

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.859 of 2024

Arising Out of PS. Case No.-94 Year-2005 Thana- KARAKAT District- Rohtas

Ritesh Kumar Singh S/o Pramod Singh R/o Village Budhwal, P.S. Karakat
District Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 949 of 2010

1. Ajay Singh @ Narhar Singh, S/o Late Jagarnath Singh, R/o village Burhwal, P.S. Karakat (Gorari), District Rohtas at Sasaram.
2. Madhuban Singh @ Munna Singh, S/o Late Jagarnath Singh, R/o village Burhwal, P.S. Karakat (Gorari), District Rohtas at Sasaram.
3. Munna Singh, S/o Sri Pramod Singh, R/o village Burhwal, P.S. Karakat (Gorari), District Rohtas at Sasaram.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1020 of 2010

Damodar Singh, Son of Late Jagarnath Singh, Resident of Village and Post -
Burhwal, P.S. - Karakat Gorari, District - Rohtas at Sasaram.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 859 of 2024)

For the Appellant/s : Mr. Pratik Mishra, Advocate
Mr. Birendra Kumar Singh, Advocate
Mr. Vatsal Vishal, Advocate
Mr. Raushan Kumar, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Addl.PP

(In CRIMINAL APPEAL (DB) No. 949 of 2010)

For the Appellant/s : Mr. Y.C. Verma, Sr. Advocate
Mr. Umesh Narayan Dubey, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 1020 of 2010)

For the Appellant/s : Mr. Y.C. Verma, Sr. Advocate
Mr. Nagendra Dubey, Advocate
Mr. Umesh Narayan Dubey, Advocate



For the Respondent/s : Mr. Sunil Kumar Singh, Advocate
Mr. Binod Bihari Singh, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 03-09-2025

Cr. Appeal (DB) No. 859 of 2024 has been preferred for setting aside the judgment of conviction dated 27.05.2024 (hereinafter referred to as 'the impugned judgment') and the order of sentence dated 30.05.2024 (hereinafter referred to as 'the impugned order') passed by learned 9th Additional Sessions Judge, Rohtas at Sasaram (hereinafter called 'the learned trial court') in Sessions Trial No. 429A of 2006 (C.I.S. Case 889 of 2014) arising out of Karakat P.S. Case No. 94 of 2005.

2. Cr. Appeal (DB) No. 949 of 2010 and Cr. Appeal (DB) No. 1020 of 2010 have been preferred for setting aside the judgment of conviction dated 20.07.2010 (hereinafter referred to as 'the impugned judgment') and the order of sentence dated 24.07.2010 (hereinafter referred to as 'the impugned order') passed by learned Additional Sessions Judge, FTC II, Rohtas at Sasaram (hereinafter called 'the learned trial court') in S.T. No. 429 of 2006, Trial No. 317 of 2009 arising out of Karakat P.S. Case No. 94 of 2005.



3. By the impugned judgments, all the appellants in Cr. Appeal (DB) No. 949 of 2010 and Cr. Appeal (DB) No. 1020 of 2010 have been convicted for the offence punishable under Section 302/34 of the Indian Penal Code (in short 'IPC') and have been ordered to undergo life imprisonment under Section 302/24 IPC

4. The appellant, namely, Ritesh Kumar Singh in Cr. Appeal (DB) No. 859 of 2024 has been convicted for the offence punishable under Section 302/34 IPC and has been ordered to undergo life imprisonment with a fine of Rs.5,000/- and in default of payment of fine, he will further undergo rigorous imprisonment for six months.

