



**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.127 of 2023**

Arising Out of PS. Case No.-2 Year-2015 Thana- BARAULI District- Gopalganj

1. Raviranjn Prasad, Son of Shambhu Prasad, Resident of Village- Baderdeh, P.S.- Barauli, District- Gopalganj.
2. Rajendra Prasad, Son of Late Ramayan Prasad Resident of Village- Baderdeh, P.S- Barauli, District- Gopalganj.
3. Vishwanath Prasad @ Bishwanath Prasad, Son of Late Ramayan Prasad, Resident of Village- Baderdeh, P.S- Barauli, District- Gopalganj.
4. Lalbutan Prasad, Son of Late Ramayan Prasad, Resident of Village- Baderdeh, P.S- Barauli, District- Gopalganj.
5. Rameshwar Prasad, Son of Late Shiv Bachan Prasad, Resident of Village- Baderdeh, P.S- Barauli, District- Gopalganj.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Ms. Anukriti Jaipuriyar, Advocate Mr. Ranjan Kumar Srivastava, Advocate Mr. Shashwat Srivastava, Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 03-08-2026

Heard learned counsel for the appellants and learned
Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 19.12.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 20.12.2022 (hereinafter referred to as the 'impugned order') passed by learned Additional District & Sessions Judge-VII,





Gopalganj (hereinafter referred to as the ‘learned trial court’) in Session Trial Case No. 214 of 2016 arising out of Barauli P.S. Case No. 02 of 2015. By the impugned judgment, the appellants have been convicted for the offences punishable under Sections 302, 323 and 341 of the Indian Penal Code (in short ‘IPC’) and by the impugned order, they have been sentenced to undergo life imprisonment and to pay a fine of Rs.50,000/- each for the offence under Section 302 IPC and in case of default of payment of fine, they have to undergo six months additional rigorous imprisonment. For the offence under Section 323 IPC, they have been ordered to undergo one year rigorous imprisonment. They have further been ordered to undergo one month simple imprisonment for the offence under Section 341 IPC. All the sentences are to run concurrently.

Prosecution Case

3. The prosecution story is based on the *fardbeyan* of Chhotelal Prasad recorded on 01.01.2015 at 07:35 PM in the evening at the Emergency Ward of Sadar Hospital. The informant has alleged that on the same day at about 05:00 PM in the evening, he was standing at his door when his co-villagers, namely, (1) Raviranjana Prasad, (2) Rajendra Prasad, (3) Vishwanath Prasad, (4) Lalbutan Prasad and (5) Rameshwar Prasad along with three





unknown persons armed with weapons and *lathi-farsa* came at the disputed piece of land which is under litigation in the court and starting cutting bamboos from the field. On seeing the incident, when the informant's cousin Arjun Prasad asked them to stop cutting bamboo, all the accused persons surrounded him and started assaulting him. Arjun Prasad got injury on his head and became unconscious. He was taken to Sadar Hospital, Gopalganj for treatment from where he was referred to Gorakhpur. In the same incident, one Vindhyachal Prasad, brother of the informant was also injured.

4. On the basis of the *fardbeyan* of the informant (PW-6), Barauli P.S. Case No. 02 of 2015 dated 05.01.2015 was registered under Sections 341, 323, 307 and 34 IPC against (1) Raviranjana Prasad (appellant no. 1), (2) Rajendra Prasad (appellant no. 2), (3) Vishwanath Prasad (appellant no. 3), (4) Lalbutan Prasad (appellant no. 4) and (5) Rameshwar Prasad (appellant no. 5). Later on, Section 302 IPC has also been added.

5. After investigation, police submitted chargesheet bearing Chargesheet No. 190 of 2015 dated 25.10.2015 against (1) Raviranjana Prasad, (2) Rajendra Prasad, (3) Vishwanath Prasad, (4) Lalbutan Prasad and (5) Rameshwar Prasad under Sections 341, 323, 307, 302 and 34 IPC.





6. Learned Chief Judicial Magistrate, Gopalganj vide order dated 28.03.2016 took cognizance of the offences punishable under Sections 341, 323, 307, 302/34 IPC against the appellants and committed the records to the Court of Sessions.

7. Charges were read over in Hindi and explained to the appellants to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 29.06.2016, charges were framed against them under Sections 341/34, 323/34, 307/34 and 302/34 IPC.

