



**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.802 of 2018**

Arising Out of PS. Case No.-47 Year-1993 Thana- HALSI District- Lakhisarai

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Daso Kewat Son of Late Narayan Kewat, Resident of Village- Siyani, P.S.-
Karandey, District- Sheikhpura.

... .. Appellant/s
Versus
The State Of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 822 of 2018

Arising Out of PS. Case No.-47 Year-1993 Thana- HALSI District- Lakhisarai

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Saryug Yadav Son of Narayan Yadav, Resident of Village- Ballopr, Police
Station- Halsi, District- Lakhisarai.

... .. Appellant/s
Versus
The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 802 of 2018)

For the Appellant/s : Mr.Arun Kumar, Advocate

For the Respondent/s : Ms.Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 822 of 2018)

For the Appellant/s : Ms. Eashita Raj, Advocate

For the Respondent/s : Mr.Sri Satya Narayan Prasad, APP





**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN**

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 18-03-2026

The aforementioned appeals have been filed challenging the judgment of conviction dated 16.05.2018 and the order of sentence dated 22.05.2018 passed by the learned ADJ-cum- Fast Tract Court No.I, Lakhisarai in Sessions Trial No. 436 of 1996 arising out of Halsi P.S. Case No. 47 of 1993 whereby all the accused mentioned above were convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/- (five thousand) each; and in default of payment of fine, all the convicts were directed to further undergo rigorous imprisonment for two months.

2. The prosecution story, as narrated in the *fardebayan* of the informant, Karyanand Yadav, dated 03.06.1993, is that on 30.05.1993, at about 10:30 PM, while he was sleeping at his doorstep, he heard a commotion with cries of “Chor Chor” coming from the side of the boring belonging to his *bagina* (nephew), Suresh Yadav. Upon hearing the alarm, he, along with Rameshwar Yadav, Bharat Yadav, Bannu Yadav, and other





villagers, proceeded to the boring, which was situated in the field of Suresh Yadav. There, they found Suresh Yadav lying injured, with blood oozing from his stomach. Umesh Yadav was tying a cloth around his injured stomach. Upon being asked, Umesh Yadav informed him that he was going to the boring to deliver food to Suresh Yadav when, in the meantime, 5–6 accused persons, armed with lathis and *bhalas*, arrived at the boring. On noticing them, Umesh Yadav called out to Suresh Yadav, saying “Bhaiya-Bhaiya,” asking who was present there. As soon as Suresh Yadav woke up, the accused persons began assaulting him. When Suresh Yadav attempted to flee towards the north, he was assaulted in the stomach with a *bhala* by accused Daso Kebat (appellant in CrI. App (DB) 802 of 2018). The other identified accused were Saryug Yadav, Bhushan Yadav, Sunil Yadav, and Sahdeo Yadav, who were armed with *bhalas* and lathis, and who also participated in the assault upon Suresh Yadav. The injured Suresh Yadav stated to the informant that he was first assaulted with a *bhala* by Daso Kebat, and thereafter by accused Saryug Yadav (appellant in Criminal Appeal (DB) No. 822 of 2018), who also struck him in the stomach with a *bhala*. Suresh Yadav further stated that all the accused persons had come with the intention of committing





theft of the boring machine. Thereafter, Umesh Yadav, the informant, and other villagers carried the injured Suresh Yadav, who was in an unconscious state, to Sikandra Government Hospital. However, the doctors there refused to provide treatment. He was then taken to Mokama Hospital, where the doctors were reportedly on leave. Subsequently, Suresh Yadav was brought to Patna, where he was admitted to N.M.C.H., Patna, for treatment. During the course of treatment, he succumbed to his injuries on Monday. The *fardebayan* of the informant, Karyanand Yadav, was recorded on 03.06.1993 at 03:00 PM by S.I. B. Ram of Halsi P.S.

