

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.772 of 2009

1. Karan Chaudhary S/O - Late Bhuneshwar Chaudhary Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur
2. Satrugan Chaudhary S/O - Late Bhuneshwar Chaudhary Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur
3. Raj Kumar Chaudhary S/O - Late Bhuneshwar Chaudhary Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur
4. Bharat Chaudhary S/O Late Bhuneshwar Chaudhary Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur
5. Pandaw Chaudhary S/O - Late Bhuneshwar Chaudhary Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur
6. Dilip Jha S/O - Sri Jay Kant Jha Vill - Masadi , P.S.- Sultanganj , Distt - Bhagalpur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajive Ranjan Singh, Advocate
		Mr. Amit Ranjan, Advocate
For the Respondent/s	:	Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 22-01-2026

Pursuant to order of this Court, a report has been received from Sr. S.P., Bhagalpur which reveals that the appellant No. 3, Rajkumar Chaudhary, has died during the pendency of this appeal. In light of the said report, the appeal against appellant No.3 stands abated.

2. Heard learned counsel for the appellants and learned A.P.P. for the State.

3. The present appeal is directed against the



judgment of conviction dated 29.08.2009 and order of sentence dated 03.09.2009, passed by learned Additional Sessions Judge, F.T.C. II, Bhagalpur in Sessions Trial No. 239 of 2002, whereby and whereunder appellants Raj Kumar Chaudhary (since deceased), Shatrughan Chaudhary, Pandaw Chaudhary, Dilip Jha and Bharat Chaudhary have been convicted under Section-323/149 of I.P.C., appellants Shatrughan Chaudhary, Pandaw Chaudhary and Dilip Jha have been convicted under Section-147 of I.P.C., appellants Karan Chaudhary, Bharat Chaudhary and Raj Kumar Chaudhary have been convicted under Section 148 of I.P.C., appellant Raj Kumar Chaudhary has been convicted under Section 379 of I.P.C. and appellant Karan Chaudhary has been convicted under Section-307/149 of I.P.C. Appellants Raj Kumar Chaudhary, Shatrughan Chaudhary, Pandaw Chaudhary, Dilip Jha and Bharat Chaudhary have been sentenced to undergo R.I. for six months each under Section-323/149 of I.P.C., appellants Shatrughan Chaudhary, Pandaw Chaudhary and Dilip Jha have been sentenced to undergo R.I. for six months each under Section-147 of I.P.C., appellants Karan Chaudhary, Raj Kumar Chaudhary and Bharat Chaudhary have been sentenced to undergo R.I. for six months each under Section-148 of I.P.C., appellant Raj Kumar



Chaudhary has been sentenced to undergo R.I. for one year under Section 379 of I.P.C. Appellant Karan Chaudhary has been sentenced to undergo R.I. for three years and a fine of Rs.3000/- under Section-307/149 of I.P.C. and, in default of payment of fine, he has been directed to further undergo R.I. for three months. All the sentences have been directed to run concurrently.

4. In the Fardbayan recorded at the house of informant/PW 5, by S.I. Madhusudan Sharma of Sultanganj Police Station, it is asserted by the informant that on 9th June, 1996, at about 8:30 hours, informant/PW 5 was at his gate with the injured brother Arvind Kumar Saini/PW 8. In the meantime, Bharat Chaudhary/appellant No.4 is stated to have come from eastern side. It is asserted by informant/PW 5 that the injured brother of informant, namely Arvind Kumar Saini/PW 8, proceeded towards the road for demanding money from appellant Bharat Choudhary/appellant No. 4. It is asserted by the informant that there was a bet of Rs. 50/- each between appellant Dilip Jha and injured Arvind Kumar Saini/PW 8 as to who would be the Prime Minister. It had also been stated by the informant that the brother of informant, Arvind Kumar Saini/PW 8 and Bharat Chaudhary (appellant No. 4) are said to