Prosecution Case

5. The prosecution case is based on the Fardbeyan of Rajnish Kumar Singh @ Annu recorded by S.I. J. Ansari on 01.09.2005 at 06:00 AM at Karakat P.S. In his fardbeyan, he has stated that on 31.08.2005 at 11:00 AM, his uncle, namely, Bipin Bihari Singh had an altercation with his co-villagers, namely, Damodar Singh, Ajay Singh and Munna Singh but villagers pacified the matter. On the same day at 07:30 PM, in the evening, when his uncle was going outside the village to attend nature's call, on the way he reached 'Pakki road' near 'pond pitch road', at that time, the informant was also present as he was returning after attending nature's call. The informant saw the accused persons, namely,



Damodar Singh, Ajay Singh @ Narhar Singh, Madhuban Singh @ Munna Singh, Pappu Singh, Ritesh Kumar Singh and Munna Singh armed with lathi and farsa had surrounded his uncle. The informant in torch light saw that Damodar Singh was armed with *farsa* and rest of the accused persons were armed with *danda*. The informant alleged that Ritesh Kumar Singh ordered to assault his uncle, on which all the accused persons assaulted his uncle by *lathi-danda* and in the meantime, Damodar Singh assaulted his uncle on his head by *farsa* causing head injury due to which he fell down on earth and became unconscious. In the meantime, the villagers assembled, then the accused persons fled away. The informant was carrying his uncle in unconscious condition for treatment to Dehri but near Itma his condition started deteriorating, then his uncle was brought to Gaya Nursing Home at Itma and during treatment on 01.09.2005 at 03:00 AM, his uncle died.

The informant brought the dead body of his uncle to the police station where his *fardbeyan* was recorded at 06:00 A.M.

6. On the basis of this *fardbeyan* (Exhibit '3'), Karakat P.S. Case No. 94 of of 2005 dated 01.09.2005 was registered under Section 302/34 IPC against (1) Damodar Singh, (2) Ajay Singh, (3) Madhuban Singh @ Munna Singh, (4) Pappu Singh, (5) Ritesh Kumar Singh and (6) Munna Singh.



7. After investigation, Police submitted Chargesheet bearing No. 93 of 2005 dated 16.09.2005 against (1) Damodar Singh, (2) Ajay Singh, (3) Madhuban Singh @ Munna Singh, (4) Ritesh Kumar Singh and (5) Munna Singh under Section 302/34 IPC keeping investigation pending against accused Pappu Singh. On the basis of this chargesheet, learned S.D.J.M. vide order dated 19.12.2005 took cognizance of the offence under Section 302/34 IPC. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried, accordingly, vide order dated 21.09.2006, charges were framed under Section 302/34 IPC. The original trial was registered as Sessions Trial No. 429 of 2006. All the witnesses were examined in course of trial.

8. In course of trial, the prosecution has examined altogether ten witnesses and exhibited several documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Vishal Kumar Singh
PW-2	Panni Kumari @ Asmita Kumari
PW-3	Anita Kumari
PW-4	Rajnish Kumar Singh
PW-5	Rajeshwar Singh
PW-6	Rajendra Mehta
PW-6A	Sunil Rawani



PW-7	Tej Narayan Singh
PW-8	Jahagir Ansari
PW-9	Govind Prasad Srivastava

List of Exhibits on behalf of Prosecution

Exhibit '1'	Signature of Rajnish Kumar Singh on Fardbeyan
Exhibit '1/1'	Signature of Dashrath Singh on fardbeyan
Exhibit '2'	Postmortem Report of deceased
Exhibit '3'	Fardbeyan
Exhibit '4'	Endorsement made on fardbeyan
Exhibit '5'	Formal FIR
Exhibit '6'	Page No. 2 of the case diary
Exhibit '7'	Carbon Copy of Inquest Report

9. Thereafter, the statements of the appellants were recorded under Section 313 of the CrPC. They took a plea that they are innocent.

10. On behalf of the defence neither any defence witness nor any document has been produced rather signature of Rajnish Kumar Singh on protest petition has been marked as Exhibit 'A'.

11. In Sessions Trial No. 429 of 2006, when the case was fixed for judgment in respect of all the accused persons, appellant Ritesh Kumar Singh could not be produced from Allahabad Jail despite the issuance of production warrant. At this stage, learned trial court directed for splitting off the records of appellant Ritesh Kumar Singh and delivered the judgment on 20.07.2010. Later on, the said appellant appeared before the learned trial court then the



learned trial court passed the impugned judgment and order in his respect separately on 27.05.2024 in Sessions Trial No. 429A of 2006 but on the same evidence.

