

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1307 of 2024

Arising Out of PS. Case No.-407 Year-2020 Thana- MADHEPURA District- Madhepura

Savita Devi W/o Manoj Das Village- Dhuragaon P.S.- Madhepura (Bharrahi O.P.) District- Madhepura

... .. Appellant

Versus

1. The State of Bihar
2. Shrawan Kumar @ Sarwan Kumar Son of Badri Das R/O Vill.- Dhuragaon, P.S.- Madhepura (Bharrahi O.P.), Dist.- Madhepura.
3. Bucho Das @ Buchai Son of Late Sukhdev Das R/O Vill.- Dhuragaon, P.S.- Madhepura (Bharrahi O.P.), Dist.- Madhepura.
4. Badri Das Son of Late Sukhdev Das R/O Vill.- Dhuragaon, P.S.- Madhepura (Bharrahi O.P.), Dist.- Madhepura.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Suraj Kumar, Advocate Mr. Pawan Kumar, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Respondent 2-4	:	Mr. Nafisuzzhoha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-07-2026

Heard learned counsel for the appellant, learned counsel
for the respondent nos. 2 to 4 and learned Additional Public
Prosecutor for the State.

2. The present appeal arises out of the judgment of
acquittal dated 29.08.2024 (hereinafter referred to as the
‘impugned judgment’) passed by learned Additional District and
Sessions Judge-IV, (hereinafter referred to as the ‘learned trial



court') in Sessions Trial No. 200 of 2022 (CIS No. 200 of 2022) arising out of Madhepura (Bharrahi) P.S. Case No. 407 of 2020 whereby and whereunder respondent nos. 2 to 4 have been acquitted of the charges under Sections 302/34, 341/34, 323/34 and 504/34 of the Indian Penal Code (in short 'IPC').

Prosecution Case

3. The prosecution case is based on the written application of the informant Savita Devi (appellant herein) recorded on 01.06.2020 wherein she has alleged that on 30.05.2020 at 4:00 PM she had gone to her *kamat* where she found that *jalawan* was kept on her *dih*. It is alleged that when she inquired as to who had kept *jalawan* on the *dih*, her *devar* (1) Badri Das, (2) Bucho Das, (3) Shravan Kumar and (4) Mintu Kumar came and questioned her as to whom she was abusing. The informant stated that she was abusing those who have put *jalawan* on the *dih*. It is further alleged that Badri Das assaulted the informant on which all the above-named accused persons started beating her by holding hair and by *lappad thappad*. On hearing *hulla*, when informant's *devar* Anmol Kumar came to save her, Shravan Das, with an intention to kill him, assaulted him by an iron rod due to which he sustained injuries and fell down. In the meantime, Nago Das, Domi Das and Lalo Das came and asked to



kill him. When her cousin father-in-law Rajesh Das came to save her, Bucho Das assaulted on his head with a sharp-edged weapon causing head injury and bleeding. All the above accused then assaulted them indiscriminately due to which they got injured. It is also alleged that a silver chain worth Rs. 4,000/- was snatched by Domi Das. Upon hearing *hulla*, nearby people came and asked them to get injured treated first and they were taken to the hospital.

4. On the basis of the written application of the informant (PW-7), Madhepura (Bharrahi) P.S. Case No. 407 of 2020 was registered under Sections 341, 323, 324, 307, 354, 504, 506, 379/34 IPC against seven accused persons.

5. After investigation, police submitted chargesheet bearing Chargesheet No. 108 of 2020 dated 31.08.2020 showing these accused persons namely (1) Nago Das, (2) Domi Das and (3) Lalo Das as not sent up for trial and the accused persons namely (1) Badri Das, (2) Bucho Das, (3) Shravan Kumar and (4) Mintu Kumar were sent up for trial for the offence under Sections 341, 323, 324, 307, 302, 504/34 of the IPC.

6. Learned Magistrate took cognizance of the offences and issued summons to all the accused persons namely (1) Badri Das, (2) Bucho Das, (3) Shravan Kumar, (4) Mintu Kumar, (5) Nago Das, (6) Domi Das and (7) Lalo Das. Vide order dated



29.07.2022, learned Magistrate separated the case of Mintu Kumar finding him a child in conflict with law and sent his records to Juvenile Justice Board, Madhepura and committed the case records to the court of Sessions in relation to the accused persons in attendance namely (1) Shravan Kumar, (2) Badri Das and (3) Bucho Das giving a direction to open separate file against the absent accused persons.

7. Upon commitment, Sessions Trial No. 200 of 2022 was registered in the court of Sessions Judge, Madhepura where charges were read over and explained to the accused persons on 22.08.2022 to which they denied. Accordingly, the learned trial court framed charges under Sections 302/34, 341/34, 323/34, 504/34 IPC against the accused persons (respondent nos. 2, 3 and 4 herein).

8. In course of trial, the prosecution examined as many as eleven witnesses and got exhibited various documentary evidence. The description of the prosecution witnesses and the list of documents exhibited on behalf of prosecution are provided hereunder for ready reference in a tabular form:-

List of Prosecution Witnesses

Prosecution witness No.	Name of Witness	Description
PW-1	Santosh Kumar Das	Hostile witness



PW-2	Ramchandra Das	Hostile witness
PW-3	Ramnaresh Das	Hostile witness
PW-4	Kali Das	Hostile witness
PW-5	Bhola Prasad Yadav	Hostile witness
PW-6	Rajesh Kumar	Hostile witness
PW-7	Savita Devi	Informant
PW-8	Mahendra Das	Hostile witness
PW-9	Yash Sharma	Medical Officer
PW-10	Dilip Kumar Singh	I.O.
PW-11	Dr. Sarshij Nayanam	Medical Officer

