

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.639 of 2024**

Arising Out of PS. Case No.-249 Year-2017 Thana- GHORASAHAN District- East  
Champaran

=====

Heyatun Khatoon, W/o Saleem Miyan, Resident of Village- Bengari, P.S.-  
Ghorasahan, District- East Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Rustam Mian, S/o Late Bakhashish Mian, Resident of Village- Bangari, P.S.-  
Ghorasahan, District- East Champaran
3. Raja Mian, S/o Late Bakhashish Mian, Resident of Village- Bangari, P.S.-  
Ghorasahan, District- East Champaran
4. Muslim Mian, S/o Late Bakhashish Mian, Resident of Village- Bangari, P.S.-  
Ghorasahan, District- East Champaran
5. Jaheer Mian, S/o Late Bakhashish Mian, Resident of Village- Bangari, P.S.-  
Ghorasahan, District- East Champaran
6. Tabrez Mian, S/o Late Bakhashish Mian, Resident of Village- Bangari, P.S.-  
Ghorasahan, District- East Champaran

... .. Respondents

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**Appearance :**

|                            |   |                              |
|----------------------------|---|------------------------------|
| For the Appellant/s        | : | Mr. Jitendra Kumar, Advocate |
| For the Respondent/s       | : | Mr. Manish Kumar No2, APP    |
| For the Respondent 2 to 6: | : | Mr. Rahul Singh, Advocate    |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 11-11-2024**

Heard learned counsel for the appellant, learned counsel  
for the respondent nos. 2 to 6 and learned Additional Public  
Prosecutor for the State. The trial court records have been received  
and we have perused the same.

**2.** This appeal against acquittal has been preferred by the  
informant-appellant for setting aside the judgment dated



08.01.2024 (hereinafter referred to as the 'impugned judgment') passed by the learned District and Sessions Judge, East Champaran, Motihari (hereinafter referred to as the 'learned trial court') in Sessions Trial No. Case No. 185 of 2018 arising out of Ghorasahan P.S. Case No. 249 of 2017. By the impugned judgment, the learned trial court has been pleased to acquit respondent nos. 2 to 6 of the charges under Sections 307/149, 341/149 and 354B/149 of the Indian Penal Code (in short 'IPC'). However, the learned trial court has held respondent nos. 2 to 6 guilty of the offences punishable under Sections 147, 148, 323/149, 324/149, 379/149, 504/149 and 506/149 IPC and directed them to undergo one year simple imprisonment under Section 148 IPC. Further, they have been directed to undergo two years simple imprisonment under Section 323/149 IPC, one year simple imprisonment under Section 324/149 IPC, simple imprisonment for three years under Section 379/149 IPC, simple imprisonment for two years under Section 504/149 IPC and simple imprisonment for one year under Section 506/149 IPC. All the sentences were directed to run concurrently.

### **Prosecution Story**

3. The informant-appellant alleged in the FIR that she was constructing house on her land, in the meanwhile, (1) Rustam



Mian, (2) Raja Mian, (3) Hafiz Mian, (4) Muslim Mian, (5) Jaheer Mian, (6) Tabrez Mian and (7) Mazir Mian with their wives and children came forming a group and started abusing. When the informant protested, the accused persons attacked on her with intention to kill her and started assaulting her. They attacked with farsa on her head with intention to kill her due to which she suffered head injury and blood started oozing out. The informant fell and started shouting. When the villagers started coming to the place of occurrence, the accused persons snatched her silver 'tavak' and golden nose-pin. The accused persons also tore her blouse with intention to commit wrong with her and snatched Rs.15,000/- from her. The accused persons also threatened her that if she goes to the police station, her family members would be killed. The informant alleged that the accused persons also assaulted her milk-feeding baby. The accused persons threatened her to kill. The informant further alleges that the occurrence took place on 18.05.2017 at about 02:00 PM and she is badly injured.

4. On the basis of the *fardbeyan* of PW-2, Ghorasahan P.S. Case No. 249 of 2017 dated 19.05.2017 was registered for the offences under Sections 147, 148, 149, 341, 323, 324, 379, 307, 354B 504 and 506 of the IPC. After investigation of the case, police submitted a charge-sheet being Charge-sheet No.181 of



2017 dated 31.08.2017. After filing of the charge-sheet, the learned trial court took cognizance of the offences under Sections 147, 148, 149, 341, 323, 324, 307, 504 and 506 IPC *vide* order dated 10.10.2017. The accused persons were explained the charges which they denied and claimed to be tried. On 19.02.2018, the records were committed to the court of Sessions.

