IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.308 of 2003

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1. Sarvadeo Giri S/O Ram Kirpal Giri R/O Vill.- Puchari,P.S- Baniapur,Dist-Saran
2. Lal Babu Giri S/O Ram Kripal Giri R/O Vill.- Puchari,P.S- Baniapur,Dist-Saran

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Mahesh Narayan Parbat, Sr, Adv.
Mr. Ved Prakash Shrivastava, Adv.
Mr. Abhay Kumar Singh, Adv.
For the State : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
Date : 16-01-2026

The present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been referred against the judgment and order of conviction and sentence dated 21.05.2003 passed by the learned court of the Presiding Officer, Fast Track Court No. 1, Saran at Chapra in Sessions Trial No. 217 of 1988, whereby and whereunder the appellant, Sarvdeo Giri has been convicted under Sections 326 read with 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') while appellant Lal Babu Giri has been convicted under Section 326 of the IPC and both have been sentenced to undergo RI for five years each.

2. The short facts of the case, as per the first information report, based on the fardbeyan of Baban Giri, P.W. 6, recorded on

14.02.1987 at 15:00 hours is that on 12.02.1987, his younger brother Krishna Giri (P.W.-1)and his nephew Birmanyu Giri were irrigating their wheat field from the canal water. At about 1:00 PM, when the informant went to the field to supervise the irrigation, he saw that the accused persons Kripal Giri, Sarvdeo Giri and Lal Babu Giri were already present and upon objection raised by them with regard to the irrigation of his field, a verbal altercation ensued between them. Accused Kripal Giri while exhorting to assault the informant inflicted a spade blow upon him hitting his right thumb as he tried to ward off the said blow by his hand. While the informant was trying to flee away, the accused Jairam Giri caught hold of him and accused Lal Babu Giri inflicted a spade blow on his head causing injury and after he fell down, accused Sarvdeo Giri assaulted on his back and his waist by means of Pash of spade and accused Lal Babu Giri hit on his right shoulder from the back side of the spade leading to injury. It has further been alleged that on alarm being raised by the informant, Uday Narayan Giri, Bhupeshwar Giri (P.W.4), Fulena Raut, Bharat Giri (P.W.2) came to the place of occurrence and saved him from further assault. The reason for this occurrence is said to be an old enmity between the parties with regard to land. The informant was thereafter brought

to the hospital for treatment and subsequently, on recovery the present fardbeyan was recorded.

3. On the basis of the above-mentioned fardbeyan, Baniyapur P.S. Case No. 15 of 1987 was instituted initially under Sections 341, 323, 325/34 of the IPC and subsequently Section 307 of the IPC was also added vide order dated 05.03.1987. After investigation, charge-sheet was submitted under Sections 307, 325, 342, 323/34 of the IPC on 22.05.1987 against the accused persons, cognizance was taken and the case was committed to the court of Sessions being numbered as Sessions Trial No. 217 of 1988 whereafter the charges were framed by the learned Trial Court against accused Lal Babu Giri under Section 307 of the IPC on 03.10.1994 and against accused Kripal Giri, Sarvdeo Giri and Jairam Giri jointly, under Sections 342 of the IPC as also under Section 307/34 of the IPC on 22.05.1987. On account of the death of appellant Kripal Giri and Jairam Giri their appeals stood abated and the present hearing of the appeal is confined to appellants Sarvdeo Giri and Lal Babu Giri. It is also clarified that there was no charge-sheet against appellant Lal Babu Giri and he was summoned as an accused under Section 319 Cr.P.C., as such, charges against him were framed separately.

4. The prosecution in order to substantiate its case, examined seven witnesses in its favour during trial, out of whom P.W. 1 Krishna Giri, P.W.2 Bharat Giri and P.W. 5 Suresh Giri are all family members of the informant who claim to be eye witnesses of the incident while P.W. 6 Baban Giri is the informant himself as well as the injured of the case. P.W. 3 Dharmnath Giri and P.W. 4 Bhupeshwar Giri are the two independent witnesses who have been declared hostile and have not supported the prosecution case while P.W. 7, Dr. Rabindra Nath Rai is the medical officer who examined the injuries of the injured informant.

5. After closing the prosecution evidence, the trial court recorded the statements of the appellants under Section 313 of the Cr.P.C. on 30-04-1998 enabling them to personally explain the circumstances appearing in the evidence against them, however, they denied the said charges and circumstances.

