

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.660 of 2009

Sk. Quaiyum @ Miyan son of Late Sk. Aiyub Resident of village- Mahua
Bhusa, Ps- Gaunaha, Dist- West Champaran

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Ms. Kriti Kumari, Adv. (Amicus Curiae)
For the State	:	Mr. Anita Kumari Singh, APP
For the Informant	:	Mr. Rajdeep Kumar, Adv. Mr. Ram Kishun Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 16-01-2026

None appears on behalf of the appellant. On previous occasion i.e. 08.07.2025 also, no one had appeared on behalf of the appellant. Learned Additional Public Prosecutor for the State and learned counsel for the informant are present.

2. It is noted that the matter is pending consideration for about 16 years.

3. It has been requested and *Ms. Kriti Kumari*, learned counsel, has shown her willingness to assist as *Amicus Curiae* in the present matter.

4. Accordingly, learned counsel *Ms. Kriti Kumari*, has been appointed as *Amicus Curiae* in the present matter.

5. Heard *Ms. Kriti Kumari*, learned *Amicus Curiae* appearing for the appellant, learned Additional Public



Prosecutor for the State and learned counsel for the informant.

6. The present appeal is directed against the judgment of conviction dated 05.08.2009 and order of sentence dated 12.08.2009 passed by learned 2nd Additional Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 173 of 2008, arising out of Gaunaha P.S. Case No. 48 of 2007 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 307, 324, 452 of the Indian Penal Code and has been sentenced to undergo R.I. for five years along with fine of Rs. 3,000/- under Section 307 of the IPC and in default of payment of fine, appellant has to undergo further simple imprisonment of three months. The appellant has further been sentenced to undergo R.I. for three years along with fine of Rs. 2,000/- under Section 452 of the IPC and in default of payment of fine, appellant has to undergo further simple imprisonment of two months. However, no sentence order has been passed under Section 324 of the IPC.

7. The informant gave his fardbeyan on 17.10.2007 to A.S.I. of Shikarpur Police Station alleging therein that a week ago his pattidar Quaiyum (appellant) was quarreling with his younger brother/Sheikh Bhutto and informant pacified the said quarrel and on account of said reason, appellant was threatening



the informant of dire consequences. It is further alleged that on 17.10.2007 the informant after taking meal was sleeping in a hut near the mosque with his elder brother/ Sheikh Toukid after covering mosquito net and his father Sk. Ejaz Ahmad was sleeping in the adjacent hut and Atikur Rahman was sleeping on verandah. Suddenly at 12.30 AM, informant was attacked by means of sharp edged weapon on his face including nose upon which the informant awoke and flashed torch light and found the appellant, who was standing having *khand* in his hand. The informant raised alarm upon which his elder brother/ Sk. Toukid/PW-1, father/Sheikh Ezaz Ahmad/PW-2 and Atikur Rahman/PW-3 came. Thereafter, the appellant fled away having *khand* in his hand but while fleeing away the appellant was identified by all present there in the light of torch. The informant claims that due to previous threat, the appellant assaulted the informant by means of sharp edged *khand* with intention to kill.

8. On the basis of fardbeyan given by the informant/PW-4, Gaunaha P.S. Case No. 48 of 2007 dated 23.10.2007 was registered under Sections 452, 324 of the IPC and later on Section 307 of the IPC was added. Routine investigation followed. Statement of witnesses came to be



recorded and on the completion of investigation, charge sheet has been submitted against the appellant under Section 452, 324, 307 of the IPC. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant under Sections 307, 324, 452 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

9. In order to bring home guilt of accused person/appellant, prosecution has examined altogether six witnesses. PW-1 Toukit Alam, PW-2 Ejaz Ahmad, PW-3 Sk. Atikur Rahman, PW-4 Ziyauddin Alam (Informant) PW-5 Dr. Arun Kumar and PW-6 Jisu Murmu (I.O. of the case).