List of Defence Witness

DW-1	Bimal Yadav	
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List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Exhibit P-1/PW-7	Written application of informant	PW-7
Exhibit P-2/PW-9	Injury report of Mahendra Das	PW-9
Exhibit P-3/PW-9	Injury report of Rajesh Das	PW-9
Exhibit P-4/PW-10	Forwarding report on Fardbeyan	PW-10
Exhibit P-5/PW-10	Registration of the FIR written on the margin of the written application	PW-10
Exhibit P-6/PW-10	Complete Formal FIR	PW-10
Exhibit P-7/PW-10	Signature of Witnesses Kapildeo Das and Muso Das on carbon copy of postmortem report	PW-10
Exhibit P-8/PW-10	complete chargesheet	PW-10
Exhibit P-9/PW-11	Postmortem report along with signature of PW-11	PW-11

List of Exhibits on behalf of Prosecution

Exhibit D-1/DW-1	Complete <i>Kebala</i>	DW-1
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Findings of the learned Trial Court

9. Learned trial court after examining the oral as well as documentary evidences available on the record found that prosecution has examined altogether eight witnesses (PWs 1 to 8) on the point of facts. Out of them, PW-7 is the informant and except her, all other prosecution witnesses (PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8) have been declared hostile. They have stated that they do not have any knowledge about the occurrence. PW-6 Rajesh Kumar (injured witness) has stated that he received two injuries on his head which he had received after falling down on the bundle of bamboos.

10. Learned trial court examined the evidence of PW-7 Savita Devi (informant). This witness is the *bhabhi* of the deceased in relation. She has deposed that Shravan Kumar injured her *devar* by assaulting him by an iron rod which hit on the right side of his head and her *devar* fell down on the earth in injured condition. She further deposed that when her cousin father-in-law came to save her *devar*, then accused Bucho Das caused injury to him after assaulting on his head by *dabiya*. Her father-in-law Mahendra Das (PW-8) was also assaulted. She further deposed that her *devar* Anmol Kumar, her cousin father-in-law and her father-in-law were brought to Madhepura Hospital from where her *devar* was referred



who died on the way to Patna. Learned trial court found from the evidence of PW-6 Rajesh Kumar (cousin father-in-law of the informant) that evidence of informant has not been supported by this witness (PW-6). Learned trial court further found that PW-8 who is the father of the deceased and father-in-law of the informant (PW-7) has not supported the occurrence.

11. Learned trial court opined that order of conviction can be passed only on the basis of sole eyewitness provided there is no scope of any suspicion on that evidence. In this case, learned trial court found that only the informant has deposed as eyewitness and other witnesses including the injured has not supported the prosecution story.

12. Learned trial court found that the informant (PW-7) in paragraph '24' of her cross-examination has stated that she went to the place of occurrence alone where she did not see any injured. In paragraph '25' of her cross-examination, she has stated that after 10-15 minutes, she had gone to Sadar Hospital from the place of occurrence with her father-in-law, Rajesh Das and Anmol Kumar. In paragraph '26' of her cross-examination, she has stated that she was going to Patna in ambulance with Anmol Kumar and on the way about 8-9 o'clock, Anmol Kumar died. Learned trial court found from the records that the date of occurrence is 30.05.2020



and the First Information Report was lodged on 01.06.2020 and by that time, Anmol Kumar had not died whereas informant (PW-7) has stated in paragraph '28' of her cross-examination that after cremation she had given her *beyan* to police which was recorded by police on which she had put her signature.

13. Learned trial court found from the materials available on the record that except the informant, no other witness has supported the occurrence and the informant's evidence is also of no such quality on which reliance can be placed. Accordingly, the learned trial court found that the prosecution has failed to establish its charges against the accused persons (respondents herein) beyond the shadow of all reasonable doubts and acquitted them from the charges levelled against them.

Submissions on behalf of the Appellant

14. Learned counsel for the appellant has assailed the impugned judgment of acquittal on various grounds. It is submitted that the learned trial court could not duly appreciate the evidences available on the record. PW-7 (the informant) is an eyewitness of the occurrence, she has fully supported the prosecution case, there is no ambiguity, much less any discrepancy of material kind in her deposition.



15. It is submitted that even as the two injured witnesses, namely, Rajesh (PW-6) and Mahendra Das (PW-8) have turned hostile, but from their deposition it is evident that they have gone in collusion with the accused persons. In such circumstance, the finding of the learned trial court that the informant (PW-7) was not duly supported by other witnesses seems to be wholly irrelevant. The informant is the star witness in this case whose testimony provides a complete picture of the date, time and manner of occurrence. The medical evidence available on the record would further show that Rajesh and Mahendra both were assaulted in the said occurrence and they had received injuries caused by hard and blunt substance.

16. It is submitted that the charges against the accused-respondent nos. 2 to 4 are duly proved, but by taking a perverse view of the matter, the learned trial court has acquitted all of them. Referring to Section 134 of the Indian Evidence Act (now Section 139 of the Bharatiya Sakshya Adhiniyam), learned counsel submits that the evidence given by the informant (PW-7) alone would be more than sufficient to record conviction of the accused persons. In the case of **Sunil Kumar vs. State (Govt. of NCT of Delhi)**, reported in **(2003) 11 SCC 367**, the Hon'ble Supreme Court held that the test for the court in any case should be whether



the witness and his evidence are truthful, convincing and reliable. In fact, the learned trial court has taken note of the settled legal proposition in this regard in the judgment, but by doubting trivial kind of discrepancies in the statement of the informant, refused to record conviction of the accused persons.

17. Learned counsel has further submitted that in this case, the Investigating Officer had not collected the injury report of the victim (the deceased) from the Sadar Hospital, Madhepura. On certain other aspects, the Investigating Officer has failed to do the investigation, but for the lapses on the part of the prosecution or absence of effort on the part of the Investigating Officer to prove the formal aspects of the investigation, the prosecution case would not suffer. In the case of **Harendra Rai vs. State of Bihar and Ors.** reported in (2023) 13 SCC 563, the Hon'ble Supreme Court has held that the failure of the State machinery and the failure of the trial court to ensure a fair trial from the perspective of the victim's side, the trial proceeding do not vitiate the genuineness of the FIR and *bayan tahriri* and no discount may be given to the accused persons for non-exhibition thereof. In the case of **Ram Bihari Yadav vs. State of Bihar and Ors.** reported in (1998) 4 SCC 517, the Hon'ble Supreme Court has held that where the record shows that Investigating Officers created a mess,



deliberately omitted to do what they ought to have done to bail out the appellant, who was a member of the police force, or for any extraneous reason, the interest of justice should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined *de hors* such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.