8. In course of trial, the prosecution examined as many as ten witnesses and got exhibited various documentary evidences. The description of the prosecution witnesses and the list of documents exhibited on behalf of prosecution are provided hereunder in a tabular form:-

List of Prosecution Witnesses

Prosecution Witness No.	Name of Witness	Description
PW-1	Vindhyachal Prasad	Eye witness
PW-2	Nitish Kumar	Eye witness
PW-3	Mahangu Prasad	Eye witness
PW-4	Vimalawati Devi	Eye witness
PW-5	Vashisth Prasad	Eye witness
PW-6	Chhotelal Prasad	Informant
PW-7	Umesh Prasad Singh	Investigating Officer
PW-8	Dr. R.P. Sinha	Medical Officer
PW-9	Dr. Subhash Singh	Medical Officer
PW-10	Md. Kaisar Javed	Medical Officer





List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'1'	<i>Fardbeyan</i>	PW-6
'3'	Signature and writing of SI Bharat Pandey on the <i>fardbeyan</i>	PW-7
'3A'	Postmortem report	PW-8
'3/1'	Injury report of Vindhyachal Prasad	PW-9
'3/2'	Injury report of Arjun Prasad	PW-10
'4'	Signature of informant Chhotelal Prasad and Basishth Prasad on the <i>fardbeyan</i>	PW-7
'5'	Endorsement of PS Incharge regarding registration of FIR	PW-7
'6'	Carbon copy of Inquest report	PW-7

9. Thereafter, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the allegations and pleaded innocence. They have also stated that the deceased died of falling on the bamboo stump ('*khunt*').

10. The defence has produced no oral witness but exhibited four documentary evidences which are being mentioned hereunder in tabular form:-

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
A	Certified copy of ordersheet of counter case no. 910 of 2013 of Sub-Divisional Officer, Gopalganj	
B	True copy of Barauli P.S. Case No. 03 of 2015	
B/1	True copy of Barauli P.S. Case No. 81 of 2013	
C	Statement of Meena Devi recorded under Section 164 CrPC	





Findings of the Learned Trial Court

11. Learned trial court after examining the oral as well as documentary evidences available on the record came to conclusion that the deceased Arjun Prasad died due to fatal injury which was caused by accused persons who assaulted him when he tried to stop them from cutting bamboo from the disputed piece of '*banswari*' land. Thus, the learned trial court held the accused persons guilty of committing murder of Arjun Prasad under Section 302/34 IPC.

12. Learned trial court further observed that the charge under Section 307 IPC against the accused persons regarding murderous assault upon deceased stood proved and merged with the charge under Section 302 IPC. However, since the injury inflicted upon Vindhyachal Prasad (PW-1) was reported simple in nature, the charge under Section 307 IPC was not established.

13. Learned trial court further observed that the ingredients of Section 323 IPC stands proved against all the accused persons which relates to offence of commission of hurt. Further, the learned trial court concluded that the charge under Section 341 IPC against all the accused persons was also proved in





course of inflicting assault upon the deceased as well as the co-injured.

14. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been successfully able to prove the charges beyond all reasonable doubts levelled against these appellants. Accordingly, the appellants were convicted for the offences punishable under Sections 302, 323 and 341 IPC.

Submissions on behalf of the Appellants

15. Learned counsel for the appellants while assailing the impugned judgment and order has submitted that the learned trial court has committed grave error in convicting the appellants.

16. Learned counsel for the appellants has submitted that there is no specific allegation in the *fardbeyan*. Learned counsel submits that no weapon was recovered. Learned counsel for the appellants submits that Section 34 of the IPC has not been invoked as its ingredients are not fulfilled. It is submitted that the appellants had gone to the bamboo thicket (*Baswari*) to cut the bamboo and not with the intention to kill Arjun Prasad.

17. Learned counsel for the appellants submits that PW-1 in his deposition has stated that the deceased was hit by a *farsa*, however, the injury report (Exhibit '3/2') does not suggest any





farsa injury. Learned counsel submits that in the cross-examination of Dr. Md. Kaisar Jawed (PW-10), he has stated that, that type of injury may be caused due to fall also. This creates doubt in the deposition of PW-1 who himself is an injured witness and thus an eye witness. Learned counsel further submits that as per the statement of PW-1 himself, PW-2 to PW-6 were not even present at the time of occurrence, they had arrived after the commission of the occurrence.

18. Learned counsel for the appellants submits that there was prior enmity between the parties with reference to the bamboo thicket '*Baswari*' where the alleged incident took place. Learned counsel further submits that no independent witness has supported the prosecution case. It is submitted that the defence has exhibited the FIR of the counter case which was also lodged on the same day i.e. on 05.01.2015.