3. On the basis of the *fardebayan* of the informant, Halsi P.S. Case No. 47/93 was registered under Sections 382 and 302/34 of the I.P.C. against all the named accused persons. Upon completion of the investigation, the Investigating Officer submitted a charge-sheet against six accused persons named in the F.I.R., including the appellant in the present matters. Consequently, cognizance was taken on 04.05.1996, and the case was committed to the Court of Sessions on 07.06.1996. Thereafter, charges were framed on 22.02.2000 against the accused persons under Sections 302/34 and 382 of the I.P.C. Upon denial of the charges by the accused persons, the trial





proceeded. However, during the pendency of the trial, one of the accused, namely Sahdeo Yadav, died. Accordingly, only the remaining five accused persons faced the trial. The prosecution evidence was closed on 13.06.2017.

4. On 13.06.2017, the statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they denied the prosecution allegations in toto and claimed themselves to be innocent.

5. In order to prove its case, the prosecution examined altogether seven witnesses. Among them, P.W.1 is Karyanand Yadav (informant), P.W.2 Bharat Yadav, P.W.3 Madan Yadav, P.W.4 Umesh Yadav, P.W.5 Jagdish Yadav, P.W.6 Bouni Yadav, and P.W.7 Ramsnehi Pandit.

The following documentary evidence has been adduced on behalf of the prosecution:

Ext. 1 – Signature of the informant on the *fardebayan*;

Ext. 2 – Carbon copy of the inquest report of the deceased, Suresh Yadav;

Ext. 3 – Formal F.I.R.

6. During examination-in-chief, P.W.1, Karyanand Yadav (informant), deposed that he is the informant of the case.





He stated that upon hearing the ‘hulla’, he proceeded to the boring of Suresh Yadav along with others and found Suresh Yadav lying injured, with blood oozing from his stomach. He further stated that Umesh Yadav informed him that he had gone to the boring to deliver food to Suresh Yadav and saw 5–6 accused persons present there, who were attempting to detach the boring machine. The accused persons were armed with *bhalas* and lathis. Umesh Yadav raised an alarm by shouting “Kaun aaya, Kaun aaya,” upon which Suresh Yadav woke up. Thereafter, the accused persons chased Suresh Yadav with the intention to assault him, and while he was fleeing towards the northern side, he was assaulted with a *bhala* by Daso Kebat and Saryu Yadav. He was also assaulted with lathis by Bhushan Yadav, Sunil Yadav, and Sahdeo Yadav. The witness further stated that Umesh Yadav told him that Suresh Yadav had sustained a *bhala* injury on his stomach. He also deposed that the injured Suresh Yadav disclosed the names of the accused persons who had assaulted him with the *bhala*. He stated that Suresh Yadav was taken to Sikandra Hospital by the informant and other villagers, where the doctor referred him to Patna for further treatment. Thereafter, the injured was taken to Mokama Hospital, but as the doctors were not available and were





reportedly on leave, he was taken to N.M.C.H., Patna, where he subsequently died. The witness stated that his *fardebayan* was recorded on 03.06.1993, and his signature on the *fardebayan* was marked as Ext. 1.

During cross-examination, the witness stated that he did not accompany Suresh Yadav and Umesh Yadav to Patna for treatment and, therefore, could not say with certainty at which hospital Suresh Yadav was treated.

7. During examination-in-chief, P.W.2, Bharat Yadav, deposed that the occurrence took place about seven years prior at approximately 10:30 PM, while he was sleeping at his doorstep. Upon hearing a commotion from the side of the boring of Suresh Yadav, he woke up and proceeded there along with others. He stated that Suresh Yadav told him that Daso Kebat had assaulted him with a *bhala* on his stomach. He saw Suresh Yadav lying injured, with blood oozing from his stomach. He further stated that the injured was taken to Sikandra Hospital, then to Mokama Hospital, and thereafter to N.M.C.H., Patna, where he died during the course of treatment.

8. P.W.3, Madan Yadav, deposed that the occurrence took place on 30.05.1993 at about 10:30 PM. He stated that while he was at his house, he heard cries of “Chor Chor” and





went to the boring of Suresh Yadav along with others. He saw Suresh Yadav lying injured with a *bhala* injury on his stomach. He further stated that, in the moonlight, he saw Daso Kebat, Saryug Yadav, Bhushan Yadav, Sahdeo Yadav, and Arjun Yadav fleeing away from the place of occurrence. He deposed that Suresh Yadav told him that Daso Kebat had assaulted him with a *bhala* on his stomach and that the remaining accused persons had also assaulted him with lathis and *bhalas*. Suresh Yadav also stated that the accused persons had come there with the intention of committing theft of the boring machine.

