

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.705 of 2017**

Arising Out of PS. Case No.-85 Year-1996 Thana- BAIRIYA District- West Champaran

- =====
1. Laxman Choudhary, Son of Late Sita Coudhary
  2. Hakim Choudhary, Son of Laxman Choudhary, Both resident of Village- Mianpur Tilangana, P.S.- Bairiya, District- West Champaran.
  3. Amrika Choudhary @ Bikram Choudhary
  4. Chandrika Choudhary
  5. Bhola Choudhary @ Bhola Sahani, All sons of Late Raj Haran Choudhary, All residents of Village- Malahi Bazar, P.S.- Paharpur, District- East Champaran.

... ... Appellants

Versus

The State of Bihar

... ... Respondent

=====

**Acts/Sections/Rules:**

- Code of Criminal Procedure (CrPC), 1973 - Section 313
- Indian Penal Code (IPC) - Sections 147, 302, 148, 149, and 323

**Cases referred:**

- Brahmdeo Sahni vs. The State of Bihar Criminal Appeal (DB) No.521 of 2015

Appeal - filed under Section 374(2) of Code of Criminal Procedure - against judgement of conviction and order of sentence - Conviction and sentencing under Section 147, Section 302, Section 149, Section 148, Section 323 of IPC - FIR was filed on basis of *ferdbeyan* wherein it was stated that informant and brother of informant was assaulted by the appellants. Brother of informant succumbed to the injuries while informant sustained injury on head.

Held - there is discrepancy in the medical evidence and evidences of eye witness - even though eyewitnesses, who are near relatives of deceased, have stated that they too received injuries, their medical certificates have not been produced. Further, doctor who had treated the witnesses have not been examined. - IO has not been examined - Adherence to Section 313 of CrPC has not been proper as only one question was put to the accused - Six independent witnesses have not supported the case of prosecution - Only five near relatives of deceased have supported the case of prosecution and thus their deposition needs to be scrutinized carefully - Prosecution has failed to prove case against appellants-accused beyond reasonable doubt. Hence, appeal is allowed.

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.705 of 2017

Arising Out of PS. Case No.-85 Year-1996 Thana- BAIRIYA District- West Champaran

- 1. Laxman Choudhary, Son of Late Sita Coudhary
- 2. Hakim Choudhary, Son of Laxman Choudhary, Both resident of Village- Mianpur Tilangana, P.S.- Bairiya, District- West Champaran.
- 3. Amrika Choudhary @ Bikram Choudhary
- 4. Chandrika Choudhary
- 5. Bhola Choudhary @ Bhola Sahani, All sons of Late Raj Haran Choudhary, All residents of Village- Malahi Bazar, P.S.- Paharpur, District- East Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Umesh Chandra Verma, Advocate  
Mr. Prince Kumar Mishra, Advocate  
Mr. Hemant Ray, Advocate  
Mr. Abhishek Kumar, Advocate  
Mr. Sharad Kumar Verma, Advocate  
Ms. Rashmi Jha, Advocate  
For the State : Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI  
and  
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 15-02-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) against the judgment of conviction dated 09.05.2017 and order of sentence dated 17.05.2017, passed by learned Additional Sessions Judge, F.T.C.-II, Bettiah in connection with Sessions Trial No.697/97, arising out of Bairiya P.S. Case



No.85/96, whereby all the appellants have been convicted for the offence punishable under Section 147 IPC, appellants, namely, Hakim Choudhary, Chandrika Choudhary, Amrika Choudhary @ Bikram Choudhary and Bhola Choudhary @ Bhola Sahani have been convicted for the offences punishable under Sections 302/149 IPC, appellants Laxman Choudhary and Hakim Choudhary have been further convicted for the offence under Section 148 IPC, appellant Laxman Choudhary has been further convicted for the offence under Section 302 IPC, appellants, namely, Chandrika Choudhary, Amrika Choudhary @ Bikram Choudhary and Bhola Choudhary @ Bhola Sahani have been convicted for the offence under Section 323 IPC and all the appellants have been sentenced to undergo RI for two years under Section 147 IPC, appellant Laxman Choudhary has been further sentenced to undergo life imprisonment and a fine of Rs.10,000/- for the offence under Section 302 of IPC and the rest appellants have been sentenced to undergo life imprisonment with a fine of Rs.10,000/- each for the offence under Sections 302/149 of IPC, appellants Laxman Choudhary and Hakim Choudhary have been further sentenced to undergo RI for three years and a fine of Rs.5,000/- each for the offence under Section 148 of IPC and the appellants, namely, Chandrika Choudhary, Amrika Choudhary @ Bikram Choudhary



