

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.486 of 2024**

Arising Out of PS. Case No.-122 Year-2018 Thana- CHIRAIYA District- East Champaran
=====

Rajendra Sah, son of Late Kamal Sah, resident Of Village-Parei, P.S.-
Shikarganj, District - East Champaran, Motihari

... .. Appellant/s

Versus

1. The State Of Bihar
2. Kailash Prasad, son of late Hajari Rai, resident of Village-Parei, P.S.-
Shikarganj, District - East Champaran
3. Mahesh Tiwari, son of Devendra Tiwari, resident of Village-Parei, P.S. -
Shikarganj, District-East Champaran
4. Pravin Kumar, son of Kailash Prasad Yadav, resident of village- Parei,
P.S.- Shikarganj, District- East Champaran

... .. Respondent/s
=====

Code Of Criminal Procedure, 1973—Section 378—appeal against acquittal—no independent eye witness of the alleged occurrence—case and counter case between the parties due to land dispute—for two different but subsequent incidents, one FIR was lodged—in first incident, ransom was demanded from appellant, denial of which respondents assaulted appellant, in second incident family members of appellant were assaulted by respondents—from prosecution witnesses, it becomes clear that the witnesses are either interested or family members or inimical to the accused persons—after close and careful scrutiny of the evidence of the entire prosecution witnesses, it clearly and conspicuously reveals that on the point of manner of occurrence and place of occurrence, there are much embellishment, exaggeration and vital contradictions in the evidence of prosecution witnesses and all the above embellished and exaggerated evidence will certainly go against the prosecution case—hence, the learned Trial Court has rightly acquitted the accused persons finding the case not proved beyond all reasonable doubts—impugned judgment upheld and appeal dismissed.

(Paras 13, 33, 34, 52, 53 and 54)

(2023) 9 SCC 581—Relied Upon.

Criminal Trial—Independent Witness—where there is no independent eye witness or the witnesses examined are interested witnesses or there is any previous dispute between the parties, the evidence of prosecution witnesses should be evaluated or scrutinized with great care and caution.

(Para 14)

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Shikarganj, District- East Champaran

... .. Respondent/s

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Appearance :		
For the Appellant/s	:	Mr.Madhurendra Kumar, Advocate
For the Resp. Nos. 2 to 4	:	Mr. Adarsh Ranjan, Advocate
		Mr. Pritish Ranjan, Advocate
For the State	:	Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 28-02-2025

The present appeal has been preferred for setting
aside the judgment of acquittal dated 20.02.2024 passed by
learned 21st Additional Sessions Judge, Motihari, East
Champaran in Sessions Trial No. 477 of 2018, (CIS No.477
of 2018) arising out of Chiraiya (Shikarganj) P.S. Case No.
122 of 2018. By the judgment under appeal, the accused-



respondent Nos. 2 to 4 who were facing trial for the charges under Sections 323, 307/149, 504, 506, 147, 148, 341, 325 of the Indian Penal Code, have been acquitted.

2. The case of prosecution as per written application (F.I.R) of informant Rajendra Sah filed on 11.04.2018 at Police Camp, Sadar Hospital Motihari in short is that he deals in purchasing and selling of she-buffalo. On 10.04.2018 in the morning, he went to the shop of Ramagya Sah at Shikarganj for taking tea, in the meantime, his co-villager Navin Kumar and Pravin Kumar arrived there taking *lathi' and danda* in their hands and started demanding *Rangdari* (ransom) and when the informant refused to pay the *Rangdari*, both the accused persons started abusing him and assaulting him by means of *lathi, danda*, as a result of which, left hand of the informant got fractured and he fell down, in the meanwhile, Pravin Kumar took out Rs. 60,000/- from his pocket and the accused persons went away leaving him at the spot in an injured condition. It is further alleged that when family members of the informant came to know about the occurrence, they went to the place of occurrence, but on the way, near canal bridge, all the F.I.R



