

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.130 of 1999**

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1. Munshi Yadav, son of Sri Budhan Yadav, resident of village Bisar, P.S. Mofassil, District Gaya
2. Baliraj Yadav, son of Sri Budhan Yadav, resident of village Bisar, P.S. Mofassil, District Gaya

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Ashwani Kumar Sinha, Advocate  
For the Respondent/s : Mr.Satya Narayan Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE NANI TAGIA**

**and**

**HONOURABLE MR. JUSTICE ANSUL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ANSUL)**

**Date : 13-05-2026**

Heard the learned counsel for the appellants as well as the learned counsel for the State.

2. In the instant appeal, the appellants have challenged the judgment of conviction and order of sentence dated 31.03.1999 passed by the learned 3<sup>rd</sup> Additional Sessions Judge, Gaya in Sessions Trial No. 282 of 1992/41 of 1998, whereby the appellants have been convicted under Section 304 Part-I of Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

3. As per the FIR, the informant namely, Chander Yadav, gave his statement on 08.06.1990 at Pilgrim Hospital. He alleged that on 04.06.1990 on Monday he was washing his ox in



the fallow land of Budhan Yadav. Munsii Yadav came and started abusing him as to why he was washing his ox in his field. He replied that he is only washing his ox in their field and not taking away their field. Heated argument took place between them. Meanwhile, the informant's mother who is aged about 60 years old came and tried stopping the accused persons from abusing. On this Budhan Yadav, abused and asked to assault her whereafter Munsii Yadav picked stone and hit her on head due to which she fell down. Thereafter Baliraj Yadav assaulted her with a stone on chest. Budhan Yadav exhorted to finish her. On alarm raised by the informant, Sitaram Yadav P.W. 2, took up his mother. Meanwhile, villagers gathered. On this statement an FIR bearing Gaya P.S. Case No. 670 of 1990 was instituted. Later, mother of the informant succumbed to the injuries and died on 08.06.1990 around 10:30 PM and her postmortem was conducted on 09.06.1990 at 10:30 AM.

4. After investigation, police submitted charge-sheet under Section 337, 323, 304 of the Indian Penal Code against the accused persons. Thereafter, cognizance for the offence was taken. Vide order dated 18.12.1995 charges were framed against the accused persons and the same was read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.



5. During the course of trial, altogether five witnesses were examined in support of the prosecution case, who are as under: -

P.W.-1	Chander Yadav (Informant)
P.W.-2	Sita Ram Yadav
P.W.-3	Gopal Sao
P.W.-4	Dr. Kapil Deo Prasad
P.W.-5	Birendra Singh

On behalf of defence, one witness namely Babuchand Yadav was examined and Court Witness namely Indrajit Singh was also examined.

6. Apart from the oral evidences, documentary evidence was also exhibited on behalf of the prosecution, which are as follows: -

Exhibit- 1	Postmortem report
Exhibit- 2	Formal FIR
Exhibit- 3	Fardbeyan
Exhibit-4	Letter No. 590 dated 4.11.1992
Exhibit-5	Indo Register entry No. 951

On behalf of the defence one document was exhibited, which is as follows:-

Exhibit-A	Signature of Anjali Tiwari on certificate
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7. PW 1 Chander Yadav (informant) deposed and supported the allegations made in the FIR in his chief examination.



He stated that Munsi Yadav assaulted his mother on head with stone and Baliram Yadav assaulted her on chest with stone. He further stated that his statement was recorded at 08:00 AM in the morning and on the very same day at 10:00 PM his mother passed away. In para 5 he stated that his mother became unconscious and on the same date i.e. 04.06.1990, when the said occurrence is alleged to have taken place then he went to the police station and told the Officer-in-Charge about the occurrence. In para 22 he again stated that the day on which his mother was assaulted at 10-11 PM he had gone to the police station alone. He states that his mother was not taken inside the police station but kept outside and gave all the information to the Officer-in-Charge but they had not given anything in writing. He further stated that the Officer-in-Charge did not read over anything to him but he has given his LTI. He denied the suggestion that he had given a written application to the Officer-in-Charge but he was hiding the same because he has not given the name of Budhan Yadav. In para 24 he states that he did not give any written Sanha. In para 28 he stated that he had not shown the stone by which his mother was assaulted to the Officer-in-Charge. He stated that on 04.06.1990 statement of his mother was not recorded as she was unable to speak. He again in para 31 states that he had given an application in the Court of Chief



Judicial Magistrate that the Officer-in-Charge had not written his statement in the Sanha correctly. He states that in FIR he had mentioned that on his raising *Hulla* Kailash Yadav, Lekha Yadav and Vikash Yadav had come.

