

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.423 of 2004

1. Shiv Kumar Singh,
2. Deo Kumar Singh,
3. Gorakh Singh,
4. Yogendra Singh,
5. Kamala Singh, all are R/o Village- Kadna, P.S.- Garakha, Distt.- Saran
... .. Appellants

Versus

State of Bihar
... .. Respondent

Appearance:

For the Appellants : Mr. Abhas Chandra, *Amicus Curiae*
For the Respondent : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date: 22-11-2025

As learned counsel appearing for the appellants/convicts has failed to appear repeatedly when this matter was taken on Board for final hearing, therefore, this Court appointed Mr. Abhas Chandra, learned Advocate, as an *Amicus Curiae* to assist in disposal of present appeal.

2. At the outset, it is submitted that appellant no. 1 (Shiv Kumar Singh) and appellant no. 3 (Gorakh Singh) have died during the pendency of this appeal, therefore present appeal stands abated against them, in terms of report of SSP, Saran, as made available to this Court *vide* letter no. 856/legal branch, dated 13.10.2025, and therefore now this appeal survives only against appellant no. 2 namely, Deo



Kumar Singh, appellant no. 4, Yogendra Singh and appellant no 5, Kamala Singh.

3. The present appeal has been preferred by the appellant-convicts under Section 374(2) of the Criminal Procedure Code (Cr.P.C.), challenging the impugned judgment of conviction dated 28.06.2004 and order of sentence dated 29.06.2004, as passed by learned Additional Sessions Judge, Fast Track Court-IV, Saran, in Sessions Trial No. 117 of 1988, arising out of Garakha P.S. Case No. 18 of 1987, whereby the learned Trial Court has convicted appellants for the offences punishable under Section 307 and 149 of the IPC, where appellants were sentenced to undergo rigorous imprisonment for six years along with fine of Rs. 1000/- each and in default of payment of fine further directed to undergo rigorous imprisonment for three months more. The appellant no. 5 has further been convicted under Section 379 of the IPC and sentenced to undergo rigorous imprisonment for one year. All aforesaid sentences are ordered to run concurrently.

4. The brief facts of the prosecution case as it is



apparent from written application lodged by the informant (PW-3) is that on 07.02.1987, he along with his brother Jai Narayan Singh (PW-2) and nephew Kedar Nath Singh (PW-1) went to his neighbour's house namely, Chinta Devi after hearing her cry. They saw appellant no. 1 assaulting Chinta Devi with fists and slaps. Shiv Nandan Singh, Deo Kumar Singh, Gorakh Singh, Yogendra Singh and Kamala Singh, variously armed, were standing there. Further, when the informant and others tried to save Chinta Devi, Shiv Nandan Singh ordered to assault them. Thereafter, all the accused persons assaulted the informant and Jai Narayan Singh (PW-2) causing head and bodily injuries.

5. On the basis of aforesaid written application of PW-3, namely, Maheshwar Pd. Singh (informant), Garakha P.S. Case No. 18 of 1987, was registered for the offences punishable under Sections 147, 148, 149, 323, 324, 307 and 379 of the Indian Penal Code.

6. After investigation, police submitted chargesheet, whereafter cognizance was taken by learned Judicial Magistrate upon perusal of materials collected during



the investigation and thereafter, supplying the police paper in view of Section 207 of the Cr.P.C committed this case to the Court of Sessions for trial and disposal in term of Section 209 of the Cr.P.C.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 8 witnesses.

One defence witness was examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Kedar Singh
P.W. 2	Jai Narayan Singh
P.W. 3	Maheshwar Pd. Singh
P.W. 4	Sudama Pd. Singh
P.W. 5	Suresh Pd. Singh
P.W. 6	Md. Jinat Hussain
P.W. 7	Dr. Krishna Ranjan Pd. Singh
P.W. 8	Chandra Bhushan Singh
Defence Witness	
D.W. 1	Dr. Krishna Ranjan Pd. Singh

8. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges:-

Sl. No.	Exhibit	List of documents
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	Nos.	
1.	Exhibit-1	<i>Fardbayan</i>
2.	Exhibit-2	Complete FIR
3.	Exhibit-3	Injury Report
4.	Exhibit-3D	Supplementary Injury report
5.	Exhibit-4	FIR
6.	Exhibit-5	Case diary

9. The statement of the appellant-accused were recorded under Section 313 of the Cr.P.C. after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellants/convicts for the offences punishable under Section 307 and 149 of IPC, appellant no. 5 was further convicted for offence punishable under Section 379 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 have preferred the present appeal.



