

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.476 of 2005**

Arising Out of PS. Case No.-66 Year-2003 Thana- AMARPUR District- Banka

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1. Rakesh Hembram, Son of Budhu @ Guddan Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
2. Dharmu Hembram, son of Somra Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
3. Basiya Marandi, son of Mahesh Marandi, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
4. Jalim Tuddu, son of Mangla Tuddu, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
5. Manoj Tuddu, Son of Mangla Tuddu, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
6. Jagan Hembram, son of Jetha Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
7. Manjhala @ Manjhila, son of Jetha Hembram, Resident of Village- Simpur (Singhpur), P.S.-Amarpur, District-Banka.
8. Babulal Hembram, son of Chhote Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
9. Jethu Tuddu @ Rajesh Tuddu, son of Mangal Tuddu, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
10. Jattu @ Juttu Hembram, son of Lotho Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka
11. Durga Hembram, son of Somra Hembram, Resident of village- Simpur, (Singhpur), P.S.- Amarpur, Dist- Banka

... .. Appellants

Versus

The State of Bihar

... .. Respondents

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**Appearance :**

For the Appellant Nos. 1 to 6, 8,10 and 11 : Mr. Baxi S.R.P Sinha, Sr. Advocate  
Mr. Sanjay Kumar Jha, Advocate

For the Appellant No. 9 : Mr. Anil Singh, Amicus Curiae

For the State : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**and**

**HONOURABLE MR. JUSTICE SOURENDRA PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 24-03-2025**

Heard Mr. Baxi S.R.P Sinha, learned Senior counsel  
assisted by Mr. Sanjay Kumar Jha, learned Advocate for the



appellant Nos. 1 to 6, 8, 10 and 11. Since appellant No. 9 is not represented through any lawyer, we have requested Mr. Anil Singh, learned Advocate present in the Court to assist this Court as an Amicus Curiae. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor is present for the State. Appellant No. 7 died during pendency of the appeal.

2. This appeal has arisen out of the judgment of conviction dated 23.03.2005 and order of sentence dated 23.03.2005 passed in Sessions Trial No. 960 of 2003 /T.R. No. 290 of 2005 (arising out of Amarapur P.S. Case No. 66 of 2003) (hereinafter referred to as 'the impugned judgment/order') by the learned 4<sup>th</sup> Additional Sessions Judge, Banka (hereinafter called 'the learned trial court').

3. By the impugned judgment and order, the learned trial court has been pleased to convict the appellants for the offences punishable under Sections 302/149 and 324/149 of the Indian Penal Code (in short 'IPC') they have been ordered to undergo sentence of life imprisonment for the offence under Section 302/149 IPC and to pay a fine of Rs. 1000/-each and in default of payment of fine, they have been ordered to undergo simple imprisonment for three months. They have also been ordered to undergo rigorous imprisonment for one year under Section 324/149 IPC. Both the sentences are to run concurrently.



4. The learned trial Court acquitted the appellants of the charges under Section 307/149 IPC but punished them for the lesser offence under Section 324/149 IPC.

**Prosecution Case**

5. The prosecution case is based on the fardbeyan of one Sitaram Tuddu (PW-7) recorded by the Sub-Inspector of Police B.P. Deo of Amarpur Police Station on 05.04.2003 at 10.00 Hours in village Singhpur at the informant's house. The informant has alleged as under :

“My name is Sitaram Tuddu, son of Arjun Tuddu, resident of Singhpur, Amarpur Police Station, Banka district. I am about 18 years old and my profession is farming. Today on 05.04.2003 at 10:00 AM, I give a statement in the courtyard of my house in front of you, the head clerk of Amarpur Police Station, that on 04.04.2003, after having dinner, I, my mother (Jasni Murmu) and Parvati Tuddu slept in the courtyard. My mother and sister slept on separate cots in the courtyard. We slept on the floor in the courtyard and my brother Shivan Tuddu and sister-in-law Champa Soren slept in the verandah. At about 10 o'clock in the night (1) Rakesh Hembram, (2) Prakash Hembram, son of Guddo Hembram, (3) Jagan Hembram, son of Jattu Hembram (4) Babulal Hembram, son of Laffo Hembram, (5) Jattu Hembram, son of Lotha Hembram (6) Jittu Tuddu, (7) Jalim Tuddu, (8) Manoj Tuddu,



