

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.74 of 2016

Arising Out of PS. Case No.-15 Year-2005 Thana- KUCHILA District- Kaimur (Bhabua)

1. Dadan Ojha
2. Nanda Ojha, Both sons of Late Budhan Ojha,
3. Tejnarayan Singh @ Tejnarayan Yadav, Son of Late Kedar Yadav,
4. Bajrangi Singh @ Bajrangi Yadav, Son of Late Prithviraj Singh,
5. Dukhu Singh @ Dukhu Singh Yadav, Son of Late Sant Yadav,
Appellant No. 1 and 2 are resident of village - Bashahi, P.S. - Rajpur,
District - Buxar and appellant no. 3 to 5 are the resident of village -
Shivpur, P.S. - Kuchila, District - Kaimur Bhabua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 203 of 2016

Arising Out of PS. Case No.-15 Year-2005 Thana- KUCHILA District- Kaimur (Bhabua)

Dipan Singh Yadav @ Dipnarayan Yadav @ Deepan Singh Son of Late
Kedar Yadav Resident of Village-Shivpur, P.S.-Kuchila, Distt.-Kaimur
Bhabua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 74 of 2016)

For the Appellant/s : Mr. Swapnil Kumar Singh, Advocate

Md. Najmul Hodda, Advocate

For the Respondent/s : Mr. Anand Mohan Pd. Mehta, A.P.P.



(In CRIMINAL APPEAL (SJ) No. 203 of 2016)

For the Appellant/s : Mr. Swapnil Kumar Singh, Advocate
Md. Najmul Hodda, Advocate

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

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 13-05-2026

1. Both the aforementioned appeals arise out of same Kuchila P. S. Case No. 15 of 2005 and hence, with the consent of all the parties, are being heard and disposed of by a common judgment.

2. Heard learned counsel appearing for the appellants and learned Additional Public Prosecutors appearing for the State.

3. These appeals have been filed challenging the judgment of conviction dated 20.01.2016 and order of sentence 25.01.2016 passed by the learned Additional Sessions Judge, III, Kaimur at Bhabua in Sessions Trial No. 129 of 2009 / Reg no. 243 of 2015 arising out of Kuchila P.S. Case No. 15 of 2005 whereby and whereunder these appellants have been convicted and sentenced to undergo rigorous imprisonment for 2 years under Section 148 of the Indian Penal Code and imprisonment for 7 years under Sections 307/149 IPC with fine of Rs. 5,000/- each and in default of payment further simple imprisonment for one month. In addition, appellant, namely, Dipan Singh Yadav @ Dipnarayan Yadav @ Deepan Singh was also sentenced to



under rigorous imprisonment for 5 years and fine of Rs. 3,000/- for the offence under Section 27 of Arms Act and in case of default of fine, appellant to undergo simple imprisonment for one month.

4. The prosecution case, in brief, is that when informant along with others was digging and carrying soil from the riverside by tractor, the accused persons, variously armed, reached there and objected the same. It is alleged that appellant Dipan Singh Yadav @ Dipnarayan Yadav @ Deepan Singh fired from a double barrel gun, causing pellet injuries on the right eye and forehead of informant, resulting in loss of eyesight.

5. In this case, in order to bring home guilt of these appellants, the prosecution has examined altogether nine witnesses.

5(a) P.W. 1, namely, Jootan Singh claims to be an eye witness of the occurrence and stated supported the prosecution case. He further admitted previous litigations pending between the parties. His evidence discloses material omissions regarding exact place of occurrence, distance and manner of assault.

5(b) P.W. 2, namely, Bansnarayan Singh is the injured informant and reiterated the allegations made in the F.I.R. His testimony also shows inconsistency regarding the direction from which firing was made and the exact position of the accused



persons.

5(c) P.W. 3, namely, Munna Singh was declared hostile.

5(d) P.W. 4, namely, Rampravesh Singh supported the prosecution case in a formal manner but his evidence is largely hearsay in nature and suffers from omission regarding overt act of individual accused persons.

5(e) P.W. 5, 6 and 7 did not support the prosecution case on material particulars and were declared hostile.

