

HEADING OF JUDGMENT IN SESSION CASE

Form A-

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-III, CIVIL COURT, GAYA (BIHAR)	
Present	: Ajit Kumar Singh : District & Additional Sessions Judge-III-cum- Special Judge of MP/MLA Court, Gaya
Date of Judgment	: 17th July 2026
Session Trial No.	- 01/2022(SJ)
General Register No.	- 10814/2013
Neemchak Bathani P.S. Case No. -21/2013	
Complainant	State of Bihar
Represented by	Sri Banwari Prasad, Learned A.P.P., Sri Amrendra Kumar Sinha, Learned Advocate and Sri Sartaz Ali Khan, Learned Advocate, (Learned Counsels for Informant)
Accused	1. Ranjit Yadav 2. Dipu Yadav 3. Vivek Yadav
Represented by	1. Sri Rajendra Narain, Learned Senior Advocate, Patna High Court. 2. Sri. Sakeel Ahmad, Learned Advocate. 3. Sri. Arun Kumar Sharma, Learned Advocate. 4. Sri. Bhola Kumar, Learned Advocate.

FORM-B

Date of Offence	26.02.2013
Date of FIR	26.02.2013
Date of Charge-sheet	28.03.2020
Date of Framing Charge	02.08.2025
Date of Commencement of evidence	11.08.2025
Date of Statement	17.04.2026
Date on which Judgment in reserved	16.07.2026
Date of the Judgment	17.07.2026
Date of the Sentencing order	Not Applicable

ACCUSED DETAIL:-

Rank of the Accused	Name of the Accused	Date of Arrest	Date of release on bail	Offences charged with	Whether acquitted or Convicted	Sentence imposed	Period of determination undergone during trial for purpose section 428 Cr.P.C.
1	Ranjit Yadav			U/S 302 IPC r/w 34 of the IPC	Acquitted		
2	Dipu Yadav	24.04.2025	09.05.2025				
3	Vivek Yadav	23.11.2024	17.07.2026				

J U D G E M E N T

1. In this case accused Ranjit Yadav, Vivek Yadav and Deepu Yadav have been tried for the offences punishable u/s 302 r/w 34 of the I.P.C.

Facts of the case according to the written F.I.R. lodged by Vijay Yadav, S/o Jaipal Yadav, R/o Vil. Dharambigaha, Tola Bathani, P.S. Neemchak Bathani, Distt. Gaya which was lodged on 26.02.2013 at about 8:05 pm in police station Neemchak Bathani, Gaya are that

“On 26.02.2013 at about 6:15 pm his elder brother Sumirak Yadav (deceased) was returning home after closing the J.D.U. Office, and reached near the Betel Shop of Sarju Barai, accused Kunti Devi Ex.M.L.A. W/o Rajendra Yadav, her two sons Ranjit Yadav and Vivek Yadav, brother-in-law of Ranjit Yadav whose name is not known, and two other unknown persons, who were armed with weapons and were lying in wait to attack by surprise, surrounded him.

Kunti Devi commanded her gang to kill Sumirak Yadav as he had defeated her in election and thereupon Ranjit Yadav struck on the head of Sumirak Yadav with his iron rod rendering him smeared with blood. Then Vivek

Yadav hit in his leg with an iron rod and he fell down. Thereafter, the brother-in-law of Ranjit Yadav and the other two accused assaulted him with hand, lathi, danda and he was grievously injured.

Kunti Devi again cautioned the assailants to ensure that the injured does not escape alive and the assailants continued inflicting injuries. Sunil Kumar, R/o Vill. Dharambigaha, Manoj Kumar, R/o Vill. Bhanpur, Chandrika Prasad, R/o. Vill. Pachayi, Madan Prasad Yadav, R/o Vill. Gewati and Arun Yadav, R/o Vill. Ambekua were present near the scene of occurrence besides him (Vijay Yadav). When a number of persons gathered at the place of incident the accused fled away. The motive behind the attack has been political rivalry and earlier also an attempt to murder was made.

On receiving the information the police reached the spot and carried his brother with them for treatment. The informant also accompanied the police station and lodged the written report.

On the basis of the written report case no. 21/2013 u/s. 341, 342, 323, 325, 307/34 of the I.P.C. was registered in police station Neemchak Bathani, Gaya against the accused Kunti Devi, Ranjit Yadav, Vivek Yadav, brother-in-law of Ranjit Yadav and two others.

Sumirak Yadav was rushed to the Primary Health Center, Neemchak where from he was referred and taken to the Medical College, Gaya. But after 10 minutes he was declared dead by the doctors.

Pursuant to death of victim Fardbeyan of informant Vijay Yadav was recorded by Sub-Inspector Ram Sarekh Singh of Magadh Medical police station on 27/02/2013 at 10 A.M at ANMCH Emergency Ward, wherein informant Vijay Yadav has reiterated the content of written information given by him earlier to the police with addition that pursuant to initial treatment at Neemchak Bathani Primary Health Centre his brother was referred to Anugrah Narayan Medical College Hospital where he was declared dead by doctors on 27.02.2013 at 10:05 P.M. He has further added

that his villager Sunil Kumar was also assaulted by accused persons and Sunil was treated in hospital at Gaya.

Pursuant to death Section 302 of I.P.C. was also added.

PROCEDURAL HISTORY

2. On the basis of written report of informant Neemchak Bathani P.S. Case No. 21/2013 was registered under Section 341, 342, 323, 325, 307 r/w 34 of I.P.C. The said Fardbeyan which was subsequently recorded was forwarded to S.H.O Neemchak Bathani, Gaya for necessary action. Pursuant to that Section 302 of I.P.C. was also added.

Pursuant to investigation with respect to aforesaid three accused persons who are facing trial, charge-sheet was submitted against two accused persons namely Deepu Yadav and Vivek @ Vivekanand however police had submitted final form against Ranjit Yadav showing his non-complicity in the alleged occurrence. However, differing with the finding of the police the Ld. Court took cognizance of offence against all three accused persons on 21.12.2021 U/s 302/34 of the I.P.C.

CHARGE

3. Pursuant to that charges have been framed in this case on 02.08.2025 under Section 302 read with 34 of IPC to which the accused persons have pleaded not guilty and claimed to be tried.
4. Pursuant to closure of evidence of prosecution the statement of accused under Section 313 Cr.P.C in which they claimed to be innocent.

Accused Ranjit has further stated that he was not present at place of occurrence and he was rather present in Mumbai on the date alleged and he was undergoing treatment over there.

Accused Vivek Yadav has also taken plea of alibi and he also stated that he was present in Allahabad for sake of pursuing his studies at the time of alleged occurrence.

Accused Deepu has stated about false implication in this case.

POINT FOR DETERMINATION

5. Now, the point for determination before this court is whether prosecution has been able to prove its case against accused persons beyond reasonable doubts or not ?

EVIDENCE ADDUCED BY THE PARTIES

6. In order to prove its case, the prosecution has examined altogether 13 witnesses. They are –

P.W. 1 Sunil Kumar

P.W. 2 Vijay Kumar (Informant)

P.W. 3 Madan Prasad

P.W. 4 Ram Avtar Prasad (Seizure-list witness)

P.W. 5. Uday Kumar (Seizure-list witness)

P.W. 6 Chandrika Prasad @ Chandrika Yadav

P.W. 7 Arun Kumar

P.W. 8 Vijay Bahadur Singh (one of the Investigating Officers)

P.W. 9 Manoj Kumar

P.W. 10 Krishan Bihari Singh, Investigating Officer

P.W.11 Shashi Bhushan Singh(one of the Investigating Officers)

P.W. 12 Naveen Paswan(one of the Investigating Officers)

P.W.13 Dr.Arvind Kumar who carried out postmortem and prepared postmortem report.

7. Apart from oral evidence prosecution adduced following documentary evidences:-

Ext.-1 Signature of the informant on Fardbeyan.

Ext.-2 Substituted copy of written information (Written F.I.R)

Ext.-3 is substituted copy of statement of Vijay Yadav under Section 164 of

Cr.P.C. recorded on 03.09.2025

Ext.-4 Signature on substituted copy of seizure list (Signature on search list)

Ext.-5 Statement of witness Chandrika Yadav under Section 164 of Cr.P.C.

Ext.-6 Signature on Production-cum-Seizure List.

Ext.-7 FSL Report

Ext.-8 Certified copy of judgment passed in the case of co-accused of this case

8. The defence has examined one witness who is Dr. Manoj Chaudhary as D.W. 1

9. The defence has marked following documents as exhibits:

Ext.-A is signature of witness Manoj Kumar

Ext. DW-1/D1 is Injury Report which is photo copy of injury report which has been marked with objection.

ARGUMENT ON BEHALF OF PROSECUTION

10. The Learned Counsel for the State has argued and the detailed argument has been done by Learned Counsel for the informant Sri Sartaz Ali Khan and the arguments were heard and dictated in Court in contemporaneous process which are as follows:

The Learned Counsel for informant has submitted that information was given by Vijay Yadav to the police station on the date of occurrence itself in the form of written application in connection with which Neemchak Bathani P.S. Case No. 21/13 dated 26/02/2013 was registered under Section 341, 342, 323, 325, 307, 34 of IPC and pursuant to death of Sumirak Yadav the Fard beyan of Vijay Yadav was again recorded by the police in Emergency Ward of ANMCH, Gaya where Vijay Yadav narrated about the incident which was sent to the police station for necessary action after recording of the same and subsequently Section 302 of IPC was also added in the

original case i.e. Neemchak Bathani P.S. Case No. 21/13.

11. Learned Counsel for the prosecution has therefore highlighted this fact that the F.I.R. was registered promptly without any delay ruling out any possibility of concoction or false implication and pursuant to death of victim Sumirak Yadav Section 302 of IPC was added.
12. The Learned Counsel further submits that altogether 13 witnesses have been examined including those whose name figures in the F.I.R as informant had claimed about the presence of these witnesses in the F.I.R itself and the same was also reiterated in the Fardbeyan which was recorded pursuant to death of the deceased.
13. Learned Counsel for the prosecution has submitted that informant Vijay Kumar who is PW2 has clearly and coherently supported the case of prosecution in all material particulars in his examination-in-chief.
14. Similarly, PW1 about whom informant has claimed that he was present at the place of occurrence has also supported the case of prosecution in all exact particulars which has been stated by informant PW2.
15. PW3 Madan Prasad has similarly supported the allegation contained in F.I.R. Thereafter learned counsel submits that PW4 has though stated to have put his signature on blank paper but he has admitted his signature to be there.
16. The Learned Counsel further submits though PW5 has not supported the alleged incident however he has identified his signature on seizure list and he has submitted this fact that murder had taken place. Learned Counsel further submits that this witness was gained over by the defence but still he has supported the factum of murder and he had put his signature on seizure list.
17. The Learned Counsel further submits that PW 6 Chandrika Prasad @ Chandrika Yadav is also said to be present on place of occurrence by the informant and PW 2 and he has also supported the case of prosecution in his

examination-in-chief. Similarly, PW7 has also supported the case of prosecution and he has given details about the things which were going on and happening during course of incident and how the victim was taken for treatment by the police by Ambulance.

18. Similarly, PW8 has though not investigated the case and he has stated to have executed the process of 83 of Cr.P.C at the house of accused Vijay Yadav and he has been gained over by the defence which is evident from his cross-examination.
19. PW9 Manoj has supported the case of prosecution in examination-in-chief. Learned Counsel further submits that PW 10 is investigating officer of this case and he has also supported the case of prosecution in his examination-in-chief. The Learned Counsel further submits that this witness has supported this fact that he had found several arms, ammunition as well as stick, rods and Lathi from the house of accused persons and seizure list was also prepared.
20. He also stated that the statement of some of the witnesses were recorded under Section 164 of Cr.P.C and then finally the Learned Counsel wraps up his arguments by stating this fact that PW 13 Dr. Arvind Kumar who has conducted post-mortem has also found multiple injuries on the person of the deceased.

Learned Counsel while describing the nature of injuries having been noticed during course of carrying out post-mortem has stated that multiple injuries were inflicted on the person of victim and all injuries were opined to be ante- mortem in nature and the death was attributed to because of those injuries. Post-mortem was carried out on 27.02.2013 and the time of death has been opined between 6 to 24 hours since post-mortem time and therefore it also corroborates the time of assault and the death having taken place as a result of which.

21. The Learned Counsel submits that defence has though tried to impeach the

credibility of the case of prosecution while producing one defence witness who has marked his signature on xe-rox document which is not admissible in evidence.

22. Ld. APP further submits on plea of alibi that no any cogent evidence has been brought on record by the defence to prove alibi and no any oral or documentary evidence has been adduced by defence to prove the same.

ARGUMENT ON BEHALF OF DEFENCE

23. On the other hand the arguments were advanced by Learned Counsel for the defence Sri Rajendra Narain, Senior Advocate and the same was also heard and dictated in Court in contemporaneous process which are as follows:

The Learned Counsel while narrating the facts of the case at the very outset submits that in the instant case accused Ranjeet Yadav who was infact present in Mumbai on the alleged date and time of occurrence and this fact was investigated and asserted by the police in its finding at the time of submission of charge-sheet wherein the police submitted charge-sheet against accused Vivek and Deepu Yadav whereas accused Ranjit Yadav was not sent up for trial.

