Bind, and Ramdeo Manjhi, were also tried, and after trial, they were acquitted by the same judgment which has been impugned in the present appeal. However, the appellants were convicted for the offences punishable under Sections 304 and 323, both read with Section 149 of the Indian Penal Code.

9. During trial the prosecution examined altogether 14 witnesses who are as under:

Sl. No.	Name	Relevancy
PW-1	Dular Yadav	An injured witness
PW-2	Mohd. M. Khan	Formal witness
PW-3	Sona Kumari	An eyewitness
PW-4	Maheshwar Yadav	An injured witness
PW-5	Nandu Yadav	An eyewitness
PW-6	Basdeo Yadav	Hearsay witness
PW-7	Bhim Yadav	An eyewitness
PW-8	Kapildeo Yadav	Informant and injured witness
PW-9	Sohaga Devi	Claimed herself as an eyewitness
PW-10	Dayamani Devi	Claimed herself as an eyewitness



PW-11	Vinod Kr. Singh S.I.	Investigating Officer
PW-12	Dr. Arbind Kumar	Medically examined the injured
PW-13	Mahendra Yadav	Hostile witness
PW-14	Dr. A.K. Singh	Conducted postmortem examination

10. In documentary evidence the prosecution proved the following documents and got them exhibited which are as under:-

Sl. No.	Relevancy
Ext.-1,1/1	Fardbeyan
Ext.-2 &3	FIR
Ext.-4 to 4/C	Signature of I.O. on injury report
Ext.-x	Inquest Report
Ext.-5 to 5/C	Injury Report
Ext.-6	Postmortem Report

11. After the completion of the prosecution evidence, the statements of the appellants were recorded, thereby affording them an opportunity to explain all the material circumstances appearing against them from the prosecution evidence, which were denied by them. While recording their statements, all the appellants claimed themselves to be innocent; however, none of them took any specific defence in their statements.

12. In defence, the appellants examined one witness namely, Mathura Prasad who was examined as DW-1.

13. In documentary evidence, the appellants produced and exhibited the following documents in defence:-

Sl. No.	Relevancy
Ext.-A	A copy of the sale deed executed by one namely Rambriksha



	Bind upon which the signature of Dular Yadav was marked
Ext.-A/1	A photocopy of the sale deed executed by one Mahendra Bind upon which the signature of Dular Yadav was marked
Ext.-A/2	Statement of one Manni Yadav recorded at Patrakar Nagar police station
Ext.-A/3	The signature of Kapildeo Yadav on his fardbeyan recorded by Patrakar Nagar police on 14.12.2008
Ext.-B	A certified copy of the chargesheet filed in connection with G.R. No. 1074/08
Ext.-C	Written report of Munger Harijan P.S. Case No. 95/08
Ext.-D	Certified copy of case record of J.J. Board pertaining to G.R. 1073A/08

14. While convicting the appellants, the learned trial court placed reliance upon the evidence of the injured witnesses and medical evidence regarding the injuries of the injured persons and the nature of injuries sustained by the deceased. The trial court observed in the impugned judgment that the ocular version of the eyewitnesses was corroborative of the medical evidence of the doctor, and the manner of assault as alleged in the FIR was corroborated by the medical evidence. As far as the motive of the appellants to commit the alleged occurrence is concerned, the learned trial court observed that a scuffle had taken place on the alleged day between both parties on account of a land dispute, due to which the alleged occurrence of assault was committed by the appellants against the prosecution party, resulting in the death of the deceased. The learned trial court further observed that the evidence of the star witnesses remained consistent and corroborative of the evidence of other witnesses, and the defence



was not able to elicit any material contradiction in their evidence as far as the assault is concerned.