10. Prosecution has relied upon following documentary evidence on record:-

Ext. 1- signature of Ejaz Ahmad on fardbeyan.

Ext. 2- signature of informant on fardbeyan

Ext. 3 to 3/2- injury report prepared by doctor.

11. Defence has not produced any oral or documentary evidence. However, defence of the appellant 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.

12. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the second paragraph of the judgment.

13. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned Amicus Curiae submits that judgment of conviction and order of sentence is bad in law and facts. Learned Amicus Curiae further submits that the learned trial court failed to appreciate that all the prosecution witnesses are close relative of the informant. Learned Amicus Curiae further submits that story of the appellant having seen by the witnesses running away in torch light does not appear to be trustworthy. Learned Amicus Curiae further submits that the trial court ought to have appreciated that appellant has been falsely implicated in this case due to previous dispute. Learned Amicus Curiae further submits that Investigating Officer has not conducted the investigation in proper manner. Learned Amicus Curiae has submitted that in initial version of prosecution story, it is stated that the informant was assaulted by the appellant upon his face including nose and after that informant awoke and used the light of torch and saw appellant who was standing with Khand but



during adducing evidence before the court the informant/PW4 has stated that he used the light of torch prior to assault. Learned Amicus Curiae further submits that in the present case, source of identification is light of torch which helps in identifying the appellant but no seizure of torch has been made. It has been highlighted by the learned Amicus Curiae that there was dispute between appellant and informant prior to the said occurrence. Learned Amicus Curiae further submitted that the very statement of PWs-1 and 2 are quite contradictory with the statement of PW-6/I.O. In the light of aforesaid facts and circumstances of the case, impugned judgment of conviction and order of sentence are not justified and legal and same are fit to be set aside.

14. Learned APP for the State and learned counsel for the informant have submitted that informant, who has sustained injury, has supported the story of prosecution. He further submits that in the present case doctor has been examined and he has also supported the story of prosecution and other witnesses have also supported the version of prosecution story. Learned APP further submitted that after going through the material available on record, the trial court has passed the judgment of conviction and order of sentence and



the same is justified and legal and hence, no interference is needed.

15. The question which arises for consideration is:-

"Whether the appellant has committed the offence punishable under Section 307, 324, 452 of the IPC in the light of given facts and circumstances of the case or not ?"

16. 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.

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

18. PW-4/ Ziyauddin Alam is informant as well as victim of the present case. At para 1 he has stated that occurrence took place on 17.10.2007 at 12:30 AM and he as well as his brother/Toukeer Alam was sleeping in the hut. He has further stated that at 12:30 AM, appellant having armed with khand came and opened the *chachra* due to which he awoke and flashed the torch upon which appellant stopped for a moment with khand and attacked as a result of which he sustained injury on face near the nose. Thereafter, the informant raised alarm upon which Atikur Rahman/PW-3 and Ejaz Ahmad/PW-2 came



and they helped the victim and took him to Narkatiyaganj Government Hospital where he was treated. During cross examination PW-4 has stated that he identified the appellant in the light of torch. He has also stated that when the appellant assaulted him, he raised alarm and also flashed the torch. He has stated that torch, pillow and bedsheet were stained with blood. He has also stated that he did not make effort to catch hold of the appellant on account of fear of weapon. There was blood stain in shirt and when his brother tried to help him, he was also besmeared with blood.