Findings of the Learned Trial Court

12. Learned trial court after analysing the evidences on record, found from the evidence of PWs 1, 2, 3 and 4 that the date, time and place of occurrence has been established i.e. on 31.08.2025 at about 07:30 PM in the evening at Tinmohana outside the village. Learned trial court found that the I.O. (PW-9) has also stated about the place of occurrence in paragraph 6 of his deposition. Learned trial court found that the manner of occurrence is established from the evidence of the witnesses and got corroboration from postmortem report (Exhibit '2'). Learned trial court found that the Doctor (PW-7) in his evidence has stated that the cause of death is hemorrhage and shock resulting from injuries caused by hard and blunt substance.

13. Learned trial court found that the accused persons in furtherance of common intention assaulted Bipin Bihari by lathi, danda and farsa as a result of which he succumbed to his injuries. Learned trial court after considering all the facts and circumstances observed that the prosecution has been able to prove its case beyond all reasonable doubts and held the



appellants guilty for the offence punishable under Section 302/34 IPC.

Submissions on behalf of the Appellants

14. Mr. Pratik Mishra, learned Advocate representing the appellant in Cr. Appeal (DB) No. 859 of 2024 submits that there is no eyewitness to the alleged occurrence. As per the fardbeyan, the Informant (PW-4) claims to be the sole eyewitness, stating that he and his uncle (deceased) had separately gone to attend the nature's call when the incident occurred. He does not mention anyone accompanying the deceased. In his testimony, PW-4 repeats this but adds that others including PW-2, PW-3 and some villagers came only after he raised an alarm. Notably, PW-4 does not mention PW-1 Vishal Kumar Singh at the scene. Conversely, PW-1, the son of the deceased states that he was with his father at the time but does not mention PW-4's presence. This contradiction is further supported by independent witnesses PW-5 and PW-6, who stated that when they arrived at the scene, no one from the deceased's family was present and they found no immediate suspicion against anyone.

15. It is further submitted that medical evidence is highly inconsistent with the prosecution version and does not support the prosecution story as the prosecution claims that accused struck the



deceased's head with a *farsa* on the order of Ritesh, the doctor (PW-7) deposed that the injuries were caused by a hard blunt object such as *lathi*. Neither any injury from a *farsa* was found nor was it alleged that the blunt side of the *farsa* caused injury. Thus, the medical evidence does not support the prosecution story and undermines it.

16. It is further submitted that it is highly contradictory that who brought the deceased from the place of occurrence to the hospital. According to the *fardbeyan*, the informant (PW-4) initially took the deceased to Gaya Nursing Home and then to the police station after the deceased's death. However, PW-4 later stated in evidence that the deceased was first taken to police station and then to the hospital upon instruction of Police. Meanwhile, the son of the deceased (PW-1) claims that he brought the deceased to the police station first and then to the hospital on the instruction of the officer-in-charge.

17. Learned counsel submits that significantly, this sequence of first visiting the police station and then hospital does not appear in the initial *fardbeyan* and seems to have been added later to justify the delay. The Investigating Officer (PW-8) confirmed that no information about the occurrence was given to him before recording the *fardbeyan*. Furthermore, while both PW-



1 and PW-4 identified Dr. Ashok as the treating physician, no treatment records have been produced, and Dr. Ashok has not been examined despite recording a statement. Thus, the identity of the person who brought the deceased to the hospital and details of his treatment remain undisclosed and unexplained, raising serious doubts about the prosecution case.

18. It is further submitted that the prosecution has miserably failed to prove the place of occurrence. While the informant (PW-4) described the place of occurrence in the *fardbeyan* as a pitch road near a pond (*pokhar*), PW-1 Vishal Kumar Singh referred the place of occurrence as "*Teenmuhana*" without mentioning any pond. PW-2 and PW-3 also gave differing accounts regarding the distance and direction to the place of occurrence. The Investigating Officer (PW-8) offered further conflicting descriptions, referring to the place of occurrence as a *chowraha* and not as a pitch road near a pond and admitted that no items were seized from the place of occurrence. Additionally, PW-8 did not clarify on whose instruction he inspected the place of occurrence.

