

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.1412 of 2025**

Arising Out of PS. Case No.-368 Year-2022 Thana- MOKAMAH District- Patna

Bipin Rai @ Bipin Ray S/O Late Tripit Rai @ Late Tripit Rai R/O Village-  
Makra Naya Tola, P.S.- Mokama, Dist.- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

**CRIMINAL APPEAL (SJ) No. 1524 of 2025**

Arising Out of PS. Case No.-368 Year-2022 Thana- MOKAMAH District- Patna

Manoj Rai S/o Deep Lal Rai @ Deepu Rai @ Dipu Rai Resident of Village-  
Mekra, P.S-Mokama, District-Patna

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 1412 of 2025)

For the Appellant : Mr. Rananjay Kumar, Adv.

For the State : Mrs. Anita Kumari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 1524 of 2025)

For the Appellant : Mr. Giridhar Gopal Tiwary, Adv.

Mr. Prem Ranjan Kumar, Adv.

Mr. Brajesh Prasad Gupta, Adv.

For the State : Mrs. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY  
CAV JUDGMENT**

**Date : 20-01-2026**

Both the above stated appeals have been



directed against the common judgment of conviction dated 06.03.2025 and order of sentence dated 11.03.2025 passed by learned Additional District and Sessions Judge-IV, Barh (Patna) in S.T. Case No. 423 of 2023, arising out of Mokama P.S. Case No. 368 of 2022 whereby and whereunder appellant/ Bipin Rai @ Bipin Ray in Cr. Appeal (SJ) No. 1412 of 2025 and appellant/ Manoj Rai in Cr. Appeal (SJ) No. 1524 of 2025 have been convicted for the offences punishable under Sections 307, 448 read with 34 of the IPC and 27 of the Arms Act and they have been sentenced to undergo R.I. for one year and fine of Rs. 1,000/- under Section 448 read with 34 of the IPC and in default of payment of fine, they will further undergo one week simple imprisonment. The appellants have further been sentenced to undergo R.I. for five years and fine of Rs. 10,000/- under Section 307 read with 34 of the IPC and in default of payment of fine, they will further undergo simple imprisonment of six months. The appellants have further been sentenced to undergo R.I. for three years and a fine of Rs. 5,000/- under Section 27 of the Arms Act and in default of payment of fine, they will further undergo simple imprisonment of three months. All the sentences have been directed to run concurrently. Therefore, both these appeals are being disposed of by this common judgment.



2. The prosecution case, as disclosed by informant, Abhinash Kumar (PW-6), is that on 25.11.2022 at about 07:20 PM, while he was sleeping in his house, 5-6 persons forcibly entered in the house, abused him, and opened indiscriminate fire, discharging 3-4 rounds at him. It is further alleged that while retreating, the assailants again fired, as a result of which the informant sustained a gunshot injury on his left arm. On his alarm, the miscreants fled. The informant asserts that he has identified the appellants and others, being well acquainted with them as residents of village Mekra. The alleged motive for the occurrence is stated to be a dispute relating to crop seeding and threats. The informant has further alleged that the firing was carried out with intention to kill him.

3. On the basis of written report of the informant/PW-6, Mokama P.S. Case No. 368 of 2022 dated 25.11.2022 was registered under Sections 448, 326, 307, 34 of the IPC and Section 27 of the Arms Act. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellants under Sections 448, 326, 307/34 of the IPC and 27 of the Arms Act whereas investigation continued in respect of others. Thereafter, the learned trial court took



cognizance against the appellants. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellants under Sections 307/34, 326/34 and 448/34 of the IPC and 27 of the Arms Act. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

4. In order to bring home guilt of accused persons, prosecution has examined altogether seven witnesses. PW-1/Chintu Kumar @ Karu, PW-2/ Pawan Devi, PW-3/ Ranju Devi, PW-4/ Ghuran Rai @ Ghus Rai, PW-5/ Anita Devi, PW-6 Abhinash Kumar (informant) and PW-7/ Chandra Bhushan Sinha (I.O.). Prosecution has relied upon following documentary evidence on record:-

