

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1078 of 2023**

Arising Out of PS. Case No.-117 Year-2011 Thana- MANSAHI District- Katihar

Suresh Paswan Son of Late Dhanraj Paswan Village- Basantpur PS- Mansahi Dist- Katihar

... .. Appellant

Versus

1. The State of Bihar
2. Deep Narayan Paswan son of Late Sukn Paswan @ Late Sukan Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
3. Manoj Paswan son of Deep Narayan Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
4. Arjun Paswan son of Deep Narayan Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
5. Ranjeet Paswan @ Ranjit Paswan son of Deep Narayan Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
6. Amarjeet Paswan @ Indrajeet Paswan @ Anarjeet Paswan son of Deep Narayan Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
7. Ramlal Paswan son of Late Aash Muni Paswan @ Shiv Muni Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
8. Ashish Paswan son of Ramlal Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
9. Ramnath Paswan son of Late Baleshwar Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
10. Krishnadeo Paswan @ Kishandeo Paswan son of Ramnath Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar
11. Chandramauli Paswan son of Ramnath Paswan village- Kajra Basantpur Mara Tola PS- Mansahi Dist- Katihar

... .. Respondents

**Appearance :**

|                         |   |                                                                           |
|-------------------------|---|---------------------------------------------------------------------------|
| For the Appellant/s     | : | Mr. Prince Kumar Mishra, Advocate<br>Mr. Brisketu Sharan Pandey, Advocate |
| For the Respondent/s    | : | Mr. Parmeshwar Mehta, APP                                                 |
| For the R. Nos. 2 to 11 | : | Mr. Bimal Kumar, Advocate                                                 |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 16-07-2024**

Heard Mr. Prince Kumar Mishra, learned counsel for the appellant, Mr. Bimal Kumar, learned counsel for the respondent nos. 2 to 11 and Mr. Parmeshwar Mehta, learned APP for the State.

2. This appeal has been preferred for setting aside the judgment of conviction and order of sentence dated 23.05.2023 (hereinafter referred to as the 'impugned judgment/order') passed by the learned Additional District and Sessions Judge-II, Katihar (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 486 of 2012 arising out of Mansahi P.S. Case No. 117 of 2011 whereby and whereunder the respondent nos. 2 to 11 have been acquitted of the charges under Sections 148, 380, 307 and 436 of the Indian Penal Code (in short 'IPC') and they have been held guilty for lesser offences under Sections 323 and 325 read with Section 149 IPC. Having held respondent nos. 2 to 11 guilty for the offences punishable under Sections 323 and 325 read with Section 149 IPC, the learned trial court has sentenced them for simple imprisonment of one year and a fine of Rs. 10,000/- under Sections 323/149 IPC and a simple imprisonment of one year and a fine of Rs. 10,000/- under Section 325/149 IPC. In case of default in payment of fine, the convicts have to undergo a further

imprisonment of two months in each of these Sections. All the punishments are to run concurrently.

3. Mr. Prince Kumar Mishra, learned counsel for the appellant, has submitted at the outset that he would confine his submissions limited to the acquittal of respondent nos. 2 to 11 for the offence punishable under Section 307 IPC.

4. It is submitted that the learned trial court has acquitted the respondents of the charge under Section 307 IPC on absolutely erroneous appreciation of the evidences and by ignoring eyewitnesses of the occurrence, therefore, the judgment of the learned trial court, to the said extent is liable to be set aside and the respondent nos. 2 to 11 would be liable to be convicted under Section 307 IPC and sentenced accordingly.

5. The prosecution case is based on the *fardbeyan* of the informant Suresh Paswan (PW-4). It is stated that on 18.12.2011 at about 2:30 PM, the informant was constructing his house on the purchased land and *sikmi* land under Indira Awas Yojana, in the meantime his co-villagers, who are the ten named accused persons in the *fardbeyan*, and 20-25 unknown persons who were called from outside, all armed with *khanti*, *lathi-danda* came abusing the informant and claimed that it was their land so how the informant was constructing house on the said land. PW-4 alleged in his

*fardbeyan* that after saying this, the accused persons assaulted the informant's brother Hari Nandan Paswan, Anirudh Paswan, Kaushalya Devi, Shambhu Paswan, Ashok Paswan and Ranjan Kumar on their head, leg and body causing them injuries.