8. P.W. 2 is Sitaram Yadav. He stated that Munsii Yadav had assaulted Somari Devi (deceased) on head and thereafter Baliram Yadav had assaulted deceased on chest. In para 6 he denied the suggestion that there was exchange of land between him and Budhan Yadav. He stated that argument had started before he reached there and there were no bricks and stone near the spot. He stated that blood had fallen from the body of Somari Devi, the deceased which was present on her clothes also and some blood had fallen on earth also. He stated that his statement was recorded five days after the occurrence by the police and that he had stated that he was taking bath near the hand-pump from where he went to the place of occurrence. He stated that he had not stated before Investigating Officer that he has not seen as to who assaulted with stone as bricks and stones were thrown from both side and she might had sustained injuries due to stone thrown by somebody. In para 22 he stated that he has not informed the Investigating Officer that one Bhola Yadav asked to file case then Chander Yadav stated that they will lodge Sanha but they will not contest the case. He



also denied suggestion that he had not mentioned Budhan Yadav, Munsu Yadav and Balram Yadav. Like PW 1 he denied the suggestion that Munsu Yadav was working in Gaya Engineering Works and that Budhan Yadav was not even in the village. He denied the issue of exchange deed with Budhan Yadav.

**9.** PW 3 was tendered for cross-examination.

**10.** The postmortem of the deceased was conducted by PW 4 Doctor Kapildeo Prasad. He found one abrasion on scalp over left parietal region of head and on dissection, underlying soft tissues were found infiltrated with blood. On removal of scalp, blood clots were found diffused in both parietal regions of the skull on dissection. There was depressed fracture of left fronto parietal region. He also found a bruise over right side of the chest and second and third rib were found fractured. He stated that the age of the deceased was sixty years. He stated that injuries were ante-mortem and grievous in nature and were caused by hard and blunt object, may be stone. He further stated that the cause of death was coma, compression and shock due to aforesaid ante-mortem injuries.

**11.** PW 5 is a formal witness who proved the handwriting of the officer Incharge, Gopal Singh. He denied any knowledge of the occurrence.



**12.** After the prosecution evidence, the defence was given opportunity to examine their witnesses. Babuchand Yadav, D.W. 1. was an employee in Gaya, he stated that on the date and time of occurrence the appellant Munsu Yadav was on duty.

**13.** Indrajit Singh, an employee of Pilgrim Hospital, Gaya, had proved the patient admission register of the Hospital where he stated that on 04.06.1990 Somari Devi was admitted and she died on 08.06.1990. He stated that as per the death column of the said register, cause of death is shown as injury on head.

**14.** It is further stated that Budhan Yadav was acquitted by the court below whereas Munsu Yadav and Baliram Yadav alias Baliraj Yadav were convicted.

**15.** We have heard and considered the submission of the parties and perused the record. The record would show that the said occurrence is of 04.06.1990. The consistent case of prosecution through the informant is that on that day itself he went to the police station and lodged Sanha and he had informed the Officer-in-Charge about the occurrence. P.W. 1 clearly states that though he had not given any written report to the Officer in-Charge but he had given his thumb impression on a paper. In para 22 the informant has specifically stated that on the date when his mother had sustained injuries he had gone alone to police station at



around 10-11 AM. Sitaram Yadav, PW-2, in para 18, had stated that blood had fallen from the body of the deceased on the land. He further stated that his statement was recorded four to five days after the said occurrence. He has denied the statement that when Budhan Yadav asked to file a case then Chander Yadav stated that he wishes to lodge Sanha and he would not contest the case. This has come in the statement of PW 2 in para 22.

