

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3434 of 2023

Arising Out of PS. Case No.-173 Year-2013 Thana- BARAULI District- Gopalganj

1. Mohan Chaudhary S/O Late Yadunandan Chaudhary R/O Village- Kotawa, Ps. Barauli, Dist. Gopalganj
2. Rakesh Chaudhary S/O Jangbahadur Chaudhary R/O Village- Kotawa, Ps. Barauli, Dist. Gopalganj
3. Satya Narain Chaudhary S/O Late Panchdeo Chaudhary R/O Village- Mirjapur, Ps. Barauli, Dist. Gopalganj
4. Dhupan Chaudhary S/O Late Panchdeo Chaudhary R/O Village- Mirjapur, Ps. Barauli, Dist. Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Vaishnavi Singh, Advocate
	:	Mr. Ajay Kr. Thakur, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 05-10-2024

This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the judgment of conviction dated 07.06.2023 and order of sentence dated 28.06.2023 passed by learned Additional Sessions Judge-X, Gopalganj in Sessions Trial No. 273 of 2015 (arising out of Barauli P.S. Case No. 173 of 2013), whereby the concerned Trial Court has convicted the



appellants/convicts for the offences punishable under Section 341, 324 and 307/34 of the IPC, where Appellant No. 1 namely Mohan Chaudhary, has been sentenced SI for seven years alongwith fine of Rs. 25,000/- for the offence punishable under Section 307 of the IPC and in default of payment of fine further undergo SI for six months, SI for two years alongwith fine of Rs. 5,000/- for the offence punishable under Section 324 of the IPC and in default of payment of fine further undergo SI for one month and SI for one month alongwith fine of Rs. 500/- for the offence punishable under Section 341 of the IPC and in default of payment of fine further undergo S.I. for one week. Appellant No. 2 namely Rakesh Chaudhary has been sentenced RI for ten years alongwith fine of Rs. 25,000/- for the offence punishable under Section 307 of the IPC and in default of payment of fine further undergo SI for six months, RI for two years alongwith fine of Rs. 5,000/- for the offence punishable under Section 324 of the IPC and in default of payment of fine, further undergo SI for one month and SI for one month alongwith fine of Rs. 500/- for the offence



punishable under Section 341 of the IPC and in default of payment of fine, further undergo S.I. for one week. Appellant No. 3 namely Satya Narain Chaudhary has been sentenced RI for ten years alongwith fine of Rs. 25,000/- for the offence punishable under Section 307 of the IPC and in default of payment of fine further undergo SI for six months, RI for two years alongwith fine of Rs. 5,000/- for the offence punishable under Section 324 of the IPC and in default of payment of fine further undergo SI for one month and SI for one month alongwith fine of Rs. 500/- for the offence punishable under Section 341 of the IPC and in default of payment of fine further undergo S.I. for one week. Appellant No. 4 namely, Dhupan Chaudhary has been sentenced RI for ten years alongwith fine of Rs. 25,000/- for the offence punishable under Section 307 of the IPC and in default of payment of fine further undergo SI for six months, RI for two years alongwith fine of Rs. 5,000/- for the offence punishable under Section 324 of the IPC and in default of payment of fine further undergo SI for one month and SI for one month alongwith fine of Rs. 500/- for the



offence punishable under Section 341 of the IPC and in default of payment of fine further undergo S.I. for one week. All aforesaid sentences ordered to run concurrently.

2. The case of prosecution in brief is that informant namely, Meena Devi @ Chhewani (P.W. 7) authored a written report, stating therein that on 20.07.2013 her son Munmum Chaudhary (P.W. 6) had gone outside on motorcycle for some work and he was found laying on road near "*Anirudhi Baba Sthan*" in stabbed condition at about 8:30 PM alongwith his motorcycle. The passer-by saw him and brought him to PHC Barauli for his treatment from where he was referred to Sadar Hospital, Gopalganj for better treatment and later on referred to PMCH Patna. It is alleged that her son sustained stab injuries by sharp knife on right side of the head, right side of the chest and two stab injuries on right thigh. The informant stated that her son was unconscious due to injuries and only after gaining his sense he can disclosed the names of accused persons and reason behind this occurrence.

3. On the basis of aforesaid written report, the



police registered a case, as Barauli P.S. Case No. 173 of 2013 dated 21.07.2013 for the offence punishable under Sections 341, 324, 307 and 34 of the IPC, where after the investigation, the police submitted charge-sheet under aforesaid sections.

