

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.99 of 2005**

Arising Out of PS. Case No.- Year-0 Thana- District- West Champaran

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1. Dhuri Sah S/o- Late Babu Ram Sah R/v- Khora Ps- Chanpatiya Dist- West Champaran
  2. Suresh Sah S/o- Dhuri Sah R/v- Khora Ps- Chanpatiya Dist- West Champaran

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mrs. Sushmita Mishra, Amicus Curiae  
For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

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

**Date : 06-12-2025**

In pursuance of order dated 25.09.2025, the Superintendent of Police, West Champaran, Bettiah has sent its report vide letter No. 747 dated 12.11.2025 which reveals that appellant no. 1 Dhuri Sah has already died accordingly, the appeal stands abated in respect of appellant no. 1 Dhuri Sah.

2. Heard learned Amicus Curiae for the appellant no.2 and learned Additional Public Prosecutor for the State.

3. The present appeal has been directed against the judgment of conviction and order of sentence dated 16.12.2004 passed by learned Additional District and



Sessions Judge 1<sup>st</sup>, West Champaran, Bettiah, Special Court under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in connection with Trial No. 22 of 1995 whereby and whereunder the appellant no. 2 has been convicted for the offences punishable under Section 323 of IPC and has been sentenced to undergo rigorous imprisonment for three months under the said section.

4. As per prosecution case, on 19.07.1992 at about 11:00 AM, the complainant Sheo Chand Baitha, was said to have put bucket into the well near his house in Khora village to draw water. The co-accused, Dhuri Sah (since deceased), had already lowered his bucket into the same well. Co-accused Dhuri Sah began verbally abusing complainant by calling his caste name saying, “Why did you put your bucket in the well while he was drawing water? My religion has been defiled.” Upon hearing co-accused Dhuri Sah’s shouts, the appellant no.2 Suresh Sah also arrived at the place of occurrence. The complainant, Sheo Chand Baitha, asked the co-accused Dhuri Sah to speak respectfully. Thereupon, both accused pushed and slapped complainant Sheo Chand Baitha, knocking him to the ground. The appellant no.2 Suresh Sah then forcibly snatched the complainant’s bucket, worth Rs.



75. Witnesses from the neighborhood arrived and intervened, thereby saving the complainant's life.

5. On the basis of complaint filed by the complainant, Complaint Case No. 6000 of 1992 was registered under Sections 323 & 379 of the IPC and Section 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Thereafter, the learned trial court took cognizance. The learned trial court framed charges against the appellant and others on 16.09.1993 under Sections 323 & 379 of the IPC and Section 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Charges were read over and explained to the appellant no.2 to which he pleaded not guilty and claimed to be tried.

6. In order to bring home guilt of accused persons, prosecution has examined altogether five witnesses. PW-1 Harihar Mahto, PW-2 Bhola Raut, PW-3 Tulsi Mahto, PW-4 Sheo Chand Baitha (complainant) and PW-5 Motilal Yadav.

7. Prosecution has not produced any documentary evidence on record.

8. Defence has produced four witnesses namely DW1-Ramawati Devi, DW2- Ramayan Sah, DW3- Harkishun Das and DW4- Bihari Gaddi and also produced exhibit A to



A/3 i.e. signature of the advocate on the complaint petition. However, defence of the appellant no. 2 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.

9. After hearing the parties, the learned trial court convicted the appellant no. 2 and sentenced him as indicated in third paragraph of the judgment.

10. Following submissions have been made on behalf of learned Amicus Curiae appearing for the appellant no.2:-

Learned Amicus Curiae has submitted that the judgment of conviction and order of sentence is bad in law as well as on the facts that there are material contradiction in the statements of prosecution witnesses and court has failed to consider the evidence of defence witnesses. Learned Amicus Curiae further submits that it is evident from defence witness that the present complaint has been filed to over come the earlier case filed by the wife of appellant no.2 which is available on record and there is delay of 10 days in filing the present complaint case and the said delay has not been explained. Learned Amicus Curiae further submitted that



other witnesses i.e. PWs-1, 3 and 5 are chance witnesses and their statements are quite divergent on the core aspects of story of prosecution. Chance witnesses are projecting themselves as eye-witnesses of the alleged occurrence but their presence at the place of occurrence is in question. Learned Amicus Curiae further submits that the statement of PW-1 regarding manner of occurrence is totally different from the other PWs. Learned Amicus Curiae further submits that PW-4 (complainant) is unable to point out the boundary as well as khata khesra of the place of occurrence and present complaint case was filed after ten days of occurrence, in that context, prosecution has failed to prove the case where boundary has not been pointed out by the complainant himself and apart from that he is unable to assign reason as to why the complaint has been filed after ten days of occurrence on the said score, the story of prosecution has become doubtful. Hence, the impugned judgment of conviction and order of sentence is fit to be set aside.

11. Learned APP for the State has submitted that PW-4 (complainant) and other prosecution-witnesses have supported and corroborated the case of prosecution. In this way, the judgment of conviction and order of sentence passed



by the concerned court is justified and legal and no interference is required.