24. While narrating the procedural history of case the Learned Counsel submits that in earlier part of investigation only three accused persons namely Kunti Devi, Pankaj and Raju were found to have done the alleged act. The charge sheet was filed by the police against them on 28.05.2013 in which the investigation with respect to Ranjeet Yadav and others were kept pending.

Learned Counsel submits that pursuant to submission of initial charge sheet Court took cognizance of offence under Section 120B and 302 IPC against those three accused persons Kunti, Pankaj and Raju and the record was split up.

Then after 7 years i.e. on 28th of March, 2020, the charge sheet was submitted against accused Deepu and Vivek and final form was submitted in favour of accused Ranjit showing him to be innocent on the ground of

plea of alibi which he has taken with respect to his presence in Mumbai at the time of occurrence.

25. However, the Learned Court below while differing with the finding of police had been pleased to take cognizance of offence against accused Deepu, Vivek as well as Ranjeet.
26. In the instant case, charges were framed against accused persons facing trial on 02.08.2025. Learned Counsel further submits that prosecution examined 13 witness.
27. While coming on the evidence of PW1 Sunil Kumar, Learned Counsel while relying on the content of examination in chief of the PW1 submits that he has disclosed that victim was treated at Neemchak Bathani Hospital and he was provided first aid and pursuant to that he was taken to Magadh Medical College. However, the prosecution has deliberately withheld the finding of doctor of Neemchak Bathani Hospital which was procured by the defence under **Right to Information Act** and a witness DW1 Dr. Manoj Chaudhary DW1 has been examined on behalf of defence wherein it has been categorically stated by said doctor that he did not find any injury on the head of the victim.

Ld. Counsel further submits that said injury report was got exhibited by D1 wherein the time of examination is shown to be 8 PM and the date of examination is shown to be 26.03.2013. The injuries on arms and leg were found to be simple by the doctor who treated the victim at first instance. Ld. Counsel further submits that no any injury was found on the vital part of the body and altogether 6 injuries were found out of which 5 were inflicted on the arm and leg and the mark of identification has been shown to be black mole over left lateral eye and so the Ld. Counsel submits that as the doctor had examined the eye of the victim meaning thereby he would have seen the whole face of victim keenly and in the whole process he did not notice any injury over the face or head of the victim which is suggestive of victim having not sustained injury on head or vital part of the body as such.

Learned Counsel further submits that he had procured requisition which was sent by the police for the examination of victim which was addressed to medical officer Primary Health Centre Neemchak Bathani wherein the injuries were noticed by police are of following descriptions:

1. Lacerated wound over right leg
2. Complaint of pain in right hand
3. Complaint of pain in waist
4. Complaint of pain on whole body

So the Learned Counsel submits that this being the position which was noticed by the stakeholders of prosecution agency, doctor and investigating officer, it disclosed with all adequate certainty that no any injury was so sustained by the victim over his head as claimed by the prosecution wherein it has been stated by PW1 that Ranjit Yadav had given blow by rod over the head of the Sumirak Yadav who subsequently died.

28. Learned Counsel for the accused while drawing attention of this Court to the cross-examination para 3 submits that this witness has claimed to have given statement to the police after 3 days of alleged occurrence despite his claim to be present at the place of occurrence which makes the accounts of this witness doubtful. Learned Counsel further submits that he has taken contradiction of this witness wherein he has not stated to have stated specifically about accused Ranjit Yadav to have given blow over head of victim Sumirak Yadav by rod and accused Vivek Yadav to have assaulted him with stick on his leg which is evident from para 19 of the case diary.
29. He has further though claimed to have given information to police and accompanied the victim in his examination-in-chief but he had not given such statement before the police under Section 161 of Cr.P.C and such contradiction has been taken by the defense during his cross-examination.
30. Learned Counsel for the defence while highlighting the questions which were put by the Court to the witness submits that the witness has

categorically stated that he was alone and he had taken Sumirak Yadav to the hospital alone and there was no other person with Sumirak Yadav and he has further claimed to have given information to the police. Ld. Counsel therefore submits that if the account of this witnesses to be believed and that should be obviously believed as he has given such statement when question was put to him by the Court itself, then the inference can be drawn with all certainty that he has denied the presence of any other witness including the informant at the place of occurrence at the time of alleged occurrence.

31. Learned Counsel further submits that this witness has stated that he did not tell police as to who had actually assaulted and how Sumirak was assaulted. He has further stated that he had given information about the alleged occurrence to the police and no body else.

He has also stated that he did not meet Vijay Yadav at the place of occurrence and Vijay Yadav actually accompanied him from Neemchak Bathani Hospital and he has further claimed that Vijay Yadav had basically asked from him that how such incident took place. Learned Counsel therefore submits that this witness has denied the presence of informant at the place of occurrence and if his version is to be believed then version of informant cannot be believed and therefore it appears that it is a clear cut case of false implication.

32. Learned Counsel further submits that informant Vijay Yadav has been examined as PW2. He is brother of the deceased and his examination-in-chief would reveal that he has given exaggerated version before the Court as whatever he has stated in examination-in-chief is not there in the written information given by him. He has stated in his examination-in-chief that there were 6-7 unidentified accused. He has stated in examination-in-chief that he had taken his brother to the hospital however in cross-examination he has stated that police had taken the injured to hospital. Learned Counsel further submits that in his written information he has not claimed to have given statement to the police prior to taking of victim to hospital wherein in

his examination-in-chief he has stated that his statement was recorded first then police had taken his brother to hospital.

33. Learned Counsel further submits that such exaggeration makes the case of prosecution completely doubtful as informant himself has given exaggerated version of alleged occurrence. Learned Counsel further submits that this witness has himself claimed to be a hearsay witness when he has stated in his deposition that he had met Sunil Yadav PW1 in police station wherein he had asked from Sunil Yadav that how his brother sustained injury meaning thereby that had this witness would have seen occurrence on his own he would not have put such question to PW1 Sunil Yadav.
34. Learned Counsel further submits PW1 Sunil Yadav has stated that PW2 informant, Vijay Yadav accompanied him in ambulance from Neemchak Bathani however, this witness has claimed to have met PW1 Sunil Yadav in police station.

Learned Counsel while highlighting para 3 of the cross-examination submits that informant has claimed this categorically that he had given his written information at around 8 PM in the police station and at that point of time his injured brother was in police station pursuant to which he was taken to hospital however the police did not take any effort to record the statement of the victim with respect to alleged occurrence. Learned Counsel further submits in his cross-examination this witness has claimed to have given Fardbeyan to the police after the death of victim on the next date which has been marked as Ext.1 however as a matter of fact this Fardbeyan was the first account of the incident so narrated by the informant and the said written information was ante dated as the time of reporting of the alleged occurrence in the police station is said to be on 26.02.2013 at 8:00 PM, however the same was sent to Court on 28.02.2013. Therefore, the late sending of FIR to the Court makes possibility of its manipulation, its fraudulent interpolation which further makes the case of prosecution doubtful.

35. Learned Counsel further submits that informant has conceded in his cross-examination that at the time of alleged occurrence 10 to 20 shops were open in Neemchak Bathani and statement of shopkeepers were recorded during course of investigation wherein they had denied the presence of the accused persons facing trial at the place of occurrence and they were not made witness by the prosecuting agency and they have not been examined by them during course of trial and therefore prosecution has been selective in terms of examination of its witnesses and have chosen to examine interested witnesses who came up with inculpatory statement and has not chosen to examine witnesses who could have given neutral account about the accused persons.
36. The examination of those witnesses finds mention from paragraph 211 to 217 of case diary and the name of such witnesses are following Srikant, Pintu, Raj Kumar Chaudhary, Rahul Kumar, Sunil and Virendra Kumar Yadav. Learned Counsel further submits that strangely the statement of these witnesses were taken after six years of alleged occurrence and the witnesses with all their best memory which did not even fade for 6 years have stated and categorically stated that accused Ranjit Yadav and others were not present at the place of occurrence and they had no any role in alleged occurrence.
37. Learned Counsel while drawing attention of this Court towards testimony of PW3 Madan Prasad submits that his examination-in-chief is also full of exaggerations and he has not stated in sync with his statement given under Section 161 of Cr.P.C and Section 164 of Cr.P.C wherein his statement was recorded before the Learned Magistrate. Learned Counsel submits that in para 3 this witness has stated his statement was taken by police after 10 days of occurrence.
38. The contradiction has been taken wherein he has though claimed to have given exaggerated account in his deposition before the Court but the said was not there in the statement under 161 Cr.P.C which finds mention in

para 71 of the case diary.

39. Learned Counsel has further highlighted the reason of false implication and this witness having given false statement before the Court because a case was earlier registered against him under 376 of IPC in Nalanda bearing Khudaganj P.S. Case No. 17/2010 in which co-accused Kunti Devi was one of the witnesses. Learned Counsel further submits that the house of this petitioner is situated at the distance of 12 km from the place of occurrence and he has though claimed to have gone in market to look for hand pump however it is quite improbable that during winter days somebody is expected to be in market till late hours and therefore as a matter of fact this witness was not present at the place of occurrence.
40. Learned Counsel while drawing attention of this Court towards testimony of PW 4 Ram Avtar submits that this witness has claimed to have put his signature on blank paper, the substituted copy of which has been marked as Ext.4 and this witness has come with different story and he has stated that accused Ranjit was undergoing treatment because of an accident when question was put to him by the Court and when the question was put to him by the defence he has reiterated that he has put his signature on blank paper and he has further stated that accused persons did not intimidate him in any manner and at the time of occurrence accused Vivek was studying at Allahabad whereas accused Ranjit was undergoing treatment at Mumbai.
41. Learned Counsel further submits that PW5 Uday Kumar has initially feigned ignorance about the alleged occurrence but when the copy of seizure list was shown to him and his memory was refreshed he has identified his signature however he has accepted his presence where alleged seizure had taken place and he has further stated that nothing was recovered in his presence and he was merely asked to put his signature on the seizure list the substituted copy of which has been marked as Ext.4.
42. This witness has stated in para 3 that he was not intimidated by the accused persons. The police did not ask anything from him he has also stated that

accused Vivek was studying at Allahabad and Ranjit was undergoing treatment at Mumbai at the time of alleged occurrence.

43. Learned Counsel further submits prosecution did not make prayer for turning PW4 and PW5 hostile and therefore whatever evidence has been adduced by them has to be seen in totality and prosecution cannot retract that such statement was not made by these witness as such. These witnesses have ruled out any threat so given by accused persons and so the deposition so given by them in Court is voluntarily made and reliable.
44. Learned Counsel submits that PW- 6 Chandrika Prasad @ Chandrika Yadav has given exaggerated version in his examination-in-chief and he has given vivid expression of the place of occurrence and he has narrated about the alleged occurrence which is not exactly the way he has stated in statement under 161 of Cr.P.C recorded in para 20 of case diary. Learned Counsel has pointed out that there was previous enmity of this witness with father of the accused Ranjit Yadav and this witness has claimed to have given evidence in Civil Line P.S. Case No. 95/2003.
45. Learned Counsel further submits that this witness in para 7 of cross-examination has not claimed to have given any statement to the police. He has further stated he did not know who had informed the police about incident.

Learned Counsel while highlighting the evidence of PW7 Arun Kumar submits that this witness has though claimed in his examination-in-chief that he is an eye-witness but he has categorically stated to the Court when question was put to him by the Court that he had reached at place of alleged occurrence after the alleged occurrence and therefore he is the hearsay witness.

46. This witness has further stated that Sumirak Yadav was not unconscious which has been stated very coherently by this witness and he has further stated that police did not record his statement or inquire from him about the

alleged occurrence. Learned Counsel further submits that this witness is not credible as he has himself conceded in para 3 of his cross-examination that he has initially stated lie that Sumirak was not related to him in any manner however Sumirak was his cousin (Mausera Bhai) and that has been the reason that this interested witness has turned up before the Court for deposing against the accused.

47. PW9 is Manoj Kumar. Learned Counsel further while highlighting evidence of PW9 submits that this witness has also given exaggerated version in his examination-in-chief. It has been further submitted that this witness has stated when question was put to him by Court that Sunil Yadav PW 1 was assaulted by none of the accused persons who have been made accused in this case rather he was assaulted by some other persons. Therefore he has created doubt over the credibility of testimony of PW1.
48. Learned Counsel has further stated that statement of this witness under Section 161 of Cr.P.C. was recorded after one month of alleged occurrence. Learned Counsel submits that this witness has not stated in his statement under Section 161 what he has stated before the Court and therefore his testimony is full of exaggeration and embellishment and the same cannot be relied upon. This witness has though stated that he had stated everything before the police which police did not write so the Learned Counsel submits that this witness in this way is doubting his own agency which further makes the case of prosecution doubtful.
49. Learned Counsel has submitted that in the instant case there have been many investigating officers out of which four of them have been examined in this case. Out of which PW 10 Krishna Bihari Singh who has been the first investigating officer and not the one who carried out the investigation with respect to accused persons facing trial in this case. This witness had actually carried out investigation with respect to co-accused person against whom he had filed charge-sheet and strangely he has been examined in this case by prosecution which deliberately did not examine the investigating

officer, Madan Prasad Singh who carried out investigation with respect to accused persons facing trial in this case and who had submitted final form with respect to accused Ranjit Yadav.

