

IN THE COURT OF 3rd ADDITIONAL SESSIONS JUDGE,
MUZAFFARPUR

Present- Sri Awdesk Kumar,
3rd Addl. Sessions Judge
Muzaffarpur.

Muzaffarpur, Dated 23th June 2026.

S.Trial No. - 710 of 2018

(Arising out of Mushahari P.S. Case No. 92/2014)

(Details of FIR/ Crime and Police Station)

(U/s- 147, 148, 341, 323, 307, 379, 447, 448, 504, 506/149 of the I.P.C.)

Informant	State through the Informant Ram Kishore Sharma, S/o – Late Ramanand Sharma R/o Vill – Chhapra Megh, P.S. - Mushahari, District- Muzaffarpur
Represented By	Sri Kamta Prasad, Ld. APP and also by Shri G. Mishra, learned Advocate for the Informant
Accused persons	1. Raghvendra Mahto, S/o- Ram Ratan Mahto (A-1); 2. Vipin Kumar, S/o- Ram Ratan Mahto (A-2); 3. Dharmendra Kumar, S/o- Jaynandan Mahto (A-3); 4. Krishna Kumar, S/o- Jaynandan Mahto (A-4); 5. Dinesh Sah, S/o- Late Ramashish Sah (A-5); 6. Vinod Sah, S/o- Ram Udar Mahtao (A-6); 7. Ram Kumar Sah, S/o- Raghunath Sah (A-7); 8. Shivchandra Mahto, S/o- Late Batahu Mahto (A-8); 9. Santlal Mahto, S/o- Late Bechan Mahto (A-9); 10. Ramesh Mahto, S/o- Jagannath Mahto (A-10); 11. Meena Devi, W/o- Ram Ratan Mahto (A-11); 12. Sunaina Devi, W/o – Mahesh Kumar (A-12); 13. Pramod Mahto, S/o- Late Rajeshwar Mahto (A-13); 14. Manoj Mahto, S/o- Late Rajeshwar Mahto (A-14); 15. Suresh Mahto, S/o- Late Kishori Mahto (A-15); 16. Ram Ratan Mahto, S/o- Late Khelawan Mahto (A-16); 17. Mahesh Kumar, S/o- Late Khelawan Mahto (A-17); All R/o Vill – Chhapra Megh, P.S. - Mushahari, District- Muzaffarpur
Represented By	Sri Rakesh Kumar, Ld. Advocate

FORM – B

Date of Offence	05.08.2014
Date of FIR	05.08.2014
Date of Charge-sheet	09.07.2015
Date of cognizance	11.09.2015
Date of Framing of Charges	03.09.2019
Date of commencement of evidence	03.10.2019
Date on which judgment is reserved	09.06.2026
Date of the Judgment	23.06.2026
Date of the Sentencing Order , if any	N/A

Accused Details

Rank of the accused	Name of the accused	Date of arrest/ Surrender	Date of Release on bail	Offences charge with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.P.C
A-1	Raghvendra Mahto	29.11.2014	29.11.2014	All accused are charged with offences punishable U/ss. 147, 148, 149, 341, 323, 307, 379, 447, 448, 504, 506 of the	All accused persons have been acquitted of all the	N/A	Nil
A-2	Vipin Kumar	29.11.2014	29.11.2014				
A-3	Dharmendra Kumar	29.11.2014	29.11.2014				
A-4	Krishna Kumar	29.11.2014	29.11.2014				

A-5	Dinesh Sah	29.11.2014	29.11.2014	IPC	charges.		
A-6	Vinod Sah	29.11.2014	29.11.2014				
A-7	Ram Kumar	29.11.2014	29.11.2014				
A-8	Sah Shivchandra Mahto	29.11.2014	29.11.2014				
A-9	Santlal Mahto	29.11.2014	29.11.2014				
A-10	Ramesh Mahto	-----	-----				
A-11	Meena Devi	29.11.2014	29.11.2014	All accused persons are	All	N/A	Nil
A-12	Sunaina Devi	29.11.2014	29.11.2014	charged with	accused persons		
A-13	Pramod Mahto	29.11.2014	29.11.2014	offences punishable	have been acquitted		
A-14	Manoj Mahto	29.11.2014	29.11.2014	U/ss. 147, 148, 149, 341, 323, 307,	of all the charges.		
A-15	Suresh Mahto	29.11.2014	29.11.2014	379, 447, 448, 504, 506 of the			
A-16	Ram Ratan Mahto	07.07.2015	07.07.2015	I.P.C.			
A-17	Mahesh Kumar	07.07.2015	07.07.2015				

