

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.291 of 2004**

1. Santosh Singh

2. Karan Singh

Both sons of Late Gudi Singh, resident of village-Chaugai, Police Station-
Murar, District-Buxar.

... .. Appellants

Versus

State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Amicus Curiae

For the Respondent/s : Mr. Ramchandra Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 06-12-2025

Heard Mr. Krishna Kant Singh, learned Amicus Curiae for the appellants and learned A.P.P. for the State.

2. The present appeal has been directed against the judgment of conviction and order of sentence dated 26.03.2004 passed by learned Additional Sessions Judge-IV, F.T.C., Buxar in Sessions Trial No. 820/92 / 37/2002 whereby and whereunder appellants have been convicted for the offence punishable under Section 324 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for one year under Section 324 of the Indian Penal Code.

3. As per prosecution case, the informant



Kameshwar Singh along with his mother and wife, who were all in an injured condition, gave his statement before the police that while the informant was sitting in the shop of Mangru Carpenter, Ganesh Yadav came and informed him that a fight was taking place at his house. When the informant reached house, he saw Santosh Singh (appellant no. 1) holding a digging iron rod (*Rami*), Mantokhi Singh (since deceased) holding a *lathi* and Karan Singh (appellant no. 2) holding a spade (*kudal*). They had entered the informant's house and were assaulting his mother, brother, and sister. The informant was also surrounded by the appellants and others. Santosh Singh (appellant no. 1) is said to have struck him on the head with the *ranni*, as a result of which the informant sustained head injury. Co-accused Mantokhi Singh (since deceased) is said to have assaulted the informant's wife on the head with a *lathi* as a result of which she sustained head injury. The appellants and others are further alleged to have assaulted the informant's mother, brother, and sister with *lathis*, as a result of which they also sustained injuries. The reason behind the occurrence was a dispute regarding drainage water, which had been blocked by the appellants and others. Uma Shankar Singh, the informant's brother had cut open the drain so that the accumulated water in the courtyard could flow out. On



account of this, the appellants and others assaulted the informant and his family members.

4. On the basis of fardbeyan, Murar P.S. Case no. 25/1990 was registered for the offence punishable under Sections 452, 341, 323, and 324 of the Indian Penal Code and later on, on the basis of supervision note given by the police Inspector, Sections 325 and 307 I.P.C. were added in the charge-sheet. On the basis of charge-sheet, cognizance was also taken under aforesaid Sections and the case was committed to court of learned Additional Sessions Judge-IV, F.T.C., Buxar for trial and disposal. Charges were framed against the appellants under Sections 325/34, 324, 307 and 452 I.P.C. and charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused persons, prosecution has examined all together five witnesses as P.W. 1- Kameshwar Singh (informant), P.W. 2-mother of the informant (Pardhano Devi), P.W. 3- wife of the informant (Sudha Devi), P.W. 4- Mohan Ojha and P.W. 5- Satyendra Singh (Medical Officer). Prosecution has produced one exhibit as Exhibit- 1 (FIR).

6. Defence of the appellants 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.

7. After hearing the parties, the learned trial court convicted the appellants and sentenced them as indicated in the opening paragraph of the judgment.

8. Learned counsel for the appellants submits that the original injury report is not available on record and no injury report has been exhibited. It is only mentioned that the doctor has admitted his signature on the certified copy of the injury report. It is further submitted that neither Ganesh Yadav nor Mangru was examined. Learned counsel for the appellants submits that no injury report has been exhibited, and it has not been mentioned as to why secondary evidence is being relied upon instead of the original injury report. There is no explanation as to why the original injury report is unavailable and why secondary evidence is being considered. The counsel further submits that the onus is on the prosecution to prove its case beyond reasonable doubt. Without exhibiting the original injury report, it is impossible to establish the nature of the injury, the weapon used or the cause of the injury. Moreover, the accounts of P.W.-1, P.W.-2, and P.W.-3 regarding the place of



occurrence are divergent. Their evidences are important as they claim to be injured witnesses and their presence at the place of occurrence cannot be doubted. However, in the absence of the Investigating Officer (I.O.), the specific place of occurrence cannot be reliably established. Even other injured witnesses are unable to identify the place of occurrence. In this way, the prosecution has completely shattered the case of prosecution. Learned counsel for the appellants has further submitted that it is very difficult to assume the situation where the appellants stand acquitted under Sections 307 and 325 of the I.P.C. based on the same set of documents and evidence. The question, therefore, arises under what circumstances, Section 324 of the I.P.C. would be applicable in the facts and circumstances of the present case. It is evident that no injury report has been exhibited. The very purpose of examining a doctor is to provide expert opinion; a doctor is not a factual witness but an expert witness. His role is to examine and authenticate certain documents that have already been exhibited. In the present case, however, here doctor has been examined but he himself stated that the original copy of the X-Ray report and plate copy are not available and that the attested copy on record is not in his handwriting. The said statement raises the question as to how he can authenticate a