son of Mangala Tuddu, (9) Manjhala Hembram, son of Jattu Hembram, (10) Dharmo Hembram, son of unknown, (11) Vipin Hembram, son of unknown, (12) Durga Hembram, son of Bogra Hembram, (13) Shyamlal Murmu, son of Bogra Hembram, (14) Rama Hembram, son of Babulal Hembram, (15) Lubba Marandi, (16) Basiya Marandi, son of Mahesh Marandi, all residents of Sindhpur, Police Station Amarpur, District Banka armed with pasiyani hasua, tangi, lathi and danda, came from the east side of the house and as soon as they arrived, all of them started beating me, my mother and sister with the sticks, tangi. Some people entered the house and started searching for my brother and sister-in-law. My brother climbed on the roof ('chappar') and ran out. Rakesh Hembram, Jalim Tuddu, Manoj Tudu, Dharmo Hembram, Vipin Hembram and Lubba Marandi started assaulting me, my sister and injured me. My mother was assaulted on the head and face with the pasiyani hasua as a result of which she died. My sister Parvati Devi was assaulted by a pasiyani on the left hand which hit her palm and Lubba Marandi and Jalim Tuddu assaulted me on the left side of the neck with a pasiyani. Babulal Hembram and Jattu Hembram assaulted with lathi-danda as a result of which I got injury on the head. We made a lot of noise but not a single person from the village came. My mother died in the courtyard itself. They also took Rs.6,000/-



from the briefcase kept in my house. The reason for the incident is that about two months back, there was a dispute with Manjhala Murmu regarding construction of the wall. Manjhala Murmu has committed this incident by taking the people of the village with him. I claim that (1) Rakesh Hembram, (2) Prakash Hembram, son of Guddo Hembram, (3) Jagan Hembram, son of Jattu Hembram (4) Babulal Hembram, son of Laffo Hembram, (5) Jattu Hembram, son of Lotha Hembram (6) Jittu Tuddu, (7) Jalim Tuddu, (8) Manoj Tuddu, son of Mangala Tuddu, (9) Manjhala Hembram, son of Jattu Hembram, (10) Dharmo Hembram, son of unknown, (11) Vipin Hembram, son of unknown, (12) Durga Hembram, son of Bogra Hembram, (13) Shyamlal Murmu, son of Bogra Hembram, (14) Rama Hembram, son of Babulal Hembram, (15) Lubba Marandi, (16) Basiya Marandi, all residents of village Singhpur, P.S. Amarpur, District-Banka have unanimously injured me and my sister and killed my mother.”

6. On the basis of the fardbeyan, police registered Amarpur P.S. Case No. 66 of 2003, dated 05.04.2003 under Sections 147, 148, 149, 324, 307, 302 and 380 IPC. Investigation was started and a charge sheet bearing no. 155/03 dated 10.07.2003 stood filed in the Court of learned jurisdictional Magistrate. Cognizance was taken of the offences on 15.07.2003



and thereafter, having noticed that the offences are triable by the Court of sessions, the records were committed to the Court of sessions on 26.08.2003 where sessions trial was registered on 22.09.2003. Vide order dated 17.12.2003 charges were framed for the offences under Sections 302, 149, 307 IPC and explained to the appellants to which they pleaded not guilty and claimed to be tried.

7. On behalf of the prosecution altogether eight witnesses were examined and two exhibits were marked. The list of witnesses and the description of the exhibits are fully detailed hereinbelow in a tabular form :-

List of Prosecution Witnesses

PW-1	Shiban Tuddu
PW-2	Champa Soren
PW-3	Parvati Tuddu
PW-4	Arjun Tuddu
PW-5	Dhiro Prasad Singh
PW-6	Jagdish Singh
PW-7	Sitaram Tuddu
PW-8	Dr. Sushil Mandal

List of Documents Exhibited on behalf of Prosecution

Exhibit-1	Signature of the Informant on the Fardbeyan
Exhibit-2	Postmortem report

8. The accused persons were examined under Section



313 of the Code of Criminal Procedure (Cr.P.C). They claimed innocence.