FORM C

LIST OF PROSECUTION/ DEFENCE/COURT WITNESSES

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE
PW-1	Dipak Mahto	Independent witness
PW-2	Upendra Mahto	Independent witness
PW-3	Uma Shankar Sharma	Independent witness
PW-4	Mukesh Thakur @ Mukesh Kr. Thakur	Independent witness
PW-5	Ramkishore Sharma	Informant of this case
PW-6	Ajay Kumar Thakur	Independent witness
PW-7	Baidyanath Singh	Independent witness
PW-8	Dr. Mukesh Kumar	M.O. of this case
PW-9	Rajnish Kumar	Independent witness
PW-10	Keshav Kumar	Informant’s son
PW-11	Lal Kumar Paswan	I.O. of this case

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW-1	Keshav Kumar	Independent witness

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
01.	Ext.- P1/PW5	Informant’s written application which is basis of this F.I.R.
02.	Ext.- P2/PW-8	Injury report of Ram Kishore Sharma dated: 05.08.2014
03.	Ext.- P3/PW-8	Injury report of Ram Kishore Sharma dated: 10.08.2014
04.	Ext.- P4/PW-8	Injury report of Keshav Kumar dated: 05.08.2014
05.	Ext. P5/PW-8	Injury report of Keshav Kumar dated: 14.09.2014
06.	Ext. X-1 to X-4	Xerox copy of reports of papers of treatment and report of S.K.M.C.H., Muzaffarpur regarding informant Ram Kishore Sharma are marked for identification.
07.	Ext. P-6	Certified copy of Sale deed bearing no.7372, dated:31/03/2014.

B. Defence:

Sr. No.	Exhibit Number	Description
01.	Ext. D1	Certified copy of order passed in Mutation Case No. 13428/2013-14.
02.	Ext. D2	Certified copy of F.I.R. of Mushahari P.S. Case No. 93/2014.
03.	Ext. D3	Certified copy of sale deed bearing no. 2000, dated: 03.02.2014.

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	

D. Material Objects:

Sr. No.	Material Object Number	Description
NIL	NIL	

J U D G M E N T

1. The above named accused-persons have faced trial for charges punishable under sections-147, 148, 341, 323, 307, 379, 447, 448, 504, 506/149 of I.P.C. which was framed and explained to them in hindi on 03.09.2019 to which they pleaded not guilty and claimed to be tried. Hence, this trial.
2. Prosecution case according to informant's written application, in brief, is that while informant and his son namely Keshav Kumar were feeding cattle at "Bathan" situated in front of their house at about 8:00 a.m. on 05.08.2014, their co-villager namely Mahesh Kumar (hereinafter referred to as A-17), Ram Ratan Mahto (hereinafter referred to as A-16), Raghvendra Mahto (hereinafter referred to as A-1), Vipin Kumar (hereinafter referred to as A-2), Dharmendra Kumar (hereinafter referred to as A-3), Krishna Kumar (hereinafter referred to as A-4) all armed with sword, farsa, bhala, lathi-danda came there and soon after their arrival, accused Mahesh Kumar (hereinafter referred to as A-17) and Ram Ratan Mahto (hereinafter referred to as A-16) stated as to how and why informant had erected "Bathan" there when the land belonged to them. When informant objected to their claim, accused Mahesh Kumar (hereinafter referred to as A-17) and Ram Ratan Mahto (hereinafter referred to as A-16) blew farsa which struck informant on his head. When Informant's son came to rescue informant, he was also assaulted with sharp edged weapon. Soon after, Vinod Sah (hereinafter referred to as A-6), Aklu Sah, Dinesh Sah (hereinafter referred to as A-5), Raghunath Sah, Ram Kumar Sah, Siyaram Mahto, Ram Lalit Mahto, Shiv Chandra Mahto, Ganesh Mahto, Sant Lal Mahto (hereinafter be referred as A-9), Arun Kumar Mahto, Ranjit Mahto, Amarjit Mahto, Lakshman Mahto, Ram Ishwar Sah, Jagannath Mahto, Ramesh Mahto (hereinafter be referred as A-10), Suresh Mahto (hereinafter be referred as A-15), Umesh Mahto, Gena Mahto, Meena Devi (hereinafter be referred as A-11), Akli Devi, Kiran Kumari wife of accused Mahesh Kumar, Pramod Mahto (hereinafter referred as A-13), Manoj Mahto (hereinafter referred as A-14), Navin Mahto, Suresh Mahto S/o-Kishori Mahto (hereinafter be referred as A-15) all armed with sharp edged weapons entered inside informant's house and started assaulting

informant's wife, informant's younger brother and son of informant's brother-in-law and removed a briefcase containing jewellery and clothes worth Rs. 2,19,500/-.