50. PW10 Krishna Bihari Singh has though strangely stated about taking about the investigation of this case on 06.02.2013 however the date of alleged occurrence is 26.02.2013 and Learned Counsel while citing para 2 of deposition which contains Court question submits that this witness has not drawn the map of the place of occurrence. He has categorically stated that he did not reach the place of occurrence on ambulance and he had reached at place of occurrence on the basis of information received through rumors which goes on to contradict the claim of PW1 Sunil Kumar that he had given information about the alleged occurrence to the police and police had reached there with the ambulance on which the victim was taken for treatment.
51. The Learned Counsel puts emphasis on this point that no any ambulance had reached at place of occurrence and he has stated that prior to his reaching at place of occurrence Sumirak was taken to Magadh Medical Hospital by his family members. He has further stated that he did not have any conversation with the victim and he had not prepared the inquest report. Learned Counsel further submits that this investigating officer has accepted to have not recorded the statement of Ram Sarekh Singh who had prepared inquest report and he had also taken the Fardbeyan of the informant.
52. Learned Counsel further submits that this witness has been the important in the sense that he is said to have reached at the place of occurrence after the occurrence and he has claimed to have received information through rumor at 7.25 PM on 26.02.2013 and he proceeded from police station at 8.30 PM and reached at place of occurrence at 8:40 PM. Learned Counsel further submits that this part of statement of PW10 assumes significance because he has stated the same when question was put to him by the Court wherein he has conceded to have got information about the alleged occurrence at

19:25 through rumors and he has further stated that he proceeded at 8:30 PM from police station and reached at place of occurrence at 8:40 PM however the FIR would reveal that the information about the alleged occurrence was received in police station at 8:05 PM suggesting the F.I.R. to be ante time and antedated.

53. He has stated the source of information through rumors and therefore in all probability the written information so submitted by the brother of the deceased was ante dated and ante time and there has been serious manipulation which will be further fortified that FIR was sent to Court after two days of its institution.
54. Learned Counsel for the defence submits that this witness has subsequently stated to have got application from Vijay Yadav and having asked him about his brother Sumirak on which Vijay Yadav replied that he is admitted in Primary Health Centre. This witness has further conceded to have not taken injured to hospital from the place of occurrence as is claimed by PW1 and others. This witness further blown hot and cold at the same time and he has stated that he has been to Primary Health Centre pursuant to receipt of application so given by Vijay Yadav. He has further blown hot and cold when he has stated that he did not find even drop of blood at place of occurrence. He has further stated that blood was there at place of occurrence but he did not seize the same as the place of occurrence was very crowded.
55. Learned counsel for the informant has however intervened and submitted that this witness basically got perturbed when questions were put to him by Court and the reason for him being incoherent was nervousness and sense of feeling perturbed therefore he has given such statement before the Court.
56. This witness has accepted in para 3 of his cross-examination that he had not recorded the statement of victim Sumirak Yadav had not asked him who had actually assaulted and when he was assaulted. Learned Counsel further submits that this witness has blown hot and cold wherein he has claimed the victim to be in unconscious state and subsequently he has conceded that

victim was conscious and despite being conscious his statement was not recorded.

57. This witness has further conceded to have not recorded statement of family members of the victim on the date of alleged occurrence. Learned Counsel further submits that this witness has conceded that he had not received injury report from the Primary Health Centre and he has further stated that he had not given written request to the doctor for such examination and this is falsified by the testimony of DW1 wherein documents have been exhibited wherein this witness had given dictation to the police for examination of victim and that examination report was deliberately withheld by the prosecution.
58. The Learned Counsel further submits that contradiction of witnesses recorded under Section 161 of Cr.P.C. have been further confirmed while examining this witness and this witness has supported the case of defence. Learned Counsel has further stated that statement of PW 12 Naveen Paswan has been recorded who has conceded to have not collected any evidence in this case and therefore his testimony does not hold any relevance.
59. Learned Counsel further submits that PW11 is another investigating officer Shashi Bhushan who has claimed to have taken up investigation on 01.08.2016 but he has again stated to have not collected the evidence and therefore his evidence is also of no any relevance.
60. Finally PW8 who is Vijay Bahadur Singh has been one of the Investigating officers and he has stated that he did not collect any evidence and he in his cross-examination has conceded that the investigating officers who earlier carried out investigation in this case has recorded in the case diary that Ranjeet Kumar was undergoing treatment at Mumbai he was not present at the time of occurrence and he was not involved in this offence.
61. The Learned Counsel further submits that let alone the defence witness but prosecution witnesses have supported the plea of alibi so taken by Ranjeet

Yadav out of which PW 4 and 5 who have been seizure lists witnesses have stated that accused Ranjit was not present at place of occurrence rather he was undergoing treatment at Mumbai and accused Vivek was studying at Allahabad and on the top of it investigating officer who is a very important stake holder of prosecuting agency has reiterated this fact while going through the content of case diary wherein he has categorically stated that investigating officers who carried out investigation in this case has reduced it in writing on the case diary that Ranjit was undergoing treatment in Mumbai and he was not present at the place of occurrence.

62. Learned Counsel while drawing the attention of this Court towards examination-in-chief of doctor Arvind Kumar who carried out the postmortem of deceased submits that in para 2 of cross-examination he has stated that I have not mentioned FIR number in postmortem report due to non mentioning of FIR number in the inquest report. The Learned Counsel therefore submits that this goes on to fortify the claims of defence that by the time postmortem was carried out no any case was instituted and therefore the FIR and written report are manipulated one and ante dated.
63. Learned Counsel has further stated that strangely this doctor found injury over the head of the deceased which was not found at the time of his examination at Primary health Center which was carried out soon after the alleged occurrence but he has clarified when question was put to him by the defence in his cross-examination that external injury so found on the face and head of deceased were simple in nature. The Learned Counsel however submits that though the postmortem of doctor reveals in column 1 A that abrasions were found on left face upper part outer to left eye size 2x1 cm and left forehead which is 1/4 x 1/4 cm but no such injuries were found at the time of initial examination which was carried out by the first sitting doctor at PHC Neemchak Bathani and therefore no any explanation with respect to such appearance of injury during the said period has been given by the prosecution.

64. The Learned Counsel further submits that those injuries have been opined to be simple in nature. No injury over the head has been found and such injury is also not sufficient in ordinary course of nature of cause of death. Learned Counsel further submits no stitched wound or any fracture wound was found on the person of the deceased at the time of carrying out of the postmortem and injuries so found were obviously not fatal in form as well as content and therefore death has been a mystery as to what has actually led to the death of deceased because the injuries allegedly noticed by the doctor during carrying out postmortem and further exercise of carrying out of dissection of organs did not reveal any such injury which could have caused the death of deceased as such.
65. Learned Senior Counsel Sri Rajendra Narain has finally summed up his arguments under following headings and has also placed reliance on case laws which are enumerated herein:

THE FIRST INFORMATION REPORT IS ANTE-TIMED

There has been ante dating and ante timing of FIR which makes the account of prosecution doubtful.

Reliance has been placed on two judgments of Hon'ble Apex Court out of which first is the case of ***Mehraj Singh Vs State of U.P. with Kallu Vs State of U.P. reported in 188 (1994)5 SCC*** of which para 12 and 13 are relevant.

The second one is ***Ramesh Baburao Devaskar and Ors. Vs State of Maharashtra reported in 2007 13 SCC 501*** and the relevant para of said judgment is para 20.

Learned Counsel while relying on para 20 of *Ramesh Baburao Devaskar* case wherein adverse views of the prosecution case has been taken when the same was sent before the Magistrate under Section 157 of Cr.P.C after delay of statutory time frame which as matter of fact should have been transmitted

forthwith. Learned Counsel submits that there is delay in sending of the F.I.R. in this case as well to Magistrate.

THE WITNESSES ARE CHANCE AND INTERESTED WITNESSES AND HENCE NOT RELIABLE

There has been parrot like repetition of the statement made by the prosecution witnesses which are full of exaggeration and they have also not having made such statement during their statement under Section 161 and 164 of Cr.P.C. Learned Counsel has submitted that the testimony of witnesses therefore cannot be relied upon at all.

THE PROSECUTION HAS BEEN SELECTIVE IN EXAMINATION OF WITNESSES GIVING OCCASION FOR DRAWING ADVERSE INFERENCE

There has been selective examination of prosecution witnesses wherein the witnesses were having shops nearby the place of occurrence were deliberately not examined by the prosecution during course of trial as they had given exculpatory version about the accused facing trial and they had stated that accused were not present at the time and place of occurrence.

EVIDENCE CONTAINS MATERIAL CONTRADICTIONS GOING TO THE ROOT OF THE MATTER AND HENCE NOT RELIABLE

Learned Counsel further submits that I.O. who carried out investigation at first instance has not supported the case of prosecution. Investigating officer has stated that when he has reached at place of occurrence there was nobody present. He has not claimed to have reached at the place of occurrence with ambulance or he has not claimed to have taken the injured to the hospital contrary to the claim of informant and other witnesses. Similarly the doctor has also supported the case being ante dated or ante time as no reference of Police Station case number was given in the postmortem report which was carried out on the next date of incident. The police did not make any effort to record the statement of injured while he was conscious and he was the right

person to have narrated about the incident. The presence of informant and other witnesses denied and falsified by PW1 Sunil Kumar who was accompanying the victim at the time of occurrence and even informant deposed as if he is hearsay witness.

THE PLEA OF ALIBI STANDS ESTABLISHED

The plea of alibi taken by accused Ranjit about his presence in Mumbai has been endorsed by police authority wherein they had submitted final form showing him to be innocent and differing with the finding of the police the Learned Magistrate has proceeded with the case after taking cognizance. Once the presence of Ranjit is denied at the place of occurrence the entire story briefed by the prosecution is shattered and that equally goes with other accused facing trial in this case.

On plea of alibi the reliance has been placed on ***Dharam Singh and others Vs State of Punjab reported in AIR 1993 suppl. (3) SCC 532*** in which paragraph 2,3,4 and 9 are relevant wherein in the instant case no any defence witness has been examined on the point of plea of alibi as the prosecution itself had accepted the plea of accused Ranjit Yadav and therefore para 9 of said judgment assume significance wherein it has been held that no doubt accused had not examined any witness in support of alibi but the investigating officer admitted that accused was not present at place of occurrence and the benefit of plea of alibi was given to the accused.

THE SOURCE OF INFORMATION ABOUT OCCURRENCE BEING DOUBTFUL

The source of information about the alleged occurrence to the police has also been doubtful as police has itself conceded to have got the information on the basis of rumors and no any entry in the station diary as such has been made and the same has not been produced in the evidence by the police.

THE PLACE OF OCCURRENCE AND RECOVERY REMAINS UNPROVED

It has been submitted that there is complete mismatch between ocular and medical evidence. It is case of prosecution that blood fell on the ground and the deceased was smeared with blood but the investigating officer PW10 has stated categorically that he did not find even a single drop of blood at place of occurrence. The seizure list witnesses PW 4 and PW5 have also not proved seizure.

COMMON INTENTION UNDER SECTION 34 IS NOT ESTABLISHED

Prosecution has also failed to establish common intention.

THE TRIAL MUST BE DECIDED ONLY ON THE EVIDENCE IN THIS TRIAL

On the point of conviction of co-accused of this case Learned Counsel for the petitioners submitted that was done in a separate trial on the basis of different set of evidence and legally it is not permissible for the Court to look into anything of that trial and even consider as it has been held by the Supreme Court in case of **A.T.M Ydeen and Ors Vs Assistant Commissioner Customs Department with A Dharampal Vs Assistant Commissioner with Janarthanan Vs Assistant Commissioner Customs Department Tutikorin reported in 2022 14 SCC 392** wherein in para h has been relied wherein it has been stated that consideration of evidence of one case for another case in appeal is impermissible.

In the light of arguments so advanced the Ld. Counsel for the defence prays for acquittal of the accused persons who are facing trial as prosecution has not been able to prove charges against them beyond all reasonable doubts.

Reply of Learned Counsel for the informant/prosecution

66. Learned Counsel for the informant has submitted that PW13 who carried out postmortem has found altogether 23 injuries on the person of deceased and those injuries were sufficient in ordinary nature to cause death.

On the point of not able to finding out injuries at the time of examination by the doctor of Primary Health Centre Neemchak Bathani, DW1 Dr. Manoj Chaudhary Ld.Counsel submits while relying on Modi Medical Jurisprudence that **Ecchymosis** makes its appearance over the seat of injury in one or two hour after the injury and it must have been one of the reasons that injuries on the head might have not surfaced at that point of time.

The alleged occurrence took place during winter and the victim might have worn some woolen cap and that might have not been noticed by the doctor who treated him first.

67. On the issue of plea of alibi, the Learned Counsel for the informant submits that it is the onus on accused to prove the plea of alibi. In the instant case no any oral or documentary evidence has been adduced by the defence for the purpose of proving plea of alibi.