5(f) P.W. 8, namely, Dr. Rajendra Choudhary examined the injured on 05.07.2005 and opined that the injuries were caused by firearms. However, in cross-examination, he admitted that the injury report produced was not original and the patient had been referred to higher centre for ophthalmological management and no final opinion regarding nature of injury or permanent loss of eyesight was given by him.

5(g) P.W. 9, namely, Bishwanath Sharma is one of the Investigating Officers and did not seize any blood stained soil, pellet, empty cartridge or firearms from the place of occurrence. No ballistic examination was conducted and he also failed to produce the original injury report.

6. On the other hand, the defence examined two witnesses and learned Trial Court discarded the evidence of



D.W. 1. His testimony creates doubt regarding the prosecution story of soil digging at the relevant time and evidence of D.W. 2 probabilises the defence plea of previous enmity and false implication.

7. Learned counsel appearing for the appellants assails the order of conviction and sentence and submits that the conviction is wholly unsustainable as out of the alleged eye witnesses, several witnesses have turned hostile and only interested and inimical witnesses have supported the prosecution case. He further submits that the original injury report was never produced and the doctor himself admitted that the injury report exhibited was not original. It is also contended that no final medical opinion proves grievous injury or permanent blindness. There is complete absence of independent corroboration. No seizure of blood stained soil, pellets, firearms or empty cartridges was made and prosecution failed to establish the place of occurrence beyond reasonable doubt. The defence has further emphasized that admitted previous enmity between the parties arising out of earlier criminal litigation furnished strong motive for false implication. It is lastly submitted that in the facts of the case no offence under Section 307 IPC is made out since there is no allegation of repetitive blow and despite there being no intervening circumstance, the



life of informant was saved. Thus, the prosecution has failed to prove the case beyond reasonable doubts and thus, the trial court has wrongfully convicted these appellants ignoring material contradictions and hence, the appellants are fit to be acquitted.

8. Learned Additional Public Prosecutors for the State have supported the judgment of conviction and submitted that testimony of injured witness carries great evidentiary value and minor contradictions are not sufficient to discard the prosecution case. There is no reason to differ with the findings of the learned trial court and the judgment of conviction and order of sentence are justified and legal.

9. Having heard learned counsel for the parties and upon perusal of the trial court records, this Court finds substantial infirmities in the prosecution case.

10. It is true that testimony of an injured witness ordinarily receives greater weight. However, such testimony must inspire confidence and should stand corroborated by surrounding circumstances and medical evidence. In the present case, prosecution suffers from serious lapses. Out of material witnesses, P.W. 3, P.W. 5, P.W. 6 and P.W. 7 were declared hostile thus, the prosecution, substantially, rests upon the testimonies of P.W. 1 and P.W. 2, who are, admittedly, interested and inimical witnesses. The I.O. also failed to produce objective



evidence regarding the place of occurrence. No blood stained soil was seized and no independent witness from the locality was examined though the occurrence is alleged to have taken place in broad daylight near riverside.

11. In my opinion, learned Trial Court failed to properly appreciate the cumulative effect of hostile witnesses, admitted enmity, defective investigation and inconclusive medical evidence. I am inclined to accept the proposition that in the facts of the case no offence under Section 307 IPC and Section 27 of the Arms Act is made out but in my view, a clear case under Section 326 IPC would be made out. Considering that the appellants have remained in custody for sufficient long period, the conviction under Section 307 IPC can be converted into Section 326 IPC and they are sentenced to the period already undergone by them. In absence of medical report, recovery of any firearms, pellets, the offence under Section 27 of the Arms Act cannot be sustained.

12. In that view of the matter, the impugned judgment of conviction dated 20.01.2016 and order of sentence 25.01.2016 passed by the learned Additional Sessions Judge, III, Kaimur at Bhabua in Sessions Trial No. 129 of 2009 / Reg no. 243 of 2015 arising out of Kuchila P.S. Case No. 15 of 2005 are hereby set aside with respect to these appellants only.



13. Appellants, above named, are acquitted of all the charges and are discharged from the liability of the bail bonds in connection with this case.

14. Accordingly, this appeal stands allowed.

15. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

Navya/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.05.2026
Transmission Date	18.05.2026

