

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.775 of 2017**

CNR No. BRHC010851052017

Arising Out of PS. Case No.-335 Year-2013 Thana- SAKRA District- Muzaffarpur

1. Karpuri Thakur, son of Late Laxmi Thakur.
2. Balkeshri Devi, wife of Karpuri Thakur.

Both resident of Village Simri, P.S. Sakra, District- Muzaffarpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Amit Kumar, Advocate Mr. Purshottam Kumr, Advocate
For the Respondent/s	:	Ms.Saloni Kumari, Advocate Ms.Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT**

Date : 15-10-2026

Heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants and Ms. Anita Kumari Singh, learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred against the judgment of conviction dated 30.01.2017 and the order of sentence dated 31.01.2017 passed by the learned Additional Sessions Judge-III, Muzaffarpur in Sessions Trial No.146 of 2014, arising out of Sakra P.S. Case No.335 of 2013, whereby and where-under the appellants have been



convicted for the offences punishable under Sections 304/34 and 323/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years under Section 304/34 of the Indian Penal Code and rigorous imprisonment for six months under Section 323/34 of the Indian Penal Code, both the sentences having been directed to run concurrently. The appellants were, however, acquitted of the charges under Sections 341/34, 324/34 and 307/34 of the Indian Penal Code.

Brief facts of the case

3. The case of the prosecution, in substance, is that on 16.07.2013 at about 10:30 P.M., an altercation took place in connection with the proposed marriage of the son of appellant Karpuri Thakur. It is alleged that Karpuri Thakur abused the informant, namely, Ranjeet Kumar Thakur, on account of the informant having interfered in the settlement of the marriage. The informant claims to have pacified the matter. It is thereafter alleged that, after about 10-15 minutes, Karpuri Thakur, Bijendra Thakur, Chandan Thakur and Balkeshari Devi came near the darwaja of the informant



armed with lathi, danda, rod and khanti and started assaulting Dinesh Thakur.

4. It is further alleged that Sanjay Thakur and Bibha Devi came to rescue Dinesh Thakur and they were also assaulted. It is alleged that on alarm being raised, villagers assembled and the accused persons fled away. The injured persons were taken to Referral Hospital, Sakra, from where Dinesh Thakur was referred to SKMCH, Muzaffarpur, but he died on the way. An allegation was also made regarding snatching of a gold chain from Neelam Devi by appellant Balkeshari Devi.

5. On the basis of aforesaid fard-e-beyan of the informant, Sakra P.S. Case No. 335/2013 was registered, and police, after investigation submitted charge-sheet and after commitment, the appellants were put on trial and thereafter, they were convicted and sentenced, as discussed aforesaid.

6. The defence of the appellants before the learned trial court was one of complete denial. The defence case, as emerging from the materials on record, is that the



prosecution version is not the true genesis of the occurrence and that a counter-case had also been instituted by Karpuri Thakur, being Sakra P.S. Case No.352 of 2013, arising out of the same occurrence. The defence further relied upon the injuries sustained by the accused side and the circumstances in which the occurrence had taken place.

7. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants has submitted that the learned trial court has not properly appreciated the material contradictions, omissions and infirmities appearing in the prosecution evidence. It is submitted that the witnesses relied upon by the prosecution do not consistently support the manner of occurrence, the place of occurrence or the identity and participation of the appellants. It is also submitted that several prosecution witnesses have been declared hostile and that even the evidence of the witnesses who were examined as injured or eye-witnesses does not furnish a consistent account capable of sustaining a conviction under Section 304/34 of the Indian Penal Code.

8. Learned counsel has further submitted that no



injury report of any of the injured persons has been brought on the record, though the prosecution case itself rests upon the allegation that several persons were assaulted and injured. It has also been submitted that the accused side had sustained injuries in the same occurrence and the existence of the counter-case was admitted during investigation, but the prosecution has not satisfactorily explained the injuries sustained by the accused side.