3. On the basis of informant's written application Mushahari P.S. Case No. 92/2014 was registered against 34 accused-persons U/s 147, 148, 323, 341, 307, 379, 447, 448, 504, 506/149 of I.P.C and the task of investigation was entrusted to S.I. Lal Kumar Paswan, who investigated the case and on conclusion of investigation, he submitted charge-sheet against 17 accused-persons only, not sending remaining 17 accused-persons up for trial. Thereafter, vide order dated 11.09.2015, the court of J.M.F.C. found prima-facie case made out against all the seventeen charge-sheeted accused-persons and therefore, cognizance against those 17 accused-persons was taken. At the same time, the court of J.M.F.C. accepted the final form submitted against remaining 17 accused-persons as named in column no. 12 of the charge-sheet and proceeding against them was dropped. Thereafter, the court of J.M.F.C. after securing the presence of the accused-persons and supplying them copy of the police paper committed the case to the court of sessions on 05.11.2018. The record so committed was registered in sessions file as S.Tr. No. 710/2018 which was then transferred to the court of 14th Addl. Sessions Judge, Muzaffarpur. In due course, the file was received by this court and today the record is fixed for judgment.
4. In order to prove the charges against the accused-persons, prosecution has examined altogether 11 witnesses which are Dipak Mahto as PW-1, Upendra Mahto as PW-2, Uma Shankar Sharma as PW-3, Mukesh Thakur @ Mukesh Kumar Thakur as PW-4, Ram Kishore Sharma (informant) as PW-5, Ajay Kumar Thakur as PW-6, Baidyanath Singh as PW- 7, Dr. Mukesh Kumar (Medical Officer) as PW-8, Rajnish Kumar as PW-9, Keshav Kumar as PW-10 and Lal Kumar Paswan as PW-11. Besides adducing oral evidences, prosecution has also produced following documentary evidences:
Ext.- P1/PW5: Written application which is the basis of this F.I.R.;
Ext.- P2/PW-8: Injury report of informant Ram Kishore Sharma dated: 05.08.2014;
Ext.- P3/PW-8: Injury report of informant Ram Kishore Sharma dated: 10.08.2014;

Ext.- P4/PW-8: Injury report of informant's son namely Keshav Kumar, dated: 05.08.2014;

Ext. P5/PW-8: Injury report of informant's son namely Keshav Kumar dated: 14.09.2014;

Ext. X1 to X4: Xerox copies of papers in connection with treatment of informant Ram Kishore Sharma in S.K.M.C.H., Muzaffarpur & P.M.C.H, Patna marked for identification;

Ext. P-6: Certified copy of Sale deed No.7372, dated: 31/03/2014.

5. Statement of accused-persons have been recorded on 30.04.2025 in which they have denied evidences against them and claimed themselves to be innocent.
6. Defence has examined Keshav Kumar as DW-1 and got following documents exhibited:
 - i. Certified copy of order passed in mutation case number-13428/2013-2014 as exhibit- D1;
 - ii. Certified copy of F.I.R of Mushahari P.S case No. 93/14 as exhibit-D2;
 - iii. Certified copy of sale-deed no. 2000, dated:03/02/14 executed by Divakar Kumar in favour of Mahesh Kumar;
7. Learned Addl. P.P. for the State assisted by Ld. Advocate for the informant has argued that prosecution witnesses have corroborated the prosecution case as alleged in the F.I.R and evidence produced on behalf of the prosecution has established the charges against the accused-persons beyond the reasonable doubt and therefore, accused-persons deserve to be convicted and severely punished.
8. On the other hand, learned advocate for the accused-persons has submitted that there are vital contradictions in the evidence of prosecution witnesses rendering their testimony not believable. Accused-persons were and they are still in possession over the land where the alleged occurrence has taken place. The prosecution parties have filed title suit and sought therein the relief of recovery of possession over the "Bathan" land. The revenue records of the alleged place of occurrence are in the name of accused Mahesh Kumar. Furthermore, sale-deed of the suit land in favour of accused Mahesh Kumar is prior to the sale-deed of prosecution parties and all the evidences in totality creates serious doubts on the prosecution story as alleged in the F.I.R.. In the end, Ld. Advocate for the accused-persons

has submitted that no conviction can be based on the basis of such unbelievable and inconsistent evidence and thus, accused-persons may be acquitted.

9. The point for determination before this court is whether prosecution has proved the charges against the accused-persons U/s 307/323/147/148/341/504/506/448/447/379/149 of I.P.C. beyond all reasonable doubts by reliable and cogent evidence or not ?