18. It is submitted that if the entire evidences are considered keeping in view the aforesaid observations of the Hon'ble Supreme Court, it may be found that the learned trial court has recorded a perverse finding by failing to appreciate the evidence of the informant (PW-7). There is no serious discrepancy or variation in her testimony with regard to the date, time and manner of occurrence. The learned trial court could not have rejected her testimony.

19. It is submitted that the learned trial court has failed to notice that the injured witnesses, namely, Rajesh and Mahendra



Das, who turned hostile, came out with a statement that they had suffered injuries in some accident, but they were unable to say that in what kind of accident, they suffered the injury. The place of occurrence is a *parti* land as per the I.O. and the parties were having enmity with respect to the piece of land. It is submitted that the judgment of the learned trial court be upturned and the accused persons-respondent nos. 2 to 4 be convicted for the charges under Sections 302/34, 341/34, 323/34, 504/34 IPC.

Submissions on behalf of the Respondents

20. Learned counsel for the respondent nos. 2 to 4 has contested the appeal. It is submitted that the learned trial court has duly examined the entire evidences available on the record. In this case, the prosecution examined altogether eleven witnesses, but PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 did not support the prosecution case, hence they were declared hostile. Rajesh Kumar (PW-6), who is one of the injured witnesses, has stated in his examination-in-chief that he had suffered two injuries on his head which were caused because of falling of bamboo clump on his head. Mahendra Das (PW-8), who is another injured and father of the deceased, Anmol Das, has stated in his examination-in-chief that at the time of occurrence he was not in the village. PW-8 has



further stated that Anmol Das was his son, but the accused persons had not committed any occurrence with him.

21. Learned counsel submits that the learned trial court has examined the evidence of the informant (PW-7) and has found that she has supported the prosecution case in her examination-in-chief, but in paragraph '24' of her cross-examination, she has stated that she had gone alone to the place of occurrence and after reaching the place of occurrence, she had not seen anyone in injured condition. She has further stated in paragraph '25' that from the place of occurrence, she had gone to the Sadar Hospital taking her father-in-law Mahendra Das, Rajesh Das and Anmol Kumar to hospital where she had stayed for 1-2 hours, thereafter she had left for Patna in an ambulance taking Anmol Kumar but on way to Patna at about 8:00-9:00 AM, Anmol Kumar died.

22. It is submitted that the date of occurrence is 30.05.2020, but the FIR has been lodged on 01.06.2020 and at the time of lodging of the FIR, Anmol Kumar had not died, but the informant has stated in her cross-examination that she had made her statement before police after the cremation had taken place and that was written in writing on which she had put her signature. The learned trial court, therefore, found that there were material discrepancy in the statement of the informant (PW-7), hence the



prosecution had failed to establish its case beyond all reasonable doubt.

23. Learned counsel further submits that in an appeal against acquittal, the judgment of acquittal need not be overturned/reversed unless the judgment of the learned trial court is perverse and the appellate court can safely record a conviction on the basis of the evidences on the record. In this case, no interference with the judgment of acquittal is warranted.

24. Learned Additional Public Prosecutor for the State has adopted the arguments of learned counsel for the respondent nos. 2 to 4.

Consideration

25. We have heard learned counsel for the parties and perused the trial court records. The prosecution case, as disclosed in the written information under signature of the informant (PW-7) (Exhibit '1'), was received and forwarded to SHO, Madhepura Police Station for instituting a case on 01.06.2020. The case was registered under Sections 341, 323, 324, 307, 354, 504, 506, 379, 34 IPC. According to Exhibit '1', the date of occurrence is 30.05.2020 at about 4:00 PM. The place of occurrence is the *kamat/ dih* (a piece of land normally at some distance from the residential place of the villagers which may be used as residential



plot either to construct house or to assemble the agricultural goods/animals). The informant had gone there walking and found that at her place someone had kept *jalawan* (the firewoods). She was inquiring as to who had kept the *jalawan*, in the meantime, her co-sharers, (1) Badri Das, (2) Bucho Das, both son of late Sukhdeo Das (3) Shravan Kumar, son of Badri Das, and (4) Mintu Kumar, son of Bucho Das, all of them came there and they started abusing the informant. They asked her as to whom she was abusing then she told that she was abusing the person who had kept the *jalawan* there. This is said to be the reason behind the occurrence.

26. The informant (PW-7) has stated in Exhibit '1' that Badri Das abused her and asked to catch hold of her and to assault her, whereafter all the accused persons caught her by hair and assaulted her by hand and fist. On hearing *hulla*, her devar, Anmol Kumar (the deceased) came and tried to save her. At this stage, it is stated that Shravan Das assaulted her *devar* by an iron rod with an intention to kill him. As a result of the assault, Anmol Kumar fell down after receiving injury. In the meantime, other accused persons, namely, Nago Das, Dobhi Das, both sons of late Shiv Prasad Das and Lalo Das, son of Dobhi Das reached there and ordered to kill. By that time, her cousin father-in-law, Rajesh Das, (PW-6) tried to save her but he was assaulted by Bucho Das by a



sharped *dabia* and Rajesh Das suffered injury on his head, his head was fractured and bleeding. The informant alleged that all the accused persons were indiscriminately assaulting the family members of the informant and in the occurrence, her family members had received many assaults. Dobhi Das is said to have snatched away the silver chain of the informant. On *hulla*, villagers assembled, they asked that first she should get them treated, then, with the help of the people, she took the injured to Sadar Hospital, Madhepura.