Submissions on behalf of the State

19. Learned Additional Public Prosecutor for the State has opposed the appeal. It is submitted that learned trial court has examined the evidences available on the record meticulously and found the involvement of the appellants in the commission of the offence. Hence, the impugned judgment and order need no interference of this Court.





Consideration

20. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused the trial court's records.

21. The prosecution case is based on the *fardbeyan* of one Chhotelal Prasad (PW-6) who is the brother of the deceased. His *fardbeyan* (Exhibit '1') was recorded on 01.01.2015 at 07:35 PM in the Sadar Hospital, Gopalganj by SI Bharat Pandey. This *fardbeyan* has been shown forwarded to the SHO, Barauli Police Station where Barauli P.S. Case No. 02 of 2015 has been registered on 05.01.2015 under Sections 341/323/307/34 IPC, later on Section 302 IPC was also added. It is, therefore, evident that the FIR giving rise to the present case has been registered four days after the occurrence. This delay in lodging of the FIR is required to be considered keeping in view the evidence of the injured prosecution witness, namely, Vindhyachal Prasad (PW-1). In paragraph '6' of his deposition, PW-1 has stated that Arjun Prasad (deceased) was taken to Gopalganj in a jeep by Chhotelal Prasad. This witness had not gone on the said jeep. He reached Barauli at 09:00 PM where he was treated. PW-1 returned home at 09-09:30 PM. He has categorically stated that the police station is beside the place where he was treated, he had gone to the police before his





treatment. In paragraph '7' of his deposition, PW-1 has stated that he had disclosed the occurrence to Darogaji. He had stayed at the police station for half an hour. This witness has further stated that Darogaji had recorded whatever he had said. He had put his thumb impression on the said writing. He had alone gone to the police station. From this part of the deposition of PW-1, it is evident that PW-1 had already disclosed the occurrence to Darogaji at Barauli Police Station on 01.01.2015 itself. He has gone to the extent of saying that he had put his thumb impression on the writing which was recorded by Darogaji. This seems to be the first version of the prosecution which has been suppressed.

22. This Court has further noticed from the deposition of Vindhyachal Prasad (PW-1) that apart from Arjun Prasad, he was the only person who had been assaulted in the '*Baswari*'. No one else had received any injury. He has clearly stated that after '*marpit*' had happened, Nitish (PW-2), Vashisth Prasad (PW-5), Mahangu Prasad (PW-3), Chhotelal Prasad (PW-6), Vimlawati Devi (PW-4) had arrived. Thus, the injured witness (PW-1) himself says that these prosecution witnesses had arrived after the occurrence had already taken place. We have, therefore, reasons to record that PW-2, PW-3, PW-4, PW-5 and PW-6 are not the eye witnesses to the occurrence.





23. This Court further finds that in course of trial, the defence has got exhibited the FIR of the counter case being Barauli P.S. Case No. 03 of 2015 dated 05.01.2015 registered under Sections 341/323/325/34 IPC. This FIR has been lodged by one Meenu Devi, wife of Shambhu Prasad. Altogether eight persons including Vindhyachal Prasad (PW-1), the deceased Arjun Prasad and the informant Chhotelal Prasad (PW-6) have been made accused in the said case. It is alleged that the occurrence had taken place on account of a land dispute in which Chhotelal Prasad had assaulted the informant Meenu Devi by *lathi* on her head causing fracture, the second *lathi* was blown on her hand whereafter she had become unconscious and when her son Ravi Ranjan Prasad came then Vindhyachal Prasad had assaulted him on his head by a *lathi* causing him injury whereafter they were taken to Primary Health Centre, Barauli for treatment and after that treatment, the written information was submitted.

24. It is found that the counter case was also lodged on the same day i.e. on 05.01.2015 in which it was alleged that Meenu Devi and Ravi Ranjan Prasad both had sustained injuries, however, the prosecution in the present case has maintained a complete silence on the allegations that Meenu Devi and Ravi Ranjan Prasad had suffered injuries.





25. It is evident from the deposition of Vindhyachal Prasad (PW-1) that it was Arjun Prasad (the deceased) alone who had gone to stop the accused persons from cutting away the bamboos. PW-1 states that Vishwanath Prasad (since deceased) was having a *farsa* whereas other accused persons were having *lathi/danda*. Vishwanath Prasad had assaulted Arjun Prasad by *farsa* which hit on his head and he started bleeding. Other accused persons had been assaulting by *lathi/danda*. At this stage, the injury report of Arjun Prasad (Exhibit '3/2') may be taken note of hereunder:-

“A. Patient brought in unconscious state for 01 hrs. and vomiting 5 times as per family members statement.
B. On examination unconscious, pupil dilated B/L, swelling left frontal area of scalp with stick mark approx-2 cm.”