FINDINGS

10. It is a settled law that ocular **evidence** of the victim or the **injured** is considered as the best **evidence**. In the case titled as “ State of U.P. vs Naresh” (2011) 4 SCC 324, the Hon'ble Supreme Court has observed that: -

"The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

Therefore, this court takes up the evidence of the injured witnesses first for appreciation. But before doing that, this court for better appreciation of evidences deems necessary to examine informant's written application according to which, the occurrence has taken place at two places at two different times but on the same date which is 05.08.2014. First occurrence has allegedly taken place at about 8:00 a.m. on 05.08.2014 at “Bathan” situated in front of informant's house and during the first occurrence, informant & his son namely Keshav Kumar has been allegedly assaulted and the second

occurrence has taken place inside the informant's house immediately after the first occurrence and during the second occurrence informant's wife, informant's younger brother and son of informant's brother-in-law have been allegedly beaten. **According to the F.I.R**, A-17 and A-16 soon after reaching at the place of occurrence stated to informant "lkyk ;g tehu gekjk gS rqe blij cFkku dSlS Mkys gq, gks" and when informant objected, A-17 and A-16 struck informant with farsa on his head as a result of which he received a cut injury on his head. When informant's son (Keshav) rushed to save his father, he was also assaulted with sharp edged weapon. As regards the second occurrence, it is stated in the FIR that accused persons carrying sharp edged weapons entered into informant's house but there is no specific allegation against any accused and there is also no statement regarding the injuries suffered by informant's wife, his younger brother and son of his brother-in-law. Therefore, these five persons are injured as well as material witnesses of the case. Although prosecution has examined informant Ramkishore Sharma as PW-5, informant's brother namely Uma Shankar Sharma as PW-3 and informant's son namely Keshav Kumar as PW-10, prosecution has not produced informant's wife and son of informant's brother-in-law as prosecution witnesses and it has also not given any explanation for their non-examination. Accordingly, this court draws presumption under section-114(g) of the Indian evidence Act that had these witnesses deposed in the court, their testimonies would have been unfavourable to the prosecution.

It is important to mention here that in the written application informant has not given details and description of the land where his "Bathan" was situated in spite of stating the fact therein that accused persons had arrived there laying their claim over the "Bathan".

11. With above reproduction of facts, now this court proceeds to discuss the evidence of injured witnesses (P.W-3, P.W-5 & P.W-10) with the evidence of informant (PW – 5) first.

PW-5 (Rama Shankar Sharma) has stated during his examination-in-chief that at about 8:00 A.M on 05.08.2014, while he and his son Keshav Kumar were feeding the Cattles in "Bathan" situated in front of their house, his co-villager A-17, A-16, A-3, A-2,

A-4, A-1, A-11, A-12, A-9, A-8, A-6, A-5, A-7, A-15, A-14, A-13 and A-10 along with other persons (total 35-40 persons) armed with weapons arrived and surrounded his "Bathan." Thereafter, A-17 stated that this was his land and how informant had constructed "Bathan" on it. When informant objected, A-16 and A-3 struck informant on his head respectively with iron rod and lathi. When informant's son namely Keshav Kumar rushed to save him, A-17 struck informant's son on his head with iron rod. This witness has further stated that all the persons were assaulting his son and also him after surrounding them. As regards the second occurrence, this witness has stated that A – 11 and A – 12 along with other accused persons entered inside the house and slapped and fisted his wife and younger brother namely Uma Shankar, besides abusing them. A-11 and A – 12 also removed a briefcase containing Jewellaries worth Rs. 2,00,000/- and a V.I.P. containing clothes worth Rs. 20,000/- from his house. This witness has identified the writing of the written application and his signature over it and accordingly, the written application has been marked as Exhibit – P-1/PW-5.

During cross-examination, this witness has accepted that Divakar Kumar, son of his uncle Awadh Naresh Thakur has executed a sale deed on 03.02.2014 concerning 7 decimal land appertaining to Keshara No. 3128 in favour of A-17 and that Kewala is prior to his kewala. He has also stated that Divakar has sold seven decimal land and seven decimal land has been also sold by father of Divakar. In para 13 & 14, this witness has stated that he has possession over the land purchased by A-17. In para 16 and 17, this witness has stated that he has got sale deed concerning "Bathan" land executed in the name of his wife and since she has possession over the said land, he also has possession over the said land. In para 21, this witness has admitted that both parties claim over the "Bathan" land in connection of which there is dispute between both the parties.

