

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.763 of 2023**

Arising Out of PS. Case No.-124 Year-1991 Thana- GHORASAHAN District- East  
Champaran

Praphull Kumar Son Of Late Suresh Thakur Resident Of Village- Nimuiya,  
Ps- Ghorasahan, Distt- East Chmaparan

... .. Appellant/s

Versus

1. The State of Bihar
2. Brij Kishore Thakur Son Of Ranjeet Kumar Resident Of Village- Nimuiya,  
Ps- Ghorasahan, Distt- East Chmaparan
3. Raju Thakur Son Of Ranjeet Thakur Resident Of Village- Nimuiya, Ps-  
Ghorasahan, Distt- East Chmaparan
4. Akhileshwar Thakur Son Of Late Rameshwar Thakur Resident Of Village-  
Nimuiya, Ps- Ghorasahan, Distt- East Chmaparan
5. Ranjeet Thakur Son Of Late Ramashish Thakur Resident Of Village-  
Nimuiya, Ps- Ghorasahan, Distt- East Chmaparan

... .. Respondent/s

**Appearance :**

|                          |   |                                                                                                                                    |
|--------------------------|---|------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant        | : | Mr. Ajay Kumar Thakur, Advocate<br>Mr. Suraj Kumar Tiwari, Advocate<br>Mr. Ritwij Raman, Advocate<br>Ms. Sushmita Mishra, Advocate |
| For the State            | : | Mr. Satya Narayan Prasad, Addl PP                                                                                                  |
| For the Resp Nos. 2 to 5 | : | Mr. Prince Kumar Mishra, Advocate<br>Mr. Abhishek Kumar, Advocate<br>Mr. Hemant Ray, Advocate                                      |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA**  
**CAV JUDGMENT**  
**(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)**

**Date : 19-06-2026**

Heard Mr. Ajay Kumar Thakur assisted by Mr.  
Suraj Kumar Tiwari, learned counsel for the appellant, Mr.  
Satya Narayan Prasad, learned Additional Public Prosecutor for  
the State and Mr. Prince Kumar Mishra, learned counsel for the  
Respondent Nos. 2 to 5.



2. The present appeal has been preferred under Section proviso to Section 372 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') for setting aside the judgment and order of acquittal dated 06.04.2023 (hereinafter referred to as the 'impugned judgment') passed by the learned Additional District and Sessions Judge-XXII, Motihari, East Champaran (hereinafter referred to as the 'learned Trial Court') in Sessions Trial No. 116 of 1992 arising out of Ghorasahan P.S. Case No. 124 of 1991. By the impugned judgment, the respondent nos. 2 to 5 have been acquitted of the charges punishable under Sections 302, 307, 324/34 of the Indian Penal Code (in short 'IPC').

3. The records of this appeal have been placed before this Court for consideration of the prayer of the appellant, who is the son of the deceased and grandson of the informant (now dead).

**Prosecution Case**

4. The case of the prosecution, as narrated by the informant, namely, Kanti Thakur (PW-9) in his *fardbeyan* recorded on 07.11.1991 at 11:15 hours, is that he had purchased a plot of land measuring six dhur from Thakur Sah, Mahendra



Sah and Laxman Sah in the name of his son Suresh Thakur and nephew Jitendra Thakur in which four mango trees were planted. On the same day at about 07:00-08:00 a.m., when the informant was going from his door towards the road, he met Rameshwar Thakur and asked him as to why he cut the branches of his tree the day before, to which he did not respond properly, rather started calling his sons, whereupon his son Akhileshwar Thakur armed with *chura*, brother Ranjeet Thakur armed with *bhala*, nephew Brijkishore Thakur armed with *farsa*, Raju Thakur and Rajan Thakur, armed with *lathi* came and surrounded him. Brij Kishore Thakur attacked the informant on his head by *farsa* due to which he got cut injury and when he fell down, Brij Kishore Thakur again assaulted him on his left elbow causing bleeding injury. Ranjeet Thakur then attacked him on his chest by *bhala* causing bleeding injury. When the informant raised *hulla*, his son Suresh Thakur came running, who was attacked by Akhileshwar Thakur on his back by *chhura* due to which he fell down, whereafter Rameshwar Thakur assaulted him on his chest by *chhura*. Akhileshwar Thakur also attacked Suresh by *chhura* which hit him on the middle finger of right hand.

It was further alleged that during the



occurrence, when the informant's brother Satyanarayan Sharma came to save him, Brijkishore Thakur assaulted him with *farsa* on his head due to which he also fell down while Rajan Thakur assaulted him by *lathi*. When Jitendra Thakur came to save them, Brijkishore Thakur injured him by hitting him with *farsa*, causing him head injury. Thereafter, Kishunpuri Devi and Kanti Devi came running from house who were also assaulted by the accused persons causing injury on finger and shoulder respectively. The incident was witnessed by others also. All the injured persons were lying in the paddy field of Ramchandra Thakur. Suresh Thakur died at the place of occurrence and the accused persons fled away.

5. On the basis of the aforesaid *fardbeyan*, the First Information Report (in short 'FIR') being Ghorasahan P.S. Case No. 124 of 1991 dated 07.11.1991 was initiated under Sections 302, 324, 326, 307, 342, 323/34 of the Indian Penal Code (in short 'IPC') against accused persons, namely, (1) Brijkishore Thakur, (R-2) Raju Thakur, (R-3) Akhileshwar Thakur, (R-4) Ranjeet Thakur, (R-5) Rajan Thakur, and (6) Rameshwar Thakur (now dead). After investigation, police submitted chargesheet on 10.02.1992 under Sections 302, 307, 324/34 of the IPC. Accordingly, cognizance was taken and accused were



put on trial.

6. Out of six accused persons, the trial of Rajan Thakur was transferred to learned Juvenile Court, Motihari vide order dated 24.06.1992 while the trial proceeded against the rest. After commitment of the case to the Court of Sessions, charges were framed against them vide order dated 01.10.1993 under Sections 302, 307, 324/34 of the IPC, to which they pleaded not guilty and claimed to be tried. The name of accused Rameshwar Thakur was however subsequently deleted vide order dated 26.04.2005, on account of his death.

7. During the course of trial, the prosecution has examined altogether twelve witnesses and exhibited several documents, while the defence has also examined four witnesses and also adduced documentary evidence. The description of the prosecution and the defence witnesses, as also the documents exhibited on their behalf are mentioned hereinbelow in tabular form:-

**List of Prosecution Witnesses**

| P.W. No. | Name of Witness       | Description     |
|----------|-----------------------|-----------------|
| 1        | Saroj thakur          | Injured witness |
| 2        | Jitendra Kumar        | Injured witness |
| 3        | Kamlesh Mishra        | Injured witness |
| 4        | Krishnachandra Thakur | Injured witness |
| 5        | Kushumpari Devi       | Injured witness |
| 6        | Kanti Devi            | Injured witness |
| 7        | Rakesh Kumar          | Injured witness |
| 8        | Ram Ayodhya Mishra    | Formal witness  |



|    |                  |           |
|----|------------------|-----------|
| 9  | Kanti Thakur     | Informant |
| 10 | Dr. Niraj Sinha  | Doctor    |
| 11 | Dr. Serajul Hak  | Doctor    |
| 12 | Kamrul Hoda Khan | I.O.      |