have gone near the house of Bisheshwar Yadav (not examined), for receiving the money from appellant Bharat Chaudhary (appellant No. 4). According to PW-5/informant, Bharat Chaudhary (appellant No. 4) called his brothers upon which appellants Raj Kumar Chaudhary, Satrugan Chaudhary alias Karuwa Chaudhary, Karan Chaudhary and Pandaw Chaudhary are said to have reached at that very place and started assaulting Arvind Kumar Saini/PW-8, with kicks and slaps. It is further stated that informant, PW-5, having heard the same, reached there where Narad Yadva, PW-2, also reached and tried to save brother of the informant by taking the informant's brother inside the house. It is further alleged that informant, PW-5, thereafter brought his brother, PW-8, to his house, who was crying in pain and it is further alleged that after twenty minutes, Bhart Chaudhary, armed with an axe, Raj Kumar Chaudhary having a country-made pistol, Shatrughan Chaudhary @ Karua, Pandaw Chaudhary, both having lathi and Karan Chaudhary, armed with Khanti, Dilip Jha, armed with lathi came there and all the appellants are alleged to have entered inside the room looking for Arvind Kumar Chaudhary. The informant is said to have made an effort to stop them, but on account of fear, he was not able to do so. The appellant Dilip Jha is alleged to have



exhorted others to assault. On the exhortation of said appellant, Bharat Choudhury inflicted axe blow on the waist of informant's brother, whereas appellants Pandaw Chaudhary, Karua Chaudhary (Shatrughan Chaudhary) and Dilip Jha started assaulting with lathi. Appellant Karan Chaudhary is said to have inflicted Khanti blow on the head of Arvind Kumar Saini with intention to kill, due to which he was besmeared with blood and became unconscious and accused persons are said to have snatched away the necklace and earring of the wife of his brother and fled away. The informant, with other family members, is said to have rushed Arvind Kumar Saini to Sultanganj Referral Hospital for treatment. It is also asserted that Shankar Pandey/PW-3, Nargis Yadav/PW-7 and Binod Yadav/PW-1 are said to have witnessed the alleged occurrence. In the referral hospital, the condition of Arvind Kumar Saini started deteriorating upon which all are said to have taken him to Bhagalpur, when doctor had advised at Bhagalpur to go to Patna for treatment. When his condition was not improving, the family members of informant are said to have taken the injured to Patna. He did not give statement on 14th June, 1996 due to the said reason. Injured Arvind Kumar Saini/PW-8 and his wife Mina Devi/PW-6 are stated to be at Patna where injured Arvind



was being treated. It is asserted by the informant that they would give their statement after returning from Patna and informant/PW5 has categorically stated that injured Arvind Kumar Saini/PW-8 was being treated at PMCH, Patna.

5. On the basis of fardbeyan of the informant, Sultanganj P.S. Case No. 110 of 1996 was registered under sections 147, 148, 149, 323, 324, 307, 448 and 379 of IPC. Investigation started and after completion of investigation, charge-sheet was submitted against the appellants accordingly. Cognizance was taken on 10-10-1996 under Sections 147, 148, 149, 307, 379, 323, 324, and 448 IPC. and the case was committed to the court of sessions on 14-3-2002. Thereafter, the learned Court of Sessions framed charges under sections 307/149, 148, 147 and 379 of IPC.

6. In order to bring home guilt of the accused persons, prosecution has examined all together 10 witnesses. P.W. 1 Binod Yadav, P.W. 2 Narad Yadav, P.W. 3 Shankar Pandey, P.W. 4 Urmila Devi, P.W. 5 Manoj Kumar Saini(informant), P.W. 6 Mina Devi, P.W. 7 Nargis Yadav, P.W. 8 Arbind Kumar Saini, P.W. 9 Dr. Ganesh Mahto and P.W. 10 Md. Nishar.

7. Prosecution has produced following



documentary evidence on record:-

Exhibit-1: Signature of informant/P.W. 5 and
Shankar Pandey (without objection)

Exhibit-2: Injury report of Arbind Kumar

Exhibit-2/1: Supplementary injury report of Arbind
Kumar

Exhibit-3: Fardbeyan of the informant

8. No oral or documentary evidence has been produced on behalf of the defence. However, defence of the appellants, as gathered from the line of cross-examination of prosecution-witnesses as well as from the statement of the accused/appellants under Section-313 of Cr.P.C., is that of total denial.

9. After hearing the parties, the learned trial court convicted the appellants and sentenced them as indicated in the 3rd paragraph of the judgment.

