

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.45 of 2008**

**CNR No. BRHC010606112008**

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1. Satyanarayan Yadav, son of Atwari Yadav, resident of village Gambhariya, P.S. Sono, District Jamui.
  2. Gopal Yadav, son of Atwari Yadav, resident of village Gambhariya, P.S. Sono, District Jamui.
  3. Jhotaha @ Mani Yadav, son of Atwari Yadav, resident of village Gambhariya, P.S. Sono, District Jamui.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Pankaj Kumar Sinha 2, Advocate  
For the Respondent/s : Mr.S.C.Mishra App

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR SINGH**

**and**

**HONOURABLE MR. JUSTICE ANSUL**

**CAV JUDGMENT**

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

**Date : 05-10-2026**

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

2. The instant memo of appeal has been filed on behalf of the appellants against the judgment of conviction dated 24.12.2007 and order of sentence dated 02.01.2008 passed by the learned Ist Additional Sessions Judge, Jamui in connection with Sessions Trial No. 47 of 2006 arising out of Sono P.S. Case No. 42 of 2005 whereby and whereunder the appellants have been convicted under Section 302/34 of the I.P.C. and sentenced to undergo



rigorous imprisonment for life and ordered to pay a fine of Rs. 2000/- each and in default of payment of fine, the appellants would further undergo S.I. for a period of six months.

3. The prosecution in the instant case was initiated on the basis of lodging of Sono P.S. Case No. 42 of 2005 dated 14.05.2005 instituted under Section 302/34 of the Indian Penal Code on the report of Prayag Yadav, P.W.-11 (own brother of the deceased). The occurrence is said to have taken place on 14.05.2005 at 11:00 AM and the fardbeyan was recorded at 09:15 PM on 14.05.2005. Information reached the police station at 10:30 PM on 14.05.2005 when the formal FIR was drawn. It was sent to the learned Chief Judicial Magistrate on 15.05.2005. The FIR was recorded by Kumar Abhinav, the Officer-in-Charge, Sono Police Station. The informant put his LTI on the FIR.

4. The informant stated that his younger brother Govind Yadav (deceased) had gone to graze cattle with him in the nearby field. His co-villagers Satyanarayan Yadav (Appellant No. 1), Gopal Yadav (Appellant No. 2) and Jhotaha Yadav (Appellant No. 3), all sons of Atwari Yadav, came carrying Tangi with them and started a hot exchange with his brother. The informant states that there was a prior land dispute between them for which a litigation was also pending and they were on inimical terms with each other.



He further states that, on account of old animosity and the opposition offered by the informant and his brother, all the three started assaulting his brother with the butt of Tangi. When he went to save his brother they chased him to assault him and he had to flee from there. When the informant fled away they again started assaulting his brother which resulted in injury on the neck of his brother and he died there. After seeing him dead all the three fled away. Thereafter, on his raising hulla, villagers gathered and informed the police station. The informant asserted that all the three persons due to existing land dispute and animosity assaulted his brother with the butt of Tangi and killed him.

5. After lodging of the FIR police started investigating the matter and finally submitted charge-sheet against all the accused persons on 30.12.2005.

6. The police recorded the statement of the informant at 02:15 PM and the FIR was lodged on the same day. The inquest report was prepared at 08:00 PM on 14.05.2005. The witnesses to the inquest were Nanhku Yadav, son of Nemat Yadav and Basant Yadav, son of Harkhu Yadav. It seems that neither of them was examined during trial.

7. Cognizance of the offence under Section 302/34 IPC was taken against the accused persons on 09.01.2006. The case



was committed to the Court of Sessions on 18.01.2006 and Sessions Trial No. 47 of 2006 was instituted. Charges were framed on 04.02.2006. The prosecution examined twelve witnesses in support of its case and exhibited the postmortem report as Exhibit-1 which seems to be the sole exhibit.

**8.** In this case neither the fardbeyan nor the formal FIR nor any other document except the postmortem report has been exhibited.

