

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.87 of 2014**

Arising Out of PS. Case No.-1 Year-2008 Thana- KUChAIKOTE District- Gopalganj

1. Mofil Sah, S/O Late Bhoj Sah, Resident of Village- Madhomath, P.S.- Kuchaikote, District- Gopalganj
2. Bishwamitra Sah, S/O Late Bhoj Sah Resident of Village- Madhomath, P.S.- Kuchaikote, District- Gopalganj
3. Pintu Sah, S/O Mofil Sah
4. Pradip Sah, S/O Bishwamitra Sah, All Resident of Village- Madhomath, P.S.- Kuchaikote, District- Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Harendra Prasad Singh, Adv.

Mr. Adish Raj Singh, Adv.

For the Respondent/s : Mr. Syed Ashfaque Ahmand, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 05-02-2026

The instant appeal has been preferred by the appellants against the judgment of conviction dated 21.01.2014 and the order of sentence dated 27.01.2014 passed by the Court of the learned Additional District & Sessions Judge-IV, Gopalganj, in Sessions Trial No. 290 of 2009/91 of 2011 (arising out of Kuchaikote P.S. Case No. 01 of 2008), whereby and whereunder the appellants have been convicted for the offences punishable under Sections 341 and 307 read with Section 34 of the Indian Penal Code (in short, "IPC"). The appellants have been sentenced to undergo rigorous



imprisonment for one month for the offence punishable under Section 341 read with Section 34 of the IPC and to undergo rigorous imprisonment for three years with a fine of Rs. 5,000/- for the offence punishable under Section 307 read with Section 34 of the IPC. In default of payment of fine, they have been directed to undergo one month's imprisonment additionally. Both the sentences of imprisonment have been directed to run concurrently by the trial court.

Prosecution Story:-

2. The substance of the prosecution story, as appearing from the FIR, is as follows:

As per the informant, on 25.12.2007 at about 2:00 P.M., he was fencing and repairing his private school near *Bathan*, situated to the east of his village. At that time, the appellants, namely, Mofil Sah, Bishwamitra Sah, Pintu Sah, and Pradip Sah, equipped with *farsa*, *tangi*, *lathi*, and iron rod, came and surrounded him and started assaulting him. The appellant Mofil Sah inflicted a *farsa* blow upon him, which hit his head, resulting in a cut injury and bleeding. On account of that assault, he fell down, and thereafter the accused/appellant Bishwamitra Sah inflicted a *tangi* blow, which hit the ankle of his right leg. After that, upon hearing hulla, his father Binda Sah came to



save him, but he was also assaulted by the appellant Pintu Sah with an iron rod, resulting in injury to him. Thereafter, all the remaining accused persons assaulted him and his father with *lathi* and iron rod. As per the informant, on account of the assault, his father sustained injuries, and by then several villagers gathered and saved them.

2.1. The informant, Saheb Lal Sah (PW-6), recorded his *fardebayan* at Sadar Hospital, Gopalganj, on the same day of the alleged occurrence at 16:15 hours. The same was recorded by Sub-Inspector A.K. Singh, posted at Town Police Station, Gopalganj. On that basis, the formal FIR bearing Kuchaikote P.S. Case No. 01 of 2008 was registered for the offences punishable under Sections 341, 323, and 307 read with Section 34 of the IPC, which set the criminal law in motion, and the investigation was started.

3. After completion of the investigation, the police submitted a charge-sheet against all the named accused persons, who are the appellants herein, for the same offences as mentioned in the FIR. After taking cognizance, the concerned Magistrate, finding the case to be triable by the Court of Sessions, committed the same to the Sessions Court.

4. The appellants were charged only for the



offences punishable under Sections 341 and 307 read with Section 34 of the IPC. The charges were read over and explained to the appellants by the trial court, to which they pleaded not guilty and claimed to be tried.

5. During the trial, in ocular evidence the prosecution examined the following eight prosecution witnesses :-

PW-1	Bhagawat Ram	A relative of both the parties
PW-2	Paspati Devi	A relative of the prosecution party and claimed herself as an eyewitness
PW-3	Binda Sah	Injured witness of the prosecution and father of the informant
PW-4	Radha Devi	A relative of the prosecution party and claimed herself as an eyewitness
PW-5	Anup Kumar Soni	A relative of the prosecution party and claimed himself as an eyewitness
PW-6	Saheb Lal Sah	The informant
PW-7	Dr. Raisul Azam	The Doctor who medically examined the injured persons
PW-8	Kanhaiya Sah	A formal witness

6. In documentary evidence, the prosecution proved and exhibited the following documents, which are as under :-

Ext-1	The signature of the informant on the fardbeyan
Ext-2	The injury report of Saheb Lal Sah (informant)
Ext-2/1	The injury report of Binda Sah

7. After completion of the prosecution evidence, the statements of the appellants were recorded by the trial court, giving them an opportunity to explain all the material circumstances appearing against them from the prosecution evidence, which were denied by them. While recording their



statements, the appellants claimed themselves to be innocent; however, the appellant Mofil Sah did not take any specific defence in his statement. Though the appellant Bishwamitra Sah took the specific defence that he had been falsely implicated, the appellant Pintu Sah took the plea that there was a counter case, and the appellant Pradip Sah took the plea that there was a land dispute between the parties, for which there was also litigation.