27. It is evident from the materials on the record that in this case, police submitted a charge-sheet bearing No. 108 of 2020 only against accused Badri Das, Bucho Das @ Buchai Das, Shravan Kumar and Mintu Kumar. After lodging of the FIR, Anmol Kumar had died, therefore, Section 302 IPC was added. Charge-sheet was submitted under Sections 341, 323, 324, 307, 302 and 504/34 IPC. Thereafter, the learned Chief Judicial Magistrate took cognizance of the offences but decided to issue summons to all the accused persons. Later on, the records of Shravan Kumar, Badri Das and Bucho Das were split on 29.10.2022. In the present case, Shravan Kumar, Badri Das and Bucho Das had faced trial.



Charges were framed under Sections 302/34, 307, 323/34, 341/34 and 504/34.

28. A perusal of the evidence of the prosecution witnesses would show that so far as PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 are concerned, they have turned hostile. After declaring them hostile, the prosecution has cross-examined them and their attention has been drawn towards the previous statements made by them before police. The I.O. of the case, namely, Dilip Kumar Singh (PW-10) has deposed to support the prosecution case. Santosh Kumar Das (PW-1) has stated in his examination-in-chief that he did not know anything about the occurrence and his statement was not recorded before the police but the I.O. (PW-10) stated in paragraph '3' of his deposition that he had recorded the statement of Santosh Kumar (PW-1). The prosecution cross-examined this witness and suggested that he was making false statement in collusion with the accuse persons. Similar is the situation with Ramchandra Das (PW-2), Ramnaresh Das (PW-3), Kali Das (PW-4) and Bhola Prasad Yadav (PW-5). About all these witnesses, the I.O. has stated that he had recorded their statement in course of investigation. We have noticed that these witnesses have apparently gone in collusion with the accused persons.



29. It is important to take note of the deposition of two injured witnesses, namely, Rajesh Das (PW-6) and Mahendra Das (PW-8). Rajesh Kumar is the cousin father-in-law of the informant (PW-7) and Mahendra Das (PW-8) is the father-in-law of the informant (PW-7). He is also father of the deceased. Their injury reports have been brought on record and proved by the prosecution in course of trial through Dr. Yash Sharma (PW-9). Both of them had suffered injuries caused by hard and blunt substance, though simple in nature and the doctor (PW-9) had examined them at Sadar Hospital, Madhepura on 30.05.2020 at about 6:30 PM. The age of injury were within six hours. It is evident that they had suffered injuries as narrated by the informant (PW-7) in her written information (Exhibit '1'), they were also examined by the I.O. (PW-10) but when these two witnesses came in the dock in course of trial, they turned hostile.

30. PW-6 has stated in his examination-in-chief that the occurrence is of the year 2020 at about 4:00 o'clock, he had got injured and got two injuries on his head, but he states that he had got injuries due to fall of bamboo clump on his head, he had himself fallen down. He has further stated that his statement was not recorded by police. This witness was cross-examined by the prosecution and his attention was drawn towards his previous



statements made before police, in which he had stated that Sabita Devi (the informant) had gone to remove the *jalawan* and was abusing, in the meantime, Badri Das, Bucho Das, Shravan Kumar, Mintu Kumar, Nago Das and Domi Das started quarreling and caused assault in which Anmol Das, Mahendra Das and he had got injured and they had gone for treatment, Anmol Das died while going. This witness denied this suggestion but the I.O. (PW-10) has clearly stated in paragraph '3' of his deposition that he had examined Rajesh Das (PW-6). The I.O. has also stated that he had collected the injury report of Rajesh Das from the hospital. The prosecution suggested this witness that he was in collusion with the accused and was making false statements.

31. It is evident from the deposition of PW-6 that he admits the time of occurrence as stated by the informant (PW-7) and it is further evident that he had gone to the hospital for treatment on 30.05.2020, where he was examined at 6:30 PM by PW-9. Thus, the date and time of occurrence as stated by PW-7 is getting corroborated from the statement of PW-6. His statement that he had fallen down of a bamboo clump is apparently a false statement in collusion with the accused. The I.O., who visited the place of occurrence on 01.06.2020, found that the place of occurrence is a *parti* land and he also found that in the north, there



is *parti* land of Domi Das, in south, there is a tin shed house of Braj Kishor Das, in the east, there is a tin shed house of Chichai Das and in the west, there is a tin shed house of Badri Das. It is evident that the accused persons, who are co-sharers of the informant, were residing in the boundary of the *parti* land which is the place of occurrence and when the informant reached there, she found that somebody had kept *jalawan* on her land, whereafter she started abusing, the accused persons were living in the boundary itself, therefore, their presence at the place of occurrence may be easily believed. The I.O. had not found any bamboo clump at the place of occurrence.

32. Mahendra Das (PW-8) has stated in his examination-in-chief that at the time of occurrence, he was not in the village and his statement was not recorded by the police. His attention was drawn towards his previous statements made before the police, in which he had supported the prosecution case and had stated that the accused persons had assaulted him, Anmol Das and Rajesh Kumar by *lathi*-rod and they were injured in the said occurrence. His attention was also drawn towards his previous statements in which he had stated that his son, Anmol Das, died on the way while being taken away for better treatment. The prosecution cross-examined him after declaring him hostile and the I.O.



(PW-10) has stated that he had recorded the statement of this witness and had also collected his injury report from the Sadar Hospital, Madhepura. The injury report is available on the record as Exhibit 'P-2/PW-9'. It has been proved by Doctor Yash (PW-9). In the injury report, the injuries are said to have been caused by a hard and blunt object and are simple in nature. The injury report of Rajesh Kumar has been marked Exhibit 'P-3/PW-9' and it shows two injuries on the head of the witness caused by a hard and blunt object. Besides those two injuries, there is another injury noted as body ache and headache caused by a hard blunt object.

33. About PW-8, it is worth noting that the defence also cross-examined him and in his cross-examination by the defence, this witness has stated that this case has been lodged by his daughter-in-law, Sabita Devi and whatever statement he had made was on his own will. He has further stated that Anmol Das was his son, but the accused persons had not committed any occurrence with him. This witness did not know as to where he had got the injuries.

34. This Court has no iota of doubt that Mahendra Das (PW-8) was won over by the accused persons. He is making a false statement. He was himself injured and had gone to the hospital and received treatment by PW-9. He was examined by the I.O. but in



the dock, he has been denying everything. His categorical statement that the accused persons had not done any occurrence is a clear indication of the fact that he had come prepared to depose in favour of the accused persons.