12. The question which arises for consideration is:-

*"Whether offence under Sections 323 of IPC is made out in the light of given facts and circumstances of the case or not ?"*

13. 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.

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

15. PW-4 /Sheo Chand Baitha is the complainant of the case. When the court question was asked, he stated that he filed the case after ten days of the occurrence, but he has not pointed out the reason as to why the complaint case has been filed after 10 days of occurrence. PW-4/complainant himself has not stated the boundary of the place of occurrence. In this way, the complainant himself has not proved the boundary of place of occurrence and the prosecution has failed to prove the boundary of place of occurrence. The accusation made against the appellant no.2 does not carry any authenticity.



The very authenticity of the complaint is doubtful.

16. While narrating the story of prosecution, the complainant himself narrates the manner of occurrence but during the course of examination he is unable to point out boundary as well as khata khesra of the place of occurrence. If the prosecution has failed to prove the place of occurrence, the very authenticity of story of prosecution is doubtful. Apart from that, complainant has not assigned any reason as to why the complaint has been filed after ten days of the occurrence. From the perusal of the record, it is crystal clear that the very authenticity of occurrence is doubtful as other witnesses are chance witnesses and complainant has reason to file a case against appellant no.2 and other as wife of the appellant no.2 had earlier filed a case against Virendra Kuwar and on account of said reason, the present complaint has been filed against appellant no.2 and other. The suggestion and evidence produced by defence disclosed that the earlier case was filed by the wife of appellant no.2 against Virendra Kuwar and other. The present complainant is the man of Virendra Kuwar and the present complaint has been filed at the behest of Virendra Kuwar just to harass the appellant no.2 and other. Appellant no.2 has already been taken defence that just



because earlier case filed by his wife on the basis of said reason, the present complaint case has been filed with intention to falsely implicate the appellant no.2 and others. In this way, the complainant has failed to prove the case beyond the reasonable doubt and benefit of doubt goes in favour of the appellant no.2.

17. PW-2/ Bhola Raut has stated that appellant no.2 gave two to three blows to the complainant. In this way, the manner of occurrence is totally inconsistent with the allegation made in the complaint petition. In paragraph 15 he has given very vague statement that he was coming from one side and Harihar, Tulsi, Motilal were coming from the other side. In this way, the statement of PW-2 is quite inconsistent with the statement of PW-3/Tulsi Mahto, who denied that any one reached along with him.

18. The statement of PW-2 on the point of blow is quite inconsistent with the allegation made in the complaint petition as PW-2 has stated while adducing the evidence that the appellant no.2 gave 2-3 blows to complainant and crushed the bucket. In this way, his statement does not carry any authenticity and evidence of said witness is fit to be discarded.

19. PW-3/ Tulsi Mahto, is resident of Mehadiya and



he asserted that he went to the house of co-accused Dhuri Yadav for taking medicine and saw the occurrence. In this way PW-3 is a chance witness. PW-3 has stated in cross-examination that his house is one mile away from place of occurrence. He further stated in paragraph 5 of the cross-examination that after hearing commotion, he went there and no one was with him. In examination-in-chief, he has stated that he was going to take medicine from Dhuri Yadav but during the cross-examination, he has admitted that he did not know the name of medicine and he also did not have receipt of purchasing of medicine. In paragraph 5 he stated that no one reached along with him at the place of occurrence. In this way, the statement of PW-3 is quite inconsistent with the statement of PW-2/Bhola Raut, who has stated that while he was coming from one side, Harihar, Tulsi, Motilal were coming from the other side. In this way, his statement is not trustworthy and he projecting himself as an eye-witness of the occurrence and his statement does not carry any weightage in the light of the aforesaid discussions made above.

20. PW-5/ Motilal Yadav, is also resident of another village. He stated that he was returning from the house of Gena Mistiri and saw the occurrence. In this way PW-5 is also



a chance witness. He further stated in paragraph 5 of the cross-examination that he did not point out the number of slaps. He also did not point out the specific boundary of place of occurrence. In para 4 he has stated that he has not made any query regarding the said occurrence to anybody. It is quite obvious that if a person had witnessed the occurrence, he would have communicated with other persons regarding the said occurrence and made necessary query. However, the conduct of PW-5 clearly indicates that he did not make any query regarding the said occurrence. This clearly establishes that he did not witness the occurrence and, therefore, did not make any query with any person.

