IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.484 of 2003

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1. Bikarma Manjhi, son of Sukhal Manjhi
2. Jai Kishore Manjhi, son of Sukhal Manjhi
3. Naresh Manjhi, son of Sukhal Manjhi
4. Saburi Manjhi, son of Banaras Manjhi
5. Sukhal Manjhi, son of Hukum Manjhi

All are residents of Village-Padamaul, P.S.-Masarakh, District-Saran.

... ... Appellants

Versus

The State of Bihar

... ... Respondent/s

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Indian Penal Code- Sections 147,148,149,323,447,307 & 379 with 34

Criminal Procedure Code- S. 374(2), 313

Appeal- Impugned Order of conviction and Sentence challenged - Contradictions in statement of witnesses and enmity over previous land dispute - Statement of injured witness cannot be casually rejected and court generally relies on statement of an injured witness as done in the case of Bonkaya but the facts of the present case suggest serious doubts about the manner and time of attack in the background of admitted land dispute and in such circumstances, the testimony of injured witness has to be examined with due caution as was done in the case of Jarnail Singh (supra)

Cr.P.C. Statement under Section 313 of Cr.P.C. - Statement of the appellants/accused was recorded in a very casual manner and conviction was ensured without placing any incriminating circumstances/evidence before them while recording their statement under Section 313 of Cr.P.C. It appears to have been recorded in a very informal, secretive and formal manner.

Held - Prosecution has failed to answer many doubts raised during the trial to ensure conviction of the appellants/accused and, therefore, appellants/accused entitled to benefit of doubt- Appeal allowed- Order of conviction and sentence set aside- Appellants acquitted.

Reliance placed on - (i) Kamaljit Singh v. State of Punjab reported in (2003) 12 SCC 155; (ii) State of Andhra Pradesh v. Pattanam Anandam reported in (2005) 9 SCC 237; (iii) Jarnail Singh v. State of Punjab reported in (2009) 9 SCC 719 and (iv) Bhola Singh v. State of Punjab reported in AIR 1999 SC 767 (v) Bonkaya v. State of Maharashtra reported in (1995) 2 SCC 447

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Appearance :
For the Appellant/s : Mr. Ravi Bhardwaj, *Amicus Curiae*
For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 30-01-2024

The present appeal has been preferred by the appellants-convicts under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the impugned judgment of conviction and order of sentence dated 16.09.2003 passed by learned 9th Additional Sessions Judge, Saran at Chapra in Sessions Trial No.495 of 1995 arising out of Masrakh P.S. Case No.9 of 1995, whereby the concerned Trial Court has convicted all above-named appellants/convicts. It appears from the impugned judgment that appellant no.1 to appellant no.4 have been convicted for the offences punishable under Section 325 read with section 149 of the Indian Penal Code (for short 'IPC') and ordered to undergo

rigorous imprisonment for three years. They were also convicted under Sections under Section 448 of the IPC and sentenced to undergo rigorous imprisonment for six months, whereas appellant no.5, who also convicted for the offence punishable under Sections 325 read with Section 149 of the IPC, sentenced to undergo rigorous imprisonment for six months. All the aforesaid appellants were acquitted for the offence charged under Section 307 read with 149 and 450 of the IPC and further appellant no.1 Bikrama Manjhi acquitted from the offence punishable under Section 379 of the IPC.

2. The brief fact of the prosecution case as it appears from the *fardbeyan* of PW-5, namely, Satya Narain Manjhi recorded on 11.01.1995 at 10:20 am at State Dispensary Masrakh before Sub Inspector of Police, R.T. Rai that while he along with his family members were taking dinner on 10.01.1995 at about 9:00 pm, the appellants/accused entered into his house and thereafter, started to assault him and his family members, where appellant no.1, namely, Bikarma Manjhi assaulted with *fersa* on his head and also on the head of Lakhia Devi (PW-4). He also assaulted on the head of PW-3, namely, Daroga Manjhi by *farsa*. It further appears from the narration of written information that appellant no.4/convict, namely, Naresh

Manjhi assaulted Jai Nath Manjhi (not examined) and appellant no.4, namely, Saburi Manjhi and appellant no.2, namely, Jai Kishore Manjhi assaulted on the head of Raj Narain Manjhi (PW2) with *fasuli*. The accused Meghnath Manjhi also assaulted the informant (PW-5) by *lathi.* Trial of accused Meghnath Manjhi separated being juvenile.