8. The appellants did not give any ocular evidence in their defence, though they produced and exhibited the following documents in their defence :-

Ext-A	The certified copy of the FIR pertaining to Kuchaikote P.S. Case No. 216 of 2007
Ext-B	The certified copy of the chargesheet submitted in connection with Kuchaikote P.S. Case No. 216 of 2007
Ext-C	The certified copy of the plaint of Title Suit No. 489/2007 running in between both the parties.
Ext-A/1	The certified copy of the FIR pertaining to Kuchaikote P.S. Case No. 215 of 2007
Ext-B/1	The certified copy of the chargesheet submitted in connection with Kuchaikote P.S. Case No. 215 of 2007
Ext-D	The deposition's copy of one Rita Kumari, daughter of the appellant Bishwamitra Sah, recorded in Sessions Trial No. 24/2010

Submissions on behalf of the appellants:

9. Mr. Harendra Prasad Singh, learned counsel appearing for the appellants, has argued that all the prosecution witnesses, except the doctor (PW-7) and the formal witness (PW-8), are relatives of the prosecution party and were highly



interested in convicting the appellants on account of longstanding enmity existing between both the parties due to a civil dispute. In this regard, sufficient documentary evidence by way of defence evidence was produced before the trial court by the appellants, but the same was not considered in the right perspective by the trial court. As per the evidence of the material witnesses of the prosecution, 10–15 villagers, who were independent persons, gathered at the time of commission of the last part of the occurrence, but none of them was examined as a witness by the prosecution.

9.1. Learned counsel further submits that, as per the allegation made in the FIR, appellant Mofil Sah inflicted a farsa blow on the informant, resulting in a cut injury on his head, but on the scalp of the informant only an abrasion was found by PW-7, which falsifies the allegation of use of such a fatal weapon, i.e., *farsa*. Though the informant sustained one sharp cut injury on his right leg but the same was opined to be simple in nature and not dangerous to life. However, both the said injuries of the informant do not support the manner of assault as alleged in the fardbeyan.

9.2. As far as the injured Binda Sah is concerned, on his person only two simple injuries in the nature of scratches



were found, whereas, as per the allegation, the appellants, being four in number, assaulted him and the informant by means of farsa, tangi, lathi, and iron rod, which does not get corroboration from the nature of the injuries of Binda Sah and also falsifies the manner of assault as revealed by the informant in his fardbeyan. It has been further submitted that, as per the prosecution, the informant recorded his fardbeyan on 25.12.2007 at 16:15 hours at Sadar Hospital, Gopalganj, but the formal FIR was registered on 03.01.2008 after a delay of nine days, regarding which no explanation was given by the prosecution before the trial court. Further, the investigating officer was not examined, so the appellants were deprived of their valuable right to cross-examine the investigating officer regarding the said inordinate delay of nine days in registration of the formal FIR, which casts a serious doubt on the credibility of the FIR.

9.3. Learned counsel has further argued that, in fact, the prosecution party badly assaulted appellant Bishwamitra Sah, for which Kuchaikote P.S. Case No. 216 of 2007 was registered on the same day of the alleged occurrence by recording the fardbeyan at the Primary Health Centre, Kuchaikote, Gopalganj. In the said case, the informant of the present case, his father, and others were charge-sheeted for the



major offence under Section 307 of the IPC and other offences. A copy of the charge-sheet was filed before the trial court as Exhibit-B.

9.4. Lastly, learned counsel has submitted that in the prosecution story described in the fardbeyan of the informant, the alleged occurrence was shown in a manner different from the actual occurrence, and the real story was concealed by the informant. A false story was projected to implicate the appellants with false allegations with an intention to create pressure upon them on account of the civil dispute pending between the parties.

Submissions made on behalf of the State:-

10. Learned APP appearing for the State has submitted that the testimonies of PW-1 and PW-2 clearly show that they were eyewitnesses to the alleged occurrence, and the relevant part of the occurrence was supported by them in their examination-in-chief. Both remained consistent in their stand during cross-examination with regard to the relevant facts of the prosecution story narrated by them. PW-3, the father of the informant and an injured witness, also supported the prosecution story, and the allegation of assault made by the informant gets corroboration from the injury reports of this witness and the



informant.

10.1. From the perusal of the injury report of the informant, it is clearly evident that a sharp-edged weapon was used in assaulting the informant, which corroborates the allegation of use of tangi in the assault. As far as the motive of the appellants in assaulting the informant and his father is concerned, the defence taken by the appellants itself shows that there was a civil dispute between the parties.

