

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 358 of 2015 & Cr. Appeal No. 469 of 2015****Reserved on: 28.9.2026****Decided on: 9.10.2026****Uploaded on: 9.10.2026**

1. Cr. Appeal No. 358 of 2015**State of H.P. ...Appellant.****Versus****Sunil Kisku. ...Respondent.****2. Cr. Appeal No. 469 of 2015****State of H.P. ...Appellant.****Versus****Sunil Kisku. ...Respondent.**

Corum***Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Hon'ble Mr. Justice Bhupesh Sharma, Judge.******Whether approved for reporting?¹ Yes.******For the Appellant. Mr.Yashwardhan Chauhan, Senior Additional Advocate General.******For the Respondent(s): Mr.Lakshay Thakur, Advocate.***

Vivek Singh Thakur, Judge

Both these appeals, arising out of the same judgment dated 19.03.2015, passed by Additional Sessions Judge, Kullu in Sessions Trial

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

No. 98 of 2014, in case FIR No. 41 of 2013, dated 28.04.2013, registered in Police Station Manali, District Kullu, under Sections 307, 326, 324 of the Indian Penal Code (for short 'IPC') and Sections 25 and 27 of the Arms Act, are being decided together for involvement of appreciation of same evidence and material on record of the Trial Court.

2. On 31.10.2013 charges against respondent were framed under Sections 324, 326 and 307 of the Indian Penal Code as well as Section 25 read with Section 27 of the Arms Act.

3. Vide impugned judgment dated 19.03.2015, respondent has been convicted under Sections 324 and 326 of Indian Penal Code; however, he has been acquitted under Section 307 of IPC and Sections 25 and 27 of the Arms Act.

4. Vide order dated 24.03.2015, respondent has been sentenced to undergo rigorous imprisonment for a period of two years with fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for three months for commission of offence under Section 326 IPC and to undergo rigorous imprisonment for a period of one year with fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for two months for commission of offence under Section 324 Indian Penal Code.

5. Respondent was arrested on 28.04.2013 and he remained in custody as an under-trial prisoner till pronouncement of judgment and

awarding sentence upon him that is till 24.03.2015. As of now, respondent has served the sentence awarded to him and he has not preferred any appeal against his conviction under Sections 326 and 324 of the Indian Penal Code.

6. Criminal Appeal No. 358 of 2015 has been preferred under Section 377 of Cr.P.C. for enhancement of sentence awarded to the respondent under Sections 326 and 324 of IPC.

7. Criminal Appeal No. 469 of 2015 has been preferred by the State under Section 378 of Cr.P.C. against acquittal of respondent under Section 307 IPC and Sections 25 and 27 of Arms Act.

8. Prosecution case is that on 28.04.2013 at around 12:00 noon, PW-2 Tashi was working inside his Dhaba near 15 Miles Bridge in District Kullu and his wife PW-3 Banti and one Nisha were sitting outside the Dhaba. Accused came and started pelting stones upon the Dhaba, whereupon PW-3 Banti and Nisha cried for help. Complainant PW-2 Tashi came out and asked the respondent about reason for pelting stones on the ladies, whereupon respondent attacked PW-2 Tashi with darat twice, causing injuries on his head and ear. Thereafter he attacked PW-3 Banti and Nisha by giving them darat blow on their heads. When Nisha tried to flee from the spot, respondent chased her and gave one darat blow on her head. Both ladies Banti and Nisha cried for help by saying "bachao bachao" and at that time, Kunj Lal, Khim Dass, PW-4 Hira Lal, residents of

village Batahar were present at Bihal Somvan, which was across the bridge. They came forward to rescue Nisha who was crying for help, whereupon respondent attacked Khim Dass, gave first blow of darat to Khim Dass, second blow of darat to Kunj Lal, and one drat blow to PW-4 Hira Lal. However, with the help of other villagers, PW-4 Hira Lal overpowered the accused and snatched the darat from him and handed over it to PW-2 Tashi. Matter was reported to the Police. Police came on the spot and in pursuant to incident, Rapat Ex. PW-7/D was recorded and injured were rushed to hospital.