9. Mr. Thakur, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in **Parshuram v. State of M.P., (2024) 12 SCC 322**, particularly paragraphs 20 to 26; **Anand Ramchandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50 : 2019 SCC OnLine SC 974**, particularly paragraphs 10 to 12; **Pohlu v. State of Haryana, (2005) 10 SCC 196 : 2005 SCC OnLine SC 1393**; **Syed Ibrahim v. State of Andhra Pradesh, (2006) 10 SCC 601**, paragraph 11; **Hem Raj v. State of Haryana, (2005) 10 SCC 614**; and **Munna @ Satish v. State of Uttar Pradesh, (2023) 1 SCC 714**, submitting that the prosecution must stand on its



own legs and that material infirmities relating to the place of occurrence, unexplained injuries, non-examination of material witnesses and absence of reliable corroboration cannot be supplied by conjectures.

10. Per contra, learned Additional Public Prosecutor has opposed the appeal and submitted that the death of Dinesh Thakur has been duly established by the post-mortem report and the evidence of the doctor. It is submitted that the ocular evidence, when read as a whole, establishes the occurrence and that minor discrepancies or omissions are not sufficient to discard the prosecution case. It is further submitted that the learned trial court has considered the evidence and has rightly recorded conviction under Sections 304/34 and 323/34 of the Indian Penal Code.

11. In order to appreciate the rival submissions, it would be apposite to re-appreciate the evidence available on record. The prosecution has examined eleven witnesses, namely, **P.W.1** Sanjay Thakur, **P.W.2** Subodh Thakur, **P.W.3** Mahendra Pandit, **P.W.4** Lakhi Thakur, **P.W.5**



Neelam Devi, **P.W.6** Vinod Thakur, **P.W.7** Ranjeet Kumar Thakur, **P.W.8** Dr. Bipin Kumar, **P.W.9** Sushila Devi, **P.W.10** Bibha Devi and **P.W.11** Ravindra Kumar, the Investigating Officer.

12. **P.W.1** Sanjay Thakur has been examined as an injured witness. His evidence shows that he and Dinesh Thakur were inside the house and, on hearing hulla, they came out. He has stated that assault took place and that he and Bibha Devi were also assaulted. However, his evidence is not free from material infirmities. In paragraph 4 of his deposition, he has admitted the existence of the counter-case lodged by Karpuri Thakur, in which the members of the prosecution side, including himself and other witnesses, have been made accused. He has also stated that his statement was recorded after two days.

13. **P.W.1** further stated that there was no visible injury upon the accused persons. At another place, he claimed to have named Karpuri Thakur, Balkeshari Devi, Virendra Thakur and Chandan Thakur before the police, but the Investigating Officer has not corroborated the said



version in the manner required. His evidence also refers to the place of occurrence as the road situated to the north of the house of the accused, whereas the prosecution case and the evidence of other witnesses do not remain consistent on this aspect. Thus, the testimony of P.W.1, though coming from an injured witness, requires careful scrutiny and cannot be accepted merely because he was projected as an injured witness.

14. **P.W.2** Subodh Thakur, P.W.3 Mahendra Pandit, P.W.4 Lakhi Thakur, P.W.5 Neelam Devi and P.W.6 Vinod Thakur have not supported the prosecution case in the manner in which it was projected in the FIR and during investigation. The said witnesses were declared hostile. Their evidence, therefore, cannot be treated as providing substantive corroboration to the prosecution story. The fact that a witness is declared hostile does not make his entire testimony effaced from the record, but the portion which supports the defence or creates doubt in the prosecution case is certainly available for consideration in accordance with law.



15. In **Raja Ram v. State of Rajasthan, (2005) 5 SCC 272**, paragraph 9, the Hon'ble Supreme Court has reiterated that where the evidence of a prosecution witness is not shaken by the prosecution by declaring him hostile, the defence can rely upon such evidence and the same cannot simply be sidelined. The principle was again noticed in **Mukhtiar Ahmed Ansari v. State (NCT of Delhi), (2005) 5 SCC 258**, particularly paragraphs 30 and 31. The criminal court is required to consider the evidence as it stands on record and not merely the part which favours the prosecution.