4. The learned Jurisdictional Magistrate, after perusal of record and materials collected during the course of investigation, took cognizance for the offences under Sections 341, 324, 307 and 323/34 of the IPC.

5. The learned trial court on the basis of materials collected during investigation, framed charges against appellants/convicts for the offences under Sections 341, 324, 307 and 323/34 of the IPC, which they pleaded “not guilty” and claimed trial.

6. To substantiate its case, the prosecution has examined altogether nine witnesses. They are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Jawahir Chaudhary
P.W. 2	Rajendra Chaudhary
P.W. 3	Lal Babu Chaudhary
P.W. 4	Sunita Devi (wife of injured)



P.W. 5	Sonu Kumar Rai
P.W. 6	Munmun Chaudhary (injured)
P.W. 7	Chhewani Devi @ Meena Devi (informant)
P.W. 8	Ram Vinay Paswan (Investigating Officer)
P.W. 9	Dr. Subash Singh

7. Apart from the oral evidence, the prosecution has also relied upon a document/exhibit in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Injury Report of Injured.

8. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellants/accused under Section 313 of the Code, where they completely denied their involvement by denying the incriminating evidences surfaced during the trial and stated that they were implicated with this case falsely and claimed their complete innocence.

9. No defence witnesses were examined by appellants/convicts during the trial in their defence but



certain documents were exhibited in support of their innocence, which are:-

Exhibit No(s).	List of documents
Exhibit-A	Certified Copy of order sheet in T.A. No. 73 of 2008.
Exhibit-A/1	Certified Copy of memo of appeal of T.A. No. 73 of 2008.
Exhibit-A/2	Certified Copy of substitution petition filed in T.A. No. 73 of 2008.
Exhibit-B	Certified Copy of FIR registered in Barauli P.S. Case No. 22 of 2013

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court have convicted appellants/convicts for the offences under Section 341, 324, 307 and 323/34 of the IPC and sentenced them in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellants/convicts has preferred the present appeal.

12. Hence, the present appeal.



Argument on behalf of the appellant/convict:

13. Mrs. Vaishnavi Singh, learned counsel for the appellants, while opening her argument submitted that false implication of appellants with present case can be easily gathered in the backdrop of land dispute, which is an admitted position. In support of her submissions learned counsel pointed out that several prosecution witnesses were aware about the name of appellants and despite of the said fact, FIR was lodged initially against unknown persons and after one week being an afterthought, out of ulterior and oblique motive appellants were named with the present occurrence. This fact can be gathered easily from the depositions of P.W. 1, P.W. 2 & P.W. 5 and also I.O. of this case, who is examined as P.W. 8. It is also submitted that the manner of assault and the nature of injury is nowhere, suggesting that appellants were under intention to cause death of injured, who is examined as P.W. 6. It is pointed out that appellants were convicted with the aid of Section 34 of the IPC, where prosecution appears to be failed to established common intention during the course of trial, so



as to connect appellants with crime in question. In support of her submissions, she heavily relied upon the legal report of Hon'ble Supreme Court as available through **Jage Ram Vs. State of Haryana, [(2015) 11 SCC 366]**. In support of non-availability of "common intention" in the present factual scenario of the occurrence Mrs. Singh, submitted that prosecution must established pre-requisites of pre-consent presence and participation in respect of each accused persons. It is pointed out that "similar intention" cannot be confused with "common intention". The present fact of case may suggest "similar intention" but learned trial court by confusing "similar intention" with "common intention" committed grave illegality by recording the judgment of conviction of appellants. In support of her submission learned counsel relied upon the legal report of High Court of Calcutta in the case of **Jagan Gope and Others Vs. State of West Bengal**, as available through **[2019 SCC OnLine Cal 5589]**.

14. Mrs. Vaishnavi Singh, further submitted that no doubt, "common intention" should be anterior in time,



which involves a pre-arranged plan or prior concert but same can be developed at the spur-of-the-moment and same can be gathered from the act conducted, relating circumstances and the continuing situation, which cropped up during the occurrence. It is pointed out that factual scenario of this case also failed to suggest that there was any "common intention", which developed at spur-of-the-moment as to murder injured/P.W. 6 by appellants. In support of her submissions learned counsel also relied upon the legal report of Hon'ble Supreme Court as available through **State of M.P. Vs. Saleem @ Chamaru and Another, [(2005) 5 SCC 554]**.