**List of Exhibits on behalf of the Prosecution**

| Exhibit No. | Description of the Exhibit                                                                                                                                                                 | Proved<br>by/Attested by |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 01&01/01    | Carbon copies of two seizure lists                                                                                                                                                         | PW-8                     |
| 02          | Carbon copy of inquest report                                                                                                                                                              | PW-8                     |
| 03          | Fardbeyan                                                                                                                                                                                  | PW-9                     |
| 04          | Writing and Signature of formal FIR                                                                                                                                                        | PW-9                     |
| 05          | Postmortem Report                                                                                                                                                                          | PW-10                    |
| 06-06/6     | Injury reports of Rakesh Kumar, Satyanarayan Sharma, Shrikanti Thakur, Shrikanti Devi, Jitendra Kumar, Kishunpari Devi, Shri Krishnachandra Thakur                                         | PW-11                    |
| 07-07/06    | Seven requisitions issued by the I.O. to the Medical Officer for examination of injured Rakesh, Satyanarayan Sharma, Shrimati Kanti Devi, Jitendra Thakur, Kishunpari Devi, Krishnachandra | PW-12                    |

**List of Defence Witnesses**

| D.W. No. | Name of Witness   | Description    |
|----------|-------------------|----------------|
| 1        | Shambhu Prasad    | Formal Witness |
| 2        | Shatrughan Prasad | Formal Witness |
| 3        | Krishna Singh     | Formal Witness |
| 4        | Radhe Shyam Kumar | Formal Witness |

**List of Exhibits on behalf of Defence**

| Exhibit No. | Description of the Exhibit                                                                                        | Proved by/Attested by |
|-------------|-------------------------------------------------------------------------------------------------------------------|-----------------------|
| A           | Carbon copy of one injury report of Rajan Thakur                                                                  | DW-1                  |
| B           | Provisional matriculation certificate of the accused Akhileshwar Thakur                                           | Public document       |
| A/1, A/2    | Carbon copy of two injury reports of Akhileshwar Thakur and Ranjeet Thakur under the signature of Dr. V.N. Tiwary | DW-1                  |
| C, C/1      | Writing and Signature of formal FIR                                                                               | DW-2                  |
| D           | Requisition for certified copy of Ghorasahni                                                                      | DW-3                  |



|   |                                              |      |
|---|----------------------------------------------|------|
|   | P.S. Case No. 140/1986                       |      |
| E | Certified copy of charge-sheet of Ghorasahni | DW-3 |
|   | P.S. Case No. 140 of 1986                    |      |
| F | Writing of <i>Janampatri Tippan</i>          | DW-4 |

8. After closure of prosecution evidence, the statements of Respondent Nos. 2 to 5 were recorded under Section 313 of the Cr.P.C. on 16.07.1999, wherein they denied the allegations and pleaded innocence.

9. Before moving on to the findings of the learned Trial Court, it would be imperative to point out the developments that took place at the stage of argument of the case. It is noticed from the records that there was non-compliance of section 207 of the Cr.P.C. at the time of commitment of the case and taking note of such irregularity, the Trial Court was pleased to transmit back the records to the Court of the learned magistrate for compliance with the requirements of Section 207 of the Cr.P.C. Pursuant to compliance of the said provision on 18.08.2004, the records were again committed to the Court of Sessions, and on the date fixed for charge, i.e., on 05.07.2007, the learned trial court proceeded to pass an order stating therein that there is no requirement of fresh framing of charge or the recall of the witnesses for further cross-examination as the irregularity was removed by compliance on



18.08.2004 and the case was posted to 16.08.2007 for final argument.

**10.** However, the said order dated 05.07.2007 was challenged before the High Court vide Cr. Misc. No.53398 of 2007 which was disposed off by an order dated 03.09.2010, giving the accused persons a fresh opportunity for cross-examination of all the witnesses from that stage and also directed the Trial court to proceed to summon the witnesses for their cross-examination and dispose off the trial in accordance with law.

**11.** In pursuance of the order dated 03.09.2010, passed in Cr. Misc. No. 53398 of 2007, summons were issued to the witnesses for their cross-examination and PWs 1 to 4, 7 and 8 were cross-examined and discharged and fresh statements of the accused persons were recorded under section 313 Cr.P.C. on 01.04.2023, wherein they again denied allegations and pleaded innocence.

**Findings of the learned Trial Court**

**12.** Learned trial court, after analysing the evidence available on the record, found that the prosecution has not been able to prove its case beyond all reasonable doubts against Respondent Nos. 2 to 5. It was noticed that PW-1 (Saroj Thakur) in paragraph 17 of his subsequent cross-examination stated that occurrence took place in the month of November and the weather



was foggy and due to fog not even one or one and half feet distance was visible, hence, he did not see who assaulted whom.

**13.** The learned Trial Court further took note of paragraphs 20 and 21 of the deposition of PW-2, paragraph 54 of PW-4, paragraph 21 of PW-7, paragraph 42 of PW-8 which were all recorded upon their subsequent cross-examination, which also indicated that these witnesses were not eyewitness to the occurrence and further negated the presence of the accused persons at the place of occurrence. The learned Trial Court also found PW-3 untrustworthy in view of the evidence of PW-8 who had stated that he along with PW-3 had come to the place of occurrence only on the next day from their village, after having received information about the incident.

**14.** Thus, in view of the learned Trial Court, PWs 1 to 4, 7 and 8 have supported prosecution case in their examination-in-chief but they have not stood the test of their cross-examination as it has been said that they did not see the occurrence. Remaining witnesses were not produced despite prosecution having been given the said opportunity.

**15.** Accordingly, learned Trial Court after considering all facts and circumstances of the case, as stated above, finding the prosecution witnesses unreliable, concluded that the prosecution



has not been able to prove the charges levelled against Respondent Nos. 2 to 5 under Sections 302, 307, 324/34 IPC beyond the shadow of reasonable doubts. Hence, learned Trial Court acquitted Respondent Nos. 2 to 5.

**Submission on behalf of the appellant**

16. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant submits that the learned Trial Court while passing the judgment of acquittal has grossly erred in reaching its conclusion only on the basis and consideration of the further/subsequent cross-examination of the prosecution witnesses being PWs-1, 2, 3, 4, 7 and 8. There is no consideration of the earlier cross-examination of these witnesses or the other witnesses whereas a proper consideration of the deposition of the prosecution witnesses including their examination-in-chief and their earlier cross-examination would have clearly led to the conviction of the respondents (accused persons) as by way of the said evidence the prosecution had clearly established its case beyond the shadow of reasonable doubt, taking into account the fact that the witnesses had stood the test of cross-examination.

17. Learned counsel has most emphatically contended that while considering the evidence of the prosecution witnesses, the learned Trial Court ought to have considered the entire



evidence and merely on the basis of the fact that these witnesses have been further cross-examined, their earlier cross-examination does not get effaced or wiped out. It has further been submitted that besides the learned Trial Court ignoring the earlier cross-examination of PWs 1 to 4, 7 and 8, the examination and cross-examination of the other prosecution witnesses including the informant of the case, being that of PWs-5, 6 and 9, was available on record but the same has been totally overlooked by the learned Trial Court as they were not available for their subsequent cross-examination on account of their death. In this connection Section 33 of the Indian Evidence Act has been referred and it has been submitted that the learned Trial Court has acted in contravention of the said provision.