*Ext. 1- Written report of informant.*

*Ext. 1/1-Endorsement of SHO, Mokama on written report of informant.*

*Ext. 2 & 2/1- Discharge ticket of Avinash Kumar from PMCH, Patna & signature of doctor.*

*Ext. 3- Charge sheet No. 48/2023 dated 20.02.2023 of this case.*

*Ext. 4- Formal FIR of Mokama P.S. Case No. 368 of 2022.*

*Ext. 5- Injury report of Avinash Kumar prepared by Dr. Rakesh Kumar.*

*Ext. 6- Certified copy of FIR of Mokama P.S. Case No. 03 of 2019.*

*Ext. 7- Certified copy of Charge sheet No. 78/2019 of Mokama P.S. Case No. 03/2019.*

*Ext. 8- Certified copy of charge framed in ST No. 905/ 2019.*

*Ext. 9- Certified copy of FIR of Mokama P.S. Case No. 181 of 2023.*



5. Defence has not produced any oral or documentary evidence. However, defence of the appellants as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

6. After hearing the parties, the learned trial court convicted the appellants and sentenced them as indicated in the opening paragraph of the judgment.

7. Following submissions have been made on behalf of the appellants:-

7.1 Learned counsel for the appellants submits that there is no evidence of house trespass as the place of occurrence is Chabutra which is outside the house of informant. Hence, no offence under Section 448 of the IPC is made out against the appellants. He further submits that for the purpose of proving the charge in a case of firing, *actus rea* and *mens rea* are required. There are several versions on the point of place of occurrence, even the informant's statement is quite divergent on the point of place of occurrence. Learned counsel for the appellants submitted that as per initial version of informant (PW-6) while he was sleeping in his house, he was fired upon. On the said point, Investigating Officer has stated that



occurrence of firing took place at Chabutra which is outside the house. He further submits that PW-7/ I.O. has specifically stated that no firing material or any incriminating article were seized from the place of occurrence and in the light of aforesaid facts, Section 27 of the Arms Act is not made out against the appellants. The appellants are not assailant of the deceased. Learned counsels further submitted that the doctor who treated the informant has not been examined in the present case. Learned counsel for the appellants has raised a pertinent question regarding the evidentiary value of the injury report where doctor has not been examined and injury report has been exhibited. The counsel of the appellants has stated that defence has raised a plea in the trial court during course of argument that doctor has not been examined and the very injury report is meaningless in the light of factum that injury report has not been authenticated by the doctor, who is author of the injury report. It is quite obvious that any person can produce injury report and same can not be proved against accused person who is alleged to have caused said injury. The counsel of the appellants has stated that it is quite dangerous that in absence of author of the injury report, any person can produce any injury report and made allegation against intended accused persons to



falsely implicate him. He further submits that apart from that there are several contradictions and discrepancies in the evidence of prosecution witnesses. Hence, in the light of aforesaid facts and circumstances, the impugned judgment of conviction and order of sentence are not sustainable in the eye of law and same are fit to be set aside.

8. Mrs. Anita Kumari Singh, learned Additional Public Prosecutor appearing for the State has submitted that as per evidence of PW-1, PW-2 and PW-3 occurrence took place within the house. Learned APP further submits that PW-3, who is aunt of the informant, has stated that Chabutra is in between the house of informant and her house. Learned APP further submits that PW-4 and PW-5 also stated that occurrence took place within the house of the informant. PW-6/informant is injured witness and has stated that informant was in his house and also stated that he has sustained one bullet injury on the left arm and remaining firing passed through the window. PWs-1, 2, 3 and 4 have stated that all the accused persons were armed with firearm and they have made firing and hence, Section 34 of IPC is applicable against the appellants also. All the prosecution witnesses have supported and corroborated the story of prosecution. Learned APP further submits that place of



occurrence has been well established by all the prosecution witnesses, except the investigating officer. Learned APP further submits that judgment of conviction and order of sentence passed by the concerned court are not in any way derogation of settled principle of law and hence, no interference is required.