26. On perusal of Exhibit '3/2', it would appear that at the first instance, the victim/deceased was taken to Sadar Hospital, Gopalganj where he reached at 07:15 PM. He was in unconscious state and had vomited five times as per family members statement, there was swelling on the left frontal area of skull and stick mark approximately-2cm has been noted by the Doctor. Dr. Md. Kaser Javed (PW-10) has proved his signature on the injury report which has been marked Exhibit '3/2'. In his cross-examination, he has stated that, that type of injury





may be caused due to fall also. The injury report (Exhibit '3/2') does not suggest any *farsa* injury.

27. On further perusal of the trial court's records, it is found that the dead body of Arjun Prasad was received by the Medical Officer in Sadar Hospital, Gopalganj for autopsy on 06.01.2015 at 11:05 AM. *Post mortem* was conducted on the same day at 11:30 AM, the *post mortem* report has been marked Exhibit '3A'. Dr. RP Sinha who was the Medical Officer in Sadar Hospital, Gopalganj (PW-8) had conducted the *post mortem* and found the following injuries on the dead body:-

“On External Examination-

1. Endotracheal Intubation, Folieys catheter, ryles tube and intracath were present (applied to dead body).
2. Mouth partially open. Eyes were closed. Rigor mortis disappearing. Depressed right frontal region of scalp. Abrasion 1” x ½” present left frontal region of scalp.

On External Examination-

3. Subcutaneous clot. Left side of frontal region of scalp.
4. Frontal bone is fracture.
5. Brain matter- lacerated and mixed each blood clot and blood. Meniges lacerated. Heart -Left and right ventricles empty and intact thoracic. Lungs pale and intact. Stomach-intestine, kidneys, liver, spleen intact and paled.
6. Pain in left arm. (X-ray advised)”

28. Dr. RP Sinha (PW-8) has stated in his opinion that all injuries were caused by hard and blunt object. The cause of death is “increased intracranial pressure as a result of blood clot, brain parenchyma, swelling and oedema and brain laceration.





29. One thing which this Court has noticed on perusal of the injury report (Exhibit '3/2'), inquest report (Exhibit '6') and the *post mortem* report (Exhibit '3A') that in all these documents, there is no mention of any case number. The *post mortem* report indicates time elapsed since death was within 24-36 hours. The SI Bharat Pandey who is said to have recorded the *fardbeyan* of Chhotelal Prasad (PW-6) on 01.01.2015 at 07:35 PM in Sadar Hospital, Gopalganj has not been examined by the prosecution. Due to non-examination of SI Bharat Pandey, the defence has got serious prejudice as it was unable to elicit relevant information from the SI Bharat Pandey. Under what circumstances, zero FIR was not registered or why it took four days to the *fardbeyan* of PW-6 in reaching to Barauli Police Station remained a question mark.

30. Be that as it may, neither the injury report nor the *post mortem* report indicate any *farsa* injury on the head of the deceased or repeated assault by *lathi/danda* on the body of the deceased. Thus, the manner of occurrence as stated by PW-1 in his testimony is not getting corroborated from the medical evidence.

31. Vindhyachal Prasad (PW-1) himself makes the prosecution story highly doubtful as on the one hand, he has stated in his examination-in-chief that he, Nitish Prasad, Vashist Prasad, Chhotelal Prasad and Vimlawati Devi all had gone to save Arjun Prasad but in his cross-examination, in paragraph '6' he states that after the '*marpit*' had happened Nitish, Vashist Prasad, Mahangu Prasad,





Chhotelal Prasad and Vimlawati Devi came. PW-1 has stated that there were countless injuries on the body of Arjun Prasad and after beating him, the accused persons had started assaulting PW-1 but they did not assault anyone else.

32. As stated above, the injury report of Arjun Prasad does not suggest repeated assault on his body. So far as the injury of PW-1 is concerned, he had also suffered only one injury which was simple in nature. His statement that he was assaulted by the accused persons for 10-15 minutes is not getting corroborated from his injury report. We reproduce the injury report of PW-1 hereunder:-

- “1. One lacerated wound on head (1” x 1/2” x 1/4”).
 2. Complaint of left hand pain.
 3. Complaint of left shoulder pain
- Nature of injury:- simple by hard and blunt substance
Time:- 0-6 Hrs.”