15. While concluding the argument, it is submitted by Mrs. Singh that in view of aforesaid factual and legal submissions, balance of appeal is in favour of appellants and therefore the judgment of conviction as recorded by learned trial court is fit to be quashed and set aside.

Argument on behalf of State:

16. Mr. Abhay Kumar, learned APP appearing on behalf respondent-State, while opposing the appeal



submitted that alleged assault was caused by knife on the vital parts of the body of the injured one-by-one after surrounding the injured/P.W. 6, while he was going to in-laws home (*sasural*). It is pointed out that upon medical examination injuries inflicted upon injured was found incised and thus appears corroborated with the allegation that injury was caused by knife, which is sufficient to suggest that appellants were under intention to cause death of injured or having knowledge that their act may likely to cause death of the injured and therefore the conviction of appellants with the aid of Section 34 of the IPC cannot be questioned.

17. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

18. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

19. **P.W. 6 Munmun Chaudhary, (injured),**

from the perusal of record and submission of learned counsel



for the parties, it appears that most important witness of this occurrence is P.W. 6/injured himself. P.W. 7 is the informant and mother of P.W. 6 and is not the eye-witness of the occurrence. It was deposed by P.W. 6/injured that while he was going to his in-laws home (*sasural*) at about 8:00 PM by motorcycle and as he reached near a bridge he found six persons standing over there. Two persons were on motorcycle and four persons were standing. When he came near to them, they all surrounded him and other standing persons, namely Mohan Chaudhary, Rakesh Chaudhary, Satya Narain Chaudhary and Dhupan Chaudhary caught hold of him. He tried to escape by turning his motorcycle but appellant Satya Narain Chaudhary stabbed knife in his right thigh and left it there, whereafter Rakesh Chaudhary came running towards him and after holding the handle of his bike assaulted him by knife on his chest and took out the knife. After the second assault, he fell down to the ground, whereafter Dhupan Chaudhary and Mohan Chaudhary both appellants assaulted him on his head by knife. He found that two persons were coming from *Devapur* side and by seeing



them appellants fled away. When those two persons came near to him, he identified them as Jawahir Chaudhary P.W. 1 & Rajendra Chaudhary P.W. 2, who started to ask him regarding the occurrence but he lost his sense after 5-6 minutes. Appellants also took away cash of Rs. 20,000/- during the course of occurrence.

19.1. Upon cross-examination, it was stated by him that he came to Patna at about 8:00 AM on the next day and only thereafter he regained his sense, where first of all he met with Sonu Kumar Rai/P.W. 5. It was stated that other 2-3 co-villagers accompanied him for Patna. His father-in-law and brother-in-law was also with him. He returned to his home after 5 days and thereafter met with her mother/P.W. 7 and told about the occurrence. It was stated by him that his statement was recorded by police before meeting with her mother/informant/P.W. 7. It was stated that there was a land dispute of plot having area of 3 $\frac{1}{2}$ bighas with appellant Mohan Chaudhary. The aforesaid land dispute is now disposed of. It was a civil suit, which was dismissed before 10 months against which the appeal is



pending. Giving description of injury it was stated by him that he received total of four injuries on his body, where one injury was already on his body before the occurrence. It was stated that criminal cases as Barauli P.S. Case No. 22 of 2013 & Barauli P.S. Case No. 23 of 2013 are pending between his maternal uncle and accused/appellants Dhupan Chaudhary and Satya Narain Chaudhary, where he is also one of the co-accused in Barauli P.S. Case No. 23 of 2013, where appellant Satya Narain Chaudhary is the informant. He denied suggestion that he received injuries due to motorcycle accident and implicated the appellants due to land dispute.

20. **P.W. 7 Chhewani Devi @ Meena Devi,**

who is mother of P.W. 6 deposed that his son named appellants Rakesh Chaudhary, Mohan Chaudhary, Satya Narain Chaudhary & Dhupan Chaudhary only after returning from Patna, who assaulted him by knife. It was deposed that his son received two injuries on his thigh, one on head and one on his chest i.e., total of four injuries. She deposed to made statement before police.