19. It is further submitted that there are conflicting versions regarding the manner of occurrence. According to the *fardbeyan* and the informant (PW-4), the six accused, armed with



various weapons, surrounded and assaulted the deceased on Ritesh's orders, with Damodar inflicting a *farsa* blow to the head causing unconsciousness. However, the son of the deceased (PW-1) stated that Ritesh first took a *lathi* from Damodar's hut and struck the deceased on the leg, causing him to fall, after which the other accused assaulted him and Damodar inflicted the *farsa* blow post-fall. The discrepancies in their accounts and their failure to acknowledge each other's presence at the scene significantly casts doubt on the veracity of the prosecution's story.

20. It is submitted that the examination of the appellant under Section 313 CrPC was a mere formality and failed to meet the principles of natural justice and violations of "Right to Fair Trial". Crucial circumstances were not put to appellant, including his alleged role as the "order giver," his giving the first *lathi* blow, the fact that the deceased died during treatment, and details regarding the place and genesis of the occurrence. This non-compliance with Section 313 has caused serious and irreparable prejudice to the appellant.

21. It is submitted that several material witnesses were not examined, which would prove fatal to the prosecution case. These witnesses include signatories to the FIR and inquest witnesses; persons who arrived at the place of occurrence shortly



after the incident; person who took the deceased to the hospital; the first treating doctor of the deceased; the staff of Gaya Nursing Home where the deceased was admitted and treated; and the mother of the deceased, who was at home at the time of occurrence. Their testimonies were crucial to establish the genesis and substance of the prosecution's case and their non-examination severely undermines its reliability.

22. Lastly, the source of identification remains suppressed. The occurrence happened after sunset and although the informant initially claimed witnessing the incident under torchlight, no witness has testified about the source of light during evidence. The torch was neither exhibited before the I.O. nor seized. This failure to disclose the source of identification seriously undermines the reliability of the prosecution's version.

23. These substantial inconsistencies, contradictions, non-compliance and suppression collectively vitiate the prosecution case warranting acquittal of the appellant.

Mr. Y.C. Verma, learned Senior Counsel argued on behalf of the other appellants.

Submissions on behalf of the State

24. The appeals have been contested by learned Additional Public Prosecutors for the State. Learned Additional



Public Prosecutor for the State submits that in this case the learned trial court has properly analysed the evidences of the prosecution witnesses and rightly convicted the appellants for the offences. Learned Additional Public Prosecutor for the State submits that the impugned judgments need no interference.

Consideration

25. We have heard learned Senior Counsel as well as the other learned counsel representing the appellants, the learned Additional Public Prosecutors for the State and perused the trial court's records.

26. The prosecution story as disclosed in the *fardebayan* recorded by the I.O. (PW-8) in the police station at 6:00 AM would reveal that the occurrence in question took place on 31.08.2005 at 7:30 PM at a place which is the *pakki* road near a pond (*pokhara*). The informant (PW-4) has claimed that he was returning through that place after defecating/easing out, and at the same time, his uncle Bipin Bihari Singh (the deceased) was going to defecate outside the village. PW-4 claimed to have seen (i) Damodar Singh, (ii) Ajay Singh @ Narhar Singh, (iii) Madhuban Singh @ Munna Singh, (iv) Pappu Singh, (v) Ritesh Kumar Singh and (vi) Munna Singh had surrounded his uncle. He has stated that he could see it in the torchlight.