During cross-examination, the witness stated that he had merely seen the injured Suresh Yadav lying at the place of occurrence. He further admitted that he did not witness the assault upon Suresh Yadav with his own eyes.

9. P.W.4, Umesh Yadav, deposed that the occurrence took place on 30.05.1993 at about 10:30 PM. He stated that he had gone to the boring to deliver food to Suresh Yadav and saw accused Daso Kebat, Bhushan Yadav, Saryu Yadav, Sunil Yadav, Sahdeo Yadav, and Arjun Yadav present there with the intention of committing theft of the boring. He further stated that he raised an alarm by shouting “Chor Chor,” upon which Suresh Yadav woke up. Thereafter, accused Daso Kebat





assaulted Suresh Yadav with a *bhala* on his stomach, followed by accused Saryug Yadav, who also assaulted him with a *bhala*. He further stated that the other accused persons assaulted Suresh Yadav with a *paina*. He deposed that he tied the stomach of Suresh Yadav with a *gamcha*. The injured was first taken to Sikandra Hospital, then to Mokama Hospital, and finally to Patna, where he died during the course of treatment.

During cross-examination, the witness stated that he had accompanied Suresh Yadav to Patna for treatment and that Suresh Yadav died there during treatment. He denied the suggestion that his *fardebayan* was recorded at N.M.C.H., Patna, by the Alamganj Police.

10. P.W.5, Jagdish Yadav, deposed that the occurrence took place about seven years prior at approximately 10:30 PM. He stated that upon hearing the commotion, he went to the boring of Suresh Yadav along with others and saw Suresh Yadav lying injured, with blood oozing from his stomach.

During cross-examination, the witness stated that Umesh Yadav arrived at the place of occurrence about five minutes after his arrival.

11. P.W.6, Bonnu Yadav, the brother-in-law (*sadhu*) of the deceased, deposed that the deceased was taken to Patna





for treatment and never regained consciousness.

12. P.W.7, Ram Sanehi Pandit, formally proved the formal F.I.R. Initially marked as Ext. 1, upon correction it was renumbered and marked as Ext. 3.

13. On the other hand, defence has produced neither oral evidence nor documentary evidence.

14. After closure of the evidence, the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure and put to him specific questions relating to the commission of the offence.

15. The Trial Court, upon considering the entire oral and documentary evidence, found that the charges levelled against the accused has been proved beyond all reasonable doubts. Accordingly, the appellant was convicted under Section 302/34 of the Indian Penal Code.

16. Being aggrieved and dissatisfied with the judgment of conviction dated 16.05.2018 and the order of sentence dated 22.05.2018, the appellants have preferred the present criminal appeal.

17. Heard learned counsel for the appellant and learned APP for the State in both the appeals.

18. Learned counsel for the appellants submits that,





from perusal of the FIR, it is apparent that the date of occurrence is 30.05.1993, the FIR was lodged on 03.06.1993, and it was forwarded to the concerned Judicial Magistrate on 05.06.1993. It is further submitted that neither the Investigating Officer nor the Doctor has been examined in the present case, and the post-mortem report has also not been brought on record. Out of the seven prosecution witnesses examined, PW-1 is the informant. From the statement made in the fardbeyan, it becomes clear that PW-1 is only a hearsay witness. PW-2, a co-villager, is also a hearsay witness who has stated that upon hearing *halla*, he went to the place of occurrence. PW-3, another co-villager, similarly reached the place of occurrence after hearing the alarm and is, therefore, also a hearsay witness. Learned counsel further submits that PW-4, the alleged eye-witness and brother of the deceased, has made statements which are in complete contradiction to the evidence of PW-5. PW-4 has stated that he saw the appellants assaulting the deceased with a *bhala*, whereas PW-5 has categorically stated that he reached the place of occurrence first and that PW-4 (the brother of the deceased) arrived there after about 10 minutes. PW-5 has further deposed in his cross-examination that there was an ongoing dispute in the village between the deceased and one