**18.** Further submission on behalf of the appellant is that the learned Trial Court has also failed to take effective steps for producing the official witnesses i.e., the I.O. and the doctor whose testimonies lent strength to the prosecution case and the learned Trial Court acted in haste in recording statements of accused under Section 313 Cr.P.C. and without giving a proper opportunity of argument, the judgment of acquittal was pronounced on 06.04.2023.



**19.** A reference has been made to the Judgment of Hon'ble Supreme Court in case of **V.M. Mathew vs. V.S. Sharma** reported in **AIR 1996 SC 109**, in connection with Section 33 of the Evidence Act by especially referring to paragraph 4, 6, 7 and 11 of the said judgment. The case of **Nisar Khan and Ors. vs. State of Uttranchal** reported in **(2006) 9 SCC 386** has also been referred to on behalf of the appellant to submit that in case the witnesses who turned hostile and resiled from their previous statement on their re-examination by defence on recall, the testimony of such witnesses cannot be rejected only on the ground that they had turned hostile, rather it was held in the said judgment that an application filed by the accused to recall the eye-witnesses after lapse of more than one year, after they were examined, cross-examined and discharged, should not have been allowed as they were recalled only on being gained over.

**20.** On the afore-mentioned grounds, it has been contended on behalf of the appellant that the impugned judgment of acquittal is against the weight of evidence and has also been passed in contravention of law, as such, the same is fit to be set aside and the respondents deserve to be convicted.



**Submission on behalf of the respondents**

**21.** Mr. Prince Kumar Mishra, learned counsel for the respondents, *per contra*, has submitted that the judgment of the learned Trial Court does not suffer from any infirmity as it is based on sound reasons. It is submitted that the witnesses of the prosecution were directed to be produced for subsequent cross-examination by the order of the Hon'ble High Court passed on the legal ground of non-compliance of the provision of Section 207 Cr.P.C., i.e., non supply of police paper to the accused, as such requirement is integral to the fundamental right to a fair trial under Article 21 of the Indian Constitution as held by the Hon'ble Supreme Court in various judicial pronouncements such as **Hussainara Khatoon vs. State of Bihar** reported in (1980) 1 SCC 81 and **Zahira Habibullah Sheikh vs. State of Gujarat** reported in (2006) 3 SCC 374. It has further been submitted that the said order of the Hon'ble High Court was never challenged and had thus attained finality.

**22.** The learned counsel has laid emphasis on the mandatory nature of Section 207 Cr.P.C. and requirement of strict compliance thereof, referring to the judgment rendered by this Court in the case of **State of Bihar vs. Md. Major**, Death Reference No. 01 of 2022, reported in **2022 (5) BLJ 302**. As



such, the significance of the contents of the subsequent cross-examination stands well established. It has thus been submitted that the learned Trial Court has made no error by considering and also basing its judgment on the subsequent cross-examination of the prosecution witnesses read with their examination-in-chief as the said cross-examination was done after due compliance of Section 207 Cr.P.C. and the evidence recorded in breach of Section 207 Cr.P.C. cannot be safely relied upon.

**23.** It has been pointed out on behalf of the respondents that, as many as, six prosecution witnesses which includes four injured witnesses, were produced for subsequent cross-examination but they have failed to stand the test of the same and have not supported the case of the prosecution as eye-witnesses. They have rather stated that they had reached the place of occurrence after the incident and they did not see the assailants. Moreover, so far as the test of prejudice is concerned, the prosecution would bear the burden to prove absence of prejudice, particularly when statutory safeguards like Section 207 Cr.P.C. are breached.

**24.** The final argument on behalf of the respondents has been made with regard to double presumption of innocence available to the respondents (accused) in case of an acquittal and



that in absence of compelling reasons and possibility of two views, the impugned judgment of acquittal may not be interfered with.

**Analysis and Consideration**

**25.** We have given our thoughtful consideration to the submissions advanced by the learned counsel for the appellant/victim and learned APP for the State and the learned counsel for the respondent nos. 2 to 5 and considered and analysed the impugned judgment and materials on record, including both oral and documentary evidence adduced by the prosecution and defence.

**26.** Before going on to the analysis of the evidence, this Court is conscious and alive to the fact that the respondents had approached this Court earlier by filing Cr. Misc. No. No.53398 of 2007, challenging the order of the learned Trial court whereby fresh framing of charge or recall of the witnesses for their cross-examination on grounds of non-compliance of the requirement of law as contemplated under Section 207 of the Cr.P.C. was refused and matter was posted for argument. However, they later confined their prayer to be given fresh opportunity to cross-examine all the witnesses with the assurance that they shall complete the cross-examination of the witnesses on the date they are produced. The High Court, by an order dated 03.09.2010, allowed the said prayer



by setting aside the order of the learned Trial Court directing it to proceed to summon the witnesses examined in the said case for their cross-examination whereafter the trial would be disposed of in accordance with law and this order of the High Court remained unchallenged.

**27.**The prosecution, in order to substantiate its case, examined as many as 12 witnesses, out of whom PWs-1 to 9 are the witnesses on the point of occurrence and amongst them PW-2(Jitendra Kumar), PW-4 (Krishna Chandra Thakur), PW-5 (Kishun Pari Devi), PW-6 (Kanti Devi), PW-7 (Rakesh Kumar) and PW-9 (Kanti Thakur), who is also the informant of the case, claim to be injured eye-witnesses. PW-1 (Saroj Thakur) also claims to be an eye-witness of the occurrence, while PW-8 (Ram Ayodhya Mishra) has been examined in the nature of a formal witness, who has proved the seizure list (Exhibit '1') and is also a signatory on the inquest report of the deceased (Exhibit '2'). PW10 (Dr. Neeraj Sinha) and PW-11 (Dr. Sirajul Haque) are the Medical Officers, who have conducted the postmortem examination on the body of the deceased Suresh Thakur (Exhibit '5') and examined the injuries of the injured persons (Exhibit '6-6/6') respectively. The Investigating Officer has been examined as PW-12.



28. This Court would now proceed to discuss and analyze the prosecution witnesses. To begin with, PW-1 Saroj Thakur, an injured witness, he has stated in his examination-in-chief that he had gone to the place of occurrence after getting information and saw the accused persons, namely, Rameshwar Thakur, Akhileshwar Thakur, Sanjeev Thakur, Brajesh Thakur and one another armed with knife, *bhala*, *farsa*, *lathi* etc. He has given the details of assault upon the informant Kanti Thakur (PW-9) by accused Brijkishore Thakur by means of *farsa* and assault by Sanjeev Thakur and upon his scream, his son Suresh Thakur (deceased) and others reached the place of occurrence. This witness has further deposed that Akhileshwar Thakur gave two knife blows to Suresh Thakur on the ribcage area and on the right hand on account of which he fell down. Thereafter, Satyanarayan Sharma, Jitendra (PW-2), Rakesh Thakur (PW-7) mother of PW-2 and Bholi @ Chandan Thakur, who came to the place of occurrence, were also assaulted by *farsa* and *lathi*. It has been stated that the death of Suresh Thakur took place at the place of occurrence itself, i.e. the maize field of Ramchandra



Thakur, on account of injury received. He has also stated that one day prior to the occurrence, accused Rameshwar Thakur had cut the branch of mango tree of Kanti Thakur (informant) PW-9 due to which some quarrel had taken place.