document that is not in his handwriting. In this way, the doctor has been examined as a factual witness, even though he is an expert witness, and his factual evidence is without having any chit of the injury report, as the same has not been exhibited. Consequently, Section 307 is not made out and Section 325 is also not established. It is, therefore, clear that Section 324 is not applicable in the present case. Learned counsel on behalf of the appellants has submitted that though three witnesses are claiming to be the eye-witness of the alleged occurrence as they are injured but on the point of place of occurrence, their statements are quite divergent and without proving place of occurrence one cannot establish the case as it is a cardinal principle of criminal law that the place of occurrence as well as manner of occurrence must be proved. If it is a case under Section 324 of the I.P.C., the document related to injury must be proved and prosecution has not proved the case beyond reasonable doubt and the judgment of conviction and order of sentence passed by the concerned court is without evaluation of the material available on record and the learned trial court has reached to the wrong conclusion and passed the judgment of conviction and order of sentence.

9. Learned A.P.P. for the State has submitted that the judgment of conviction and order of sentence passed by the



concerned court is on the basis of material available on record. He has further submitted that there are three injured witnesses, who have supported and corroborated the allegation made in the F.I.R. and the doctor has been examined and he has also stated that how he has treated the injured and he has specifically stated that number of injuries, nature of injuries and other material available on record. In this way, the judgment of conviction and order of sentence passed by the concerned court is justified and legal and there is no room for interference.

10. The question which arises for consideration is:-

"Whether offence under Section 324 of IPC is made out in the light of given facts and circumstances of the case or not ?"

11. 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.

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

13. PW1, Kameshwar Singh, who is informant of this case, during the course of examination-in-chief, has supported the initial version of prosecution story that how he has



been informed by Ganesh Yadav regarding the occurrence that had been taking place at his house and on the said information he reached at his house. He has further stated that when he reached at his house, Santosh Singh (appellant no.1), Karan Singh (appellant no.2), Mantokhi Singh (since deceased) and Guddi Singh made intrusion in his house. He has further stated that Karan Singh (appellant no.2) assaulted on the head of informant's wife by means of spade, as a result of which, his wife sustained head injury. He has further stated that co-accused Guddi Singh assaulted on the arm of his mother by *lathi*. He has further stated that his brother and sister had been assaulted by appellants and others. He has further stated at para-3 that appellant no. 1 (Santosh Singh) assaulted by means of Rami on his head as a result of which, informant sustained head injury and when he fell on ground, co-accused Mantokhi Singh assaulted him by means of lathi.

During the course of cross-examination, the informant (PW-1) has given following description of the boundary of place of occurrence:-

North : His own land thereafter Udhari Ojha's land

South : The house of Ganesh Yadav

East: Jagdish Ojha

West: His own cow shed.

Informant (PW-1) at para 2 of his examination-in-



chief has stated that he was present when his brother and sister have been injured but in para 5 of cross-examination he has stated that informant's brother and sister have been injured before he reached there.

14. From perusal of initial version of prosecution story as well as evidence of informant/PW-1, it is crystal clear that the informant while setting the story of prosecution into motion narrated that appellant no. 2 was holding a spade in his hand but during the course of adducing evidence before the court, he has improvised his version that the appellant no. 2 has assaulted upon the head of informant's wife, which is completely absent in the initial version of prosecution story. During course of initial version of story of prosecution, there is no specific allegation against the co-accused Guddi Singh regarding assault, but while adducing the evidence before the court, he has improvised his version and stated that he (Guddi Singh) has assaulted on the arm of his mother by means of lathi. In the initial version of prosecution story, there is no specific allegation of assault against the co-accused Mantokhi Singh upon the informant but at para 3 of his examination-in-chief informant has stated that co-accused Mantokhi Singh assaulted the informant (PW-1) by means of *lathi* when he fell on ground. In this way,



the statement of PW-1, who has improvised his own version while adducing his evidence before court, is totally inconsistent with the initial version of prosecution story. In this way, his evidence is not trustworthy.

15. P.W.-2 /Pardhano Devi is mother of the informant and she is also an injured witness of the case. She has further stated that reason behind the occurrence is that Santosh Singh (appellant no.1), Karan Singh (appellant no.2), Mantokhi Singh and Guddi Singh closed the drain of her house and her younger son, Uma Shankar Singh, cut open the drain upon which Santosh Singh (appellant no.1) slapped Uma Shankar Singh. When her elder son Kameshwar Singh came, he was also surrounded by appellants and others and Santosh Singh assaulted by means of *Rami* on the head of Kameshwar Singh (informant), as a result of which he sustained head injury. When he fell on ground, Mantokhi Singh assaulted by means of lathi on informant's back. She further stated in para-3 that when she and her daughter-in-law came to rescue, Guddi Singh assaulted by means of lathi upon her hand, as a result of which, her hand got fractured and Karan Singh assaulted her daughter-in-law by means of spade on her head.