The informant alleged that he and other persons became unconscious. On hearing *hulla*, the local persons assembled at the place of occurrence, then the accused person, namely, Deep Narayan Paswan instigated other persons to commit *loot-pat* in the house, they entered in the house and took away a sum of Rs. 20,000/- of Indira Awas. PW-4 further alleged that the accused persons took away ten *bora* of paddy from the house of Anirudh Paswan and set the house at fire, as a result whereof, the house was burnt. The informant claimed that with the help of local people, they were brought to the Sadar Hospital, Katihar, in course of treatment also the accused persons were threatening to kill the entire family otherwise they should flee away. The informant claimed that he had given information of this occurrence to DM in *Janta Darbar* on 14.12.2011 but no action was taken there on.

6. It appears that on the basis of the *fardbeyan* of PW-4 recorded by ASI Mithilesh Paswan on 18.12.2011 at 17 hours at Katihar Sadar Hospital, a formal FIR was registered on the same

day at 10:00 PM. The *fardbeyan* has been marked Exhibit '1' on behalf of the prosecution.

7. After investigation, Police submitted a charge-sheet *vide* Charge-sheet No. 19 of 2012 dated 27.03.2012 for the offences under Sections 147, 148, 149, 323, 325, 307, 380, 447, 448, 436 and 504 IPC against ten accused persons. The charge-sheet has been marked Exhibit '4' in course of trial.

8. On behalf of the prosecution fourteen witnesses were examined out of whom, PWs-1, 2, 3, 4, 6, 7, 11, 12 and 13 claimed themselves eyewitnesses to the occurrence. Uma Shankar Singh (PW-5) and Chhedi Paswan (PW-10) did not support the prosecution case, therefore they were declared hostile. PW-8 and PW-9 are the medical witnesses. PW-14 is the Investigating Officer (I.O.). The prosecution got exhibited the *fardbeyan*, injury reports and charge-sheet. After completion of the prosecution evidence, the statement of the accused were recorded under Section 313 CrPC. They pleaded innocence and claimed false implication. On behalf of the defence, Lakshmi Paswan (DW-1) and Baleshwar Singh (DW-2) were examined. The defence exhibited certified copy of the *khatiyān*, registered sale deeds and the certified copy of various order passed from time to time by the revenue authorities and the court. The name of witnesses adduced

on behalf of the prosecution and the defence as also documentary evidences brought on record on their behalf are being shown hereunder in tabular form:-

List of Prosecution Witnesses

|       |                       |
|-------|-----------------------|
| PW-1  | Hari Nandan Paswan    |
| PW-2  | Anirudh Paswan        |
| PW-3  | Chano Devi            |
| PW-4  | Suresh Paswan         |
| PW-5  | Uma Shankar Singh     |
| PW-6  | Ashok Paswan          |
| PW-7  | Kausalya Devi         |
| PW-8  | Dr. Rohit Kumar Jha   |
| PW-9  | Dr. Deena Nath Poddar |
| PW-10 | Chhedi Paswan         |
| PW-11 | Umesh Kumar Paswan    |
| PW-12 | Shambhu Paswan        |
| PW-13 | Ranjan Paswan         |
| PW-14 | Haresh Tiwari         |

List of Defence Witnesses

|      |                 |
|------|-----------------|
| DW-1 | Laxmi Paswan    |
| DW-2 | Baleshwar Singh |

List of Exhibit (prosecution side)

|               |                                                |                   |          |                 |
|---------------|------------------------------------------------|-------------------|----------|-----------------|
| Exhibits -1   | Signature of Suresh Paswan on <i>fardbeyan</i> | Without objection | 05.07.13 | ADJ-I, 05.07.13 |
| Exhibits -2   | Injury report of Ranjan Paswan                 | "                 | 10.2.14  |                 |
| Exhibits -2/1 | Injury report of Shambhu Paswan                | "                 | 10.2.14  |                 |
| Exhibits -3   | Injury report of Hari Nandan Paswan            | "                 | 17.4.14  | ADJ-I 10.2.14   |
| Exhibits      | Injury report of Ashok                         | "                 | 17.4.14  |                 |