9. On the basis of statement of complainant PW-2 Tashi, recorded under Section 154 Cr.P.C. Ex. PW-2/A, FIR was registered in the Police Station. Darat Ex. P-6 was also taken in possession vide memo Ex. PW-2/C on production thereof by PW-2 Tashi.

10. After collecting evidence including medical evidence and photographs etc., and recording statements of witnesses under Section 161 Cr.P.C., challan was prepared and presented in the Court.

11. On finding sufficient material, charges, as referred supra, were framed against respondent and on pleading not guilty, he was subjected to trial. Prosecution has examined 10 witnesses to substantiate its case, whereas after recording statement under Section 313 Cr.P.C., no defense evidence has been led by and on behalf of respondent.

12. PW-1 Dr. Rakesh Negi has conducted the medical examination of the injured persons at PHC Jagatsukh on 28.04.2013.

13. PW-2 Tashi, PW-3 Banti, and PW-4 Hira Lal are injured and spot witnesses of the incident, whereas injured Khim Dass, Kunj Lal, and Nisha have not been examined, being witnesses of repetitive in nature.

14. PW-10 Dr. Philip Alexander, Medical Officer of Lady Willington Hospital, Manali, had examined injured PW-2 Tashi, PW-3 Banti, Nisha (not examined), Khim Dass (not examined), Kunj Lal (not examined), and PW-4 Hira Lal.

15. Other witnesses, PW-5 ASI Abhimanyu, PW-6 Bhupender Singh, PW-7 HC Sher Singh, PW-8 Constable Mahesh Kumar, PW-9 HC Mathura Ram, are Police Officials who have performed their respective roles in conducting the investigation and performing their respective roles for completion of investigation, which has resulted in preparation of challan and presentation thereof in the Court.

16. On behalf of respondent, incident has not been disputed, however, defense was taken that respondent came to Dhaba of Tashi and after having tea, there was altercation between Tashi and respondent regarding payment of bill, which according to respondent was excessive. During that altercation, Tashi came with darat along with other persons who were present there and they started beating accused and while he

was trying to save himself, all injured persons sustained injury in the said occurrence.

17. After conviction under Sections 324 and 326 of IPC, respondent did not prefer appeal, and thus he has accepted the findings recorded against him that he was aggressor in the incident and he has caused injuries to the victims not in defense, but as an aggressor.

18. Now, incident is an admitted fact. Findings of the Trial Court that respondent was aggressor also stand admitted, and now, issues involved in present appeals are whether respondent is liable to be sentenced under Section 307 IPC and Section 25 and 27 of Arms Act also, and/or he is liable for enhancement of sentence awarded to him under Section 324 and 326 IPC.

19. In aforesaid facts for the purpose of adjudication of issues raised in appeal, there is no necessity to discuss the role and evidence brought on record with regard to official witnesses from PW-5 to PW-9. For nature of injuries received by injured persons as well as evidence on record with regard to commission of offense by respondent under Section 307 IPC and Sections 25 and 27 of the Arms Act, statements of PW-2 Tashi, PW-3 Banti, and PW-4 Hira Lal, would be relevant.

20. With regard to alleged commission of offense under Sections 25 and 27 of the Arms Act, it would be relevant to refer following provisions of the Arms Act, 1959:-

Section 2

2. Definition and interpretation.---(1) In this Act, unless the context otherwise requires,—

(a)

(i) "prohibited arms" means—

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing,2(a)(i)

and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

Section 7

"Prohibition of acquisition or possession, or of manufacture or sale of prohibited arms or prohibited ammunition.—No person shall—

(a) acquire, have in his possession or carry; or

(b) [use, manufacture], sell, transfer, convert, repair, test or prove; or

(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof;

any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf."

21. Penalties for having in possession any arm without license for having the same is punishable under Section 25 of the Act, and user of any arm in contravention of Section 5 is punishable under Section 27 of the Act.