**9.** The prosecution in all examined twelve witnesses. P.W. 1 to 8 and P.W. 10 have not supported the case of the prosecution and have been declared hostile. The hostility towards the prosecution case is not of such a nature that it can even be looked into. All of them have come before the court and stated in one line that they do not know about the occurrence and the police had not taken their statements. Two of them just stated that they had heard that Govind Yadav had died.

**10.** The first witness of any relevance is the doctor who conducted postmortem examination of the dead body. He found the following injuries:-

i. incised wound 3" X 2" X 1" on frontal region of forehead. Blood and blood clots were present.



ii. incised wound 2" X 1" X ¼" on left side of cheek.

Blood and blood clots were present.

iii. Abrasion 1" X 1" on both sides of upper hand.

iv. Abrasion 1" X 1" on upper part of abdomen.

**11.** In the FIR, the allegation is that he was assaulted on the neck by all the three persons with the blunt side of the Tangi. The doctor found incised wound on the frontal region of forehead and incised wound on the left side of the cheek. Neither of them is on the neck. The rest are abrasions on upper hand and abdomen. Further, the blunt side of Tangi has specifically been said to have been used. The same would not result in causing of incised wound.

**12.** The next relevant witness is P.W.-11, the informant. In the FIR he stated that all the three were carrying Tangi and all of them started assaulting the deceased. In his examination-in-chief, he has stated that Satyanarayan Yadav was carrying Tangi and Gopal Yadav and Jhotaha Yadav were carrying Lathi. He further stated that Satyanarayan Yadav assaulted his brother with the blunt side of Tangi whereas Gopal Yadav and Jhotaha Yadav started assaulting the deceased with Lathi. He admits that there is a prior animosity between them.

**13.** In para-8 of his deposition his attention was drawn towards his statement made in the FIR. Contrary to his statement



made in the FIR, he states that he had stated before the police that Satyanarayan Yadav assaulted his brother with Pasa (blunt side of Tangi) and Gopal Yadav and Jhotaha Yadav assaulted his brother with Lathi.

**14.** The next relevant witness is P.W.-12, the Investigating Officer of the case. In para-5 of his deposition he stated that he did not find any blood on the place of occurrence. Further, he also states that he asked for the papers of the disputed land from the informant but he did not produce the papers. The statement of Prayag Yadav made in the FIR was presented before him and the contradiction was taken from him. He clearly stated that Prayag Yadav had not stated before him that Satyanarayan Yadav assaulted his brother with Pasa of Tangi and Gopal Yadav and Jhotaha Yadav assaulted his brother with Lathi.

**15.** The case raises following issues:-

(i) When neither the fardbeyan, the formal FIR nor the inquest has been proved, can the court look into the same to decide the case?

(ii) Whether the improvement made by Prayag Yadav in his deposition has been duly countered in terms of Sections 145 and 155 of the Evidence Act and thus whether the improvement that attributes specific acts to specific persons can be relied upon?



(iii) Whether conviction can be sustained on the deposition of a solitary witness?

(iv) If the conviction can be based on the sole testimony of a witness as is the mandate of Section 134 of the Evidence Act what is to be the quality of evidence that can sustain a conviction?

(v) Whether the informant is a related and interested witness?

(vi) Whether the allegation of assault by blunt portion of the weapons and existence of two incised wounds leading to death can be reconciled and if not, whether oral or medical evidence will have primacy?

(vii) Whether the investigation in the case is deficient and if so whether the benefit can accrue to the accused?

**Issue (i): Non-proof of the fardbeyan, the FIR and the inquest, and the extent to which the record can be looked into**

**16.** The occurrence is placed at 11:00 AM on 14.05.2005. The informant's statement was not recorded. The inquest proceeded from 08:00 PM. The fardbeyan itself is timed 09:15 PM after the inquest had already commenced and the formal FIR was recorded only at 10:30 PM. Neither the fardbeyan nor the FIR nor the inquest report has been exhibited at trial. No witness,



including the Investigating Officer, has proved the contents of any of the three documents.