9. The question which arises for consideration is:-

*"Whether offence under Sections 307, 448 read with 34 of the IPC and 27 of the Arms Act is made out in the light of given facts and circumstances of the case or not ?"*

10. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

11. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

12. PW-6/ Abhinash Kumar is informant of the case. He has stated that the occurrence took place on 25.11.2022 at 07:00 PM and at that time, he was sleeping at his house and all of sudden 5-6 persons made intrusion in house, made three to four rounds of firing upon informant. He has further stated that Rahul Rai, appellant-Bipin Rai, appellant-Manoj Rai, Pampam



Rai and Lolin Rai entered into house out of whom there was pistol in the hand of Rahul and others were having rifle in their hands. He has further stated that firing made by Rahul hit left hand of informant/PW-6 as a result of which he fell down on the ground. Thereafter, all the accused persons went away while making firing and abusing. He has further stated that this occurrence had been seen by informant's mother/ Pawan Devi, informant's father/Ghuran Rai, informant's cousin/ Karu Kumar @ Chintu and informant's aunt/ Ranju Devi and Anita Devi. At para 2 he has stated that at the time of occurrence light of the electricity was available in his house. He has also stated that first of all information of said occurrence was given in village Mekra by informant's father and informant was taken to Government Hospital, Mokama for treatment. He has further stated that he got the application written by his uncle/ Shankar Rai and informant put signature upon the application and entire application stands marked as Ext-1. Reason behind the occurrence is that informant's aunt Ranju Devi sustained gunshot injury by accused persons and informant was witness of said case and informant was being threatened not to adduce evidence in said case.

12.1 During cross examination, at para 8 PW-



6/informant has stated that first of all, Rahul Kumar entered into the house. He was sleeping with his eyes open. At para-10 PW-6 has stated that all the family members were present in the room where he slept. Again he stated that no one from his family member was present in his room. At para 10 he has also stated that three to four rounds of firing was made upon him within house, out of whom one firing hit between left elbow and wrist of informant and other remaining firing went away through window. At para 12, he has stated that after five to six minutes of occurrence he came out of his room. At para 16 he has stated that he had not pointed out to police that at the time of occurrence light of electricity was available in his house.

*12.2 From a perusal of the FIR, it appears that PW-6/informant did not attribute the firing to any specific accused and merely alleged that the appellants and others collectively fired and were identified while fleeing; however, while adducing evidence before the court he materially improved the prosecution case by specifically alleging that Rahul Rai fired the shot that caused injury. Further, though in evidence he claimed that the occurrence was witnessed by his parents, cousin and aunt, no such fact finds mention in the initial version of prosecution story.*



*Likewise, while informant later asserted that electricity was available and a bulb was on at the time of occurrence facilitating identification, this circumstance was not disclosed in the FIR. Additionally, the motive stated during evidence-relating to threats in connection with an earlier case in which informant/PW-6 was a witness- is wholly inconsistent with the earlier motive assigned in the prosecution narrative, namely the dispute over sowing of seeds and threats. These omissions and subsequent improvements constitute material inconsistencies affecting the credibility of the prosecution case.*

13. PW-7/ Chandra Bhushan Sinha has stated that on 25.11.2022 he was posted in Mokama Police Station as Sub Inspector of Police. He took charge of investigation of Mokama P.S. Case No. 368 of 2022. He identified the place of occurrence. Place of occurrence is specified as Chabutra in barren land in front of house of informant situated at village Mekra where informant sustained firearm injury. PW-7 has given following description of boundary of place of occurrence:-

North-House of Ravindra Rai  
South-Barren land of Mantu Rai.  
East-House of Rahul Rai  
West-House of Bhuran Rai



13.1 During cross examination, PW-7/I.O. has stated that place of occurrence is Chabutra, which is outside of house of the informant. PW-7 has further stated that no firing material was seized nearby the place of occurrence. PW-7 has also stated that son of Pawan Devi (informant) was sat on Chabutra and he was lying on the said Chabutra. He has further stated that no blood was found in the house of informant when question was asked. He has stated that Pawan Devi came outside the house after hearing the sound of firing and Ranju Devi stated to the police that she heard the sound of firing in the evening at 7:20 PM and she heard regarding sound of firing from the people and Ranju Devi stated that after raising alarm people of nearby came there and accused persons ran away. No witness has stated that informant/ Avinash Kumar sustained firearm injury within house.