|                  |                                 |   |          |  |
|------------------|---------------------------------|---|----------|--|
| -3/1             | Paswan                          |   |          |  |
| Exhibits<br>-3/2 | Injury report of Anirudh Paswan | " | 17.4.14  |  |
| Exhibits<br>-3/3 | Injury report of Suresh Paswan  | " | 17.4.14  |  |
| Exhibits<br>-3/4 | Injury report of Kaushalya Devi | " | 17.4.14  |  |
| Exhibits-4       | Charge-sheet                    | " | 01.08.16 |  |

List of Exhibit (defence side)

|           |                                                                                                     |         |         |                   |
|-----------|-----------------------------------------------------------------------------------------------------|---------|---------|-------------------|
| Exhibit-A | C.C of order dated 15.05.02 passed in ceiling case no 14/2006 u/s 16(3) Ceiling Act                 | Defence | 16.3.21 | Without objection |
| Exhibit-B | C.C of order dated 3.11.2008 of Additional Collector Ceiling passed in ceiling Appeal no. 711/02-03 | "       | "       | "                 |
| Exhibit-C | C.C of order dated 20.05.09 of Commissioner court Purnea passed in ceiling Revision no. 19/08-09    | "       | "       | "                 |
| Exhibit-D | C.C of order dated 03.11.2010 passed in CWJC 9082/2010                                              | "       | "       | "                 |
| Exhibit-E | C.C of order dated 16.07.2012 passed in LPA no. 85/2011 in CWJC 9082/2010                           | "       | "       | "                 |
| Exhibit-F | C.C of khatiyani of Khata no. 147, khesra no. 841, 842 and 854                                      | "       | "       | "                 |
| Exhibit-G | C. C of registered sale deed no. 4171/65                                                            | "       | "       | "                 |
| Exhibit-H | C. C of registered sale deed no. 2897/2001                                                          | "       | "       | "                 |
| Exhibit-I | C. C of order dated 04.05.11 to 11.06.13 passed in Title Suit 87/2011                               | "       | "       | "                 |
| Exhibit-J | C. C of order dated 29.01.03 of Ld. CJM passed in Mansahi PS case No. 30/02                         | "       | "       | "                 |
| Exhibit-K | C.C of cognizance order dated 30.06.2014 passed in CA 1530/2013                                     | "       | "       | "                 |
| Exhibit-L | C. C of cognizance order dated                                                                      | "       | "       | "                 |

|           |                                                    |   |   |   |
|-----------|----------------------------------------------------|---|---|---|
|           | 15.11.13/16.11.13 of CA<br>3322/2011               |   |   |   |
| Exhibit-M | C.C of order dated 4.7.12 of case<br>no. 1124/2011 | " | " | " |

9. We find from the discussions made by the learned trial court in the impugned judgment that after discussing the deposition of the prosecution and defence witnesses as also upon taking into consideration the documentary evidences on the record, the learned trial court held as follows:-

- “(a) There is land dispute between both the parties in which Deep Narayan Paswan has got success in various courts as per the documents available on the record.
- (b) As per the case of the prosecution all the accused persons namely Deepnarayan Paswan, Manoj Paswan, Arjun Paswan, Ranjeet Paswan, Amarjeet Paswan, Ramlal Paswan, Ashish Paswan, Chandramauli Paswan, Krishnadev Paswan and Ramnath Paswan came at the place of occurrence along with 20-25 unknown miscreants along with khanti, lathi, danda and started abusing informant and claimed on the plot of land on which informant was constructing the house of Indira Awas Yojna. They have attacked and badly injured the informant and his other family member namely Hari Nandan Paswan, Anirudh Paswan, Kaushaliya Devi, Shambhu Paswan, Ashok Paswan and Ranjan Kumar.
- (c) As per the injury report available on the record, Exhibit - 2 Injury report of Ranjan Paswan, Exhibit -2/1 Injury report of Shambhu Paswan, Exhibit - 3 Injury report of Harinandan Paswan, Exhibit 3/1- Injury report of Ashok Paswan, Exhibit 3/2- Injury report of Anurudh Paswan, Exhibit-3/3 Injury report Suresh Paswan, Exhibit -3/4 Injury report of Kaushalya

Devi, it is quite evident that some of them have sustained grievous injuries and some have sustained simple injuries.