22. In present case, weapon of offense used as an arm is darat, i.e. sickle. In the details of prohibited arms provided under Section 2(a)(i), it does not include darat or sickle. However, apart from the said detail,

Central Government by Notification in the Official Gazette may specify any other arms as prohibited arms. As also recorded by the Trial Court, prosecution in this case has also not shown any Notification issued by the Central Government prohibiting the darat or sickle under Section 7 or any other provision of the Act. Learned Senior Additional Advocate General has also failed to refer any Notification or provision warranting for holding a license for having darat/sickle in possession.

23. Observations made and findings returned by the Trial Court related to charges framed under the Arms Act in para 15 of the judgment remains unchallenged and uncontroverted for want of any material on record in establishing violation of provisions of the Arms Act by the respondent. Therefore, prayer for conviction under Sections 25 and 27 of the Arms Act is not sustainable.

24. With regard to alleged commission of offense under Section 307 IPC (now Section 109 of BNSS, 2023), it would be relevant to refer provisions of Section 307 of IPC, which reads as under:

“307 IPC Attempt to murder.—

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.---When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section."

25. In ***Amit Rana alias Koka and Another Vs. State of Haryana***, reported in **2024 (15) SC 42**, the Apex Court has observed as under:

"6. A perusal of Section 307 IPC, would make it clear that it really imbibes the true spirit of the maxim "*culpa poena per esto*" – means "*let the punishment be proportionate to the offence; let the punishment fit the crime.*" It itself prescribes three types of sentences imposable on a convict thereunder. If it is an attempt to murder simpliciter, the offence is punishable maximum with by a term of imprisonment of either description upto ten years and fine. The last part of Section 307 prescribes death sentence as the only punishment when the offender during the

commission of the crime is under the sentence of imprisonment for life and hurt is caused to the victim.”

7-8

9. Section 307, IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307, IPC is constituted by the concurrence of *mens rea* followed by *actus reus*, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a “*sine qua non*”. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307 IPC.”

26. In ***State of Himachal Pradesh Vs. Shamsher Singh***, reported in ***AIR 2025 SC 2180***, the Apex Court has held as under:

“12. It may be emphasized that to attract Section 307 IPC, it is not necessary that the hurt should be grievous or of any particular degree. If hurt of any nature is caused and it is proved that there was intention or knowledge to cause death, Section 307 IPC would stand attracted.”

27. In ***Roshan Lal Vs. State of Haryana***, decided on 22.05.2026, ***2026 INSC 524***, the Apex Court has held as under:

“35. Undoubtedly, the injuries sustained by Amar Singh (PW3) were grievous in nature, and the medical evidence demonstrates that the injury to the head subsequently led to serious complications. However, the gravity of the injury by itself cannot be determinative of the offence under Section 307 IPC unless the prosecution is able to establish the requisite *mens rea* contemplated under the provision. The intention to commit murder cannot be presumed merely because the injuries were ultimately opined to be dangerous to life. In the absence of evidence

showing prior motive, premeditation, repeated deliberate blows with deadly weapons, or any conduct indicative of a determined effort to cause death, this Court is unable to hold that the appellants possessed the intention or knowledge necessary to attract Section 307 IPC in the light of Bipin Bihari (*supra*).

36. At the same time, the evidence on record clearly establishes that the appellants voluntarily caused grievous injuries to the complainant, particularly on vital parts of the body, resulting in fractures and prolonged medical treatment. At this juncture, it is imperative to reproduce Section 320 IPC for our reference: -

Grievous hurt. —The following kinds of hurt only are designated as “grievous”: — First. —Emasculation.

Secondly. —Permanent privation of the sight of either eye.

Thirdly. —Permanent privation of the hearing of either ear.

Fourthly. —Privation of any member or joint. Fifthly. —Destruction or permanent impairing of the powers of any member or joint.

Sixthly. —Permanent disfiguration of the head or face. Seventhly.

—Fracture or dislocation of a bone or tooth. Eighthly. —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

37. The injuries sustained by the complainant, as borne out from the medical evidence on record, clearly fall within Clause Seventhly of Section 320 IPC, and would also attract Clause Eighthly in view of the finding that the injury was dangerous to life/prolonged treatment. The evidence of the doctors establishes that the complainant suffered fractures in both parietal bones near the midline, accompanied by neurological complications and prolonged hospitalization. Since fracture or dislocation of a bone constitutes grievous hurt within the meaning of Section 320 IPC, the offence committed by the appellants is squarely covered by Clauses Seventhly and Eighthly thereof. Consequently, the ingredients necessary to attract Section 325 IPC stand fully satisfied in the facts and circumstances of the present case.

38. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to establish the essential ingredients necessary to sustain a conviction under Section 307 IPC, particularly the existence of the requisite intention or knowledge to commit murder. However, the evidence on record unequivocally proves that the appellants, in furtherance of their common intention, voluntarily caused grievous hurt to the complainant, the injuries being squarely covered under Clauses Seventhly and Eighthly of Section 320 IPC. Accordingly, the conviction of the appellants under Section 307 read with Section 34 IPC is altered to one under Section 325 read with Section 34 IPC."

28. In recent judgment dated 08.09.2026 pronounced by the Apex Court in ***SLP (Crl.) No. 14611 of 2026***, titled ***Surender Kumar Vs. State of Haryana & Others***, after taking into consideration earlier pronouncements of the Apex Court in ***State of Madhya Pradesh Vs. Kashiram and others, 2009 (4) SCC 26***; ***Chimanbhai Jagabhai Patel Vs. State of Gujarat and Another 2009 (11) SCC 273***, ***Pasupuleti Siva Ramakrishna Rao v. State of Andhra Pradesh and Others, 2014 (5) SCC 369***; ***State of M.P. v. Saleem alias Chamaru and Another, 2005 (5) SCC 554***; ***State of Madhya Pradesh Vs. Kanha alias Omprakash, 2019 (3) SCC 605***; and ***Jage Ram and others Vs. State of Haryana, 2015 (11) SCC 366***, it has been held as under:

"8. It has two limbs, insofar as the punishment is concerned but only one regarding the culpability. The culpability being found if there is commission of any act with such intention or knowledge that the act could result in death; making the perpetrator guilty of murder. As regards punishment, the accused shall be punished with imprisonment of either

description for a term which may extend to 10 years and shall also be liable to fine; which is the first limb. The second limb provides that if such act, caused with intention or knowledge, results in hurt to any person then the offender shall be liable either to imprisonment for life or to such punishment as provided in the first limb. Hurt, grievous or simple, is not a precondition to attract Section 307, but, if there is a hurt, be it simple or grievous, and the act causing such hurt is with the intention or knowledge that such act could have caused death; making the perpetrator guilty of murder, then a graver punishment is provided.

9. In ***State of Madhya Pradesh v. Kashiram and Others*, (2009) 4 SCC 26** this Court held that to justify the conviction under Section 307, it would be sufficient if there is intent coupled with some overt act in execution thereof. It is not essential that there should be a bodily injury capable of causing death or even an injury in the nature of simple hurt. Relying on a number of decisions, it was held that the intention to kill or knowledge that death will occur, is a question of fact depending on a given case to find culpability under Section 307. The mere fact that the injury inflicted was simple or minor, will not by itself rule out the application of Section 307, since the determining question is the intention or knowledge.

10. ***Chimanbhai Jagabhai Patel v. State of Gujarat and Another*, (2009) 11 SCC 273** found the ingredients under Section 307 to be; (i) the overt act of the accused, (ii) the intention or knowledge; to cause a bodily injury, which he knew would likely cause death, or such bodily injury which in the ordinary course of nature would lead to death, or that act is so imminently dangerous that in all probability death would be occasioned and (iii) that the accused had no excuse for incurring the risk of causing such death or injury. ***Pasupuleti Siva Ramakrishna Rao v. State of Andhra Pradesh and Others*, (2014) 5 SCC 369** differentiated the punishments; as we found in the first and second limbs. One, the intention alone leading to a punishment of 10 years and if it is accompanied with hurt, then extending to life imprisonment. ***State of M.P. v. Saleem alias Chamaru and Another*, (2005) 5 SCC 554** categorically held that to sustain a conviction under Section 307, there is

no necessity for a bodily injury capable of causing death. A simple injury caused, would not as a corollary mean absence of intention to cause the death, which intention or knowledge has to be discerned from the circumstances surrounding the crime. ***State of Madhya Pradesh v. Kanha alias Omprakash, (2019) 3 SCC 605*** and ***Jage Ram and Others v. State of Haryana, (2015) 11 SCC 366*** held that the absence of a fatal injury would not dislodge Section 307, but the nature or gravity of the injury and the nature of the weapon used could lead to an inference of intent and knowledge.

