

## Bande Lal Sah and Subodh Sah Vs State of Bihar

**Court:** Patna High Court

**Date of Decision:** Dec. 2, 2002

**Acts Referred:** Cattle Trespass Act, 1871 â€” Section 2, 24, 3  
Criminal Procedure Code, 1973 (CrPC) â€” Section 207, 360  
Penal Code, 1860 (IPC) â€” Section 323, 325, 34

**Citation:** (2003) 2 PLJR 652

**Hon'ble Judges:** S.N. Pathak, J

**Bench:** Single Bench

**Advocate:** Arun Pd. Ambastha, Ravindra Kr. Choudhary and Rupesh Ranjan, for the Appellant; Ali Mozaffar, for the Respondent

**Final Decision:** Allowed

### Judgement

S.N. Pathak, J.

This revision is directed against the judgment dated 20.2.2001 passed by the Addl. Sessions Judge VI Purnea, in Cr.

Appeal No. 40/ 1994/17/2000, confirming the judgment of the trial court dated 22.4.94, rendered by the Judicial Magistrate 1st Clase in GR case

No. 1138/84, trial No. 715/94. Revisionist No. 1, Bande Lal Sah, was convicted u/s 323/34 IPC and was sentenced to undergo SI for 3 months

and he was also convicted and sentenced to one month SI u/s 24 of the Cattle Trespass Act. Revisionist No. 2, Subodh Sah, was convicted u/s

325 IPC and was sentenced to undergo RI for one year. He was further convicted u/s 24 of the Cattle Trespass Act and sentenced to undergo SI

for one month. Sentences passed against the revisionists were directed to run concurrently.

2. The fardbeyan of the informant Bhola Sah, gave rise to the case wherein it was alleged that on 12.6.84, these two revisionists were grazing

Mung crops in his field situated in village Gharari. When the informant protested to the grazing in the field and was about to take cattle-heads to the

pound, the two revisionists over-powered him and assaulted him with Dabia and lathi. Dabia was wielded by Bande lal Sah and Subodh Sah dealt

lathi blow on him resulting in breaking of his five teeth. When the cattle-heads were being taken to the pound by the informant, these two

revisionists called other accused who also subjected the informant to assault. Two other accused persons facing trial were acquitted by the

appellate court, although convicted by the trial court.

3. The accused-revisionists took the defence of false implication.

4. The prosecution had examined in all 5 witnesses to prove its case. P.W. 5 was the formal witness who brought on record the case diary from

page 1 to 30 (exhibit 5). P.W. 4 was the doctor who examined the informant and found several abrasions and swellings on the body including

bruises. Injury No. 4 referred to fracture of four upper incisor teeth and two lower incisor teeth. All injuries except injury No. 4 were simple

caused by hard and blunt substance. P.W. 1 was the informant himself. P.W. Section 2 and 3 were the so called eye witnesses.

5. It was submitted by the revisionists lawyer that the fardbeyan of the informant shows that the alleged occurrence took place in the village

Gharari, whereas witnesses in court said that the occurrence took place in a field at village Akbarabad. So, P.O. has been changed. Moreover, the

revisionists were not supplied with the copy as mandated u/s 207 Code of Criminal Procedure So, they were prejudiced in their defence and that

is why, they failed to draw the attention of P.Ws. to their purported statements made by them to the police although the case diary was exhibited in

court. Since the accused-revisionists were not supplied with the copy, they were unable to cross-examine the witnesses regarding the

contradictions between their statements made to the police and the same made in the court. Non-examination of the IO also affected the defence

of the revisionists because they were unable to draw the attention of the IO, towards the actual place of the occurrence. Besides the aforesaid

submissions, it was submitted that there was no evidence regarding previous conviction of the revisionists. Hence they were entitled to get the

benefit u/s 360 Code of Criminal Procedure or Probation of Offenders Act.

6. State lawyer referred to the case diary which was exhibited in court. The court can also peruse the case diary in order to find out whether any

contradiction regarding the statement of the P.Ws. as also in order to find out what is the place of the occurrence and what is the objective

evidence with respect to the same. At para 6, the IO described the place of occurrence and he stated that PO fell in village Akbarabad, which was

shown to him by the informant himself. The informant also showed to him the papers relating to his field. This PO was over plot No. 125, khata

No. 91 having area 2.2 acres.

7. So, of course, there is discrepancy between the statement of the informant in his fardbeyan and the same made by him in court and the IO's

description of the PO at para 6. Informant fixed the place of the occurrence in village Gharari and the IO had given the distance between Gharari

and village Akbarabad as 1/2 K.M. So, this difference of 1/2 K.M. between the PO village and the village Gharari becomes vital in order to

discredit the prosecution case. In a criminal case, place of occurrence, time of occurrence, and manner of occurrence are three main vital

ingredients which must be proved by unimpeachable and positive evidence. It is not understandable why the informant failed to reconcile this

discrepancy between his case as stated in the fardbeyan and the same as made during the course of trial. The non-supply of the copy u/s 207

Code of Criminal Procedure to the accused-revisionists is also a vital aspect of the case which, of course, may amount to prejudicing the accused-

revisionists.

8. No conviction can be had if the prosecution failed to prove the place of occurrence by unimpeachable evidence. So, if the two courts below

recorded a mechanical order of conviction, I think they were in legal error.

9. Hence this revision is allowed and the order of conviction and sentence is set aside and the accused-revisionists stand acquitted.