and Bhola Choudhary have been further sentenced to undergo one year RI for the offence under Section 323 of IPC. In default of payment of fine, the appellants shall have to undergo six months RI for each default so imposed. All the sentences have been directed to run concurrently.

2. The factual matrix of the present case is as under:

2.1. *Fardbeyan* of Yogi Choudhary came to be recorded on 20<sup>th</sup> of July, 1996 at M.J.K. Hospital at about 13 hours wherein he has stated that on 20.07.1996 at about 08:00 a.m., Nemi Choudhary, one of the brothers of the informant, was cultivating his field situated west to his house. In the meantime, Laxman Choudhary armed with *Bhala*, Hakim Choudhary armed with *Bhala*, Hukum Choudhary armed with *Lathi*, Chandrika Choudhary, Bikram Choudhary and Bhola Choudhary armed with *Lathi* came there. All of a sudden accused Laxman Choudhary is alleged to have assaulted Nemi Choudhary by means of *Bhala* on his left thigh. The rest accused persons assaulted him by *Lathi*. He was also assaulted by *Bhala* causing injury on the left leg. His *Bhabho* Rajpati Devi was also assaulted by *Bhala* on her left wrist. All the injured persons were brought to the hospital and during treatment, Nemi Choudhary, the brother of the informant died. The informant also sustained injury on his head.



3. After recording of the said *fardbeyan*, it appears that formal FIR came to be recorded on 21.07.1996 at about 03:00 p.m. and the same was received in the court on 22.07.1996. After registration of the FIR, the Investigating Officer commenced investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses and also collected documentary evidence and thereafter filed charge-sheet against the accused before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the learned Magistrate committed the same to the concerned Sessions Court where the same was registered as Sessions Trial No.697/97.

4. During the course of trial, the prosecution had examined 12 witnesses and thereafter statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment against which the appellants have preferred the present appeal.

5. 2. Heard Mr. Prince Kumar Mishra, learned counsel for the appellants and Km. Shashi Bala Verma, learned APP for the State.

6. Learned counsel for the appellants would mainly submit that there is delay in registration of the FIR. It is submitted



that as per the case of the informant, the occurrence took place at about 08:00 a.m. on 20<sup>th</sup> July, 1996. However, *fardbeyan* was recorded on the same day at about 01:00 p.m. Thereafter formal FIR came to be registered on 21.07.1996 at 03:00 p.m. However, surprisingly it is mentioned in the prescribed format that the copy of the same was sent to the concerned court on 20<sup>th</sup> July, 1996 itself. However, from the formal FIR, it is further revealed that in fact the court has received the said FIR on 22.07.1996. It is, therefore, urged that there is discrepancy in the date mentioned in the FIR from which it can be said that appellants herein have been falsely implicated. It is submitted that delay in dispatching the FIR to the area Magistrate is fatal to the case of the prosecution. In support of the said contention, learned counsel for the appellants has placed reliance upon paragraph-12 of the decision rendered by Hon'ble Supreme Court in the case of **Meharaj Singh and Ors. vs. State of U.P. and Ors.**, reported in (1994) 5 SCC 188. He has also placed reliance upon paragraph-24 of the decision rendered in the case of **Arjun Marik and Ors. vs. State of Bihar**, reported in 1994 Supp(2) SCC 372.