3. On the basis of aforesaid information, formal case was lodged with Masrakh Police Station, Distt.-Saran and same was registered as Masrakh P.S. Case No.9 of 1995 for the offences punishable under Sections 147, 148, 149, 447, 323, 307 and 379 of the IPC.

4. After completion of investigation, the investigating officer has submitted charge-sheet under Sections 147, 148, 149, 323, 447, 307 and 379 read with 34 of the IPC against appellants-accused, where learned Jurisdictional Magistrate after taking cognizance and complying provision of Section 207 of the CrPC, committed the case to the court of sessions u/s 209 of CrPC for trial and disposal.

5. In order to substantiate its case, the prosecution has examined altogether seven witnesses, who are- PW-1 Sheopujan Manjhi, PW-2 Raj Narain Manjhi, PW-3 Daroga Manjhi, PW-4 Lakhia Devi, PW-5 Satya Narain Manjhi, PW-6 Daya Nand

Kumar, Investigating Officer of this case and PW-7 Dr. Ram Murti Jha, who examined the injured.

6. The prosecution has also relied upon the following documents as to substantiate its case:-

Sl. No.	Exhibit Nos.	List of the documents
1	Exhibit-1	Signature of Satyanarayan Manjhi on *fardbeyan.*
2	Exhibit-2	*Fardbeyan.*
3	Exhibit-3	Formal FIR
4	Exhibit-4	Case diary
5	Exhibit-5 to 5/5	Injury report.
6	Exhibit-6	Certified copy of judgment of Tr. No.642 of 1997 of court of Judicial Magistrate, Chapra.

7. The learned Trial Court explained the incriminating circumstances/evidences as surfaced during the trial to the appellants/accused while examining them under Section 313 of the CrPC to which, they denied simply and shows their complete innocence.

8. In defence, the appellants/accused have produced three witnesses in support of their case, who are DW-1, Basudeo Manjhi, DW-2, Dasrath Manjhi and DW-3 Thakur Manjhi.

9. After considering the evidences available on record, the learned Trial Court convicted the appellants/accused in the manner as discussed above. Being aggrieved, the present appeal

has been preferred.

10. Hence, the present appeal.

11. It is submitted by Mr. Ravi Bhardwaj, learned *Amicus Curiae* appearing on behalf of the appellant that the version of prosecution witnesses cannot be accepted on its face, for the reason that injured witnesses are appearing highly interested and in inimical terms due to pending land dispute. This fact has been surfaced out of the testimony of almost all the prosecution witnesses. It is further submitted that the manner in which assault was alleged to be caused by PW-5 through his *fardbeyan* is appearing completely improved while recording his deposition during the trial. In support of this submission, it is submitted that it was stated specifically by informant in FIR that assault was caused by *farsa, fasuli* and knife, which are sharp-edged weapons and no such statement was made thereof that injuries were inflicted from back side of these weapons but during the trial, it found improved to be caused by back side of these weapons just in order to corroborate with injury report, which shows injuries as lacerated to secure conviction. It is submitted that PW-2 specifically pointed out that informant/PW-5 regained his sense after 24 hours of his hospitalization and if his deposition be taken into consideration, then certainly, the

timing of lodging of the FIR is appearing doubtful. The version of eye-witnesses also contradicting each other on materials aspects. In support of his submissions, learned *Amicus Curiae* relied upon the legal reports of Hon'ble Supreme Court in the matters of (i) **Kamaljeet Singh vs. State of Punjab** reported in **(2003) 12 SCC 155**; (ii) **State of Andhra Pradesh vs. Pattnam Anandam** reported in **(2005) 9 SCC 237**; (iii) **Jarnail Singh vs. State of Punjab** reported in **(2009) 9 SCC 719** and, (iv) **Bhola Singh vs. State of Punjab** reported in **AIR 1999 SC 767**.

12. Mrs. Anita Kumari Singh, learned APP appearing on behalf of the State while opposing the appeal submitted that the judgment of conviction as recorded by learned Trial Court cannot be said bad in the eyes of law for the reason that the injuries as inflicted upon the injured witnesses are duly supported by PW-7, who is a doctor and authored injury report. It is also submitted that the minor contradictions are bound to surface during the trial and merely on the basis of those minor contradictions, the testimony of injured witnesses cannot be discarded. It is also pointed out by learned APP that injured witnesses are chance witnesses, whose presence on the scene of occurrence appears very normal being family members and they did not give real assailants go free by substituting

innocent persons. In support of her submission, learned APP relied upon report of **Bonkaya vs. State of Maharashtra** reported in **(1995) 2 SCC447**.

