

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.224 of 2004

Arising Out of PS. Case No.-167 Year-1994 Thana- MASHRAK District- Saran

1. Janki Devi (Abated vide Hon'ble Court's order dated 19-02-2025) D/O Sarwajeet Sahni R/O Village- Mashrakh Dakshin Tola, P.S- Mashrakh, Distt.- Saran.
2. Sharda Devi W/O Sri Bhagwan Sahni R/O Village- Mashrakh Dakshin Tola, P.S- Mashrakh, Distt.- Saran.
3. Dilip Sahani S/O Sarwajeet Sahani R/O Village- Mashrakh Dakshin Tola, P.S- Mashrakh, Distt.- Saran.
4. Sri Bhagwan Sahani S/O Sarwajeet Sahani R/O Village- Mashrakh Dakshin Tola, P.S- Mashrakh, Distt.- Saran.
5. Sarwajeet Sahani (Abated vide Hon'ble Court's order dated 19-02-2025) S/O Dasai Sahani R/O Village- Mashrakh Dakshin Tola, P.S- Mashrakh, Distt.- Saran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr.Mukund Kumar, Advocate (Amicus Curiae)
For the State	:	Mr.Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-11-2025

From perusal of the order dated 08.10.2025, it appears that Mr. Kushal, was appointed as Amicus Curiae, but he has not appeared in Court. Prior to his appointment, the earlier Amicus Curiae was also replaced by this Court.

2. Accordingly, out of present advocates in open Court, Mr. Mukund Kumar, learned counsel shows his willingness to assist this Court as Amicus Curiae.

3. In view of the aforesaid, Mr. Mukund Kumar,



learned counsel is appointed as *Amicus Curiae* for the present appeal.

4. From perusal of record, it also appears that this appeal stands abated against appellant nos. 1 and 5 namely, Janki Devi and Sarwajeet Sahani vide court's order dated 19.02.2025.

5. Now, this appeal survives only with regard to appellant nos. 2, 3 & 4 namely, Sharda Devi, Dilip Sahani and Sri Bhagwan Sahani respectively.

6. Heard Mr. Mukund Kumar, learned Amicus Curiae appearing on behalf of the appellants and Mr. Satyendra Narayan Singh, learned A.P.P. for the State.

7. This memo of appeal has been filed on behalf of the appellants under section 374(2) of the Code of Criminal Procedure (in short the, 'Cr.P.C.') against the judgment of conviction dated 01.04.2004 and order of sentence dated 06.04.2004 passed in Sessions Trial No. 226 of 1995 by learned 6th Additional Sessions Judge, Chapra (Siwan), whereby and whereunder the appellants were convicted for the offences punishable under section 307/34 of the I.P.C.



and sentenced to undergo rigorous imprisonment for four years under section 307 of the I.P.C. The appellant namely, Sri Bhagwan Sahani was convicted under section 379 of the I.P.C. and sentenced to undergo rigorous imprisonment for one year and further ordered that all the sentences shall run concurrently.

8. The brief facts of the case is that PW-5 namely, Manager Sahani, who is the informant of this case, alleged that on the previous day i.e. on 18.10.1994, at about 2:00 A.M., while he was sitting at his Darwaja, all of a sudden, Sarwajeet Sahani armed with Lathi, Sri Bhagwan Sahni armed with knife and Dilip Sahani also armed with knife, abused the informant and when he protested, all three accused persons assaulted the informant with their respective weapons, which caused various injuries on his body. It is further alleged that when the brother of informant Shambhu Sahani tried to save the informant, he was also assaulted by the accused persons and at the same time, Chameli Devi, Sharda Devi and Janki Devi came there and assaulted the informant and brother of the informant by means of lathi. It is



alleged that all the accused persons snatched the golden chain from the neck of Lal Muni Devi (PW-4), thereafter, villagers came and pacify the matter. The motive behind the occurrence was the land dispute, which was claimed to be decided in favour of the informant.