16. **P.W.7** Ranjeet Kumar Thakur is the informant of the case and, therefore, his evidence assumes considerable importance. His fardbeyan refers to the occurrence at about 10:30 P.M., whereas in his examination-in-chief he stated the time to be about 11:30 P.M. He has also introduced Sushila as a person who came to save Dinesh, although her name does not find mention in the FIR. Such omission, by itself, may not be decisive, but when read along with the other infirmities it assumes significance.



17. **P.W.7** has stated that it was a dark night. He further stated that he saw Karpuri Thakur and Balkeshari Devi, but significantly, he stated that he did not see the deceased at the place of occurrence and that he saw the deceased in the hospital. This statement creates a serious difficulty in accepting his version as an eye-witness account of the assault resulting in the death of Dinesh Thakur.

18. **P.W.7** has also stated that the accused persons did not assault them. He has referred to the occurrence as having taken place near the house of Karpuri Thakur. Thus, his own testimony, when read carefully, does not establish in clear and consistent terms the presence of the deceased at the place of assault, the manner in which the fatal injury was caused or the specific role of either of the appellants.

19. Another important part of the evidence of P.W.7 is that he stated that he was not mentally stable when his statement was recorded by the police and that Sanjay Thakur spoke and he merely signed the statement. This statement casts a further shadow upon the reliability of the prosecution version as recorded during investigation. The



Court is conscious that a statement recorded during investigation is not substantive evidence, but the circumstances in which the informant himself says that he was not in a proper mental condition to make the statement cannot be ignored while testing the credibility of his testimony.

20. The motive suggested by P.W.7 relates to the marriage of Virendra and the disagreement of Karpuri Thakur regarding the proposed marriage. Motive may explain why a dispute arose, but motive by itself cannot establish participation in the fatal assault. It is settled that motive is a double-edged circumstance and, in a case resting substantially upon ocular evidence, it cannot substitute proof of the actual occurrence or the identity of the assailant.

21. **P.W.8** Dr. Bipin Kumar is the doctor who conducted the post-mortem examination on the dead body of Dinesh Thakur. His evidence establishes the factum of death and the existence of ante-mortem injuries. The medical evidence, however, does not by itself establish the identity of the person who caused the injuries. In a criminal trial, proof



of homicidal death and proof of the authorship of the homicidal act are two distinct questions and both have to be established by the prosecution in accordance with law.

22. **P.W.9** Sushila Devi and P.W.10 Bibha Devi have not supported the prosecution case in the manner alleged and were declared hostile. P.W.10 was projected as one of the persons who came to rescue the deceased and was herself assaulted. Yet, the prosecution has not brought on record the injury report of the alleged injured persons. The absence of such medical record assumes significance in the facts of the present case because the prosecution has relied upon a chain of alleged assaults involving several injured persons.

23. **P.W.11** Ravindra Kumar, the Investigating Officer, has stated about the investigation and the counter-case. His evidence is important on the aspect that the accused side had also sustained injuries and that Karpuri Thakur and Balkeshari Devi were found in an injured condition and were taken for treatment. The Investigating Officer has also spoken about the statement of Karpuri



Thakur that he was assaulted by Ranjeet with a rod and that Balkeshari Devi had come to save him and was also assaulted.

24. The existence of Sakra P.S. Case No.352 of 2013, therefore, cannot be brushed aside as a wholly irrelevant circumstance. The counter-version relates to the same occurrence and the prosecution evidence itself brings the injuries on the accused side into the field of consideration. What becomes material is not the mere existence of a counter-case, but whether the prosecution has offered a satisfactory explanation of the injuries sustained by the accused side and whether the prosecution version represents the complete and truthful genesis of the occurrence.