13. I have perused the lower court records carefully and gone through the evidences available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

14. It would be apposite to discuss the oral evidence as surfaced during the course of trial for the purpose of re-appreciation of evidence, which requires for just disposal of the case, which are as:-

15. **PW-1 is Sheo Pujan Manjhi**, who has stated in his examination-in-chief that occurrence is of 10.01.1995, which took place at 6:30. He arrived at place of occurrence on hearing alarm raised by the persons gathered over there. He stated the same version of FIR as authored by PW-5.

15.1. Upon cross-examination, he stated that he lodged a case agaisnt appellant no.1, namely, Bikrama Manjhi but, he was acquitted in that case. It is also stated by him that he is the uncle of PW-5/informant. It was also stated by him that PW-5 and PW-3 became unconscious by the time when he arrived at the place of occurrence. It is specifically stated by him that

occurrence took place due to road/passage related dispute.

16. **PW-2 is Raj Narain Manjhi**, who is admittedly brother of the injured and narrated the same version of FIR as authored by PW-5 in terms of allegation as raised through FIR. He further stated that the occurrence is of 9:00 pm, which took place on 10.01.1995. He supported the manner of occurrence as per FIR and stated that appellant no.3 Naresh Manjhi assaulted on his head by knife. He stated that during the time of occurrence, he was ten years old and was student of Class-IV.

16.1. Upon cross-examination, he stated that he is the own brother of PW-5, namely, Satya Narain Manjhi, who is informant of this case. He specifically stated that they are in inimical terms with appellants/convicts due to land related dispute. It was stated that he was the first person to saw the occurrence, where he saw that Satya Narain Manjhi (PW-5), Daroga Manjhi (PW-3), Lakhia Devi (PW-4) and Raj Narain Manjhi (PW-2) were lying over the ground and they were not unconscious. It was stated that they became unconscious after 24 hours reaching to Masrakh. It was stated by him that he did not loosed his sense but later on stated that he also became unconscious. It was further stated that the statement of Satya Narayan Manjhi (PW-5) was recorded 24 hours after regaining

his sense, which was his first statement.

17. **PW-3 is Daroga Manjhi**, who stated in his examination-in-chief that occurrence took place about five years before at 9:00 pm. He also stated the same version through examination-in-chief as narrated in FIR by PW-5. He further stated that he also received treatment at Masrakh Hospital. He specifically stated that he is own brother of appellant no.5 Sukhal Manjhi. He stated that he lost his eye sight before 5-6 years. He is the father of informant/PW-5.

17.1. Upon cross-examination, he specifically stated that the moment appellants/accused entered into the house, first of all they broken the lighted lantern and, thereafter, started assaulting. He also stated that there is no electric connection in his house and by the time of occurrence, it was dark. He also stated specifically that he did not loosed his consciousness out of the occurrence and on same very day at 4:00 pm went to police station. He stated that he went to hospital after eight days of the occurrence.

18. **PW-4 is Lakhia Devi**, who is the mother of PW-5, who stated in her examination-in-chief that the occurrence took place before five years at about 9:00 pm. She deposed that appellants, namely, Bikarma Manjhi, Jai Kishore Manjhi,

Meghnath Manjhi, Saburi Manjhi, Sukhal Manjhi and Naresh Manjhi entered to her house and assaulted on the head of her son Satya Narain Manjhi (PW-5) by back of *farsa.* Further stated that she alongwith her husband were assaulted by Bikarma Manjhi by back of *farsa,* and thereafter Bikarma Manjhi snatched her, '*Hasuli' (*sickle shaped neck wearing ornament).

18.1. Upon cross-examination, she denied having any previous enmity with appellants/accused but, stated to have dispute related with a passage. She denied specifically that none of the appellants/accused belongs to her family. She further denied that appellant no.5 Sukhal Manjhi is brother of her husband Daroga Manjhi (PW-3). It was stated by her that appellants/accused started to assault immediately after entering to her house. She did not loosed her sense. It was stated that blood was oozing continuously nine hours from her body out of said assault. She did not loosed her consciousness even out of said bleeding.

