

IN THE HIGH Court OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.199 of 1996

1. Mahabir Manjhi, S/o Late Budhu Manjhi, R/o vill - Derma, P.S.- Akabarpur, Distt.- Nawadah
(Abated vide order dated 01-03-2002)
2. Gaya Manjhi, S/o Mahabir Manjhi, R/o vill - Derma, P.S.- Akabarpur, Distt.- Nawadah

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. S.K. Lal, Sr. Advocate
Mr. Bharat Lal, Advoaacte
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR SINGH
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 09-04-2026

1. Both the accused, namely, Mahabir Manjhi and Gaya Manjhi have preferred this criminal appeal, but appellant no. 1, Mahabir Manjhi died in Central Jail, Gaya on 07.01.2001, hence vide order of this Court dated 01.03.2002, this appeal was directed to abate, so far appellant no. 1 (Mahabir Manjhi) is concerned.

2. Heard the learned counsel for the appellant no.2 and learned A.P.P. for the State of Bihar.

3. The present appeal arises out of the judgment of conviction dated 25.04.1996 (hereinafter referred to as the



'*impugned judgment*') and the order of sentence dated 26.04.1996 (in short referred to as the '*impugned order*') passed by the learned 1st Additional Sessions Judge, Nawada in connection with Sessions Trial No. 365/94, 38/94.

4. By the impugned judgment, the appellant no.2 has been convicted for the offences under Sections 302/34 of the I.P.C and has been sentenced to undergo rigorous imprisonment for life for the offence under Sections 302/34 of the I.P.C.

Prosecution Case:

5. That the prosecution case, in brief, is that on 15.07.1994 at about 6.00 P.M., the father of the informant (P.W.-4), namely Kameshwar Manjhi (since deceased), returned from Nawadah and saw the accused persons putting mud and constructing "OLTI" adjacent to his OLTI. Upon objecting to the same, an altercation ensued between the parties on that very pretext. Thereafter, the informant came out of his house and noticed that the appellants had gone back to their house and returned armed with a sword and *garansa*. It is alleged that appellant no.1, namely, Mahabir Manjhi inflicted a sword blow on the head of the deceased, as a result of which he fell down. Subsequently, appellant no.2, namely, Gaya Manjhi assaulted the deceased with a *garansa* on his eye-brow and further dealt



two sword blows on the face and neck of the deceased. On alarm being raised, the brother and mother of the informant (P.W.-3) came out of the house, upon which the accused persons fled away from the place of occurrence.

6. On the basis of the aforesaid written application, Akbarpur P.S. Case No. 096 of 1994 dated 16.07.1994 under Sections 302/34 of the I.P.C Act was registered.

7. After completion of investigation, the police submitted charge-sheet against both the accused and the case was committed to the Court of session on 03.10.1994 vide G.R. Case No. 906 of 1994.

8. On the basis of the police report, cognizance was taken against the the appellants on 21.09.1994.

9. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried.

10. In course of trial, the prosecution has examined as many as six witnesses and exhibited several documents to prove the prosecution case.

List of prosecution witnesses:

PW-1	Gulla Manjhi
PW-2	Prabhu Manjhi
PW-3	Janki Devi



PW-4	Bhola Manjhi
PW-5	Bipul Kumar (Doctor)
PW-6	Ram Janam Singh (I.O)

List of Exhibits on behalf of the Prosecution

Exhibit-X	Fardbeyan, Thumb impression of Bhola Manjhi.
Exhibit-Y	Bhola Manjhi's thumb impression on seizure list.
Exhibit-Z	Bhola Manjhi's thumb impression on Inquest Report.
Exhibit-1	Postmortem Report.
Exhibit-2	Fardbeyan
Exhibit-3	Forwarding of Fardbeyan
Exhibit-4	Seizure list
Exhibit-5	Inquest report
Exhibit-6	F.I.R.

Findings of the learned Trial Court

11. The learned trial Court, upon appreciation of the evidence on record has found that the prosecution examined six witnesses, out of whom P.W.1 and P.W.2 were hearsay witnesses and did not materially support the prosecution case. It has been held that the prosecution case mainly rests upon the testimony of P.W.3, the wife of the deceased, who was treated as an eye witness. The trial Court has observed that her presence at the place of occurrence was natural, the occurrence having taken place near her house and her evidence was found to be



consistent and reliable. It has further been recorded that the place of occurrence stood established between the adjoining houses of the deceased and the accused, indicating prior dispute between the parties regarding Olti. The trial Court has also held that the evidence of P.W.3 finds corroboration from the medical evidence of P.W.5, who opined that the injuries were caused by sharp cutting weapons like sword and *garasa*.