9. The defence did not examine any witness. No documentary evidence has been adduced on behalf of the defence.

**Findings of the Learned Trial Court**

10. The learned Trial Court examined the evidences adduced by the prosecution. The I.O of the case was not examined. The treating doctor has also not been examined and in this regard, the learned Trial Court observed in paragraph '20' that the absence of non-examination of the I.O. would not prove fatal to the prosecution because everything has been taken out from the mouth of the prosecution witnesses who were consistent and reasonable as also their statements are probable. The learned Trial Court took a view that in absence of the examination of the doctor, the case under Section 307/149 IPC would fail but the ocular evidences are very much consistent and according to the learned Trial Court, it appeared from the case diary that police had issued requisition to the Hospital for the treatment of the injureds. In absence of the examination of the treating doctors, the learned Trial Court was of the view that the accused persons are to be held guilty for the offence under Section 324/149 IPC which is a lesser offence.

**Submissions on behalf of the Appellants**

11. Learned Senior counsel for the appellant nos. 1 to 6,



8, 10 and 11 as well as learned Amicus Curiae representing appellant No. 9 have jointly assailed the impugned judgment and order. It is their common contention that in this case, the learned Trial Court has grossly erred in appreciation of the evidences on the record. 1

**12.** Learned senior counsel points out that the fardbeyan was recorded by Sub Inspector B.P Deo of Amarpur Police Station who has not been examined in this case. The informant (PW-7) has only proved his signature which has been marked as Exhibit '1' in course of trial. The Investigating Officer has also not been examined, therefore, the fardbeyan which is said to be in the hand writing of S.I. B.P. Deo has not been duly proved.

**13.** Learned senior counsel further submits that the learned Trial Court has taken aid from the case diary and for purpose of convicting the accused persons under Section 324/149 IPC, the learned Trial Court has recorded that from the case diary, it appears that police has issued requisition to the Hospital for their treatment. The submission is that the requisition which is said to have been issued by the I.O, has not been proved in course of trial by any competent witness and the trial Court has erred in looking into the case diary for purpose of placing reliance upon the requisition.

**14.** Learned senior counsel further submits that in this



case, the injury reports of the informant (PW-7) and his sister (PW-3) have not been proved. The doctors who treated PW-7 and PW-3 have not been examined and it is for this reason that the learned Trial Court has taken a view that the charge under Section 307/149 would not be proved.

**15.** Learned counsel further points out with reference to the statements of the accused persons recorded under Section 313 Cr.P.C that all the accused persons who were facing trial have been put to only one common question. None of the incriminating circumstances which were brought by the prosecution in course of trial has been pointed out to the accused persons. It is submitted that the importance of the statement under Section 313 Cr.P.C has been pointed out by the Hon'ble Supreme Court time and again in the catena of judgments. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Sukhjit Singh Vs. State of Punjab** reported in **(2014) 10 SCC 270** and **Sujit Biswas vs. State of Assam** reported in **(2013) 12 SCC 406**. It is submitted that for this reason alone, the impugned judgment and order are liable to be set aside.

**Submissions on behalf of the State**

**16.** Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has contested the appeal. It is submitted



that the appellants have been convicted for the charge under Section 302/149 IPC and this conviction is based on consistent ocular evidence which is corroborated by the post-mortem report (Exhibit '2'). Learned Additional Public Prosecutor has further submitted that no doubt, the doctor who treated the injured persons, namely, PW-7 and PW-3 has not been examined and the injury reports have not been proved but the Trial Court has found that the injureds were sent to the Hospital for treatment and for that reason, the Trial Court has held them guilty for the lesser offence under Section 324/149 IPC. According to him, no fault may be found with this.