The Learned Counsel further submits that the defence is relying on statement of PW8 Vijay Bahadur Singh who somewhere stated that the person who carried out investigation earlier had mentioned in case diary that the accused Ranjit was not present and he was undergoing treatment at Mumbai but that statement will not rescue the accused as the investigating officer who had actually recorded such statement in case diary was not examined.

On the point of plea of alibi the Ld. Counsel for the informant relies on judgment of Apex Court passed in **1997 Criminal 362 SCC Vijay Kumar Singh and Ors. Vs State of Bihar**. Learned Counsel for the informant submits that the defence witness who has been examined is Doctor and whatever might have been his finding but that rather shows the prompt

manner in which authority swung into action and that proves that the incident had taken place and victim was taken to the primary Health Centre within 10 minutes of alleged occurrence.

68. Learned Counsel while submitting prosecution has succeeded in proving its case and merely on ground of alibi and on the basis Ranjit Yadav has not been charge sheeted by the police and different injury is found at Primary Health Centre adverse views should not be taken by the Court as the petitioner facing the trial are members of the family wherein both their father and mother were members of legislative assembly and therefore influence over the police agency and doctor at local level cannot be denied so it is a fit case for conviction and informant prays for convicting the accused person.

APPRECIATION OF EVIDENCES AND FINDING

69. In the instant case, this Court has heard the arguments of both sides at length and they have also submitted their written notes of argument.
70. Now coming on the very allegation which is contained in written information as far as three accused persons Ranjit Kumar, Deepu Yadav and Vivek Yadav are concerned.

The allegation in F.I.R against Ranjit is with respect to hitting the victim (deceased) Sumirak Yadav over his head with iron rod and there is allegation against Vivek Yadav to have hit over the leg of deceased and there is allegation against accused Deepu Yadav whose name does not figure in the written information that he assaulted indiscriminately to the victim with hand and stick.

This Court is now enumerating its findings after having heard the arguments of both sides under following headings:-

PLEA WITH RESPECT TO ALIBI OF ACCUSED RANJIT YADAV AND VIVEK YADAV

71. The defence has primarily relied on this fact that this case with respect to main assailant accused Ranjit Yadav proceeded on very weak evidence as

the prosecuting agency i.e. police had exonerated him after detailed investigation wherein he was said to be present in Mumbai on the date and time of alleged occurrence and therefore final form was submitted and differing with that the Learned Court of Magistrate had been pleased to take cognizance of offence against him as well and so trial with respect to Ranjit Yadav commenced on the basis of cognizance order of the Learned Magistrate and on the basis of exculpatory evidence which was collected by the police during course of investigation with respect to him in which police itself had found him innocent.

72. The Learned Counsel during course of argument has heavily relied on this fact that in this case the thrust of allegation in the F.I.R is against Ranjit Yadav who has been stated to have given blow over the head to the victim with the iron rod and once his presence on the place of occurrence is denied on the basis of scientific evidence collected during course of investigation by the police itself the whole case of prosecution therefore with respect to him and other two accused persons facing trial will stand shattered.
73. In this context, this Court finds force in submissions of Learned Counsel for the defence with respect to plea of alibi of accused Ranjit Yadav proved and established by the prosecution's own material. The prosecution has not disputed this fact that one of the investigating officers after carrying out detailed investigation and having relied on scientific evidence had given clean chit to this accused and he was said to be present in Mumbai on the date and time of alleged occurrence. He had not even remote opportunity and it was next to impossible for him to come from Mumbai and participate in the alleged incident which allegedly took place in Neemchak Bathani.
74. The said plea stands corroborated from two independent sources within the prosecution case itself. First, the seizure witness P.W. 4 Ram Avatar, and P.W.5 Uday Kumar who were not declared hostile and whose evidence therefore binds the prosecution, and they have admitted in their cross-examination that Vivek Yadav was studying at Allahabad and that Ranjit

Yadav had gone to Mumbai for treatment, and that, secondly, P.W. 8, an Investigating Officer, has admitted that the earlier Investigating Officer had himself recorded in the case diary that Ranjit Yadav was in Mumbai for treatment and was not present at the time of occurrence. The plea of alibi is thus corroborated by the very record of the investigation and by a prosecution witness who were not declared hostile and by one of the investigating officers PW8 Vijay Bahadur Singh.

PW4 Ram Avtar in para 3 of his cross-examination has stated which is reproduced herein

“ 3. मैं पुलिस के डर से जप्ती सूची पर हस्ताक्षर किया था। अभियुक्तों ने मुझे डराया धमकाया नहीं है। घटना के समय अभियुक्त विवेक इलाहाबाद में रहकर पढ़ता था और रंजीत यादव बंबई में ईलाज करवाने गया था।”

Similarly PW5 has stated in para 3 of his cross-examination which is reproduced herein

“3. पुलिस हमसे पूछताछ नहीं किया था। अभियुक्तों ने हमें डराया धमकाया नहीं है। घटना के समय अभियुक्त विवेक इलाहाबाद में रहकर पढ़ता था और रंजीत यादव बंबई में ईलाज करवाने गया था।”

Similarly PW8 Vijay Bahadur Singh has stated in para 2 of his cross-examination which is reproduced herein

“2.पूर्व के अनुसंधानकर्ता ने अपने कांड दैनिकी में यह अभिलिखित किया था कि रंजीत कुमार घटना के समय बंबई में ईलाज करा रहा था। घटना के समय नहीं था। उनकी संलिप्तता इस कांड में नहीं है।”

75. Therefore apart from this fact that accused Ranjit Yadav was found to be innocent by the police during investigation which has been conceded by one of the investigating officers during trial and this is the matter of record that police had submitted final form with respect to him showing him to be not involved in the alleged act, the witnesses of prosecution PW4 and PW5 have also stated about him to be present in Mumbai for treatment and they have stated about accused Vivek Yadav to be present in Allahabad.

These two witnesses have categorically stated that accused persons had not intimidated them in any manner so the statement so coming from them is voluntary and this Court has no reason to disbelieve the same.

76. Now the prosecution has argued that the burden of proof of plea of alibi rests on accused and in the instant case accused persons have not examined any of its own witness in their defence to support the same.
77. However, it has been submitted by defence that where the plea of alibi of the accused finds support in the prosecution's own evidence, the defence is not supposed to discharge the said burden.

Reliance has been placed on the ruling of **Dharam Singh v. State of Punjab, 1993 Supp (3) SCC 532**, wherein the Hon'ble Supreme Court, upon finding the alibi of the accused established, including through the admissions emanating from the prosecution's own witness as to the office records, held that the accused had been falsely implicated and that such false implication affected the veracity of the alleged eyewitnesses, who were interested witnesses bent upon implicating the accused.

78. The case of accused Ranjit Yadav is exactly similar with the factual matrix of **Dharam Singh v. State of Punjab, 1993 Supp (3) SCC 532**, and the **relevant paragraph is para 9 of the said judgment** wherein accused of the said case having pleaded not guilty and he having further stated in his statement under Section 313 of Cr.P.C. about false implication and having not examined any witness in support of his alibi was given the benefit of alibi as the investigating officer had admitted that the said accused was elsewhere like that the case with accused Ranjit Yadav in this case.
79. The prosecution has argued that the investigating officer who carried out investigation and submitted final form with respect to accused Ranjit Yadav was not examined so the statement of another investigating officer conceding such entry in case diary will not come to the rescue of accused Ranjit Yadav. The defence has argued that the prosecution has deliberately

withheld the examination of said investigating officer and the prosecution cannot go on to belie the finding of its own agency which submitted final form showing accused Ranjit Yadav to be innocent. The prosecution has been selective in examining the witnesses who gave exculpatory version about Ranjit Yadav with respect to his absence at place of occurrence which finds mention from para 211 to 217 of case diary and such selective examination will lead for the Court to draw adverse inference.

This Court finds force in submissions of Ld. Counsel for the defence. The prosecution has not disputed this fact that accused Ranjit Yadav was not found to be innocent and so final form was submitted stating him to be not involved in the alleged offence. The plea of alibi stands proved from prosecutions own material. This case with respect to accused Ranjit Yadav is factually similar with the case of Dharam Singh as discussed above. Prosecution has been selective in examination of witnesses as has been argued by the defence in detail during course of argument which finds mention under the heading Argument made by defence dealt above in this judgment.

80. The case of accused Ranjit Yadav is even on better footing than the case of **Dharam Singh v. State of Punjab, 1993 Supp (3) SCC 532** as in the instant case of Ranjit Yadav his plea of alibi has been even supported by the prosecution witnesses. Prosecution witnesses have supported the plea of alibi so taken by Ranjit Yadav out of which PW 4 Ram Avtar and PW 5 who have been seizure lists witnesses have stated that accused Ranjit was not present at place of occurrence rather he was undergoing treatment at Mumbai and accused Vivek was studying at Allahabad and on the top of it investigating officer who is a very important stake holder of prosecuting agency has reiterated this fact while going through the content of case diary wherein he has categorically stated that investigating officers who carried out investigation in this case has reduced it in writing on the case diary that

Ranjit was undergoing treatment in Mumbai and he was not present at the place of occurrence.

81. It seems to have been rightly submitted by the defence that accused Ranjit Yadav does not come to defend himself upon a mere plea taken at a trial as the Investigating Agency itself upon due investigation into the occurrence did not find any material to connect him and submitted final form in his favour. His plea of having been away in Mumbai for treatment is the outcome of investigation and therefore this fact having not been denied by the prosecution even with respect to this fact that final form was submitted in his favour his plea of alibi stands established. **The plea of alibi therefore having been established and the presence of accused Ranjit Yadav being denied on the basis of material of the prosecution itself.**

82. However as far as plea of alibi with respect to accused Vivek is concerned that cannot be said to have been proved merely on the statement of PW4 Ram Avtar, PW5 Uday Kumar wherein they have stated in their cross-examinations that Vivek was studying at Allahabad and not present at place of occurrence. This accused Vivek Yadav has though taken plea of alibi in his statement under Section 313 of Cr.P.C. has stated that he was present in Allahabad but except the cross-examination part of PW4 and PW5 he has not adduced any evidence in his defence to prove his plea of alibi.

His case of plea of alibi therefore does not inspire confidence and his case with respect to plea of alibi does not stand on similar footing with co-accused Ranjit Yadav in whose favour the police itself had submitted final form showing his non-complicity in the alleged offence whereas the police has submitted charge-sheet with respect to this accused Vivek Yadav.

83. Now this Court having dealt with plea of alibi part will go on to appreciate other ocular and medical evidence to ascertain that whether prosecution has proved its case against accused persons facing trial or not ?

84. The defence has argued that even if the plea of alibi part of accused Ranjit Yadav is not considered and excluded for ascertaining his guilt and the guilt of co-accused persons the evidences led by prosecution are full of contradiction and infirmity and the contradictions are not in the nature of minor contradiction but they are material contradictions striking at the very root of case of prosecution making the same not trustworthy to entail the conviction of accused persons.

FINDING OF POSTMORTEM REPORT AND INJURY REPORT BY FIRST TREATING DOCTOR ARE NOT IN SYNC WITH EACH OTHER

85. While pointing out very vital contradiction between finding of first treating doctor at Primary Health Centre Neemchak Bathani and the finding of postmortem report wherein injuries in both reports are not in sync with each other at all it has been rightly pointed out and highlighted by the defence that there is allegation against Ranjit Yadav to have assaulted over the head of victim with iron rod leaving him smeared with blood, whereas the primary injury report which was prepared soon after the occurrence was deliberately withheld by the police and the same was not brought on record and in that injury report which has been brought on record by defence while examining DW1 Dr. Manoj Chaudhary it is established that no injury was found over the head of the victim Sumirak Yadav and thus falsifying case of prosecution with respect to accused Ranjit Yadav having given blow over the head of Sumirak Yadav leaving him smeared with blood. This being the position the case against accused Ranjit Yadav and accused persons Vivek Yadav and Deepu Yadav is not proved by the prosecution.
86. This Court finds force in the submissions of Learned Counsel for the defence as it is the case of prosecution that accused Ranjit Yadav had given blow over the head of Sumirak Yadav with iron rod leading to bleeding injury, however, let alone bleeding injury no any injury over the head was found by Dr. Manoj Chaudhary DW1 who examined Sumirak Yadav soon after the

alleged incident. All witnesses including the informant, PW1 Sunil Kumar who was accompanying Sumirak Yadav when alleged incident took place the investigating officer PW10 Krishna Bihari Singh have stated that Sumirak Yadav was treated at Neemchak Bathani Primary Health Centre.

87. The defence has procured the said injury report through **Right to Information Act** which is as follows:

ERN. 969

“Examination of Sumirak Yadav age 42 years, S/o Lt. Jaypal Yadav village-Dharam Bigha P.S.-Neemchak Bathani, Dist. Gaya GR No. 969 on ER No.969 on 26.02.2013 at 8 P.M. found are following injury his person

No. of injury

- 1. Lacerated wound over Lt. Lower leg below knee joint size 2”x1/2” skin deep with abnormal movement.**
- 2. Lacerated wound over Rt. Lower leg below knee joint size 1/2”x1/2” skin deep with abnormal movement.**
- 3. Lacerated wound over Rt. Lower leg size 1/2”x1/2” skin deep with abnormal movement**
- 4. Lacerated wound over Lt. Knees joint size 1/4”x1/4” skin deep**
- 5. Swelling over right Arm size 5”x4” abnormal Movement.**
- 6. Pain in whole body**

caused of injury Hard & Blunt object + substances

Age of injury- within 12 hrs

Nature of injury- 1,2,3,4,5 opinion are reserved, 6 are simple – patient referred to Hospital Gaya to X-Ray & Radio logical opinion & further treatment.