Saryug Sah; however, the said Saryug Sah has not been made an accused in the present case. It is also submitted that the FIR has been exhibited through a formal witness and not through the Investigating Officer. Learned counsel further submits that although the FIR was lodged on 03.06.1993, the inquest report was prepared on 31.05.1993, which, according to the appellants, falsifies the prosecution case. PW-6, a relative of the deceased, never reached the place of occurrence and instead accompanied the injured to Patna. It is also contended that the examination of the accused under Section 313 Cr.P.C. is defective. In the absence of the examination of the Investigating Officer and the doctor, and in the absence of the post-mortem report and medical evidence regarding the injuries, the entire prosecution case collapses. The prosecution, therefore, has failed to prove its case beyond reasonable doubt.

19. Learned APP for the State, on the other hand, submits that there is a specific allegation in the FIR that the appellant in Criminal Appeal (DB) No. 802 of 2018, Daso Kewat, inflicted the first *bhala* blow and the appellant in Criminal Appeal (DB) No. 822 of 2018, Saryug Yadav, inflicted the second *bhala* blow, while the other accused assaulted the deceased with *lathis*. Thereafter, all the accused allegedly went





to the boring of the deceased with an intention to commit theft of the engine of the boring machine. It is further submitted that the eye-witness in the case is PW-4, the brother of the deceased, who has categorically stated that when his brother went to his boring, he saw the present appellants and others there with the intention of committing theft. Upon PW-4 raising alarm, appellant Daso Kewat assaulted the deceased with a *bhala* and Saryug Yadav also inflicted a *bhala* blow. PW-4 has further stated that in the moonlight (*chandani raat*), he was able to identify all the accused persons and has also identified them in the witness box. Learned APP fairly concedes that it is true that the Investigating Officer and the doctor have not been examined and the post-mortem report is not on record, but submits that the death of the deceased is not in dispute and there is a direct and specific allegation made by PW-4 against the present appellants. Therefore, no interference is warranted with the judgment and order of conviction passed by the learned trial court, and both the appeals are liable to be dismissed.

20. Upon hearing the parties and perusal of the record, it transpires that seven prosecution witnesses have been examined. PW-1 is a co-villager of the deceased. From the





contents of the FIR and his deposition, it appears that he reached the place of occurrence after hearing *halla* and found the deceased in an injured condition, with his brother Umesh Yadav tying a *gamcha* around his stomach. It was Umesh Yadav who informed him that the present appellants and others had assaulted the deceased with a *bhala*. The informant has also stated that Suresh Yadav disclosed that one *bhala* blow was inflicted by Daso Kewat and another by Saryug Yadav. However, in cross-examination, PW-1 admitted that at the time of occurrence he was not present at the place of occurrence and was about half a kilometer away. Thus, he is not an eye-witness but a hearsay witness. He has also not proved the *fardebayan*. PW-2, another co-villager, has not identified any specific assailant. He stated that he received information regarding the assault from Umesh Yadav. He further deposed that the inquest report was prepared in his presence and that his signature appears on the inquest report (Exhibit-II). The inquest report shows that it was prepared on 31.05.1993 at 14:00 hours in the Emergency Room of NMCH, Patna. However, the FIR was lodged on 03.06.1993. It is surprising that the inquest report was prepared on 31.05.1993 whereas the FIR was lodged subsequently on 03.06.1993. The inquest report was prepared





by the Sub-Inspector of Alamganj Police Station, Patna, whereas the *fardebayan* was recorded at Halsi Thana, District Lakhisarai. This indicates that the prosecution has failed to produce the FIR, if any, on the basis of which Alamganj Police Station conducted the inquest. The delay in lodging the FIR has also not been explained either in the FIR or in the deposition of the informant. Thus, PW-1 and PW-2 appear to be hearsay witnesses. PW-3, also a co-villager, reached the place of occurrence after hearing the alarm and stated in cross-examination that he saw the deceased in an injured condition but did not see any of the accused persons there, as they had already fled. Hence, PW-3 also does not support the prosecution case as an eye-witness. PW-4, the alleged eye-witness and brother of the deceased, has identified all the accused persons and stated in his examination-in-chief that the present appellants assaulted the deceased with a *bhala*. However, PW-5, another co-villager, deposed that he reached the place of occurrence first and stated in cross-examination that PW-4 arrived there after about 10 minutes. PW-5 also stated that on the same day there was a dispute between the deceased and one Saryug Sah regarding a loan, but Saryug Sah has not been made an accused in this case. A conjoint reading of the evidence of