named accused persons surrounded them and on the order of Mahesh Tiwari they started assaulting family members of informant and one Rambabu Sah with *lathi* and *danda*. It is further alleged that Lakhan Rai, Kishori Rai, Daresh Rai, Mangesh Kumar and Kailash Prasad Yadav assaulted Rambabu Sah with *lathi*, *danda* and rod with intention to kill him causing cut and bleeding injury on his head. It is further alleged that Navin Kumar, Pravin Kumar and Lakhan Rai assaulted Jawahar Singh with *lathi* causing cut injury on his head at two places and also cut injury on his right leg. It is also alleged that Daresh Prasad Yadav assaulted Sonu Sah with *lathi* on his head causing cut injury and Mangesh Kumar assaulted Ramdulari Devi with *lathi* with intent to kill her but the *lathi* hit the left hand of Ramdulari Devi and Amit Kumar fired from Nalkatuwa at Sonu Sah but the fire missed and Santosh Prasad Yadav snatched ear-ring worth Rs. 30,000/- from the ear of Ramdulari Devi and all the accused persons fled away. Thereafter, the informant and other injured were brought to the Primary Health Center, Dhaka from where, they were referred to Sadar Hospital, Motihari but the condition of Jawahar Sah and Rambabu Sah



was serious, hence they were referred to Rahmania Nursing Home, Motihari.

3. On the basis of the written application of the informant, the police registered Chiraiya (Shikarganj) P.S. Case No. 122 of 2018 dated 14.04.2018 for the offences under Sections 147, 149, 323, 341, 325, 307, 379, 504, 506 of the Indian Penal Code.

4. After completion of investigation, the accused/respondents were charge-sheeted by two different charge-sheets, one under Sections 147, 148, 149, 341, 323, 325, 307, 504, 506/34 of the Indian Penal Code against respondents Kailash Prasad Yadav and Mahesh Tiwari and another under Sections 147, 148, 149, 341, 323, 325, 307, 504, 506, 34 of the Indian Penal Code against respondents Pravin Kumar.

5. On the basis of charge-sheet and material available in the case diary, learned A.C.J.M, Motihari, East Champaran has taken cognizance on 21.06.2018 under Sections 147, 148, 149, 341, 323, 325, 307, 504, 506, 34 of the Indian Penal Code against the accused persons named in the charge-sheet and the case was committed to the Court of



Sessions on 05.07.2018.

6. After taking cognizance, both the cases were committed to the Court of Sessions for trial. During course of trial, both the trials i.e. Sessions Trial No. 477 of 2018 and Sessions Trial No. 610 of 2018, arising out of the same Chiraiya (Shikarganj) P.S. Case No. 122 of 2018 relating to the present matter were amalgamated vide order dated 14.12.2018.

7. After completion of trial, learned Trial Court has acquitted all the accused persons/respondents of the entire charges. Being aggrieved and dissatisfied with the said judgment, the present appeal has been preferred by the informant.

8. It is submitted by learned counsel for the appellant that admittedly there was a demand of extortion and due to non-fulfillment of the same, the informant and others were badly assaulted by the respondents' side. The entire incident was witnessed by P.Ws. 1 to 9, particularly, P.W.s 2, 4, 5 and 9 who are the injured and the eye witness of the alleged occurrence but the learned Trial Court did not place reliance upon their evidences, without showing any



cogent reason. The instant matter is based on the informant's own statement which was given by him in the form of FIR and the same is only sufficient to prove the prosecution's case. The Trial Court has also not considered the evidence of P.W. 12, who is the Investigating Officer of the case. He has fully supported the prosecution version in his evidence. The medical evidence is also fully supportive to the prosecution case and the medical findings given in the injury report of the informant's side are also sufficient to establish the manner of assault described in the FIR but it was not appreciated in proper manner by the learned trial court.

9. It is submitted on behalf of the respondent Nos. 2 to 4 that respondents are innocent and they have falsely been implicated in this case. There is a major contradiction on the point of place of occurrence and manner of occurrence and further the witnesses have admitted that there is enmity between the parties since before. The prosecution has failed to prove the motive which is essential in this case. Considering the above facts, the Trial Court has rightly appreciated all the evidences and arrived at a right conclusion in acquitting the respondents.



10. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

(i) Whether the prosecution has been able to prove its case against the accused persons(respondents) beyond all reasonable doubts before Trial Court or not ?

(ii) Whether the impugned judgment of acquittal is sustainable and tenable in the eyes of law or requires any interference ?

11. Heard learned counsel for the appellant, respondents and learned Additional Public Prosecutor for the State and also perused the case record.

12. From perusal of the impugned judgment dated 5th September, 2023, it appears that accused (respondent Nos. 2 to 4) have been tried in this case for committing the offences under Sections 147, 149, 323, 341, 325, 307, 379, 504, 506 of the Indian Penal Code arising out of Chiraiya (Shikarganj) P.S. Case No. 122 of 2018.

13. At the very outset, it is essential to note here that there is no independent eye witness of the alleged occurrence. All the non-official prosecution witnesses are either family members or have inimical terms with the



accused persons. It is also admitted fact that there is case and counter case between the parties due to land dispute.

14. So, in this view of the matter, it is well settled law that where there is no independent eye witness or the witnesses examined are interested witnesses or there is any previous dispute between the parties, the evidence of prosecution witnesses should be evaluated or scrutinized with great care and caution.

15. On the anvil of aforesaid principle, we propose to examine the prosecution case on the strength of evidence adduced on behalf of the prosecution.

16. As per the F.I.R., there are two sets of occurrence, first occurrence is alleged to have taken place at the tea shop of Ramagya Sah (P.W. 8) on 10.04.2018 in the morning and second occurrence is alleged to have taken place soon after on the same day at canal bridge near the village of the informant.

17. As per written application of informant/injured which is the basis of the present F.I.R., the first occurrence took place on 10.04.2018 in the morning when the informant/injured Rajendra Sah reached at the tea stall of



Ramagya Sah where his two villagers namely Navin Kumar and Pravin Kumar came there and assaulted him with *lathi* and *danda* after refusal to give ransom amount. It is also alleged that due to assault made by above two accused persons, left hand of the informant got fractured and he became injured and the accused Pravin Kumar took away 60,000/- from his pocket.

18. Altogether nine non-official witnesses have been examined on behalf of the prosecution during the course of trial and out of nine non-official prosecution witnesses, only P.W. 3, P.W. 7, P.W. 8 and P.W. 9 (Informant-injured) have stated some facts regarding the alleged occurrence. Rest of the witnesses i.e. P.W.s 1, 2, 4, 5 and 6 are not the eye witnesses of the first occurrence.

19. P.W. 1 Manoj Kumar has clearly deposed in his evidence in para-4 that he was not present at the time of first occurrence. Regarding first occurrence, he was informant by the wife of injured Rajendra Sah at 6:00 A.M. P.W.s 2, 4, 5 and 6 are the injured of second occurrence who were going to see the informant (P.W. 9) after the first occurrence.

20. P.W. 3 Surendra Rai has deposed in his



examination-in-chief in para-1 that on the alleged date and time of occurrence, he had also gone to the tea stall of Ramagya Sah (P.W. 8) for taking tea where Rajendra Sah (informant) was also taking tea. In the meanwhile, Kailash Yadav, Navin Kumr, Pravin Kumar and Amit Kumar, these four persons started altercation with the informant and assaulted him. He has also deposed that Kailash Rai, armed with rod, Navin, Pravin and Amit, armed with *lathi*, had assaulted the informant, due to which he became injured and his hand got fractured and body became swollen. Thereafter, Pravin took away Rs. 60,000/- from the pocket of the injured-informant Rajendra Sah.

21. It is essential to take notice of the fact that injured (informant) has neither alleged the name of Kailash Yadav and Amit Kumar in his F.I.R nor in his evidence as P.W. 9. Therefore, regarding the involvement of two more accused persons (Kailash Yadav and Amit Kumar) in the first occurrence is highly exaggerated one and from the evidence of P.W. 3, it appears that the manner of occurrence has been changed.

