

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No. 401 of 2018**

Arising Out of PS Case No.-71 Year-2006 Thana- BISFI District- Madhubani

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Md. Nazir Son of Md. Siddique, Resident of Village- Jagwan East, P.S.- Bisfi,  
District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Shivli Nomani
3. Md. Sheikh Junaid Farooque.  
Both 2 & 3 Sons of Muzaffar Hasan @ Kallu.
4. Md. Aamir Son of Md. Sheikh Farooque, All are Resident of Village-  
Jagwan Tola, Manirabad, P.S.- Bisfi (Patauna), District- Madhubani.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Pankaj Kumar Das and<br>Mr. Rajeev Ranjan, Advocates |
| For the State        | : | Mr. Nagendra Prasad, APP                                 |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN**  
**AMANULLAH**

**ORAL JUDGMENT**

**Date : 19-11-2019**

Heard learned counsel for the petitioner and learned  
APP for the State.

2. The petitioner has moved the Court against the order  
dated 07.03.2018 passed in Sessions Trial No. 234 of 2010/2342  
of 2013, by the Sessions Judge, Madhubani by which the opposite  
parties no. 2 to 4 have been acquitted under Sections 447, 307,  
504/34 of the Indian Penal Code and convicted only under  
Sections 323 and 341 of the Indian Penal Code.



3. The petitioner had filed Bisfi (Patauna) PS Case No. 71 of 2006/GR No. 1067 of 2006, under Sections 447, 341, 323, 327 and 504/34 of the Indian Penal Code in which cognizance was taken under all the Sections. Upon trial, the judgment has resulted in acquittal of the opposite parties no. 2 to 4 under Sections 447, 307, 504/34 of the Indian Penal Code and conviction under Sections 323 and 341 of the Indian Penal Code and they have been sentenced to undergo simple imprisonment of one year and fine of Rs. 1,000/- each under Section 323 of the Indian Penal Code and fine of Rs. 5,00/- each under Section 341 of the Indian Penal Code and in case of default in depositing the fine, to undergo further one month simple imprisonment.

4. Learned counsel for the petitioner submitted that the accused had assaulted him and two others with *lathi* and iron rod and the blow was also on the head and acquittal under Section 307 of the Indian Penal Code is not justified. It was submitted that even witnesses have deposed that the accused had assaulted the injured. Learned counsel referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Hari Mohan Mandal v. State of Jharkhand** reported as **2004(3) PLJR (SC) 7**, for the proposition that to justify a conviction under Section 307, it is not essential that bodily injury capable of causing death should have



been inflicted and it is sufficient if there is present an intent coupled with some overt act in execution thereof and further that merely because the injury inflicted on the victim were simple in nature it would not be correct to acquit under Section 307 of the Indian Penal Code.

5. Learned APP submitted that the Court below has meticulously weighed the evidence and has rightly arrived at the conclusion by which it has acquitted the accused under Sections 307, 447 and 504 of the Indian Penal Code. It was submitted that the assault resulted in only simple injury and even on the head, there was only one lacerated wound which clearly does not satisfy the requirement of conviction under Section 307 of the Indian Penal Code as it did not disclose premeditated intention to kill, as there was no repetition of blow and even the weapons used could not be said to be weapons which may indicate intention to kill the person assaulted.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The order impugned has discussed the evidence and has rightly convicted the opposite parties no. 2 to 4 only under Sections 323 and 341 of the Indian Penal Code. Neither the nature of injury nor the



sequence of events indicate that there was any intention to kill or the blows were inflicted knowing fully well that they will result in death of the person on whom it was inflicted.

7. Coming to the decision of the Hon'ble Supreme Court in the case of **Hari Mohan Mandal** (supra), the Court finds that the same has no application in the present case. There cannot be any issue with regard to the principle held by the Hon'ble Supreme Court that merely because the injuries were simple in nature, conviction under Section 307 of the Indian Penal Code would not be justified, as it has to be seen that the injury inflicted has been with the avowed object or intention to cause death. In the case before the Hon'ble Supreme Court, the person so convicted had inflicted 3-4 knife blows on the abdomen of the injured. Further, the accused had inflicted knife blow on the head and eye of another person who had gone to save the first victim and another co-accused had assaulted by throwing bricks hitting the eye of injured person. In the present case, an abstract principle of law cannot be applied in vacuum as there has to be foundational facts to which law can be applied. Thus, in the present case, there being only a single blow which has been found to be simple in nature, on the back of the head, can in no way be construed to be



indicative of a premeditated mind to inflict such blow knowing that the same would result in the death of the person.

8. In the aforesaid background, the Court does not find any ground to interfere in the order impugned.

9. Accordingly, the application stands dismissed.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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