20.1. Upon cross-examination, it was stated that her written information was recorded at her courtyard and at that time her son/P.W. 6 (injured) was senseless. He was also senseless in Gopalganj Hospital, whereafter he was referred to Patna. It was stated that her son was accompanied with cousin brother Sonu Kumar Rai/P.W. 5 and his father-in-law for Patna in connection of his treatment. She did not accompanied her son for Patna. She came to know about the occurrence after 4-5 days when her son returned to home after his treatment. It was deposed by her that Mohan Chaudhary & Rakesh Chaudhary are agnates. She denied to have any knowledge regarding pending land disputes. She denied any pending criminal cases between her brother and appellant Dhupan Chaudhary and Satya Narain Chaudhary. She denied suggestion that her son P.W. 6 received injury in motorcycle accident and due to previous enmity appellants were implicated falsely.

21. **P.W. 1 Jawahir Chaudhary & P.W. 2 Rajendra Chaudhary,** who came to the place of the occurrence immediately after the occurrence in terms of



depositions of P.W. 6/injured, where both are appearing chance witnesses of the occurrence as they were returning to their home from Gopalganj and while they came near to *Anirudhi Baba Asthan*, they found Mohan Chaudhary, Rakesh Chadhary and Dhupan Chaudhary were assaulting P.W. 6/injured by knife. They carried out injured upto Barauli Hospital, whereafter he was taken to Sadar Hospital Gopalganj and thereafter he was referred to Patna.

21.1. Upon cross-examination, it was stated that their statement was recorded after 8-10 days of the occurrence. It was stated by them that they said to police that when they came to *Anirudhi Baba Sthan*, they found all four appellants assaulting P.W. 6. They also approved land dispute between the parties and also criminal cases between the maternal uncle of injured, where injured is also one of the accused. It appears from the depositions of P.W. 1 that he named only three appellants i.e., Mohan Chaudhary, Rakesh Chaudhary and Dhupan Chaudhary in his examination-in-chief as to assault injured by knife, whereas P.W. 2 accompanied with P.W. 1 named all four appellants



involved in alleged knife assault. P.W. 2 denied knowledge of pending criminal cases between the parties. It was categorically stated by P.W. 2 that three injuries were caused upon injured P.W. 6. He went to Gopalganj Hospital with injured and by that time he was unconscious. It was stated that P.W. 7/informant and appellants are agnates.

22. **P.W. 3 Lalbabu Chaudhary,** who deposed in his examination-in-chief that he came to the place of occurrence after crime in issue, where he came to know about the occurrence from P.W. 1 & P.W. 2. He accompanied deceased firstly to Barauli Hospital and thereafter upto Gopalganj. It was stated by him that informant is her father's sister. He denied any land dispute with the appellant Satya Narain Chaudhary with his uncle.

23. **P.W. 4 Sunita Devi,** who is the wife of injured P.W. 6. She was in her paternal home at the time of occurrence. She met with her husband/injured/P.W. 6 after four days of the occurrence, whereafter she came to know that her husband was assaulted by knife by Mohan Chaudhary, Rakesh Chaudhary, Satya Narain Chaudhary and



Dhupan Chaudhary.

23.1. Upon cross-examination, it was stated that she received information about the occurrence, while she was in her paternal home, despite of that she did not come to her in-laws home and remained there only. She also approved the land dispute between the parties.

24. **P.W. 5 is Sonu Kumar Rai**, who deposed that at the time of occurrence he was at his house, where he came to know that his uncle was assaulted by knife, he rushed towards the place of occurrence and found P.W. 6/injured lying on the ground. He brought him to Barauli Hospital, whereafter he was referred to Gopalganj and further to Patna. He throughout accompanied injured during his treatment. It was deposed that treatment continued for a week in Patna and thereafter, when injured gained his consciousness, he narrated him about the occurrence that appellants namely Mohan Chaudhary, Rakesh Chaudhary, Satya Narain Chaudhary and Dhupan Chaudhary assaulted him by knife near *Anirudhi Baba Sthan*. It was stated by him that his statement was recorded by police after two weeks,



when he returned from Patna. He named appellants in his statement. He approved land dispute between the parties. He denied suggestion that he was not the eye-witness of the occurrence.