12. Hence, the present appeal.

13. It is submitted by Mr. Abhas Chandra, the learned *Amicus Curiae* that the learned trial Court convicted the appellants primarily considering the nature of injury as one of the injured received grievous injury during the occurrence. It is submitted that the nature of injury is not the only criteria on the basis of which intention to cause death can be gathered as there are several aspects which are required to be established during the trial as to establish “intention to cause death within the meaning of Section 307 of the IPC several factors like nature of injury, manner of assault, pre and post conduct of the accused qua occurrence etc are to be taken into consideration”. In support of his submissions learned counsel relied upon the legal report of Hon’ble Supreme Court as available through ***Jage Ram and Others Vs. State of Haryana, [(2015) 11 SCC 366]***.

14. It is further submitted that the PW-1 and PW-2 are nephew and brother of informant and therefore, their testimony being interested witnesses cannot be relied upon wholly. In support of his submission learned *Amicus Curiae*



relied upon the legal report of Hon'ble Supreme Court as available through ***Namdeo v. State of Maharashtra reported in (2007) 14 SCC 150.***

15. Arguing further, it is submitted that the formal FIR and endorsement with its contents not appear proved during the trial as same were proved by advocate-clerks which is not approved under the law and on this score alone, this judgment is liable to be set aside/quashed. It is also pointed out that the investigating officer of this case also could not examined during the trial and therefore, place of occurrence could not established and also the appellant/accused were deprived from their valuable legal right of defence as to contradict or corroborate the testimony of the other prosecution witnesses who supported the occurrence and the allegations during the trial. It is also submitted by learned *Amicus* that the learned trial Court completely overlooked the version of defence witnesses and moreover, the statement of appellants/accused were recorded in a very cryptic and mechanical manner, which also makes the impugned judgment of conviction questionable under the



law. In support of his submission, learned *Amicus* relied upon the legal report of Hon'ble Supreme Court as available through ***Sukhjit Singh v. State of Punjab reported in (2014) 10 SCC 270.***

16. Learned A.P.P., Ms. Anita Kumari Singh, while arguing on behalf of State submitted that the testimony of, PW-1 (Kedar Singh), PW-2 (Jai Narayan Singh) and PW-3 (Maheshwar Pd. Singh) cannot be discarded outrightly as they are injured eyewitness of the occurrence. There is no apparent reason that PW-1 and PW-2 may depose false only being relative because they have also received injury during the occurrence. It is also pointed out that the independent witness, PW-4, namely Sudama Prasad Singh supported the occurrence and therefore, the judgment of conviction as recorded by learned trial Court cannot be viewed with doubt.

17. I have perused the trial Court records carefully and gone through the evidences available on record and also considered the submissions as canvassed by learned *Amicus Curiae* appearing on behalf of the parties.

18. It would be apposite to reproduce Section



307 for better understanding of law:

“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.

Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

19. From the perusal of materials available on record, it transpires that the alleged occurrence took place on the alarm raised by one Chinta Devi, who is the neighbour of informant/PW-3, who is a widow lady and was assaulted by accused persons during the occurrence. Interestingly, said Chinta Devi was not examined during the trial creating a prima facie doubt qua occurrence. The factual aspects of the case also suggest that the injured prosecution witnesses arrived at the house of Chinta Devi and opposed the activities of accused/appellants made during the occurrence and they



received the injuries.

20. From the testimony of PW-8, it appears that Shiv Nandan Singh and the appellant Deo Kumar Singh were equipped with *farsa*, Kamla Singh was equipped with *farsa*, Gorakh Singh was equipped with *lathi* and Yogendra Singh was equipped with spears. They started to assault on the order of Shiv Nandan Singh, who is not the appellant. On his instigations, appellant/accused no. 5, Kamala Singh assaulted by using *farsa* on the head of informant (PW-3) and Gorakh Singh assaulted him by using *lathi*. When his brother Jai Narayan Singh (PW-2) came to rescue him, Shiv Kumar Singh (appellant no. 1) assaulted him by using spear on the forehead of his brother. Yogendra Singh (appellant no. 4) assaulted by using *barchi* on his lips and Deo Kumar Singh (appellant no. 2) also assaulted by using *farsa*. They also assaulted the brother of informant namely, Kedar Nath Singh, who was examined as PW-1 by using *farsa*. Taking together the depositions of all three injured prosecution witnesses, it appears that there are contradictions qua weapons as alleged to be equipped by appellants/accused and also the manner of



assault appears different as raised through the FIR.