10. Learned counsel for the appellants has submitted that the injury report prepared by the doctor is very inadequate, cryptic and slipshod and it has no value in the eyes of law. In the present case, there is allegation against the six persons to have assaulted the injured/victim. It is further submitted that out of six accused persons/appellants, appellant



No. 3/Raj Kumar Chaudhary has died and appeal stands abated with regard to him, which is already on record. As per injury report, there is only one injury and injury report is very cryptic as opinion stands reserved. In this way, the injury opined by doctor is cryptic in nature and, prudently and pragmatically, it cannot be possible that there are six assailants and there is only one injury. Hence, the injury is not corroborated and the matter arose on the betting for the post of Prime Minister and it was mutually agreed that if the bet is decided in favour of particular person, he would be awarded by Rs. 50/-. The dispute arose on a trivial matter. The dispute arose on a trivial matter on account of non-payment of betting amount of Rs.50 and prudently and pragmatically, it is highly improbable that appellants had intention to commit murder of the victim for the said petty issue and the facts are exaggerated and statement of so called victim is not reliable that he was assaulted by six persons and he got only one injury. Hence, the very truthfulness of the said story becomes doubtful. Apart from that, none of the prosecution-witnesses has stated regarding the boundary of the place of occurrence and I.O. has not been examined and due to non-examination of I.O., place of occurrence is also not proved and it is the cardinal principle of criminal law that prosecution has



to prove the case beyond reasonable doubt. The statement of victim suffers from infirmities as six persons are alleged to have assaulted, inflicting one injury. The dispute arose on a petty issue and as the I.O. was not examined, real cause of altercation or assault has not come to the fore. In this way, the prosecution has not proved the case beyond reasonable doubt. In the light of aforesaid facts and circumstances of the case, the judgment of conviction and order of sentence passed by the trial court are not justified and legal and the same are fit to be set aside.

10.1. Learned counsel has cited the judgment of Hon'ble Supreme Court, passed in Cr. Appeal No. 1794 of 2013 (**Machindra Vs. Sajjan Galfa Rankhamb & Ors**). In para-15, it has been held as follows:-

“15. But looking at the post-mortem report, cause of injuries was not stated nor was any opinion formed to create independent testimony. We would like to emphasize on the vital role played by opinion of the expert which is simply a conclusion drawn from a set of facts coming to his knowledge and observation. Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod,



inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution. Therefore, we are of the considered opinion that the prosecution has failed to prove that death was caused due to the injuries inflicted by the recovered weapons.”

11. Learned A.P.P. for the State has submitted that the informant is the victim of the present case and has stated how he sustained injuries in the alleged occurrence and injuries have also been corroborated by the doctor. Other witnesses have also supported and corroborated the prosecution story. Learned APP further submits that the judgment of conviction and order of sentence passed by the concerned court is based on the appreciation of evidence and material available on record which is justified and legal and no interference is required.

12. The question which arises for consideration is:-

Whether the prosecution has proved the case under Sections-307/149, 147, 148 and 379 of I.P.C. against the appellants beyond the shadow of reasonable doubt?

13. I have perused the impugned judgment, order



of trial court and trial court records. I have given my thoughtful consideration to the rival contentions made on behalf of the parties, as noted above.

14. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

15. PW1 Binod Yadav, PW2 Narad Yadav and PW3 Shankar Yadav, who are said to have seen the occurrence, have not supported the prosecution-case and they have been declared hostile. PW 7 has stated that he does not know anything about the occurrence and police had not recorded his statement. In this way, his evidence is of no significance.

16. PW4 Urmila Devi has stated that the occurrence took place on 9th June, 1996, at 8:30 hours early in the morning. She was at her house. On alarm, she came out and saw Rajkumar, Bharat Chaudhary, Karan Chaudhary, Shatrughan Chaudhary, Dilip Jha and Pandaw Chaudhary. Karan was having khanti, Rajkumar was having gadasa and rest came with lathi and they started assaulting her son, as a result of which he fell down and after sustaining injury, he became unconscious. The gold necklace and ear rings of Mina Devi were snatched by Rajkumar Chaudhary and, for the purpose of treatment, the victim was sent to Sultanganj hospital, from there



to Bhagalpur hospital and from Bhagalpur to Patna. The treatment continued for one month in Patna.