Submissions on behalf of the Appellants :

15. Mr. Ajit Kumar Singh, learned counsel appearing for the appellants, has argued that there exists a major contradiction between the ocular evidence and the medical evidence with regard to the manner of assault, and that the same is sufficient to discredit the entire prosecution version. He has further submitted that all the material witnesses of the prosecution who claimed to have witnessed the entire occurrence of assault are family members of the deceased. In view of the contradiction arising between their ocular evidence and the medical expert's opinion regarding the nature of the weapons used in the alleged assault, their evidence is completely unreliable, and, further, they are highly interested witnesses of the prosecution. It has also been argued that a delay of two days occurred on the part of the concerned police officer in sending the First Information Report to the jurisdictional Magistrate, without giving any explanation, which casts doubt on the reliability of the FIR and raises a reasonable apprehension of manipulation by the police in its contents. Learned counsel has further submitted that, as per the prosecution story, the alleged occurrence is said to have taken place at 10:00 A.M., and,



according to the evidence of the prosecution witnesses, several villagers, numbering about 100, gathered at the site of the occurrence. However, none of these villagers was made a witness by the police, even though they were the best witnesses to prove the place of occurrence and other relevant facts constituting the occurrence. Some material witnesses of the prosecution deposed that there was no dispute between the appellants and the prosecution party, who are agnates, and that they had a cordial relationship during the relevant period. In this regard, the evidence of PW-5 is relevant. Therefore, there was no reason for the appellants to assault the prosecution party with fatal weapons. It was further argued that the investigating officer did not find any signs of marpit at the alleged place of occurrence, nor did he find blood-stained earth or soil, despite visiting the site on the very next day. According to the postmortem report, the deceased sustained six injuries, among which injury No. 1 was described as the fatal injury and opined to be the cause of death. However, the medical expert who treated the deceased initially stated in his evidence that the said injury was not life-threatening, and he did not mention in his report that the deceased was unconscious when brought to the Primary Health Centre, Sheikhpura. According to him, this showed that the deceased was conscious. Further, the said injury was



specifically attributed to the co-accused Bhushan Yadav, who was tried separately before the Juvenile Justice Board and was acquitted. The same medical expert, examined as PW-12, deposed that he could not give his final opinion regarding the nature of injury No. 1 because the X-ray report of the deceased was not available at that time. Hence, the evidence given by PW-12 is not corroborative of the medical opinion given in the postmortem report, in which injury No. 1 was considered fatal and the main cause of death. Learned counsel has further submitted that, as per the FIR, the appellants allegedly used sharp-edged weapon (garasa) and pointed weapon (spear) in assaulting the deceased and other injured persons. However, no corroborating injury from the said weapons was found either on the body of the deceased or on the bodies of the other injured persons, which amounts to a serious contradiction. In fact, all the so-called eyewitnesses did not see the commission of the alleged occurrence, and none of them was an eyewitness; they were planted to support a false story. An incident of marpit took place between the prosecution party and one Ramdeo Manjhi, in respect of which Ariyari P.S. Case No. 151/2008 was registered for offences under Sections 147, 341, 323, and 325 of the IPC against the informant of the present matter, some injured persons of the present matter, and others who



were charge-sheeted for offences alleged in that matter. The FIR relating to that case was lodged on the same day, 27.11.2008, which relates to the date of occurrence of the present matter. The submission of the charge-sheet in Ariyari P.S. Case No. 151/2008 clearly shows that the police found the allegations of assault and marpit made in that FIR to be true. Further, the same is sufficient to indicate that the alleged occurrence, as narrated in the FIR of the present matter, took place in a different manner, which casts a serious doubt on the truthfulness and veracity of the allegations leveled by the informant.

Submissions on behalf of the Respondents:-

16. On the other hand, Mr. A.M.P. Mehta, learned Additional Public Prosecutor appearing for the State, argued that the material witnesses of the prosecution, namely PW-1, PW-4, and PW-8, remained consistent with the prosecution story and fully supported it in their testimonies. The evidence of these witnesses is highly reliable, as they are injured. Although there are some contradictions between their testimonies and the prosecution story, the same are minor in nature and ignorable. When the Investigating Officer inspected the place of occurrence, he found some straw scattered at the site, which indicates that some incident had taken place there. Regarding the contradiction between the



nature of the weapons mentioned in the FIR by the informant and the injuries noted by the medical expert in his report, the same is also ignorable. According to the testimonies of the material witnesses, all the alleged fatal weapons — garasa and spear having wooden portions, and other implements such as iron rods, lathis, and dandas — could have been used by the accused in their blunt portions during the assault on the deceased and other injured persons. Learned APP further submitted that the informant recorded his fardbeyan on the same day of the occurrence, which demonstrates the naturality and credibility of his statement. As per the postmortem report, the deceased sustained a head injury among other injuries, and the said head injury was found to be the primary cause of death. According to the prosecution story, the accused specifically assaulted the head of the deceased.