As per the *fardbeyan* of PW-4, Damodar Singh was armed with a *farsa* while other accused were having *danda* in their hands. Ritesh Singh told the other accused persons “*akele hai dekh kya rahe ho maro*”. On this, all the accused persons started assaulting his uncle by *lathi-danda*, in the meantime, Damodar Singh assaulted by *farsa* on the head of his uncle, causing fracture of his head, as a result whereof he fell down on the earth and became unconscious. In the meantime, people from the village assembled then they fled away. PW-4 claimed in his *fardbeyan* that in unconscious condition, he was taking his uncle to Dehri for treatment but when he reached near Itma, the condition of his uncle deteriorated whereafter he got started the treatment of his uncle in Gaya Nursing Home at Itma but in course of treatment his uncle died. Thereafter he had brought the dead body to the police station. This *fardbeyan* has been marked Exhibit ‘3’ and the signatures thereon of PW-4 and the witness, namely Dashrath Singh have been marked Exhibit ‘1’ and ‘1/1’ respectively.

27. It is found from the materials on the record that the two persons, namely Dashrath Singh and Kumar Pradeep, who have signed as witnesses on the *fardbeyan*, have not been examined by the prosecution.



28. It is evident that PW-4 claims himself an eyewitness of the occurrence. He has not stated about presence of PW-1, PW-2 and PW-3, who are the sons and daughters respectively of the deceased, at the place and time of occurrence. We have also noticed that PW-4 has stated in his *fardbeyan* that after the occurrence, he took his uncle in unconscious condition for treatment and considering his deteriorating condition, he was admitted in Gaya Nursing Home.

29. The prosecution has not brought on record any particular of treatment, injury report, if any, prepared by the doctor in the Gaya Nursing Home. In course of evidence, PW-4 has disclosed in paragraph '20' of his deposition that Dr. Ashok had treated Bipin Bihari in hospital but PW-4 had not disclosed to Dr. Ashok as to how Bipin Bihari had sustained injuries. PW-4 has stated that Bipin Bihari died in the hospital of Dr. Ashok but this Court finds that regarding the treatment papers (*purja*), this witness has stated that he cannot say anything about the *purja*. Dr. Ashok, who had treated the deceased in injured condition, has not been examined by the prosecution.

30. This Court further finds that the inquest report (Exhibit '7') has been witnessed by Dashrath Singh and Kumar Pradeep, who have been withheld by the prosecution for no reason



explained by them. The postmortem report of the deceased (Exhibit '2') has been brought on record and the same has been proved by Dr. Tej Narayan Singh (PW-7), who conducted the autopsy on the dead body. The postmortem report is being extracted hereunder for a ready reference.

“The following antemortem injuries are found during PM exam over dead body of Bipin Bihari Singh S/o Late Koleshwar Singh about 40 Yrs old at Burawal, P.S.Karakat District-Rohtar at 2 pm on 1.9.05 in Sadar Hospital, Sasaram.

Ext. Injuries - (1) After opening stitches, lacerated wound 4” x ½” x ¼” over frontal parietal region of skull in midline.

(2) Bruise 6 cm x 2 cm over right thigh

(3) Abrasion 1 cm x 1cm over left knee.

On dissection – Skull – cranial cavity filled with blood. Brain and meninges pale and lacerated frontal and left parietal bone fractured.

Thorax – chest cavity intact both lungs congested and intact Both chamber of hear contained blood.

Abdomen – liver spleen and kidney are congested and intact.

Stomach contained digested fluid small gut contained fluid and gas. Large gut contained taicus and gas.

Cause of death – Due to hemorrhage and shock resulting from above injuries are caused by hard blunt substances.