PW-4 and PW-5 reveals sharp contradictions. The prosecution has not declared PW-5 hostile; therefore, his evidence remains on record and must be considered. PW-6, a relative of the deceased, has merely stated that Umesh Yadav is his brother-in-law (sadhu) and that he accompanied the injured to Patna. PW-7 is an advocate's clerk through whom the FIR has been marked as Exhibit-1.

21. It is indeed an unfortunate situation that the prosecution has failed to examine the Investigating Officer as well as the doctor, which is a serious lapse in the present appeal. The post-mortem report has also not been exhibited. Furthermore, the person who recorded the fardbeyan has not been examined. These are not minor irregularities but substantial lacunae in the prosecution case.

22. In *Pankaj v. State of Rajasthan*, reported in (2016) 16 SCC 192, the Hon'ble Supreme Court held that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Hon'ble Supreme Court in paragraph no. 25 of the aforesaid judgement has held as under:

“25. It is a well-settled principle of law that when the genesis and the manner of the incident is





doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt.”

Here in the present case, in the absence of the testimony of the Investigating Officer, the defence has been deprived of the opportunity to confront the prosecution with contradictions and omissions in the statements of witnesses recorded. Similarly, non-examination of the doctor and non-production of the post-mortem report deprive the Court of reliable medical evidence regarding the nature of injuries, cause of death, and the manner in which the injuries were inflicted. These lapses are not mere procedural irregularities but go to the





root of the matter. Further, the contradictions in the statements of the prosecution witnesses, coupled with the absence of medical and investigative evidence, substantially weaken the prosecution case. Taken together, these deficiencies create serious doubt about the prosecution version and render it unsafe to sustain the conviction solely on such infirm evidence.

23. In *Munna Lal v. State of U.P.*, reported in **(2023) 18 SCC 661**, the Hon'ble Supreme Court ruled that the failure to seize the weapon of offence dents the prosecution story, leading to the benefit of doubt for the accused. The relevant paragraph of the judgment is reproduced below:

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

In the present case, the non-examination of the





Investigating Officer as well as the doctor, coupled with the non-exhibition of the post-mortem report, creates a material lacuna in the prosecution case. These omissions strike at the very root of the prosecution story and significantly impair its ability to establish the manner of occurrence, the cause of death, and the nexus between the alleged acts of the appellants and the injuries sustained by the deceased. Such deficiencies do not merely amount to procedural irregularities but go to the core of the matter, thereby seriously prejudicing the case of the prosecution.

24. Hence, in light of the discussions made hereinabove and upon applying the principles laid down by the Hon'ble Supreme Court of India in the decisions referred to earlier, we are of the considered and firm view that the prosecution has failed to prove the guilt of the appellants beyond all reasonable doubt. Accordingly, the appellants are entitled to the benefit of doubt.

25. In result, the judgment of conviction dated 16.05.2018 and the order of sentence dated 22.05.2018 passed by the learned ADJ-cum- Fast Tract Court No.I, Lakhisarai in Sessions Trial No. 436 of 1996 arising out of Halsi P.S. Case No. 47 of 1993, are perverse and are hereby set aside.





26. In result, the appeals above-mentioned are hereby allowed.

27. The appellants are acquitted of all charges.

28. The appellants shall be released forthwith, if their presence is not required in any other case.

(Dr. Anshuman, J)

Bibek Chaudhuri, J : I agree.

Ashwini/-

(Bibek Chaudhuri, J)

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| AFR/NAFR | |
| CAV DATE | 25.02.2026 |
| Uploading Date | 19/03/2026 |
| Transmission Date | 19/03/2026 |