17. Mr. Sanjay Kumar, learned counsel appearing for the informant, adopted the submissions advanced by the learned Additional Public Prosecutor appearing for the State.

Consideration and Analysis:-

18. I have heard the arguments of both sides, perused the impugned judgment, examined the evidence of both parties available on the record of the trial court, and have also taken into account the statements of the accused.



19. The first and foremost contention raised by the appellants' counsel is the contradiction between the ocular evidence and the medical evidence, particularly with respect to the manner of assault, as stated above. In light of this contention, I have perused the fardbeyan of the informant, the evidence of the injured witnesses (PW-1, PW-4, and PW-8), and, regarding the medical opinion, the evidence of PW-12 and PW-14. As per the prosecution story narrated in the FIR, the appellant Indradeo Yadav used a spear, the appellant Mishri Yadav used an iron rod, co-accused Devendra Yadav used a tangi, co-accused Bhushan Yadav used a garasa, and other accused persons used lathis and dandas in assaulting the deceased and his two brothers, including the informant.

19.1. PW-1 deposed in his examination-in-chief that co-accused Bhushan Yadav assaulted the deceased on his head with a garasa, the appellant Indradeo Yadav assaulted the informant using a spear, and co-accused Devendra Yadav assaulted PW-4 with a tangi, inflicting a blow on the neck of PW-4 with the said weapon. Regarding the use of these weapons by the accused, including the appellants, similar evidence was given by PW-4 in his examination-in-chief. The witness (PW-4) stated in cross-examination in paragraph 11 that his brother sustained two spear



injuries to his chest and one garasa blow to his head, and that the sharp portion of the garasa was used in the assault. Similarly, PW-5 Nandlal Yadav, who claimed to be an eyewitness of the alleged occurrence, deposed in cross-examination in paragraph 12 that the deceased was assaulted with the sharp portion of the garasa. If these statements of the said witnesses are taken to be true, it would appear that the sharp portion of the garasa was used to inflict blows on the head of the deceased, and that the other injured persons were also assaulted by the pointed portion of the spear and the sharp portion of the garasa. However, as per the medical expert's opinion, who initially examined the deceased and the other injured persons, all injuries were caused by hard and blunt objects, and most of the injuries were found to be bruises, swellings, and some lacerated wounds. It is not believable that all the injured persons, four in number, including the deceased, were assaulted by the accused with the blunt portion of the alleged weapons. The said contradiction between the ocular evidence and the medical evidence appears to be fatal to the prosecution and cannot be ignored. It is a settled position of law that where the ocular evidence of the prosecution witnesses is totally inconsistent with the medical evidence, such inconsistency should be considered a fundamental defect in the prosecution case, and in



such a situation, it would be unsafe to convict solely on the ocular evidence. In this regard, I would like to refer to the observations made by the Hon'ble Supreme Court in ***Ram Narain Singh v. State of Punjab and the analogous case Jaggar Singh and Others v. State of Punjab***, reported in (1975) 4 SCC 497, and the relevant paragraph no. 6 of the said judgment is reproduced as under:

“ 6. the evidence of the eyewitnesses was inconsistent with the medical evidence appears to be well founded. In other words, the position is that if we discard this part of the evidence of the eyewitnesses which has come to light for the first time in the Sessions Court, then according to medical evidence, the deceased would have got two gunshots whereas it was never the prosecution case that Ram Narain Singh or any other accused fired a second shot at the deceased at any time. The medical evidence, therefore, clearly falsifies the prosecution case regarding the manner in which the deceased was hit.”

19.2. I would also like to refer to the judgment of the Hon'ble Supreme Court in the case of ***Thaman Kumar v. State of Union Territory of Chandigarh***, reported in (2003) 6 SCC 380, in which the observations made in paragraph 16 are reproduced as under:



“16. The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eyewitnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony.”