9. On the basis of aforesaid written report, police drawn formal FIR being Mashrakh P.S. Case No. 167 of 1994 was registered under sections 341, 323, 324, 307, 379, 447, 504/34 of the Indian Penal Code. After conclusion of investigation, police submitted charge-sheet against all the accused persons. Thereafter, cognizance of the offences was taken and the case was committed to the court of session by the then learned C.J.M., Chapra on 03.07.1995.

10. Learned trial court explained the aforesaid charges to appellants/accused, which they pleaded “not guilty” and claimed to be tried.

11. To establish its case before the learned trial court, the prosecution altogether examined total of six (6) witnesses and they are (1) Shambhu Sahani (2) Shambhu Pd. Yadav (3) Motilal Rai (4) Lalmuni Devi (5) Manager Sahani



and (6) Ram Murti Jha. The prosecution has also produced certain documents viz. Signature of Manager Sahani and witnesses on the fard-e-beyan, which are marked as Exhibit -1 and 1/1. Exhibit - 2, 2/1 & 2/2 are the injury reports of Shambhu Sahani, Manejar Sahani and Lal Muni Devi.

12. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of accused/appellants were recorded under Section 313 of the Cr.P.C., which was denied by the appellants in totality by claiming their complete innocence and false implication.

13. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellants/convicts, in aforesaid terms. Being aggrieved of which present appeal was preferred.

14. Hence, the present appeal.

15. Mr. Mukund Kumar, learned *amicus curiae* appearing on behalf of the appellants, submitted that learned trial court has completely ignored the fact that occurrence was free-fight in nature where both parties had received injuries arising out of land dispute, where the informant's side made



attempt to dispossess the accused/appellants. It is pointed out that merely considering the nature of injury as certain cut wound mark was found by the doctor upon examination of injured, the conviction by the learned trial court was secured for the offence punishable under section 307 I.P.C., which is contrary to the established principle of law. In support of his submission, Mr. Mukund relied upon the legal report of Hon'ble Supreme Court as available through **Jage Ram v. State of Haryana, (2015) 11 SCC 366.**

16. It is also submitted that the witnesses are **interested** being family members and relatives and, therefore, their testimony cannot be wholly relied upon and in support of his submission, learned counsel relied upon legal report of Hon'ble Supreme Court as available through **Namdeo v. State of Maharashtra** reported in **(2007) 14 SCC 150.**

17. Mr. Mukund Kumar, learned *amicus curiae*, further submitted that statement of accused/appellants was also appears to be recorded in a very cryptic and mechanical manner under section 313 of the Cr.P.C. and, therefore, on



this score alone, this appeal is liable to be set-aside.

18. It is submitted that the contradiction amongst the deposition of prosecution witnesses as surfaced during the trial creates several doubts, which prosecution was bound to answer but failed and, therefore, on the basis of testimony and materials available on record, it cannot be said that prosecution established its case beyond all reasonable doubts. In support of cryptic recording of statement of accused/appellants, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Sukhjit Singh Vs. State of Punjab** reported in **(2014) 10 SCC 270**.

19. It is also submitted that I.O. of this case could not be examined during trial as to establish contradiction and also corroboration, thus, appears to defeat the valuable legal right of the accused/appellants in their defence. In want of examination of I.O. of this case, the P.O. and other material aspects could not be established before court during the trial.

20. Mr. Satyendra Prasad Singh, learned A.P.P. for the State, while opposing this appeal, submitted that the



testimony of injured witnesses i.e. PW-1 namely, Shambhu Sahani, PW-5 namely, Manejar Sahani and PW-4 namely, Lalmuni Devi are consistent enough qua occurrence as to view the judgment in issue with any doubt.

21. I have perused the records of learned trial court 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. It would be apposite to reproduce section 307 of the I.P.C., which reads as under:

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned."

22. It appears upon perusal of injury report of PW-1 namely, Shambhu Sahani that he received total of eight injures out of which all the injuries were found simple, except injury no. 1, which was found self-cut injury on the front of left shoulder having dimension of 2" x $\frac{1}{2}$ " x 1". It also



appears that rest of the seven injuries are simple in nature. The injury no. 1, as discussed, found on non-vital part of the body i.e. left shoulder.