Time since death – Within 12 to 24 hours”

PW-7 has stated that on the date of occurrence he was posted as Medical Officer, Sadar Hospital, Sasaram. After opening the stitches, he had found lacerated wound, 4” x 1/2” x 1/4” over frontal parietal region of skull in midline, bruises 6 cm x 2 cm over right knee and abrasion 1 cm x 1 cm over left knee. As regards the cause of death, PW-7 has stated that it was due to hemorrhage and



shock resulting from the injuries caused by hard and blunt substance, maybe *lathi*. In his cross-examination, PW-7 has stated that he had found stitches on the body of the deceased but he cannot mention the number of stitches. As regards injuries nos. (ii) and (iii), he has stated that the injuries are superficial in nature. On going through the postmortem report, this Court finds that the manner of occurrence as alleged by PW-4 in his *fardbeyan* and in course of trial are not getting corroborated. In his *fardbeyan* as well as in course of trial, PW-4 has stated that the accused persons had started assaulting his uncle, they were Damodar Singh, Madhuban Singh @ Munna, Ajay Singh @ Narhar Singh, Ritesh Singh @ Tuttu Singh and Munna Singh. He has stated that five persons were assaulting his uncle by *danda* and Damodar was assaulting by *farsa* but in course of autopsy on the dead body, PW-7 found only one midline lacerated wound over frontal parietal region of skull. The injury nos. (ii) and (iii) are superficial in nature, therefore, this Court would take a view that those two injuries were caused in course of falling down after assault on his head. The postmortem report (Exhibit '2') does not suggest by any stretch of imagination that five persons had assaulted the deceased by *lathi-danda*. As regards the assault given by Damodar using



farsa, PW-7 has not opined that injury no.(i) was caused by a sharp cut weapon.

31. In course of hearing, the learned Additional Public Prosecutors suggested that injury no. (i) may have been caused by the blunt side of *farsa*. We are, however, not ready to accept this submission. In this regard, Mr. Pratik Mishra, learned Advocate appearing for one of the appellants, has relied upon the judgment of the Hon'ble Supreme Court in the case of **Hallu and Others vs. State of Madhya Pradesh** reported in **(1974) 4 SCC 300** (paragraph 11), which we reproduce here under for a ready reference:-

“**11.** The post-mortem report prepared by Dr N. Jain shows that on the body of Jagdeo were found three bruises and a haematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eyewitnesses the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that “the miscreants dealt axe blows from the sharp-side or used the spear as a piercing weapon”. According to the High Court axes and spears may have been used from the blunt side and therefore the evidence of the eyewitnesses could safely be accepted. We should have thought that normally, when the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon.”



32. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Mani Ram and Others vs. State of U.P.** reported in **1994 Supp (2) SCC 289** to submit that where the medical evidence completely rules out the ocular evidence, the prosecution case is likely to get weakened.

33. In view of the opinion of the Hon'ble Supreme Court as recorded in the abovementioned judgments, we are of the considered opinion that in absence of any clarification by the prosecution witnesses in course of trial, there would be no reason to take a view that Damodar had assaulted the deceased from the blunt side of the *farsa*.

34. Learned counsel for the appellants have raised a number of pleas to submit that PW-4 is not an eyewitness of the occurrence. He has changed his version in course of trial and adopted the version of the son of the deceased (PW-1) about the place of occurrence. PW-1 has stated that the place of occurrence is the *Teenmuhani*, whereas PW-4 has not stated so in his *fardbeyan*. We have examined the evidence of the prosecution witnesses with regard to the place of occurrence. In his *fardbeyan*, the informant has stated that place of occurrence is a *pakki* road near Pond (*pokhara*), PW-1 has stated that it was a place known as Teen Muhani. He has given the description of the place of



occurrence, stating that about 20-22 steps west to the *Teenmuhani* there is a transformer. Adjacent east is the house of Lal Babu Yadav, whose door opens at the side of *Teenmuhana*, adjacent to his house, which may be called *dalan*, Shiv Kumar Paswan is engaged in selling straws. He has stated that on the road going to *Teenmuhani* and Gorari, adjacent south there is a canal and adjacent south is the orchard of Damodar Singh. In this regard, we have examined the evidence of the I.O. Jahangir Ansari (PW-8) who has stated about the place of occurrence in paragraph '6' of his deposition. He has stated that he reached the place of occurrence in village Budhwal with armed forces. There is a *chauraha* outside the village, which takes a turn towards north side from east-west. He has stated that fifteen meters east there is house of Lal Babu and thirty meters south there is STD Booth of Damodar Singh. He has also stated that thirty meters east to the place of occurrence there is a transformer and the place of occurrence is adjacent to the village. He had found the blood mark at the place of occurrence. As regards the place of occurrence, we are of the opinion that the prosecution has been able to prove it and no material contradiction may be found in the evidence of PW-1, PW-4 and PW-6 on this point.