25. The shortcoming becomes more serious because no injury report of any of the injured persons, either from the prosecution side or from the accused side, has been brought on record before this Court as part of the proved medical evidence. Where the prosecution alleges an occurrence involving assault upon several persons, the absence of injury reports, coupled with the existence of a



counter-case and the evidence of the Investigating Officer regarding injuries to the accused side, is a circumstance which cannot be treated as insignificant.

26. The Hon'ble Supreme Court in **Anand Ramchandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50 : 2019 SCC OnLine SC 974**, in paragraphs 10 to 12, has emphasised that the burden remains upon the prosecution to prove its case beyond reasonable doubt and that weakness in the defence cannot be converted into strength of the prosecution. The Court also noticed the significance of injuries suffered by the accused in the same occurrence and the suppression or non-production of the relevant injury material. The principle squarely reminds the Court that the prosecution must explain material circumstances which arise from its own evidence.

27. It would be apposite to reproduce Paragraph Numbers 10 to 12 of **Anand Ramchandra Chougule's case (supra)**, which reads as under:-

"10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to



establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

11. The fact that a defence may not have been taken by an accused under Section 313 CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In Sunil Kundu v. State of Jharkhand [Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] , this Court observed: (SCC pp. 433-34, para 28)

"28. ... When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

12. The fact that an FIR was lodged by the accused with regard to the same occurrence, the failure of the police to explain why it was not investigated, coupled with the admitted fact that the accused were also admitted in the hospital for treatment with regard to injuries sustained in the same occurrence, but the injury report was not brought on record and suppressed by the prosecution, creates sufficient doubts which the prosecution has been unable to answer."

28. In Parshuram v. State of M.P., (2024) 12

SCC 322, particularly paragraphs 20 to 26, the Hon'ble



Supreme Court considered the effect of serious injuries sustained by the accused which were not explained by the prosecution. Relying upon the settled principle in **Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394**, the Supreme Court held that non-explanation of injuries on the accused can be a very important circumstance indicating suppression of the genesis of the occurrence and can render the prosecution evidence unsafe where the witnesses are interested or inimical and the defence version competes in probability. The said principle assumes relevance in the present case.

29. It would be apposite to reproduce Paragraph Number 12 of **Lakshmi Singh's Case (Supra)**, which reads as under:-

"We do not find the said observation of the trial court correct. The injuries sustained by Ramrup alias Roopa is by a sharp weapon. It will be trite to refer to the following observations of this Court in Lakshmi Singh v. State of Bihar [Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394 : 1976 SCC (Cri) 671] : (SCC pp. 401-402, para 12)

"12. ... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from



which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [*State of Gujarat v. Bai Fatima*, (1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly



not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

30. It is true that non-explanation of injuries on the accused is not an inflexible rule leading to acquittal in every case. The effect of such omission depends upon the nature of injuries and the quality of the prosecution evidence. However, in the present case the prosecution evidence is not of such clear, cogent, independent and consistent character that the unexplained injuries and the counter-case can be safely brushed aside. On the contrary, the evidence is accompanied by contradictions as to time, place, presence of the deceased, and participation of the appellants.

31. The place of occurrence also requires careful consideration. The informant refers to the occurrence near the house of Karpuri Thakur, while P.W.1 has stated about the road situated to the north of the accused's house. The prosecution evidence, therefore, does not furnish a consistent and definite description of the situs of occurrence. This is not being noticed as a mere discrepancy of direction; rather, the uncertainty becomes material because the presence and opportunity of the witnesses to see the alleged



assault are themselves in issue.

32. In **Syed Ibrahim v. State of Andhra Pradesh, (2006) 10 SCC 601**, paragraph 11, the Hon'ble Supreme Court considered materially different versions regarding the place of occurrence and observed that when the place of occurrence itself has not been established, it would not be proper to accept the prosecution version. The Court also reiterated that the FIR is not substantive evidence, though it can be used for testing the veracity of the witness. The principle is applicable to the present facts to the limited extent that the shifting or uncertain place assumes significance when it affects the credibility of the alleged eye-witness account.