23. From perusal of injury of PW-5 namely, Manegar Sahani, it appears that he received total of three injuries, out of which two was cut injuries behind chin and below the right knee and one was abrasion below the right axila having dimension of $\frac{1}{2}$ " x $\frac{1}{4}$ ", but all found simple and caused by sharp cutting substance, whereas the injuries which found upon the third injured who was PW-4 namely, Lalmuni Devi, which was two in number but both are cut injuries and found simple in nature.

24. It appears from testimony of PW-5 (informant) that accused/appellants namely, Dilip Sahani and Sri Bhagwan Sahani were equipped with knife, whereas during his examination-in-chief, he submitted that Sarwajeet Sahani assaulted him on his cheek, below his eye by knife. The statement appears contradictory in itself that how a person equipped with lathi assaulted him by knife. There is no testimony which may suggest that knife was already in his



possession and during the occurrence it was passed to him by other accused persons.

25. He also deposed that his Bhabhi (wife of elder brother namely, Lalmuni Devi PW-4) was assaulted by Sarwajeet Sahani by using Lathi, which again creates a doubt that the informant was assaulted by co-accused Sarwajeet Sahani by using knife.

26. The maximum of injuries which was noticed upon aforesaid injured are on non-vital private parts and simple in nature except the injury no. 1 of the informant. With aforesaid injuries, it cannot be said that the accused persons were under intention to kill the injured and therefore, the conviction, as secured by learned trial court, appears doubtful on its face. It further appears that the occurrence took place in the background of land dispute. It also transpires that the appellants' side lodged a case against the informant's side which was registered as Marhorwa P.S. Case No. 169/1994 by Chameli Devi, wife of accused appellant namely, Sarwajeet Sahani, which was lodged on the basis of information given in Sadar Hospital during his treatment on 18.10.1994 qua



occurrence i.e. 17.10.1994.

27. It is submitted that in said case the informant and others were named as accused and upon trial Manejar Sahani, Shambhu Sahani and Radha Sahani were convicted under section 341, 323 of the I.P.C. and were released under the Probation of offenders Act after due admonition.

28. It appears that the accused who were convicted in aforesaid case were examined as prosecution witnesses in the present case as PW-1 and PW-5, and, therefore, their testimony being interested witnesses cannot be relied wholly. In this context, it would be apposite to reproduce **para 38** of **Namdeo case (supra)**, which are as under for ready reference:

"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."



29. It also transpired from the statement of the appellants/accused that same was not recorded in terms of established principle of law rather appears to be recorded in very cryptic and mechanical manners and, therefore, on this score alone, judgment under appeal appears questionable.

30. It would be apposite to reproduce **para 10, 11, 12, 13 of Sukhjit Singh case (supra)**, which reads as under:

“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.

11. 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."

31. Taking note of aforesaid testimony, as discussed aforesaid, it transpires that several doubts could not answered by the prosecution creating a doubt and benefit of same be extended to the accused/appellants.

32. Hence, the judgment of conviction dated 01.04.2004 and order of sentence dated 06.04.2004 as passed in Sessions Trial No. 226 of 1995 by learned 6th Additional Sessions Judge, Chapra (Siwan), is hereby set-aside.

33. Accordingly, this appeal stands allowed.

34. In view of the aforesaid, appellant nos. 2, 3 & 4 named-above, are acquitted from the charges leveled against them. Since, the appellants are on bail, they are discharged from their liabilities of respective bail bonds. Sureties stands discharged. Fine, if any, paid, be returned to the appellants



henceforth.

35. Office is directed to send the LCR of this appeal to the court concerned.

36. Let a copy of this judgment be sent to the learned trial court forthwith.

37. The Patna High Court Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand Only) to Mr. Mukund Kumar, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 224 of 2004, as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.11.2025
Transmission Date	27.11.2025