During the course of cross-examination she has



given following description of boundary of the place of occurrence:-

North: House of Guddi Singh

South: Her own house

East: House of Yadav Sogai

West: House of Tatwa

At para 6 of cross-examination, she has stated that when she came out from her house, she saw her son fallen on ground and he was in unconscious state.

16. The deposition of PW-2 while adducing her evidence before court is quite inconsistent with the initial version of prosecution story as while narrating the initial version of prosecution story, there is no specific allegation against co-accused Guddi Singh and there was no accusation of assault against appellant no.1 to slap Uma Shankar. There is no specific allegation of assault against Mantokhi Singh upon the informant but at para-2 of cross examination, PW-2 stated that when informant fell down, co-accused Mantokhi Singh assaulted by means of lathi on informant's back. In this way, there are several discrepancies and inconsistencies found in the evidence of PW-2 and her evidence does not carry authenticity in light of discussion made above. Her statement regarding manner of occurrence is totally inconsistent with the manner of occurrence as narrated in the initial version of prosecution story. Her



description of place of occurrence is quite divergent with place of occurrence as given by PW-1/Informant. In this way, manner of occurrence and place of occurrence are divergent with the PW-1, though she is an injured witness.

17. PW-3/ Sudha Devi, who is wife of the informant, has also specifically stated the reason of occurrence as stated by the PW-2 and she has further stated that when the drain was being opened by Uma Shankar Singh, the appellants and others started assaulting Uma Shankar Singh. When the husband of this witness (PW-3), who is informant of this case, came and made a query regarding the said occurrence, then co-accused Guddi Singh exhorted to kill the informant. Santosh Singh (appellant no.1) assaulted upon the head of the informant by means of Rami and co-accused Mantokhi Singh assaulted by means of lathi on back of the informant and when PW-3 and her mother-in-law came to rescue, co-accused Guddi Singh assaulted upon the hand of her mother-in-law, as a result of which, her hand got fractured. Karan Singh (appellant no.2) also assaulted Sudha Devi (PW-3) by means of spade and Mantokhi Singh (since deceased) assaulted upon the leg of Sudha Devi (PW-3).

During the course of cross examination, P.W.-3/Sudha Devi has given the following description of the



boundary of place of occurrence:

North- Drain

South- My own house.

East- Not given any detail

West- Not given any detail.

18. The statement of PW-3 is quite inconsistent with the initial version of prosecution story as there is no allegation of assault against appellant no.2 but during course of adducing evidence PW-3 has improvised her version that appellant no.2 assaulted her by means of spade. In the FIR, it is stated that co-accused Mantokhi Singh assaulted informant's wife (PW-3) on the head by means of lathi but during course of adducing evidence PW-3 has stated that co-accused Mantokhi Singh assaulted upon her leg. In the FIR, there is no allegation of assault against co-accused Guddi Singh but during course of adducing evidence PW-3 has stated that co-accused Guddi Singh assaulted upon the hand of her mother-in-law. In this way, the statement of PW-3, who has improvised her own version while adducing her evidence before court, is totally inconsistent with the initial version of prosecution story. In this way, her evidence is not trustworthy.

19. P.W. 4- Mohan Ojha, is a chance witness as he is resident of some other village. He has stated that he had gone to village Chaungai. On hearing the commotion, he went to the



door of informant, where appellants and others were assaulting the informant, informant's mother and informant's wife. He further stated in para-2 that co-accused Guddi Singh assaulted on the hand of informant's mother, as a result of which, her hand got fractured. He further stated that Santosh Singh assaulted on the head of Kameshwar Singh (PW-1) by means of Rama as a result of which he got head injury and fell on the ground. When he fell on ground, Mantokhi Singh assaulted by lathi on the head of Kameshwar Singh (PW-1). Karan Singh (appellant no.2) assaulted by means of spade on the head of informant's wife.

20. The manner of occurrence as stated by the PW-4 is quite inconsistent with the initial version of prosecution story as in the FIR, it is alleged that co-accused Mantokhi Singh assaulted informant's wife but during the course of adducing evidence, P.W.-4 has stated that co-accused Mantokhi Singh assaulted the informant. In the FIR, there is no allegation of assault against co-accused Guddi Singh but during course of adducing evidence PW-4 has stated that co-accused Guddi Singh assaulted upon the hand of informant's mother. In the FIR, it is alleged that appellant no.2 (Karan Singh) was holding a spade in his hand but during course of adducing evidence PW-4 has stated that Karan Singh (appellant no.2) assaulted by means of spade



on the head of informant's wife. In this way, the statement of PW-4, who has improvised his own version while adducing his evidence before court, is totally inconsistent with the initial version of prosecution story. In this way, his evidence is not trustworthy.