12. The learned trial Court has further taken into consideration that though P.W.4, the informant, did not fully support the prosecution case in cross-examination, his presence at the place of occurrence could not be denied and his earlier version still give some support to the prosecution. It has also been held that the Investigating Officer (P.W.6) proved the steps taken during investigation, including preparation of the inquest report and seizure list. The learned trial Court has treated the lapses in investigation, such as non-sending of blood-stained earth for forensic examination and its non-production in Court, as minor irregularities not affecting the core of the prosecution case. The defence plea regarding contradictions and alleged compromise has been rejected as not sufficient to create reasonable doubt. On such findings, the trial Court has concluded that the prosecution has proved the charge against the



accused beyond reasonable doubt and accordingly, recorded a finding of guilt against them.

Submission on behalf of the appellant no. 2 (Gaya Manjhi)

13. The learned counsel for the appellant submits that he has falsely been implicated in the present case due to differences arising out of construction of Olti. It is next submitted that the informant and the deceased Kameshwar Manjhi had committed murder of one Bindeshwar Manjhi for which a case was registered in Akbarpur. Owing to this incident, the sons of Bindeshwar Manjhi were allegedly harbouring a grudge against the present appellant no.2.

14. The learned counsel for the appellant no. 2 submits that the prosecution has in all examined six witnesses out of whom PW-3 Janki Devi has claimed herself to be the eyewitness of the said occurrence, However from the deposition made by the said witness is not true as, the deposition made by PW-2 Prabhu Manjhi states that there was a large crowd at the time of incident, thus when simultaneously read, both the statements are contradictory in nature.

15. The Learned counsel for the appellant no. 2 next submits that PW-4, being the informant, has not established



himself as an eyewitness of the occurrence. PW-1 has been declared hostile by the prosecution. It is next submitted that the conviction is based on the testimony of sole witness- Janki Devi(PW-3) and according to the recital of the First information Report, she is not an eyewitness to the said occurrence.

16. The learned Senior Counsel for the appellant no. 2 thus submitted that the present case suffers from vital contradictions and inconsistency in the statements of two so called eye-witnesses being PW-3 and PW-4, which goes to the root of the prosecution case. He has categorically stated that the overwriting in the date of the incident on the fardbeyan and the signature of the CJM on a date on which the occurrence had occurred and not even the FIR had been lodged smells of mischief and it can be said that it is a case of ante-dating. The learned Senior Counsel has also pointed out that it is a case of interpolation in the FIR and on this point alone the appeal may be allowed. It has lastly been submitted that there is a delay in sending the FIR to the Court and therefore, the fact that there seems to be interpolation in the FIR coupled with the fact that the FIR was sent after delay, there is a reason to believe that FIR is ante-dated and therefore, the investigation is also tainted.

17. The learned senior counsel in support of his



submissions has relied upon the judgment of Hon'ble Supreme Court in the case of **Suraj Mal v. The State (Delhi Administration); AIR 1979 SC 1408** and the judgment passed by this Hon'ble Court in the case of **Abdul Rahman v. State of Bihar, (1992) 1 PLJR 161.**

18. Referring to the aforesaid two judgments, the learned Senior Counsel has emphasized that on account of extraordinary delay in sending the FIR to the Court coupled with the fact of interpolation in the FIR, the stand of the defense of the FIR being ante-dated stands vindicated. He has further submitted that in view of the inconsistent statements in the evidences of two eyewitnesses, who have contradicted each other then the testimony of such witnesses become unreliable and are not worthy of any credence and therefore, conviction cannot be based relying on such evidence.

Submission on behalf of the State

19. The Learned APP, while vehemently opposing the prayer made in the present appeal has stated that the appellant no. 2 has committed a gruesome act which has been amply proved by the evidence led on behalf of the prosecution.

20. The learned APP for the State further submits that the arguments raised on behalf of the appellant no. 2 about the



FIR being ante-dated is not tenable as from perusal of the records, it would be evident that the FIR being Akbarpur P.S. Case No. 96 of 1994 dated 16-07-1994 was received by the learned CJM Nawada on 19.07.1994 and therefore, the notings on the FIR seems to be an inadvertent clerical mistake and the appellants cannot take advantage of the same. She further submitted that the ground of interpolation in the date on the fardbeyan is also not correct as the fardbeyan was recorded in the night i.e. on 16.07.1994 and inadvertently earlier it seems that the date has been written as 17.07.1994, however, the same is answered from the fact that in the body of the fardbeyan, in the fourth line, the date has been categorically written by the scribe of the fardbeyan to be 16.07.1994 and the scribe has also signed in the end of such fardbeyan mentioning the date as 16.07.1994, apart from the notings by the S.I. while forwarding the said fardbeyan for instituting a case.