35. As regards the admissibility of the evidence of hostile witnesses, the law is well settled. In the case of **Talari Naresh vs. State of Telangana** reported in **2026 SCC OnLine SC 852**, the Hon'ble Supreme Court has reviewed the case laws on the subject and held in paragraph '8.3' and '8.4' as under:-

“8.3 The law as to how to appreciate and apply the evidence of a hostile witness is also not far away to search. In *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*⁶, this court observed,

‘... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’
(Para 6)

8.4. In *Koli Lakhmanbhai Chanabhai v. State of Gujarat*⁷, this Court reiterated that the testimony of a hostile witness is useful to the extent which it supports the prosecution case. In *Bhagwan Singh v. State of Haryana*⁸ also this Court held that when a witness is declared hostile and is cross examined with the permission of the court, his evidence

6. (1991) 3 SCC 627 : 1991 SCC (Cri) 916

7. (1999) 8 SCC 624 : 2000 SCC (Cri) 13

8. (1976) 1 SCC 389 : 1976 SCC (Cri) 7



remains admissible and there is no legal bar to arrive at a finding of conviction on the basis of the testimony of such hostile witness, if corroborated by other reliable evidence.”

36. Similar views have been taken in the case of **Neeraj Dutta vs. State (NCT of Delhi)** reported in **(2023) 4 SCC 731**, **State of Kerala vs. K. A. Abdul Rasheed** reported in **2026 SCC OnLine SC 592** and **Rajesh Yadav vs. State of U.P.** reported in **(2022) 12 SCC 200**.

37. This Court is, therefore, of the considered opinion that the fact that these prosecution witnesses have turned hostile and not supported the prosecution case would not prove fatal to the prosecution. The evidence of the informant (PW-7), the doctor (PW-9), the I.O. (PW-10) and Dr. Sarsij Nayanam (PW-11), who conducted the autopsy on the dead body of the deceased, would be important to take note of to see whether the prosecution case stands on its own leg through these witnesses or not.

38. The informant (PW-7) has, in her examination-in-chief, supported the prosecution case. She has given the time of occurrence being 4:00 PM, place of occurrence is the *dih* and the reason of occurrence is the quarrel which took place on finding that the *jalawan* was spread over the *dih* of the informant and as no one turned up on her asking to take away the same, she started abusing. She has stated that she had taken her *devar* Anmol Kumar



@ Kailash, cousin father-in-law and her own father-in-law to Madhepura Hospital, where all were treated. Kailash was referred, he was being taken to Patna but on the way he died. PW-7 has stated that he died on 2nd.

39. In her examination-in-chief, PW-7 has stated that before death of Kailash, she had gone to the Bharrahi Police Station where Dilip Babu (Daroga) had written the application as per her statement. The application was written in her presence, which was read over to her and after finding the same correct, she had put her signature thereon. On her identification, the written application has been marked Exhibit 'P-1/PW-7'. She identified the accused persons present in the dock.

40. In her cross-examination, PW-7 has stated about the genealogy of the family. She has stated that the old residential plot is about three *katthas*, in which Mandal Das, Jangal Das, Sukhdev Das and Jagdev Das all have equal share. She expressed her unawareness that three sons of Jangal Das had executed a sale deed with respect to his share of land in favour of Badri Das and Buchai Das, both sons of late Sukhdev Das. PW-7 has stated that in the said land, the three brothers have their shares. She was residing at a place where she had constructed her new house and she was living there for the last four years. She has further stated



that the house where she was living is about ten *katthas* of land, which is in the name of her father-in-law.

41. PW-7 has stated in paragraph '15' that her new house is situated at a distance of one and half kilometer from the place of occurrence and it takes ten minutes in reaching to the house of Domi Das from the place of occurrence. She could not tell the *khata* and *khasra* number of the disputed land. In paragraph '20', she has stated that the dispute is with respect to the land which had been sold to Badri Das and Buchai Das. Thus, this witness admits land dispute. She has stated that after the occurrence, she had taken her father-in-law Mahendra Das, Rajesh Das and Anmol Kumar to the hospital. All were being treated and she had stayed for 1- 2 hours. Thereafter, she had taken Anmol to Patna by an ambulance, but Anmol died on the way during day hours, between 8:00-9:00 AM. She had left Madhepura during the night hours, but she could not tell the time.

42. In paragraph '27' of her cross-examination, PW-7 has stated that she had returned and the postmortem was done on the day on which the victim died. Thereafter, she had returned home and the cremation of Anmol Kumar was done. She has stated that in this regard, the information was given to the police and after the cremation, she had given her statement to the police. In



paragraph '28', she has further stated in course of her cross-examination that she had given her oral statement and the police had written the application on her statement, on which she had put her signature. It appears that the learned trial court has found a contradiction in this statement of PW-7. The trial court could not appreciate that the statement in paragraph '28' is in two parts. Firstly, she has stated that after the cremation, she had given her statement to police. In the second part, she is reiterating her earlier statement made in paragraph '3' of her examination-in-chief. She has stated that on the basis of her statement, police had written the application and had taken her signature. Thus, in the second part of her statement in paragraph '28', during cross-examination, she has remained consistent with her statement in paragraph '3' of the examination-in-chief.

43. The learned trial court has referred paragraphs '24' and '26' of the cross-examination of PW-7. In paragraph '24', PW-7 has stated that on the date of occurrence, her father-in-law Mahendra Das and her mother-in-law were in the house, she had alone gone to the place of occurrence where she had not seen anyone in injured condition. No discrepancy may be found in this statement of PW-7. If she was put a question by the defence as to whether she had seen anyone injured after reaching the place of



occurrence, the answer has come that she had not seen anybody injured after reaching the place of occurrence. This Court does not find any discrepancy in the statement of the informant because it is not the prosecution case that the occurrence had taken place or anyone was injured prior to the reaching of PW-7 at the place of occurrence. The occurrence took place only after PW-7 had reached at the place of occurrence and when she started abusing those who had kept *jalawan* at her *dih* (*parti* land).

