

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.713 of 2018**

Arising Out of PS. Case No.-250 Year-2016 Thana- NATHNAGAR District- Bhagalpur

Chandan Kumar Mandal Son of Anil Mandal @ Anil Kumar Mandal,
Resident of Village- Kanjhiya, Police Station- Nathnagar Madhusudanpur,
District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manohar Prasad Singh, Adv.
For the State	:	Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT**

Date : 19-05-2023

1. The present appeal has been directed against the judgment of conviction dated 11.01.2018 and order of sentence dated 15.01.2018 passed by learned Additional Sessions Judge-V, Bhagalpur in Sessions Trial No. 35/2017, Trial No. 534 of 2017 arising out of GR Case No. 3169 of 2016 connected to Nathnagar (Madhusudanpur) P.S. Case No. 250/2016 whereby and whereunder appellant has been convicted for the offences punishable under Sections 307, 324 and 341 of the IPC and has been sentenced to undergo rigorous imprisonment for ten years along with fine of rupees five thousand (Rs. 5,000/-) for offence under Section 307 of the IPC. The appellant has further been sentenced to undergo rigorous imprisonment for three years along with fine of rupees one thousand only (Rs. 1000/-) for offence under Section 324 of the IPC and an imprisonment for a term of



one month and a fine of rupees five hundred only (Rs. 500/-) for offence under Section 341 of the IPC. In case of default in payment of fine, he shall further undergo simple imprisonment of one month. All the sentences shall run concurrently.

2. According to fardbeyan of informant-cum-victim (PW-3) the occurrence is of 06.09.2016 at near about 7:30 PM for which fardbeyan was recorded by S.I. M.N. Paswan of Barari police station District Bhagalpur at JLNMCH Mayaganj, Bhagalpur Emergency Surgery Ward Bed No. 12 on 07.09.2016 at about 3 PM and immediately whereafter FIR was registered.

3. The prosecution case, as stated by the informant, in brief, is that on the fateful day i.e. 06.09.2016 at near about 7.30 PM, she was heading towards the lavatory to answer the nature's call where appellant and others were waylaying near the toilet. The appellant and others grabbed the informant after seeing her and the present appellant inflicted a knife blow upon the informant-victim with intention to kill as a result of which informant sustained injuries on the neck and right portion of stomach and she fell on the ground in injured condition. On hearing her scream, the victim's husband and other villagers ran and the moment the appellant and others noticed the arrival of the villagers, they fled away from the spot. It is further stated that appellant and others are



said to have threatened to kill informant and her family, in case, FIR is lodged in thana. It is further alleged that before the said occurrence the appellant attacked upon the informant with intention to kill. It is further stated that informant cum victim was brought in the said hospital for treatment with the help of her husband and villagers.

4. On the basis of fardbeyan of the informant, Nathnagar (Madhusudanpur) P.S. Case No. 250/2016 dated 07.09.2016 was registered under Sections 341, 307, 324, 506 and 34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, appellant along with acquitted accused Anil Mandal came to be charge sheeted under Sections 341, 307, 324, 506 and 34 of the IPC. Rest two accused persons namely Vinit Kumar Mandal and Govind Mandal were shown as not sent up. Thereafter, the learned trial court took cognizance under the aforementioned sections of IPC. The learned trial court was pleased to frame charges against the appellant and acquitted accused Anil Mandal under Sections 307/34, 341/34, 324/34 and 506 of the IPC and charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.



5. In order to bring home guilt of accused persons, prosecution has examined altogether eight witnesses namely, PW-1 Dr. Chandra Mohan Singh, PW-2 Gagan Mandal, PW-3 Kavita Devi (informant-cum-victim), PW-4 Ravindra Prasad Singh @ Ravindra Singh, PW-5 Upendra Prasad Singh @ Upendra Mandal, PW-6 Pratima Devi, PW-7 Umakant Mishra (I.O.) and PW-8 Vidyanand Singh. Prosecution also proved injury report as Exhibit-1, supplementary injury report as Exhibit-1/1, fardbeyan in the writing and signature of S.I. Mahendra Narayan Paswan as Exhibit-2, forwarding of fardbeyan as Exhibit-2/1, re-forwarding of fardbeyan to Nathnagar P.S. as Exhibit-2/2, registration of FIR as Exhibit-2/3 and chargesheet as Exhibit-3. Defence of accused persons as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial. However, they did not enter in defence.