19. **PW-5 is Satya Narain Manjhi**, who is the informant of this case. Who deposed in his examination in chief that occurrence took place at 9 PM on 10.01.1995. He deposed that by that time, he was taking dinner along with his family members when appellants/accused, who is co-villagers, namely,

Bikarma Manjhi (appellant no.1) equipped with faita, Jai Kishore Manjhi (appellant no.2) equipped with *fasuli,* Naresh Manjhi (appellant no.3) equipped with knife, Saburi Manjhi (appellant no.4) equipped with *fasuli* and Sukhal Manjhi (appellant no.5) equipped with *lathi* entered into his house and started to abuse and assault them. It was deposed by him that appellant no.1 Bikarma Manjhi assaulted with back side of *faita* on his head, which caused bleeding from his head. Sukhal Manjhi (appellant no.5) and Meghnath Manjhi also assaulted on back of his head. It was deposed that Sukhal Manjhi assaulted with *lathi* on his thigh and, thereafter, when his brother came to save him then, appellant no.1 Bikarma Manjhi assaulted on her head by *farsa* and snatched her *Hasuli*, thereafter, Saburi Manjhi (appellant no.4) and Jai Kishore Manjhi (appellant no.2) and Naresh Manjhi (appellant no.3) assaulted his brother Raj Narain. It was further deposed that Naresh Manjhi (appellant no.3) assaulted with butt of knife to his brother Raj Narain (PW-2). It was further deposed by him that his father was assaulted by appellant Bikarma Manjhi by back of *faita* but later on said that he was assaulted by back of *farsa* on head. It was stated by him that after receiving injuries, he was hospitalized in Government Hospital at Masrakh along with all five injured, where his

statement was recorded at 10 am on next day. He identified his signature over *fardbeyan* which, on his identification, exhibited as Exhibit No.1. He stated the reason behind the occurrence as blocking of road/passage by appellants/accused.

19.1. Upon cross-examination, he stated that appellant/accused Sukhal Manjhi is not elder brother of his father and his father had no own brother. He stated that during the occurrence he was the person who received injury at first instance. He stated that appellant no.1 Bikarma Manjhi assaulted him from distance of 2-2½ steps, where rest of the accused/appellants assaulted at a distance of 2½ -3 steps. He stated that he did not received injuries from sharp-edged part of the weapons. He also stated that no blood oozed from his injuries and fell to the ground. He also stated that her mother was also not assaulted by sharp-edge of the weapons. He stated that all injured received one or two *lathi* blows. It was stated that they raised alarm when all appellants/accused left the place of occurrence.

20. **PW-6 is Daya Nand Kumar**, who is Investigating Officer of this case who stated in his examination-in-chief that he has identified the hand-writing and signature over the *fardbeyan*, which on his identification, exhibited as Exhibit Nos.

2 and 3. It was stated by him that he did not make the complete investigation of this case. He recorded the re-statement of the informant and other witnesses including injured and visited the place of occurrence. He also identified handwriting and signature over injury report sent to the doctors which was in handwriting of Ram Tabkhya Rai which, upon his identification, exhibited as Exhibit Nos.5, 5/1, 5/2, 5/3 & 5/4. He stated that the cause behind the present occurrence was land dispute.

21. **PW-7 is Dr. Ram Murti Jha**, who stated in his examination-in-chief that on 11.01.1995, he was posted at Primary Health Center, Masrakh. On that day, he had examined Satya Narayan Manjhi (informant) and found the following injuries on his person:-

(i) Lacerated injury on right parietal region of scalp 1 x 1/2" x scalp deep.
(ii) Haematoma on occipital region 2" x 2".
(iii) Bruise over left thigh literally 3" x 1"

He opined that all these injuries were found simple in nature caused by hard and blunt substance and said found caused within 24 hours.

On the same day, he had examined Daroga Manjhi (PW-3) and found the following injuries on his person:-

(i) Bruise over right forearm anteriority 2" x 1".
(ii) Bruise over left arm anteriority 2" x 1".

(iii) Complain of pain over left side of chest wall and awaited for x-ray report. After receipt of x-ray report on 18.1.1995, he found the fracture in posterior part of left 7th and 8th ribs. Injury no.3 was found grievous No. (i) and (ii) were found simple in nature and injury No. (iii) was found grievous in nature. He opined that all the injuries were caused by hard and blunt substance.