16.1. During the course of cross-examination, P.W. 4 has stated how the victim sustained injury and has also stated that the reason for quarrel was the betting amount which was not given by Dilip Jha/appellant No. 6 and Bharat Chaudhary/appellant No.4, who is a guarantor to ensure the payment of betting amount. When the payment was not made, hot talk took place between the victim and Bharat Chaudhary, and on account of said reason, the occurrence took place at the street near the house of Bharat Chaudhary. She has further stated that when her son became unconscious, no one had assaulted.

17. From perusal of evidence of P.W. 4 it is evident that accused Rajkumar was having gadasa, but in the initial version of prosecution-story of informant/P.W.5., it is stated that accused Rajkumar was having a country-made pistol. Hence, the statement of P.W. 4 on the point of holding gadasa is quite divergent from the initial version of prosecution-story. On the point of place of occurrence also the statement of P.W. 4 is divergent as she has stated during cross-examination that the victim was assaulted near the house of Bharat Chaudhary, but in



the initial version of prosecution-story it is stated that the victim was assaulted first assaulted near the house of Bisheshwar Yadav and again at the house of the informant and P.W. 6 has stated that the victim was dragged out of the house and then assaulted by the accused persons. On the point of snatching gold necklace and ear rings of Mina Devi/P.W.6, the statement of P.W.4 is quite divergent from the initial version of prosecution-story. In the initial version of prosecution-story, it is stated that the accused persons snatched the gold necklace and ear rings of Mina Devi/P.W.6 but P.W. 4 has stated that appellant Rajkumar snatched the gold necklace and ear rings of Mina Devi/P.W.6. The statement of P.W.4 is also divergent from the statement of P.W.6 as P.W.6 has stated that Rajkumar and Shatrughan entered the house and snatched her gold necklace and ear rings. In this way, the statement of P.W. 4 is full of infirmities, inconsistencies and contradictions.

18. PW5/Manoj Kumar Saini is the informant. He has asserted that occurrence took place at 8:30 A.M., early in the morning on 9th June 1996. He was sitting along with his younger brother Arvind Kumar Saini/victim. He has stated that his brother Arvind Kumar Saini/PW8 was demanding the bet amount of Rs.50/- from Bharat Choudhary. The bet was on the



sole issue whether Mr. Atal Bihari Bajpayee would be Prime Minister or not. The bet was decided in favour of his brother/victim. He has also stated that PW8/victim came with Bharat Chaudhary near the house of Bisheshwar Yadav. Bharat Chaudhary called his brothers, who assaulted by fist. Narad Yadav/PW2 had saved the victim. The informant and others called P.W.8/injured brother at his house and after 20 minutes, Bharat, Karan, Raj Kumar, Satrugan, Pandaw and Dilip came. Bharat was having an axe, Karan was having a khanti, Rajkumar was having country-made pistol and Shatrughan was having a lathi. Karan is alleged to have assaulted by means of khanti upon the head of P.W.8/victim, as a result of which P.W. 8/victim became unconscious after falling. Bharat is alleged to have assaulted upon the waist of P.W.8/victim by means of an axe. Shatrughan and Dilip Jha are alleged to have assaulted by means of lathi. On raising alarm, people came and P.W.8/victim was rushed to Sultanganj hospital, from Sultanganj to Bhagalpur, and from Bhagalpur to Patna. He was finally hospitalized in Patna. Informant and Shankar put their signatures on the fardbeyan (Exhibit-1).

18.1. During cross-examination, the informant has reiterated the motive behind occurrence. He has stated that the



payment of amount of betting was denied by Bharat upon which occurrence took place. He has further stated that the injury was found all over the body. In this way, his statement on the point of number of injuries is divergent with the finding of the doctor who has found only one injury on the injured/victim.