18.1 The statement of PW-4 is quite divergent regarding the manner of occurrence as in initial version of prosecution story, the informant/PW-4 has stated that when informant was assaulted on his face including nose by means of sharp edged weapon, he awoke and flashed the torch light and found the appellant who was standing with Khand in his hand but during course of adducing evidence the informant, who is the star witness of this case and also sustained injury in the alleged occurrence, has improved his statement and stated that appellant having armed with khand came and opened the chachra upon which he awoke and flashed the torch upon which appellant stopped for a moment with khand and attacked as a



result of which he sustained injury on face near the nose and on raising alarm, all the witnesses came. From the statement of PW-4, it is evident that when the occurrence took place, he raised alarm upon which PW-3 Sk. Atikur Rahman and PW-2 Ejaz Ahmad came. In this way, as per statement of informant/PW-4, other prosecution witnesses are not eye witness of the alleged occurrence. Apart from that, the source of light is the most important factor to identify the appellant and on the point of source of light, the statement of PW-4 in initial version of prosecution story is quite divergent with the statement adduced before the court as in initial version of prosecution story informant used the light of torch after being assaulted but during course of adducing evidence, he has stated that he used the light of torch prior to assault. In both ways, the statement of PW-4 is quite divergent and same is not trustworthy.

19. PW-6/ Jissu Murmu has stated that on 17.10.2007 he was posted at Gaunaha Police Station and on 23.10.2007 he took charge of investigation of Gaunaha P.S. Case No. 48 of 2007. He has stated that during course of investigation he recorded the re-statement of informant and inspected the place of occurrence. The place of occurrence is the



thatched house of informant situated at Village Mahua Bhuj. He has further stated that he recorded the statement of Ejaz Ahmad, Sheikh Toukit and Sheikh Atiur Rahman. He obtained the injury report of injured and submitted charge sheet in the court.

19.1 During cross examination, PW-6/I.O. has stated that Fardbeyan was received from Narkatiyaganj Thana and fardbeyan was recorded by S.I. Samendra Prakash Singh. He has further stated that he has not recorded the statement of chowkidar who used to take daily diary to Superintendent of Police. He has not recorded the statement of officer who has recorded the fardbeyan. He has not mentioned the description of injury of the injured in the case diary. He recorded the statement of injured in Mahua Bhuj. He has not recorded the statement of witnesses of boundary of place of occurrence. He has stated that blood was not fallen on the earth and he did not seize blood stained mosquito net and bed sheet. He has not seized any weapon from the house of accused. He has also stated that there was land dispute between appellant and informant but he has not conducted the investigation on the said point. He recorded the statement of injured after one week of the occurrence.

20. PW-5/ Dr. Arun Kumar has stated that on 17.10.2007 he was posted P.H.C. Narkatiaganj as Medical



officer and on the same day, he examined Sk. Jiyauddin and found following injuries on his body:-

i. Incised wound on the bridge of nose and left side of cheek, size 4" x 1/2" x 1/2".

ii. Broken tooth on left side.

Opinion was reserved till receipt of report of MJK Hospital, Bettiah. Injury no. 1 is caused by sharp object and injury no. 2 is caused by hard blunt substance. Fracture of nasal bone was found in X-ray, which is grievous in nature. Other injuries are simple in nature.

21. PW-1/ Toukit Alam has stated that occurrence took place on 17.10.2007 at 12:30 AM. and at that time he was sleeping in his house and on the rattling sound of *Chachra*, he awoke and flashed torch and saw that appellant assaulted on the neck of his brother Jiyauddin (Informant) by means of *khand* which hit on the nose and tooth. He further stated that appellant was quarreling with his brother and informant pacified the matter upon which the appellant threatened the informant of dire consequences.

21.1 During cross examination, at para 2 PW-1 has stated that his brother raised alarm that he sustained injury and at that time the appellant was standing there. He further stated that though he raised alarm but did not make effort to catch the appellant. Blood stain was found on the bed, bed-sheet and



floor. At para 3 he has stated that after one week of the occurrence Daroga Ji came to the village and at that time he was in his house. He has stated that he handed over mosquito net and bed sheet to Daroga Ji and seizure list was made.