MI- Black mole over Lt. Lateral eye.

88. Learned Counsel for defence had procured requisition which was sent by the police for the examination of victim which was addressed to medical officer Primary Health Centre Neemchak Bathani wherein the injuries were noticed in following descriptions:

1. Lacerated wound over right leg

2. Complaint of pain in right hand

3. Complaint of pain in waist

4. Complaint of pain on whole body

89. So the Learned Counsel has argued that this being the position which was noticed by the stakeholders of prosecution agency, doctor and investigating officer, it disclosed with all adequate certainty no any injury was so sustained by the victim over his head as claimed by the prosecution wherein it has been stated by PW1 that Ranjit Yadav had given blow by rod over the head of the Sumirak Yadav who subsequently died.

90. Defence has examined DW1 Dr. Manoj Chaudhary who has deposed in the Court and he has categorically stated both in his examination-in-chief and cross-examination that there was no any injury over the head.

The injury report has been identified which is in the handwriting of this doctor bears his signature which has been marked as Ext.DW1/D1. However, the such marking has been done with objection from prosecution side on the ground that the injury report is xe-rox copy of original injury report however it is to be appreciated that this document has been sought under Right to Information Act wherein the copy of original injury report has been provided to the information seeker and this copy of original injury report has been prepared by the Doctor, who has been examined in Court as DW1 and he has identified his hand-writing and got the document exhibited therefore this Court has no reason to disbelieve the same.

The prosecution as such has not disputed the content of this injury report or veracity of it. Moreover such evidence emanating from a Government

doctor who had examined the victim soon after the occurrence cannot be discarded by this Court when the same is in his own handwriting which he has identified. This witness being a doctor at Primary Health Centre has clearly stated in para 1 of his examination-in-chief and para 3 of his cross-examination that he did not notice any head injury of any sort over the head.

91. The defence has rightly pointed out that the doctor has enumerated mark of identification as black mole over Left Lateral eye and therefore he had all opportunity to see the whole face minutely which he did to find out mark of identification but he did not find any injury over face or head.
92. The veracity of this document which has been brought on record by the defence has not as such been disputed by the prosecution. The doctor who is one of the stake holder of prosecuting agency has turned up and has stated his finding which was soon after the occurrence and therefore this Court has no reason to disbelieve the same.

In this context the defence has rightly pointed that if the story of giving blow over the head with iron rod is to be believed which also left the victim in pool of blood as has been stated the corresponding injury must have been found by the doctor over head who treated the victim immediately after the occurrence but the same has not been found which obviously weakens the case of prosecution.

93. The Learned Counsel for the informant has submitted that **Ecchymosis** appears after two hours of injury and as it was cold season the victim might have been wearing woolen cap.

Though this Court cannot be guided by the assumption and presumption but even if the same is believed for a while then it is the story of prosecution that Ranjit Yadav gave blow with rod over the head of the victim Sumirak which left him in pool of blood and the same stands falsified that let alone bleeding injury even abrasion was not found by DW1 first treating doctor.

94. The case of prosecution is further falsified and turns out to be mystery as at first instance when the victim was examined aforesaid six injuries were noticed on his limbs however during course of postmortem which was carried out on next morning multiple injuries were found over the person of deceased including abrasion on the head, shoulder etc. which were not initially found by DW1 who treated the victim at first instance.
95. The doctor PW12 Dr. Arvind Kumar has found these injuries while carrying out postmortem and the examination-in-chief of said witness is reproduced as below (with some spelling corrections). The postmortem report has been marked as Ext.7.

“On 27-02-2013, I was posted as Associate Professor and head in the Dept Forensic Medicine A.N.M.C.H, Gaya. On that day at 11:00 AM I conducted postmortem examination on the dead body of Sumirak Yadav S/o Jaypal Yadav Village- Bathani Tola, P.S.- Neemchak Bathani, Gaya, hindu male about 42 years brought and identified by Constable no. 191 Jayjay Ram Verma, 2. Vijay Yadav relative and found the following antemortem injuries on the dead body of Sumirak Yadav:-

Average built, Eyes were pale, mouth little opened, tongue inside the mouth, Finger nail beds were bruised, body and clothes were stained with dust all over at places and blood with few places. Rigor mortis present all over the body. Surgical bandage were present on left elbow, left leg, right leg following antemortem injuries found.

A. Abrasions:- left face upper part outer to left eye size 2X1 cm., left forehead (1/4X1/4cm), right arm inner (0.5X.5cm)with underlying swelling and contusion of right arm all over and with underlying fracture of right arm bone, right and dorsum lower (0.5X.5cm and 1X1cm) with underlying swelling and contusion (6X4cm.) left shoulder top (3X1cm),left ankle inner (1X.5cm) with underlying swelling and contusion (7X6cm), right knee and right leg with underlying swelling and contusion (8X8cm) and 12X8 cm respectively, right knee upper anterior (2X.5cm).

B. lacerated wound:- Left elbow back 1X.5cm into muscles, left leg anterior upper 3X2cmX bone with underlying fracture of bone. Left leg middle anterior 1X.5cm into bone with contusion at and adjacent regions, right leg anterior upper 2X1 cm X muscles, right leg middle anterior(3X2cmXmuscles).

C. Swelling and contusion with bluish discoloration in right buttock lower part (7X6 cm), right thigh back upper part(12X10cm), also all over on right knee anterior and left and right leg and left and right feet, left and right thighs have contusion all over.

D. on further dissection brain pale, neck respiratory track pale, chest-lung pale, heart chambers partially filled, Abdomen-stomach was pale, had semi digested pasty food about 5-6 ml. Intestine gas faeces. Other viscera were pale, bladder and urinary bladder was empty. Rest NAD

E. Opinion:-

i. injuries are antemortem. Injury in A caused by hard and blunt substances/surfaces/forces.

ii. Death was due to above noted injuries.

iii. Times since death approx 06-24 hours approx since PM time.

This postmortem report is written by me and bears my signature as marked as Exhibit-7.”

96. Therefore there is complete mismatch between the injury found by the doctor who treated the victim first and the injuries noticed during postmortem.

Even if it is accepted that injuries found during postmortem over the face and forehead was there the same is in form of abrasion and has been opined to be simple in nature by PW12 Dr. Arvind Kumar who carried out postmortem which he has conceded in para 2 of his cross-examination therefore the case of prosecution being hitting over the head by accused Ranjit Yadav over the head of the Sumirak Yadav with iron rod leading to bleeding injury is even not proved by the postmortem report and therefore the manner of occurrence as contained in prosecution case does not find support at all from the injury

report prepared by DW1 Dr. Manoj Chaudhary and even by the postmortem report prepared by PW12 Dr. Arvind Kumar who carried out postmortem.

MISMATCH BETWEEN THE WRITTEN REQUISITION OF POLICE ENUMERATING NATURE OF INJURIES SUSTAINED AND FINDING OF POSTMORTEM REPORT AND OCULAR EVIDENCE NOT IN SYNC WITH MEDICAL EVIDENCE

97. The requisition of police for treatment of victim Sumirak Yadav has been also brought on record by the defence and in this document also no injury on the head was noticed by police official prepared requisition for treatment at Primary Health Center, Neemchak Bathani. The veracity of this document has not been disputed by the prosecution. The defence has rather stated that this document was also deliberately withheld by the prosecution so that actual truth could not come to the fore.

This document has though not exhibited however PW10 investigating officer Krishna Bihari Singh has conceded to have issued requisition for injury report and sending the victim to Primary Health Centre Neemchak Bathani and therefore this document which has been though brought on record by the defence but not exhibited in which requisition report for injury by the police has been issued and in the said requisition no injury over head was found is thus supported by this witness.

The defence has put the question that whether this investigating officer had asked for injury report from Primary Health Centre to which this witness has answered that he did not ask for injury report from the Primary Health Centre and thus the important witness of prosecution, investigating officer has himself supported the existence of such document.i.e. the requisition of police for treatment which has been brought on record.

98. Therefore there is complete mismatch between the injury report issued by first treating doctor finding no injury on head and postmortem report wherein

abrasion over head was found contrary to the claim of story of prosecution with respect to bleeding injury over head caused by rod.

The written requisition of the police for treatment of victim Sumirak Yadav which was prepared soon after the incident also does not disclose injury over the head as discussed above.

Therefore ocular evidence is not in sync with medical evidence with respect to bleeding injury over head and thus it does not substantiate the allegation against accused Ranjit Yadav as such.

THE ACCOUNTS OF WITNESSES ARE FULL OF MATERIAL CONTRADICTIONS AND PRESENCE OF INFORMANT AND OTHER WITNESSES AT PLACE OF OCCURRENCE STANDS DENIED

99. Now coming on to appreciation of ocular evidence and medical evidence with respect to accusation of accused Ranjit Yadav and two co-accused persons facing trial i.e. Vivek Yadav and Deepu Yadav are concerned this Court having gone through the deposition of eye-witnesses has noticed material contradictions, denial of presence of informant from place of occurrence rendering him to be hearsay witness and the testimony of prosecution witnesses full of exaggeration rendering the same not safe to rely upon.
100. The Learned Counsel for defence during course of detailed argument has pointed out in detail about the testimony of each witnesses being full of flaws and contradictions and thus rendering the case of prosecution doubtful and unbelievable.

This Court therefore would examine the testimony of each of witness who have been examined by the prosecution to ascertain that whether prosecution has proved its case against accused persons beyond all

reasonable doubts or not and to ascertain that the testimony of witnesses are coherent and corroborate the testimony of informant or not.

PW1 is Sunil Kumar who is most important witness as he has stated to be present with the victim with Sumirak Yadav and in his examination-in-chief he has stated that he was going along with deceased Sumirak Yadav after closing the JDU Office then accused person did the alleged act. He also claims to have been assaulted by accused persons. He has supported the case of prosecution in his examination-in-chief however when the question was put to him by the Court he has answered like this which is reproduced below and in this way he has not only denied the presence of informant PW2 Vijay Kumar from place of occurrence but he has also denied the presence of all witnesses from place of occurrence.

“न्यायालय द्वारा

2. मेरे साथ और कोई व्यक्ति नहीं थे। मैं सुमिरन यादव को उठाकर अस्पताल ले गया था मेरे अलावा अन्य कोई व्यक्ति सुमिरन के साथ नहीं था, मैं ही पुलिस को सूचना दिया था। पुलिस जब घटनास्थल पर आयी तो मैं था, पुलिस हमसे नहीं पूछी कि सुमिरन को कैसे और किस चीज से मारा। सुमिरन को उठाकर नीमचक बथानी मैं एंबुलेंस में साथ गया था। मैं सुमिरन के साथ घटित घटना की सूचना पुलिस के अलावा किसी अन्य व्यक्ति को नहीं दिया। विजय यादव से मेरी मुलाकात नहीं हुई। नीमचक बथानी तक मैं एंबुलेंस के साथ गया था मेरे अलावे कोई नहीं था। नीमचक बथानी से विजय यादव मेरे साथ हो लिए। नीमचक बथानी में जब उन्हें हम एंबुलेंस में लादकर मेडिकल ले जा रहे थे तब विजय यादव मुलाकात हुई। विजय यादव हमसे पूछे कि मेरे भाई के साथ यह घटना कैसे घटी। उस समय जब विजय यादव हमसे पूछे कि हमारे भाई को कैसे चोट लगी तो मैं उन्हें घटना के बारे में बताया कि नहीं मुझे याद नहीं है। पुलिस को मैंने नहीं बताया कि सुमिरन यादव को किसने और किस चीज से मारा”

Therefore this witness has categorically stated that he was alone and he had taken Sumirak Yadav to the hospital alone and there was no other person with Sumirak Yadav and he has further claimed to have given information to the police.

He did not tell police as to who had actually assaulted and how Sumirak was assaulted. He has further stated that he had given information about the alleged occurrence to the police and no body else.

He has also stated that he did not meet Vijay Yadav (informant) at the place of occurrence and Vijay Yadav actually accompanied him from Neemchak Bathani Hospital and he has further claimed that Vijay Yadav (informant) had basically asked from him that how such incident took place.

101. Therefore this witness has denied the presence of informant and all other witness excluding himself from place of occurrence and this he has stated when the questions were put to him by the Learned Predecessor Court.

Moreover in his cross-examination para 3 this witness has claimed to have given statement to the police after 3 days of alleged occurrence despite his claim to be present at the place of occurrence which makes the accounts of this witness doubtful.

The contradiction of this witness has been taken by defence wherein he has not stated to have stated specifically about accused Ranjit Yadav to have given blow over head of victim Sumirak Yadav by rod and accused Vivek Yadav to have assaulted him with stick on his leg which is evident from para 19 of the case diary.