6.1. Learned counsel for the appellants further submits that the prosecution has though examined six independent witnesses, none of them have supported the case of the prosecution



and they have turned hostile. At this stage, it is pointed out that the learned Trial Court after relying upon the deposition given by so called eye witnesses, who are near relatives of the deceased, has passed the impugned judgment. It is also pointed out from the record that there are major contradictions and inconsistency in the testimony of the so called eye witnesses which casts doubt on the presence of the said eye witnesses at the place of occurrence. Learned counsel has placed reliance upon paragraph-16 of the decision rendered by Hon'ble Supreme Court in the case of **Sunil Kumar Sambhudayal Gupta and Ors. vs. State of Maharashtra**, reported in (2010) 13 SCC 657.

6.2. Learned counsel for the appellants further submits that in the present case, the inquest report of the deceased has not been produced by the prosecution. It is also pointed out from the record that even the Investigating Officer has not been examined and, therefore, the defence has lost valuable right to cross-examine the Investigating Officer and the same has caused serious prejudice to the defence of the appellants. Learned counsel has placed reliance upon the following decisions:

(i) **State of Karnataka vs. Bhaskar Kushali Kotharkar**, reported in (2004) 7 SCC 487, paragraph-6



(ii) **Ravishwar Manjhi & Ors. vs. State of Jharkhand**,  
reported in **(2008) 16 SCC 561, paragraph-2**

(iii) **Munna Lal vs. State of Uttar Pradesh**, reported in  
**2023 SCC OnLine SC 80, paragraph-39**

(iv) **Brahmdeo Sahni vs. The State of Bihar** and  
another analogous case, passed in **Criminal Appeal (DB) No.521  
of 2015**

6.3. Learned counsel for the appellants thereafter referred the deposition given by PW-12, Dr. Diwakar Prasad who had conducted the postmortem on the dead body of the deceased. It is submitted that only one injury was found on the dead body of the deceased. However, as per the case of the so called eye witnesses including the informant, more than two accused gave blow with different weapons to the deceased and, therefore, the medical evidence does not support the version of the so called eye witnesses. Learned counsel, therefore, urged that the testimony of the so called eye witnesses is required to be discarded. Learned counsel for the appellants has placed reliance upon paragraph-14 of the decision rendered by Hon'ble Supreme Court in the case of **Ram Narain Singh vs. State of Punjab**, reported in **(1975) 4 SCC 497**.





6.4. Learned counsel for the appellants lastly submits that only one question was put to the appellants-accused while recording the statement under Section 313 of the Code. It is submitted that the accused must be given opportunity to prove innocence and, therefore, he must be confronted with incriminating materials/evidence produced by the prosecution against them. Learned counsel has placed reliance upon the following decisions:

(i) **Reena Hazarika v. State of Assam**, reported in **(2019) 13 SCC 289**, paragraph 19-21

(ii) **Satbir Singh v. State of Haryana**, reported in **(2021) 6 SCC 1**, paragraph-22

(iii) **Kalicharan & Ors. Vs. State of Uttar Pradesh**, reported in **(2023) 2 SCC 583**, paragraph 27-29

6.5. Learned counsel for the appellants, therefore, urged that when the prosecution has failed to prove the case against the appellants beyond reasonable doubt, the Trial Court ought to have acquitted them. However, the Trial Court has passed the impugned judgment of conviction, therefore, the said judgment be quashed and set aside.

7. On the other hand, Km. Shashi Bala Verma, learned APP has vehemently opposed the present appeal. Learned APP



submits that the informant and three others are the injured eye witnesses who have supported the case of the prosecution and, therefore, when the four injured eye witnesses have specifically levelled the allegation against each of the appellants-accused and the specific role has been attributed to them, the Trial Court has not committed any error while passing the impugned judgment. It is further submitted that though tried, presence of the Investigating Officer could not be secured, therefore, the benefit of the same may not be given to the appellants-accused. Learned APP, therefore, urged that this appeal be dismissed.