**29.** In his cross-examination, this witness has stated that he had seen the occurrence from the road. He admitted that he received the information about the incident while he was at home and upon reaching the place of occurrence, he saw Kanti Thakur fallen on the ground with bleeding injuries and also saw the injuries on 7-8 persons. In paragraph no. 13 of his evidence he has given details of assault by stating that the *farsa*, *bhala* and knife were used with force and accused Rameshwar Thakur had inflicted knife blow on the chest of Suresh Thakur (deceased).

**30.** This witness was again subjected to cross-examination in the light of the order of the High Court and paragraphs 17 to 21 were recorded. In paragraph 17 of his cross-examination he stated that the occurrence took place in the month of November when it was very cold and foggy and due to the fog the visibility was so low that things could not



even been seen at a very short distance and people at the distance of 1 and 1 ½ feet were also not visible. He further deposed that the distance between his house and the maize field of Ramchandra was about 70 to 80 feet and when he heard the alarm, he was at the door of his house. Upon hearing the hulla, he went to the said field and saw around 50-60 persons including Rakesh Kumar (PW-7), Jitendra Thakur (PW-2), Bhuneshwar (N.E) and Kishun Devi (PW-5) in injured condition, and made a categorical statement that he did not see the accused persons at the said place. In paragraph no.20 of his deposition the witness has stated that 50 to 60 persons were his co-villagers and he did not see any one either being assaulted or engaged in assaulting. He has further stated that he had given his earlier statement before police at the instance of those 50 to 60 persons.

**31.** PW-2 Jitendra Kumar is an injured witness and also claims to have reached the place of occurrence on hulla and saw Kanti Thakur (PW-9), Satyanaran Sharma (N.E.) and Suresh Thakur (deceased) fallen on the ground. He also saw the accused persons with arms. He has narrated the details of



assault upon him and other injured persons and that he received the injury on the right side of his head while the deceased had died on the spot.

**32.** In his cross-examination, he has accepted that he came out of his bungalow on *hulla* and that the place of occurrence is not visible from his bungalow. He has also stated about the presence of blood at the place of occurrence where the deceased had fallen.

**33.** Upon his subsequent cross-examination, as recorded in paragraph 20 and 21, he made similar statement as that of PW-1 denying having seen the assailants or the accused persons at the place of occurrence. He further stated that Kishunpari Devi (PW-5) arrived at the place of occurrence after he left, while Kanti Thakur came after arrival of Kishunpari Devi and both of them had fallen at the ridge of the field, on account of which they suffered injuries.

**34.** Kamlesh Mishra, the brother-in-law of the informant, was examined as PW-3 and he had also given similar statement as PW-1 and PW-2 in examination-in-chief as an eye-witness to the occurrence with some variance as he



stated that Akhileshwar Thakur had assaulted the deceased Suresh Thakur from the back by giving two knife blows on his back while Rameshwar Thakur gave a knife blow on his chest. In his cross-examination, he stated that when he reached the place of occurrence two persons were already injured while the assault was still going on. He further stated that no blood stain was found at the place of mar-pit but blood was present where Suresh Thakur had fallen. He also deposed that while other injured persons remained in hospital for 3 to 4 days, he stayed for one day in hospital. Further, he did not remember as to after how many days of the occurrence he had given his statement before the police.

**35.** Upon being subsequently cross-examined, he stated in paragraph no.16 that the time of occurrence was the month of November and the cold weather had begun, however, there was no fog. In paragraph no. 20, he stated that his eye sight from one eye is damaged since past 15 years. Further, in paragraph no.21 he had stated that he did not go to the place where Kanti Thakur and Suresh Thakur had fallen and went near the deceased after half an hour of occurrence after the



accused persons had left. This witness was re-called for cross-examination again wherein he admitted that Ram Ayodhya Mishra PW.-8 was his *Pattidar* and also his neighbour in his village. He has denied the fact that he along with his brother Ram Ayodhya Mishra PW-8 came to the P.O. village one day later, after having heard of the occurrence, but accepted that on the date of occurrence he had no talk with any person either from village Nimuia or from his village.

**36.** PW-4, Krishan Chandra Thakur, has deposed on similar lines as other witnesses claiming himself as an injured eye-witness who came to the place of occurrence on *hulla*. In his cross-examination he has admitted that Kanti Thakur, informant, is his first cousin and both the parties are agnates. Altogether nine persons, including him, got injured in the incident which arose on account of cutting of branch of mango tree by Rameshwar Thakur, with abuse and scuffle which later escalated into the present incident. He states about the presence of blood and blood-stained weapons at the place of occurrence.



**37.** His subsequent cross-examination recorded in paragraph no.54 reveals that it was very cold and foggy at the time of occurrence in the month of November. He stated that the field of Ramchandra was not visible from his house and he did not see anyone being assaulted by his own eyes. He has also made a categorical statement that he did not see the accused persons at the place of occurrence and they were not involved in the occurrence. Further, Kishunpari Devi (PW-5) came after he had gone.

**38.** PW-5, Kishunpari Devi, wife of the informant Kanti Thakur, has also claimed to be an injured eye-witness to the occurrence as she came out on *hulla*. In her cross-examination, she has related to the cause of occurrence and has stated that as soon as she reached the place of occurrence she saw Rameshwar Thakur along with other accused persons and she fell unconscious for some time.

**39.** PW-6, Kanti Devi, sister-in-law of the informant, happens to be a tendered witness and in her cross-examination she disclosed that the dispute had taken place



between the parties on account of cutting of branch of mango tree.

**40.** We have also gone through the evidence of PW-7 Rakesh Kumar also claiming to be an injured eye-witness and in his cross-examination also he has narrated the details of assault, however, in his later cross-examination in light of the order of the High Court, he has categorically stated that it was a very cold and foggy morning and he did not see anyone being assaulted by his own eyes and he could not even see as to who assaulted him. He further denied to have seen the accused persons, who were his co-villagers, at the place of occurrence.

**41.** PW-8, Ram Ayodhya Mishra, is a formal witness who is a signatory to the seizure lists of arms (Ext.1 & 1/1) and also on the inquest report of the deceased (Ext.2). He has admitted in his cross-examination that he is the cousin brother of PW-3. However, in his subsequent cross-examination he has stated that his house and the house of PW-3 is in village Dola Pakaria and they received the information about the death of Suresh Thakur on the next day



of occurrence whereafter he along with PW-3 went to village *Nimuia* and no one there disclosed the name of the assailants. He denied to be an eyewitness to the occurrence. Thus, it appears that the evidence of PW-8 poses a serious challenge to the credibility of PW-3 as his very presence at the place of occurrence at the relevant time is being doubted.

**42.** Kanti Thakur, the informant, was examined as PW-9 and he, claiming himself to be an injured eyewitness, has supported the case of the prosecution, giving vivid details of earlier land-related dispute between the parties and the details of assault. In his cross-examination he stated that the deceased Suresh Thakur was the first to reach the place of occurrence in order to save him but he did not get an opportunity to talk to him as he was stabbed on his arrival. The statement of the informant was recorded in the hospital after he got admitted.

