

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.571 of 2025

Arising Out of PS. Case No.-240 Year-2017 Thana- BAUNSI District- Banka

Suresh Prasad Mandal @ Suresh Mandal Son of Late Chamru Mandal
village-Sarua, Chamru P.S.- Bousi District -Banka

... .. Appellant/s

Versus

1. The State of Bihar
2. Nayan Mandal @ Nayan Kumar Mandal son of Late Bharat Mandal village-Sarua, Chamru P.S.- Bousi District -Banka
3. Ashok Mandal @ Ashok Yadav son of Late Bharat Mandal village-Sarua, Chamru P.S.- Bousi District -Banka
4. Munna Mandal @ Munna Yadav son of Ashok Mandal @ Ashok Yadav village-Sarua, Chamru P.S.- Bousi District -Banka

... Respondent/s

Appearance :

For the Appellant/s : Mr.Arjun Prasad, Advocate
For the Respondent/s : Mr.Mukeshwar Dayal, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 18-03-2025 Heard Mr. Arjun Prasad, learned counsel for the
appellant and Mr. Mukeshwar Dayal, learned Spl. P.P. for the
State.

2. The appeal has been filed for:

setting aside the judgment/order dated 17.12.2024 passed by Shri Nikhilesh Kumar Tripathi, the learned Sessions Judge, Banka in Sessions Trial No. 143/2017, arising out of Bousi P.S. case No. 240/2017 (State through Suresh Prasad Mandal Va Nayan Mandal Yadav & others) registered u/s 341,323,308,



504/34 of the I.P.C. by which the respondent no. 2 to 4 have been acquitted u/s 308 I.P.C. and convicted/sentenced rigorous imprisonment for one year u/s 323 and further convict/sentence simple imprisonment for one month u/s 341 I.P.C. and further convict sentence rigorous imprisonment for two years u/s 504 I.P.C. and all the sentenced run concurrently against the respondent no. 2 to 4.

3. As per the prosecution story, the informant alleged that he alongwith his wife were cleaning the grass on their land, the accused persons armed variously came, assaulted and also demolished the wall on his land. The wife got injury on her head while the appellant on his back. This led to the FIR.

4. After investigation, charge-sheet was submitted on 12.10.2017 and the trial commenced/concluded and resulted into conviction/sentence dated 17.12.2024 of the respondents as follows:

Sr. No.	Respondents name	Sentence	Fine	In Default of Fine
1.	Nayan Mandal @ Nayan Kumar Mandal	R.I. for one year under Section 323 of the IPC.	None.	None.
2.	Ashok Mandal @ Ashok Yadav	S.I. one month u/s		



3.	Munna Mandal @ Munna Yadav	341 IPC. R.I. for two years u/s 504 IPC(all the three respondents)		
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5. However, considering the fact that though there was injuries to the wife on the head and the appellant on the back, in view of the fact that the both injuries have been found to be simple in nature, after detailing out of the same in paragraph-21 of the order, learned Trial Court came to the conclusion that section 308 of the IPC is not made out. Accordingly, the said section was omitted from the conviction/sentence.

6. Aggrieved, the present appeal.

7. Learned counsel for the appellant has taken this Court to the Trial Court’s order to show that so far as the wife is concerned, the injury was found to be on the head and as such the learned Trial Court has completely erred in giving benefit of doubt under section 308 of the IPC. In that background, he submits that the respondents be noticed and appropriate order be passed.

8. Learned Spl. P.P. on the other hand opposes the prayer once again taking this Court to paragraph-21 of the Trial Court’s order to show that he has reasoned out for giving the



benefit of doubt under section 308 of the IPC. According to him, though the allegation of assault on the appellant and his wife is there, both the injuries were found to be simple in nature. He submits that only because the injury is on the head, that cannot force the Trial Court to automatically convict the accused under section 308 of the IPC in a routine manner.

9. Having gone through the facts of the case and the submissions of the parties, the learned Spl. P.P. has rightly pointed out that the injuries to both the appellant and his wife have been found to be simple in nature, this fact has been recorded by the learned Trial Court in paragraph-21 of the order.

10. In that background, the Court was fully justified in coming to the conclusion that the accused persons cannot be convicted under section 308 of the IPC though the fact remains that the accused have been convicted under sections 323, 341 and 504 of the IPC and sentenced as recorded above. In that background, this Court do not find any error in the order passed by the learned Trial Court.

11. The appeal stands dismissed.

(Rajiv Roy, J)

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