6. The learned Trial Judge, upon appreciation, analysis and scrutiny of the evidence adduced during trial, has found the appellants guilty of the offences and has sentenced them to imprisonment by its impugned judgment and order.

7. I have heard the arguments of the learned senior counsel Mr. Mahesh Narayan Parbat appearing for the appellants and Ms. Anita Kumari Singh learned APP for the state.

8. It has been argued on behalf of the appellants that there is a delay in lodging of the First Information Report inasmuch as while the occurrence is said to have taken place on 12.02.1987 at around 1:00 p.m., the fardbeyan was recorded on 14. 02.1987 at about 3:00 p.m. i.e. after a delay of two days while the formal FIR was instituted as late as on 25.02.1987 i.e. after a delay of 13 days which has not been explained by the prosecution by any reasonable or satisfactory explanation. On account of such unexplained and inordinate delay caused in lodging of the FIR, it has been contended that the same was lodged after due thought and deliberation, as such, the same is not a reliable piece of document. It has next been contended on behalf of the appellants that the prosecution case has been supported only by the witnesses who are the close family members and who can be brought within the ambit of interested witnesses in the background of the enmity existing between the family on account of land dispute. The learned senior counsel has also submitted that but for these interested witnesses, the only two independent witnesses P.Ws. 3 and 4, have both not supported the case of the prosecution, further

doubting its veracity. The medical evidence not being in tune with the oral allegations has also been urged as a ground for contending that the prosecution has not come up with the true picture of the case inasmuch as against the specific allegation of assault by spade, the opinion of the medical expert would reveal that the injures were in the nature of laceration, swelling etc. caused by hard and blunt substance. Further argument made on behalf of the appellants is that the Investigating Officer of this case has not been examined and his non-examination has caused serious prejudice to the defence as the defence has not been able to clearly bring out the contradictions in the statement of the witnesses. Further, non-examination of the Investigating Officer has also led to the fact that the place of occurrence has not been clearly established as no incriminating material including the weapons have been seized from the place of occurrence, in order to conclusively establish the same.

9. Per contra, learned APP for the State Ms. Anita Kumari Singh has submitted that P.Ws. 1, 2, 5 and 6 examined on behalf of the prosecution have supported the case of the prosecution as eye witnesses and the evidence of the informant Baban Giri, P.W. 6, being an injured witness, assumes further significance. She has further submitted that the witnesses being

merely related to each other would not affect their credibility and the medical evidence adduced in the present case, by and large, corroborates the ocular evidence inasmuch as the location and seat of injuries seem to match with the oral allegations of assault. It has also been submitted by her that since, at least, one of the injury suffered by the informant has been opined to be grievous in nature and that too on the vital part of the body by the use of dangerous weapon like spade, the conviction of the appellants as ordered by the impugned judgment is completely justified and the prosecution has been able to prove its case beyond all reasonable doubts.

10. I have minutely perused both the oral and the documentary evidence, besides hearing the learned counsel for the parties. Before proceeding further, it would be necessary to cursorily discussed the evidence on record.

11. P.W. 1 Krishna Giri who is the brother of the informant, claims to be an eye witness of the incident and has stated that the occurrence took place when he was irrigating his field. He has almost reiterated the story as narrated in the first information report, however, the allegation levelled on appellant lal babu giri is with regard to an assault on the head of the informant by means of spade due to which he fell down and he does not make any reference to any repetition of assault by

appellant Lal Babu Giri injuring him on the right shoulder and waist etc. He has rather denied knowledge in the cross examination in paragraph-2 of his deposition that the accused had lodged a case against him and his brother Kanhaiya Giri in the court of the Magistrate. Further, the statement of this witness also reveals that the appellant Lal Babu Giri had assaulted the informant from back side of the spade on the head which caused head injury to him. The deposition of this witness also discloses that the accused persons had fled away from the place of occurrence. The attention of this witness has been drawn to the statement made before the police under Section 161 of the Cr.P.C. The presence of witnesses Suresh Giri, Bhupeshwar Giri and Deo Nath Giri has also been alleged by P.W.-1. The witness has admitted that the informant is his real brother. With regard to the place of occurrence he has stated in paragraph-6 that there was water in the field and the wheat crops were standing in the field.