13.2 From perusal of evidence of PW-7/ investigating officer, it is clear that no firing material was seized from the place of occurrence. Place of occurrence is Chabutra which is outside house of informant. PW-7/I.O. has not pointed out as to who has helped to identify the place of occurrence. He did not point out the name of villagers. Place of occurrence is Chabutra where informant had slept. No witness has stated that



informant/ Avinash Kumar sustained firearm injury within house. Primary treatment was not given in referral hospital. In the initial version of prosecution story motive behind the occurrence is highlighted but I.O./ PW-7 has not made any investigation regarding the motive behind the occurrence. PW-7 has stated that re-statement of informant has been recorded on 16.12.2022 in Thana Parisar which reflects that investigation was not fair. In this way, the role of I.O. is not fair and he has not conducted the investigation in a fair manner.

14. PW-1/ Chintu Kumar @ Karu has stated that occurrence took place on 25.11.2022 at about 07:20 PM and at that time, he was in his house. He has stated that Rahul Rai, appellant/Bipin Rai, appellant/Manoj Rai, Ram Lalin Rai and Pampam Rai came and started abusing. He has further stated that in the year 2019 accused persons had fired at his mother for which a case was lodged and said case is still going on and to put pressure to withdraw the said case the accused persons were abusing. He further stated that accused persons were abusing Avinash/informant and on refusal to withdraw the earlier case, the accused persons resorted to firing. He further stated that the accused persons entered the house and fired at Avinash who was sleeping inside the house and the said firing



hit below the left elbow. At para-3 of examination in chief PW-1 stated that 11 empty cartridges were handed over to Daroga.

14.1 During cross-examination, PW-1 at para 5 has given following description of the boundary of place of occurrence:-

North : His own house  
South : Barren land.  
East: House of Rahul Rai  
West: House of Upendra Rai.

14.2 At para 6 of cross examination, PW-1 has stated that there is a chabutra at the place of occurrence situated in the eastern side of the house. There is no temple at that place. This is a public Chabutra. There is no regular sitting on the said Chabutra. No one was sitting on the said Chabutra on the date of occurrence. All the persons present there were his family members. PW-1 at para 7 has clearly stated that no firing was made at the place where he and his family members sat and firing was made inside the house. At para 8 he has stated that all the family members went home when firing started and when they reached home, accused persons fled away while making firing. PW-1 at para 10 has stated that earlier he sat on Chabutra but again he stated that he was at place of occurrence.

14.3 From perusal of evidence of PW-1, it is clear that his statement is quite contradictory as he himself



stated that he was not at the place of occurrence when firing was made and he and his family members viz. Ranju Devi/PW-3, cousin brother Abinash/PW-6, Pawan Devi/ PW-2 and Ghuran Rai/PW-4 sat at a place and when firing started they went home and all the accused persons fled away. From perusal of statement of PW-1, it is evident that none of the prosecution witnesses is eye witness of the alleged firing as when PW-1 and his family members, viz. Ranju Devi/PW-3, cousin brother Abinash/PW-6, Pawan Devi/ PW-2 and Dhuran Rai/PW-4 sat, no firing was made and when firing was made they went inside the house and accused persons fled away while making firing. Further, statement of PW-1 regarding the alleged handing over 11 empty cartridges to Daroga is quite divergent as I.O./PW-7 has categorically stated that no firing material was recovered at the place of occurrence. Boundary of place of occurrence as stated by PW-1 is quite inconsistent with the boundary of place of occurrence as stated by PW-7/I.O.

15. PW-2/ Pawan Devi has stated that occurrence took place eight months ago at about 07:20 PM and at that time, she was in her house. She has further stated that Rahul, appellant/Bipin, appellant/Manoj, Pampam, Ramnalin came. Rahul was having pistol, Bipin was having rifle, Manoj



was having pistol, Pampam was having rifle and Ramnalin was having rifle. She has further stated that accused persons resorted to firing upon which her son/ Abinash Kumar, who was near Chabutra, went inside the house. Thereafter Rahul entered the house and fired at her son which hit him on his left hand. She has further stated that appellant/Bipin, appellant/Manoj, Pampam and Ramnalin were outside the house. Thereafter accused persons fled away.