25. **P.W. 8 Ram Vinay Paswan, who is Investigating Officer** of the present case, deposed that he was posted as ASI in Barauli Police Station on 21.08.2013. He identified hand writing of *thana munshi* on formal FIR and also hand writing on fardbeyan, which is of informant Meena Devi/P.W. 7, as to lodge Barauli P.S. Case No. 73 of 2013. He visited the place near to "*Anirudhi Baba Sthan*" and recorded the statement of witnesses during the investigation, who supported the occurrence and thereafter submitted charge-sheet for the offence under Sections 323, 324, 341 and 307/34 of the Indian Penal Code against appellants/accused. It was stated that present case was investigated by Jaleshwar Prasad Singh also as he was transferred on 16.02.2014 from Barauli Police Station. It was stated that during investigation till 28.07.2013 none of the witnesses disclosed the name of accused. He stated that



he recorded the statement of independent witness namely Vishwanath Pathak in Para No. 26 of the Case Diary, who appears not examined during the trial. It was stated that said witness narrated different story regarding occurrence. He also came to know regarding land dispute between the parties.

26. **P.W. 9 Dr. Subash Singh,** deposed that he was posted as Medical Officer on 20.07.2013 at PHC Barauli, Gopalganj and on that day he examined Munmun Choudhary/P.W. 6 at 2:30 PM and noted following injury:-

(i) Sharp wound on the right parietal region on head. Size- 2"x1/2"x1/4".

(ii) Stab injury on right chest. Size- 1"x1/2"x1/4".

(iii) Stab injury on right thigh. Size- 1"x1/2"x1/4".

Age of injury-Within 6 hours.

Identification Mark-Mole on right chest.

Nature of Injury-Injury No. 1 & 3 is simple in nature by sharp knife (pointed object) and Injury No. 2 case referred to Sadar Hospital Gopalganj, then after referred to Patna for better treatment.



Report of Patna Hospital-Dr Ranjan

Choudhary given his report a small right basal ref-fusion, so Injury No. 2 is dangerous by sharp knife. This injury report written by said doctor was recognized by him thereafter it was marked as Exhibit-1.

26.1. Upon cross-examination, it is deposed that timing of examination is not mentioned in this report. No injury report was issued by Gopalganj Sadar Hospital and Dr. Ranjan Choudhary was a private doctor. Injury No. 1 and 3 are simple. It is not possible by motorcycle accident. These injuries are not possible by motorcycle accident. The report of Dr. Ranjan Choudhary is attached with my injury report. It is not correct that he had given collusive report.

Conclusion

27. With aforesaid oral and documentary evidence, it appears that the witnesses of actual crime in question regarding inflicting of knife injury is only P.W. 6, injured himself namely Munmun Chaudhary. Though P.W. 1 projected himself to be an eye-witness of the actual



occurrence but from the deposition of P.W. 6, it appears that P.W. 1 & P.W. 2 came to place of occurrence only after inflicting knife injuries by appellants/accused. If the testimony of P.W. 6 be taken into consideration, it appears that altogether six persons were sitting near to a bridge at *Anirudhi Baba Sthan*. He was given a single stab of knife by appellant Satya Narain Chaudhary, who left knife in thigh itself. Thereafter a single knife blow was given by Rakesh Chaudhary on his chest. Consequent upon, he fell down and appellants Dhupan Chaudhary and Mohan Chaudhary assaulted him on his head by knife. If this version be taken into consideration, then suddenly he must have two injuries on his head but same found single as per depositions of P.W. 7/informant and P.W. 9/doctor. Further doctor found only single injury on the thigh of the injured. One injury as per depositions of P.W. 6 was already available on the body prior to this occurrence. The nature of injury, which was found on head and thigh was of simple in nature. The nature of stab injury on right chest was not brought on record but was stated that it was dangerous as caused by sharp knife.



From the deposition of injured it nowhere, appears that appellant/accused said any words during the occurrence, which may suggest that they were under intention to cause his death. The fact of this case suggests that there was no intervening circumstances, which prevented appellant/accused from repeated assault. It appears that only one appellant assaulted injured at a particular time, whereas others were standing without any participation in crime. They did not even hold injured during the occurrence, while assault was made by others. Each attack appears independent.

28. It would be apposite to reproduce the para nos. 12, 13 and 14 of the **Jage Ram Case (supra)**, in aforesaid context which reads as under:-

12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would



depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P. v. Kashiram* [*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642] , the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '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.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [*State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28 : 1983 SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [*Girija Shankar v. State of U.P.*, (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408].

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the



nature of the injury.'

See *State of M.P. v. Saleem* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329], SCC pp. 559-60, paras 13-14 and 16. 13. '6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [*Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ' (*Saleem case* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329], SCC p. 558, para 6)"

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under



Section 307 IPC is unassailable.