21. P.W. 5/ Satyendra Nath Sinha has stated that on 13.07.1990 he was posted at P.H.C., Dumraon and on the same day, he examined injured Kameshwar Singh and found the following injuries:-

(i) By means of a sharp weapon on the front scalp
1½" X ¼" X 1/8".

(ii) Bruise 3" X 2" on the back.

The injury is simple, first one is by means of a sharp edged weapon and the second one is by means of a blunt weapon.

He has further stated in para 2 that he examined Mrs. Pandhari Devi w/o Late Bindeshwari Singh and found the following injuries:-

only swelling with tenderness 2" above right wrist
and advised to do X-Ray.

Further, in para 3 he has stated that he examined Sudha Devi and found following injuries.

(i) Abrasion 1/2" X ¼" middle of scalp, Nature of the injury is simple by means of a blunt weapon.

(ii) Bruise 4" X 2" on the left leg below the knee.



(iii) Bruise 3"X 2" on the upper arm

All the injuries were simple and caused by hard blunt object.

He has further stated in para 4 that he had perused the X-Ray of Pandhari Devi and found fracture of lower end of right radius. Thus the nature of injury was grievous.

In his cross-examination, he has stated that he has adduced the evidence on the perusal of the attested copy of the injury report which bears his signature. He does not remember that the attested copy bears the signature of whom. The original copy of the X-Ray report and plate are not presented before him. The attested copy is not in his handwriting.

22. In the present case, however, relevant document has not been exhibited and in absence of the injury report, the oral examination of doctor is of no significance.

23. If not a single chit of paper has been examined as injury report, the question arises what is the authenticity of the examination of doctor, who has not authenticated the injury report. The injury report produced is only an attested copy, which is not in the handwriting of the said doctor and in this way his evidence carries no authenticity in absence of any chit of original copy of injury report.

24. After going through the material available on



record, it is quite obvious that the informant who narrated the story of prosecution has asserted that how the informant as well as his family members have been injured by the appellants and others but during course of examination-in-chief, PW-1 has improvised his version which finds no place in the initial version of prosecution story. During the cross-examination, statement of PW-1 regarding boundary of place of occurrence is quite inconsistent with the other PWs (2 and 3). On the point of boundary of place of occurrence, there is divergent views of PW-2 and PW-3 and hence, boundary of place of occurrence has not been specifically proved. Apart from that, I.O., who has not been examined and whose examination is necessary to prove the place of occurrence, specifically, in the light of aforesaid facts and circumstances of the case, place of occurrence has not been proved. P.W.-4 is a chance witness and he is totally unable to point out the place of occurrence. In this way, prosecution has very shaky evidence with regard to the place of occurrence and it is cardinal principle of criminal law that the case of prosecution must be proved beyond the reasonable doubt.

25. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.



26. In *Behari Prasad Vs. State of Bihar* reported in (1996) 2 SCC 317, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

27. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating



Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

28. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."

29. So far as the nature of injury, number of injury can be proved on the basis of document exhibited. Here, original injury report is not available and the reason has not been assigned as to why the original injury has not been made available on the record and the doctor has been examined as a factual witness of injury report though doctor is an expert witness. He has to authenticate what is exhibited document of injury. In absence of exhibited document of injury, the examination of doctor is purely a factual witness of the said



occurrence which is not suited to the expert witness. So far as the present appellants are concerned, they already stand acquitted under Sections 307 and 325 of the I.P.C. as the exhibited injuries are not available.

30. In order to attract Section 324 of the I.P.C. following things are necessarily to be proved:

31. Section 324 of the Indian Penal Code provides for punishment for voluntarily causing hurt by dangerous weapons or means. Section 324 of the Indian Penal Code reads as under:-

“324. Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to in-hale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

32. In order to attract Section 324 of the IPC, nothing has been produced by the prosecution side to prove the



prosecution story. In this way, the allegation of injury is not proved as no document has been exhibited. In absence of exhibited document, one cannot presume the injury by the statement of doctor, who is stating like a factual witness and he does not fulfill the criteria as mentioned under Section 324 of the I.P.C. and on the same facts and allegation, the present appellants are already acquitted under Sections 307 and 325 of the I.P.C. and it is difficult to assume that the allegation under Section 324 of the I.P.C. is attracted.

33. 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, the judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

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

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

36. Before parting with the judgment, I appreciate



the legal assistance rendered by Mr. Krishan Kant Singh, learned Amicus Curiae. Patna High Court Legal Service Committee is directed to pay a sum of Rs.10,000/- (ten thousand) to Mr. Krishan Kant Singh, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by him within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

Amitkumar/
Nilmani-

AFR/NAFR	AFR
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