15.1 During cross examination, at para 4 PW-2 has stated that at the time of occurrence she did not sit at chabutra. At para 5 she has stated that she heard the sound of firing from house and 5-6 round of firing took place outside the house. At para 10 she has given following description of the boundary of place of occurrence:-

East : House of Rahul  
West : Her own house  
North: House of Bano Rai  
South: Field.

At para 16 PW-2 has stated that accused Bipin is her agnate and she had dispute with Bipin on the issue of erecting a pole on the land.

15.2 From perusal of evidence of PW-2, it is evident that on the point of utilization of Chabutra, Pws 1 and 2 have divergent view. Further on the point of presence of



appellants, PW-2 has divergent view as she stated that appellants were outside the house with co-accused Pampam and Ramnalin and Rahul caused firearm injury to the informant. The boundary of place of occurrence as stated by the PW-2 is quite inconsistent with the boundary of place of occurrence as stated by PW-7/ informant. Further, on the point of place of occurrence, the statement of Pws 1 and 2 are quite divergent as PW-7/ I.O. has stated that place of occurrence is Chabutra but neither PW-1 nor PW-2 has specifically pointed out that Chabutra is place of occurrence. It is quite unbelievable that when 5-6 rounds of firing took place outside the house, how PW-2 can witness the persons who have fired 5-6 round of firing at 07:20 PM in evening. Further source of light has also not been pointed out by the PW-7/ I.O. The very claim of PW-2 as an eye witness of the occurrence is very shaky. The motive behind the occurrence as pointed out by the informant in initial version of prosecution story is totally different from the motive pointed out by the PW-2 during course of adducing evidence before the court. The statement of PW-2 is quite inconsistent with regard to manner of occurrence as stated in the initial version of prosecution story.

16. PW-3/ Ranju Devi has stated that



occurrence took place eight months ago at about 07:20 PM and at that time, she was in her house. She has stated that Rahul, appellant/Bipin, appellant/Manoj, Pampam and Nalin came to the house of informant and started abusing. She has further stated that Rahul was having pistol, Bipin was having rifle, Manoj was having pistol, Pampam was having pistol and Nalin was having pistol and on forbidding to abuse, accused persons resorted to firing upon the informant which hit him on the left arm. At para 3 PW-3 has stated that appellant Bipin and co-accused Rahul caused firearm injury to her four years prior to the present occurrence and the said firing caused injury upon the right leg of PW-3 and informant of the present case is witness of the case filed by PW-3.

16.1 During cross examination, at para 9 PW-3 has stated that in her statement before the police she had stated that at 07:20 PM, she was at her house and on hearing the sound of firing when she came outside, she found the informant in injured condition. At para 4 PW-3 has stated that partition was made by local Sarpanch between appellant Bipin and informant Abinash regarding ancestral property but appellant Bipin Rai did not accept the partition done by Sarpanch. At para 8 PW-3 has stated that her house is adjacent to the house of informant.



She has stated that at the place of occurrence there is a Chabutra made of soil and people sat around the said Chabutra. PW-3 has further stated that she heard 11 round of firing and after that she went outside the house and she met the informant but she did not made any query to Abinash regarding assailant. At para 11 PW-3 has stated that she met Anita Kumari/ PW-5, Pawan Devi/ PW-2 and Ghuran Rai/PW-4 and they have stated that appellant Bipin, appellant/Manoj and co-accused Rahul caused firearm injury and fled away. At para 14 she has given following description of the boundary of place of occurrence:-

North : House of Bano Rai  
South : Barren land.  
East: House of Rahul  
West: Her own house.

16.2 From the statement of PW-3, it is quite evident that she has not seen the occurrence. She came outside the house after hearing 11 round of firing and she has not made query to the victim Abinash as to who has caused firing and inflicted gun shot injury to the informant. In this way, PW-3 is not eye witness of the occurrence and her statement regarding manner of occurrence is quite inconsistent with the initial version of prosecution story. She has stated that other family members i.e, Anita Kumari/ PW-5, Pawan Devi/ PW-2 and Ghuran Rai/PW-4 told her that appellants and co-accused Rahul



ran away after causing firearm injury to the informant. Further, her statement regarding boundary of place of occurrence is quite inconsistent with the boundary of place of occurrence as stated by the I.O./PW-7. Her statement regarding specific place of occurrence is quite inconsistent with other version of prosecution witnesses. In this way, her statement is neither convincing nor trustworthy in the light of aforesaid facts and circumstances. PW-3 has specifically stated that informant was witness of a case in which she sustained injury and appellants and other are assailants of the case filed by her and she has reason to adduce the evidence against the appellants and others.