44. Similarly, in paragraph '27', PW-7 has stated that she had returned from the way and had taken the dead body for postmortem. The postmortem was conducted on the same day on which Anmol Kumar had died. This statement of PW-7 is getting corroborated from the evidence of the I.O. (PW-10), who has stated that he had prepared the inquest report of the deceased Kailash Kumar @ Anmol Kumar (Exhibit 'P-7/PW-10'). This exhibit has been prepared on 02.06.2020. PW-7 has given the specific date of death of Kailash Kumar @ Anmol Kumar i.e. on 02.06.2020. Therefore, it is evident that the inquest report was prepared on the same day. PW-10 has stated that in the inquest report he had written about the injuries caused by rod and brick, which he had recorded on the basis of the statements of the witnesses. The I.O. (PW-10) has further stated that he had sent the



dead body for postmortem from the same place where he had prepared the inquest report. Dr. Sarsij Nayanam (PW-11) who was posted as Medical Officer at Sadar Hospital, Madhepura on 02.06.2020, has conducted the postmortem of the dead body of Anmol Kumar @ Kailash Kumar, aged 18 years. He had found the following injuries:-

“On 02/06/2020 I was posted as Medical Officer at Sadar Hospital Madhepura. On that I have conducted the Postmortem of the dead body of Anmol Kumar @ Kelash Kumar, Age 18 years, Male, C/o- Mahanand Das, Village- Dhurgaon, Ward No. 11, Lakshmi Tola, P.S.- Bharrahi O.P., Distt- Madhepura.

External Examination

Rigor mortis present in all four limbs. They have no swelling and scar mark on head, chest, abdomen. A lacerated wound present 2 CM x 1 CM on occipital region on head. He is treated first at Sadar Hospital, Madhepura and referred to PMCH but he take treatment in Koshi Hospital. CT Scan EDH left frontal region.

Internal Examination

(1) Cranial Cavity - There is no blood found in cranial cavity. Fracture present temporal region. Brain is irregular and pale, congested.

(ii) Neck - All are intact no hyroid bone fracture.

(iii) Throasis cavity

Heart- Left chamber have few clotted bloods and right chamber empty.

Lungs - Congested and intact.



(iv) Abdominal cavity - All organ are intact and congested stomach is empty.

Cause of Death - Shock and multiple extra dural haemorrhage due to head injury.

Time of death - Within 12 hours.

After PM completed dead body handed over to the Chowkidar 2/8 Sadanand Paswan at 10:30 AM.

02. This PM report is in my handwriting and signature. After identification of own handwriting and signature by the witness, this postmortem report is marked as Exhibit-P-9/PW-11.”

45. PW-11 has proved the postmortem report as Exhibit ‘P-9/PW-11’. In his cross-examination, he has stated that rigor mortis starts after 6 hours of death and it disappears in 36 hours. He had found stitched wound on the occipital region of the deceased. He had written in his postmortem report that the patient was referred to PMCH from Sadar Hospital, Madhepura.

46. The defence relies upon the statement of the doctor (PW-11) in course of his cross-examination that such injury may be caused by fall on hard surface or hard object. Such injuries may be caused by accident also. In the opinion of this Court, paragraph ‘10’ of the cross-examination of PW-11 is only based on a presumption that whether such injury may be caused by fall on hard surface or hard object. Such suggestive questions would not take away the consistent case of the prosecution that the deceased was assaulted by an iron rod. PW-11 had found on internal



examination that there was fracture present on the temporal region. From the evidence of PW-11, the statement of the informant (PW-7) is getting fully corroborated.

47. The fact that the I.O. (PW-10) had not collected the injury report of the Anmol Kumar @ Kailash Kumar from Sadar Hospital, Madhepura is a fault on the part of the Investigating Officer but that would not be fatal to the prosecution case. The informant (PW-7) is no doubt an inimical witness in this case but on a careful scrutiny of her evidence, it is found that she is an eyewitness and her deposition is credible and trustworthy. Her evidence is getting support from the evidence of the I.O. (PW-10) and the doctor (PW-11). In fact the doctor (PW-9) has proved the two injury reports of PW-6 and PW-8, who have turned hostile. The injury reports marked Exhibit 'P-2/PW-9' and 'P-3/PW-9' respectively are as under:-

“01- On 30-05-2020, I was posted at Sadar Hospital, Madhepura as a M.O. On that day at about 06:30 P.M., I examined Mahendra Das, aged about 60 years, s/o Chichai Das of village Dhurgaon, P.S.- Madhepura (Bharahi O.P.), District- Madhepura and found followings:

(i) Body ache.

(ii) Headache.

Both injuries caused by hard and blunt substance and simple in nature.

2. Age of injury - Within 06 hours.



3. M/I - Till on planter aspect of right hand.

4. This injury report is in my pen signature, which I identify. Let it be marked as Exhibit-P-2/P.W.-9.

5. On the same day at about 06:25 P.M., I examined Rajesh Kumar, aged about 20 years, s/o Chichai Das of Dhurgaon, P.S.-Madhepura (Bharahi O.P.), District- Madhepura and found followings:

(i) Body ache and headache.

(ii) Lacerated wound 1"x.3" on temporal frontal region.

(iii) Lacerated wound 1"x.5" on frontal parietal region.

All injuries caused by hard and blunt substance and simple in nature.

6. Age of injuries :- Within 06 hours.

7. M/I - Till on chest right side.

8. This injury report is also in my pen and signature, which I identify. Let it be marked as Exhibit-P-3/P.W.9.”

48. In the case of Mallanna and Ors. vs. State of Karnataka reported in **(2007) 8 SCC 523**, the Hon’ble Supreme Court has held *inter alia* that merely because witnesses are related or interested or not injured, their evidence cannot be discarded if they are natural witnesses and their testimonies are otherwise found to be credible, especially when they have supported the prosecution case in material particulars.

49. In the case of Vadivelu Thevar vs. State of Madras reported in **AIR 1957 SC 614**, the Hon’ble Supreme Court has reiterated that:-



“As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.”