**17.** A first information report is not a substantive piece of evidence. It can, at best, corroborate its maker under Section 157 of the Evidence Act or contradict him under Section 145, and even that limited use is unavailable where the document has never been brought on the record through admissible proof. An inquest report prepared under Section 174 of the Code of Criminal Procedure stands on a similar footing, it is not substantive evidence and cannot be looked into for the manner of assault or the identity of the assailants, its purpose being confined to ascertaining the apparent cause of death. What the timing of these documents can nonetheless disclose is whether the earliest, spontaneous version of the occurrence was in fact recorded when it says it was, an external check the Supreme Court has repeatedly applied to test the genuineness of an FIR starting from *Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393*.

**18.** In *Lalita v. Vishwanath, 2025 INSC 173 (J.B. Parodiwala and R. Mahadevan JJ*, decided 30.01.2025), though the context was slightly different, the Apex Court held that if the informant is dead, the Investigating Officer can prove the factum of the



FIR, but its contents, to be looked into, need to be proved. The relevant para reads as under:

*"34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station."*

19. In the instant case, the fardbeyan, the FIR and the inquest report have not been exhibited at all. The sequence on this record, an inquest commencing at 08:00 PM, a fardbeyan recorded at 09:15 PM after the inquest had already begun, and a formal FIR an hour later still at 10:30 PM, is precisely the infirmity **Meharaj Singh v. State of U.P., (1994) 5 SCC 188**, at para 12, condemns. A fardbeyan recorded after the inquest had begun cannot be treated



as the earliest, spontaneous version of the occurrence that the law requires it to be.

20. Thus, neither the fardbeyan, nor the FIR, nor the inquest report can be looked into for their contents on this record, and the timing that can be looked into tells against the prosecution rather than for it.

**Issue (ii): Whether the improvement made by Prayag Yadav has been proved as a contradiction under Sections 145 and 155 of the Evidence Act**

21. In the FIR, Prayag Yadav's account was that all three accused assaulted the deceased together with the butt of the Tangi. In his examination-in-chief, his account changed: Satyanarayan Yadav alone struck with the Pasa, the blunt side of the Tangi, and Gopal Yadav and Jhotaha Yadav struck with Lathi. In paragraph 8 of his cross-examination, his attention was drawn to the FIR version, and he asserted that he had stated before the police that Satyanarayan Yadav assaulted the deceased with the Pasa of the Tangi and that the other two had used Lathi, a version materially different from the FIR. The Investigating Officer, P.W.-12, when the same portion was put to him in turn, stated in clear terms that Prayag Yadav had made no such statement before him.



**22.** The exercise required for proving an omission as a contradiction under Section 145 of the Evidence Act read with Section 162 of the Code of Criminal Procedure is settled by the Constitution Bench in *Tahsildar Singh and another v. State of U.P., AIR 1959 SC 1012*. A witness cannot be confronted with the unwritten record of an unmade statement. Before an omission can be relied upon as a contradiction, the witness must first be given the opportunity, in cross-examination, to explain the discrepancy, and if he denies having made the earlier statement in the form now put to him, the material part of that earlier statement must then be proved through the Investigating Officer.

**23.** That is precisely the sequence followed on this record. Prayag Yadav was given the very opportunity Tahsildar Singh requires, his attention drawn in cross-examination to the version he had given the police, and he did not accept it. The Investigating Officer was then asked the same question, and denied that any such statement had been made to him. The contradiction is accordingly proved in the manner the law requires; it does not rest on a mere suggestion left unconfirmed. What was, before the police, a composite allegation that all three accused assaulted the deceased with the butt of the Tangi, becomes, for the first time in



the witness box, an account attributing the Pasa of the Tangi to Satyanarayan Yadav alone and the Lathi to the remaining two.

**24.** The improvement cannot be explained away as a discrepancy of memory or a natural elaboration at trial. It stands proved as a contradiction and, going as it does to the very identity of the person said to have caused the fatal injury, it cannot be brushed aside as immaterial. This has to be taken as a material improvement and has to be kept out of consideration. The credit of the witness stands impeached in terms of Section 155(3) of the Indian Evidence Act.