17. Learned Additional Public Prosecutor has further submitted that the attention of the witnesses were drawn towards the deposition of the witnesses and as such, it cannot be contended by the defence that the incriminating circumstances were not brought to the notice of the accused persons.

**Consideration**

18. We have heard learned counsel for the parties, learned Amicus Curiae and learned Additional Public Prosecutor for the State as also perused the Trial Court records.

19. We find from the evidence on the record that in this case, the informant PW-7 and his sister PW-3 are said to be



the injured witnesses. They are the eye witnesses to the occurrence. The case was registered on the basis of the fardbeyan of the informant (PW-7) but when he came in the witness box, he named 12 persons who had come in the courtyard of the house in the night of the occurrence. PW-7 had earlier named 16 persons in the fardbeyan but in his examination-in-chief, he has named only 12 persons. In his fardbeyan, he has stated that as soon as the accused persons entered into the courtyard, they started assaulting the informant, his sister and his mother (since deceased) but in his examination-in-Chief, PW-7 has stated that the 12 accused persons who entered into the house, started assaulting his mother. He named Rakesh, Manoj and Dharmo who assaulted his mother. At this stage, he has stated that when he went to save his mother then the accused persons also assaulted him. He has named Manoj who assaulted PW-7 on his head and Rakesh who assaulted on his neck. His sister was assaulted on her left hand by sickle. The injury of the informant and that of his sister (PW-3) have not been proved by the prosecution.

**20.** He has stated that his brother was in the verandah who fled away on seeing the miscreants. The dispute was with Manjhala Manjhi (since deceased) over construction of wall for



last two months. The miscreants were calling his mother as Dain ('witch'). This witness says that Chaukidar had come. Darogaji had come at 10 O'clock and had recorded his statement and he had put his signature on the same. His signature has been marked as Exhibit '1'.

**21.** In his cross-examination, this witness has stated that Manjhala Manjhi is his brother in village relationship. All the accused persons had entered into the courtyard together and they had started assaulting. In his cross-examination, he has further stated that the people from the village do not talk with him saying that his mother is a 'witch'. He denied the suggestion of the defence that on the basis of suspicion, because of enmity, he had falsely implicated the accused persons.

**22.** The sister of the informant has been examined as PW-3. In her examination-in-chief, she has stated that she was sleeping in her courtyard. Her mother was being assaulted then she raised hulla. On that hulla, the witness got awaken and then she saw 16 persons who were armed with *pasiyani hasua*, *chura*, *garasi* and *tangi*. They were assaulting her mother and some persons armed with *lathi* had surrounded her. She was assaulted by *chura* on her left hand but she has not named the accused who assaulted her by *chura*. She has stated that Sitaram



was also assaulted but who assaulted him has not been disclosed. Regarding the cause of occurrence, this witness has stated that one child died, for that reason, the accused persons were saying that her mother is a 'witch' and after her death, they said that they had killed the 'witch'. She identified Rakesh, Manoj, Jalim, Dharmu, Basiya, Jattu, Jethu, Durga, Manjhala and Babulal. In her cross-examination, this witness has stated that she had not seen the accused persons entering into the house. She had seen the accused persons leaving the house and she identified them at that time. From this part of her deposition, it would appear that this witness is not an eye witness to the occurrence. She had seen the accused persons only at the time of leaving the house. She has stated that she had seen who had assaulted and how but she has only stated about Manjhala, Babulal, Durga, Rama, Shyamlal, Jethu, Lubba, Jattu who were armed with *lathi*, they were standing and had surrounded the witness. In paragraph '8' of her deposition, she has stated that she had not seen that in whose hand was *tangi*. This witness has further stated that she had not seen that in whose hand was the *garasa* but having said so, the witness recalled in her second thought that Dharmu was holding *garasa*.

23. This Court further finds that this witness has



admitted that she had not tried to save her mother. This cannot be said to be a natural conduct of this witness. If she was present in the house and in front of her, her mother was being assaulted then her statement that she had not tried to save her seems contrary to the normal human conduct.