He further stated that he had also examined Smt. Lakhia Devi and found the following injuries on her person:-

(i) Bruise over lower part of left side of chest wall with fractured ribs.
(ii) Lacerated injury over right parietal region 2" x 1/2" x scalp deep.

He opined that injury no.(i) was found grievous and injury no. (ii) was simple in nature. Both the injuries were caused by hard and blunt substance.

On the same day, he had examined Raj Narayan Manhi and found the following injuries on his person:-

(i) Lacerated injury over left parietal region 1 ½" x 1/2" x scalp deep.
(ii) Lacerated injury over right parietal region 1" x 1/2".
(iii) Bruise over right thigh 4" x 1".

He opined that all these injuries were fond simple in nature caused by hard and blunt substance.

On the same day, he had examined Jai Nath Manjhi and found the following injuries on his person:-

(i) Lacerated injury over right frontal area.

(ii) Abrasion over right leg laterally 3” x 1/2”.

He opined that both the injuries were found simple in nature and caused by hard and blunt substance. He identified his hand-writings and signatures over the injury reports, which have been marked as **Exhibit Nos. 5 to 5/4** respectively, of aforesaid injured persons. He proved the supplementary injury report of Daroga Manjhi (PW-3), which has been marked as **Exhibit No.5/5**.

21.1. Upon cross-examination, he deposed that all the injuries found upon the person of injured persons may not be caused by sharp edged weapon like, *farsa, chhura, phasuli*. He further deposed that he found injury no.(i) of Lakhia Devi grievous in nature without any x-ray report, as it was obvious. He further deposed that he had not referred the injured Daroga Manjhi and his wife Smt. Lakhia Devi for further treatment anywhere else. He further stated that the fracture injury may be dangerous to life. He had denied the suggestion that injury report is collusive.

22. It would be further apposite to discuss evidence of defence witnesses, which are as under:-

23. **DW-1 is Basudeo Tiwary**, who is grand-father of the informant, namely, Satya Narayan Manjhi has stated that

Daroga Manjhi is his nephew and Lakhia Devi is daughter-in-law (Bahu). He stated that Jai Nath Manjhi and Raj Narayan Manjhi are his grandson. He further stated that disputed land situated at east and west side of the house of the informant. He futher stated that he is living in the village and doing agricultural work. He further stated that the "*Hasuli"* of Lakhia Devi was not snatched by Bikarma Manjhi. He further stated that the appellants had never entered into the house of the informant, Satya Narayan Manjhi and never assaulted them. He further stated that appellant no.5 Sukhal Manjhi is lame and blind since 10-12 years. He further stated that Sukhal Manjhi and Daroga Manhi are own brother

23.1. In cross-examination, he stated that the wife of Bikarma Manjhi and his wife are own sisters. He stated that his house is adjacent to the house of Bikarma Manjhi. He further stated that police was not recorded his statement. He further stated that it is not the fact that Satya Narayan Manjhi, Jai Nath Manjhi and Raj Narayan Manhi are not his grandsons. He denied that it is not true that Bikarma Manjhi and his brothers were assaulted their family members and relatives. He denied that being relative of Bikarma Manjhi, he deposed in favour.

24. **DW-2 Dashrath Manjhi**, stated in his

examination-in-chief that Kashi Nath Manjhi and Jai Nath Manjhi, who are present in the court are own brother of the informant Satya Narayan Manjhi. He further stated that the informant is his nephew. He further stated that his house is adjacent to the house of informant. He further stated that there was no enmities between the informant and the appellants.

24.1. Upon cross-examination, he stated that I.O. (Investigating Officer) has not recorded his statement in this case. He further stated that the appellants are his nephew. He denied that he had deposed in his favour, being uncle of the informant.

25. **DW-3 is Thakur Manjh**i, who made a general statement that no incident had taken place, as alleged.