**16.** The records thus clearly establish that the initial version of the case was given to the police on 04.06.1990 and there is doubt as to whether it contained the name of the appellants. Suggestions have been given to the witnesses in this regard but deposition of Investigating Officer was vital to take contradiction with regard to the statements made by the witnesses when their attention was drawn to their statement made before police. The Investigating Officer has not been examined in this case. Non-examination of Investigating Officer has therefore resulted in failure to prove the place of occurrence. It has also robbed the defence of the opportunity to establish the earlier contradictory statement of the witnesses taking recourse to Section 145 and 155 of the Evidence Act in order to discredit the witnesses.



17. In the case of *V.K. Mishra v. State of Uttarakhand*, reported in (2015) 9 SCC 588, the Hon'ble Supreme Court has held at para 19 that:-

*“19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the*



*police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.”*

**18.** The occurrence is of 04.06.1990. Fardbeyan was given on 08.06.1990 and the FIR came to be registered on 09.06.1990. The deceased had sustained injury on her head and chest as per the postmortem report. The attention of PW-2 has been drawn to his statement made before police that there was brick-batting from both the side. However, the absence of Investigating Officer has not allowed the defence to get the said statement confirmed.

**19.** Furthermore, the record shows that this is an admitted position that the earliest version of the occurrence came out on 04.06.1990 but the same is not on record. Moreover, the Investigating Officer is not there to lend credence to the prosecution case with regard to the place of occurrence and the



earliest version. This is a classic case where the absence of Investigating Officer has clearly caused prejudice to the defence and thus non-examination of Investigating Officer in this case has to be held to be fatal to the case of prosecution.

**20.** In the case of *Munna Lal v. State of U.P.*, reported in **(2023) 18 SCC 661** the Hon'ble Supreme Court has held at para 39 and 40 that:-

*“39. Secondly, though PW 4 is said to have reached the place of occurrence at 1.30 p.m. on 5-9-1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses i.e. PW 2 and PW 3, not being found by this Court to be wholly reliable. The missing links could have been provided by the investigating officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the investigating officer could not depose as a witness, as told by PW 4, is that he had been sent for training. It was not shown that the investigating officer under no circumstances could have left the course for*



*recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the investigating officer.*

*40. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW 2 and PW 3 not being wholly reliable, this Court holds the present case as one where examination of the investigating officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”*

**21.** The victim is said to have been treated at Pilgrim Hospital. A witness has come to prove the patient admission register and date of death of deceased but no treatment paper of Pilgrim Hospital has been brought on record. The only material regarding the death of the deceased is the oral allegation of the witnesses and the postmortem report. What transpired between 04.06.1990 to 08.06.1990 in terms of treatment of the deceased is nowhere on record. The issue regarding this gap is enhanced in view of absence of initial version as well as the age of the deceased and the allegation that it may have resulted from brick batting between two groups of people.



22. It is further noted that the FIR has not been promptly lodged. Apart from the fact that the initial version is not on record the FIR available to the court is the version dated 08.06.1990 which was lodged after four days of delays.

23. The Hon'ble Supreme Court, on a number of occasions has discussed the importance of prompt lodging of FIR.

24. In the Case of *Thulia Kali v. State of T.N.*, reported in (1972) 3 SCC 393 Hon'ble Supreme Court has held at para 12 that:-

*“12. ....First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated*



*account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.....”*

**25.** Similarly, in the case of *Meharaj Singh v. State of U.P.* [*Meharaj Singh v. State of U.P.*, reported in (1994) 5 SCC 188 Hon'ble Supreme Court has held at para 12 that:-

*“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story.....”*

**26.** The situation is further complicated due to the absence of Investigating Officer. Only his presence could have proved the place of occurrence as well as defence version and also



the initial version. His presence is thus vital and in his absence there is no way to ascertain the truth of the allegation levelled.

**27.** Accordingly, the appeal is allowed and the judgment of conviction and order of sentence dated 31.03.1999 passed by the learned 3<sup>rd</sup> Additional Sessions Judge, Gaya in Sessions Trial No. 282 of 1992/41 of 1998, whereby the appellants have been convicted under Section 304 Part-I of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life is set aside. Consequently, the appellants of the present appeal are acquitted of the charges levelled against them.

**28.** If the appellants are in jail, they shall be released forthwith, if not required in any other case. The appellants are discharged from the liabilities of their bail bond.

**29.** The lower court records be sent to the concerned court.

**(Ansul, J)**

I agree

amitkr/-

**(Nani Tagia, J)**

<b>AFR/NAFR</b>	NAFR
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