Another injured informant's son namely Kehsav Kumar (P.W-10) during his examination-in-chief has stated that at about 8:00 am on 05.08.2014, while he along with his father were feeding cattle at "Bathan", his co-villager namely A-17, A-16, A-1, A-3, A-2, A-4, A-12, A-11, Manoj Sah, A-7, A-5, A-8, A-9, A-13, Vinod

Mahto, A-10, A-15 (total 17-18 persons) armed with lathi, danda, rod and farsa arrived and surrounded his “Bathan” and thereafter, started abusing his father. A-16 struck his father with farsa on his head and caused him bleeding head injury. A-1 and A-4, thereafter, started assaulting his father with lathi. This witness has further stated that when he intervened, A-17 struck him towards the left side of his head with iron rod. Thereafter, he struck him on his knee. Thereafter, A-3 and A-2 kept on beating this witness until he lost his consciousness. This witness has also stated that his uncle and mother arrived at the “Bathan” after hearing ‘hulla’ but they were also assaulted.

In para 9 of his cross-examination, this witness has stated that he is unaware about the Khata and Khesara number of “Bathan” land. In para 21, this witness has stated that the cause of dispute is “Bathan” land over which both parties lay their claim. In para-29, this witness has stated that A-16 was carrying farsa in his hand whereas A-1 and A-4 were wielding lathi and they struck Ram Kishore Sharma with the weapon in their hand. The defence has suggested to both the above witnesses that the “Bathan land” belong to A-17, mutation also stands in his name and he has possession also over the Bathan land. However, both P.W – 5 and P.W-10 have denied the suggestion.

PW-3 is informant’s younger brother who also as per F.I.R has been assaulted and he during his examination-in-chief has stated that at about 8:00 a.m. on 05.08.2014, while he was at his door and his nephew Keshav Kumar (P.W-10) was feeding cattle at the “Bathan” situated in front of his house, several persons armed with farsa and lathi arrived and surrounded the “Bathan”. This witness has further stated that A-17, A-16, A-3, A-4, A-1, A-2, A-12, A-11, A-9, A-6, A-7, A-5, A-10, A-8, A-14, A-13, A-15 started abusing his brother, stating that that was not his land. When Ram Kishore Sharma objected to the abuse, A-17 ordered to kill informant and thereafter, A-16 blew farsa on the informant’s head as a result of which blood started flowing out from his head. A-2 struck him with “lathi-danda”. This witness has further stated that when informant’s son Keshav Kumar intervened, A-17 struck him incessantly with the butt of the Farsa as a result of which blood started flowing out from his head. A-1 and A-2

kept on striking Keshav Kumar until he lost his consciousness. This witness has further stated that when he tried to save them, Krishna Kumar (A-4) struck him with lathi and danda. This witness has further stated that some of the accused persons entered inside informant's house and abused and assaulted female members of informant's family. They also committed theft of attachi, briefcase, clothes and jewellery. This witness in para-8 of the cross-examination has stated that Awadh Naresh Thakur is cousin brother of his father and Divakar Thakur is son of Awadh Naresh Thakur.

After careful examination of the evidence of injured witnesses, this court finds that the evidence of informant himself is materially inconsistent with the assertion in the written application as according to F.I.R, A-16 and A-17 struck him on his head with "farsa". But according to his evidence, it was A-16 and A-3 (& not A-17) struck him on his head but with rod and lathi (& not with farsa). This contradiction is material and creates suspicion as to who had struck him and with what weapon. Similarly, according to F.I.R, his son Keshav Kumar was also struck by A-16 and A-17 with farsa whereas according to evidence of PW-5 (informant), A-17 only struck him but with iron rod. Furthermore, according to evidence of this witness, A-11 and A-12 along with other accused-persons entered inside informant's house and they slapped and fisted informant's wife, his younger brother. Therefore, during his examination-in-chief, P.W-5 has not stated about the presence of son of informant's brother-in-law & assault that as per F.I.R was given to him and this omission also can not be termed as a minor inconsistency. Similarly, statements of P.W-10 is also materially inconsistent with the allegation in the F.I.R. which is clear from the following facts: as per statements of P.W-10, Ram Lakhan Mahto only (which might be either a slip of tongue or a typographical mistake for A-16) struck informant on his head with farsa while A-1 & A-4 struck informant with lathi. According to this witness, A-17 struck him but with iron rod and A-2 & A-3 kept on assaulting him until he lost his consciousness. According to the evidence of this witness, his uncle & his mother reached at the Bathan where all accused-persons severely assaulted four of them but as per F.I.R, uncle & mother of this witness had been assaulted while they

had been inside the house. Likewise, P.W-3 has stated that A-16 struck informant on his head with farsa and A-17 struck informant's son on his head but with the butt of the farsa. A-1 & A-2 struck informant's son with lathi. This witness has further stated that when he came in their rescue, he was also beaten by A-4 with lathi. All the above statements are materially inconsistent with the allegation in the F.I.R. Therefore, from careful examination of evidences of injured witnesses, this court comes to the conclusion that the evidence of injured witnesses is not only inconsistent with the F.I.R but also it is inconsistent inter se. Therefore, in the considered opinion of this court, their evidence as regards the weapon of assault and as regards the accused who inflicted injury is not wholly reliable. It is also important to mention here that none of the injured witnesses in their testimonies has stated that accused persons had inflicted injury with the intention of causing death or with the knowledge that their act may result into death.