8. We have considered the submissions canvassed by learned counsels for the parties. We also perused the materials placed on record including the paper book and the LCR. It would emerge from the record that as per the case of the prosecution, the occurrence took place at 08:00 a.m. on 20<sup>th</sup> July, 1996. However, the *fardbeyan* of the informant Yogilal Choudhary came to be recorded at 01:00 p.m. on 20<sup>th</sup> July, 1996. It is further revealed that the formal FIR came to be registered after more than 24 hours, i.e., on 21.07.1996 at about 03:00 p.m. The concerned court has received the copy of the said FIR on 22.07.1996. It is further revealed from the record that PW-1, PW-2, PW-3, PW-5, PW-7 and PW-8 have not supported the case of the prosecution and,



therefore, they were declared hostile and the case of the prosecution rests upon the deposition given by PW-4 son of the informant, PW-6 the informant, PW-9 son of the deceased, PW-10 wife of the informant and PW-11 wife of the deceased. Thus, aforesaid are the near relatives of the deceased and, therefore, they are interested witnesses hence, as per the law laid down by the Hon'ble Supreme Court in various cases, the deposition of the said witnesses are required to be scrutinized carefully.

9. PW-4 Wokil Choudhary in his examination-in-chief has deposed that Laxman, Hakim armed with *Bhala*, Hukum, Chandrika, Bhola and Amrika armed with *Lathi* came at the place of occurrence and Laxman said that kill them. Hakim assaulted Yogi by means of *Bhala* which hit him in his rib cage and Yogi fell down. Thereafter all accused persons assaulted Yogi with *Lathi*. It is further deposed that Nemi ran away from there and Laxman said that kill him. All accused persons surrounded Nemi and Laxman assaulted him with *Bhala*. Hakim also assaulted Nemi by means of *Bhala* in his testicles and other accused persons assaulted him with *Lathi*. When wife of Nemi, Rajpatia came to save him, she was also assaulted by Laxman with *Bhala* which hit him in her left arm. All injured persons were brought to Bettiah hospital where during course of treatment Nemi died. This witness further



deposed in his examination-in-chief that reason for the occurrence is that their grandfather had already distributed the property before his death, but after his death Laxman Choudhary says that the field where the occurrence took place belongs to him. It is further deposed that Chandrika Choudhary, Bhola Choudhary and Amrika Choudhary are brothers-in-law of Laxman and were staying in Laxman's house since four days before the incident.

10. PW-6 Yogilal Choudhary has deposed in his examination-in-chief that the occurrence took place four years before. It was Saturday. At 08:00 a.m. he was cultivating his field. Nemi Choudhary was his brother. Nami Choudhary was also cultivating his field. This witness further deposed in his examination-in-chief that at that very time, Laxman and Hakim Choudhary armed with *Bhala*, Hukum Choudhary, Chaltar, Amrika and Bhola Choudhary armed with *Lathi* came and started assaulting Nemilal. Accused Laxman assaulted Nemi by means of *Bhala*. Hakima too assaulted by *Bhala* on left thigh. It is further deposed that all accused persons assaulted him and his brother by means of *Lathi*. This witness further stated in his examination-in-chief that when wife of Nemi, namely, Rajpati Devi went to save her husband, she also sustained injury caused by *Bhala* on her left hand. This witness also sustained injury. It is further deposed that



he was assaulted by means of *Lathi* on his head as also by means of *Bhala* on his stomach. It is deposed that the villagers brought them in Bettiah hospital.