He has further though claimed to have given information to police and accompanied the victim in his examination-in-chief but he had not given such statement before the police under Section 161 of Cr.P.C and such contradiction has been taken by the defense during his cross-examination.

He has though claimed to have been assaulted by accused persons but no any injury report of this witness Sunil Kumar PW 1 has been brought on the record by the prosecution to substantiate such claim of he having been assaulted.

102. **Now coming to testimony of informant PW2 Vijay Yadav** this witness has supported the case of prosecution in his examination-in-chief with certain exaggeration as has been pointed out by the defence that he has given exaggerated version before the Court as whatever he has stated in examination-in-chief is not there in the written information given by him.

He has stated in his examination-in-chief that there were 6-7 unidentified accused. He has stated in examination-in-chief that he had taken his brother to the hospital however in cross-examination he has stated that police had taken the injured to hospital. In his written information he has not claimed to have given statement to the police prior to taking of victim to hospital wherein in his examination-in-chief he has stated that his statement was recorded first then police had taken his brother to hospital.

There are obvious exaggeration in the testimony of this witness and this witness has himself claimed to be a hearsay witness when he has stated in para 2 of his deposition when the question was put to him by the Court. The relevant part of his testimony is reproduced below.

“न्यायालय द्वारा

2. मेरे भाई को अस्पताल सुनिल ले गया था। मैं पुलिस को सूचना नहीं दिया था। मैं अपने भाई को उठाकर एंबुलेंस पर नहीं चढ़ाया था। मेरे भाई को एंबुलेंस पर सुनिल यादव, मदन यादव, मनोज साव, अरूण यादव ने चढ़ाया। मेरी मुलाकात सुनील यादव से नहीं हुई। मैं सुनिल यादव से नहीं पूछा कि कहां कहां चोट लगा। मैं अपने भाई के पास जाकर पूछा कि भैया कहां कहां चोट लगी। वह कुछ नहीं बोल रहे थे। मेरे भाई का सिर फटा हुआ था और दोनों पैर टूटा था। सुनिल यादव से मेरी बातचीत थाना पर हुई। मैं सुनिल यादव से पूछा कि भैया को चोट कैसे और कहां पर लगी। सुनिल यादव बोला कि सिर फटा हुआ था, दोनो पैर और दाहिना हाथ टूटा हुआ था। सुमिरक मेरा सहोदर भाई था। मैं अपने भाई को बचाने एवं छुड़ाने का प्रयास नहीं किया क्योंकि पंकज यादव मुझे लाठी लेकर सब्जी मंडी तक दौड़ाया तो सब्जी मंडी में खड़ा हो गया। यह बात मैं अपने फर्द बयान एवं पुलिस को दिये गए प्राथमिकी के आवेदन में नहीं लिखाया हूं पुनः कहते हैं कि केवल पंकज का नाम अभियुक्तों के रूप में दिया है।”

Therefore he has conceded to have asked from Sunil Yadav PW1 that how his brother sustained injury meaning thereby that had this witness would have seen occurrence on his own he would not have put such question to PW1 Sunil Yadav.

PW1 Sunil Yadav has stated that PW2 informant, Vijay Yadav accompanied him in ambulance from Neemchak Bathani however, this witness has claimed to have met PW1 Sunil Yadav in police station.

103. Learned Counsel while highlighting para 3 of the cross-examination submits that informant PW2 has claimed this categorically that he had given his written information at around 8 PM in the police station and at that point

of time his injured brother was in police station pursuant to which he was taken to hospital however the police did not take any effort to record the statement of the victim with respect to alleged occurrence. Learned Counsel further submits in his cross-examination this witness has claimed to have given Fardbeyan to the police after the death of victim on the next date which has been marked as Ext.1 however as a matter of fact this Fardbeyan was the first account of the incident so narrated by the informant and the said written information was ante dated as the time of reporting of the alleged occurrence in the police station is said to be on 26.02.2013 at 8:00 PM, however the same was sent to Court on 28.02.2013. Therefore, the late sending of FIR to the Court makes possibility of its manipulation, its fraudulent interpolation which further makes the case of prosecution doubtful.

WITHHOLDING OF MATERIAL AND INDEPENDENT WITNESSES BY PROSECUTION

104. Learned Counsel further submits that informant has conceded in his cross-examination that at the time of alleged occurrence 10 to 20 shops were open in Neemchak Bathani and statement of shopkeepers were recorded during course of investigation wherein they had denied the presence of the accused persons facing trial at the place of occurrence and they were not made witness by the prosecuting agency and they have not been examined by them during course of trial and therefore prosecution has been selective in terms of examination of its witnesses and have chosen to examine interested witnesses who came up with inculpatory statement and has not chosen to examine witnesses who could have given neutral account about the accused persons.
105. The examination of those witnesses finds mention from paragraph 211 to 217 of case diary and the name of such witnesses are following Srikant, Pintu, Raj Kumar Chaudhary, Rahul Kumar, Sunil and Virendra Kumar Yadav. Ld. Counsel further submits that strangely the statement of these

witness were taken after six years of alleged occurrence and the witnesses with all their best memory which did not even fade for 6 years have stated and categorically stated that accused Ranjit Yadav and others were not present at the place of occurrence and they had no any role in alleged occurrence.

Therefore the submissions so advanced by the Learned Counsel for the defence are not completely out of place.

106. The two important witnesses PW 2 informant Vijay Kumar and PW1 Sunil Kumar have not supported each other who are said to be the eye-witnesses and most important witnesses. PW 2 informant has stated that he asked about the occurrence of PW1 suggesting the informant not being eye-witness and his presence on place of occurrence has been further denied by PW1 Sunil Kumar. Therefore these witnesses cannot be said to have supported the case of prosecution coherently and beyond reasonable doubt.

The late sending of FIR to the Court, the difference with respect to time terming the FIR to be antedated and withholding of material witnesses and non-examination of witnesses of locality further makes the case of prosecution doubtful.

107. It is submitted that the withholding of such independent and material witnesses is not a neutral circumstance. In **Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145**, the Hon'ble Supreme Court has held that where a material witness who would unfold the genesis of the incident or an essential part of the prosecution case is not examined, and the resulting gap or infirmity is not otherwise convincingly made good, the Court may draw an adverse inference against the prosecution. It is submitted that the prosecution having chosen to rest its case upon chance and interested witnesses drawn from distant villages while withholding the natural and independent witnesses of the very market in which the occurrence is said to have taken place, an adverse inference ought to be drawn that the independent witnesses of Bathani Bazar, had they been

examined, would not have supported the prosecution.

Therefore the submission of defence with respect to withholding the material witnesses of locality and the prosecution not having examined them in this case during trial and in such event adverse inference to be drawn is not completely out of place.

THE ACCOUNTS OF WITNESSES FULL OF EXAGGERATIONS AND CONTRADICTIONS

108. **PW3 Madan Prasad's** examination-in-chief is also full of exaggerations and he has not stated in sync with his statement given under Section 161 of Cr.P.C and Section 164 of Cr.P.C which is marked as Ext.3 wherein his statement was recorded before the Ld. Magistrate. In para 3 this witness has stated his statement was taken by police after 10 days of occurrence.
109. The contradiction has been taken wherein he having given exaggerated account in his deposition before the Court is proved as such content was not there in his statement under Section 161 Cr.P.C. and which finds mention in para 71 of the case diary. The statement made by this witness in his examination-in-chief is also not in sync with his statement made before Learned Magistrate under 164 of Cr.P.C. and therefore the same dose not inspire confidence.
110. Learned Counsel has further highlighted the reason of false implication and this witness having given false statement before the Court because a case was earlier registered against him under 376 of IPC in Nalanda bearing Khudaganj P.S. Case No. 17/2010 in which co-accused Kunti Devi was one of the witnesses.
111. The presence of this witness has also been denied by PW1 Sunil Kumar from place of occurrence. The house of this petitioner is situated at the distance of 12 km from the place of occurrence and he being on inimical terms with accused person has also surfaced and in the event wherein PW2 informant and PW1 Sunil Kumar have not coherently supported the case of

prosecution the testimony of this witness which is full of exaggeration and contradiction does not appear to be of much help for prosecution.

SEIZURE LIST WITNESSES HAVING NOT TURNED HOSTILE BY PROSECUTION HAVE NOT SUPPORTED THE SEIZURE AND HAVE SUPPORTED DEFENCE VERSION

112. **PW 4 Ram Avtar** has claimed to have put his signature on blank paper, the substituted copy of which has been marked as Ext.4 and this witness has come up with different story and he has stated that accused Ranjeet was undergoing treatment because of an accident when question was put to him by the Court and when the question was put to him by the defence he has reiterated that he has put his signature on blank paper and he has further stated that accused persons did not intimidate him in any manner and at the time of occurrence accused Vivek was studying at Allahabad whereas accused Ranjeet was undergoing treatment at Mumbai.
113. **PW5 Uday Kumar** has initially feigned ignorance about the alleged occurrence but when the copy of seizure list was shown to him and his memory was refreshed he has identified his signature however he has accepted his presence where alleged seizure had taken place and he has further stated that nothing was recovered in his presence and he was merely asked to put his signature on the seizure list the substituted copy of which has been marked as Ext.4.
114. This witness has stated in para 3 that he was not intimidated by the accused persons. The police did not ask anything from him he has also stated that accused Vivek was studying at Allahabad and Ranjeet was undergoing treatment at Mumbai at the time of alleged occurrence.
115. The prosecution did not make prayer for turning PW4 and PW5 hostile and therefore whatever evidence has been adduced by them has to be seen in totality and prosecution cannot retract that such statement was not made by these witness as such. These witnesses have ruled out any threat so given by

accused persons and so the deposition so given by them in Court is voluntarily made and reliable.

Therefore PW4 and PW5 are though witnesses of prosecution but they have supported the defence version.

A prosecution witness who has not supported the prosecution and who has not been declared hostile remains a witness of the prosecution whose evidence binds it and may be relied upon by the defence, as held in **Sanjai Paswan v. State of Bihar, 2012 (1) PLJR 252.**

116. Therefore PW4 and PW5 have not only not supported any recovery but they have also denied the presence of accused Vivek Yadav from place of occurrence and though his plea of alibi has not been accepted by this Court but such statements with respect to he being absent from the place of occurrence emanating from prosecution witnesses obviously raises doubt with respect to his complicity and the benefit of doubt therefore will obviously go in his favour.

THE WITNESSES BEING EITHER INTERESTED WITNESSES OR CHANCE WITNESSES AND BEING ON INIMICAL TERMS WITH ACCUSED PERSONS HENCE NOT RELIABLE

117. **PW- 6 Chandrika Prasad @ Chandrika Yadav** has given exaggerated version in his examination-in-chief and he has given vivid expression of the place of occurrence and he has narrated about the alleged occurrence which is not exactly the way he has stated in statement under 161 of Cr.P.C recorded in para 20 of case diary. There was previous enmity of this witness with father of the accused Ranjeet Yadav and this witness has claimed to have given evidence in Civil Line P.S. Case No. 95/2003. The signature of this witness on his statement under 164 has been marked as Ext.5. The contradiction of this witness has been taken by defence in para 3 and 4 of his cross-examination wherein he has not stated specifically about accused persons to have inflicted specific injury to the victim. Therefore the

testimony of this witness is full of exaggeration and he being on inimical terms as well giving an occasion for deposing for the purpose of false implication.

118. Moreover, this witness in para 7 of cross-examination has not claimed to have given any statement to the police. He has further stated he did not know who had informed the police about incident.
119. In the event of informant PW2 Vijay Kumar and PW1 Sunil Kumar not coherently supported the case of prosecution and the presence of this witness PW 6 has been denied from place of occurrence by PW1 Sunil Kumar and out of proportion exaggerations and contradictions appearing in the testimony and therefore the testimony of this witness cannot be safely relied upon.
120. **PW7 Arun Kumar** has though claimed in his examination-in-chief that he is an eye-witness but he has categorically stated to the Court when question was put to him by the Court that he had reached at place of alleged occurrence after the alleged occurrence and therefore he is a hearsay witness.
121. This witness has further stated that Sumirak Yadav was not unconscious which has been stated very coherently by this witness and he has further stated that police did not record his statement or inquire from him about the alleged occurrence. This witness is not credible as he has himself conceded in para 3 of his cross-examination that he has initially stated lie that Sumirak was not related to him in any manner however Sumirak was his cousin (Mausera Bhai). Therefore this witness is not only a hearsay witness but also an interested witness and he having suppressed truth during his examination before the Court and therefore his testimony cannot be safely relied upon.
122. **PW9 is Manoj Kumar** has also given exaggerated version in his examination-in-chief. This witness has stated when question was put to him

by Court that Sunil Yadav PW 1 was assaulted by none of the accused persons who have been made accused in this case rather he was assaulted by some other persons. Therefore he has created doubt over the credibility of testimony of PW1 Sunil Kumar.

123. Statement of this witness under Section 161 of Cr.P.C. was recorded after one month of alleged occurrence. This witness has not stated in his statement under Section 161 what he has stated before the Court and therefore his testimony is full of exaggeration and embellishment and the same cannot be relied upon.