26. It would be apposite to reproduce Para-7 and 8 of the judgment rendered by Hon'ble Supreme Court in the matter of **Kamaljeet Singh** (supra) as under:-

> **"7.** The trial court was of the view that PW 5 was a "transplanted" witness and he was introduced after consultation and confabulations. No relevant or just reason was indicated by the trial court to so conclude. Though effort was made to show that he was interested in the conviction of the accused, the High Court analysed his evidence with great care and caution, taking note of the fact that he was the son of deceased Gurcharan Singh. After detailed analysis his evidence was found credible and the reasons which weighed

with the High Court in this regard are not shown to suffer any infirmity to warrant our interference. The other factor which weighed with the trial court is the alleged variation between the medical and the ocular evidence. Here again, the trial court's judgment was practically not based on any acceptable reason. From a perusal of the statement of Devinderpal Singh (PW 5) and the medical evidence, referred to above, in our opinion, it cannot be said that there was any contradiction between the ocular and medical evidence. There was absolutely no occasion for the trial court to have observed that the evidence of PW 5 Devinderpal Singh was not exactly in tune with the medical evidence. Gurcharan Singh, the deceased had a stab-wound on the back of the chest on “left side, 22 cm below the neck and 1 cm from the midline”, whereas Devinderpal Singh (PW 5) had stated that blow was given to his father on the back towards the right side. In our opinion, it could not be said that there was any contradiction between the ocular and medical evidence when sufficient materials were produced to prove the presence of the accused as well as PW 5 at the factory at the time of occurrence, the fact that some or more of records which could have been produced but not shown to be deliberately withheld cannot by itself cast any shadow of doubt on the veracity of the prosecution version.

8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. (See *Solanki Chimanbhai Ukabhai* v. *State of Gujarat* [(1983) 2

> SCC 174 : 1983 SCC (Cri) 379 : AIR 1983 SC 484] .) The position was illuminatingly and exhaustively reiterated in *State of U.P.* v. *Krishna Gopal* [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] . When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference."

27. It would further apposite to reproduce Para-11 of the judgment rendered by Hon'ble Supreme Court in the matter of **State of Andhra Pradesh vs. Patnam Anandam** (supra) as under:-

> "**11.** The most crucial circumstance which could have linked the respondent with the murder of the deceased is the finding of a cloth piece and two buttons near the body of the deceased, which according to the prosecution were parts of the shirt worn by the respondent on the date of occurrence. It was urged before us that the respondent made a disclosure statement on 22-11-1992 and produced a shirt from his house voluntarily which was worn by him on the date of occurrence. The case of the prosecution is that while resisting the assault on her, the deceased may have caught hold of the pocket of the shirt and in the struggle that ensued, the pocket was torn off and two buttons also fell off near the place of occurrence. Unfortunately, the prosecution has led no evidence to connect the shirt with the piece of cloth found near the place of occurrence. Counsel for the respondent submitted that the

respondent was arrested on 8-11-1992 and the alleged disclosure statement is said to have been made on 22-11-1992. The disclosure statement made after such delay has no value. We will assume in favour of the prosecution that a disclosure statement was made on 22-11-1992 and pursuant thereto the respondent produced before the police a shirt, which according to the prosecution, was worn by him on the date of occurrence. The seizure memo of the shirt shows that the shirt was a white shirt with red patterns of flowers and it appeared that the pocket of the shirt was torn apart. Two buttons were also missing from the shirt. The site plan Exhibit P-3 discloses that near the dead body was found a torn shirt pocket and two white buttons. The colour of the shirt pocket found has not been disclosed in the panchnama. It is, therefore, difficult to connect the torn shirt pocket with the shirt which was recovered at the instance of the respondent. This apart, we find that no evidence has been adduced by the prosecution to establish that the piece of cloth found at the place of occurrence was really a part of the shirt which was recovered at the instance of the respondent. No witness has said so. Moreover, the circumstance that the pocket of the shirt worn by the accused at the time of committing the offence was found at the scene of occurrence, was not even put to the respondent in his examination under Section 313 CrPC. It is, therefore, difficult to rely upon it as an incriminating circumstance, the recovery of two buttons and a piece of cloth, said to be the pocket of a shirt, from the place of occurrence, in the absence of any evidence to connect the said piece of cloth with the shirt of the accused."