10.1. PW-6 Yogilal Choudhary deposed in his cross-examination that the land on which the occurrence took place belonged to his grandfather. The name of his grandfather was Goga Choudhary. The area of the land on which the occurrence took place is 5.75 *Katha*. This witness has denied the story of execution of deed of gift by Jayee Choudhary and in favour of Laxman Choudhary. PW-6 further stated in his cross-examination that his share falls in the north side of the land on which the occurrence took place. The share of Laxman Choudhary is in the middle and the share of Nemilal is in the south. The sons of Laxman, namely, Hakim and Hukum both were involved in assault. Chandrika, Ambika and Bhola are brothers-in-law of Laxman. This witness further deposed in his cross-examination that all six accused persons assaulted them together. This witness also fell down in the field after sustaining injury. After sustaining injury on his head, he fell down. PW-6 further deposed in his cross-examination that he regained his consciousness in the hospital on the next day at 11:00 a.m. Hakim, Hukum and Laxman were arrested from the Bettiah Government Hospital and he cannot



say that from which place of the hospital, they were arrested. It is further deposed in the cross-examination by PW-6 that blood stains were present in his cloth. He had not given the blood stained cloth to *Daroga Ji*.

11. PW-9 Sushil Choudhary, who is son of the deceased, has stated in his examination-in-chief that Laxman Choudhary, Hakim Choudhary armed with *Bhala*, Hukum Choudhary, Chandrika Choudhary, Bhola Choudhary and Amrika Choudhary armed with *Lathi* came in his field. The accused persons started assaulting his father with *Lathi*. This witness further deposed in his examination-in-chief that his father ran towards the village. His uncle also ran away. He and his mother also ran away. When his uncle came some distance away, Hakim Choudhary assaulted him by means of *Bhala* in his rib cage and the accused persons also assaulted him with *Lathi*. PW-9 further stated in his examination-in-chief that when his father was running, he fell down in the field of Baldeo Choudhary and thereafter Laxman Choudhary assaulted his father by means of *Bhala* on his thigh and Hakim Choudhary assaulted his father by means of *Bhala* in his rib cage. Other accused persons also assaulted his father by means of *Lathi*. When his mother went to save his father, she was also assaulted by Laxman Choudhary by means of *Bhala*. This witness further



deposed in his examination-in-chief that he was assaulted by Hukum Choudhary with *Lathi* on his back. When the villagers came, the accused persons ran away towards East. His father had died before reaching the hospital.

11.1. PW-9 deposed in his cross-examination that the accused persons came from East. The accused persons firstly went to Yogi Lal. Yogi Lal ran away and thereafter his father Nemi also ran away. Yogi Lal did not receive injury in the field. Both ran away towards the same direction. It is further deposed by PW-9 in his cross-examination that the accused persons surrounded Yogi and assaulted him. He became unconscious. When he became unconscious, the accused persons went towards his father. Yogi was running away towards East and the accused persons were also running towards East. It is further deposed that when his mother was assaulted, his father was unconscious. Baidyanath Choudhary, Tilak Choudhary, Ganesh Mahto, Heeralal Mahto brought his father. It is further deposed that blood had fallen in the field. There was water in the field and it was raining. Yogo Lal called the S.P. from the hospital. Laxman Choudhary and other accused persons were giving statements to the police in Bettiah hospital. They reached at the same time. When his uncle called the police, police came and their statement was recorded. *Daroga Ji* saw blood at the



place of occurrence. *Daroga Ji* did not pick anything from the place of occurrence. This witness told the police that Yogi Lal and Nemi Lal were ploughing in different fields. PW-9 said the police that his father had died in the way.

12. PW-10 Hiramati Devi, wife of Yogi Choudhary, has stated in her examination-in-chief that Laxman Choudhary, Hakim Choudhary, Hukum Choudhary, Chandrika Choudhary, Amrika Choudhary and Bhola Choudhary came armed with *Lathi* and *Bhala*. Hakim and Laxman came armed with *Bhala*. Hakim Choudhary assaulted her master by means of *Bhala* in his rib cage. Her master fell down. Thereafter Laxman Choudhary and Hukum assaulted. When Nemi Lal fell down in the field of Baldeo Choudhary, Hakim, Hukum, Laxman, Bhola and Amrika assaulted him. When the wife of Nemi Choudhary went to save her, she was assaulted by Laxman Choudhary. Nemi was assaulted by Laxman Choudhary and Hakim Choudhary by means of *Bhala*. Rest accused persons assaulted him with *Lathi*.