**24.** This Court further finds that while PW-7 has stated that Darogaji had come at 10 O'clock and he had recorded his statement and read over the same to him on which he had put his signature (Exhibit '1'), PW-3 has made a different statement. She has stated in paragraph '10' of her deposition that she had given her statement at the police station. She had herself gone to the police station for giving her statement. Her thumb impression was taken in the police station. With her, Sitaram (PW-7) had gone. First of all, her statement was recorded then the statement of Sitaram was recorded whereafter she did not meet Darogaji. She has also stated that the whole village is against her. This witness was suggested that she had made her statement only for falsely implicating the accused, this witness denied the suggestion.

**25.** The other prosecution witnesses, namely, Shiban Tuddu (PW-1) is the brother of the informant (PW-7) who had deposed in support of the prosecution. According to this



witness, the accused persons had entered into his house in between 10-11 PM, when he along with his mother, brother and sister was sleeping separately. The accused persons were armed with *pasiyani hasua*, *garasi* and *tangi*, they started assaulting his mother, brother and sister and they were in search of him. He climbed up to the roof ('*Chappar*') of his house and from there, he was witnessing the occurrence. When he came down, he found that his mother had suffered injuries on her head, eyes, nose and on the neck. He had seen injury on the neck and head of his brother Sitaram and injury on the hand of his sister. In his cross-examination, this witness has stated that apart from him, nobody else fled away with him. He has stated that the moment accused persons came and started assaulting, he fled away. This witness has further stated that the accused persons are from his caste but there is a prior enmity with them. He has stated that the accused persons were calling his mother a 'witch' and that is the reason behind the occurrence. In paragraph '7' of his deposition, he has stated that in his presence nobody had called his mother a 'witch'. He has stated that Rakesh, Dharmu, Jalim and Manoj had assaulted his mother. He had not seen that who had assaulted his brother and sister. He had raised hulla from the roof but nobody had come. He met Darogaji at the police station



where he was investigated. He met Darogaji after 2-3 days of the occurrence. He had told Darogaji that after the accused persons arrived, he had fled away.

**26.** From the deposition of PW-1, it is evident that he is not an eye witness of the occurrence. In his cross-examination, he claims to have seen Rakesh, Dharmu, Jalim and Manoj who had assaulted his mother. But in the examination-in-chief, he says that all the accused persons had assaulted his mother but he fled away. He did not try to save his mother which is again an unnatural conduct. He did not see the assailant of his brother and sister. It is not believable that while this witness could see assailants of his mother, he could not see the assailants of his brother and sister. The fact that his statement was recorded after 2-3 days in the police station despite the fact that police had arrived at the place of occurrence according to the informant (PW-7) at 10:00 AM would create doubt over the authenticity of the statement of PW-1. The I.O. has not been examined, therefore, the defence got seriously prejudiced as no question could be asked with regard to the place of occurrence and whether PW-1 could have been in a position to see the occurrence from the roof of his house.

**27.** Champa Soren (PW-2) is the wife of Shivan Tuddu



who claims that she was sleeping in the verandah of the house with her husband, mother-in-law and nanad (Parvati) separately on the cots. Her devar Sitaram (PW-7) was sleeping on the earth in the courtyard. She got awoken on hearing hulla. She claims to have seen Rakesh, Lubba, Basiya, Prakash, Jattu, Jagan, Babulal, Jethu, Manoj, Jalim, Manjhala, Durga, Dharmu, Shyamlal and Rama altogether 16 persons. She has stated that Rakesh was armed with *pasiyani hasua*, Lubba was having *lathi*, Basiya was armed with *Lathi*, Prakash was having *tangi*, Jethu was armed with *lathi* and Jagan was armed with *tangi*. They were assaulting her mother. They had also assaulted Sitaram and Parvati. Her husband had climbed up to the roof and raised hulla. The accused persons had taken away Rs.6,000/- after breaking open the box. She claims herself an eye witness to the occurrence. From the statement of PW-2, it would appear that she had introduced the story of taking away of Rs.6,000/- by the accused persons after breaking open the box. The other prosecution witnesses whom we have discussed hereinabove have not stated so. In her cross-examination, this witness has stated that the accused persons had entered into the house stealthily. She and her husband were sleeping. There was a dispute about one and half day back over construction of wall



and her father-in-law had lodged a case in respect of the said dispute over wall against ten persons but she cannot say that against whom the case was lodged. She had also not tried to save her mother-in-law. She has stated that there is no bonding with the villagers. She denied the suggestion that she did not identify the accused, somebody else had killed her mother-in-law but because of enmity she had falsely implicated them. She denied the suggestion that the accused persons had not indulged in causing assault.