21.2 From perusal of evidence of PW-1, it is clear that though he is claiming to be an eye witness of the alleged occurrence but the statement of PW-4/ informant clearly denotes that PW-1 is not eye witness of the occurrence as when informant raised alarm after having sustained injury, only PW-2 and PW-3 came. Further, PW-1 has stated that he handed over mosquito net and bed sheet to Daroga Ji but the said statement is quite divergent from PW-6/I.O. who has stated that he did not seize blood stained mosquito net and bed sheet. On the point of seizure list, the statement of PW-1 is quite divergent with the PW-6/I.O. In the light of aforesaid facts, his evidence is neither convincing nor trustworthy.

22. PW-2/Ejaz Ahmad has stated that occurrence took place on 17.10.2007 at 12:30 AM and at that time he was sleeping in his house. He has stated that on the noise of his son Sk. Ziyauddin, he awoke and proceeded to the hut with torch where his son was sleeping and saw the appellant having blood stained khand in hand and blood stain was also found on his



body. He has further stated that he went near his son and found him in injured condition and his face was cut by means of khand. Reason behind the occurrence as stated by PW-2 is that one week's ago appellant and his younger brother had quarreled and his son/informant had pacified the matter upon which the appellant had threatened the informant of dire consequences.

22.1 During cross examination, at para-2 PW-2 has stated that blood stain was found on floor, mosquito net and bed sheet and same were shown to the police and police made seizure list of the said articles and seizure list was also made blood stained clothe. PW-2 has specifically stated that his son had sustained one injury but he had not seen the appellant assaulting the victim/informant. He has also stated that his son stated that appellant was escaping by assaulting him and on account of fear of weapon, he did not catch hold of the appellant.

22.2 From perusal of statement of PW-2, it is crystal clear that he has not seen the appellant assaulting the victim/informant. Further, PW-2 has stated that blood stain was found on floor, mosquito net, bed sheet and clothe and police made seizure list of the said articles but the said statement is quite divergent from the statement of PW-6/I.O. In this way, his



statement is also not trustworthy.

23. PW-3/ Sk. Atikur Rahman has stated that occurrence took place on 17.10.2007 at 12:30 AM and at that time he was sleeping at his verandah. He has stated that on raising alarm by Ziyauddin, he came with torch and went near the hut of Ziyauddin and saw the appellant who was having blood stained *khand* and blood stain was also found on the body of appellant and appellant fled away. Thereafter, he saw Ziyauddin/informant who sustained injury on the nose and nearby part. Reason behind the alleged occurrence as stated by PW-3 is that appellant and his brother had quarreled and informant pacified the matter upon which appellant threatened the informant of dire consequences.

23.1 During cross examination, PW-3 at para 2 has stated that victim told him that appellant after assaulting went away but PW-3 had not seen the appellant assaulting the victim. In this way, PW-3 is not eye witness of the occurrence.

24. From the analysis of evidence of prosecution witnesses, it is clear that in initial version of prosecution story the informant/PW4 has stated that in light of torch the appellant was identified by him (PW-4) as well as Sk. Taukeer Alam/PW-1, Sk. Ejaz Ahmad/ PW-2 and Sk. Atikur Rahman/PW-3 but



alleged source of light was neither seized by the I.O./PW6 nor produced during trial, thereby rendering the very basis of identification doubtful and unclear. Furthermore, PW-1 has stated that mosquito net and bedsheet were handed over to police and seizure list was made. PW-2 has stated that blood stained bed sheet and mosquito net were shown to police and police made seizure list of said articles. PW-2 has also stated that police made seizure list of blood stained clothe but the aforesaid statements of PWs-1 and 2 are quite contradictory with the statement of PW-6/Investigating Officer, who has stated that blood stained mosquito net and bed-sheet was not seized by him. Furthermore, the statement of I.O. on several aspects of investigation is full of infirmities and discrepancies. He has not made any investigation regarding the dispute between the appellant and informant. He has not assigned any reason as to why the statement of victim was recorded one week after the occurrence. PW-5/ doctor has found one fracture of nasal bone which is grievous in nature and others are simple in nature. Further, it is also admitted by the prosecution witnesses that there is quarrel between appellant and his brother and informant had pacified the said quarrel and I.O. has also admitted that there is dispute between the parties though he has