19. From perusal of evidence of P.W. 5/informant, it is clear that the informant has stated that Raj Kumar was having a country-made pistol, but P.W. 4 has stated that Raj Kumar was having a gadasa. P.W. 8 at one point has stated that Raj Kumar was having a pistol, but at another place he has stated that Raj Kumar and others assaulted with lathi. Hence, the manner of assault and the description of weapon varies in the statements of P.W.5, P.W. 4 and P.W. 8. The statement of the informant on the point of place of treatment of the victim is quite divergent with the statements of P.W.6 and P.W.8/victim as P.W.6 has stated that her husband was taken to Government Hospital, but no treatment was given there and the victim was taken to the clinic of Dr. R.P. Chaudhary where he was treated and P.W.8/victim has stated that he was treated in the Ganesh Nursing Home for 15 days and after 15 days he lived in a rental house for further treatment. The statement of P.W.5/informant on the point of number of injuries is divergent with the finding



of the doctor as the informant has stated that victim was assaulted all over his body but the doctor has found only one injury on the injured/victim.

20. PW6/Mina Devi has stated that the incident took place at 8:30 A.M., early in the morning on 9th June 1996. She has further stated that she was inside her house. A quarrel had taken place between her husband/victim and Raj Kumar Chaudhary and Bharat Chaudhary and talk was going on regarding the same. Meanwhile, Bharat and Raj Kumar were shouting to drag the victim out of the house to kill him. Bharat having an axe, Rajkumar having a pistol, Shatrughan, Dilip and Pandaw having lathi and Karan having khanti came there and dragged the victim out of the house. Thereafter, Bharat assaulted on the waist of the victim with the wooden portion of the axe, Shatrughan, Karan and Dilip assaulted the victim with lathi and Karan assaulted by means of khanti on the head of the victim, as a result of which blood started oozing and the victim became senseless. On raising alarm, no one ventured to come to his rescue. Raj Kumar and Shatrughan entered the house and took away the gold ear rings and necklace and fled away. Victim was taken to Sultanganj hospital for treatment and from Sultanganj he was referred to Bhagalpur and from Bhagalpur to



Patna.

20.1. During cross-examination, P.W. 6 has stated that a bet of Rs.50/-was entered between her husband and Dilip on the issue as to whether Bajpayeeji would be the Prime Minister or not. Her husband claimed that Bajpayeeji would be the Prime Minister whereas Dilip claimed that Bajpayeeji would not be the Prime Minister. Her husband demanded the money upon which a quarrel took place followed by the assault. However, she has stated that she had not counted the number of blows for assaulting her husband. She has further stated Rajkumar and Shatrughan entered the house and snatched her gold necklace and ear rings. She has further stated that her husband was taken to Government Hospital, but no treatment was given there and the victim was taken to the clinic of Dr. R.P. Chaudhary where he was treated.

21. From perusal of evidence of P.W. 6, it is evident that the statement of P.W. 6 is quite divergent from the initial version of prosecution-story on the point of snatching gold necklace and ear rings as she has stated that appellants Raj Kumar and Shatrughan entered the house and took away the gold ear rings and necklace whereas in the initial version of prosecution-story it is stated that the appellants snatched the



gold necklace and ear rings and fled away. Further, P.W.6 has stated that the victim was not treated at Government Hospital, Sultanganj rather he was treated in the clinic of Dr. R.P. Chaudhary, but the said statement is quite divergent with the initial version of prosecution story wherein it is stated that after the occurrence, Arvind Kumar Saini/injured was rushed to Sultanganj Referral Hospital for treatment and when the condition of Arvind Kumar Saini started deteriorating, he was taken to Bhagalpur, where the doctor had advised to go to Patna for treatment. The statement of P.W. 6 is also divergent with the statement of P.W.8/victim as P.W./8/victim has stated that he was treated in the Ganesh Nursing Home for 15 days and, therefore, police had not recorded his statement and after 15 days he lived in a rental house for further treatment.