(d) Prosecution witnesses have supported the factum of beating by accused persons as per the case of the prosecution.

(e) As per the case of the prosecution all the accused persons came at the place of occurrence and beaten informant and his family member to cause injuries on their bodies. This fact is corroborated by injury report on the record of injured persons, namely, Ranjan Kumar Paswan, Shambhu Paswan, Harinandan Paswan, Ashok Paswan, Anurudh Paswan, Suresh Paswan and Kaushaliya Devi.

(f) From the fact available on the record, the intention to kill any particular person of the informant family is missing. All of them have attacked without any specific intention to kill any particular person. Although, as per the injury report available on the record, informant and his family member have sustained injury of various nature as discussed above. So case u/s 307 IPC is not made out, although charges u/s 323 and 325 r/w 149 IPC have been proved.

(g) There is no specific allegation regarding theft of Rs. 20000/- and ten sacks of paddy. From perusal of the statements of the prosecution witnesses, it is not clear from whose possession and by whom such theft has been committed. So this fact is not sufficiently proved to bring home the charges under section 380 IPC.

(h) From the perusal of the statements of the prosecution witnesses, it is not evident that who has committed the mischief of fire. Moreover, accused persons have attacked at the place of occurrence which is a under construction house and not a dwelling house or place for the custody of the property, so case under section 436 IPC is also not made out from the evidences available on the record.

(i) As per the case of the prosecution and evidences on the record, it appears that accused persons have used Khanti, lathi and danda to commit this offence. These weapons are not within the meaning of deadly weapons. So case u/s 148 IPC is not made out.

(j) From the perusal of all the evidences on the record, this court is of the view that prosecution has successfully proved charges u/s 323, 325 r/w 149 IPC.

(k) Under such facts and circumstances keeping in view the above mentioned discussion, this court is of the view that all the accused persons are liable to be acquitted u/s 148, 380, 307 and 436 IPC, but, they are liable to be convicted u/s 323, 325 r/w 149 IPC.”

**Submission on behalf of the appellant**

**10.** Learned counsel for the appellant, in order to support his submissions that respondent nos. 2 to 11 are liable to be convicted for the offence punishable under Section 307 IPC would submit that the learned trial court failed to consider the evidence of eyewitnesses including the injured witnesses who have fully supported the case of the prosecution. It is submitted that the oral testimony of the eyewitnesses find corroboration from the evidence of the Doctors who have been examined as PW-8 and PW-9.

**11.** Learned counsel submits that the prosecution witnesses have specifically stated that the accused persons abused the informant and when he raised a protest, then they assaulted the

prosecution side brutally and caused serious injuries on the body of the brothers of the informant as well as his family members.

**Submission on behalf of the respondent nos. 2 to 11**

**12.** Learned counsel for the respondent nos. 2 to 11 would submit that it is the specific case of the defence that both the parties are neighbours. Suresh Paswan (PW-4) got money of Indira Awas Yojana for construction of a house but instead of constructing the house on his own land, he started construction on the plot of land measuring area 9 decimal belonging to Deep Narayan Paswan (respondent no.2). It is submitted that DW-1 has stated that Suresh Paswan (PW-4) has filed 17-18 cases against the accused persons. DW-1 had seen the scuffle between both the parties. Respondent no.2 had also filed a case against PW-4.

**13.** It is further submitted that Baleshwar Singh (DW-2) has also stated that Suresh Paswan was constructing house of Indira Awas Yojana on the plot of land belonging to Deep Narayan Paswan (PW-2), despite the fact that he had got money to construct house on the other plot of land. When Deep Narayan Paswan interrupted Suresh Paswan from constructing house on his land, a scuffle started between them as Suresh Paswan was adamant to construct house on this plot of land. Due to intervention made by villagers, the matter was pacified. DW-2 has admitted that the land

on which Suresh Paswan was trying to construct the house is Khesra No. 147 area 64 decimal and Deep Narayan Paswan had got the title of this land through the court case.