6. After hearing the parties, the learned trial court was pleased to convict the appellant-accused and to sentence him as indicated in the opening paragraph of the judgment. However, co-accused Anil Mandal stood acquitted by the learned trial court by the same judgment.



7. Heard Mr. Manohar Prasad Singh, learned counsel appearing for the appellant at sufficient length of time. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant has submitted that there are vital discrepancies in the testimonies of prosecution witnesses and on the said discrepancies it is found that prosecution witnesses have not supported their case. He has further submitted that place of occurrence has not been specifically established and on the said ground alone the case of the prosecution is not proved. It has further been submitted that basically it is a case of no eye witness. It has further been argued that informant cum victim is not a witness of high caliber to whom credibility of any degree can be attached as she went with the appellant Chandan Kumar Mandal leaving her children at home and hence, the statement of such lady cannot be given due weightage. He has further submitted that the alleged occurrence took place at 07:30 PM on 06.09.2016 but formal FIR has been lodged at 21 hours on 07.09.2016 after recording her ferdbeyan at 3:00 PM on 07.09.2016 so it has been submitted that fardbeyan was recorded after delay of 19:30 hours. He further submits that blood was not found on the place of occurrence. There is vital contradiction on the place of occurrence



and the prosecution has not proved the place of occurrence and on this score alone appellant may be acquitted. In this context false implication of appellant cannot be ignored and allegation against the appellant is nothing but afterthought and circumstances clearly indicate that appellant is innocent and prosecution has completely failed to prove its case beyond reasonable doubts.

8. Mr. A.M.P. Mehta, learned Additional Public Prosecutor appearing for the State has submitted that from perusal of Exhibit-2 which is initial version of story of prosecution it is crystal clear that appellant stabbed the informant/victim on her neck and stomach and the same fact is reiterated by the PW-3 who is victim as well as informant of the case during her examination in chief. He further submits that PW-1 who is doctor has sufficiently proved the story of prosecution by mentioning that there are two injuries on vital parts of the body caused by sharp cutting weapon and the said injury is dangerous to life which shows the intention of the appellant. He has further submitted that PW-1 Dr. Chandra Mohan Singh has clearly stated in para 1 of examination in chief that PW-1 examined the injured on the alleged date of occurrence i.e. 06.09.2016 at 8:30 PM which suggests that after one hour of the occurrence she got medical facility. Had the victim failed to get the treatment in a hospital



within a golden hour period that saved the victim otherwise outcome would have been very disastrous. He further submits that one thing is quite clear that victim's evidence and doctor's opinion are quite consistent with the story of prosecution regarding place of injury, weapon used in committing the said injury, duration of injury which is within six hours specifying the truthfulness of prosecution story. Except the hostile witnesses, prosecution witnesses on the point of fleeing away the accused their version is quite consistent as their version is not contradictory with the earlier version recorded by the police during investigation and PW-7 the I.O. has recorded the statement of said witnesses and it has been stated that all the witnesses have seen the appellant fleeing away from the place of occurrence and I.O. (PW- 7) has clearly identified and proved the place of occurrence. In this context, manner of occurrence, place of occurrence and time of occurrence is very much consistent with initial version of prosecution story as well as during the deposition adduced by PW-3 in court. No attention was drawn by the defence regarding the earlier version recorded by police during investigation and even no suggestion was given on the earlier statement recorded by the police in respect of PW-3. In this way, the evidence adduced by PW-3 is quite consistent with the story of prosecution and no dent



has been made by the defence to discredit the testimony of PW-3. In this way, her testimony is enough to secure conviction on that account only. He has further submitted that FIR has been lodged after recording fardbeyan in hospital and all the steps taken by concerned officials have been mentioned in Ext. 2, Ext. 2/1 and Ext. 2/2 which is quite evident from initial version of story of prosecution. The defence of appellant's counsel regarding delay in lodging FIR and allegation is nothing but afterthought which cannot be tenable in light of present case which is well proved. He has further submitted that finding of the trial court is just and due appreciation of the evidence and impugned judgment is based on sound principle of law and hence, the impugned judgment does not require any interference.