22. Further in para-3 this P.W. 3 has deposed that



accused Kailsah Rai has also lodged a case against him which is pending in A.C.J.M, Dhaka and he has also filed a case against Kailsah Rai.

23. The above fact goes so show that P.W. 3 was having inimical terms with accused Kailash Rai and to settle the score with Kailash Rai, he has falsely implicated him (Kailash Rai) in this case.

24. P.W. 3 has further deposed in para-10 that when he reached at the tea stall, Rajendra Sah (informant) was taking tea from before. He further deposed that he remained there till 20 minutes and during that time, no one came there and only he (P.W. 3), Rajendra Sah (informant) and tea shop owner were there. So, this fact goes to show that he has not seen the alleged occurrence, otherwise he could have said about the presence of other accused persons.

25. P.W. 7 Mukhtar Sah has deposed in his examination-in-chief in para-1 that after getting information that accused Kailash Yadav, Pravin etc were assaulting his brother Rajendra Sah (informant), he came at the tea stall of Ramagya Sah (P.W. 8). In his entire examination-in-chief, he has not alleged the name of Navin Kumar whose name has



allegedly been taken by the informant(P.W. 9), whereas this witness has named other accused Kailash Yadav, who was not named as an accused by the informant. So, this witness has also changed the manner of occurrence in his evidence.

26. Further P.W. 7 in his cross-examination in para-3 has clearly deposed that he got information regarding the assault being made at the shop of Ramagya Sah (P.W. 8) after 10 minutes of the occurrence and when he reached there, the tea stall was much crowded. Hence, the evidence of this witness goes to show that he was not present at the time of alleged occurrence.

27. P.W. 8 Ramagya Sah is the tea stall owner where first occurrence is alleged to have taken place. He has deposed in his examination-in-chief that on the alleged date and time of occurrence when Rajendra Sah came at his tea stall for taking tea, son of Kailash Yadav namely Navin, Amit and one other person, whose name is not remembered, being armed with *lathi*, *danda* and rod came there and started assaulting Rajendra Sah (informant) after entering into his house. They also dragged him out from the house, threw him down and assaulted him. So, according to the



evidence of this witness (P.W. 8), three accused persons were involved in the first occurrence viz. Navin, Amit and one other person whose name is not remembered by him. So, the evidence of this witness (P.W.8) has changed the manner of occurrence as alleged by the informant (P.W. 9) in the F.I.R.

28. P.W. 8 has further deposed in his cross-examination in para-3 that Rajendra Sah (informant) happens to be his brother in relation and the accused persons assaulted him by entering into his house and at the time of assault, he did not go inside the house. So, this fact also changed the place of occurrence. He has also deposed in para-4 that right hand of the informant (P.W.9) got fractured but he did not see who had assaulted him with *lathi*. This witness has further deposed in para-6 that he cannot not say that all three sons of Kailash Yadav were armed with which weapon. In para-5, this witness has deposed that at the last moment of the occurrence, he became unconscious and when he regained consciousness the informant (P.W. 9) had gone from there.

29. Therefore, from the entire evidence of this



witness (P.W. 8), it appears that the manner of occurrence and place of occurrence which is alleged in the F.I.R has totally been changed.

30. P.W. 9 Rajendra Sah, who is informant and injured of the case has supported the prosecution story to some extent in his examination-in-chief, but in para-14 of his cross-examination, he has deposed that no one was examined in Dhaka and the injureds were referred to Motihari and all the injureds reached in Motihari at about 9:00 A.M whereas rest of the injured were treated at Rahmania Hospital on the same day. However, P.W. 10 Dr. Sudhir Kumar Gupta who was posted as Medical Officer, Referral Hospital, Dhaka has deposed that on 10.04.2018, he had examined Rajendra Sah (P.W. 9) along with other injured persons. He has also given description of injuries found by him on the person of the injured. Now, the injured have deposed that none was treated at Dhaka but the Medical Officer who was posted in Dhaka Referral Hospital on the alleged date and time is submitting the injury reports of the injured. Hence, in this factual situation, both the evidences can not be treated as credible, either injuries



sustained by the injured are false or the evidence of Medical Officer, who is said to have given treatment is false.