21. In view of such a specific mentioning of date as 16.7.1994 on several other places on the fardbeyan (Ex-3) the plea of interpolation does not stand to test.

22. The learned APP for the state has thus submitted that from the deposition of the evidences of various prosecution witnesses, it is clear that the appellant no. 2 and



others were specifically named to be present there, where the father of the informant was found dead with injuries.

23. The learned APP has further submitted that minor contradictions would not entitle the appellant to draw any benefit from the same and the fact that the informant was gained over by the defense's side can easily be gathered from the fact that the informant in his examination-in-chief has supported the entire case of the prosecution, however, during his cross-examination, he has categorically accepted that the parties have compromised and he did not want to lead evidence any further.

24. It has thus been submitted by the learned APP for the state that the appellant should not be given any leverage on account of such minor contradictions and there is no illegality in the judgment and order impugned and the appeal is fit to be dismissed.

Conclusion

25. Having heard the learned senior counsel for the appellant and the learned APP for the State, as well as after going through the entire records of the case, it is evident that the factum, that the father of the informant having died on account of injuries inflicted by a sharp cutting weapon is not disputed. Out of all the six prosecution witnesses examined on behalf of



the prosecution, P.W.-1 and P.W.-2 are hearsay witnesses and they have not spoken about having seen the occurrence and in fact P.W.-1 has stated that he had heard that Mahabir Manji (now died) and Kameswar Manji (deceased) were fighting and P.W.-1 was subsequently declared hostile, while P.W.-2 has also stated that he had not seen the occurrence and had heard about it and he came to know about the incident after two to three hours of the occurrence.

26. P.W.-3, namely, Janki Devi happens to be the wife of the deceased Kameshwar Manjhi and as per her deposition, she has stated that Mahabir Manjhi assaulted Kameshwar Manjhi (deceased) by '*saif*' while Gaya Manji, the appellant no. 2, assaulted with *garasa* causing injury and blood started oozing out. During her cross-examination, P.W.-3 has stated that during the altercation apart from the accused persons, it was only her who was present at the time of occurrence.

27. In paragraph no. 3 of her deposition, she has categorically answered that she was not told about the incident by Prabhu Manjhi (P.W.-2), rather she had seen the occurrence herself. She has further stated that after the occurrence nobody has turned up.

28. Bhola Manjhi (P.W.-4), happens to be the son



of the deceased and son of Janki Devi (P.W.-3) who is also the informant of the case has stated in his examination-in-chief that Mahabir Manjhi was armed with sword while Gaya Manjhi (appellant no. 2) was armed with *garasa* and both the persons assaulted his father with the said weapon and his father sustained injuries on his head, neck and nose upon which he fell and was later declared dead while he was being taken for treatment.

29. Bholu Manjhi (P.W.-4) has identified his fardbeyan given to the police officer and has accepted that he had put his thumb impression on the same. He has categorically stated that the I.O. had collected the blood-stained soil from the place of occurrence and had also prepared a document for the same upon which he had also put his thumb impression. He has admitted to have put his signature in the inquest report prepared by the I.O. and thereafter the body of his father was taken to Nawada for postmortem where he had also gone along with the dead body.

30. Contrary to what has been stated in the examination-in-chief, the informant P.W.4, during his cross-examination in paragraph 5, has stated that he had not seen the person who had assaulted his father. He acknowledged as to



how they had assaulted and from which weapon they had assaulted. He has further stated that the S.I. had taken his thumb impression on plain paper.

31. In paragraph no. 6, he has admitted the fact that he has compromised with the accused person and has stated that he is not eager to depose any further.

32. Dr. Bipul Kumar, (P.W.-5) happens to be the doctor, who had conducted the post-mortem and he has supported the ante-mortem injuries which were found on the body of the deceased which were the ultimate cause for the death of the father of the informant.

33. Shri Ram Janam Singh (P.W.-6) was the I.O. of the case and he has during his examination-in-chief supported the factum of recording the fardbeyan, preparation of inquest report, the seizure of blood-stained soil from the place of occurrence and recording of the FIR. The I.O. has described the place of occurrence with boundaries. The I.O. in paragraph no. 7 of his deposition has admitted the fact that the blood-soaked soil was kept sealed at Akbarpur police station. During his cross-examination, he had admitted the fact that the blood-stained soil was not sent for FSL examination and also the fact that the said soil was not produced before the Court.