17. PW-4 / Ghuran Rai @ Ghus Rai has stated that occurrence took place eight months ago at about 07:00 PM and at that time, he was on the verandah of his house. He has stated that Rahul, Pampam, appellant/Bipin, appellant/Manoj and Nalin having armed with firearms came, abused and fired at his son Abinash. He has further stated that Rahul fired upon the Abinash which hit him on the left hand. PW-4 has pointed out that the reason behind the occurrence is not to adduce evidence in Ranju Devi case as well as compromise took place in the said case. At para 3 he has stated that on the date of occurrence electric light was available on the place of occurrence.



17.1 During cross examination, at para 5 PW-4 has stated that there was no Chabutra of soil in front of his house. At para 7 he has stated that he had heard the sound of firing in verandah. Having heard the sound of firing he proceeded from verandah to the room of his son (informant/PW-6) where his son was found in senseless condition. At para 8 PW-4 has stated that no person from nearby locality came to the place of occurrence after arrival of police. Only family members were present there. At para 11 PW-4 has given following description of the boundary of place of occurrence:-

North : House of Mantun Rai  
South : His barren land.  
East: House of Rahul Rai  
West: House of Upendra Rai.

17.2 At para 16 PW-4 has stated that he knows Nibha Devi, who is the wife of co-accused Rahul, who has filed the case against his son and there was a dispute on account of erection of pole in land. At para 18 he has stated that there was also dispute regarding loot of wheat between both parties.

17.3 From the evidence of PW-4, it is crystal clear that his views regarding place of occurrence is quite divergent as there was no Chabutra in front of his house and his statement regarding the boundary of place of occurrence is also quite inconsistent with the I.O./PW7. PW-4 has stated that there



was dispute between the accused persons and informant's side as wife of co-accused Rahul has filed case against informant regarding erection of pole on the land and there was also dispute regarding loot of wheat between the parties. Further the manner of occurrence as stated by PW-4 is totally inconsistent with the initial version of prosecution story and during cross examination he has stated that he was in verandah and after hearing the sound of firing, he proceeded to the room of his son and he found his son in unconscious condition. In this way, PW-4 is not eye witness of the occurrence as he was not available when the firing hit his son/informant. PW-4 has reason to adduce evidence against the accused persons and his statement is neither convincing nor carrying any weightage in the light of aforesaid facts and circumstances.

18. PW-5/ Anita Devi has stated that occurrence took place near about nine months ago at about 07:30 PM and at that time, she was cooking meal in her house. She has stated that Rahul, appellant/Bipin, Pampam, appellant/Manoj and Lalin Rai entered the house of Abinash/informant making firing. She has stated that Abinash was taking food on the bed and Rahul made fire upon Abinash which hit him on the left hand. PW-5 has pointed out that the reason behind the occurrence is that



appellant/Bipin fired bullet upon Ranju Devi three years ago and to compromise the said case, pressure was being made.

18.1 During cross examination, PW-5 at para 4 has stated that appellants and others after raising alarm and abusing came and then she reached the house of informant and saw that accused persons shot the informant. She has further stated that she found two women at the house of informant, one is PW-2/Pawan Devi and another is her daughter-in-law. She has stated at para 5 that in front of house of informant there was Chabutra of soil but she had not pointed out regarding said Chabutra to police. At para 6 she has deposed that she had stated before the police that she had seen the firing. She had also stated before the police that she was cooking meal and on hearing hulla as well as sound of firing she went to the house of Abinash/informant where she saw Abinash in injured condition.