**28.** From the evidence of PW-2, it is clear that she has been introduced in this case as a witness at a belated stage. Neither PW-7 nor PW-3 have claimed that either PW-1 or PW-2 were sleeping in the house at the time of occurrence. While PW-7 has only stated about the presence of his mother and sister, PW-3 has stated that she, her mother and Sitaram (PW-7) were sleeping in the courtyard. It is evident that PW-2 is also not an eye witness to the occurrence.

**29.** Arjun Tuddu (PW-4) has stated in his examination-in-chief that it was a Friday. In the morning Prakash, Manjhala, Babulal and Jethu came in his house and said that his family is 'witch' so he should go for putting out lamp then he followed them. They were taken to Malgor where at 02:00 PM, he was



asked to stay there. According to this witness, the accused persons came next day and asked him to come to his house. He along with them reached Sahulia Mor where he came to know that his wife has been killed. It is evident from the statement of PW-4 that he is not an eye witness to the occurrence.

**30.** Dinu Prasad Singh (PW-5) has stated that Shivan Tuddu (PW-1) had come to his house and asked him to come to his house because his mother was killed. This witness had gone to his house and found that his mother had already died. In paragraph '2' of his deposition, this witness has stated that he was not told the names of the killers. This prosecution witness has not supported the prosecution case as regards the manner of occurrence and from his deposition, it would appear that PW-1 who had gone to the house of this witness had not disclosed that who killed his mother.

**31.** Jagdish Singh (PW-6) is another witness who was called by PW-1. He has stated that about 2-3 months back, there was a *panchayati* in which many people were present. This witness was sleeping in his house at the time of occurrence. He has not taken name of any of the accused persons in his deposition.

**32.** We have already discussed the evidence of the



informant (PW-7) hereinabove.

**33.** The Doctor Sushil Mandal (PW-8) had conducted the post-mortem on the dead body of the deceased. He had found the following injuries:-

- “(1) Incised wound on the face which starts from the left side of the neck and extends up to the nose. Nose was bisected transversely. Size of the wound is 8” × 1” × 1” bone deep.  
(2) Two incised wound on the right side of the face size (a) 1” × ¼” × skin deep (b) 1 ½” × ¼” × skin deep  
(3) Incised wound which bisects the right pinna of the ear.  
(4) Four incised would on the upper part of the head size-(a) 1” × ¼” × bone deep (b) 2” × ¼” × bone deep (c) ½” × ¼” × bone deep and (iv) 1 ½” × ¼” × bone deep.”

**34.** According to the Doctor, all the injuries were caused by sharp cut weapon such as *pasiyani hasua* and *tangi*. The cause of death was hemorrhage and shock and the time elapsed since death is 24 hours. This witness has proved post-mortem report which has been marked Exhibit ‘2’. A perusal of tshe post-mortem report would show that the dead body was first seen by the Doctor on 05.04.2003 at 05:00 PM but in the column made for recording of the case number, no case number is recorded. The formal FIR in this case has not been proved but from the materials on the record, it is evident that the fardbeyan was recorded at 10 O’clock in the morning itself, if it is so, then till 05:00 PM why the case number was not provided to the



Doctor who was conducting post-mortem on the dead body is not known.

35. The I.O. has not been examined in this case, therefore, the defence was precluded from bringing the truth with regard to delay in lodging of the FIR and the facts and circumstances which prevailed at the place of occurrence. The S.I. B.P. Deo who had recorded the fardbeyan has also not been examined.