**Issues (iii) and (iv): Whether a conviction can rest on the solitary testimony of Prayag Yadav, and the quality of evidence Section 134 of the Evidence Act demands**

**25.** Of the twelve witnesses examined, nine, P.W. 1 to P.W. 8 and P.W. 10, were declared hostile. None of them, on their own admission, knew anything of the occurrence. Two of them stated only that they had heard that Govind Yadav had died. Their hostility does not assist the prosecution in the manner hostile testimony sometimes does, since nothing of substance was elicited from any of them that could be sifted or weighed. What remains is Prayag Yadav's testimony, corroborated only by the doctor who



conducted the postmortem and by the Investigating Officer, neither of whom witnessed the occurrence.

**26.** Section 134 of the Evidence Act permits a conviction on the testimony of a single witness, but only where that testimony is wholly reliable.

**27.** The classification of witnesses into three categories, wholly reliable, wholly unreliable, and neither wholly reliable nor wholly unreliable, goes back to *Vadivelu Thevar v. State of Madras, AIR 1957 SC 614*. The first two categories cause no difficulty. It is the third that calls for corroboration in material particulars. The relevant portion, at paras 11 and 12 of the report, reads as under:

*"...Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking oral testimony in this context may be classified into three categories, namely:*

- 1) Wholly reliable.*
- 2) Wholly unreliable.*
- 3) Neither wholly reliable nor wholly unreliable.*

*In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reli-*



*able testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses..."*

**28.** Vadivelu Thevar was followed in *Jagdish Prasad v. State of M.P., AIR 1994 SC 1251*, and the rule was restated in *Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367*, at paras 8 and 9, and again by a three Judge Bench in *Amar Singh v. State (NCT of Delhi), Criminal Appeal No. 335 of 2015*, decided 12.10.2020, at paras 15 to 17. The substance of it is this. A court can and may act on the testimony of a single witness provided he is wholly reliable, and Section 134 of the Evidence Act stands on that footing. Where there is doubt about the testimony, corroboration will be insisted upon. Evidence is to be weighed, not counted, and the test is whether the testimony has a ring of truth and is cogent, credible and trustworthy.

**29.** Amar Singh is close to the present record. The conviction there, under Section 302 read with Section 34 IPC, rested on a sole eyewitness who was the brother of the deceased; the other witnesses had turned hostile. The three Judge Bench found the conduct of the witness unnatural, held that it was unsafe to act on his testimony without corroboration from some other piece of



evidence, and set aside a conviction that had been affirmed by the High Court.

**30.** Prayag Yadav's case stands on this footing exactly. His statement to the police made no distinction between the manner in which the three accused assaulted the deceased; the specific attribution, that Satyanarayan Yadav struck with the Pasa of the Tangi while the other two used Lathi, surfaces for the first time in his deposition, and stands proved as an improvement rather than a discrepancy of memory for the reasons already recorded.

**31.** A sole witness whose account changes in precisely this manner between the police statement and the witness box does not meet the standard Section 134 demands, and a conviction cannot be sustained on his testimony alone.

**Issue (v): Whether Prayag Yadav is a related and interested witness**

**32.** Prayag Yadav is the deceased's own brother, and he admits, in his deposition, to a subsisting land dispute and a pending litigation between the two families.

**33.** Relationship alone does not disqualify a witness. A close relative is ordinarily the last person to let the true assailant escape by falsely implicating another. But where a witness related to the deceased also shares an independent motive of enmity to-



wards the accused, such as a live land dispute, his evidence calls for closer scrutiny before it is acted upon. That distinction, and the definition of an interested witness as one with a stake in the outcome arising from prior enmity, are well settled.