22. P.W. 8/Arvind Kumar Saini is the victim of the present case. He has stated that the occurrence took place on 09.06.1996 at 08:30 A.M. He was sitting at his door with the informant Manoj Kumar Saini. In the meantime, Bharat Chaudhary came from eastern side. He(victim) demanded the betting money as he was the winner of the bet which was entered on the issue as to who would be the Prime Minister either Bajpayee or Devegoda. On such demand, Bharat



Chaudhary took him near the house of Bisheshwar Yadav and called his brothers. Raj Kumar, Shatrughan and Karn came having lathi and started assaulting with lathi, fists and slaps. Upon hearing the commotion, village people gathered there and Narad saved him by taking him to his (Narad's) house. The victim was narrating the incident to his wife. In the meanwhile, Bharat armed with an axe, Raj Kumar Yadav, Shatrughan and Dilip Jha armed with lathi, Karan armed with khanti came and assaulted the victim. Upon commotion, several people gathered there but no one dared save him. Bharat assaulted with axe on victim's waist, Pandaw, Raj Kumar, Dilip and Shatrughan assaulted with lathi all over the body and blood started oozing. He was assaulted for ten minutes. The victim fell down and became senseless. His family members took him to Sultanganj Referral from where he was taken to Bhagalpur and from Bhagalpur to P.M.C.H., Patna where he was treated. He regained his sense after 36 hours and his statement was recorded after a month.

22.1. During cross-examination, P.W.8 has stated that he and Dilip Jha had deposited money in favour of appellant Bharat Chaudhary. Victim was claiming that Bajpayeeji would be the Prime Minister whereas Dilip was



claiming that Devegoda would be the Prime Minister. Bharat was not giving the money as deposited in favour of Bharat. When the victim demanded the money, Bharat called his brothers and they started assaulting the victim. He has further stated that he received injuries on whole part of body. He has further stated that all the family members, including wife, mother and brother, raised alarm, but other family members did not sustain injury. He has stated that he was being assaulted approximately for ten minutes. He was in the Ganesh Nursing Home for 15 days and, therefore, police had not recorded his statement and after 15 days he lived in a rental house for further treatment.

23. From the perusal of statement of P.W. 8, it is clear that the dispute arose on account of the demand of dues amount of betting money which was decided in favour of the victim, but the statement of victim regarding the manner of occurrence is totally inconsistent with the initial version of prosecution-story. In the initial version of prosecution-story, the victim was first assaulted by kicks and fists and thereafter by weapons like lathi, axe and khanti, but while adducing his evidence before the Court P.W.8 has stated that appellants came with lathi and assaulted on his head. The statement of victim is



quite inconsistent on the point of blows inflicted by the appellants and description of arms. On the point of treatment, the statement of victim is quite divergent with the initial version of prosecution-story. He has stated that he was treated in Ganesh Nursing Home and after that he took a private accommodation for treatment which finds no place in the initial version of prosecution-story and the occurrence took place on 09.06.1996, but fardbeyan was recorded on 14.06.1996 and date of registration of F.I.R. is 15.06.1996 and no plausible reason has been given for the delay and the reason as stated in initial version of prosecution-story is just to suit the prosecution-case. The injury report of victim indicates only one injury and where opinion of the doctor has been kept reserved. The very allegation of assaulting by six appellants is without having any substance so far as number of injuries, as indicated by doctor, according to which there is only one injury.

24. P.W.9/Dr. Ganesh Mahto has stated that on 09.06.1996, he was posted at Referral Hospital, Sultanganj as a Medical Officer and on 02.09.1996, he was also posted there in the same capacity. He further stated that on 09.06.1996, he examined Arbind Kumar Saini and found following injuries on his body:-



(I) Sharp Cutting injury 3 inch x $\frac{1}{4}$ inch x $\frac{1}{2}$ inch on the right side of the scalp head, profusely bleeding caused by sharp cutting weapon.

Nature of Injury :- Opinion reserved for the x-ray A.P. and lateral view of the scalp. Patient is referred to J.L.N.M.C.&H., Bhagalpur. Patient was brought in semi-conscious stage but during treatment for half an hour, the patient become unconscious. This injury report is in his pen and signature. It is marked as Ext-2.

(iii) On 02.09.1996 final injury report of the above named injured was written by him. According to clinical feature of Sri Arbind Kumar Saini, vomiting, haematoma on the right side of the temporal part of brain and dangerous to life.