5. On behalf of the prosecution, as many as six witnesses were examined and several documents were marked Exhibits. The list of witnesses and the description of the exhibits are being provided hereunder:-

List of Prosecution Witness

|      |                                         |
|------|-----------------------------------------|
| PW-1 | Nazma Khatoon                           |
| PW-2 | Heyatun Khatoon (Informant-cum-Injured) |
| PW-3 | Sahabbudin Alam                         |
| PW-4 | Jamila Khatoon                          |
| PW-5 | Dr. Raj Kumar Sinha (Medical Officer)   |
| PW-6 | Nirmal Uraon (I.O.)                     |

List of Exhibits

|           |                                                           |
|-----------|-----------------------------------------------------------|
| Exhibit 1 | Injury Report of the informant                            |
| Exhibit 2 | Formal FIR                                                |
| “X”       | Written Application of the informant (for identification) |

**Findings of the learned Trial Court**

6. Learned trial court on analysing the evidences of all the prosecution witnesses found that from PW-1 to PW-4 all the witnesses i.e. PW-1 Nazma khatoon(daughter of the victim), PW-2 Heyatun Khatoon(informant and victim), PW-3 Sahabuddin Alam,



PW-4 Jamila Khatoon have fully supported the prosecution case and corroborated the version of the occurrence that all the accused persons forming an unlawful assembly and holding weapons came and started abusing in filthy language and when the informant protested it the accused persons attacked on the informant and started assaulting her and accused Rustom Mian inflicted farsa blow on the head of the informant causing cut injury with oozing blood.

7. The learned trial court analysed the evidence of the Doctor PW-5 Dr. Raj Kumar Sinha (Medical Officer) who had fully supported the prosecution case. This witness found five injuries on the body of the informant which were simple in nature. Injury no. 1 has been caused by sharp cut weapon, injury no 2 to 5 caused by hard and blunt substance. Further he stated in his cross examination that injury no 1 and 2 is not fatal to the life of the injured. Thus the medical evidence conclusively established the injury of the informant.

8. The learned trial court after considering the fact that there was single *farsa* blow which is simple in nature held the prosecution had failed to establish the charges u/s 307/149. Further the learned trial court found that the prosecution has also failed to



establish the charges u/s 341/149 and 354B/149 of IPC against the accused persons.

9. Learned trial court held that the prosecution is able to prove that the informant suffered injury on her body which was simple in nature, hence, offence under Sections 147,148,323/149, 324/149, 379/149, 504/149 and 506/149 of the IPC has been proved beyond all reasonable doubts.

**Submissions on behalf of the appellant**

10. Learned counsel for the appellant submits that the learned trial court could not appreciate the evidence of the Doctor (PW-5) who had found an incised wound at the mid-part of the head in the left side and the same corroborated the allegation of assault by Rustam Mian, who was holding a *farsa* in his hand.

11. It is submitted that the informant had suffered at least five injuries and one of the weapons of the offence was a sharp-cut weapon. Referring to the judgment of the Hon'ble Supreme Court in the case of **State of M.P. vs. Saleem** reported in **(2005) 5 SCC 554** (paragraph '13'), learned counsel submits that the learned trial court has committed error in acquitting the accused of the charge under Section 307 IPC merely because the injury inflicted on the person of the victim was simple in nature.



12. Learned counsel has also relied upon another judgment of the Hon'ble Supreme Court in the case of **State of M.P. vs. Kashiram** reported in (2009) 4 SCC 26 to strengthen his submission that to justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of death should have been inflicted. Emphasis is that in the present case, the accused were liable to be convicted under Section 307/149 IPC.

13. On the other hand, learned counsel for the respondent nos. 2 to 6 has drawn the attention of this Court towards the findings of the learned trial court wherein after considering the entire prosecution evidence on the record, the learned trial court noticed the evidence of Nirmal Uraon (PW-6) who is the Assistant Sub-Inspector of Police posted at Ghorasahan Police Station and had taken charge of investigation of the present case. In his deposition, PW-6 has stated that a house was constructed at the place of occurrence from before and stone chips, sand and cements were found at the place of occurrence, so no seizure list was prepared. PW-6 had not mentioned the details of the disputed land in the case diary, he had demanded the papers of land in question from both sides, but none had produced any paper with respect to the aforesaid land. This witness has further deposed that the case under Section 307 IPC was not found true before the



submission of charge-sheet and he had not recorded the statement of the witnesses of the vicinity. The accused persons had also lodged a counter case which was also investigated by him and both the parties are claiming the disputed land. Learned counsel submits that the genesis of the alleged occurrence is evident from the deposition of the I.O. (PW-6). It is the disputed land which both the parties are claiming. It is submitted that whether a case under Section 307 IPC is made out or not depends upon various circumstances. Referring to the same judgments which have been relied upon by learned counsel for the appellant, learned counsel for the respondent nos. 2 to 6 has submitted that the learned trial court in this case has rightly appreciated the evidences on the record and concluded that no case under Section 307 IPC would be made out.