**34. *Chhote Lal v. Rohtash and Ors., Criminal Appeal No. 2490 of 2014, 2023 INSC 1072***, decided 14.12.2023, affirmed an acquittal on materially similar facts; the complainant, father of the deceased and the sole eyewitness, was held to be the most interested witness by reason of his relationship and long enmity with the accused, and his testimony was found insufficient to sustain a conviction, at Para 13. It reads as under:

*"13. It may not be out of context to mention that the appellant/complainant, a sole eyewitness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the accused persons belong, therefore, his testimony was to be examined with great caution and the High Court was justified in doing so and in doubting it so as to uphold the conviction on his solitary evidence."*

*Sanjay Kumar v. State of Bihar and Anr., Criminal Appeal No. 3316 of 2026, 2026 INSC 735, decided 21.07.2026, a concurrent acquittal from this very State affirmed by the Supreme Court in an appeal by the informant under Article 136, holds at Paras 34 and 35 that while a related witness's evidence is not to be discarded for relationship alone, the correct rule is one of careful scrutiny and where such a witness's evidence suffers material infirmities and independent corroboration is absent, the Court must proceed with caution. The same reads as under:*

*"34. There can be no quarrel with the proposition that evidence of a related witness cannot be re-*



*jected merely on the ground of relationship. Dalip Singh (supra) and the long line of decisions following it make it clear that a close relative is often a natural witness and may not ordinarily allow the real offender to go scot-free by falsely implicating an innocent person.*

*35. However, the said principle does not mean that the evidence of related witnesses must be accepted as a matter of course. The correct rule is one of careful scrutiny. If the related witnesses are otherwise reliable, their testimony can sustain conviction. But where their evidence suffers from material infirmities, where their presence is doubtful, where independent witnesses do not support the prosecution, and where the medical evidence does not fully fit the ocular version, the court must necessarily proceed with caution."*

35. Prayag Yadav's evidence is that of a sole, related and admittedly interested witness whose account of the assault itself did not remain constant, for the reasons already recorded. The independent corroboration Chhote Lal and Sanjay Kumar require before such evidence can be acted upon is absent from this record.

36. Prayag Yadav's evidence does not survive the scrutiny an interested witness's testimony demands.

**Issue (vi): Whether the allegation of assault by the blunt portion of the weapons can be reconciled with the two incised wounds, and whether oral or medical evidence prevails**

37. The FIR alleges that the deceased was assaulted on the neck by all three accused with the butt, the blunt side, of the Tangi. The doctor who conducted the postmortem found an incised wound on the frontal region of the forehead and another incised



wound on the left side of the cheek, neither on the neck, together with abrasions on the hand and abdomen.

**38.** An incised wound, by its nature, is caused by the sharp edge of a weapon and cannot result from a blow with its blunt side. The prosecution here does not have even the room which the High Court in *Hallu v. State of M.P.* reported in (1974) 4 SCC 300 had tried to make for itself. There the witnesses spoke of axes and spears, the injuries were bruises and lacerated wounds, and the High Court reconciled the two by supposing that the blunt side had been used. The Supreme Court declined to draw that supposition and held that if that was the prosecution case it was for the prosecution to obtain the clarification from its own witness. In the present record no supposition is called for at all. The witness has said blunt side, in the fardbeyan and in the witness box, and the doctor has found incised wounds. Where the medical evidence is totally inconsistent with the manner of assault alleged, that inconsistency is a fundamental defect going to the root of the prosecution case and a court retains the discretion to decline the ocular evidence in such a case, notwithstanding the general rule that ocular evidence independently found trustworthy should not be discarded merely for variance with medical opinion.



**39. Hallu and Ors. v. State of Madhya Pradesh, (1974)**

**4 SCC 300**, decided 19.03.1974, at para 11, reads as under:

*"The postmortem report prepared by Dr. N. L. Jain shows that on the body of Jagdeo were found three bruises and a hematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eye-witnesses the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that the miscreants dealt axe blows from the sharp-side or used the spear as a piercing weapon. According to the High Court axes and spears may have been used from the blunt side and therefore the evidence of the eye-witnesses could safely be accepted. We should have thought that normally when the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as blunt weapon."*

**Ram Narain Singh v. State of Punjab, (1975) 4 SCC**

**497**, decided 15.07.1975, reads as under:

*"It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eye witnesses in the Court was a belated*



*attempt to improve their testimony and bring the same in line with the Doctor's evidence with a view to support an incorrect case."*

***Khambam Raja Reddy and Anr. v. Public Prosecutor,***

High Court of Andhra Pradesh, **(2006) 11 SCC 239**, decided 21.09.2006, at para 19, reads as under:

*"The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of State of M.P. v. Dharkole alias Govind Singh and Ors., reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence."*

**40.** No clarification was needed here and none was sought. Neither incised wound corresponds to the neck, the part of the body the FIR identifies, and the weapon named, the blunt side of the Tangi, could not in any event have produced an incised



wound at all. This is the defect Ram Narain Singh and Khambam Raja Reddy treat as fundamental.