not made investigation on the said score. So, there is reason to falsely implicate the appellant in the said occurrence. The source of identification which is light of torch is in question and on the point of use of torch light, the statement of PW-4/informant is quite divergent as in initial version of prosecution story, the informant has stated that he was assaulted by means of sharp edged weapon upon face and nose upon which he awoke and used the torch light and found the appellant having *khand* in his hand but during adducing evidence before the court, the informant/PW4 has stated that prior to assault, he flashed torch light. Furthermore, from the statement of PW-2 it is clear that he reached at the place of occurrence on the noise of his son/victim and proceeded to hut with a torch and he found his son was sleeping and appellant was having blood stained *khand* in his hand. PW-2 himself has not admitted that he has seen the occurrence rather he has stated that he has seen the appellant. In initial version of prosecution story, it is stated that after raising alarm by informant, PWs-1, 2 and 3 came and appellant fled away but he was identified in the light of torch while escaping. In this way, from initial version of prosecution story, PWs-1, 2 and 3 saw the appellant in running condition in the light of torch and none of the aforesaid witnesses has seen the appellant at the



place of occurrence while assaulting the informant. Further, pragmatically and prudently, it is inconceivable that a person who sustained injury in dead silence of night was in a position to exercise the option of torch light to identify the person who assaulted him.

25. PW-4 is informant as well as victim of the case. His statement is quite inconsistent regarding manner of occurrence and defence has given suggestion that on account of enmity with the appellant, he has been falsely implicated in the present case and I.O./PW-6 has clearly stated that on the point of enmity, he has not made any investigation and the very duty of the I.O./PW-6 suffers from infirmities. The I.O. has not done investigation in a fair manner. The very crux of the matter is that the occurrence took place in midnight and appellant is agnate. Motive behind the occurrence has also been disclosed by the prosecution witnesses. It is also not disputed that there is dispute between the appellant and informant's side and the I.O./PW-6 has also admitted that there is land dispute between the appellant and informant's side. Further, the defence has also suggested that on account of enmity, appellant has been falsely implicated in the present case. While going through the material available on record source of light which is potent factor to



identify the appellant is in question and the said source of light has not been seized and no seizure list has been produced. The statement of victim/informant on the point of using torch light is quite contradictory and pragmatically and prudently it is unfathomable that when a person was assaulted whether he was in a position to use the torch light to identify the accused/appellant. Furthermore, the most important factor to identify the appellant is light of torch and source of light is proof of identification, in case occurrence has taken place in darkness of night. Significantly, the alleged source of light was neither seized by the I.O./PW-6 nor produced during trial, thereby rendering the very basis of identification doubtful and unclear. The very statement of informant on the point of using torch light is quite divergent as in initial version he flashed torch light after having sustained injury but during adducing evidence before the court he has stated that he flashed torch light prior to assault. The Fardbeyan clearly indicates that occurrence took place on 17.10.2007 and FIR lodged on 23.10.2007 and there is no plausible explanation regarding the said delay in lodging the FIR. In this way, the needle of doubt persists upon the initial version of prosecution story, thereby rendering the prosecution case doubtful. It is cardinal principal of criminal law that the



prosecution has to prove the case beyond reasonable doubt. The contention of learned Amicus Curiae is quite convincing in the light of aforesaid facts and circumstances of the case.

26. On all counts from the analysis of evidence of prosecution witnesses as well as material available on record, I find that the prosecution has failed to prove its case beyond reasonable doubt.

27. 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 this appeal stands allowed. Appellant is on bail. He is discharged from the liabilities of bail bonds.

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

29. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

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



31. Before parting with the judgment, I appreciate the legal assistance rendered by *Ms. Kriti Kumari*, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (rupees five thousand) to *Ms. Kriti Kumari*, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by her, within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23.01.2026
Transmission Date	23.01.2026