33. Reliance has also been placed upon **Pohlu v. State of Haryana, (2005) 10 SCC 196 : 2005 SCC OnLine SC 1393**. The Hon'ble Supreme Court therein, particularly in paragraph 10, observed that the prosecution need not multiply witnesses, but the intrinsic worth of the witnesses examined must first be assessed. Thus, the issue is not merely how many witnesses have been examined, but



whether their evidence, on its own intrinsic worth, is truthful, reliable and acceptable. In the present case, the number of witnesses does not cure the material inconsistencies appearing in their evidence.

34. It would further be apposite to reproduce Paragraph Number 10 of the **Pohlu's Case (Supra)**, which reads as under:-

"10. It was then submitted that some of the material witnesses were not examined and in this connection it was argued that two of the eyewitnesses named in the FIR, namely, Chander and Sita Ram were not examined by the prosecution. Dharamvir, son of Sukhdei was also not examined by the prosecution though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eyewitnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained."

35. The circumstance of darkness also deserves due weight. The occurrence is alleged to have taken place late in the night. P.W.7 himself has stated that it was dark.



No satisfactory source of light has emerged from his evidence so as to explain how the assailants could be identified and how specific overt acts could be attributed to them in the manner alleged. The possibility of mistaken identification, particularly in a sudden occurrence involving several persons, cannot be ruled out.

36. In **Ashoksinh Jayendrasinh v. State of Gujarat, (2019) 6 SCC 535**, paragraph 10, the Hon'ble Supreme Court considered an occurrence at night in the absence of sufficient evidence regarding the source of light and found that identification of the accused and attribution of overt acts became doubtful. In paragraph 16, the Supreme Court held that where darkness makes identification difficult and the ocular evidence is contradictory as to the fatal blow, guilt is not proved beyond reasonable doubt and benefit of doubt must follow. The said principle is of assistance in the present case.

37. It is also significant that the prosecution alleged use of lathi, danda, rod and khanti, but no convincing recovery of the alleged weapons has been shown from the



appellants so as to connect them with the fatal injuries. Non-recovery of a weapon is not by itself fatal to every prosecution, but where the ocular account is already uncertain, the absence of such corroborative material assumes significance. The Court cannot supply the missing link by presumption.

38. The prosecution also did not examine the attesting witness to the FIR, Nagendra Prasad Singh, and the scribe, Dinesh Kumar Yadav. Again, non-examination of a witness is not, in isolation, a ground for acquittal. The relevance of the omission depends upon the totality of evidence. Here, the omissions are considered along with the hostile witnesses, uncertainty regarding the place of occurrence, darkness, counter-case, unexplained injuries and absence of injury reports. The cumulative effect is material.

39. The evidence of a hostile witness is not to be discarded in toto. The Court may rely upon that part of the evidence which is found to be truthful and corroborated by other material on record. At the same time, the prosecution cannot rely upon a witness for the purpose of proving one



part of the case while ignoring the other part which creates a reasonable doubt, without assigning a satisfactory reason. The criminal court has to assess the entire evidentiary texture of the case.

40. The Court is also required to keep in mind that the accused can rely upon the prosecution evidence itself. The defence is not required to establish its version beyond reasonable doubt. If the evidence led by the prosecution creates a reasonable probability in favour of the defence or leaves a reasonable doubt as to the true genesis of the occurrence, the accused is entitled to the benefit of that doubt.

41. In **Mukhtiar Ahmed Ansari v. State (NCT of Delhi), (2005) 5 SCC 258**, paragraphs 30 and 31, the Hon'ble Supreme Court reiterated that the defence may rely upon the evidence of a prosecution witness and that the prosecution cannot simply overcome an inconvenient part of its own evidence. Similarly, in **Raja Ram v. State of Rajasthan, (2005) 5 SCC 272**, paragraph 9, the Supreme Court emphasised that evidence of a prosecution witness



which remains on record cannot be casually sidelined. These principles assume importance in the present case where several witnesses have not supported the prosecution version in material particulars.