36. We further find from the evidence on the record that the learned trial court has committed an error in relying upon the case diary to hold that police had sent a requisition with respect to PW-3 and PW-7 to the hospital and, therefore, in absence of the injury reports having not been proved, the accused persons may be convicted under Section 324/149 IPC.

37. We further find that while recording the statement of the accused persons under Section 313 CrPC, all the accused persons were asked the same and one question. We reproduce the question put to the accused hereunder:-

“प्र० – क्या आपने गवाहों की गवाही सुनी। गवाहों का कहना है कि दि० 4/4/03 को 10 बजे रात में ग्राम – सिंहौर, थाना– अमरपुर, जिला– बाँका में संयुक्त उद्देश्य से जसमी टुडू उर्फ मुरमू की हत्या किये और जान मारने के नियत से पार्वती देवी एवं सीताराम टुडू को मारे–पीटे। क्या कहना है ?

उ०– जी नहीं

प्र० – सफाई में क्या कहना है ?

उ०– लिख कर दूंगा।”



**38.** It is evident on a bare reading of the statement under Section 313 CrPC that the prosecution did not bring to the notice of the accused persons all the incriminating materials which were brought by the prosecution. The accused persons were not even informed that there are statements of the prosecution witnesses that they had entered into the house of the deceased. The prosecution did not inform the accused persons that there are statement of the witnesses that they were armed with *pasiyani hasua, chura, garasi* and *tangi*.

**39.** The importance of the statement under Section 313 Cr.P.C. has been reiterated by the Hon'ble Supreme Court in the case of **Sukhjit Singh** (supra). Paragraphs '12' and '13' of the said judgment is being reproduced hereunder for a ready reference:-

“**12.** In *Hate Singh Bhagat Singh v. State of Madhya Bharat*<sup>4</sup> Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in

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4. AIR 1953 SC 468 : 1953 Cri LJ 1933



some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

**13.** The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*<sup>5</sup> in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

**40.** Having discussed the prosecution evidence, we are of the considered opinion that the learned trial court could not

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5. (2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371



notice the materials inconsistencies in the prosecution story with regard to the presence of the accused and the manner of occurrence as alleged. The learned trial court could not notice that the conduct of the prosecution witnesses who were none else but the son, daughter and daughter-in-law of the deceased was not natural as none of them even tried to save the deceased. The independent prosecution witnesses, namely, PW-5 and PW-6 have stated that they were called by PW-1 and they had gone to the house of PW-1 where they had seen the deceased lying dead, they have not told about the accused persons. The fact that the post-mortem report does not contain the case number even though the dead body was brought to the Doctor (PW-8) at 05:00 PM on 05.04.2003 for post-mortem, would give rise to a suspicion with regard to the authenticity of the fardbeyan. The Doctor has opined that the time elapsed since death was 24 hours. In our opinion, the prosecution witnesses who are not only related and interested, they are also highly inimical, hence, would not fall in the category of wholly reliable witnesses. Non-examination of the I.O. and the Sub-Inspector who had recorded the fardbeyan of the informant has seriously prejudice the defence of the accused and it will prove fatal to the prosecution. Presence of PW-1 and PW-3 seems doubtful as the prosecution



failed to prove their injury reports in course of trial.

**41.** For all the reasons stated hereinabove, we set aside the impugned judgment and order. The appellants are acquitted of the charges levelled against them giving them benefit of doubt. They are on bail, hence, they and their sureties stand discharged from liability of their bail bonds.

**42.** This appeal is allowed.

**43.** Let the trial court's record be sent down to the District Court.

**44.** We acknowledge the assistance rendered by Mr. Anil Singh, learned Advocate as Amicus Curiae for appellant no. 9. A consolidated sum of Rs. 15,000/- (Rupees Fifteen Thousand/-) shall be paid to the learned Amicus Curiae by the Patna High Court Legal Services Committee within one month from the date of receipt of a copy of this judgment.

**(Rajeev Ranjan Prasad, J)**

**(Sourendra Pandey, J)**

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