10.2. So far as the applicability of Section 307 of the IPC is concerned, appellant Mofil Sah inflicted a farsa blow on the head of the informant, and though the same resulted in a simple injury, the intention of this appellant was to kill the informant, which is sufficient to attract the offence under Section 307 of the IPC. The trial court rightly convicted him for the said offence and convicted the other appellants with the aid of Section 34 of the IPC.

10.3. Learned APP has further submitted that the non-examination of the investigating officer was not fatal to the prosecution case, as the testimonies of prosecution witnesses (PW-1 to PW-6) were sufficient to establish the place of occurrence, which was not disputed by the accused persons before the trial court. For proving the injuries sustained by the



prosecution party, the medical evidence given by PW-7 was sufficient.

10.4. The defence taken by the appellants, particularly regarding the alleged assault on appellant Bishwamitra Sah by the prosecution party on the alleged day and time, is not believable and remained unproved before the trial court; hence, no reliance can be placed upon the defence version. As such, there is no merit in this appeal and the same is liable to be rejected.

Consideration and Analysis:

11. I have heard both sides, perused the impugned judgment and the evidence adduced by both sides available on the record of the trial court, and also taken into account the statements of the appellants. As per the prosecution story, all the appellants were equipped with farsa, tangi, lathi, and iron rod at the time of commission of the alleged occurrence, and appellant Mofil Sah inflicted a farsa blow on the informant, which hit his head resulting in a bleeding injury.

11.1. A farsa is considered to be a sharp-edged weapon; if it is used from the sharp side, it may cause a sharp injury, but if it is used from the blunt side, it may cause a blunt injury. However, in view of the nature of this weapon, the



injury, whether sharp or blunt, must be of such nature as to indicate the use of a farsa. As per the injury report of the informant (Ext-2), proved by the doctor (PW-7), only one abrasion measuring $\frac{1}{2}$ " \times $\frac{1}{3}$ " was found on the scalp of the informant, which does not support the use of the alleged farsa by appellant Mofil Sah.

11.2. Only two injuries were found on the person of the informant, whereas as per the prosecution story, four persons equipped with deadly weapons assaulted him. Thus, the number of injuries does not corroborate the manner of assault involving a number of weapons and several attackers as alleged. The appellants took the defence that appellant Bishwamitra Sah was assaulted by the prosecution party on the same day and time, for which Kuchaikote P.S. Case No. 216 of 2007 was registered on the basis of the fardbeyan of appellant Mofil Sah. Certified copies of the FIR and the charge-sheet were filed and exhibited as Exhibit-B. The police, finding the allegations in the said case to be true, charge-sheeted the informant and others. Although the outcome of the said trial is not on record, however, the injury reports discussed in the said chargesheet and the acceptance by PW-1 that appellant Bishwamitra Sah was seen injured on the alleged day suggest that the alleged occurrence



took place in a different manner than projected by the prosecution. The actual manner of occurrence appears to have been concealed, creating doubt about the prosecution's allegation's credibility. It is settled position of law that when the genesis and origin of occurrence is suppressed by the prosecution and the injuries sustained by an accused on the same alleged day of occurrence remain unexplained by the prosecution then the only possible and probable course left open is to grant the benefit of doubt to the accused. In this regard, I would like to refer to the observation made by the Hon'ble Apex Court in the case of **Bhagwan Sahai and Anr. vs. State of Rajasthan** in **Cr. App. No. 416 of 2016** and the relevant paragraph No. 8 of the said judgment is reproduced as under :-

“8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their



father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-bye in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case.”

11.3. Further, a civil dispute between the parties is an admitted position, and preventive measures under Sections 107 and 144 Cr.P.C. were recommended. Multiple litigations show longstanding enmity, and it is settled law that enmity cuts both ways; it may motivate an offence or false implication.

11.4. Regarding the alleged assault on the informant's father, PW-3 stated in cross-examination that he reached the place of occurrence 15 minutes after the incident, whereas the informant stated that his father arrived during the assault. This contradiction affects the credibility of PW-3's claim of being assaulted.

11.5. Although the fardbeyan was recorded on the same day, the formal FIR was registered after nine days. The



investigating officer was not examined, depriving the appellants of the opportunity to cross-examine the investigating officer about the reasons of said delay. The unexplained delay casts a serious doubt on the credibility of the FIR.

Conclusion:

12. In view of the above-discussed facts and circumstances, I am of the considered opinion that although the informant and his father might have sustained injuries on the alleged place, day and time but the manner of assault as alleged does not get corroboration from the evidence. The prosecution failed to explain the injuries sustained by appellant Bishwamitra Sah on the same day of alleged occurrence, the non-examination of the investigating officer proved fatal to prosecution, and the inordinate delay in registration of the FIR remained unexplained, which also seriously affects the case of prosecution. Accordingly, this Court is not persuaded to affirm the judgment of conviction. The impugned judgment of conviction and order of sentence are set aside, and the appeal is allowed.

13. The appellants are on bail; accordingly, they and their sureties are discharged from the liabilities of their bail bonds.



14. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for necessary compliance.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.02.2026
Transmission Date	09.02.2026