11. The nature of the hurt on which the courts laboured in the impugned orders, according to us, though relevant cannot on that sole basis result in a finding of attempt to murder. But the finding of the Sessions Court that there is no intention or knowledge alleged, could be taken as a reason or justification for not bringing in Section 307.

12. The trial had proceeded substantially, and it was at a late stage, the prayer was made to bring in Section 307. Both the medical certificates were available when the chargesheet was filed, since it was obtained during investigation. At the time of taking cognizance, the injured victim did not complain of Section 307 having not been incorporated, which was absent in the chargesheet itself. The injured were very conscious of the injuries sustained by them and were also aware of the manner in which the acts were perpetrated by the accused. No such case of an intention or knowledge as would attract Section 307 having been raised at the initial stage or at the stage of cognizance or when the evidence was being led; which the investigation also did not detect, the application made at the later stage, cannot be entertained and hence, the finding leading to rejection of incorporation of Section 307, is justified."

29. In the present case, undoubtedly, injured persons had received simple as well as grievous hurts, and the Doctor has also opined that injury received by some of victims can be dangerous to the life. As held by the Apex Court and discussed supra, the nature of injury alone is

not sufficient to hold an accused guilty for commission of offense under Section 307 IPC, unless other ingredients, including intention or knowledge to cause death, are proved.

30. For convicting an accused for commission of offense under Section 307 IPC, essential ingredient of *mens rea* followed by *actus reus* to commit an attempt to murder is *sine qua non* and, therefore, unless an act is committed with intention or knowledge to commit murder, and under such circumstances if death had been caused, the offense would have amounted to murder, or act itself is of such a nature as would have caused death in usual course of an event, the act would not constitute the offense punishable as an attempt to murder under Section 307 IPC.

31. In present case, in statements of PW-2 Tashi, PW-3 Banti Devi, and PW-4 Hira Lal, it has come that respondent was unknown in that area. He was noticed for the first time there, and he gave one or two blows to the injured persons. He did not target any one of witness so as to construe his intention to commit murder. He was not known to the injured prior to the incident, and there was no cause or reason for him to make an attempt to murder the injured persons and the injured witnesses have not stated that respondent attacked them with intention to kill or with knowledge that by that act, if death is caused, he would have been guilty of murder. Only for causing grievous injuries to a person dangerous to the

life, but without intention or knowledge as contemplated under Section 307 IPC, an accused cannot be convicted under Section 307 IPC.

32. Learned Senior Additional Advocate General could not point out any material evidence on record to establish ingredients required to be proved for commission of offense under Section 307 IPC.

33. So far as enhancement is concerned, in view of nature of evidence on record and genesis of the incident, and also keeping in view the fact that incident is of April, 2013 and we are in 2026, and further that respondent was not having any axe to grind against the victims, and it appears that the incident in reference was spontaneous, without any premeditated plan or conspiracy, we are of the considered opinion that no case is made out for enhancement of sentence against the respondent for commission of offense under Sections 324 and 326 IPC. In the given facts and circumstances, there is no infirmity or perversity in awarding the quantum of sentence to respondent for commission of offense under these sections.

34. In view of aforesaid discussion, we don't find any merit in appeals, and accordingly both appeals are dismissed for lack of evidence to prove commission of offense by the respondent under Section 307 of IPC and Section 25 and 27 of Arms Act.

35. Record of Trial Court be sent back forthwith. Pending miscellaneous application(s), if any, are also disposed in the same terms. Bail bonds furnished by respondent stand discharged.

***(Vivek Singh Thakur),
Judge.***

***(Bhupesh Sharma),
Judge.***

***9th October, 2026
(Keshav)***