28. It would be apposite to reproduce para-28 and 29

of the judgment rendered by Hon'ble Supreme Court in the matter of **Jarnail Singh** (supra) as under:-

> "**28.** Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa* v. *State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.
>
> **29.** In *State of U.P.* v. *Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan* v. *State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

29. In view of the aforesaid discussions of evidence, it is apparent that there is contradiction regarding the timing of

occurrence as PW-1 is saying that it took place at 6:30 pm but, as per the deposition of other witnesses including the informant (PW-5), it appears that the occurrence took place at 9:00 pm. The deposition of PW-1 also appears doubtful in the view that he arrived at the place of occurrence after hearing *hulla* (alarm) and saw the occurrence and weapons had with appellants/accused but, PW-5, the informant himself stated that he raised alarm only when appellants/accused left the place of occurrence. In view of same, the deposition of PW-1 is appearing doubtful regarding manner of occurrence and timing of occurrence. He is also admitting the previous enmity and relations with informant. Though, he claimed to be an eye-witness of the occurrence but he is not stated that the assault was caused by the back of weapons. PW-2 stated that the informant became senseless during occurrence and after 24 hours of admitting in Masrakh Hospital and 24 hours thereafter of regaining his sense, he made his first statement and if it is so, then, certainly the statement of PW-5 was made after 48 hours. But, in the instant case, same appears to be reduced in writing on very next day of occurrence i.e. after 24 hours by Sub Inspector of Police, Mr. R.T. Rai, making the entire occurrence and formal FIR doubtful on its face. PW-3, who is the father of

PW-5 specifically stated that he is own brother of appellants/accused no.5, namely, Sukhal Manjhi, who lost his vision prior to 5-6 years of the occurrence. The manner of occurrence turned onward deposition of PW-4, namely, Lakhia Devi, who is mother of PW-5, who stated first time in court in improved/changed manner to cause injuries to injured persons from the back of weapon. It is important to mention that PW-1, PW-2 and PW-3, who are also claiming to be an eye-witness of the occurrence did not stated that the assault was made from the back side of the weapons equipped by appellants/accused. Interestingly, she also denied that appellant no.5, namely, Sukhal Manjhi is own brother of her husband, whereas same is admitted by her husband PW-3 himself during the trial. She stated specifically that accused/appellants immediately after entering into the house assaulted her at first instance, whereas her said version also appearing doubtful in view of the statement of PW-5 that he was the person who was assaulted first by appellants/accused. It also appears from the deposition of PW-3 that the accused/appellants immediately after entering into the house broke the lighted lantern and there was no other source of light, making doubtful that how the other prosecution witnesses, who were available in the same house, saw the occurrence and

explained the occurrence in such a specific manner.

29.1. PW-5, who is informant of this case also improved his version over his written information and stated that he received injuries from the back of sharp-edged weapons. He stated that he made statement on the very next day of the occurrence, which appears doubtful in view of statement of PW-2, where he stated that PW-5 lost his sense after 24 hours of his hospitalization and made his statement only after 24 hours of regaining to his self.

29.2. No doubt, the statement of injured witness cannot be discarded in casual manner and court ordinarily relied upon the deposition of an injured witness as held in the matter of **Bonkaya case** (supra) but, the fact of present case suggest a serious doubt regarding manner and timing of assault in the background of admitted land dispute having pending litigation and in such a circumstances, the testimony of injured witness required to be scrutinized with due care as held in the matter of **Jarnail Singh** (supra). It also appears from the perusal of the record that the statement of the appellants/accused were recorded in very casual manner and conviction was secured without placing the incriminating circumstances/evidences before them, while recording their statement under Section 313

of the CrPC. It appears to be recorded in very casual, cryptic and formal manner, where appellants/accused denied to be involved in the occurrence by showing their innocence.

30. It would be relevant to reproduce Para - 10 to 13 of the judgment rendered by Hon'ble Supreme Court in the matter of **Sukhjit Singh v. State of Punjab** reported in **(2014) 10 SCC 270** as under:-

> "**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav* v. *State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.
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> **11.** In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh* v. *State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)
>
> *"30.* I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a

proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel

there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box."

13. The aforesaid principle has been reiterated in *Ajay Singh* v. *State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

"*14*. The word 'generally' in sub-section (1)(*b*) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a

> fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

31. In view of aforesaid factual and legal discussions and upon re-appreciation of evidence as above, it appears that the prosecution has failed to answer several doubts during the trial to secure the conviction of appellants/accused and, therefore, the appellants/accused are entitled to give benefit of doubt.

32. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 16.09.2003 passed by learned 9th Additional Sessions Judge, Saran at Chapra in Sessions Trial No.495 of 1995 arising out of Masrakh P.S. Case No.9 of 1995 is, hereby, set aside. The above-named appellants/accused are acquitted from the aforesaid charges levelled against them.

33. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Mr. Ravi Bhardwaj, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

34. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.02.2024
Transmission Date	13.02.2024