This witness has though stated that he had stated everything before the police which police did not write so this witness in this way is doubting his own agency which further makes the case of prosecution doubtful.

The entire ocular account in the present trial rests upon witnesses who are, on their own showing, either **chance witnesses** residing at a considerable distance from the place of occurrence with no adequately explained reason for their presence, or **interested witnesses** harbouring pre-existing enmity and prior litigation against the accused, or both.

124. P.W. 9 Manoj Kumar has admitted in answer to a Court question that his house is thirty-five kilometres away from the place of occurrence, and that although he claims to have gone there for contract work with Madan Yadav, he possesses no paper whatsoever regarding any such partnership. Similarly, P.W. 3 Madan Prasad is a resident of a place at a considerable distance from Bathani Bazar. The presence of this witnesses at the spot is also wholly unexplained.
125. P.W. 7 Arun Kumar has admitted that he reached the place of occurrence only after the incident, so that his account of the occurrence itself is hearsay, and that he first denied any relationship with the deceased but, when confronted, admitted that he is the maternal cousin of the deceased.

126. Similarly P.W. 6 (Chandrika Prasad @ Chandrika Yadav) has admitted in cross- examination that he had earlier filed a criminal case against the accused, thereby establishing pre-existing enmity, and has admitted that when the police came to the place of occurrence he gave no statement at all.
127. It has been submitted by defence that it is settled law that the evidence of a chance witness requires a very cautious and close scrutiny, and that a chance witness must adequately explain his presence at the place of occurrence, failing which his deposition, where his presence remains doubtful, is liable to be discarded.

In Jarnail Singh v. State of Punjab, (2009) 9 SCC 719, the Hon'ble Supreme Court has held that the evidence of a chance witness calls for very cautious and close scrutiny, that such a witness must adequately explain his presence at the spot, that the deposition of a chance witness whose presence at the place of the incident itself remains doubtful should be discarded, and that the conduct of the chance witness subsequent to the incident, particularly as to whether he informed anyone else about the occurrence, may legitimately be taken into consideration.

The submission of defence therefore is forceful and in the instant case PW 3 Madan Prasad, PW 6 Chandrika Prasad, PW 7 Arun Kumar, and PW 9 Manoj Kumar have either been interested witnesses or chance witnesses.

128. PW 3 and P.W. 6 have admitted prior criminal litigation with the accused. Obviously where enmity of this order is admitted, the evidence of the interested witnesses must be subjected to the closest scrutiny and cannot be accepted at par with the evidence of a wholly disinterested witness, and therefore the evidences of these witnesses PW 3, PW6, PW7 and PW 9 cannot be safely relied as they have themselves admitted either close relationship with the informant and thus being interested witnesses or they have accepted to have earlier litigations with the accused persons and being on inimical terms with accused.

PROSECUTION DID NOT EXAMINE THE INVESTIGATING OFFICER WHO CARRIED OUT INVESTIGATION WITH RESPECT TO ACCUSED PERSONS FACING TRIAL AND THOSE INVESTIGATING OFFICERS WHO HAVE BEEN EXAMINED HAVE NOT SUPPORTED CASE OF PROSECUTION

129. Learned Counsel has submitted that in the instant case there have been many investigating officers out of which four of them have been examined in this case. Out of which PW 10 Krishna Bihari Singh who has been the first investigating officer and not the one who carried out the investigation with respect to accused persons facing trial in this case has been examined in this case.

The Learned defence counsel has submitted that this witness PW 10 Krishna Bihari Singh had actually carried out investigation with respect to co-accused person against whom he had filed charge-sheet and strangely he has been examined in this case by prosecution which deliberately did not examine the investigating officer, Madan Prasad Singh who carried out investigation with respect to accused persons facing trial in this case and who had submitted final form with respect to accused Ranjit Yadav.

130. **PW 12 Naveen Paswan** is one of the investigating officers and his deposition has been recorded who has conceded to have not collected any evidence in this case and therefore his testimony does not hold any relevance.

131. **PW11 is another investigating officer Shashi Bhushan** who has claimed to have taken up investigation on 01.08.2016 but he has again stated to have not collected the evidence and therefore his evidence is also of no any relevance.

132. **PW8 is Vijay Bahadur Singh** who has been one of the Investigating officers and he has stated that he did not collect any evidence and he in his

cross-examination has conceded that the investigating officers who earlier carried out investigation in this case has recorded in the case diary that Ranjit Kumar was undergoing treatment at Mumbai he was not present at the time of occurrence and he was not involved in this offence.

In this way this witness who is one of the investigating officers has rather supported the defence version with respect to plea of alibi of accused Ranjit Yadav.

133. Now coming to the testimony of **PW10 Krishna Bihari Singh.**

This witness in para 2 of deposition which contains Court question has deposed which is reproduced below.

2. न्यायालय द्वारा:- दिनांक-12.06.2013 तक मैं किसी विधि विज्ञान प्रयोगशाला की रिपोर्ट प्राप्त नहीं किया था इसलिए मैं नहीं बता सकता कि जो डंडा/लाठी मैं जब्त किया था उसमें किस चीज का खून लगा था। मैं इस बात पर अनुसंधान नहीं किया कि क्या अभियुक्तों के पास किसी शस्त्र की अनुज्ञप्ति प्राप्त थी या नहीं। घटनास्थल का मैं नक्शा नहीं बनाया हूँ। घटनास्थल की चौहद्दी- उत्तर सुनिल की दुकान, दक्षिण विवेक कुमार का खैनी दुकान, पूरब एवं पश्चिम सड़क। मैं घटनास्थल पर किस चीज से पहुंचा था वह कांड दैनिकी में अंकित नहीं किया। मैं घटनास्थल पर जीप से गया था। मैं घटनास्थल पर एंबुलेंस लेकर नहीं गया था। घटनास्थल पर कोई एंबुलेंस नहीं आया था। मैं अफवाहों के आधार पर घटनास्थल के सत्यापन हेतु घटनास्थल पर गया था। मेरे घटनास्थल पर पहुंचने के पूर्व सुमिरक के परिवार वाले उसे उठाकर मगध मेडिकल अस्पताल ले गये। मेरी मृतक से बात नहीं हुई। मैं मृतक के शव का परीक्षण नहीं किया था। मृतक की मृत्यु समीक्षा रिपोर्ट मगध मेडिकल कालेज में तैयार की गयी थी जिसे रामसरेख सिंह ने की थी। मगध मेडिकल कालेज में दरोगा ने विजय यादव का बयान लिया था। मैं कुंती देवी से पूछताछ नहीं किया था। मुझे थाना में सूचना दिनांक 26.02.2013 को 19:25 बजे पर अफवाहन पता चला था। मैं पहली बार थाना पर सूचना मिलने के बाद थाना से 20:30 बजे चला और घटना स्थल पर 20:40 बजे पहुंचा। विजय यादव मुझे आवेदन थाना पर दिया जिसके पश्चात मैं घटना स्थल पर जाने हेतु तैयार हुआ। विजय यादव जब थाना पर मुझे आवेदन दिया तो मैं उससे पुछा था कि आपका भाई कहां है तब उसने बताया कि मैं अपने भाई सुमिरक को प्राथमिक स्वास्थ्य केन्द्र में भर्ती कराया हूँ। सही बात यह है कि मैं सुमिरक यादव को घटना स्थल से लेकर नहीं आया था बल्कि विजय यादव ने सुमिरक यादव को प्राथमिक स्वास्थ्य केन्द्र में लाकर भर्ती करा दिया था। प्राथमिक स्वास्थ्य केन्द्र में सुमिरक यादव को देखने मैं कब गया यह मैं कांड दैनिकी में अंकित नहीं किया हूँ। विजय यादव के आवेदन देने पर मैं प्राथमिक स्वास्थ्य केन्द्र गया

उसके बाद मैं घटना स्थल का निरीक्षण किया। मैं घटना स्थल पर एक बुन्द भी खून नहीं पाया था। घटना स्थल पर खून गिरा था लेकिन खून मैं जप्त नहीं किया था। काफी भीड़ हो गयी थी इस कारण मैं खून को जप्त नहीं किया। मैं अभी न्यायालय के समक्ष जो बात बतायी उसमें कुछ बात कांड दैनिकी में अंकित है और कुछ बात कांड दैनिकी में अंकित नहीं है।

This witness has thus stated that he had not drawn the map of the place of occurrence. He has categorically stated that he did not reach the place of occurrence on ambulance and he had reached at place of occurrence on the basis of information received through rumors which goes on to contradict the claim of PW1 Sunil Kumar that he had given information about the alleged occurrence to the police and police had reached there with the ambulance on which the victim was taken for treatment.

No any ambulance had reached at place of occurrence and he has stated that prior to his reaching at place of occurrence Sumirak was taken to Magadh Medical Hospital by his family members. He has further stated that he did not have any conversation with the victim and he had not prepared the inquest report. This investigating officer has accepted to have not recorded the statement of Ram Sarekh Singh who had prepared inquest report and that Ram Sarekh Singh had also taken the Fardbeyan of the informant.

This witness has been the important in the sense that he is said to have reached at the place of occurrence after the occurrence and he has claimed to have received information through rumor at 7.25 PM on 26.02.2013 and he proceeded from police station at 8.30 PM and reached at place of occurrence at 8:40 PM.

134. This part of statement of PW10 assumes significance because he has stated the same when question was put to him by the Court wherein he has conceded to have got information about the alleged occurrence at 19:25 through rumors and he has further stated that he proceeded at 8:30 PM from police station and reached at place of occurrence at 8:40 PM however the FIR would reveal that the information about the alleged occurrence was received in police station at 8:05 PM which is suggestive of F.I.R. being

ante timed.

135. He has stated the source of information through rumors and therefore, the chances of the written information so submitted by the brother of the deceased being ante dated and ante time and there having serious manipulation as FIR was sent to Court after two days of its institution, cannot be ruled out completely.
136. This witness has subsequently stated to have got application from informant Vijay Yadav and having asked him about his brother Sumirak on which Vijay Yadav replied that he is admitted in Primary Health Centre. This witness has further conceded to have not taken injured to hospital from the place of occurrence as is claimed by PW1 and others. This witness has further blown hot and cold at the same time and he has stated that he has been to Primary Health Centre pursuant to receipt of application so given by Vijay Yadav. He has further blown hot and cold when he has stated that he did not find even drop of blood at place of occurrence. He has further stated that blood was there at place of occurrence but he did not seize the same as the place of occurrence was very crowded.
137. This witness has accepted in para 3 of his cross-examination that he had not recorded the statement of victim Sumirak Yadav and had not asked him who had actually assaulted and when he was assaulted. This witness has blown hot and cold wherein he has claimed the victim to be in unconscious state and subsequently he has conceded that victim was conscious and despite being conscious his statement was not recorded. This witness has further conceded to have not recorded statement of family members of the victim on the date of alleged occurrence.
138. This witness has conceded to have issued requisition for injury report and sending the victim to Primary Health Centre Neemchak Bathani and therefore a document which has been though brought on record by the defence but not exhibited in which requisition report for injury by the police has been issued and in the said requisition no injury over head was found is

thus supported by this witness. The defence has put the question that whether this investigating officer had asked for injury report from Primary Health Centre to which this witness has answered that he did not ask for injury report from the Primary Health Centre and therefore the submission of defence regarding deliberately withholding this injury report does not completely out of place.

139. The contradiction of witnesses recorded under Section 161 have been further confirmed while examining this witness in para 6 wherein contradiction of PW1 Sunil Yadav and PW2 Vijay Yadav has been taken in para 7 wherein contradiction of PW3 Madan Yadav has been taken. PW1 Sunil Yadav and PW3 Madan Yadav had not stated to him with respect to which accused had actually inflicted which particular injury on the victim.
140. In this way this witness has not been able to support the case of prosecution. This witness had also not carried out investigation with respect to accused facing trial and the decision with respect to complicity of accused persons in alleged offence was kept pending for detailed investigation even though he has been examined as main investigating officer in this case and he has not been able to prove the case of prosecution or corroborate the witnesses of prosecution rather he has stated that witnesses did not make statement before him under Section 161 of Cr.P.C. which they stated in Court as dealt above and he further stated that he had not brought ambulance at place of occurrence contrary to the claim of other prosecution witnesses.

The investigating officer who carried out investigation with respect to accused persons facing trial in this case has not been examined by the prosecution for the reason best known to it.

**SUBMISSION OF LEARNED COUNSEL FOR INFORMANT WITH
RESPECT TO LEARNED PREDECESSOR COURT HAVING PUT
SEVERAL QUESTIONS FROM THE PROSECUTION WITNESSES**

141. Learned Counsel for informant has however submitted that this witness PW 10 Krishna Bihari Singh basically got perturbed when questions were put to him by Court and the reason for him being incoherent was nervousness and sense of feeling perturbed therefore he has given such statement before the Court when the question was put to him by the Court.
142. This submission of Learned Counsel for the informant is not convincing as this witness who happens to be an investigating officer and a police officer being acquainted with the proceedings of the Court and being a stakeholder of criminal justice system and working in coordination with judicial system would get perturbed and nervous when questions will be put to him by any Court.
143. Here this Court would also discuss the submission of Learned Counsel for informant so made in their written note of argument which this Court is herein reproducing the submissions so made in para 10 and 11 of their written note of argument.