9. I have perused the impugned judgment, order of trial court and lower court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

10. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Sections 307, 324 and 341 of the IPC.



11. PW-1 Dr. Chandra Mohan Singh who examined Kavita Devi (informant-cum-victim) found following injuries:-

(i) L shaped sharp cutting injury over the left mandibular edge of 1.5"x1"x1/4".

(ii) Sharp cutting injury of 1"x1/2"x1/4" over the right hypochondriac region of the anterior abdominal wall.

Investigations:- Plain X-ray abdomen showing the diaphragm.

Age of the injuries:- Less than six hours.

Cause of the injuries:- Sharp cutting weapons.

Supplementary injury report dated 16.09.2016:- As per B.H.T., O.T. findings are:-

(i) Haemoperitoneum (means blood inside the paritorial cavity).

(ii) 1" rent found in the under surface of the right lobe of the liver.

(iii) 1/2" rent found in the anterior wall of the stomach.

Nature of injuries:- Dangerous to life.

These injury reports which includes primary and supplementary injury are written and signed by PW-1. Preliminary injury report is marked as Exhibit-1 and supplementary injury report is marked as Exhibit-1/1.

During cross examination of this witness, this witness has clarified that whenever there is possibility of whole in liver on account of illness, pus would be discharged but same cannot be possible in the case of haemoperitoneum.

12. From perusal of evidence adduced by the doctor, it is crystal clear that place of injury is on the vital part of the body i.e. left mandibular edge and over right hypochondriac region of



anterior abdominal wall and weapon used in the offence clearly indicates that it is sharp cutting weapon which is consistent with the initial version of prosecution story i.e. Exhibit-2 (fardbeyan) and time elapsed during injury is within six hours which also stands corroborated by the facts narrated by the informant during the course of recording fardbeyan and nature of injury as opined by the doctor is dangerous to life. The force and impact of injuries are evident from supplementary injury report. The doctor has specifically stated that informant/victim was examined by this witness on 06.09.2016 at 8:30 PM which is just one hour after the occurrence and supplementary injury report indicates that she was discharged from the concerned hospital on 16.09.2016. The informant (PW-3) availed the medical facility which is quite evident from the evidence adduced by the doctor. Had this facility not been availed by the informant (PW-3) at the relevant time, she might have died keeping in view the place of injury, nature of injury, number of injury and weapon used for causing the said injury.

13. PW-2 Gagan Mandal has stated that he knows the victim who is from his village. This witness further stated that informant's house is at the distance of 1 km from his house. This witness further stated that he identified the appellant and other as



their houses are at the distance of 1/2 km from his house. The appellant and others are named in the case of assaulting Kavita Devi (informant-PW-3). This witness also stated that he has not heard hulla regarding assault upon Kavita Devi. Police had not recorded the statement of this witness. This witness has been declared hostile.

14. PW-3 Kavita Devi is victim cum informant of the present case. Her fardbeyan was recorded by S.I. Mahendra Narayan Paswan of Barari police station and by virtue of this fardbeyan, FIR was set into motion. During her examination in chief this witness has stated that the occurrence took place near about eleven months ago at about 7:00 PM. This witness further stated that she was heading towards the lavatory to answer the nature's call which is situated beside her house where appellant and others grabbed her. This witness further stated that she was inflicted by the appellant in stomach and neck and after hearing her scream, her jethani Pratima Devi (PW-6), her husband and villagers came. This witness further stated that appellant and others assaulted her and when she started screaming they fled away. This witness further stated that with the help of her husband and others she was taken to Mayaganj hospital for treatment. She further stated that her statement was recorded by the daroga in



Mayaganj hospital when she regained consciousness. She has further stated that 2-3 years ago she was enticed by the appellant and was taken by him to Delhi and after returning from there she came to her husband's house. She has further stated that the alleged occurrence took place on account of revengeful attitude of the appellant as the informant cum victim was residing at her husband's house. This witness has identified the appellant and others in court. During cross examination she has reiterated the earlier version that she was inflicted by chura when she was in conscious position. During cross examination nothing was elucidated by the defence to discard her testimony on the point of injury caused by the appellant on the neck and stomach of informant and she supported the factum of occurrence, place of occurrence, time of occurrence, manner of occurrence. Even the said witness is subjected to lengthy cross examination but nothing has been elucidated to discard her testimony as there is a consequence of fact that injury to witness is an inbuilt guarantee of her presence at the scene of crime. The defence has not made any dent in the story of prosecution which has specifically and categorically reiterated by the PW-3 who is victim as well as informant of the present case. During course of cross examination her statement is quite consistent with the story of prosecution.