12. P.W. 2 Bharat Giri is also related to the informant and claims to have seen the occurrence as he was also working in his field at the relevant time and the field of the informant was at a distance one bigha. This witness has also reiterated the story as stated by P.W.-1 by specially stating that Lal Babu Giri had given a blow on the head of the informant from the back side of the spade,

while Sarvdeo Giri had also assaulted the informant by means of Hatha. He has admitted in paragraph-2 that he belongs to the family of the informant Baban Giri. From paragraph-6 of the deposition, it would appear that the accused persons had not fled away from the place of occurrence but they remained there for an hour while the villagers were also present at the place of occurrence. His attention has also been drawn to the statement given by him to the police under Section 161 of the Cr.P.C. P.W. 3, Dharmanath Giri and P.W. 4 Bhupeshwar Giri have both been declared hostile by the prosecution although these two witnesses had been projected as the independent witnesses to the occurrence.

13. Suresh Giri has been examined as P.W.-5 who also claims to be an eye witness of the occurrence by virtue of the fact that he was also engaged in his field doing irrigation and has narrated the entire story of verbal altercation between the parties with regard to irrigating the field whereafter the alleged incident is said to have taken place. In paragraph-2 of his deposition, he has specifically admitted that the informant is his cousin brother. He has stated in paragraph-5 of his deposition that the occurrence of assault had taken place before him and he was present at the place of occurrence on account of the fact that Bharat Giri P.W.2 had taken him alone to the field for the purpose of irrigating the field

on labour charges. The attention of this witness has been drawn to his earlier statement before the police under Section 161 of the Cr.P.C.

14. The prosecution has examined the informant Baban Giri as P.W. 6 and his evidence is almost a recital of the facts narrated by him in the fardbeyan and has also admitted in paragraph 4 of his evidence that there was a land dispute of the informant with the accused persons. He has also admitted that the accused persons had lodged a case against his brother kanhaiya giri and that a Title Suit bearing No. 67 of 1975 was pending. In the cross examination, this witness has stated that he was in a Railway service at Banaras and had come for holidays to his village between 08.01.1987 to 12.02.1987 and meanwhile the present occurrence happened on 12.02.1987. It would further appear from his evidence that there was no serious altercation with the accused persons at the time of the occurrence and initially there was only three accused persons and that it was Ram Kripal Giri who had first resorted to assault. The informant has stated in his evidence that as soon as he reached the Baniyapur hospital, he fell unconscious and was not conscious during the course of his treatment and has also stated that his brother Krishna Giri P.W. 1 remained in the hospital while others left. The attention of this

witness has also been drawn to his statement made under Section 161 of the Cr.P.C. in paragraph-15 of the deposition.

15. Dr. Rabindra Nath Rai, P.W. 7, had examined the injuries of the informant Baban Giri on 12.02.1987 and had noticed the following injuries on his person:

> "1. Lacerated wound 3/4''x 1/2"x bone deep on the left side of the head.
> There was profuse bleeding from the would and patient had intense headache and patient was vomiting.
> 2. Swelling 1 ¼" x 1" on the left side of the eyebrow with conjunctivial Haemotoma.
> 3. Swelling 1" x ½" on the left side of the nose with bleeding from the left side of the nose.
> 4. Huge swelling in between the thumb and index finger of the left hand with lacerated wound 1" x 1/3"x ¼" in between the thumb and index finger of the palm.
> 5. Swelling and abrasion 3"x1/2" on the back of the right shoulder joint.
> 6. Swelling 2 ¾"x1 ¼" on the right side of the buttock."

16. While the opinion of injury no. 1 was reserved for X-ray report, rest of the injuries were opined to be simple in nature and all injuries were said to be caused by hard and blunt substance with the additional observation that the said injuries may be caused due to the blunt portion of farsa. Subsequently, the injury no. 1 was found to be grievous in nature. In the cross examination, the doctor has stated that the blunt portion of the farsa is built of iron and there would be multiple fractures if the injured is assaulted by

the blunt portion of the farsa with force and velocity. In paragraph-6 of his deposition he has also stated that the injuries in question can be manufactured if one takes the risk of life.

Analysis and consideration

17. I have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the learned senior counsel for the appellants as well as learned APP for the State.