12.1. PW-10 deposed in her cross-examination that the field where the occurrence took place is situated at a distance of 5.5 Bighas from her house. This witness further stated in her cross-examination that her husband had gone to plough the field before her. Six persons including Laxman Choudhary had come to fight.





It is further deposed that after sustaining injury, Nemi Lal became unconscious. Hakim Choudhary assaulted her husband. Her husband sustained injuries on his head and rib cage. The injured was brought to home. Till that time Nemi was alive. It is further deposed that she does not know that Laxman Choudhary sustained injury. She had not gone to the hospital. Her master brought the dead body after three days. Daroga Ji came in the morning at about 08:00 a.m. on the day of occurrence. This witness told Daroga Ji that her husband was ploughing the field. She also told that Hakim and Hukum were armed with *Bhala*. PW-10 further stated in her cross-examination that she told Daroga Ji that her master fell down and thereafter Laxman Choudhary assaulted him. She also told that Hakim Choudhary assaulted the wife of Nemi Choudhary.

13. PW-11 Rajpati Devi, who is wife of deceased Nemi Choudhary, has stated in her examination-in-chief that Laxman Choudhary, Hakim Choudhary armed with *Bhala*, Hukum Choudhary, Chandrika Choudhary, Amrika Choudhary and Bhola Choudhary armed with *Lathi* came in her field. Yogi Lal Choudhary was assaulted by Hakim Choudhary by means of *Bhala* and Laxman Choudhary assaulted Nemi Choudhary by means of *Bhala* in the field of Baldeo Choudhary. This witness further deposed in her examination-in-chief that Hakim Choudhary



assaulted Nemi with *Bhala* in his rib cage and other accused persons assaulted him with *Lathi*. When she went to save, she was also assaulted by Laxman Choudhary with *Bhala* in her arm.

13.1. PW-11 stated in her cross-examination that firstly Yogi Lal was assaulted with *Bhala* by Hakim. After sustaining injury, Yogi Choudhary fell down. Thereafter he was assaulted by *Lathi*.

14. PW-12 Dr. Diwakar Prasad has stated in his cross-examination that an important blood vessel passes through where the deceased sustained injury. That part is a vital part of the body. He does not remember whether there was blood on the clothes of the deceased or not. This witness further deposed in his cross-examination that he gave the clothes of the deceased to the Constable. He did not seal those materials. It is further deposed that he does not know whether the accused persons were admitted in the hospital at the time of arrival of the dead body or not. PW-12 further stated in his cross-examination that if a person falls on the iron part of a plough, this type of injury can be found.

15. From the deposition of the aforesaid so called injured eye witnesses, it is clear that there are major contradictions in their deposition and the version given by the so called injured eye witnesses is not supported by the medical evidence. The



informant Yogilal Choudhary has specifically stated in the *fardbeyan* that Laxman Choudhary armed with *Bhala*, Hakim Choudhary armed with *Bhala*, Hukum Choudhary armed with *Lathi* came at the place of occurrence. It is further stated that Laxman Choudhary assaulted with *Bhala* on the left thigh of Nemi Choudhary (deceased) whereas rest of the accused persons assaulted with *Lathi*. Similarly, it is stated by the informant that he was assaulted by Hakim on the left leg whereas his Bhabhi Rajpati Devi was assaulted by the accused. Thereafter all the injured were brought to the hospital and during course of treatment, Nemi Choudhary died. It is also the case of the informant in the *fardbeyan* that he also sustained *Lathi* blow on his head.

15.1. However, it is pertinent to note that while giving deposition before the court, PW-6 the informant has stated that Laxman assaulted Nemi with *Bhala*. Similarly, Hakim also assaulted Nemi with *Bhala* on his thigh whereas rest of the accused persons assaulted with *Lathi*. Rajpati Devi was assaulted by *Bhala* on left hand. The said witness admitted in cross-examination that he did not see which side he had fallen and he became unconscious and thereafter gained consciousness in the hospital on the next day at 11:00 a.m.