12. **After discussing the evidence of injured witnesses, this court adverts to appreciation of evidence of independent witnesses:** PW-1, PW-2, PW-4, PW-6, PW-7 and PW-9. Out of these witnesses, two witnesses namely Deepak Mahto (PW-1) and Upendra Mahto (PW-2) have stated during their examination-in-chief that they do not know anything about the occurrence and they have not given statement to police. Prosecution has declared them hostile but it has failed to obtain any material in support of the prosecution case from them during their cross-examination. Furthermore, P.W-1 during his cross-examination by the defence has supported the defence version and stated that accused Mahesh had purchased 07 decimal land from Divakar Kumar Thakur and constructed thatch thereon. **Similarly, although PW-4** has corroborated the time and place of occurrence during his evidence. His evidence is materially inconsistent to the F.I.R in respect of assault. During his examination-in-chief, this witness has stated that the occurrence took place at about 8:00 A.M. on 5th of August 2014 and about 15-20 persons including A-16, A-17, A-3, A-2, Jay Nandan Mahto and A-4 armed with lathi, danda arrived at the "Bathan" of informant Ram Kishore Sharma while he and his son Keshav Kumar were feeding cattle. This witness has further stated that A-17 ordered A-16 whereafter

A-16 struck Ram Kishore Sharma on his head and when Keshav Kumar intervened, Mahesh Kumar A-17 struck him on his head with lathi. Both Ram Kishore Sharma and Keshav Kumar were then taken to P.H.C. Mushahari for treatment. This witness has stated that he witnessed the occurrence while he was returning to his house after fetching milk. Therefore, this witness is a chance witness and according to him, accused-persons were only carrying lathi & danda and A-16 struck informant with lathi and A-17 struck informant's son with lathi, but according to the F.I.R, accused-persons were armed with sword, farsa, bhala besides lathi-danda. Moreover, as per F.I.R, informant and his son had been struck with farsa. Furthermore, this witness in para-15 of the cross-examination has stated that when he saw Ram Kishore Sharma & Keshav kumar at the alleged place of occurrence for the first time, blood was coming out from their heads. Therefore, from this statement of the witness & also the fact that this witness has stated nothing about the second occurrence, this court concludes that he has not witnessed accused-persons assaulting prosecution parties. Thus, on the basis of above discussion, this court concludes that the testimony of P.W-4 is wholly unreliable.

PW-6 in his examination-in-chief has stated that in course of going to Muzaffarpur, he reached near the "bathan" of informant Ram Kishore Sharma at about 8:00 a.m. on 5.08.2014 and saw that Keshav and Ram Kishore Sharma were wrenched with blood. He and Mukesh brought Keshav to Mushahari government hospital where informant subsequently reached. This witness has also stated in his examination-in-chief that he did not see Keshav and Ram Kishore Sharma being beaten. However, he saw that A-2 was armed with lathi, A-8 was armed with bhala and they also attempted to beat him. This witness has further stated that A-16, wife of A-16 and A-17 were also present there and while he was helping Keshav, A-8 blew bhala that was held by Raj Kumar. During cross-examination, this witness has stated in para 7 that he did not see the "jhagra-jhanjhat" with his own eyes. From all the statements of this witness, it can be surely said that he has witnessed no part of the occurrence with his own eyes. Therefore, his testimony is hearsay.

PW-7 in his examination-in-chief has stated that at

about 8:00 a.m. on 05.08.2014, while walking on the road, he went towards the "bathan" of Ram Kishore Sharma and then found that Ram Kishore Sharma and his son Keshav Kumar were feeding cattle. Exactly at that time, 15-20 persons armed with lathi, danda and rod assembled there. A-17, A-16, A-3, A-4, A-1 and A-2 were amongst them. They started abusing Ram Kishore Sharma and when he objected, A-17 ordered A-16 saying "ekjks lkys dks". Thereafter, A-16 struck Ram Kishore Sharma on his head with rod and when Keshav intervened, A-17 struck him also with rod on his head. Other persons were also striking Keshav Kumar with lathi, danda.