**43.** Dr. Niraj Sinha, the doctor who conducted the post-mortem examination on the person of the deceased Suresh Thakur, was examined as PW-10. He conducted the



post-mortem examination on 08.11.1991 at 10:00 a.m. and found the following antemortem injuries:-

(i) *Sharp cutting wound 1" x ½" , cavity deep at epiglottis region.*

(ii) *Lacerated wound on fingers of right hand index, middle and ring fingers extending whole of the fingers.*

(iii) *Sharp cut on left lumbar region measuring 2" x 1" x abdominal cavity deep.*

(iv) *Sharp cut on left side of spine measuring 1" x ½" x muscle deep.*

44. It was opined that the above injuries were caused by hard and sharp substance such as 'Chhura' and the cause of death was hemorrhage and shock. The post-mortem report was marked as Exhibit-5. In the cross-examination by the defence, the doctor had opined that spear may have been used for causing injury no.(i), however, such injury may also be caused in course of running, if a man falls on a sharp pointed substance. He has further stated in paragraph no.22 of his deposition that from the injuries found on the person of the deceased, it cannot be said that he was given *lathi* blow. With regard to injury no.(iii) it has been stated that it could not have been caused by hard blow otherwise it would have penetrated inside. As against the specific oral evidence



of *bhala* or knife blow on chest of the deceased, the doctor has stated that no sharp cutting injury was found on the chest, no clear cut injury of sharp cut was found on the fingers and no injury was either found on the elbow of the deceased. Thus, the medical evidence vis-à-vis the ocular testimony, gives rise to substantial conflict between the two.

**45.** PW-11, Md. Serajul Haque, is the doctor who examined the injuries of other injured persons being PWs 2, 4, 5, 7, 9 and one Satyanarayan Sharma on 07.11.1991 at different hours of the day, as would be evident from his deposition, and the injuries on all these persons were found to be simple in nature. From the cross-examination it transpires that although this witness has treated the injured persons, the injury report does not indicate what treatment they had been given. Neither the doctor nor the hospital has any other document which would show as to what treatment was given to the injured persons. He has further stated that such injuries are possible if one falls on sharp substance and can also be manufactured if some risk is taken.

**46.** The Investigating Officer of the case is one Kamrul Hoda Khan examined as PW-12. On 07.11.1991 while he was posted as S.H.O. of Ghorasahan P.S., he received O.D. slip from



the local hospital at around 11:05 a.m. whereafter he recorded a *sanha* entry and proceeded for the hospital where he recorded the fardbeyan of Shri Kanti Thakur at 11:15 a.m. (Ext.3). He recorded the further statement of the informant and inspected the injuries of the injured persons and even took the statement of 3 to 6 injured persons in the hospital. He then inspected the place of occurrence which was the maize field of Ramchandra Thakur and found some blood nearby and also found a cut branch of mango tree. Some trampling marks, blood-stained soil, knife and *garasa* were found and seizure list was prepared (Ext.1/1). Further, the dead body of the deceased Suresh Thakur was found at a distance of 50 feet from the place of occurrence kept on a cot and inquest report was prepared (Ext.2). The seizure list of one *farsa* and two *lathis* seized from the house of accused Rameshwar Thakur was also prepared (Ext.1).

**47.** In his cross-examination he has acknowledged a counter case having been lodged on the same day stating therein that five persons in the other case were also injured. The cross-examination further indicates that no blood stain was found near the dead body. Further, the defence has drawn some contradictions with regard to the statements of PWs 1, 2 and 3 made before him during investigation.



48. After having discussed the evidence of the prosecution witnesses, it is gathered that PWs 1 to 7 and 9 are related witnesses and they have supported the case of prosecution with regard to the manner of occurrence, place of occurrence, and genesis of the said incident in their examination-in-chief. Further, the aforesaid witnesses in their cross-examination have by and large supported the prosecution case with certain discrepancies and contradictions. PWs 8, 10 to 12 are the formal witnesses who have also been examined and cross-examined at length, and their testimonies broadly lend support to the case of prosecution. However, in their subsequent cross-examination, pursuant to the order of the High Court dated 03.09.2010, PWs 1 to 4, 7 and 8 were again cross-examined, wherein they completely resiled from their earlier stance, thereby not supporting the prosecution case and due to eventual death of PWs 5,6 and 9, they were not subjected to subsequent cross-examination. Although, the summons were issued to the formal witnesses, i.e; PWs 10, 11 and 12, their appearance could not be secured for the said purpose.



**49.** For the purpose of proper adjudication of the present case, this court deems it appropriate to frame certain issues which are being enumerated hereinunder:

**Issue No.1:** Whether the plea of non-compliance of Section 207 of the Cr.P.C. can be raised at any stage of the trial, and can the accused be precluded from raising such issue belatedly at an advanced stage of trial?

**Issue No.2:** Whether the learned Trial Court committed an error by not considering the earlier cross-examination of the prosecution witnesses which was done without the compliance of section 207 of the Cr.P.C?

**Issue No.3:** Whether judicial propriety demands that this Court needs to delve into the question of fair trial which mandates the compliance of the basic requirements of a fairly conducted trial, considering that such indefeasible right of the accused, emanating from the Constitution of India, has been breached?

**Issue No.4:** Whether this court ought to take into consideration the question that the conviction can only be legal and not moral under criminal jurisprudence?

**Issue No. 5:** Whether in view of the law laid down by several judicial pronouncements, this court, being an appellate court, should interfere with the impugned judgment of acquittal passed by the learned Trial Court, in case two views, one of conviction and other of acquittal, are both possible?



**50. Issues no. 1 and 2** are being dealt together as they are inter-linked with each other. Before discussing the present issues, it would be first necessary to quote the relevant portions of the order of the Trial court which held that since the irregularity relating to non-compliance of Sections 207 and 209 Cr.P.C. was already removed, there was no need for fresh charge or recall of witnesses for further cross-examination and the order of the High Court which noticed the defect found in the trial not being a curable one, set-aside the order of the Trial Court and directed for the summoning of witnesses for their cross-examination.

**Order dated 05.07.2007: (Trial Court)**

05/07/2007 “Today the date is fixed for order on the point of charge.....

It was ordered that the compliance under Section 207 Cr.P.C. and 209 Cr.P.C. is not in order and it was sent to the lower court which was complied on 18.8.04 and the case was rebacked before the trial court and this is a case of bonafide irregularity and it can be removed at any stage before an announcement of judgment. Under the facts and circumstances of the case there is no need of fresh charge or the recall of the witnesses for further cross-examination in order to demolish the prosecution case under Section 302 IPC. The trends of the accused persons shows that now they have got the informant and injured in their own favour.

In my view there is no need to frame charge against all the accused persons.

To 16.08.07 for final argument.”

**Order dated 03.09.2010: (High Court)**

03. 03.09.2010 Heard counsel for the parties.

Petitioners call in question the order dated 05.07.2007, passed by learned 3rd Addl. Sessions Judge, Motihari in Sessions Trial No.116 of 1992. By this order, learned Magistrate fixed the case for final argument in the following circumstances:.....



Counsel for the petitioners takes a stand before this Court that in view of the facts of the case, he would not insist on a fresh framing of charge and/or fresh examination(s) in chief of the witnesses who have already appeared and adduced evidence, but the accused should be given fresh opportunity for cross examination of all the witnesses. Learned counsel further assures the Court that the accused shall fully co-operate with the case and shall complete the cross-examination of the witnesses on the date they are produced.

Having regard to the aforesaid fair stand of the petitioners, and also having noticed the defect which was found in the trial was not curable one, this Court is inclined to interfere with the order impugned.