18.2 From perusal of evidence of PW-5, manner of occurrence is totally divergent with initial version of prosecution story as PW-5 has stated that while the victim was taking food on bed, appellants along with other accused persons forcibly entered the house while making firing and Rahul made firing upon Abinash which hit him on the left hand. From perusal of evidence of PW-5 it is crystal clear that only two



women are present when she visited the house of the informant but from perusal of evidence of Pws 1, 2, 3 and 4, all are claiming to be eye witness of the occurrence which is quite inconsistent with the evidence of PW-5 that except two women i.e. PW-2 and her daughter-in-law, no one was present. In this way, other male prosecution witnesses are not eye witness of the occurrence though they are claiming to be the eye witness of the occurrence. Further PW-5 has also not pointed out the place of occurrence which is Chabutra to the police though PW-7/I.O. has clearly stated that Chabutra which is outside the house of the informant is the place of occurrence. In this way, her statement regarding manner of occurrence as well as place of occurrence is quite inconsistent with the initial version of prosecution story as well as the evidence of IO/PW-7. Her evidence is neither trustworthy nor convincing in the light of aforesaid facts and circumstances.

19. In the present case, the author of the injury report (doctor) has not been examined. Pragmatically and prudently, the doctor who prepared the injury report was required to enter the witness box during course of adducing evidence to prove the injuries of injured person. In absence of examination of doctor, said injury report is merely a formality



and nothing else.

20. In the present case, the informant who has initiated the story of prosecution by setting the fact into motion and in initial version of prosecution story the informant did not attribute the firing to any specific accused and merely alleged that the appellants and others collectively fired and were identified while fleeing but during course of adducing evidence before the court he materially improved the prosecution case by specifically alleging that co-accused Rahul Rai fired the shot which hit the informant causing injury to him. Further though in the evidence he claimed that occurrence was witnessed by his mother/ Pawan Devi, his father/Ghuran Rai, his cousin/ Karu Kumar @ Chintu and his aunt/ Ranju Devi and Anita Devi, no such fact finds mention in initial version of prosecution story. Further PW-5 has stated that when she went to the house of informant she found two ladies, one is Pawan Devi/ PW-2 and another is her daughter-in-law but no daughter-in-law has adduced evidence before the trial court. By virtue of evidence of PW-5, it is crystal clear that only one lady was present with the informant at the time of occurrence and other witnesses who have stated that they were present at the place of occurrence with the informant is quite divergent. PW-7/I.O. has clearly



stated that none of the witnesses has stated that occurrence took place within the house. In this way, the statement of other prosecution witnesses who have stated that occurrence took place inside the house is quite divergent with the statement of I.O. and on the point of place of occurrence, statement of other Pws are quite inconsistent with the I.O./PW-7. Further the manner of occurrence as stated by the informant is quite divergent with the I.O. as informant has stated that he was in his house when firing was made but I.O./PW-7 has stated that informant was lying on Chabutra where firing was made.

21. Apart from that, counsel of the appellants has raised a pertinent question that in absence of author of the injury report how the injury can be proved. Doctor is the most competent person to authenticate the injury report but in the present case, doctor has not been examined. From the evidence of prosecution witnesses, it is crystal clear that there was a dispute between the parties and it is quite obvious that prosecution has prepared a plan to frame false allegation in order to suit the prosecution case and how the informant improved his earlier version by stating that Rahul made firing which hit on the left hand of informant and same is absent from the initial version of prosecution story. Further, motive behind



the occurrence has already been alleged in the initial version of prosecution story and other prosecution witnesses have stated that there was dispute between both the parties and hence, false implication of the appellants and others cannot be denied in the present case. It is cardinal principle of criminal law that prosecution has to prove the case beyond reasonable doubt.

22. Keeping in view all the infirmities and discrepancies, I find the judgment of conviction and order of sentence passed by the concerned court are not justified and legal and same are fit to be set aside.

23. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and both the appeals stand allowed. The appellants are in custody, they are directed to be released forthwith, if not warranted in any other case.

24. The interlocutory application, if any, also stands disposed of.

25. Let a copy of this judgment be transmitted



to the Superintendent of the concerned jail for compliance and  
for record.

26. The records of this case be also returned to  
the concerned trial court forthwith.

**(Alok Kumar Pandey, J)**

shahzad/-

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