In para 8 of the cross-examination, this witness has stated that the occurrence took place because of land dispute. He has further stated that accused persons lay their claim over bathan land. In para 10, this witness has stated that A-16 and A-17 were carrying rod in their hand. In para 14, this witness has stated that when he saw Ram Kishore Sharma and Keshav for the first time at the place of occurrence, he found that blood was coming out from their heads. This statement in para 14 indicates that this witness has not seen informant and Keshav Kumar being assaulted and therefore, this statement contradicts his claim in examination-in-chief to have seen the occurrence. Furthermore, his statement that informant and his son Keshav was assaulted with rod is also inconsistent with the version in the FIR. Therefore, evidence of this witness is also not wholly reliable.

PW - 9 in his examination-in-chief has stated that while he was on daily walk, he reached near "bathan" of Ram Kishore Sharma at about 8:00 a.m. on 05.08.2014 and found that Ram Kishore Sharma along with his son were feeding cattle. He also observed that A - 17, A - 16, A - 1, A - 2, A - 3, A - 12, A - 11 and other persons total 10-15 in number, carrying lathi-danda and farsa in their hand, arrived there and started abusing informant Ram Kishore Sharma. When he objected, A - 16 blew farsa over his head which struck him towards the backside of his head and blood started flowing therefrom. Other accused persons started assaulting him with lathi and danda. This witness has further stated that when his son namely Keshav Kumar intervened, A - 17 from the back struck him on his head with iron rod as a result of which he received bleeding head injury. A - 1 and A - 2

thereafter assaulted him with lathi-danda until he fainted. A - 11 and A - 12 thereafter entered into informant's house and removed briefcase and attachi from his house. In course of cross-examination, the court noticed which is also mentioned in Para - 7 that this witness had written the boundaries of the place of occurrence. In para - 13 of the cross-examination, this witness has stated that when he reached at the place of occurrence, a crowd of about 8-10 persons had already gathered there. He has further stated that when he glanced at Ram Kishore Sharma for the first time, he noticed that blood was oozing out from his head and he was lying on the ground. He also observed that blood was also coming out from the head and the arm of Keshav. Therefore, from the above statements during cross-examination, it appears that this witness arrived after the occurrence had taken place and thus, statements of this witness in the cross-examination is contradictory to his statement in examination-in-chief. Accordingly, his evidence is not wholly reliable. Furthermore, in para - 16 of the cross-examination, this witness has stated that Divakar Thakur and informant Ram Kishore Sharma are gotiyas although this fact has been denied by both informant and his son in their evidence.

13. After discussing the oral evidences regarding the assault and injury on the prosecution parties, this court begins to appreciate the evidence of **PW – 8, the Medical Officer** who examined informant Ram Kishore Sharma and his son Keshav Kumar on 05.08.2014 and Investigating Officer PW-11.

PW-8, in his examination-in-chief, has identified his writing and signature over the injury report of informant Ram Kishore Sharma prepared by him on 05.08.2014 and 10.08.2014 which have been marked respectively as Exhibit – P-2/PW-8 and P-3/PW-8. He has also identified his writing and signature over the injury report of Keshav Kumar prepared by him on 05.08.2014 and 14.09.2014 which have been marked respectively as Exhibit - P-4/PW-8 and P-5/PW-8. According to the evidence of PW - 8, he found following injuries on the body of informant Ram Kishore Sharma: -

- (i) Lacerated wound over right occipital parietal region 3" x 1/2".
- (ii) Bruise over right and left side of back.
- (iii) Bruise over right chest.

According to this witness and Exhibit P-2/PW-8, injury no. (ii) and (iii) on the body of informant were simple in nature and caused by hard and blunt object and injury no. (I) was also found to be simple in nature as per the evidence of this witness and Exhibit No. P-3/PW-8. According to this witness, he also found following three injuries on the body of informant's son Keshav Kumar: -

- (i) Patient was in semi conscious region;
- (ii) Lacerated wound over centre of parietal region 3½" x 1½";
- (iii) Bruise over right toe.

According to evidence of this witness, injury no. (i) and (ii) on the body of Keshav Kumar were grievous in nature as skull had a longitudinal fracture and injury no. (iii) was simple in nature. All the injuries were caused by hard and blunt object.

After examining the evidence of PW-8, this court finds that there is no ground to disbelieve the fact that informant and his son has suffered injury.

PW - 11 is the Investigating Officer and he in para 12 of the cross-examination has stated that he found "bathan" at the place of occurrence. However, he could not inquire into whose bathan it was. In para 16, this witness has admitted that he himself was the Investigating Officer of Mushahari P. S. Case No. 93/2014 which is counter blast of this case. However, he has not recorded this fact in the case diary.