33. PW-1 had gone to the police station prior to receiving treatment in the Barauli Primary Health Centre is also evident from the injury report of PW-1 issued by the Medical Officer, Primary Health Centre, Barauli on 01.01.2015 as the same is addressed to the Officer Incharge, P.S. Barauli. It shows that PW-1 was sent to the Primary Health Centre, Barauli for medical examination and in this regard, the Officer Incharge of Barauli Police Station had issued the requisition. PW-1 had made





statement before the Darogaji and that was recorded in writing but this written document has been suppressed by the prosecution.

34. To this Court, it is evident that the FIR has been lodged at a much belated stage. The fact that till preparation of the inquest and *post mortem*, no case was registered and shown on these documents would create huge doubt over the prosecution story. The informant (PW-6) is not an eye witness. While Vindhyachal Prasad (PW-1) has stated that he was assaulted by Rameshwar Prasad, PW-6 has stated that Vindhyachal Prasad was assaulted by Rajendra Prasad causing fracture of his head. Then Rameshwar Prasad assaulted Vindhyachal Prasad on his waist by *lathi*. PW-6 has stated that Arjun Prasad was referred to Gorakhpur and from Gorakhpur to Patna where in course of treatment, he died then the dead body was brought to Barauli Police Station and on the next day, *post mortem* was conducted. Thus, on his own statement, PW-6 indicates that Arjun Prasad died at Patna during his treatment then dead body was brought to Barauli and on the next day, *post mortem* was conducted.

35. In this case, *post mortem* has been conducted on 06.01.2015, the dead body had arrived at Barauli Police Station on 05.01.2015 itself but the inquest report has been prepared on 06.01.2015 at 06:30 AM. The inquest report does not bear any case





number, therefore, it is evident that till the dead body arrived at Barauli Police Station and the inquest report was prepared, no FIR was lodged. The prosecution story was, therefore, still in embryo when the dead body was sent for *post mortem*.

36. This Court has further found that the informant (PW-6) admitted to have recorded his statement in police after five days of the occurrence. In his cross-examination, he could not say that for how long the occurrence had taken place. He could not say that how many people had come to save. He has stated that from the neighbourhood, Bhutai Prasad, Bikhari Shah, Prahalad Prasad, Deepak Prasad, Manindra Prasad etc. had come. These persons who had assembled from the neighbourhood have not been examined in course of investigation or trial. No independent person has supported the prosecution case. The defence suggested to PW-6 that for the occurrence of the same day, the defence has lodged a case, this witness showed his unawareness about any such case.

37. It appears on perusal of the trial court's judgment that the defence has brought on record documentary evidences such as Exhibits 'A' and 'B' to prove that there is pre-existing land dispute and that the parties were on inimical terms.





38. To this Court, it appears that the learned trial court missed out on an important aspect of the matter i.e. the manner of occurrence as alleged by the prosecution was not getting corroborated from any independent material particulars. It has already been held that the medical evidence was not suggesting the manner of occurrence as alleged. The prosecution case came to be lodged at a much belated stage after the *post mortem* was over but by ante-dating the FIR showing it to have been registered on 05.01.2015 after receipt from Gopalganj but that would not inspire confidence of this Court. The fact that there was quarrel between both the sides over cutting of the bamboos, it was a sudden fight and the FIR of the counter case (Exhibit 'B') has not been disputed by the prosecution in the present case, therefore, it will go a long way to suggest that there was a free fight between the parties but while lodging the FIR, this aspect has been suppressed by the prosecution. The first version of the prosecution case which came through the mouth of PW-1 in Barauli Police Station on 01.01.2015 has been apparently suppressed. For all these reasons, we are of the considered opinion that the evidence of the injured witness (PW-1) who is a highly inimical witness alone cannot be made basis of conviction in the present case. It would be totally unsafe to accept PW-1 as a wholly reliable witness.





39. In result, we set aside the impugned judgment and order. The appellants are acquitted of the charges giving them benefit of doubt.

40. This Court has been informed that appellant no. 3, namely, Vishwanath Prasad @ Bishwanath Prasad has died in jail during pendency of the appeal.

41. The appellant nos. 1, 2, 4 and 5, namely, Raviranjana Prasad, Rajendra Prasad, Lalbutan Prasad and Rameshwar Prasad respectively are said to be in custody. They shall be released forthwith if not wanted in any other case.

42. The appeal is allowed.

43. Let the copy of this judgment along with the trial court's records be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
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