Consequently, the order dated 05.07.2007, passed by 3rd Addl. Sessions Judge, Motihari in Sessions Trial No.116 of 1992 is set aside. Learned trial court shall proceed to summon the witnesses examined in this case for their cross-examinations and thereafter dispose of the trial in accordance with law."

**51.** The core issue is thus connected to the plea of non-compliance of Section 207 of the Cr.P.C. and the legality/illegality of the evidence which was adduced in absence of such compliance.

**Section 207 of the Cr.P.C.,1973** is being reproduced hereunder for ready reference:

"207. Supply to the accused of copy of police report and other documents:-  
In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

1. the police report;
2. the first information report recorded under section 154;
3. the statements recorded under Sub-Section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-Section (6) of section 173;
4. the confessions and statements, if any, recorded under section 164;
5. any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-Section (5) of section 173:

**Provided** that the Magistrate may, after perusing any such pan of a



statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

**Provided further** that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

**52.** A bare reading of the said provision indicates its mandatory nature with the use of the word “shall” and due compliance of the same has to be made by the Magistrate at the earliest opportunity. It is only thereafter that the case would be committed to the Court of Sessions when such offence is triable exclusively by it. The mandatory nature of Section 207 of the Cr.P.C gets further strengthened by section 209 of the Cr.P.C. dealing with the commitment of the case to the Court of Sessions where the commitment is ordered only after complying with the provisions of Sections 207 or 208 Cr.P.C., as the case maybe. Further, Section 238 of the Cr.P.C is another provision which deals with compliance with Section 207 making it mandatory for the Magistrate to satisfy himself at the commencement of the trial that he has complied with the said provision. The whole idea and scheme of these provisions rests on reinforcement



of the right of the accused to a fair trial so that no prejudice is caused to him on account of non-supply of the police papers. In the case of **P.Gopalkrishnan V. State of Kerala** reported in **(2020) 9 SCC 161**, the Hon'ble Supreme Court held:

*“21. Be that as it may, furnishing of documents to the accused under Section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution.”*

*“22. Similarly, in V.K. Sasikala v. State [V.K. Sasikala v. State, (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010] , this Court held as under:*

*“21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court [V.K. Sasikala v. State, 2012 SCC OnLine Kar 9209] . The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view [V.K. Sasikala v. State, 2012 SCC OnLine Kar 9209] taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.”*

*(emphasis supplied)*



**53.** The Hon'ble Apex Court has also greatly emphasized on the statutory mandate of section 207 of the Cr.P.C. linking it with the indefeasible right of the accused to a fair trial in the case of **Sunita Devi v. State of Bihar & Anr.** reported in **AIR 2024 SC (Supp) 617** in the following words:

*“17. We make it clear that the right of an accused would arise, in getting the documents relied upon by the prosecution, after taking cognizance and before framing of the charges. Therefore, between taking cognizance and framing of charges, an accused should have sufficient window to go through the documents supplied to him as he is entitled to be heard at a later stage.”*

**54.** This court is also tempted to refer to a judgment passed by a three judges bench of Hon'ble Supreme Court reported in **(2023) 2 SCC 353, Manoj & ors. V. State of M.P.**, making reference to the case of **Manu Sharma V. NCT of Delhi** reported in **(2010) 6 SCC 1**, wherein it was held that the prosecution, as a matter of rule in all criminal trials, must furnish the list of statements, documents, etc. which are not relied upon by the investigating officer, giving



a liberal and relevant meaning to Section 207 of the code and the presiding officers of the courts must ensure such compliance.

**55.** Section 207 Cr.P.C. thus imposes an obligation to furnish the documents to the accused without any delay. The scheme of the provisions expressly denotes that compliance to the said provision must be made at the commencement of the trial as Section 238 of the Cr.P.C. warrants the Magistrate to satisfy himself that the aforesaid provision is complied with, in order to enable the accused to build and put up his defence effectively. Thus, considering the mandatory character of the aforesaid provision we proceed to answer **Issue No.1** by stating that such plea of non-compliance of Section 207 of the Cr.P.C. can be raised at any stage of the trial and the accused cannot be precluded from raising such issue even at the belated stage in view of the law laid down in the case of **V.K. Sasikala Vs. State (2012) 9 SCC 771** which has been taken note of in the case of **P. Gopalkrishnan (supra)**.



**56.** Reverting to the present case, the fact scenario was such that the Trial Court had admitted the factum of irregularity pertaining to compliance of Sections 207 and 209 of the Cr.P.C. and clearly indicated in its order dated 05.07.2007 (as quoted above). However, since the Trial Court ordered that there was no need of fresh charge or recall of witnesses for further cross-examination, the said order was challenged by the accused before the High Court and a Bench of this court, noticing the defect, allowed the said challenge giving the defence a fresh opportunity for cross-examination of all the witnesses, as was conceded by the counsel for the defence.

**57.** At this stage, it becomes significant to note that this order of the High Court was never challenged by the prosecution, as such, it gained finality. In such view of the fact that there was an irregularity in the trial and there was a fresh commitment made and that the High Court had granted fresh opportunity to the accused for cross-examination of witnesses, no objection can now be raised to the plea of non-



compliance of Section 207 of the Cr.P.C. being resorted to by the accused at a belated stage.

**58.** In the above-mentioned situation where no fresh charges were framed, and the High Court also granted a fresh but limited opportunity for cross-examining the prosecution witnesses, the entire trial did not get vitiated and since the trial was not a denovo trial or re-trial, it would not be proper to assume that all the earlier evidence adduced during trial, gets effaced or wiped out. The learned Trial Court while passing the impugned judgment did not take into consideration the previous cross-examination of the witnesses, which in our opinion, was an error and illegality committed by the learned Trial Court and this answers the **Issue No.2** affirmatively. Nevertheless, the question still remains as to whether by adducing evidence in absence of compliance of the provision of Section 207 Cr.P.C., the right of the accused to a fair trial gets in any way affected.

**59.** This takes us to the **Issue No.3** relating to the violation of the principle of fair trial which is one of the necessary concomitants for ensuring compliance with the



basic rule of law and which is also fundamental to the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. The concept of fair trial is an integral part of Article 21 of the Indian Constitution and has to be followed in its letter and spirit as it concerns both the accused and the victim. So far it concerns the accused, who although presumed to be innocent during a criminal trial unless proven guilty, has to be provided with the procedural safeguards in order to prove his innocence and non-compliance or any deviation from these procedural safeguards, as provided in the Code of Criminal Procedure would impede a fair trial. The Hon'ble Apex court in the case of **Sunita Devi** (*supra*), elucidated the concept of fair trial in the following words:

*"9. A fair trial is the heart and soul of criminal jurisprudence. The principle of democracy lies in a fair trial. It is not only a statutory right, but also a human right, which would be violated when the safeguards provided under the Statute are not followed. The absence of a fair trial would seriously impair and violate the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India, 1950. What is important to be seen is the existence of a failure of justice, which is obviously one of fact. A mere violation per se would not vitiate the trial, especially when the degree of substantivity exhibited in a statute is minimal."*



60. Thus, it was held in the above-mentioned judgment that a fair trial would include due procedure with adequate opportunities for all the stakeholders. It further held that the procedural safeguards and its compliance are to be kept in mind by the court, as any deviation might either impact the prosecution or defence in a given case. We may, in this regard, gainfully refer to the case of **Rattiram Vs. State of M.P** reported in (2012) 4 SCC 516 by quoting paragraph 39 and 40 of the said judgment:

*“39. The question posed by us fundamentally relates to the non-compliance with such interdict. The crux of the matter is whether it is such a substantial interdict which impinges upon the fate of the trial beyond any redemption or, for that matter it is such an omission or it is such an act that defeats the basic conception of fair trial. Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism.”*

*“40. In Kalyani Baskar v. M.S. Sampooranam [(2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577] it has been laid down that “fair trial” includes fair and proper opportunities allowed by law to the accused to prove innocence and, therefore, adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It is essential that the rules of procedure designed to ensure justice should be scrupulously followed and the courts should be zealous in seeing that there is no breach of them.”*

61. Fair trial has also been succinctly discussed very recently by a three-judges bench of Hon’ble Supreme Court in the case of **Sovaran Singh Prajapatti Vs. The State of**



**U.P.** reported in **(2025) 2 SCR 1890: 2025 SCC OnLine SC 351**, exhaustively dealing with the issue of compliance of the basic requirements of a fairly conducted trial, in accordance with the well-established legal propositions before imposing death sentence upon the accused and concluded that since there was a clear non-compliance of the principles of law and the procedural rigors, both the judgments of the Trial Court and the High Court were set-aside and the matter was remanded to the Trial Court to proceed afresh from the stage of framing of charge. The purpose of a trial, the statutory mechanism regarding a trial before a Court of Session as provided in the Cr.P.C. and the concept of a fair trial, being a guarantee under Article 21 of the Constitution of India were all discussed giving reference to several other judicial pronouncements. Paragraph 10 of the said judgment is being quoted as hereunder: -

*“10. Fair and impartial administration of justice is a treasured right protected by various enactments of law including, first and foremost, the Constitution, which under Article 21 guarantees the Right to Fair Trial. In numerous pronouncements, this Court has underscored the same.”*



**62.** Now applying all these principles to the present case where the trial had proceeded without compliance of the provision of section 207 Cr.P.C., the proceedings before the Trial Court were rendered defective as the said provision, as discussed earlier, is couched with terminology which is of mandatory character. The trial may not have vitiated depending upon several considerations, including the fact that the accused had infact cross-examined the prosecution witnesses making the Trial Court presume that they may be aware of the contents of the police-papers and also in background of the fact that the trial had reached an advanced stage, but the fact remains that the evidence adduced during trial without the compliance of the statutory provision of section 207 of the Cr.P.C. permits the accused to raise the plea of denial of their valuable right of 'fair trial'. Thus, while taking into consideration the entire evidence on record, the concept of fair trial needs to be kept in mind.

**63.** This Court, while analysing the rival contentions, has also not lost sight of the fact that inordinate delay has been caused in conclusion of the trial commencing



from the year 1992 and ending in a judgment of acquittal in the year 2023, which makes it an agonizing journey of about 32 long years of undergoing the rigours of a protracted trial. This delay cannot be attributed to the defence alone, on account of raising the plea of non-compliance of the provision of section 207 Cr.P.C. at a belated stage, but it is also the prosecution which delayed the production of witnesses in pursuance of the order of the High Court for fresh cross-examination in the year 2010. Thirteen long years were spent in producing these witnesses for cross-examination and in the meantime some of the witnesses, including the informant, were even dead, while the presence of some, like the I.O. could not be procured despite issuance of summons.

**64.** An argument has also been raised on behalf of the appellant that the trial court did not take adequate steps for subsequent cross-examination of the I.O. but we gather from the records of the case that summons were issued for his appearance but it may be said that effective steps towards his appearance were not taken. The records indicate that the



I.O., at the time of recording of his deposition in the year 1998, was aged about 51 years and in case a question with regard to remanding the matter for recording his fresh/further cross-examination is to be considered, it is to be borne in mind that almost 35 years have lapsed since the date of occurrence and at least 28 years have lapsed since the date of deposition of the I.O. and there can be no guarantee of this witness being even alive or at least having capacity or capability of any recollection of events.

**65.** It is not a normal situation wherein the court can contemplate on remanding the matter as there is such a huge lapse of time. Moreover, no definite prejudice is being caused by non-subjecting of the I.O. to subsequent cross-examination as his evidence could be used for bringing out corroboration or contradiction and would be based upon materials collected during investigation, including the statements of the witnesses recorded under Section 161 Cr.P.C. during investigation. However, the evidence based on such statements of witnesses recorded during investigation



would not have primacy over the statements made by the prosecution witnesses during trial.

**66.** The evidence of the I.O. however makes a reference to the seizure lists prepared by him of some incriminating articles showing collection of objective evidence from the place of occurrence but it also needs to be considered that out of the two seizure list witnesses, one Raja Thakur was never examined by the prosecution, while the other Ram Ayodhya Mishra (PW8) had initially supported the said recovery in his examination-in-chief but his cross-examination recorded in para 7, 8, and 13 indicates several inconsistencies raising certain doubts upon a valid seizure, while his subsequent cross-examination, after remand of the matter, totally belies his earlier statements of being even present on the date of occurrence. It is also a fact that the seized articles were never sent for any forensic examination and hence, the veracity of the entire seizure becomes highly doubtful.

**67.** We now come to the question as to whether the entire evidence on record being considered in its totality



would be sufficient to record a conviction of the accused persons and whether it would be proper for this court to upset the impugned judgment of acquittal passed by the learned Trial court in case two views were possible. Both the **Issues Nos. 4 and 5** are thus being taken up together.

68. The evidence led by the prosecution by way of deposition of witnesses in their examination-in-chief no doubt supported the case of the prosecution. The cross-examination of these witnesses raised certain inconsistencies and discrepancies but by and large they did not go to the root of the prosecution case. We also gather from the evidence that the prosecution witnesses are all related to each other and are inimically disposed towards the accused persons who were also their agnates/*pattidars* having a dispute between them. The evidence discloses that the entire matter escalated on a petty issue of cutting of branch of a mango tree which was being claimed by both the parties.

69. We have also noted that besides the deceased (Suresh thakur) other witnesses also got injured in the incident and the testimony of these injured witnesses cannot



be brushed aside or discarded lightly unless strong and compelling grounds exist. However, it is also a fact that before a court accepts the testimony of the injured eyewitness, it has to be satisfied that he is a truthful witness and has no reason to falsely implicate the accused persons. It has been held in the case of **Santosh Prasad Vs. State of Bihar** reported in **(2020) 3 SCC 443** that an injured witness would ordinarily not lie as to actual assailants but there can be no presumption for assuming that such statement is always correct or without any embellishments or exaggeration.

**70.** The issue that assumes significance at this stage is that at least six out of nine private witnesses, being PWs 1 to 4, 7 and 8 in their subsequent cross-examination, did not support the case of the prosecution as an eyewitness. The informant (PW9), his wife (PW6) and also PW5 died during the pendency of the trial and could not be subjected to fresh/further cross-examination. We have already discussed in the preceding paragraphs the contents of the subsequent cross-examination of these six witnesses which includes the



alleged injured witnesses, wherein they have specifically denied being eyewitness to the incident of assault and have even expressly negated the presence of the accused persons at the place of occurrence. We are thus, faced with a situation where the prosecution witnesses, including alleged injured witnesses, have given vacillating, inconsistent and self-contradictory statements before and after the remand of the matter.