Nature of Injury:- It may be grievous injury by sharp cutting weapon. It is also in his pen and signature. It is marked as Ext.-2/1. During the course of cross-examination, he has stated that after examining the patient on 09.06.1996, he referred the patient for further treatment at J.L.N.M.C.H, Mayurganj, Bhagalpur and the patient was discharged from the referral Hospital, Sultanganj. The injury of the patient was stitched on 09.06.1996 by him. No x-ray report of the patient was received by him. He further stated that he couldn't say that



the patient was admitted at J.L.N.M.C.H., Mayurganj, Bhagalpur or not. On 02.09.1996, neither the patient was produced before him nor any paper of treatment of patient at J.L.N.M.C.H., Mayurganj, Bhagalpur was received by him then on the basis of his previous injury report (Ext-II), he issued the injury-report (Ext.2/1) dated 02.09.1996 at his own instance. He has denied the suggestion that out of way, he issued 2nd injury report when the injured was not under his control and in the collusion of the patient, he issued wrong injury report.

25. PW10/Md. Nisar has identified the fardbeyan to be in the writing and signature of the SI Madhusudan Sharma, o/c Sultanganj P.S. and the same stands marked as Ext.3. He has also identified the signature of SI Madhusudan Sharma, o/c Sultanganj on the formal FIR and the same stands marked as Ext.1/A. He further stated the Bharat Mishra was the Investigating Officer of the present case who put his signature on the charge-sheet which he identifies and the same stands marked as Ext.1/B. During the course of cross-examination, he has stated the above mentioned exhibit was not written by him. He further stated the he has no knowledge regarding the incident. Hence, his evidence is of no significance.

26. Apart from that, the Investigating Officer of



this case has not been examined who is the material witness on the point of identifying the place of occurrence.

27. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

Applying this principle to the present matter, this Court finds that the omission to examine the Investigating



Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side.

28. From the perusal of evidence of prosecution-witnesses, it is clear that PW1 and PW3, who are said to have seen the occurrence, have not supported the prosecution-case at the time of adducing evidence before the Court and they have been declared hostile. PW2/Narad Yadav, who is said to have saved the victim, has also not supported the prosecution case at the time of adducing evidence before the Court and has been declared hostile. PW 7 has stated that he does not know anything about the occurrence and police had not recorded his



statement. In this way, his evidence is of no significance. PW 9 has proved only one injury, though in initial version of prosecution story, there is allegation of assault against six persons, and in absence of X-ray A.P. and lateral view of the scalp, no definite finding regarding the nature of injury has been given by the doctor/P.W. 9. Further, Bisheshwar Yadav has not been examined, though the PO is stated to be near the house of Bisheshwar Yadav. The dispute arose on a trivial matter on account of non-payment of betting amount of Rs.50 and prudently and pragmatically, it is highly improbable that appellants had intention to commit murder of the victim for the said petty issue. The statement of P.W. 4 on the point of holding gadasa by Raj Kumar Chaudhary is quite divergent from the initial version of prosecution-story as well as the statements of other prosecution-witnesses. The FIR has been belatedly lodged after five days of the occurrence for which no plausible explanation has been given. PW4, PW5 and PW6 are the family members of the victim/injured. No independent witness has supported the case of prosecution. There is no seizure of any weapon. P.W.8/injured has stated that he was treated in the Ganesh Nursing Home for 15 days and, therefore, police had not recorded his statement and after 15 days he lived in a rental



house for further treatment, but his version on the said point is divergent from the initial version of prosecution-story and is not supported by any of the prosecution-witnesses. In the initial version of prosecution-story, accused persons/appellants are said to have snatched away the gold ear rings and necklace of the wife of informant's brother/P.W. 6, but P.W. 6 while adducing evidence before the Court has specifically stated that accused Rajkumar and Shatrughan snatched gold ear rings and necklace after entering into the house and P.W.4 has stated that it was Rajkumar who snatched the gold necklace and ear rings. In this way, on the point of snatching gold ear rings and necklace, the statement of informant/P.W. 5 is quite divergent with the statement of P.W. 6. Apart from that, none of the prosecution-witnesses has stated regarding the boundary of the place of occurrence and as the Investigating Officer has not been examined in the case, the appellants have been prejudiced as relevant contradiction in evidence of prosecution witness could not be taken and due to non-examination of I.O., place of occurrence could not be proved.