**14.** Learned counsel for the respondent nos. 2 to 11 has taken this Court through the various orders passed by the revenue authorities which are Exhibit 'A', 'B' and 'C'. It is stated that Exhibit 'D' and 'E' are the certified copies of the order dated 03.11.2010 passed in CWJC No. 9082 of 2010 and certified copy of the order dated 16.07.2012 passed in LPA No. 85 of 2011 in CWJC No. 9082 of 2010 respectively. Learned counsel submits that on bare perusal of the orders passed by the Hon'ble High Court in the writ application and the Letters Patent appeal it would appear that Rambati Devi, wife of Late Dhanraj Paswan, Anirudh Paswan, Suresh Paswan (PW-4) and Harinandan Paswan (PW-1) were the petitioners whereas respondent no.2 was the contesting respondent no.5 in the writ application. The petitioners were aggrieved by the order of the Land Reforms Deputy Collector, Katihar, the Additional Collector, Katihar and the Commissioner, Purnea Division by which the preemption application of respondent no.5 had been allowed on the ground that he is adjoining raiyat and co-sharer of Plot No. 841, 842 and 854 measuring 64 decimals. The learned writ court held that all the

three courts have found that the respondent is the adjoining raiyat of the land in question and the land are not homestead land. The writ application was therefore dismissed.

**15.** Against the judgment of the learned writ court, the petitioners had moved in appeal giving rise to LPA No. 85 of 2011. *Vide* order dated 16.07.2012 passed in LPA No. 85 of 2011, the Hon'ble Division Bench of this Court upheld the order of the learned writ court and dismissed the LPA after holding that no case for interference has been made out. It is submitted that when the Letters Patent Appeal was pending before the Hon'ble Division Bench of this Court, PW-4 made an attempt to raise construction over the disputed land in order to change the basic feature of the land to support his contention before the Hon'ble High Court that the land is a homestead land. Thus, the conduct of the informant is required to be noticed by this Court. The learned trial court has rightly held that it is a case of land dispute and there was no intention on the part of the respondent nos. 2 to 11 to commit murder of the prosecution side.

**Submissions on behalf of the State**

**16.** Learned APP for the State has defended the judgment of the learned trial court. It is contended that in the facts and circumstances of the present case, the learned trial court has

rightly appreciated the evidences on the record and acquitted the Respondent Nos. 2 to 11 of the charge under Section 307 IPC.

**Consideration**

17. We have heard learned counsel for the parties, learned APP for the State and have also perused the trial court's records.

18. The informant (PW-4) has set out a case in his *fardbeyan* that he was constructing a house under Indira Awas Scheme on a piece of land which he had purchased and on *Sikmi* land. PW-4 has suppressed about the pending land dispute. In his cross-examination, PW-4 has stated that the land which is the place of occurrence is Plot No. 841, 842 and 854 under Khata No. 147 measuring 24 decimal. He has admitted that the quarrel had taken place with respect to this land and cases were also filed. From the deposition of PW-4 itself, it is clear that he was trying to raise construction over the land which was subject matter of dispute between the parties. The occurrence took place on 18.12.2011 when the Letters Patent Appeal between the parties was pending in this Court.

19. Hari Nandan Paswan (PW-1), Aniruddh Paswan (PW-2) and Chano Devi (PW-3) are all closely related witnesses who have supported the prosecution case but they have at the same

time tried to suppress their knowledge about the pending case. As noticed above from Exhibits 'D' and 'E' of the defence, it is crystal clear that the prosecution witnesses, namely, Anirudh Paswan and Harinandan Paswan were the appellants in the Letters Patent Appeal, therefore, they were fully aware of the ongoing dispute between the parties and pendency of the Letters Patent Appeal in the High Court on the date of occurrence.