71. A plea has been taken on behalf of the prosecution that the witnesses were gained over. However, there is nothing on record to indicate any such specific objection having been taken earlier. The Hon'ble Supreme Court in the case of **State of U.P. V. Jaggo @ Jagdish, AIR 1971 SC 1586**, while considering the question whether the mere presentation of an application by the prosecution to the effect that a certain witness had been "won over" was conclusive of the allegation that he had been so "won over", negated the said proposition in paragraph 16 of the said judgment. Thus, the plea of 'gain over' being raised at this stage is purely speculative in nature and it goes without



saying that criminal jurisprudence is not based on mere speculations.

72. The law is rather clear even in case of hostile witnesses, that such part of the evidence of a hostile witness which is either consistent with the case of prosecution or the defence can be taken into account. Recently, in the case of **Talari Naresh Vs. The State of Telangana** reported in **(2026) INSC 486**, the Hon'ble Supreme Court held that the testimony of a hostile witness could be used to discredit the prosecution case and a conclusion of acquittal be well be supported through it. Paragraph 9 of the said judgment is quoted hereunder:

*“9. Therefore, when the testimony of a hostile witness is admissible subject to be feeded by corroboration and the conviction on that basis could be arrived at, the reverse is also true as a canon of appreciation of evidence. What necessarily implies is that as the evidence of a hostile witness can be used for convicting the accused, such evidence could indeed be applied and utilised also for the purpose of acquitting the accused, when what is testified by the hostile witness inspires credibility, when read with the other evidence on record, either ocular or documentary. The dictum would be that the testimony of a hostile witness or statement in the deposition of hostile witness could be properly employed to discredit the prosecution case and a conclusion of acquittal could well be supported through it and could be founded thereon.”*



73. In the case at hand the situation is even better as we are not dealing with hostile witnesses, but these witnesses are full-fledged prosecution witnesses whose evidence is binding on the prosecution. Thus, when the evidence of a hostile witness can be employed for supporting a conclusion of acquittal, there appears to be no impediment in considering the testimony of full-fledged prosecution witnesses in support of a finding of acquittal. The judgment and the finding of a court have to be based on sound legal principles and even if there are possibilities of the witnesses changing their stand on account of lapse of time, being gained over, etc., these considerations would be based upon assumptions, presumptions and speculations. This court is conscious of the fact that in criminal jurisprudence there is no place for moral conviction rather the conviction has to be legal, based on evidence. The consideration of this aspect addresses the **Issue No.4**.

74. The Hon'ble Apex Court has dealt with the issue of moral and legal conviction in the cases of **Randeep Singh Rana Vs. State of Haryana & Ors** reported in (2024)



**SCCOnLine 3383 (para-17) and in case of Renuka Prasad Vs. State Represented by Assistant Superintendent of Police reported in (2025) SCCOnLine SC 1074. Paragraph 1 and 49 of the Renuka Prasad Case is being reproduced hereunder :-**

*“1. Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye- witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants.”*

.....  
*“49. We cannot but say that the High Court has egregiously erred in convicting the accused on the evidence led and has jumped into presumptions and assumptions based on the story scripted by the prosecution without any legal evidence being available. Truth is always a chimera and the illusion surrounding it can only be removed by valid evidence led, either direct or indirect, and in the event of it being circumstantial, providing a chain of circumstances with connecting links leading to the conclusion of the guilt of the accused and only the guilt of the accused, without leaving any reasonable doubt for any hypothesis of innocence. We can only accede to and share the consternation of the Division Bench of the High Court, which borders on desperation, due to the futility of the entire exercise. That is an occupational hazard, every judge should learn to live with, which cannot be a motivation to tread the path of righteousness and convict those accused somehow, even when there is a total absence of legal evidence; to enter into a purely moral conviction, total anathema to criminal jurisprudence. With a heavy heart for the unsolved crime, but with absolutely no misgivings on the issue of lack of evidence, against the accused arrayed, we acquit the accused reversing the judgment of the High Court and restoring that of the Trial Court.”*

*(emphasis*

*supplied)*



75. The entire discussion made hereinbefore leads us to the last issue being **Issue No.5**, as to whether the impugned judgment of acquittal passed by the learned Trial Court is worth interference, in case two views are possible. After having discussed and analyzed the entire evidence on record in totality, considering both pre-remand and post-remand cross-examination, we find that two views are possible to be taken. We cannot lose sight of the fact that the impugned judgment which is before us for consideration is a judgment of acquittal and the accused persons have a double presumption of innocence in their favor, one that the criminal jurisprudence permits them to have unless they are proven guilty and the other, reinforced by the impugned judgment of the acquittal.

76. For reversing a finding of the acquittal, there should be no doubt in the mind of the court that the prosecution has been able to prove its case beyond all reasonable doubts by way of unfettered and clinching evidence. The moment an element of doubt creeps in and if



evidence gives rise to two reasonable views, the Courts ought to lean in favour of the view which supports the accused, entitling them to benefit of doubt, as such, the appellate court should not disturb the finding of acquittal recorded by the Trial Court. The law is well settled in this regard and in the case of **Rajesh Prasad Vs. State of Bihar**, reported in (2022) 3 SCC 471, which also took note of the case of **Chandrappa v. State of Karnataka**, reported in (2007) 4 SCC 415, the Hon'ble Apex Court outlined the general principles that an appellate court must bear in mind, including that of double presumption in favour of the accused. Paragraph-29 of **Rajesh Prasad** (supra) is being quoted hereunder:

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)*

*“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge*

*(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.*

*(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

*(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”,*



*“very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.”*

77. Thus, upon careful consideration of entire factual aspect and well-established legal principles, and after having examined and analyzed the entire evidence on record, it is gathered that the evidence of witnesses is infested with some glaring deficiencies shaking the very foundation of the case. We are also conscious of the accused persons (respondent nos. 2 to 5) having undergone the ordeal of trial since the year 1992 with a sword hanging before them even till today. In view of the settled law, even if we accept that there is a stark possibility of two reasonable conclusions based on the evidence on record, this court does not find it



either proper or reasonable to disturb the finding of acquittal recorded by the Trial Court.

**78.** In view of the position emerging out from the foregoing reasons and upon considering the totality of facts and circumstances, including the consideration of the lapse of 35 years since the date of occurrence alongwith the law laid down with regard to appeals against acquittal, we are constrained to hold that the impugned judgment and order of acquittal dated 06.04.2023 passed by learned Additional District and Sessions Judge-XXII, Motihari, East Champaran in Sessions Trial No. 116 of 1992 arising out of Ghorasahan P.S. Case No. 124 of 1991 warrants no interference.

**79.** Accordingly, the present appeal stands dismissed.

**80.** However, before parting with the judgment, we feel compelled to observe that the learned Trial Courts must realize the significance of compliance of mandatory procedural safeguards and the requirements of law and that non-compliance of the same can have far-reaching consequences, including facing rigours of protracted trials,



rendering them an ordeal for the parties to the litigation. The Courts must be conscious and sensitive towards these aspects to ensure a fair trial and thereby uphold the rights guaranteed to citizens by the Constitution of India.

(Soni Shrivastava, J)

Rajeev Ranjan Prasad, J:

(Rajeev Ranjan Prasad, J)

Harsh/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | 23.04.2026 |
| Uploading Date    | 19.06.2026 |
| Transmission Date | 19.06.2026 |