42. The Court is also conscious of the distinction between suspicion and proof. The death of Dinesh Thakur is an unfortunate and serious circumstance, but the existence of a homicidal death cannot, by itself, lead to the conclusion that the appellants before the Court were the persons who caused the fatal injuries. The prosecution must establish the connecting circumstances with the same degree of legal certainty required in every criminal trial.

43. Section 34 of the Indian Penal Code embodies a principle of joint liability where a criminal act is done by several persons in furtherance of the common intention of all. It does not dispense with proof of participation and common intention. Common intention may be inferred from proved circumstances, but it cannot be used as a substitute for proof of identity or participation. Where the evidence regarding the actual role of the accused is itself uncertain,



Section 34 cannot be invoked merely because more than one person has been named in the prosecution case.

44. The present case is not one where there is a clear and consistent account of a fatal assault by the appellants followed by medical corroboration and independent circumstances. Rather, the prosecution evidence leaves several questions unanswered: whether the informant actually witnessed the assault upon the deceased; whether the deceased was seen at the place of occurrence by the informant; the precise place of occurrence; the source of light; the manner in which the fatal injury was caused; the explanation of injuries on the accused side; and the reason for the absence of injury reports.

45. The learned trial court has placed substantial reliance upon the factum of death and the statement of the informant. However, in an appeal against conviction, this Court is required to independently re-appreciate the evidence and ascertain whether the findings recorded by the trial court are sustainable on the standard of proof required in criminal law. The appellate jurisdiction is not restricted merely



because the trial court has recorded a finding of guilt.

46. It is equally well settled that an appellate court should not interfere merely because another view is possible. But where material evidence has not received proper consideration or the view taken by the trial court overlooks circumstances creating a reasonable doubt, the appellate court is duty-bound to re-appreciate the evidence. The constitutional guarantee of a fair criminal process under Article 21 requires that no person be deprived of liberty except by a procedure which is fair, just and reasonable.

47. The presumption of innocence remains attached to an accused until guilt is proved in accordance with law. It is not displaced merely because an occurrence has resulted in death. The prosecution carries the burden throughout. The maxim ***ei incumbit probatio qui dicit, non qui negat***—the burden of proof lies upon him who asserts, not upon him who denies—continues to operate in criminal adjudication, subject of course to statutory exceptions which are not attracted in the present case.

48. Likewise, the principle of in ***dubio pro reo***



requires that where two views are reasonably possible on the evidence, the view favourable to the accused should ordinarily be adopted. The benefit of doubt is not a concession to the accused; it is the consequence of failure of the prosecution to cross the threshold of proof beyond reasonable doubt.

49. Applying the aforesaid principles to the evidence on record, this Court finds that the prosecution has succeeded in establishing that Dinesh Thakur died a homicidal death. But the more important question for the purpose of the present appeal is whether the prosecution has established beyond reasonable doubt that the present appellants were responsible for the assault causing his death and that such act was done in furtherance of their common intention.

50. On this question, the evidence is found wanting. P.W.7, the informant, has stated that it was dark, that he did not see the deceased at the place of occurrence and that he saw him in the hospital. P.W.1 has given a different account regarding the place of occurrence and the



evidence of several other witnesses has not supported the prosecution case. The counter-case and injuries on the accused side remain inadequately explained. No injury report of the alleged injured persons has been brought on record. The evidence does not disclose a clear and reliable account of the fatal assault attributable to the appellants.

52. The fact that the learned trial court acquitted the appellants of the charges under Sections 341/34, 324/34 and 307/34 of the Indian Penal Code is also a circumstance which has to be kept in perspective. The same evidentiary foundation cannot be selectively accepted for the more serious conviction under Section 304/34 without satisfactorily addressing the infirmities which led to the acquittal on the other charges. The Court is not suggesting that an acquittal on one charge automatically requires acquittal on another; the point is that the evidentiary reasons have to be internally consistent.