14. It is clear from the prosecution evidence and also from the F.I.R. that accused persons also claim the land where "bathan" was situated. They have filed certified copy of order of Mutation Case No. 13428/2013-14 which has been marked as Exhibit D-1 and the certified copy of sale deed dated 03.02.2014 executed by Divakar Kumar in favour of A-17 marked as Exhibit D-3. Prosecution has also filed certified copy of sale deed dated 31.03.2014 executed by Awadh Naresh Thakur in favour of Renu Devi, wife of informant Ram Kishore Sharma marked as Exhibit P-6. From the perusal of documents filed on behalf of prosecution marked as exhibit- P-6 & sale deed filed on behalf of defence marked as Ext- D-3, this court finds that land of both the deeds are one and the same. Therefore, since defence has filed order of mutation in favour of A-17 and sale deed in his name which is prior to the sale deed filed on

behalf of prosecution, claim of the defence over bathan land appear stronger than the claim of prosecution and this is sufficient to defeat the charge U/s 447, 448, 147, 148/149 of the I.P.C. Furthermore, although there is nothing to disbelieve the injury on the person of informant and his son, the prosecution has failed to prove by cogent and reliable evidence that these injuries have been caused by accused persons. Therefore, on the basis of facts and evidence discussed above, this court comes to the conclusion that prosecution has failed to prove charge under Section 307, 323/149 of I.P.C.

15. Having discussed the evidence produced on behalf of prosecution, this court also finds that PW-4, PW-6 and PW – 10 have stated not a single word as regards the charge under Section 504, 506, 341, 379/149 of I.P.C. and PW-1 and PW-2 have turned hostile. PW-3 has stated that some of the accused persons after entering into informant's house started abusing females and slapped and fisted them. They carried with themselves briefcase, attachi, kapra, silver and gold. Similarly, PW-5 has stated that A-11 and A-12 entered into informant's house, slapped and fisted informant's wife and his younger brother Uma Shankar (examined as PW - 3). This witness has further stated that A-11 and A-12 removed briefcase and V.I.P. from informant's house. Briefcase was containing jewelleryes worth Rs. 2,00,000/- (two lakhs) and V.I.P. contained clothes worth Rs. 20,000/- (twenty thousand). PW-7 in his examination-in-chief has stated that A-11 and A-12 removed briefcase from informant's house and also hurled abuses after entering inside informant's house. Similarly, PW-9 has stated in his examination-in-chief that A-11 and A-12 entered into informant's house and came out with briefcase and attachi. Police has recovered no article from the possession of the accused persons and prosecution has not examined informant's wife or any other member of informant's family claiming those jewelleryes. Prosecution has also not produced any chit of paper to show the ownership and possession of those theft articles. There is almost no evidence that accused persons gave threatening and provocation to either informant or his family members. There is also absolutely no evidence that they wrongfully restrained either informant or any member of his family. According to F.I.R., informant's younger brother and informant's wife were assaulted inside informant's house.

But, informant's younger brother examined as PW-3, has stated that he had tried to save informant and his son while they were being beaten at "bathan" and then he was assaulted with lathi-danda by A-4. Therefore, according to the evidence of PW-3, he was outside the house which is inconsistent with the evidence of informant Ram Kishore Sharma PW-5 who has stated that his brother and wife were assaulted when they were inside the house. According to the evidence of PW-10, when his uncle and mother reached at the "bathan" after hearing halla, they were assaulted. So, the evidence of all the witnesses regarding the occurrence inside the house is inherently inconsistent with each other and the testimony as regards above charges U/s 504, 506, 341, 379/149 of I.P.C. is not believable.

16. On the basis of fact and evidence discussed above, this Court comes to the conclusion that charges as above has not been proved by the prosecution beyond the shadow of all reasonable doubts and therefore, accused persons are entitled to be acquitted of all the above charges.

ORDER

17. Accordingly, the accused-persons namely A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-16 & A-17 are hereby **acquitted** of all charges U/Ss 147, 148, 341, 323, 307, 379, 447, 448, 504, 506/149 of I.P.C.
18. Since acquitted-persons are on bail, they as well as their sureties are discharged from the liabilities of their bail-bonds.

Dictated & Corrected.

Sd/-

(AWDESH KUMAR)
Addl. Sessions Judge- III
Muzaffarpur.

THIS JUDGMENT IS PRONOUNCED, DATED & SIGNED BY ME IN OPEN COURT.

Sd/-

(AWDESH KUMAR)
Addl. Sessions Judge- III
Muzaffarpur.
23.06.2026