35. So far as the question of PW-4 being an eyewitness is concerned, we have found that in paragraph '10' of his deposition, PW-4 has stated that the occurrence had taken place after half an hour or one hour of the sunset. He could not say whether it was a dark night or a chandni night. He has also stated that when he had started for going to defecate, he cannot say whether Bipin Bihari was in his house or not. He had seen Bipin Bihari first from a distance of ten steps. At that time, he was standing and surrounded from all the four sides. He was standing facing west side and from that direction the witness was coming. He did not pay attention to know that how many persons were standing east to him. In paragraph '15', PW-4 has stated that when he saw Bipin Bihari, he was being assaulted. This witness had started raising *hulla*, came near and stood there where people were assaulting Bipin Bihari. He saw it for five minutes when indiscriminate assaults were taking place on Bipin Bihari but he cannot say that after how much time Bipin Bihari fell down and after his falling down for how long he was assaulted. He has stated that he had raised *hulla* and had gone near Bipin Bihari when he had fallen down on the road and was lying from the backside, he was unconscious. It is worth noticing that in paragraph '16', PW-4 has stated that he tried to lift Bipin Bihari but he did not call



people from the neighborhood. He has then stated that people from the neighborhood had come but he cannot say their names, he knew them but cannot say whether they had tried to lift Bipin Bihari, he did not remember. PW-4 has then stated that he stayed there for 1-2 minutes, then he went to the village to get a jeep but he did not talk about the occurrence in the village. He has stated that in village he went to Rajmani Singh whose house is situated at a distance of little less than half kilometer. He has stated that the driver of Rajmani Singh had come with the vehicle. He had not asked how his uncle had got injured. This Court finds that the conduct of PW-4 is unnatural. He is not calling the people from the neighboring places, he is not naming the persons who came at the place of occurrence, he did not talk about the occurrence in the village and though he got the jeep and driver from Rajmani Singh but Rajmani Singh did not ask him about how his uncle got the injury.

36. In paragraph '18', PW-4 has stated that he and the driver started by jeep but he did not go to the house of his uncle to give information by stopping the jeep. When he reached at the place of occurrence with the jeep, about thirty persons were there. He has stated that there were seven persons on the jeep. In paragraph '19', he has stated that on jeep with him, Chhedi Singh, Munna driver and Vishal were present. This Court finds that neither Chhedi Singh



nor the driver has been examined in this case. According to PW-4, Gorari is at a distance of 1-1/4 kilometer where there is a private hospital and doctor. Police station is also in Gorari. He has stated that they had gone to Gorari Police Station where Munshi was present who told him that he should first go for treatment, he had seen Bipin Bihari in the jeep but did not ask anything. The government hospital at Gorari was closed. This Court finds that in the *fardbeyan*, PW-4 has stated that he had directly taken Bipin Bihari in injured condition to the hospital, he had started for Dehri but on way, the condition of Bipin Bihari deteriorated so he was admitted at Itma but in course of trial, he has given a different version in paragraph '19' of his deposition. This is where we find that this change of statement has taken place in order to explain the delay in lodging of the FIR. The FIR has been lodged after about eleven hours of the occurrence.