16. Similarly, PW-4, who is son of the informant, stated before the court that Hakim assaulted Yogi, i.e., the informant with *Bhala* and, therefore, he fell down and thereafter Yogi was assaulted by *Lathi* by all the accused. Thereafter Nemi was encircled by all the accused and Laxman gave *Bhala* blow. Hakim assaulted Nemi with *Bhala* on his testicle.

17. PW-9, Sushil Choudhary, who is cousin of the deceased, placed different story before the court. He has stated that Laxman gave *Bhala* blow on thigh of his father whereas Hakim gave *Bhala* blow on rib cage of Nemi Lal. Other accused persons also assaulted his father by *Lathi*.

18. PW-10, who is wife of the informant, has also stated that Nemi was also assaulted by means of *Bhala* by Laxman and Hakim.

19. From the aforesaid deposition of the witnesses, it is clear that all the so called eye witnesses, who have also sustained injuries, as claimed by them, have stated before the court that deceased Nemi Lal was assaulted by two accused and *Bhala* blow was given on rib cage as well as thigh of the deceased. However, at this stage, if the medical evidence is carefully seen, it is revealed that the deceased sustained one external injury.



20. It further transpires from the record that though the eye witnesses have specifically stated before the court that they have also sustained injuries in the occurrence in question, their medical certificates were not produced before the court nor the doctor who had given the treatment to the said witnesses has not been examined by the prosecution. Thus, in the aforesaid facts and circumstances of the present case, presence of the so called eye witnesses, who are near relatives of the deceased, is doubtful.

21. It is also not in dispute that the prosecution has failed to examine the Investigating Officer who had conducted investigation and, therefore, it is specific case of the defence and learned counsel appearing for the appellants that serious prejudice has been caused because of non-examination of the Investigating Officer.

22. We have also gone through the statement of the accused-appellants recorded under Section 313 of the Code. Only one question was put to the accused by the concerned Court.

22.1. At this stage, we would like to refer the recent decision rendered by this Court in the case of **Brahmdeo Sahni (supra)**. This Court had considered various decisions rendered by Hon'ble Supreme Court on the point of statement of the accused under Section 313 of the Code and thereafter held that it is the



duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.2. As discussed hereinabove, the material circumstance against the accused were not put to them and, therefore, it is the specific case of the appellants-accused that prejudice has been caused to them because of the same.

23. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court as well as this Court, if the facts of the present case, as discussed hereinabove, are examined, we are of the view that when six independent witnesses have not supported the case of the prosecution and only five near relatives of the deceased have supported the case of the prosecution, their deposition is required to be scrutinized carefully. As discussed hereinabove, even presence of the so called eye witnesses at the place of occurrence is also doubtful. The injury certificates of the



injured eye witnesses were not produced before the court nor the doctor who had treated the injured witnesses was examined by the prosecution. Further, the Investigating Officer was also not examined by the prosecution and only one question was put to the accused while recording the statement under Section 313 of the Code as a result which prejudice has been caused to the appellants. Thus, looking to the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt despite which the Trial Court has passed the impugned judgment.

24. Accordingly, The appeal stands allowed. The impugned judgment of conviction dated 09.05.2017 and order of sentence dated 17.05.2017 passed by learned Additional Sessions Judge, F.T.C.-II, Bettiah in connection with Sessions Trial No. 697/97, arising out of Bairiya P.S. Case No. 85/96 is quashed and set aside. The appellants, namely, Laxman Choudhary, Hakim Choudhary, Amrika Choudhary @ Bikram Choudhary, Chandrika Choudhary and Bhola Choudhary @ Bhola Sahani are acquitted of the charges levelled against them by the learned trial court. Appellants, namely, Hakim Choudhary, Amrika Choudhary @ Bikram Choudhary, Chandrika Choudhary and Bhola Choudhary



@ Bhola Sahani are on bail. They are discharged from the liabilities of their respective bail bonds. Since appellant, Laxman Choudhary is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Sunil Dutta Mishra, J.)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.02.2024
Transmission Date	24.02.2024