“10. That during trial the lengthy cross examination by the predecessor court was not in the good taste. Presiding officer has every right to put questions to the witnesses for removing doubts or for any clarification.

But such a lengthy cross examination before the cross examination of defence is not a healthy precedent.

A court acting as a cross examiner is always, in the quest of being a successful cross examiner which is reflected in the recording of the deposition. The predecessor court has put almost all the witness on lengthy cross examination.

However in spite of the witnesses being nervous by the lengthy cross examination by the court, the witnesses have stood firm.”

144. As far as this submission of Learned Counsel for the informant at the stage of filing of written note of argument when the arguments of both sides were already heard is concerned this is not open for this Court to make any comment with respect to questions so put by the Learned Predecessor Court to the witnesses of prosecution which even Learned Counsel for the informant has conceded in para 10 of his written note of argument as enumerated above that presiding officer has every right to put questions to the witnesses.

If at all the Learned P.P. or Learned Counsel for the informant had any reservations it should have been objected at the very outset however no any objection as such was made and Learned Predecessor Court has put question from almost all witnesses. The questions are obviously asked by Court for the purpose of eliciting the truth and the same cannot be termed as cross-examination by the Court.

This Court being the successor Court and having heard the arguments of both sides is supposed to confine itself with the material which are there on the record at present and pass just and appropriate order on the basis of the same.

DEFENCE CONTENTION WITH RESPECT TO F.I.R BEING ANTE-TIMED AND ANTE-DATED AND F.I.R BEING SENT TO COURT AFTER DELAY

145. Dr. Arvind Kumar PW12 who carried out the postmortem of deceased in para 2 of cross-examination he has stated that I have not mentioned FIR number in postmortem report due to non mentioning of FIR number in the inquest report. The Learned Counsel for defence has therefore claimed that this goes on to fortify the claim of defence that by the time postmortem was carried out no any case was instituted and therefore the FIR and written report are manipulated one and ante dated and there has been ante dating and ante timing of FIR which further makes the account of prosecution

doubtful.

Reliance has been placed on two judgments of Hon'ble Apex Court out of which first is the case of ***Mehraj Singh Vs State of U.P. with Kallu Vs State of U.P. reported in 188 (1994)5 SCC*** of which para 12 and 13 are said to be relevant.

The second one is ***Ramesh Baburao Devaskar and Ors.Vs State of Maharashtra reported in 2007 13 SCC 501*** and the relevant para of said judgment is para 20.

In para 20 of *Ramesh Baburao Devaskar* case adverse view of the prosecution case has been taken when the same was sent before the Magistrate under 157 of Cr.P.C after delay of statutory time frame which as matter of fact should have been transmitted forthwith.

Reliance has also been placed on ***Chotkau V. State of U.P., (2023)6 SCC 742*** with respect to late transmission of F.I.R. to Court being fatal to case of prosecution in appropriate cases.

146. In the instant case, the F.I.R. was sent to Court after lapse of statutory time frame. There was no case number on the inquest report despite the case was allegedly registered promptly soon after the occurrence and pursuant to death of victim the penal sections were altered therefore not mentioning of F.I.R. number on inquest report and not mentioning of the same in postmortem report by PW 12 Dr. Arvind Kumar are the circumstances which obviously further makes the case of prosecution doubtful.

CONCLUSION

147. While summing up this Court has found that there has been contradictory statements made by the prosecution witnesses which are full of exaggeration and they have also not having made such statement during their statement under Section 161 and 164 of Cr.P.C.
148. There has been selective examination of prosecution witnesses wherein the witnesses were having shops nearby the place of occurrence were not

examined by the prosecution during course of trial as they had given neutral version about the accused facing trial and they had stated that accused were not present at the time and place of occurrence.

149. In the instant case, there has been contradiction in the accounts of the witnesses of prosecution and the glaring contradiction has appeared in the testimony of main eye- witness PW1 claiming to be accompanied victim at the time of occurrence and PW2, the informant and the informant himself has been reduced to the level of hearsay witness by the important witness of prosecution.
150. The presence of informant on place of occurrence stands denied by his own testimony and testimony of other witnesses including investigating officer wherein he has stated that when he reached at place of occurrence he did not find anyone present there whereas informant and PW1 stated that victim was taken to hospital on ambulance brought by police. The police has denied to have brought any ambulance at place of occurrence. There has been complete mismatch in injury report and postmortem report.
151. The ocular evidence did not find support from medical evidence at all. There is allegation of causing injury over head leaving the victim smeared with blood but no any injury over the head was found by the doctor who treated at first instance.
152. There has also been contradiction with respect to who actually took the victim to primary health centre and by what mean. The witnesses have stated that he was taken by ambulance which police had brought which has been gainsaid by investigating officer who denied to have brought ambulance at place of occurrence.
153. PW1 Sunil Kumar accompanying the victim claimed to have taken the victim alone by ambulance contrary to the claim of other witnesses.
154. The presence of informant and all witnesses from place of occurrence has been denied by PW1.

155. No injury over the head was found as alleged.
156. The appearance of more injuries on person between examination by first treating doctor till carrying out postmortem in next morning is completely unexplained by the prosecution making the whole incident of death mysterious.
157. The plea of alibi of accused Ranjit Yadav has been established by the prosecution itself and the prosecution witnesses.
158. The source of information about the alleged occurrence to the police has also been doubtful as police has itself conceded to have got the information on the basis of rumors and no any entry in the station diary as such has been made and the same has not been produced in the evidence by the police.

**THE TRIAL HAS TO BE DECIDED ON THE BASIS OF EVIDENCE
OF THIS TRIAL ONLY**

159. On the point of conviction of co-accused Kunti Devi of this case, the certified copy of which has been marked as Ext.8. and the prosecution has argued that as co-accused was convicted in separate trial so in this case the said Judgement is to be considered for conviction of accused persons facing trial in the instant case.

Learned Counsel for the defence has however submitted that it was done in a separate trial on the basis of different set of evidence and legally it is not permissible for the Court to look into anything of that trial and even consider.

The defence has submitted that in this case police had submitted final form against accused Ranjit Yadav wherein in case of co-accused Kunti Devi who was convicted chargesheet was submitted against her and her trial went on separately which was based on the evidence recorded in that separate trial and therefore that cannot be applied.

160. The defence has further submitted that injury report of victim Sumirak Yadav was deliberately held by prosecution in the said trial of co-accused Kunti Devi and had the injury report of victim Sumirak Yadav prepared by

DW1 Dr. Manoj Chaudhary been procured earlier and adduced in case of Kunti Devi which has been adduced by the defence in this case through DW1 while procuring through most empowering legislation of century **The Right to Information Act** then the fate of that trial would have been different.

161. Apart from such submissions reliance has been placed on the case of **A.T.M Ydeen and Ors Vs Assistant Commissioner Customs Department with A Dharampal Vs Assistant Commissioner with Janarthanan Vs Assistant Commissioner Customs Department Tutikorin reported in 2022 14 SCC 392** wherein in **para h** which has been specifically relied wherein it has been stated that consideration of evidence of one case for another case in appeal is impermissible.
162. The case relied by the defence is thus relevant in the context of present case and the trial of the accused persons facing trial would be definitely guided by content of evidence of this case and obviously it would not be guided by a separate trial of co-accused of this case in which she was convicted.
163. Though the FSL report has been marked as Ext.7 however in the instant case the seizure has remained unproved and considering the fact that prosecution has not been able to prove its case through its eye-witnesses and there has been complete mismatch between oral and medical evidence such report is not of much help for the prosecution for proving its case.

ORDER

164. Therefore on the basis of aforesaid discussions it can be safely concluded that the prosecution has not been able to prove charges against accused persons facing trial beyond all reasonable doubts.

As far as accused Ranjit Yadav is concerned his plea of alibi stood established and even if his plea of alibi is not considered even though the prosecution has been not able to prove the case against him as there has been complete mismatch in terms of ocular evidence and medical evidence as he

was said to have given blow over head with iron rod causing bleeding injury but no any injury was found over the head of victim by first treating doctor or no bleeding injury was found by doctor carrying out postmortem on the head of deceased. The manner of causing occurrence is thus falsified and in the instant case the ocular evidences have been doubtful as the informant himself appeared a hearsay witness and the accounts of eye-witnesses have been full of contradiction and exaggeration as discussed above in detail in preceding paragraphs.

Similarly, as far as accused Vivek Yadav is concerned his plea of alibi though not established but two of prosecution witnesses have stated about he being not present at place of occurrence though he has been stated to have cause injury over the leg and corresponding injury on leg was found but the witnesses have not coherently stated in their statements under Section 161 and 164 of Cr.P.C. about he having inflicted injury over the leg and the defence having taken their contradictions in cross-examinations of these witnesses and investigating officer having supported such position and therefore considering the serious flaws appearing in prosecution evidence as discussed above in detail in preceding paragraphs, where the presence of informant from place of occurrence stands denied this Court finds the evidences against him deficient to hold him guilty.

Moreover once the manner of causing occurrence with respect to main assailant Ranjit Yadav having been not proved and no bleeding injury over head of victim was found as claimed by prosecution the case of this accused Vivek Yadav and accused Deepu Yadav also turns out to be doubtful and benefit of doubt obviously will go in favour of these accused.

Similarly, as far as accused Deepu Yadav is concerned there is no specific allegation against him in F.I.R. and no coherent allegation against him have come in accounts of witnesses made before this Court and therefore as the quality of evidence has not been found to be fit enough to hold accused Vivek Yadav guilty the same is also not there for holding this accused guilty of commission of offences for which he is charged.

There is thus want of evidence in this case to hold accused persons named above guilty.

Accordingly, all accused persons namely **Ranjit Yadav, Vivek Yadav and Deepu Yadav** are held not guilty and acquitted of all charges.

Pronounced in the open court on this 17th day of July, 2026.

Place :- GAYA

Dictated, Corrected and Signed by me.

Sd/-

(*Ajit Kumar Singh*)

**District & Additional Sessions Judge-III-
cum-Special Judge of MP/MLA Court,
Gaya**

Dictated, Corrected and Signed by me.

Sd/-

(*Ajit Kumar Singh*)

**District & Additional Sessions Judge-III-
cum-Special Judge of MP/MLA Court,
Gaya**

FORM C
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. PROSECUTION

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESSES, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	SUNIL KUMAR	EYE WITNESS
PW2	VIJAY KUMAR	INFORMANT, EYE WITNESS
PW3	MADAN PRASAD	EYE WITNESS
PW4	RAM AVTAR PRASAD	OTHER
PW5	UDAY KUMAR	OTHER
PW6	CHANDRIKA PRASAD @ CHAINDRIKA YADAV	EYE WITNESS
PW7	ARUN KUMAR	EYE WITNESS
PW8	VIJAY BAHADUR SINGH	ONE OF THE INVESTIGATING OFFICERS
PW9	MANOJ KUMAR	EYE WITNESS
PW10	KRISHAN BIHARI SINGH	INVESTIGATING OFFICER
PW11	SHASHI BHUSHAN SINGH	INVESTIGATING OFFICER
PW12	NAVEEN PASWAN	INVESTIGATING OFFICER
PW13	DR. ARVIND KUMAR	MEDICAL WITNESS

B. DEFENCE WITNESSES, IF ANY

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESSES, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	DR. MANOJ CHAUDHARY	MEDICAL WITNESS

C. COURT WITNESSES, IF ANY

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESSES, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

FORM D

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. PROSECUTION

Sr. No.	Exhibit Number	Description
1	Ext- 1	SIGNATURE OF THE INFORMANT ON FARDBEYAN
2	Ext- 2	SUBSTITUTED COPY OF WRITTEN INFORMATION (WRITTEN FIR)
3	Ext- 3	SUBSTITUTED COPY OF STATEMENT OF VIJAY YADAV U/S 164 OF CR.P.C. RECORDED ON 03.09.2025
4	Ext- 4	SIGNATURE ON SUBSTITUTED COPY OF SEIZURE LIST (SIGNATURE ON SEARCH LIST)
5	Ext- 5	STATEMENT OF WITNESS CHANDRIKA YADAV U/S 164 OF CR.P.C.
6	Ext- 6	SIGNATURE ON PRODUCTION-CUM-SEIZURE LIST
7	Ext-7	EXT.-7 F.S.L REPORT
8	Ext-8	CERTIFIED COPY OF JUDGMENT PASSED IN CASE OF CO-ACCUSED OF THIS CASE

B. DEFENCE

Sr. No	Exhibit Number	Description
1.	Ext.-A	SIGNATURE OF WITNESS MANOJ KUMAR
2.	Ext.-DW-1/D1	INJURY REPORT

C. COURT EXHIBITS, IF ANY

Sr. No	Exhibit Number	Nil
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Sd/-
(*Ajit Kumar Singh*)
District & Additional Sessions Judge-III-
cum-Special Judge of MP/MLA Court,
Gaya

Sd/-
(*Ajit Kumar Singh*)
District & Additional Sessions Judge-III-
cum-Special Judge of MP/MLA Court,
Gaya