

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4 of 2016**

Arising Out of PS. Case No.-70 Year-1985 Thana- HATHIDAH District- Patna

Surendra Kapri Son of Ram Kishun Kapri, Resident of Village - Aunta, P.S. -
Hathida, District - Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 41 of 2016

Arising Out of PS. Case No.-70 Year-1985 Thana- HATHIDAH District- Patna

Baijnath Yadav son of Late Gyani Yadav, resident of village Aunta, P.S.
Hathidah, District Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 4 of 2016)

For the Appellant/s : Mr. Gouranga Chatterjee, Sr. Advocate
Mr. Nilanjan Chatterjee, Mr. Ujjwal Raj,
Mr. Sahil Kumar, Mr. Anirvan Choudhuri,
Mr. Jyoti Prakash, Mr. Sarvjit Kumar, Advocates

For the Respondent/s : Mr. Mukeshwar Dayal, A.P.P.

(In CRIMINAL APPEAL (SJ) No. 41 of 2016)

For the Appellant/s : Mr. Gouranga Chatterjee, Sr. Advocate
Mr. Nilanjan Chatterjee, Mr. Ujjwal Raj,
Mr. Sahil Kumar, Mr. Anirvan Choudhuri,
Mr. Jyoti Prakash, Mr. Sarvjit Kumar, Advocates

For the Respondent/s : Smt. Abha Singh, A.P.P.

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

Date : 15-04-2026

1. Both the aforementioned appeals arise out of same
Hathidah P. S. Case No. 70 of 1985 and Sessions Trial No. 350
of 1987 and hence, with the consent of all the parties, are being
heard and disposed of by a common judgment.

2. Heard learned senior counsel for the appellants and



learned A.P.Ps. for the State.

3. These appeals have been filed challenging the judgment of conviction dated 30.11.2015 and order of sentence dated 07.12.2015 passed by learned Additional Sessions Judge 3rd, Barh, Patna in Sessions Trial No. 350 of 1987 arising out of Hathidah Case No. 70 of 1985 whereby appellant namely, Surendra Kapri has been convicted under Section 379 of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of three months and appellant, namely, Baijnath Yadav has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 1,000/- and in default to undergo a further period of rigorous imprisonment for three months.

4. The prosecution case, in brief, is that on 9.9.1985 one Deo Nandan Yadav/informant filed a written report before the office-in- charge, Hathidah P.S. alleging therein that he lives in his purchased house with his aunt Sridevi. On the said date, just before the filing of the written report, four accused named in the F.I.R., including these appellants, came and started abusing informant and caused *bhala* injury on his head and asked him to vacate the house. When informant fell down



unconscious upon receiving *bhala* injury, co-accused Manish Kapri snatched his wrist watch and appellant namely, Surendra Kapri snatched his money. Accordingly, Hathidah P. S. Case No. 70 of 1985 was registered under Sections 324, 323, 379 of the Indian Penal Code.

5. Police after investigation submitted charge sheet in the case under Sections 307, 326, 324, 379 IPC. During trial, charge under Section 379 IPC was framed against appellant namely, Surendra Kapri and co-accused Manish Kapri while charge under Section 307 IPC was framed against appellant, namely, Baijnath Yadav and co-accused Jai Narayan Yadav. During the trial, co-accused Manish Kapri and Jai Narayan Yadav absconded therefore, trial of these appellants were held separately.

6. During the trial, prosecution, in all, examined seven witnesses, who are PW1 Sharwan Kumar, PW2 Deo Kumar Yadav, PW3 Ramesh Chandra Sharma, PW4 Manoj Kumar, PW5 Deo Nandan Yadav (informant), PW6 Dr. Krishna Murari Prasad Singh and PW7 Rameshwar Singh (I.O.). PW2 was declared hostile by the prosecution and PW5 is the informant-cum-injured of this case.

7. On the other hand, the defence also examined one



witness Rajendra Chaudhary and proved some documents regarding the land dispute.