53. The evidence also does not establish any specific fatal act by either of the appellants. There is no reliable evidence identifying which appellant caused which



injury upon the deceased. In a case where the prosecution seeks to invoke Section 304/34, the Court must be satisfied not only about the occurrence but also about the common intention and participation of each accused in the criminal act. The gap cannot be filled by a general allegation that all the accused assaulted the deceased.

54. The circumstances relied upon by the defence are not being treated as proof of the defence version in its entirety. That is not the requirement of law. The question is whether the prosecution evidence, after taking into account the defence circumstances emerging from the record, inspires the degree of confidence required for a criminal conviction. In the considered view of this Court, it does not.

55. The prosecution has not placed the case in a category where the evidence is so overwhelming that minor discrepancies may safely be ignored. On the contrary, the discrepancies go to the root of the prosecution case. The difference in time, the uncertain place of occurrence, darkness, the informant's statement that he did not see the deceased at the place of occurrence, the hostile witnesses,



the counter-case, the unexplained injuries and the absence of injury reports operate cumulatively and not in isolation.

56. Criminal jurisprudence does not permit a conviction on the basis of a process of elimination or on the strength of suspicion. The Court may have a strong suspicion regarding the occurrence, but suspicion, however strong, cannot take the place of proof. The prosecution must establish the chain of facts in a manner which leaves no reasonable doubt as to the guilt of the accused.

57. In the present case, the chain remains incomplete. The medical evidence proves death, but does not identify the assailants. The ocular evidence is not consistent. The independent witnesses have not supported the prosecution case. The alleged injured witnesses do not have the necessary medical corroboration on record. The counter-case remains a relevant circumstance and the injuries on the accused side have not been satisfactorily explained. The place and manner of occurrence also remain uncertain.

58. This Court is, therefore, of the considered opinion that the prosecution has failed to establish the guilt



of the appellants beyond reasonable doubt for the offences under Sections 304/34 and 323/34 of the Indian Penal Code. The appellants are entitled to the benefit of doubt. The principle *falsus in uno, falsus in omnibus* is not mechanically applicable in India, but the Court is equally not required to accept a materially infirm part of the evidence merely because another part may appear acceptable. The evidence has to be tested on its own intrinsic worth.

59. The judgments relied upon by learned counsel for the appellants, particularly **Anand Ramchandra Chougule (supra)**, **Parshuram (supra)**, **Syed Ibrahim (supra)**, **Pohlu (supra)**, **Hem Raj (supra)** and the principles noticed in **Mukhtiar Ahmed Ansari (supra)** and **Raja Ram (supra)**, lend support to the conclusion that the prosecution cannot be relieved of its burden by the weakness of the defence or by the mere factum of death. The relevant circumstances emerging from the prosecution evidence itself must be answered satisfactorily before a conviction can be sustained.

60. Consequently, this Court finds that the findings



recorded by the learned trial court under Sections 304/34 and 323/34 of the Indian Penal Code are not sustainable on the evidence available on record. The appellants are entitled to an acquittal by extending the benefit of doubt.

61. Accordingly, the present appeal stands allowed.

62. The judgment of conviction dated 30.01.2017 and the order of sentence dated 31.01.2017 passed by the learned Additional Sessions Judge-III, Muzaffarpur in Sessions Trial No.146 of 2014, arising out of Sakra P.S. Case No.335 of 2013, are hereby set aside so far as they relate to the present appellants.

63. Both the appellants, namely, Karpuri Thakur and Balkeshari Devi, are acquitted of the offences punishable under Sections 304/34 and 323/34 of the Indian Penal Code, extending to them the benefit of doubt. Their acquittal already recorded by the learned trial court for the offences under Sections 341/34, 324/34 and 307/34 of the Indian Penal Code shall remain undisturbed.

64. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds



and sureties.

65. Let a copy of this judgment along with the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	12.10.2026
Uploading Date	15.10.2026
Transmission Date	15.10.2026

RAJEEV
KUMAR

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Date: 2026.10.15 20:36:19 +0530