50. In the case of **Vadivelu Thevar** (supra), it has been held *inter alia* that:-

“... Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.”

51. In the case of **Piara Singh vs. State of Punjab** reported in (1977) 4 SCC 452, the three eyewitnesses were relations of the deceased and bore animus against the accused but as the occurrence had taken place near the door of the house of the deceased, these persons were found to be natural witnesses. Thus, the Hon’ble Supreme Court rejected the contention of the deceased that there was no independent witness from the village. The Hon’ble Supreme Court observed as under:-

“... It may be difficult to get witnesses from the village when an assault of the type suddenly takes place in the house of the deceased. It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the court is satisfied that the evidence is credit-



worthy there is no bar in the Court relying on the said evidence...”

52. Keeping in view the entire evidences available on the record, this Court is wholly satisfied with the evidences of PW-7, PW-9, PW-10 and PW-11 fully supporting the prosecution case. The place of occurrence has been proved by the I.O. (PW-10) who had inspected the place of occurrence on 01.06.2020 at 8:00 AM. He had not found any house at the place of occurrence but houses were there in the boundary. He has stated that the house of the informant is at a distance of half kilometer from the place of occurrence. I.O. has stated that the house of the accused, Domi Das, is at a distance of 300 meters from the place of occurrence and the house of another accused, Badri Das, is in the boundary. It is evident from the deposition of the I.O. that the accused persons were in the boundary or at a short distance of 300 meters only. Therefore, their arrival at the place of occurrence as stated by the informant (PW-7) is worth believable.

53. At this stage, this Court would briefly refer the statement of the injured hostile witness (PW-6) who has stated in paragraph ‘1’ of his examination-in-chief that the occurrence is of the year 2020 and it was daytime at 4:00 o’clock when he had got injured and had received two injuries on his head. In fact, in paragraph ‘1’ of his examination-in-chief, PW-6 is supporting the



prosecution case as regards the date and time of occurrence and the fact that he had got injured in the said occurrence. His statement that he got injured due to fall of bamboo clump is only an afterthought and that part of the statement of PW-6 is not believable. He had gone in collusion with the defence is also evident from his statement that police had not recorded his statement, whereas I.O. has stated that he had recorded his statement and the attention of this witness was drawn towards his earlier statement made before police.

54. Similarly, the evidence of the another injured witness, PW-8, who has turned hostile, is liable to be rejected. He has made false statement that he was not in the village at the time of occurrence. PW-7 has categorically stated in paragraph '24' of her deposition that on the date of occurrence, her father-in-law, Mahendra Das and her mother-in-law were present in the house. The fact that PW-8 had suffered injuries, he was taken to Sadar Hospital, Madhepura where the Doctor (PW-9) had treated him and recorded in the injury report (Exhibit 'P-2/PW-9') that the injuries were caused by hard and blunt object are testimony of the fact that this witness was very much present in his village and had suffered injury during the occurrence. PW-8 has stated that his statement was not recorded by police, but the prosecution has



cross-examined him and his attention has been drawn towards his previous statements made before police. I.O. (PW-10) has also contradicted him by saying that he has recorded his statement.

55. The defence has brought one witness, namely, Bimal Yadav, who is a formal witness. He has proved the sale deed executed by Kari Das, Balo Das, Shambhu Das, sons of late Jangal Das, in favour of Kabutri Devi and Rina Devi on 07.03.2020. He is not a witness to the occurrence or the facts and circumstances of the case.

56. This Court further finds that in their statements under Section 313 CrPC, even as the attention of the accused persons was drawn towards the incriminating materials, such as the deposition of the witnesses and the various documentary evidences, the accused persons did not come with any explanation, save and except to deny those incriminating materials by saying that they have been falsely implicated.

57. In this case although the occurrence is of the 30.05.2020 but the FIR has been lodged on 01.06.2020. The informant has herself stated in the FIR (Exhibit 'P/1') that she was advised by the local people to take the injured to the hospital first. The injured persons were taken to the hospital on the same day within two hours, which would be evident from the injury reports.



It was incumbent upon the Sadar Hospital authorities to inform the local police, but it seems no such information was given to police. The informant being a village lady had to go to the police station herself and then only the FIR was recorded. This simply shows the failure of the hospital authorities in informing the police and reluctance on the part of the police officials to register the FIR at the earliest opportunity. The injured were getting treatment and one of the injured, Anmol @ Kaushal, was referred to higher center. In the opinion of this Court, the delay is not such that it may create any doubt in the prosecution story. In the case of **Tara Singh vs. State of Punjab** reported in **1991 Supp (1) SCC 536**, the Hon'ble Supreme Court has held as under:-

“... the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report...”.

58. In ultimate analysis of the entire evidences on the record, this Court is of the considered opinion that the learned trial court has erred in appreciation of the evidences available on the



record. In the case of **Gopal Singh vs. State of Bihar** reported in **(1993) 1 PLJR 236**, the Hon'ble Division Bench of this Court has held that the case is to be decided on broad probabilities.

59. On a close scrutiny of the evidences on the record, we find that in this case, the quarrel had taken place all of a sudden and the accused persons had assembled at the place of occurrence after they heard the abuses being hurled by the informant for keeping the *jalawan* on the *dih* of the informant (PW-7). The assault was made by iron rod and *lathi*, which are normally kept in the house of the villagers. We further find that Shravan Kumar had assaulted the deceased, Anmol @ Kaushal Kumar, on his head by iron rod, which fractured the temporal region of the deceased but there was no repetition of blow on the head. The other two injured, namely, Rajesh (PW-6) and Mahendra Das (PW-8) had received simple injuries caused by hard and blunt object. The I.O. had recorded in the inquest report on the basis of the statement of the witnesses that the injuries were caused by a rod and a brick.

60. The quarrel seems to have taken place in the spur of the moment, there was no intention on the part of the accused persons to kill Kaushal Kumar @ Anmol, therefore, the charge under Section 302 IPC would not be established beyond all reasonable doubts. This would make this case a culpable homicide



not amounting to murder. It will fall under Exception 4 of Section 300 IPC (now Section 101 of the Bharatiya Nyaya Sanhita).