15. PW-4 Ravindra Prasad Singh @ Ravindra Singh has stated that on the alleged date of occurrence he had neither gone to the house of Munna Mandal nor heard anything. This witness further stated that daroga went to his door but he did not make any query regarding the said occurrence. This witness has been declared hostile.

16. PW-5 Upendra Prasad Singh @ Upendra Mandal has stated that he did not remember as to when occurrence took place. This witness further stated that police did not make any query to him. This witness has been declared hostile.

17. PW-6 Pratima Devi has stated that the occurrence is of year 2016 and occurrence took place near about 8-9 months ago from today at about 7:30 PM. This witness further stated that she was at her house and she heard the sound of screaming. When she reached near toilet, she saw that three persons caught hold Kavita Devi (informant/PW-3). She recognized appellant and Anil Kumar whereas others had fled away. This witness stated that she saw that appellant inflicted knife in the right portion of stomach of informant. She further stated that injury was also found on the neck and blood was oozing out. She further stated that on her screaming, husband of informant (Kavita Devi) and Krityanand came and they took informant (Kavita Devi) to Mayaganj hospital.



She further stated that police came to her house and enquired from her and she stated all the facts to police. During cross examination the attention of this witness has been drawn by the defence with regard to her earlier statement recorded by the police during course of investigation and this witness has denied the suggestion that she reached on the place of occurrence after raising alarm by the victim where victim stated that appellant inflicted knife's blow in right portion of stomach and went away towards west side. From perusal of Exhibit-2 (fardbeyan), it is crystal clear that she is not eye witness to the alleged occurrence as all the nearby people reached at the place of occurrence on hearing the screaming of victim/informant which is just after the alleged occurrence and attention has already been drawn by the defence during the cross examination that earlier the statement recorded during investigation by this witness has been denied during the course of adducing evidence and hence, attention has been drawn on the earlier version. In this way, PW-6 is not eye witness of the alleged occurrence. From perusal of evidence adduced by PW-6, it appears that she claims to be eye witness of the alleged occurrence but from the version of PW-3 and Exhibit-2, it is proved that she is not eye witness to the alleged occurrence rather she reached at the place of occurrence on hearing the screaming of victim and the



I.O. (PW-7) has clearly stated at para 43 during cross examination that no witness has seen stabbing the informant as the I.O. has stated in para-43 that witnesses have seen the appellant fleeing away from the place of occurrence. From perusal of evidence of PW-7 (I.O.), it is clear that all the witnesses have seen the appellant fleeing away from the place of occurrence and they have not seen inflicting chura upon the informant.

18. PW-7 Umakant Mishra is I.O. of the case. This witness has stated that fardbeyan was recorded by S.I. Mahendra Narayan Paswan of Barari thana at JLNMCH, Bhagalpur which bears his writing and signature and same has been marked as Exhibit-2. This witness further stated that fardbeyan was forwarded to S.H.O., Madhusudanpur police station by S.I. Mahendra Narayan Paswan under his signature which has been marked as Exhibit-2/1. He further stated that fardbeyan was re-forwarded by Officer in charge of Madhusudanpur P.S. Harun Mustaq, S.I. to Nathnagar police station for registration of the case. This witness identified the writing and signature of Harun Mustaq marked as Exhibit-2/2. On the said fardbeyan, Kaiser Alam Inspector cum S.H.O. Nathnagar police station has put P.S. Case number which is in his writing and signature, marked as Exhibit-2/3. He further stated that charge of investigation was



handed over to him in this case and he proceeded to the place of occurrence. He recorded the statement of Pratima Devi in para-4 of the case diary and then recorded the statement of witness Vijyanand Singh and after that inspected the place of occurrence as pointed out by the said witnesses. The place of occurrence is vacant land of Kishun Mandal situated in village Kanjhiya which is near about 35-40 yards west from the house of informant and toilet where alleged occurrence was stated to have happened with the informant/victim (PW-3). The boundary of place of occurrence is as follows:-

North:- newly constructed roofed house of Kishun Mandal wherein no one resides.