**20.** We find that Harinandan Paswan had suffered two grievous injuries and one simple injury caused by hard and blunt substance. His injury report is Exhibit '3'. Ashok Paswan had sustained two simple injuries caused by hard and blunt substance (Exhibit '3/1'), Anirudh Paswan had sustained one simple injury and one grievous injury (Exhibit '3/2'), Suresh Paswan had sustained two simple injuries caused by hard and blunt substance (Exhibit '3/3') and Kaushalya Devi had sustained one simple injury and two grievous injuries caused by hard and blunt substance (Exhibit '3/4'). In the cross-examination, Dr. Rohit Kumar Jha (PW-8) who had examined Ranjan Kumar Paswan and Shambhu Paswan has stated that all the injuries were simple in nature and caused by hard and blunt substance. The another Doctor, Dr. Deonath Poddar (PW-9) has stated in his cross-examination that none of the injuries are dangerous to human life.

**21.** Haresh Tiwari (PW-14) who is the I.O. of the case has proved the charge-sheet (Exhibit '4'). He was posted as Sub-Inspector of Police under training in Mansahi Police Station on 12.11.2012. He had taken charge of the investigation of the case. He claims to have visited the place of occurrence but had not recorded the description of the plot in the case diary. From the deposition of PW-14, it would appear that he had not collected any significant material in course of investigation.

**22.** We have noticed from the evidence of DW-1 and DW-2 that they have stated about the land dispute between the parties. They have stated that Suresh Paswan was constructing his house on the land of Deep Narayan Paswan which was objected to by Deep Narayan Paswan and in the said occurrence, a scuffle had taken place.

**23.** In the light of the materials which came before the learned trial court, in our considered opinion, the learned trial court has rightly appreciated the evidences on the record. The case of the defence that they are being harassed by the prosecution side because of previous enmity and land dispute between the parties as the prosecution has lost the battle of civil dispute in various courts as per the evidences adduced on the record has been taken note of by the learned trial court and it has been rightly concluded that the

intention to kill any particular person of the informant side is missing. The trial court has rightly held that all of them (defence side) had attacked without any specific intention to kill any particular person although in the said occurrence, some family members have sustained injuries of various nature but a case under Section 307 IPC would not be made out.

**24.** Section 307 IPC reads as under:-

“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.”

**25.** Learned counsel for the appellant has placed before this Court the judgments of the Hon’ble Supreme Court in the case of **Ratan Singh Vs. State of Madhya Pradesh and Another** reported in **(2009) 12 SCC 585**, **R. Prakash Vs. State of Karnataka** reported in **(2004) 9 SCC 27** and **State of Maharashtra Vs. Balram Bama Patil and Others** reported in **(1983) 2 SCC 28**.

**26.** The submission is that in the case of **Ratan Singh (supra)**, the Hon'ble Supreme Court has held that the accused charged under Section 307 IPC cannot be acquitted merely because injuries inflicted on the victim were in the nature of simple hurt. Determinative question is intention or knowledge, as the case may be, and not the nature of injury.

**27.** In our opinion, the judgment in the case of **Ratan Singh (supra)** would help Respondent Nos. 2 to 11. It has been held in this case that “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 a penultimate act. It is sufficient in law, if there is present an intention coupled with some overt act in execution thereof.”

**28.** In the case of **Ratan Singh (supra)**, the Hon'ble Supreme Court has referred its earlier judgment in the case of **Sarju Prasad Vs. State of Bihar** reported in **AIR 1965 SC 843**. Paragraph '5' from the judgment in the case of **Ratan Singh (supra)** is being reproduced hereunder for a ready reference:-

“5.“15. In *Sarju Prasad v. State of Bihar*<sup>6</sup> it was observed in para 6 that [the] mere fact that the injury actually

inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

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.”

**29.** In the present case, we are of the considered opinion that PW-4 being fully aware of the pending case before the Hon’ble Division Bench of the Patna High Court tried to raise construction over the disputed plot which was objected to by Respondent No.2 and in course of said objection, a quarrel broke out. The respondents were not armed with any deadly weapon, they are said to be armed with traditional *lathi* and *khanti* which are normally kept by the villagers engaged in agriculture work. From the entire materials, this Court is unable to find that the prosecution has proved that the respondents had any intention or knowledge as envisaged under Section 307 IPC.

**30.** In result, we find no infirmity in the judgment of the learned trial court. This appeal is dismissed accordingly.

**(Rajeev Ranjan Prasad, J)**

**(Shailendra Singh, J)**

Rishi/Lekhi-

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