Section 300 with Exception IV is quoted hereunder:-

“300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1

Exception 2

Exception 3

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5

61. Having said so, this Court finds that the present case would be covered under Section 304 Part II IPC. We reproduce Section 304 IPC (now Section 105 of the Bharatiya Nyaya Sanhita) hereunder for a ready reference:-



“304. Punishment for culpable homicide not amounting to murder- Whoever commits culpable homicide not amounting to murder, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

62. The materials present on the record are clearly establishing a case of culpable homicide not amounting to murder, covered under Section 304 Part II. This Court therefore, convicts the accused-respondent no. 2 for committing offence punishable under Section 304 Part II IPC.

63. In the materials present on the record, we are of the considered opinion that the respondent no. 2 Shrawan Kumar @ Sarwan Kumar, Son of Badri Das, who had assaulted the deceased, has committed an offence of culpable homicide not amounting to murder. He has committed an offence covered under Section 304 Part II IPC. Accordingly, this Court convicts respondent no.2 under Section 304 Part II IPC.

1. Subs. By Act 26 of 1955, s. 117 and the Schedule, for “transportation for life” (w.e.f. 1-1-1956).



64. So far as respondent nos. 3 and 4 namely Bucho Das @ Buchai Das and Badri Das, both sons of Late Sukhdev Das are concerned, they had caused simple injuries to PW-6 and PW-8, therefore both of them are liable to be convicted under Section 323/34 IPC. Section 323 IPC reads as under:-

“323. Punishment for voluntarily causing hurt.

—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

65. It is evident that respondent nos. 3 and 4 have committed the offence under Section 323/34 IPC and they are liable to be convicted under the said provision. Accordingly, they are convicted under Section 323/34 IPC.

66. All the accused persons have been charged for the offences committed under Section 341 IPC. Section 341 IPC is the punishing section which reads as under:-

“341. Punishment for wrongful restraint.

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

67. Wrongful restraint has been defined under Section 339 IPC. We reproduce Section 339 IPC hereunder:-



“339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.”

68. In our considered opinion, the prosecution has not been able to prove the ingredients of Section 341/34 IPC. Accordingly, all the accused are acquitted of the charge under Section 341/34 IPC.

69. The accused persons have also been charged under Section 504/34 IPC, therefore we reproduce Section 504 IPC hereunder for a ready reference:-

“504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

70. From the evidences available on the record, it is evident that the accused persons had not intentionally insulted the



informant or the injured witnesses. As held by this Court, it was a sudden quarrel, there was no pre-meditation of mind. Thus, the accused persons are acquitted of the charge under Section 504/34 IPC.

71. The judgment has been delivered in open court. The accused persons-respondent nos. 2 to 4 are present in person, hence they are taken into custody.

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

Later on

On the point of sentence

The matter has been heard on the point of sentence. Mr. Nafisuzzhoha, learned counsel representing the respondent nos. 2 to 4 submits that respondent no. 2 Shrawan Kumar @ Sarwan Kumar (respondent no.2) is a young man aged about 25 years only and the occurrence seems to have taken place in spur of the moment without premeditation of mind. It is submitted that he is presently earning his livelihood as a security guard, hence a lenient view be taken in the matter of award of sentence.

2. This Court has been informed that Shrawan Kumar (respondent no.2) has remained in jail in connection with this case



from 24.07.2020 to 29.08.2024, therefore, he has spent four years one month (approximately) in custody which period is required to be set off against the sentence which may be awarded by this Court.

3. Learned counsel has further informed that so far as Bucho Das @ Buchai Das (respondent no.3) is concerned, he has remained in jail from 11.06.2020 to 16.07.2021 during trial and Badri Das (respondent no.4) has remained in jail from 08.08.2020 to 16.07.2021. They have been found guilty of the offence under Section 323/34 IPC. It is submitted that the maximum imprisonment under Section 323 IPC is one year, therefore, respondent nos. 2 and 3 may be awarded a sentence for the period undergone.

4. Mr. Ajay Kumar Mishra, learned Additional Public Prosecutor for the State, submits that so far as Shrawan Kumar @ Sarwan Kumar (respondent no.2) is concerned, since he has been found guilty for the offence under Section 304 Part II of the IPC, which prescribes the maximum imprisonment upto ten years, a period commensurate to the status of his guilt is required to be awarded with adequate amount of fine. As regards respondent nos. 3 and 4, learned Additional Public Prosecutor for the State submits that since they have spent considerable period in custody



during trial, they may be awarded a sentence equal to the period already undergone by them.

5. Learned counsel for the appellant has endorsed the submissions of learned Additional Public Prosecutor for the State.

6. Having considered the submissions noted hereinabove, we are of the considered opinion that rigorous imprisonment of seven years to Shrawan Kumar @ Sarwan Kumar (respondent no.2) would be a reasonable period of sentence for the offence committed by him punishable under Section 304 Part II IPC. This Court, therefore, directs that Shrawan Kumar @ Sarwan Kumar, Son of Badri Das (respondent no.2) shall undergo a sentence of seven years rigorous imprisonment. He would also be liable to pay a fine of Rs. 50,000/- which would be payable to the appellant. In default of payment of fine, he shall further undergo a sentence of six months simple imprisonment. The period already spent by the respondent no.2 during the trial shall be set off in terms of Section 428 of the Code of Criminal Procedure (now Section 468 of the Bharatiya Nagarik Suraksha Sanhita). Shrawan Kumar @ Sarwan Kumar, Son of Badri Das (respondent no.2) is taken into custody. He shall be forwarded to Divisional Jail, Madhepura to undergo the remaining sentence.



7. So far as Bucho Das @ Buchai Das (respondent no. 3) and Badri Das (respondent no.4) are concerned, they are awarded the sentence to the extent of the period already undergone by them during trial. Hence they are released from custody.

8. This appeal stands allowed to the extent indicated hereinabove.

9. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

SUSHMA2/Rishi-

AFR/NAFR	
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