34. In view of the aforesaid depositions, especially by P.W.-3 and P.W.-4, who happens to be the wife and son respectively of the deceased, it would be evident that P.W.-3, the wife of the deceased, claims herself to be an eyewitness to the occurrence and denies the presence of any other person, including her son, at the time of occurrence. This categorical statement made by P.W.-3 is in complete contradiction to the statement given by P.W.-4 Bholu Manjhi, who happens to be the informant of the case and has claimed himself to be an eyewitness at the time of giving his fardbeyan and even in his examination-in-chief. In fact, P.W.-4 Bholu Manjhi had specifically stated that he had seen Mahabir Manjhi armed with sword and Gaya Manjhi with *garasa*, who had assaulted his father and only when he had raised alarm *hulla* that Prabhu Manjhi, Kulla Manjhi, Girani Manjhi and his mother i.e. Janki Devi, P.W.-3, came to the place of occurrence. If we compare the statements of P.W.-3 *vis-a-vis* P.W.-4, both claims to be an eyewitness to the occurrence, however, both denies the presence of each other in their respective depositions.

35. At this juncture, it would be relevant to refer to a judgment rendered in the case of **Kannaiya v. State of Madhya Pradesh; 2025 SCCOnLine SC 2270** wherein the



Hon'ble Apex Court in paragraph nos. 38, 39 and 40 has observed as under:

“38. The incident took place in a small village where everyone is known to each other. Puniya (PW-12) was closely related to Ramesh. Thus, had he actually seen the incident, this fact was bound to crop up in the discussion among the family members and in that event, the name of Puniya (PW-12) as an eye witness to the alleged assault would definitely have reflected in the FIR. It is true that the reason for the said material omission could not be elicited because the first informant, Gobariya (PW-2), turned hostile. However, the fact that the name of a family member who claims to have seen the assault, was not mentioned in the FIR is undoubtedly a very vital omission which would have a bearing on the veracity of the prosecution case.

39. We may hasten to add here that Puniya (PW-12) is not the scribe of the FIR, but the omission of his name in the FIR gains significance considering the fact that the incident started with the accused persons trying to damage the hut of Jagya (PW-3), father of Puniya (PW-12). In this background, the omission of his name in the FIR is a material one.

40. Thus, we have no hesitation in concluding that Puniya (PW-12), falls within the



category of a “wholly unreliable witness”.”

36. In the present case, in view of the complete denial of having seen the occurrence and also the fact as to who had assaulted and with which weapon, the entire case of the prosecution which was based on the testimony of P.W.-3 and P.W.-4 becomes doubtful as noted above. Both these witnesses have given contradictory versions regarding their being an eyewitness and presence at the place of occurrence and therefore, conviction cannot be upheld relying upon these witnesses. In paragraph nos. 58 of the judgment in the case of **Kannaiya (supra)**, the Hon’ble Supreme Court has observed as under:

“In this regard, reference may be made to the decision of this Court in Pankaj v. State of Rajasthan, wherein it was emphasised that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under:—

“25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the



case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."

(Emphasis Supplied)"

37. In view of such finding of fact and the judgment rendered by the Hon'ble Supreme Court, we are of the opinion that it would not be safe to uphold the conviction of the accused appellant relying on the testimony of the so-called eye-witnesses Janki Devi (P.W.-3) and Bhola Manjhi (P.W.-4), which is full of contradictions.

38. In the light of the aforesaid discussions, we hold that the conviction of the appellant no. 2 (Gaya Manjhi), as recorded by the learned trial Court, cannot be sustained and therefore, the judgment of conviction dated 25.04.2026 and order of sentence dated 26.04.1996 passed by the learned 1st Additional Sessions Judge, Nawada in connection with Sessions Trial No. 365/94, 38/94 are set aside. The appellant no. 2 (Gaya Manjhi) is acquitted of the charges levelled against him. Since the appellant no. 2, Gaya Manjhi is on bail, he is discharged from the liability of his bail bonds. However, he is directed to execute fresh bail bonds and sureties within three weeks to the satisfaction of the learned trial Court concerned in terms of Section 437A of the Code of Criminal Procedure to appear before the Hon'ble Supreme Court on issuance of notice in



respect to any appeal or petition filed against this judgment.

Said bail bond shall be in force for six months.

39. Let the lower Court records be transmitted to the learned Trial Court forthwith along with a copy of this judgment.

40. Accordingly, the appeal stands **allowed**.

(Sanjay Kumar Singh , J)

(Sourendra Pandey, J)

aditya/-

AFR/NAFR	
CAV DATE	31.03.2026.
Uploading Date	10.04.2026.
Transmission Date	