14. Learned counsel for the respondent nos. 2 to 6 submits that in an appeal against acquittal, the appellate court may not interfere with the judgment lightly unless the principles which govern the exercise of appellate jurisdiction in such matters are available. Reference in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others vs. State of Karnataka** reported in (2023) 9 SCC 581 wherein the Hon'ble Supreme Court has laid down the



principles which would govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal. It is submitted that in the kind of materials on the record, no interference with the impugned judgment of the learned trial court would be required.

### **Consideration**

**15.** Having heard learned counsel for the appellant, the respondents and learned Additional Public Prosecutor for the State and upon perusal of the trial court records, we find that the only grievance of the appellant in this case is to the extent that the learned trial court has not convicted the accused persons of the charges under Section 307/149 IPC. On perusal of the judgment and order of the learned trial court, it is found that all the five accused persons have been found guilty for the offences punishable under Sections 147, 148, 323/149, 324/149, 379/149, 504/149 and 506/149 IPC.

**16.** So far as the charges under Section 307/149 IPC is concerned, the learned trial court has, upon appreciation of the evidences of the prosecution witnesses, found that in the First Information Report, there is no specific allegation as to who gave *farsa* blow on the head of the informant. PW-2 Heyatun Khatun, who is the informant of this case, has deposed in the trial court and



said that accused Rustam Miyan was holding *farsa* in his hand and inflicted the said *farsa* on the left side of her head causing cut injury with oozing blood. The other witnesses have also stated about the same but it has come in the evidence of all the prosecution witnesses (PW-1 to PW-4) that the accused persons forming an unlawful assembly and holding weapons came and started abusing in filthy language and when informant (PW-2) protested it, the accused persons attacked on the informant and started assaulting her. The learned trial court found that there is no allegation of repetition of *farsa* blow and the doctor has found the incised wound at the mid part of head left side simple in nature.

17. Learned counsel for the appellant has relied upon the judgments of the Hon'ble Supreme Court in the case of **Saleem** (*supra*) (paragraph '13') which reads as under:-

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. 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 circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

18. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Kashiram** (*supra*) to submit that to justify a conviction under Section 307 IPC, it is not



essential that bodily injury capable of causing death should have been inflicted.

**19.** We have carefully gone through the both the judgments of the Hon'ble Supreme Court. Section 307 IPC reads as under:-

‘307. 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.’

**20.** In the case of **Kashiram** (*supra*), the Hon'ble Supreme Court has once again laid down the broad principles on which a case under Section 307 IPC is to be considered. It may be found from the judgments that the court has to consider and record a finding as to the intention of the accused. Such intention may be deduced from the various circumstances. While it is true that bodily injury capable of causing death is not an essential ingredient to attract Section 307 IPC, the court is obliged to see whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned in the section.



**21.** A bare perusal of the evidences on the record would show that the parties in this case are close door neighbours and the occurrence has taken place over construction of a house on a disputed piece of land. The prosecution witnesses have stated that accused persons have also lodged a case for the occurrence on the same day against the informant side. Land dispute between the parties since one year is also admitted. In these circumstances, the fact that the accused persons had assembled with the traditional kind of weapon and even as Rustam Miyan is said to be armed with a *farsa* and assaulted the informant on the mid upper head, the accused did not repeat the assault and the *farsa* blow was not given with full strength and impact, these are the circumstances which would lead to conclude that the accused persons cannot be attributed with either intention or knowledge to kill the informant.

**22.** We are keeping in mind the principles provided by the Hon'ble Supreme Court in the case of **H.D. Sundara** (*supra*) wherein the broad principles on which appeal against equitable may be entertained have been provided. Paragraph '8' of the said judgment is being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section

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1. State of Karnataka v. H.K. Mariyappa , 2010 SCC OnLine Kar 5591



378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

**23.** On a reappraisal of the prosecution evidence, we do not find any reason to take a different view as no irresistible conclusion may be reached to say that the accused persons would be guilty of the charge under Section 307/149 IPC. The learned



trial court has not committed any error in appreciation of the evidences.

24. This appeal has no merit. It is dismissed accordingly

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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