18. It is clear from the analysis of evidence that out of seven witnesses examined on behalf of the prosecution, P.Ws. 1, 2 and 5 seem to have supported the case of the prosecution and P.W. 6 is the informant himself who is also an injured witness. So far as the credibility of the witnesses is concerned, a perusal of their depositions would demonstrate that there are several inconsistencies in their statements on the point as to whether the injured was conscious or had lost his consciousness at the time he was taken to the hospital, inasmuch as while the informant who is the injured himself has made a specific statement that he had not lost his consciousness at the place of occurrence and it is only after he reached the hospital around 2:00 p.m that he became unconscious, the other witnesses have made different statements to

the effect that the informant after being assaulted, fell on the ground and immediately became unconscious. There is inconsistency in the statements of the witnesses even on the point of the informant/injured being taken to the hospital. While the evidence of P.W.1 would indicate that he was directly taken to Baniyapur Hospital, the evidence of the informant himself discloses that he was carried to the market area and upon not finding a good doctor, from there he was taken on Jeep to the Baniyapur Hospital. It does not stand to reason as to why no information was given to the police and no fardbeyan was recorded when the informant P.W. 6 was conscious while he was taken to the market and then to the hospital. This takes us to the argument advanced on behalf of the appellants that the First Informant Report has been lodged after an inordinate delay and no reasonable explanation has been tendered in this regard. The delay in recording of the fardbeyan is that of two days but the formal FIR came to be lodged after about 11 days after recording of the fardbeyan. This argument has been made on the basis of the records and upon going through the records, it is clear that while date of occurrence is 12.02.1987, the fardbeyan was recorded on 14.02.1987, while the formal FIR was lodged as late as on 25.02.1987. The delay caused has been long and substantial and it

is not a matter which can be casually overlooked, especially in the background of the fact that no explanation has been furnished for such an inordinate delay. The feeble explanation given by the prosecution is that since the informant himself was injured and not conscious, the same had led to a delay in recording of the fardbeyan. Such explanation does not appear to be convincing at all for the reason that there were several family members accompanying the informant as per the prosecution case itself who could have reported the said matter and yet the same was done only two days after the occurrence, for the reasons best known and the same makes the initial statement lose its spontaneity and leaves scope for due thought and deliberation. The law is also settled with regard to the relevance and significance of prompt lodging of an FIR and the same being sent to the court forthwith. In the present case, the very fact that the First Information Report has been instituted on 25.02.1987 upon a fardbeyan which was recorded on 14.02.1987 raises reasonable suspicion also on the fact as to whether the fardbeyan was recorded on the day as alleged or there is antedating of the fardbeyan itself. At this juncture, this Court would gainfully refer to the case of **Thulia Kali Vs. State of Tamil Nadu reported in (1972) 3 scc 393** wherein the object and significance of a prompt lodging of a First Information Report

with respect to commission of an offence has been emphasized for obtaining the correct picture and the earliest information regarding the circumstances in which the offence was committed and it has also been held that the delay in lodging the first information report quite often results in embellishments which is a creature of afterthought. Extract of paragraph-12 of the case of **Thulia Kali (supra)** is being quoted hereunder:

> *"12……..First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, step-son of the deceased, is also alleged to have arrived near the*

scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

19. In this connection, this Court may also refer to another judgment rendered by the Hon'ble Supreme Court in the case of **Nand Lal & Ors. Vs. State of Chhattisgarh reported in (2023) 10 SCC 470** where the importance of immediate lodging of an FIR has been discussed, especially in the backdrop when the parties are involved in a fight and are having inimical relations. Paragraph- 31 of the said judgment is being quoted hereunder:

*"**31.** As held by this Court in Ramesh Baburao [Ramesh Baburao Devaskar v. State of Maharashtra, (2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212] , the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case."*

20. It would be clear from the above-mentioned pronouncement of the Hon'ble Supreme Court that in a case where the parties are inimically disposed towards each other, there is a tendency to either falsely implicate or to over implicate a number of persons. The facts of the present case as discussed above seem to completely fall into the criteria of the First Information Report being viewed with suspicion as the same is hopelessly delayed and the prosecution has not cared to come up with any logical and reasonable explanation for the same.