37. PW-4 has stated about the treatment given to the deceased by Dr. Ashok in his hospital but he does not say about the treatment papers. This witness has stated that he had gone to the police station with the *takiya* and *gamchi* and papers were prepared but this Court finds that no seizure list of *takiya* and *gamchi* has been brought on record in this case. PW-4 also failed to disclose the name of the compounders of the hospital. He did not remember whether he had put any signature in the register of the hospital. He



has stated that no one from his family had put his signature in the register of the nursing home. He was not aware whether Dr. Ashok or his compounder had informed the police station. He has stated that he had not gone to the police station to give information that Bipin Bihari is admitted in nursing home. This Court finds that so far as the first occurrence, which this witness has disclosed in the FIR which had taken place on 31.08.2005 at 11:00 AM, has been given up in course of trial. In his examination-in-chief, he has not stated at all about the occurrence of 31.08.2005 at 11:00 AM. In fact, none of the prosecution witnesses has stated about the first occurrence whereas the prosecution has set up the first occurrence as the genesis of the second occurrence which took place at 7:30 PM.

38. We have further noticed that PW-4 did not produce the torch which he was carrying at the time of occurrence, no other means of identification has been disclosed by any other witness. It seems highly unnatural that for five minutes the informant (PW-4) would remain standing near the place of occurrence where all the accused persons were assaulting his uncle, still he would not get a single assault by any of the accused persons. It has also come in evidence of PW-4 that Bipin Bihari had gone to jail and he was accused in the case registered under Sections 364 and 307 IPC. The manner of occurrence as suggested by PW-4 is not getting



corroborated from the medical evidence as has been found by this Court and his conduct in not calling any person from the neighbouring places even though the house of Lal Babu Yadav is adjacent to the road and his door is opening towards the *Teenmohani* would create huge doubt over the informant being an eyewitness of the occurrence.

39. Now, when we examine the evidence of PW-1 it is found that he claims himself an eyewitness of the occurrence. He does not say about the presence of PW-4 at the place of occurrence. At the same time, PW-4 does not talk of presence of PW-1 at the place of occurrence. Both the witnesses are though claiming themselves eyewitnesses of the occurrence but they did not see each other at the place and time of occurrence which is highly improbable and does not inspire confidence of the Court. PW-2 says that she had heard the *hulla* and then went to the place of occurrence. PW-3 has stated that when she reached the place of occurrence, her sister (PW-2) was there, 20-25 persons were there but she did not identify any one of them. Thus, she does not say about presence of PW-1 or PW-4 there. The place of occurrence is situated at a distance of one mile from her house. PW-2 and PW-3 are the sisters of PW-1. It is highly improbable that PW-2 and PW-3 would hear *hulla* from a distance of one mile. The two independent witnesses namely Rajehswar Singh (PW-5) and Rajendra Mehta



(PW-6) have totally demolished the prosecution case. PW-5 has stated that he saw Bipin Bihari Singh in injured condition and he did not know where he was taken for treatment. He further stated that when he went near Bipin Bihari then no villager was there, he remained for ten minutes and thereafter, the informant and his family members came there and they did not raise suspicion against anyone. He stated that he had not seen how Bipin Bihari received injury. PW-6 has stated that Bipin Bihari died in quarrel. He has deposed that when he reached near the place of occurrence then three persons were present there, they were the family members of Bipin Bihari. The persons present there did not disclose the name of assailants. Both the witnesses have not been declared hostile. The effect of not declaring them hostile would prove fatal to the prosecution.

40. We have found that the learned trial court has grossly erred in appreciating the evidences available on the record and has gone on to the extent of believing not only PW-4 and PW-1 as eyewitnesses but have also held that the medical evidence corroborates the ocular evidence we are in respectful disagreement with the views expressed by the learned trial court. In ultimate analysis, we find that the prosecution has not been able to prove its case beyond all reasonable doubts. The accused have made out a case for interference, giving them benefit of doubt.



41. In result, we set aside the impugned judgments and orders and acquit all the appellants of the charges, giving them benefit of doubt.

42. The appellant, namely, Ritesh Kumar Singh in Cr. Appeal (DB) No. 859 of 2024 is in incarceration, he shall be released forthwith, if not wanted in any other case.

43. The appellants in Cr. Appeal (DB) No. 949 of 2010 and Cr. Appeal (DB) No. 1020 of 2010 are on bail. They and their sureties are discharged from the liability of the bail bonds.

44. All these appeals are allowed.

45. Let a copy of the judgment along with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/-

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