South:- barren field of Ram Pukar Mandal.

East:- plain government land and shiv mandir.

West:- plain land of Wakil Mandal and no other things were found on the place of occurrence.

This witness has stated that thereafter he recorded statements of other witnesses. He further stated that he recorded the re-statement of the informant on 09.09.2016 who is admitted in bed no. 12 of surgery ward of Mayaganj hospital. He further submitted that he got recorded the preliminary injury report after receiving it and then recorded final injury report after receiving



from the hospital. Thereafter, he filed charge sheet no. 68/16 on 30.11.2016 against appellant and others under Sections 341, 307, 324, 506 and 34 of the IPC which is under his pen and signature and the same has been marked as Exhibit-3. During cross examination, this witness has stated that none of witnesses have stated to see infliction of knife's blow by the appellant rather they saw the appellant and others fleeing away from the place of occurrence. This witness has denied the suggestion that his investigation is faulty.

19. PW-8 Vidya Nand Singh stated that occurrence took place on 06.09.2016 at about 07-07:30 PM. This witness stated that he was sitting at Chowk at that time and heard hulla and after hearing hulla he went there and saw that Kavita Devi (informant) was caught hold by Anil Mandal and appellant inflicted knife's blow. He stated that victim sustained injury on her right side of neck and stomach. He further stated that after arrival of this witness, Pratima Devi and nearby people came. He has stated that this witness and others took the victim to hospital where she was treated and police made query to this witness. This witness identified the appellant and other in the court. During cross examination, the attention of this witness has been drawn by the defence with regard to his earlier statement recorded by the police



during course of investigation and this witness has denied the suggestion that on the sound of alarm he saw that appellant and other caught the victim/informant and appellant by inflicting knife's blow, was fleeing away and said knife blow hit on right portion of neck and stomach. At para 41 of his deposition this witness stated that toilet situated outside the house of his brother Munna Mandal is the place of occurrence. From perusal of Exhibit-2 and statement of PW-3 as well as statement of I.O.(PW-7), this witness is not eye witness of the alleged occurrence rather I.O. (PW-7) has clearly stated that none of the witness has seen the occurrence regarding stabbing but they have seen the accused persons fleeing away from the place of occurrence.

20. Now, it is to be seen whether the offence of appellant is punishable under Sections 307, 324 and 341 of the IPC in the light of given facts and circumstances of the case.

21. To constitute an offence under Section 307 of the IPC, the following ingredients of the offence must be present;

- (a. An intention or knowledge relating to commission of murder and
- (b. Doing of an act towards it.

For the purpose of Section 307 IPC, what is the material is the intention or knowledge, and not the consequence of the



actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with the intention of causing death but which fails to bring intended consequence on account of initiation on account of intervening circumstances. The intention or knowledge of the cause must be such as a necessary to constitute a murder. In absence of intention or knowledge which is a necessary ingredient of Section 307 IPC, there can be no offence of attempt to murder.

22. Considering the aforementioned facts and circumstances, the following judicial decisions are pertinent to cite:-

In ***Takdir Samsuddin Sheikh v. State of Gujarat and another*** reported in ***AIR 2012 SC 37***, the Hon'ble Supreme Court observed at para 10(ii) as follows:-

"10 (ii). This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a



ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

In Brahm Swaroop and another v. State of U.P., reported in ***AIR 2011 SC 280***, the Hon'ble Supreme Court at para 22 of the judgment held as follows:

"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

In Ranjit Singh and others v. State of Madhya Pradesh, reported in ***AIR 2011 SC 255***, the Hon'ble Supreme court at para 17 of the judgment held as follows:-

"17. Under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction."



In Mano Dutt and another v. State of Uttar Pradesh,
reported in ***(2012) 4 SCC 79***, the Hon'ble Supreme Court at para
30 of the judgment observed as follows:-

"30... Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit."

In State of U.P. v. Kishan Chand and others reported in
(2004) 7 SCC 629, a similar view has been reiterated observing
that the testimony of a stamped witness has its own relevance and
efficacy. The fact that the witness sustained injuries at the time
and place of occurrence lends support to his testimony that he was
present during the occurrence.