21. The factum of delay in recording the fardbeyan and the registration of the First Information Report is coupled with the fact that there is an admitted enmity between the families of the informant and the appellants emerging out of a land dispute as has been admitted not only in the first information report but also by way of the deposition of the witnesses recorded during the trial. The informant P.W. 6 has stated in his cross examination that there exists cases between him and the appellants prior to the date of occurrence and while he has denied an earlier case lodged by the appellant Sarvdeo Giri upon him with regard to throwing of acid, he has accepted that a case has been filed against his brother Kanhaiya Giri. He also admits the existence of title suit bearing Title Suit No. 67 of 1975 between them and 144 Cr.P.C.

proceeding has also been admitted. Thus, the two factors of delay in FIR coupled with admitted enmity between the parties, has a direct bearing on the issue of credibility of witnesses.

22. The records of the case also reveal that the medical evidence adduced in the present case is not totally corroborative of the oral allegations despite the fact that the fardbeyan itself was lodged after two days and in the meantime the informant was subjected to medical examination on the date of occurrence i.e. on 12.02.1987 while the reporting of the said medical examination, giving finding on the injuries was also done after delay i.e on 14.02.1987 and it is also on the same day that the fardbeyan came to be recorded. As against the direct and specific allegation made in the first information report itself with regard to assault by means of spade on the head of the informant by Lal Babu Giri, the medical opinion as would appear from the evidence of the doctor p.w. 7 was that of all the injuries being caused by hard and blunt substance. It was never the initial case of the prosecution in the first information report that the blunt portion of the spade was used by appellant Lal Babu Giri on the head of the informant, however, the story with regard to using the blunt portion of the spade has been attempted to be introduced by the prosecution during the trial in its bid to match the opinion of the doctor. It would also appear

from the evidence of P.W. 7 as also upon perusal of the injury report itself which is Ext. 2 that while injury no. 1 suffered by the informant was reserved for an opinion upon X-ray of the said injury, the rest of the injuries being in the nature of swelling were recorded to be simple in nature and all of the injuries were said to be caused by hard and blunt substance. It would further appear from paragraph-2 of the evidence of the doctor, P.W.-7, that despite the injury of the victim being examined on 12. 02.1987, the reporting of the said injuries was done on 14.02.1987 upon police requisition and the advised X-ray was performed on 18.02.1987 i.e. 6 days after the occurrence and at least 4 days after the advice and as a result of the said X-ray, the injury no. 1 was opined to be grievous in nature. However, he has deposed that he did not specifically mention in the injury report that he had referred the injured for X-Ray examination. It has also been admitted that the supplementary report stating the nature of injury to be grievous was prepared on the basis of the X-ray report, however, neither the X-ray report nor the X-ray plate has been exhibited by the prosecution. The injury report rather demonstrates that the X-ray plate was with the informant himself as would appear from Ext. 2/1 which bears the signature of the informant with the specific statement that he is in possession of the X-ray plate. It is beyond

the comprehension of this Court as to why the X-ray plate or the X-ray report was not exhibited by the prosecution if they were very much in their possession. In absence of the X-ray report and plate, the finding on the nature of injury also becomes doubtful.

23. While considering the evidence, this Court also takes notice of the fact that for putting a question with regard to the delay caused in registration of the FIR as also the recording of the fardbeyan, corroding its authenticity, the examination of the Investigating Officer was extremely important, rather he would have been the most competent witness to be subjected to examination and cross-examination for eliciting relevant information. The non-examination of the Investigating Officer has indeed caused prejudice to the case of the defence as they have not been able to bring out the contradiction with regard to the statement of the prosecution witnesses made in the trial vis a vis the statement made before the Investigating Officer under Section 161 of the Cr.P.C. as it is the definite case of the defence that the prosecution witnesses have tried to improve upon the prosecution story and have also introduced new facts. In absence of the Investigating Officer, the place of occurrence has also not been properly established as there is neither the weapon that has been seized or exhibited nor any other objective evidence in the form of

blood stains etc. has been collected or produced by the prosecution in order to conclusively establish the place of occurrence. It would be apt to refer to the case of **Lahu Kamlakar Patil & Anr. Vs. State of Maharashtra reported in (2013) 6 SCC 417** dealing with the issue as to when the non-examination of the I.O. becomes fatal to the prosecution case. It would be relevant to quote paragraph-18 of the said judgment hereunder:

> *"**18.** Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to*

> *think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of Bihar [(2001) 6 SCC 407 : 2001 SCC (Cri) 1148] , Rattanlal v. State of J&K [(2007) 13 SCC 18 : (2009) 2 SCC (Cri) 349] and Ravishwar Manjhi v. State of Jharkhand [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50] , has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.*

