

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.247 of 2016**

Arising Out of PS. Case No.-62 Year-2008 Thana- NAWANAGAR District- Buxar

1. Maharaj Yadav, Son of Babulal Yadav
2. Bhola Singh @ Bhola Yadav
3. Manoj Kumar @ Manoj Yadav Both Sons of Maharaj Yadav All resident of Village- Gunja Dih, P.S. Nawanagar, District- Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Naresh Chandra Verma, Advocate
For the State	:	Mr. S. Ashfaque Ahmad, APP

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 04-05-2026

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

2. This appeal has been filed challenging the judgment of conviction and order of sentence 21.03.2016 passed by the learned District and Sessions Judge, Buxar in connection with Sessions Trial No. 25 of 2010 arising out of Nawanagar P.S. Case No. 62 of 2008 whereby and whereunder these three appellants have been convicted for committing offence under Sections 325 and 34 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for three years with a fine of Rs. 1,000/- and in case of default in payment of fine, to



further undergo simple imprisonment for one month.

3. The prosecution story, in brief, is that at about 9 AM in the morning, when the informant was returning to his house from the brick kiln, he saw Appellant No. 1, namely Maharaj Yadav, was abusing owner of the brick kiln, namely Pankaj Kumar Singh and informant intervened and made enquiries. Later on the same day, at about 12 o'clock in the noon, when the informant was returning home, in the meantime, all these three accused-appellants intercepted him, abused and assaulted with fist, kicks and *lathi* and also snatched Rs. 500/- from pocket of the informant.

4. In this case, in order to bring home guilt of these accused-appellants, the prosecution has examined altogether seven witnesses. P.W. 1, namely Vikrama Ram; P.W. 2, namely Jag Niwas Singh and P.W. 5, namely Asha Devi, have been declared hostile. P.W. 3, namely Pankaj Kumar Singh, is owner of the brick kiln where the informant works and is a hearsay witness. P.W. 4, namely Collector Mushar, is informant of the case. P.W. 6, namely Dr. Parmanand Choudhary, is the doctor who examined the informant. P.W. 7, namely Sukhiya, is mother of the informant and is a hearsay witness. The prosecution has also adduced documentary evidences, which are marked as:-

Exhibit 1	Written petition of Nawanagar P.S. Case No. 62 of 2008
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Exhibit 2	Signature and writing on Injury report
Exhibit 2/1	Final injury report
Exhibit 2/2	Radiological report of Dr. A.K. Sinha

5. On the other hand, the defence has not produced any oral or documentary evidence.

6. After hearing the parties, the learned trial court convicted these appellants and sentenced them, as indicated in the opening paragraph of this order.

7. Learned counsel appearing for the appellants assails the order of conviction and sentence on multiple grounds. The learned trial court has committed grave illegality in facts and law both. He contends that the alleged incident took place in broad daylight, however, there is no independent witness of the occurrence. P.W. 1, P.W. 2 and P.W. 5 have been declared hostile. P.W. 3 is owner of the brick kiln where the informant works and P.W. 7 is mother of the informant and both of them are highly interested and hearsay witness. Moreover, the prosecution has failed to specify which of the three accused caused injuries and also could not clearly state as to who took out cash from pocket of informant. It is lastly contended that from perusal of the evidence adduced on behalf of the prosecution it is apparent that both parties are co-villagers and the alleged incident occurred spontaneously on the spur of the



moment over a minor dispute. Doctor has found two out of three injuries sustained by the informant simple in nature. Moreover, during pendency of this case, the dispute between the parties has already been compromised. It is further contended that in this case, the Investigating Officer has not been examined. Non-examination of the Investigating Officer has caused great prejudice to the defence of these appellants as they were not able to contradict the evidence of the witnesses and the place and manner of occurrence could not be proved. Thus, the prosecution has failed to prove the case beyond reasonable doubts and the trial court has wrongfully convicted these appellants ignoring material contradictions and hence, the appellants are fit to be acquitted.

8. *Per contra*, learned Additional Public Prosecutor for the State submits that the evidence on record unmistakably points to the guilt of the appellants. The prosecution could prove that it was these appellants who committed the occurrence. Charges against the appellants was proved by the prosecution witnesses beyond all reasonable doubt and, therefore, the learned Trial Court was fully justified in convicting the appellants under Sections 325 and 34 of the Indian Penal Code and imposing the sentence, as indicated above.



9. On going through the rival submissions, evidences and upon perusal of the records, this Court finds that in this case, the Investigating Officer has not been examined, which has caused great prejudice to the defence as the defence could not get opportunity to contradict and explain the material discrepancies and inconsistencies in the deposition of the witnesses. Moreover, there is no independent eye witness to the occurrence. P.W. 3 and P.W. 7, who have been examined by the prosecution, are hearsay witness and are related to the informant.

10. It is settled law that in criminal cases, since life and liberty of the accused are involved, a strict standard of proof is required as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can only be convicted if the court reaches the conclusion that the prosecution story must be proved. The burden of proving the guilt of the accused is upon the prosecution. In this case, the prosecution has failed to prove the guilt of these appellants beyond reasonable doubt and thus, the



appellants are entitled to be given the benefit of doubt.

11. Accordingly, the impugned judgment of conviction and sentence dated 21.03.2016 passed by the learned District and Sessions Judge, Buxar in connection with Sessions Trial No. 25 of 2010 arising out of Nawanagar P.S. Case No. 62 of 2008 are hereby set aside with respect to these appellants only.

12. In that view of the matter, appellants, above named, are discharged from the liability of their bail bonds in connection with this case.

13. Accordingly, this appeal stands disposed of.

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

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2026
Transmission Date	11.05.2026