29. From the perusal of record, it is evident that there is inconsistency regarding weapons carried by accused persons/appellants as P.W. 5 has stated that Rajkumar was



having pistol, P.W. 4 has stated that Rajkumar was having gadasa and there is no clear assertion of pistol at first stage in the statement of P.W.8. There is contradiction on the crucial fact whether Rajkumar was holding firearm or sharp weapon. In this way, the statements of P.W. 5, P.W. 4 and P.W. 8 are totally contradictory upon holding of either firearm or sharp weapon by appellant Rajkumar. Hence, there are inconsistencies in the statements of P.W. 5, P.W.4 and P.W. 8 regarding the weapon carried by Rajkumar.

30. The manner of assault at the beginning is mutually inconsistent as it is evident from the fardbeyan that first assault was made by kicks and slaps and P.W. 8/victim has stated that accused came with lathi even at first stage. In this way, manner of assault at beginning is mutually inconsistent between the evidence of P.W. 5 and P.W.8 regarding initial assault. P.W. 5 has stated that injury was all over the body, but P.W. 8 has stated that he was assaulted for ten minutes and he was assaulted by several persons and P.W. 9/doctor found only one sharp cut injury on the scalp. In this way, there is major contradiction between ocular evidence and medical evidence and the statement of prosecution-witnesses P.W. 5 and P.W.8 are neither convincing nor



trustworthy in light of the fact that there are six assailants and there is only one injury though there was allegation of assault by six persons with axe, khanti and lathi and medical evidence records only one sharp cut injury and no injury by hard and blunt substance which makes the prosecution version highly improbable and exaggerated. Inconsistency regarding place of occurrence is found in the evidence of P.W. 5 as he has stated that assault took place near the house of Bisheshwar Yadav, but later he has stated that assault took place inside the informant's room. P.W. 4 has stated that the assault took place on street near the house of Bharat Chaudhary and P.W. 6 stated that victim was dragged out of the house. In this way, place of occurrence keeps shifting and it is not firmly established. In this way, statements of P.W. 5, P.W. 6 and P.W. 4 are neither trustworthy nor convincing. There is inconsistency regarding medical treatment also as P.W. 9/doctor has stated that he referred the patient to Bhagalpur and he issued supplementary injury report after nearly three months, without examining the patient again. Hence, medical opinion itself becomes procedurally weak and unreliable. There is inconsistency regarding delay in lodging the F.I.R. as the occurrence took place on 09.06.1996,



fardbeyan was recorded on 14.06.1996 and F.I.R. was lodged on 15.06.1996 and there is no proper or plausible explanation as to why the statement of the informant, who is not the victim, was recorded after five days and victim claims that he remained unconscious for 36 hours, still there is no explanation why the statement of the victim was recorded after a month. Delay appears manufactured and not convincingly explained and independent witnesses, P.W. 1, P.W.2 and P.W. 3 have not supported the prosecution-case and they have been declared hostile and P.W.7 claims that police never recorded his statement. It is found that the family members have become the witnesses with contradictions among themselves. There is inconsistency regarding the motive as betting amount was not paid by Dilip Jha and Bharat Chaudhary was the guarantor, as the F.I.R. is totally silent on the point of custodian of the betting amount, P.W. 4 has not stated anything regarding custodian of betting money and P.W.5 and P.W.8 have stated that the betting money was deposited with Bharat Chaudhary and the versions vary on the custodian of betting money, as is evident from the statements of P.W. 4, P.W. 5 and P.W.8. Even motive is not consistently narrated. There is inconsistency due to non-



examination of Investigating Officer as there was no site plan, no seizure of weapons and no clarification of contradictions.

31. Keeping in view the aforesaid discussion, it is crystal clear that prosecution-witnesses do not speak in one voice on weapon, injuries, place of occurrence, place of treatment, motive and snatching of gold necklace and ear rings and their statements collide rather than converge creating reasonable doubt.

32. It is cardinal principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt. Hence, the contention of learned counsel for the appellants is quite tenable and sustainable in the light of aforesaid facts and circumstances of the case that the prosecution has failed to prove the case beyond reasonable doubt.

33. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed.



The appellants are on bail, they are discharged from the liabilities of their bail-bonds.

34. The interlocutory application/s, if any, shall also stand disposed of.

35. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

36. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	06.02.2026
Transmission Date	06.02.2026