21. It is necessary to cite the guideline of Hon'ble Supreme Court given in a case of chance witness (**Rajesh Yadav. v. State of Uttar Pradesh** passed in **Criminal Appeal Nos. 339-340 of 2014**) which is reproduced hereinbelow:

*26. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a*



*chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times.*

22. The principle was reiterated by the Hon'ble Supreme Court in **Jarnail Singh v. State of Punjab** at para 15 reported in **(2009) 9 SCC 719** which reads as under:

*15. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh [(1997) 4 SCC 192], Harjinder Singh v. State of Gujarat [(2004) 11 SCC 253] Acharaparambath Pradeepan & Anr. v. State of Kerala [(2006) 13 SCC 643] and Sarvesh Narain Shukla v. Daroga Singh & Ors. [(2007) 13 SCC 360). **Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan [(2004) 10 SCC 632.***

23. PW-1/ Harihar Mahto stated that when he was



working in the field, he saw the occurrence. In this way PW-1 is also a chance witness. PW-1 has stated that appellant no.2 and other assaulted the complainant by fists but the statement on the point of blow is quite inconsistent with the other PWs. In this way, his evidence does not carry authenticity and the same can be discarded in the light of discussions made above. There was an allegation in complaint that appellant no. 2 snatched the bucket by force and nearby witnesses came but while adducing evidence, PW-1 has not stated anything regarding appearance of other witnesses and merely stated that bucket was taken away. During adducing evidence before the court he stated nothing regarding appearance of any witness when bucket was taken but in complaint petition it was mentioned that when occurrence took place, the bucket was taken by appellant no.2 forcibly and other witnesses were present.

24. The statement of PW-1 regarding manner of occurrence is quite inconsistent with the complaint petition as in complaint petition it has been asserted that at the time of occurrence, other witnesses were also present but while adducing evidence, he has not stated that other witnesses appeared while quarrel was going on. In this way, his



evidence is not trustworthy.

25. Appellant no.2 has produced defence witnesses i.e. Dws-1, 2, 3 and 4 and Exhibit A, A/1, A/2 and A/3 and from the perusal of material as produced by the appellant no.2 and other, it is crystal clear that the wife of appellant no.2 has filed a case against Virendra Kuwar and other and the present case has been filed in retaliation of the said case as the complainant is associated with Virendra Kuwar and just to overcome the said complaint, the present complaint has been filed.

26. From the analysis of evidence of prosecution witnesses, it is quite evident that PW-4, who is complainant himself and the star witness of this case, is unable to point out the boundary as well as khata khesra of the place of occurrence and on the said score, the case of the complainant is very much doubtful. Apart from that, he has not assigned the reason as to why the complaint case has been filed after ten days of occurrence. In this way, the very authenticity of the occurrence is doubtful as other witnesses i.e. PWs-1, 3 and 5 are chance witnesses and they have been made the witnesses of the present complaint case and same has been lodged after 10 days of that occurrence as admitted by



complainant. The very authenticity of allegation is in question that how the complainant has filed the complaint against appellant no. 2 and others on the basis of allegations suited against appellant no. 2 and others by securing the evidence of witnesses, who are merely chance witnesses. Furthermore, the appellant no. 2 has taken the defence that there is reason to file a complaint case against appellant no. 2 and others as Mehadiya P.S. Case No. 110 of 1992 was filed by wife of appellant no. 2 against Virendra Kuwar and he was closely associated with the complainant. On the basis of the close association of Virendra Kuwar with the complainant, the complainant has prepared a base to file a complaint against appellant no. 2 and others just to overcome Mehadiya P.S. Case No. 110 of 1992 and by dint of the said reason, the complainant is unable to explain the delay in filing the present complaint petition. The complainant himself admitted that the present complaint was lodged after ten days of the occurrence, and the said complaint case is supported by witnesses who are chance witnesses. The present complaint is merely a calculated device to pressurize the appellant no.2 and other to withdraw the earlier case filed against Virendra Kuwar because the present complainant is the man of Virendra



Kuwar. PW-1/Harihar Mahto stated that he was working in field but he had not disclosed that nature of work that he was doing in the field and how the said place of occurrence was visible from the place where he was working. Keeping in view all the facts and after going through the deposition of the witness, it is crystal clear that he is a chance witness and his presence at the place of occurrence is quite doubtful. He is a chance witness coupled with the fact that the occurrence which took place on a particular date but no reason has been explained as to why the case has been filed after ten days of occurrence. In this way, the evidence of PW-1 does not carry any authenticity. There is delay of 10 days in filing the complaint case and said delay has not been explained in the complaint petition. PWs-1, 3 & 5 are chance witnesses. In the light of aforesaid fact and circumstances of the case, the accusation made against the appellant no.2 is without having any substance. Apart from that, there are several inconsistencies, discrepancies and contradictions in the deposition of prosecution witnesses. Hence, the contention of learned *amicus curiae* is quite convincing and sustainable in the light of facts and circumstances of the present case. The prosecution has not proved the case beyond reasonable doubt.



Hence, the impugned judgment of conviction and order of sentence is fit to be set aside.

27. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant no. 2 is on bail, he is discharged from the liabilities of his bail bonds.

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

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

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

31. Before parting with the judgment, I appreciate the legal assistance rendered by Mrs. Sushmita Mishra, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (five



thousand) to Mrs. Sushmita Mishra, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by her within a period of four weeks from the date of receipt of this judgment.

**(Alok Kumar Pandey, J)**

Nilmani/-

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	N.A.
<b>Uploading Date</b>	18.12.2025
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