In State of Madhya Pradesh v. Imrat and another
reported in ***(2009) 2 SCC (Cri) 558***, the Hon'ble Supreme Court at
para 11 of the judgment observed as follows:-

"11. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."



In Lachman Singh v. State of Haryana reported in ***(2006) 10 SCC 524***, the Hon'ble Supreme Court at para 13 of the judgment observed as follows:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Sadakat Kotwar and another v. The State of Jharkhand passed in ***Criminal Appeal No. 1316 of 2021***, the Hon'ble Supreme Court held at para 4.1 as follows:-

"4.1. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand



on the aforesaid principles, when the deadly weapon-dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

23. In the light of given facts and circumstances of the present case, it is found that informant who set the initial version of story of prosecution into motion by recording the fardbeyan (Exhibit-2) and from perusal of Exhibit-2 it is crystal clear that informant is the sole eye witness of the alleged occurrence and she has suffered two injuries during the course of occurrence by the appellant which has been narrated in the initial version of story of prosecution. Other witness is Dr. Chandra Mohan Singh (PW-1) who has given his opinion with regard to the injury which has already been discussed in the foregoing paragraphs that injuries are dangerous to life. So far as duration of injury, nature of injury, place of injury, weapon used in causing the said injury are concerned, opinion of this witness is quite consistent with the story of prosecution. Victim during adducing the evidence in court has stated that on raising alarm, the accused persons fled away. Had the victim not raised the alarm upon being injured by the accused, the outcome of criminal act of the accused could have produced a fatal effect. PW-3 has also stated during course of adducing



evidence that people of nearby reached and by the aid of nearby people she arrived at the hospital and on the said score the doctor has also pointed out that PW-3 informant was examined on 06.09.2016 at 8:30 PM and the said fact is quite consistent with the story of prosecution. Statement of PW-3 (informant) is quite reliable and inspires confidence which is corroborated and supported by the doctor while providing medical aid. Had the relatives/other people not arrived on the spot upon hearing her scream, outcome of attack on the neck and stomach of victim could have produced fatal effect and it was the arrival of relatives and people of neighbourhood as well as victim's treatment in hospital with the golden hours, that saved the victim, otherwise outcome could have been disastrous.

24. It is worth to mention that during course of cross-examination of PW-3 neither attention was drawn by the defence nor suggestion was made regarding the earlier version recorded by the I.O.(PW-7) during investigation. In this way, the version of PW-3 is quite intact and her earlier version during investigation and her deposition before court are quite consistent and her evidence has been corroborated by the medical evidence.

25. So far as Section 324 of the IPC is concerned, it has already been discussed that injuries are stated to have caused on



the vital parts of informant's body and said injuries are dangerous to life and appellant has repeatedly inflicted knife's blow on vital parts of the body and the opinion of the doctor is also quite consistent on the point of said version as discussed in foregoing paragraphs that voluntarily causing hurt by stabbing has well been established by the prosecution which is quite intact from the version of PW-3 and same stands corroborated by opinion of the doctor.

26. So far as Section 341 of the IPC is concerned, there is no specific and categorical evidence of restraining or preventing the victim by the appellant from going which is quite obvious from the evidence adduced by the PW-3 during her deposition. In this context, in absence of said evidence no offence is made out under Section 341 of the IPC.

27. In the light of discussion made above, I find no reason to differ with the findings given by the learned trial court on the point of Sections 307 and 324 of the IPC and submission advanced on behalf of learned A.P.P. is quite tenable in the light of said offences and hence, in my view, judgment of conviction on the point of Sections 307 and 324 of the IPC requires no interference. So far as judgment of conviction on the point of Section 341 of the IPC is concerned, the same is set aside.



28. The appellant has voluntarily surrendered before the trial court on 17.10.2016 and since then he is in custody and he has already served sentence of near about six years and seven months in custody. This court is of the view that if sentence of appellant is reduced to the period already undergone that would meet the ends of justice. Accordingly, the sentence is reduced to the period already undergone and with the aforesaid modification in sentence, this criminal appeal stands partly allowed.

29. Let the appellant be set free at once, if he is not warranted in any other case.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	15.05.2023
Uploading Date	19.05.2023
Transmission Date	19.05.2023