19.3. As far as the place of occurrence is concerned, according to the FIR, the alleged assault took place near the house of one Rambriksha Bind. However, as per the evidence of some



material prosecution witnesses (PW-8), the incident took place near a Samudayik Bhawan, and according to PW-7 Bhim Yadav, who claimed to be an eyewitness, the incident occurred near the field of the prosecution party. The investigating officer visited the place of occurrence on the second day after the alleged incident and did not find any signs of marpit or blood-stained soil. Although, as per the learned APP, some straw was found scattered, the same is insufficient to prove the alleged place of occurrence. The investigating officer also made no attempt to recover the weapons allegedly used in assaulting the deceased and others. It is relevant to note that on 27.11.2008, an FIR bearing Ariyari P.S. Case No. 151/2008 was also lodged by one Ramdev Manjhi against the deceased and some of the injured persons of the present matter, and others, pertaining to an alleged assault that took place on the same date. In that FIR, Maheshwar Yadav, Dular Yadav (injured persons of the present matter), Kapildeo Yadav (informant of the present matter), and others were charge-sheeted, whereas the deceased Kailash Yadav could not be charge-sheeted on account of his death. If the prosecution story in Ariyari P.S. Case No. 151/2008, the contradictions between the ocular evidence of the prosecution witnesses in the present matter and the medical evidence, and the non-finding of any signs of marpit at the alleged



place of occurrence by the investigating officer are considered simultaneously, it may be inferred that the alleged occurrence, as narrated by the informant in his fardbeyan, did not take place in the manner described by him and might have occurred differently. Furthermore, the informant also recorded his statement at Rajeshwar Hospital, Kankarbagh, Patna, before Sub-Inspector S.K. Verma, the original copy of which was produced before the trial court and exhibited; this has not been disputed by the prosecution. From the perusal of the second fardbeyan of the informant, a different story emerges. Although the participation of the appellants and other co-accused in the alleged assault was reiterated, the genesis of the occurrence is described differently. According to the informant's second fardbeyan, on the alleged day and time, the appellant Indradeo Yadav was erecting a hut on disputed land near the house of Rambriksha Bind, which was opposed by the deceased. Thereafter, the deceased and his brothers were threatened and abused by the accused. Subsequently, Indradeo Yadav rushed behind the deceased, and near the Samudayik Bhawan, other accused, including the appellants, joined him and assaulted the deceased with lathi, danda, bhala, garasa, and iron rod. Upon hearing the cries of the deceased, the informant and others rushed to the spot and were also assaulted by



the accused. Thus, there is a serious contradiction between the prosecution story described by the informant in his first fardbeyan, which formed the basis of the FIR, and the story described in his second fardbeyan, recorded at Patrakar Nagar Police Station, Patna. Accordingly, the place of occurrence as shown in the first fardbeyan appears doubtful.

20. The second contention raised by the appellants' counsel is that all the so-called eyewitnesses are highly interested and relative witnesses of the prosecution party and despite the presence of several independent persons at the time of the alleged occurrence, none of them was produced or examined by the prosecution. Further, the presence of the informant at the alleged time and place of the alleged occurrence is also highly doubtful. In this regard, the learned counsel has referred to the evidence of PW-1, PW-3, PW-4, PW-5, and PW-8.

20.1. From a perusal of the evidence of these witnesses, it appears that several independent persons gathered when the alleged occurrence was being committed by the accused. PW-5, Nandu Yadav @ Nandlal Yadav, deposed in his cross-examination that 100–200 people had gathered at the place of occurrence when he reached there. However, the prosecution has not provided any plausible explanation for not producing and examining any of



these persons, whose evidence might have been helpful, at least to establish the alleged place of occurrence. The withholding of such witnesses weighs against the prosecution. PW-3, Sona Kumari, who is the daughter of the injured Maheshwar Yadav, claimed to have witnessed the occurrence. However, as per her statements in paragraph 4 of her cross-examination, she does not appear to be an eyewitness, as she deposed that at the time of the occurrence she was inside her home cooking food. Her evidence contradicts the informant's claim that he had witnessed the commission of the alleged assault, as she deposed in paragraph 5 of her cross-examination that her uncle Kapildeo Yadav arrived at the place of occurrence just after she reached there. In the preceding paragraph (paragraph 4), she also deposed that 20–30 persons had gathered at the place of occurrence before she reached there. PW-5, Nandu Yadav @ Nandlal Yadav, the brother of the informant, deposed in cross-examination that when he and his four brothers were going, they saw the accused seated at the alleged place of occurrence the said fact is contradictory to the story narrated by the informant in his second fardbeyan. In paragraph 12, he deposed that when the accused were assaulting Kailash Yadav (deceased), he was standing nearby observing the occurrence, and upon hearing the commotion, 100–200 villagers gathered. He further stated that



when the accused left the place of occurrence, he went there. In the next paragraph, he stated that all his brothers stood nearby and reached the place of occurrence only after the accused had left. This conduct of the witness and his brothers raises doubt regarding their presence at the place of occurrence during the relevant time of alleged assault. Accordingly, I find force in the aforesaid contention of the appellants' counsel.