41. The oral version and the medical evidence are, on this record, irreconcilable, and the medical evidence, being the more disinterested and forensically grounded of the two, must prevail.

**Issue (vii): Whether the investigation is deficient, and whether that deficiency benefits the accused**

42. The Investigating Officer, P.W.-12, admitted in his deposition that he found no blood at the place of occurrence, notwithstanding that the deceased is said to have sustained incised wounds there with blood and blood clots noted at autopsy. No site plan was ever prepared marking the spot. P.W.-12 further admitted that he had asked the informant for the papers relating to the disputed land but that none were produced, an omission that finds no mention even in the case diary. Both the fardbeyan and the deposition of Prayag Yadav name the weapons with particularity, the Tangi to Satyanarayan Yadav and the Lathi to the remaining two accused, yet neither was ever seized or exhibited.

43. The proof of the place of occurrence and the recovery of the weapon require consideration. Where the place of occurrence rests on nothing beyond interested testimony, unsupported



by blood at the spot or a site plan, it cannot be treated as independently established. Where a prosecution's own witnesses are specific about the instrument of assault, its total absence from the investigation is not a peripheral omission. It stands as an infirmity in its own right.

**44. *Abdul Wahid and Anr. v. State of Rajasthan, Criminal Appeal No. 722 of 2012, 2025 INSC 295***, decided 28.02.2025, was an appeal against conviction in which a sole and interested informant was disbelieved and the investigation was found wanting in two respects present here as well. No blood soil sample had been collected from the place of occurrence for forensic comparison, and the weapon recoveries were held to be of no assistance to the prosecution, the seized weapons having been neither shown to the postmortem doctor nor produced in court (paras 20 and 21). The appellants were acquitted on a cumulative view (para 24). That the lapses were there weighed together does not deprive either, on the present facts, of independent force.

**45.** The prosecution has, on this record, nothing beyond the word of Prayag Yadav to establish where the assault occurred, neither the physical trace one would expect from a fatal assault by a cutting instrument nor a scene sketch supports his account, precisely the deficiency Abdul Wahid treats as weighing against the



prosecution. The absence of blood and of a site plan at the place of occurrence, the non-production of the land dispute papers despite being sought, and the non-recovery of the weapon, taken with the infirmities already noticed in the ocular and medical evidence, weigh cumulatively in favour of the accused.

**46.** The investigation suffers from lapses that benefit the accused rather than the prosecution.

### **Conclusion**

**47.** On a cumulative assessment of the fardbeyan, the FIR and the inquest being unproved, the improvement in Prayag Yadav's account being proved as a contradiction rather than explained away, his evidence being that of a sole, related and interested witness falling short of the sterling standard Section 134 demands, the oral and medical evidence being irreconcilable on the manner of assault, the place of occurrence itself resting on nothing beyond his interested testimony and the further lapses in investigation noticed above, this Court is of the considered view that the prosecution has not proved its case against the appellants beyond reasonable doubt.

**48.** In the result, the appeal is allowed. The judgment of conviction dated 24.12.2007 and the order of sentence dated 02.01.2008 passed by the learned Ist Additional Sessions Judge,



Jamui in Sessions Trial No. 47 of 2006 arising out of Sono P.S. Case No. 42 of 2005 is hereby set aside. The appellants, namely, Satyanarayan Yadav, Gopal Yadav and Jhotaha Yadav, are acquitted of the charge under Section 302/34 of the Indian Penal Code and are given the benefit of doubt.

49. The appellants are on bail. They are discharged from liabilities of their bail bonds.

50. Let a copy of this judgment along with the lower court records be sent to the learned trial court forthwith.

(Sanjay Kumar Singh , J)

( Ansul, J)

amitkr/-

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