21. The doctor who was examined before the learned trial Court as PW-7 namely, Dr. Krishna Ranjan Prasad Singh upon examinations of Jai Narayan Singh (PW-2) found altogether seven injuries. All of the injuries were found simple upon medical examination. Secondly, Kedar Nath Singh (PW-1) was also examined by him and altogether three injuries were noticed upon him, out of which one was found grievous, i.e., injury no. 1, which is lacerated wound on right side of skull having dimensions 2" x 1/2". The third injured namely, Maheshwar Prasad Singh, who is the informant of this case (PW-3), was also examined by this witness, whereupon, altogether seven injuries were noticed, out of which injury no. 6 was found grievous which was due to fracture of proximal phalynx of left little finger. Chinta Devi was also examined by this doctor, who received during the occurrence two bruise injuries and one swelling on her right eye. All injuries were said to be simple in nature.

22. From discussion of aforesaid injuries, it transpires that one injury each of PW-1 and PW-3 namely,



Kedar Singh and Maheshwar Prasad Singh upon medical examinations were found grievous. The grievous injury of PW-1 was lacerated and grievous injury of PW-3 was due to fracture of finger. The injury of PW-1, Kedar Singh does not appear to be caused by any sharp edged weapons as testified during the trial that he was assaulted by appellant by using *farsa*. Maximum of the injuries as received by injured are of laceration. The number of injuries though appears multiple, but the magnitude of the injuries nowhere suggest that it was under the knowledge of appellants that the same might cause death of the injured.

23. Therefore, considering the nature of injury, contradictions qua the manner of assault and also the equipments equipped by appellants/accused during the occurrence as surfaced out of testimony of the injured witnesses and also the pre and post conduct qua occurrence etc. can be safely arrived that appellants/accused were not under intention to cause death of injured, in view of the legal report as available through ***Jage Ram Case (Supra)***

24. In this context, it would be apposite to



reproduce the relevant part of the aforesaid report which is 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.”

25. No doubt, the PW-1 and PW-2 are injured witnesses. It also appears from the record that the appellants/accused entered into the house/courtyard of Chinta Devi who was not examined during the trial. The injured witnesses joined the occurrence without having any occasion, only being neighbour of Chinta Devi. In such peculiar scenario, though PW-1, PW-2 and PW-3 received injuries during the occurrence, but their relations cannot be ignored outrightly as to view their deposition with doubt being interested witnesses.

26. In this context, it would be apposite to reproduce the relevant part of **Namdeo (Supra)**:

“38. From the above case law, it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable



and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

27. From the perusal of record, It transpires that the formal FIR not appears proved during the occurrence, rather this important document of prosecution was proved during the trial through advocate-clerks, who are PW-5, PW-6 and PW-8. These witnesses never worked together with investigating officer of this case in official capacity so as they can claim to identify the signature and handwriting of investigating officer of this case. Getting proved important documents like FIR, its endorsement by using advocate-clerks cannot be appreciated at any cost and therefore, the conviction in this case appears recorded on the basis of not-proved FIR. Non examination of investigating officer also proves fatal for the prosecution for the reason that the improvements and variations were not contradicted as surfaced during the testimony of prosecution witnesses, particularly the injured



prosecution witnesses, i.e., PW-1, PW-2 and PW-3 and thus, valuable legal right of appellants/accused appears defeated. From perusal of the statement of accused/appellant, it further appears that the incriminating materials which surfaced during the trial were placed before them in very cryptic and mechanical manner contrary to the object for which the provision of Section 313 of the Cr.P.C. was legislated. It appears that the same was recorded in very cryptic and mechanical manner which cannot be approved under the law particularly in view of the legal report of Hon'ble Supreme Court as available through ***Sukhjit Singh (Supra)***:

“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri)



92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

1. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that



the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material



circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)



“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b)



does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the



evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

28. The aforesaid factual and legal aspect categorically suggest that the assault as alleged to be caused by the appellants/accused can not be said to be made with intention to cause death, particularly in view of the settled legal ratio in view of the legal report of Hon’ble Supreme Court as available through ***Jage Ram Case (Supra)***.

29. In view of the aforesaid discussions, it also appears that the prosecution failed to answer several material aspects during the trial which ought to be answered to establish this case beyond all reasonable doubts. The benefit of all such doubts must be extended to the appellants/accused.

30. Accordingly, the appeal stands allowed by giving benefit of doubt to the appellants/accused.

31. The impugned judgment of conviction dated 28.06.2004 and order of sentence dated 29.06.2004 passed by learned Additional Sessions Judge, Fast Track Court-IV,



Saran, in Sessions Trial No. 117 of 1988, arising out of Garakha P.S. Case No. 18 of 1987, is accordingly set aside.

32. The appellants, above-named, are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from their liabilities of bail bonds. Sureties also stand discharged. Fine, if any paid, be returned to appellants hence forth.

33. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- (Rupees Five Thousand Only) to Mr. Abhas Chandra, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

34. Office is directed to send back the lower court records along with a copy of this judgment to the Court below, henceforth.

(Chandra Shekhar Jha, J)

Shahnawaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.11.2025
Transmission Date	29.11.2025