31. Further, the informant (P.W. 9) has deposed in para-18 that he is not a party in a case registered under Section 144 Cr.P.C but he has admitted that there is land dispute between the accused persons and his agnates. He has further deposed in para-19 that he does not remember whether his statement was recorded by the Investigating Officer or not during investigation.

32. P.W. 10 Dr. Sudhir Kumar Gupta and P.W. 11 Dr. Arsad Kamal have found the injuries of the informant in left arm whereas P.W. 8 Ramagya Sah at whose tea stall the alleged occurrence took place has deposed that right hand of informant-Rajendra Sah got fractured.

33. P.W. 12 Kameshwar Singh, who is the Investigating Officer of this case has deposed in para-2 that in the boundary of first occurrence, so many shops are there but none have come forward to depose in support of the prosecution story.

34. After going through the above facts and evidences of all the four prosecution witnesses, it becomes



clear that the witnesses are either interested or family members or inimical to the accused persons and there are so many contradictions and embellishments which is sufficient to change the manner of occurrence, place of occurrence and nature of occurrence. So, their evidences cannot be safely relied upon.

35. Now we propose to examine and scrutinize the second occurrence which is allegedly taken place soon after the first occurrence at the canal bridge of the informant's village.

36. Out of nine non-official prosecution witnesses, P.W.s 2, 4, 5 and 6 are said to be injured in the second occurrence.

37. P.W. 7 Mukhtar Sah is not the eye witness of the second occurrence. He has clearly deposed in his examination-in-chief that when he rushed to Dhaka for treatment of his brother Rajendra Sah (informant), he heard that accused persons namely Lakhan Rai, Hulash Rai, Kishori, Madan, Vinod had assaulted his family members.

38. P.W. 8 Ramagya Sah is also not an eye witness of the second occurrence. He has clearly deposed in his



cross-examination at para-8 that he could not see the occurrence and he also does not remember the name of the person who had disclosed him about the second occurrence. He had also not seen who had sustained injuries at canal bridge.

39. P.W. 9 Rajendra Sah, who is the informant and injured of the first occurrence has not specifically stated about the second occurrence in his examination-in-chief. He has only deposed that when his family members came to know about his injured condition then Jawaharlal Sah, Yadolal Sah, Ramdulhari, Rambabu Sah and Suraj Sah went at the place of occurrence but on way, they were assaulted by the accused persons. Hence, the evidence of this witness proves that he has not seen the second occurrence.

40. However, it is surprising enough that this witness (P.W. 9) has categorically alleged in the F.I.R about the entire facts and the manner of second occurrence but he has not supported the said facts in his evidence as P.W. 9. It is also not clear that from whom he got knowledge about the second occurrence.

41. As per F.I.R, the writer of F.I.R is one Nawal



Kishore Sah but he has not been examined as prosecution witness in this case.

42. Regarding second occurrence, it is essential to examine the manner of occurrence on the strength of evidence of prosecution witnesses.

43. As per F.I.R., total 17 accused persons were involved in the second occurrence, but P.W. 1 (Manoj Kumar) has deposed only 14 accused persons in the alleged occurrence. He has deposed that accused persons assaulted his father Jawahar Sah, brother Rambabu Sah and Sonu Kumar and accused Santosh Kumar snatched ear-rings of his mother (Ram Dulari Devi) and fled away. So, according to the evidence of this witness (P.W. 1), only three persons had sustained injuries in the second occurrence and his mother (Ram Dulari Devi) did not sustain any injury. However, mother of P.W. 1 namely Ram Dulari Devi has been examined as P.W. 4 who has alleged that she also sustained injuries. So, the evidence of this witness (P.W. 1) has changed the manner of occurrence and number of injured persons, what was alleged in the F.I.R. This witness has further deposed in his cross-examination at para-28 that



Vinod Prasad Yadav has also lodged a case for the same occurrence on the same day in Chiraiya Police Station against the informant's side.