8. Learned senior counsel appearing for the appellants assails the order of conviction and sentence on numerous grounds. He contends that prosecution has failed to prove the charge u/s 307 & 309 IPC beyond all reasonable doubt. He further submits that in the written report, no specific allegation was made against any accused about assaulting with *Bhala* or that he was assaulted with *Bhala* twice. There is also no allegation that informant received any injury on the hand. However, during trial, informant including all the witnesses improved their case which is contrary to the statement in the written report. All the depositions of witnesses during trial are totally inconsistent and contrary to the F.I.R. and their previous statements before the police.

9. It is further submitted that the informant did not state in written or in statement under Section 161 Cr.P.C. about the occurrence as stated before the police and did not disclose in written report as to who caused *Bhala* injury and that he was assaulted twice with *Bhala* and received two injuries.

10. None of the independent witnesses, present at the place of occurrence, were examined on behalf of the



prosecution. Thus, entire depositions of the witnesses are contrary to the written report as well as to their previous statements made before the police during the investigation. There is no allegation of repetition of blow and as such, no offence under Section 307 IPC would be made out since despite there being no intervening circumstances, informant saved his life and from the injury report it appears that one of the injury was simple. The story of theft is also unbelievable for the simple reason that as per the statement of the informant, theft was committed when he had fallen down unconscious and therefore, he could not have seen the said occurrence. Rest of the eye witnesses who are chance witnesses have not corroborated the allegation of theft the way it was alleged. Thus, in view of the inconsistent and contradictory evidence and the circumstances which had appeared in the case, accused persons deserve to be acquitted and appeals deserve to be allowed.

11. On the other hand, learned A.P.Ps. for the State supported the prosecution case and submitted that informant is eye witness of the occurrence and has supported and corroborated the allegation. There is no reason to differ with the findings of the court. Judgment of conviction and order of sentence passed by the trial court is justified and no interference



is required.

12. I have perused the depositions of witnesses, impugned judgment and order of the trial court and I have also given thoughtful consideration to the submissions made on behalf of the parties.

13. From perusal of the evidence adduced on behalf of the prosecution, it is apparent that all the statements of prosecution witnesses suffer from material infirmities, discrepancies and inconsistencies. Depositions of witnesses are apparently in conflict with and contrary to the F.I.R. and their previous statements made before the police. Prosecution case has been lodged on the basis of written report of the informant and as per F.I.R., there is no whisper of second injury on the hand of informant. During trial, all the witnesses have improved the prosecution case and alleged that it was these appellants who assaulted informant with *Bhala* which is completely in conflict and contrary to the F.I.R. as well as their previous statements before the police. None of the witnesses, during investigation, have stated before the police as to who assaulted informant with *Bhala*. It further appears that in the F.I.R., informant, who appears to be the victim of the occurrence, has not alleged that who caught hold of him and assaulted him with *Bhala*.



However, during trial, informant improved the entire prosecution case and stated that these appellants assaulted him with *Bhala*. Similarly, informant, in his written statement, is silent about the second injury on his hand.

14. Testimony of the witnesses are inconsistent with the F.I.R. and their previous statements before the police. None of the witnesses, during investigation, have stated as to who assaulted informant. Thus, the depositions of the witnesses are totally untrustworthy and wholly unreliable. There is mismatch between medical and ocular evidence. Thus, in view of the material contradiction and discrepancies with regard to the prosecution case, place and manner of occurrence, I find that the impugned judgment of conviction and order of sentence are difficult to sustain.

15. Thus, in view of the facts and circumstances of the case, as discussed above, it is evident that 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. In consequences, conviction cannot be sustained and accused are entitled to acquittal.

16. In that view of the matter, judgment of conviction dated 30.11.2015 and order of sentence dated 07.12.2015 passed



by learned Additional Sessions Judge 3rd, Barh, Patna in Sessions Trial No. 350 of 1987 arising out of Hathidah Case No. 70 of 1985 are, hereby, set aside.

17. Appellants are acquitted of all the charges and are discharged from the liability of the bail bonds in connection with this case.

18. Accordingly, this appeal stands allowed.

(Prabhat Kumar Singh, J)

Navya/-

AFR/NAFR	NAFR
CAV DATE	N/A
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