21. The third contention raised by the appellants' counsel is the delay of two days on the part of the concerned police officer in sending the First Information Report (FIR) to the jurisdictional Magistrate. During the course of arguments, the learned APP has not provided any plausible explanation for the said delay in not sending the FIR within the time frame prescribed under the law. This delay is also a relevant factor that creates doubt regarding the reliability of the FIR.

22. The fourth contention raised by the appellants' counsel is that the prosecution has failed to establish a direct connection between the cause of death of the deceased, as indicated in the postmortem report, and the alleged injuries purportedly inflicted by the accused/appellants on the person of the deceased.



22.1. The deceased died on 14.12.2008, while the alleged occurrence is said to have taken place on 27.11.2008. Thus, there was a gap of seventeen days between the date of the occurrence and his death. The deceased was initially treated at Sadar Hospital, Sheikhpura, where the concerned doctor, examined as PW-12, found five injuries on his person. Out of these, three were bruises, the fourth was swelling, and the fifth was a lacerated wound over the left parietal region of the scalp measuring 2½” x ¼” x ¼”. As per PW-12, two injuries were simple, and regarding the remaining injuries, he kept his opinion reserved for want of the X-Ray report. However, the X-Ray report could not be produced before PW-12 when the final opinion regarding the reserved injuries was to be given. PW-12 deposed in cross-examination in paragraph 10 that he did not give the opinion that the deceased was unconscious, as per him which indicates that the deceased was conscious at the time of examination. He further deposed that injuries Nos. 2, 3, and 4 of Kailash Yadav (deceased) were superficial, and regarding injury No. 1, he could not state whether it was fatal due to the absence of the X-Ray report; however, according to him, it did not appear to be fatal. He further deposed in cross-examination in paragraph 11 that he did not refer the deceased for treatment at Patna. As per the prosecution, the



deceased was initially treated at Sadar Hospital, Sheikhpura, and thereafter at P.M.C.H., Patna, and Rajeshwar Hospital, Kankarbagh, Patna. However, regarding the treatment at P.M.C.H. and Rajeshwar Hospital, the prosecution could not produce any documentary evidence. Though the postmortem report opined the cause of death as due to head injury, the concerned doctor opined that injuries Nos. 1 and 6 were caused by a hard and blunt substance, and for injuries Nos. 2 to 5, opinion should be taken from the surgeon who conducted the operation of the deceased before postmortem. In the light of these facts, I find convincing materials to show that the prosecution has not fully established the death of the deceased as a direct consequence of the alleged assault. Accordingly, I find some force in the above contention.

Conclusion:-

23. After having discussed the evidences available on record, I reach the conclusion that there is a serious contradiction between the manner of assault as alleged in the FIR and the medical evidence regarding the nature of the injuries and the weapons allegedly used in assaulting the injured and the deceased. This contradiction is fatal to the prosecution's case. Furthermore, the prosecution has failed to establish the place of occurrence, and no strong motive on the part of the appellants to commit the



alleged occurrence emerges from the evidence. The prosecution has also failed to establish that the death of the deceased was a direct consequence of the alleged assault. Accordingly, I am of the view that the conviction of the appellants for the charged offences is not sustainable in law. Hence, the impugned judgment of conviction dated 16.11.2013 and the order of sentence dated 20.11.2013 passed in Sessions Trial No. 404 of 2010 / G.R. Case No. 1073 of 2008, convicting and sentencing the appellants for the charged offences, are hereby set aside.

24. The appeal is allowed.

25. The appellants are on bail. Accordingly, their bail bonds stand cancelled forthwith, and they, along with their sureties, are hereby discharged from their respective liabilities.

26. Let the records of the trial court, along with a copy of this judgment, be sent forthwith to the court concerned for compliance and for doing the needful.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.02.2026
Transmission Date	07.02.2026