24. It also needs to be considered that in a situation like the present one where the non-examination of the Investigating Officer has caused prejudice to the defence and the non-seizure of any objective evidence from the place of occurrence leading to the place of occurrence itself not being established, it was incumbent upon the prosecution to examine some independent witnesses who would have supported its case as the occurrence is said to have taken place in an open field which would be within view of others. It is also the case of the prosecution itself that the people had gathered on the incident of assault and yet only two independent witnesses P.W. 3 and P.W.-4 were put to examination by the prosecution and they too failed to stand in support of the case of the prosecution and were eventually declared hostile. In the

backdrop of the long standing enmity between the parties and existing title dispute and also in the wake of prior litigations between the parties, the non-examination and non-supporting of the prosecution case by the independent witnesses assumes significance.

25. The contention placed by the learned APP with regard to the informant himself being examined as an injured witness whose evidence would be treated at a much higher level of credibility also needs to be considered. There is no doubt about the fact that the testimony of an injured witness is accorded a special status and unless compelling reasons to doubt an injured witness exists, the statement of such witness cannot be discarded or brushed aside lightly as the same has a greater evidentiary value. However, when there are serious discrepancy in the version of the witnesses in the backdrop of the parties being at loggerheads, coupled with the inordinate delay in the FIR, medical evidence not corroborating the ocular allegations and also existence of other inconsistencies in material particulars, court has to be satisfied that such witness is a truthful witness and he has no reason whatsoever to falsely implicate the accused persons. This has been clearly laid down in the case of **Jainul Vs. The State of Bihar, 2025 (6) BLJ 130 (SC)**. The Hon'ble Supreme Court even in case of **Khema Vs.**

The State of Uttar Pradesh reported in (2023) 10 SCC 451 had considered the fact that there was serious discrepancies in the prosecution case despite the version of an injured witness being there on record and the accused persons had been given the benefit of doubt and eventually acquitted of the charges. In the case at hand also, there exists serious discrepancies touching the very core of the case to the extent that the genuineness of the initiation of the prosecution done by the FIR itself is under suspicion. Merely on the ground of the witness being injured, the testimony of such a witness cannot be considered to be free from shadow of reasonable doubt as the statement of such a witness is neither supported by the testimony of independent witness nor corroborated fully by the medical evidence coupled with the fact that the FIR itself has been lodged after due thought and deliberation, being inordinately delayed.

26. In the background of such facts, the defence has been able to raise a doubt in the mind of this Court over the genuineness of the entire prosecution as against the appellants and to even ponder as to what had prevented or deterred the other witnesses who claimed to have been present at the place of occurrence and even being the family members of the informant, to lodge a prompt FIR in order to rule out the possibilities of

contention of false contents and embellishments in the wake of the same being lodged after due thought and deliberation in order to falsely implicate the appellants.

27. In a criminal case, the court has a bounden duty to ensure that the facts and evidence adduced by the prosecution prove its case beyond reasonable doubts. The phrase ‘may be true’ signifies a possibility or uncertainty, while ‘must be true’ indicates a certainty of facts. There is a long mental distance between ‘may be true’ or ‘must be true’ which is to be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before an accused can be condemned to be a convict and this long distance does not seem to have been traversed in the facts of the instant case. There are several loopholes in the prosecution case which cannot be overlooked and in the background of the infirmities of the prosecution case, the appellants are entitled to benefit of doubt.

28. Thus, taking an overall perspective of the entire case emerging out of the totality of facts and circumstances, I find that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubt, hence it is a fit case of extending the benefit of doubt to the appellants.

29. Accordingly, the finding of conviction recorded by the trial court, in my considered opinion, is not sustainable and requires interference. Therefore, the judgment of conviction and order of sentence dated 21.05.2003 passed by the learned court of the Presiding Officer, Fast Track Court No. 1, Saran at Chapra in Sessions Trial No. 217 of 1988 (arising out of Baniyapur P.S. Case No. 15 of 1987) is hereby set aside. The appellants are already on bail and hence, they would be discharged of the liability of their bail bonds, if not required in any other case.

30. Accordingly, the present appeal stands allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.01.2026
Transmission Date	28.01.2026