29. It would also be apposite to reproduce the para no. 26 of the **Jagan Gope Case (supra)**, in aforesaid context which reads as under:-

26. Relying on these pieces of evidence it has been contended although P.W. 6 did not find Sasthi and Ashadhan at the place of occurrence, the said accused persons also shared common intention with the other appellants to commit murder of the deceased. Common intention under Section 34 of the Penal Code, 1860 is a species of constructive liability which renders every member of a group who shares such intention responsible for the criminal act committed by anyone of them when such act is done in furtherance of the common intention. Common intention, however, cannot be confused with similar intention. Although accused persons may have similar intention to commit a crime, say murder, until and unless the pre-requisites of: (a) pre-consent, (b) presence and (c) participation in respect of each accused are established, it cannot be said that they shared common intention and be culpable



for the crime committed by any of them in furtherance to such intention. [See *Mahbub Shah v. Emperor*, AIR 1945 Privy Council 118; *Shreekantiah Ramayya Munipalli v. State of Bombay*, AIR 1955 SC 287 (paras 23 and 24); *Shiv Prasad v. State of Maharashtra*, AIR 1965 SC 264 (para12)]

30. It would be apposite to reproduce the para nos. 11, 16 and 17 of the **Saleem @ Chamaru Case (supra)**, in aforesaid context which reads as under:-

11. It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

"307. 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.”

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

17. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years.



The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine. The maximum sentence in each case goes to show the gravity which is attached to respective offences. Unfortunately, the High Court has not kept these features in view.

31. It appears very strange to this court that neither FIR nor injury report was proved during the trial, despite examination of informant/P.W. 7, I.O./P.W. 8 and first attending doctor P.W. 9. The FIR was authored by P.W. 7, who is none but the mother of injured/P.W. 6. As per FIR occurrence took place on 20.07.2013 at about 8:30 PM but as per P.W. 9/doctor, who is first attending doctor of injured/P.W. 6, it appears that he examined injured/P.W. 6 on 20.07.2013 at about 2:30 PM. It also appears very strange that how injured/P.W. 6 was examined by P.W. 9/doctor, six hours prior to the occurrence. It also appears from deposition of P.W. 8 that he took charge of investigation of this case on 21.08.2013. P.W. 5 deposed in his examination-in-chief that occurrence is of 8th August



2013, whereas as per FIR occurrence is of 20.07.2013. Moreover, P.W. 1 projected himself as an eye-witness of the occurrence and did not found Satya Narain Choudhary at place of occurrence. None of the witnesses except injured stated that appellants took away Rs. 20,000/- from the injured during the occurrence.

32. Besides above, it further appears from the testimony of P.W. 6/injured that he lost his sense after five minutes of arrival of P.W. 1 & P.W. 2 at the place of occurrence. It appears very strange that injured did not disclosed the names of appellants during said five minutes to P.W. 1 & P.W. 2. From the nature of testimonies of P.W. 1 & P.W. 2 it appears that they were acquainted with injured and also interested with the outcome of this case and therefore their presence at the place of occurrence being chance witness also appears doubtful.

33. Hence, from the aforesaid depositions, and evidences the manner, date and time of the occurrence and presence of appellant appears doubtful at the place of occurrence. Out of aforesaid factual and legal discussions



nothing appears that "common intention" developed at the place of occurrence itself in spur-of-the-moment. This case may be of "similar intention" but certainly it is not a case of "common intention" so as to secure conviction of appellants with the aid of Section 34 of the Indian Penal Code.

34. Accordingly, the appeal stands allowed.

35. The impugned judgment of conviction dated 07.06.2023 and order of sentence dated 28.06.2023 passed by learned Additional Sessions Judge-X, Gopalganj in Sessions Trial No. 273 of 2015 (arising out of Barauli P.S. Case No. 173 of 2013) is hereby quashed and set aside.

36. Accordingly, appellant Nos. 2, 3 & 4, namely Rakesh Chaudhary, Satya Narain Chaudhary and Dhupan Chaudhary are acquitted from the charges levelled against them by the learned trial court. They are directed to be released forthwith, if their presence are not required in any other case.

37. Appellant No. 1 namely, Mohan Chaudhary is on bail, he is discharged from the liabilities of bail bonds and sureties.



38. Office is directed to send back the trial court records along with a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR/NAFR
CAV DATE	N/A
Uploading Date	08.10.2024
Transmission Date	08.10.2024