44. P.W. 2 who is Rambabu Sah and injured of this case has named only nine accused persons who were involved in the alleged second occurrence. He has not given any details of specific accusation of assault against any of the accused to any injured. This witness has also deposed that accused persons have also lodged Chiraiya P.S. Case No. 123 of 2018 against them, in which they are on bail.

45. P.W. 4 Ram Dulari Devi has named only six accused persons in his evidence whereas P.W. 5 Jawahar Sah has named only 16 accused persons and he has not alleged any specific assault by any accused persons to anyone.

46. P.W. 6 Sonu Kumar is also one of the injured who has named only 16 accused persons. He has deposed in para-4 of his cross-examination that he is nephew of the informant (P.W. 9).

47. The evidences of P.W.s 1, 2, 4, 5 and 6 go to show that all have stated a different version regarding giving the names of accused persons who were involved in the



second occurrence. Hence, as per their own evidence, the manner of occurrence becomes changed.

48. During the course of arguments, learned counsel for the respondents has submitted that P.W. 11 Dr. Arsad Kamal who was posted as Medical Officer, Sadar Hospital, Motihari has deposed in his evidence at para-5 that on 10.04.2018, one of the injured Rambabu Sah was referred from Dhaka Referral Hospital and was admitted in Sadar Hospital, Motihari in Emergency Ward No. 4159 and he made a complaint of headache and x-ray skull A.P/lateral view was advised but patient was taken away from the hospital by his relatives on the same day without any treatment and x-ray, however, said Rambabu Sah was examined as P.W. 2 during trial who has deposed that after occurrence, he came to Dhaka Referral Hospital for treatment and thereafter he was treated in Motihari Sadar Hosptial. So the evidences of both the prosecution witnesses are contradictory to each other.

49. In this context, the evidence of PW. 10 (Dr. Sudhir Kumar Gupta) is also relevant who has deposed in para-4 of his evidence that on 10.08.2018 at 6:45 A.M, he



examined Rambabu Sah (P.W. 2) and described the injuries found on his person. So, the evidences of P.W.s 2, 10 and 11 are contradictory to each other.

50. P.W. 2 Rambabu Sah has also deposed in para-1 that in the second occurrence, he, Sonu, Jwala Sah and wife of Jwala Sah have sustained injuries but neither Jwala Sah nor his wife have been examined in this case nor any injury report of both the injured were produced in this case.

51. After going through all the above facts and considering the entire contradictory facts and embellishments, it becomes clear that manner of occurrence and the nature of occurrence has been totally changed from what has been alleged in the F.I.R.

52. So, after close and careful scrutiny of the evidence of the entire prosecution witnesses, it clearly and conspicuously reveals that on the point of manner of occurrence and place of occurrence, there are much embellishment, exaggeration and vital contradictions in the evidence of prosecution witnesses and all the above embellished and exaggerated evidence will certainly go against the prosecution case. Hence, the learned Trial Court



has rightly acquitted the accused persons finding the case not proved beyond all reasonable doubts.

53. In the case of H.D. Sundara and Others versus State of Karnataka reported in (2023) 9 SCC 581, while dealing with an appeal against acquittal, the Hon'ble Supreme Court has laid down the broad principles in paragraphs '8.1' to '8.5' which are to be kept in mind and we reproduce the same hereunder for a ready reference:-

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised as follows:

"8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and



documentary evidence.

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record.

8.4 If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

54. In view of the aforesaid discussions made hereinabove, what has transpired from the evidence available on the record, we find no reason to take a different view from what has been held by the learned Trial Court. Hence, the impugned judgment is upheld and the appeal is dismissed.



55. Let the judgment’s copy be sent immediately to the trial court concerned for information and needful.

56. Let the LCR be sent back forthwith to the trial court concerned.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21/03/2025
Transmission Date	21/03/2025

