

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.221 of 2004

1. Birendra Das @ Birendra Kumar Das, Son of late Munsu Das.
2. Raghunath Das, Son of late Munsu Das,
3. Vishwanath Das, son of late Munsu Das,
4. Ram Nath Das, son of late Munsu Das,
5. Amarnath Das, son of late Munsu Das,
6. Vaidnath Das, son of late Munsu Das,
7. Jaggarnath Das, son of Munsu Das,
All are residents of village- Chuksaho, P.S. Patory, District- Samastipur.
... .. Appellant/s

Versus

The State of Bihar. Respondent/s

Appearance :

For the Appellant/s : Ms. Jasjit Pranjali, amicus
For the Respondent/s : Mr. Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-11-2025

Ms. Jasjit Pranjali, learned counsel present in court at the time of hearing agreed to assist this Court as amicus and, therefore, this Court appointed Ms. Jasjit Pranjali, as an *Amicus Curiae* to assist in disposal of present appeal.

2. At the outset, it is submitted that appellant nos. 4, 6 and 7 have died during pendency of present appeal and, therefore, the present appeal stands abated against them.

3. Now this appeal survives only against appellant nos. 1, 2, 3 and 5.

4. The present appeal preferred by appellants/convicts against judgment of conviction and order



of sentence dated 26.03.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 3, Samastipur in Sessions Trial No. 62 of 1992 (arising out of Patory P.S. Case No. 119/91), whereby and whereunder appellants/convicts have been convicted for the offences punishable under Sections 307, 148, 147 and 326 of the Indian Penal Code and further accused/appellant nos. 5, 6 and 7, namely, Amarnath Das, Vaidnath Das and Jaggarnath Das sentenced to undergo rigorous imprisonment for six years for the offences under Section 307 of the Indian Penal Code, two years for offence under Section 148 of IPC, further accused/appellant nos. 6 and 7, namely, Baijnath Das and Jaggarnath Das sentenced to undergo rigorous imprisonment for four years for the offence under Section 326 of the IPC, further appellant nos. 1 to 4, namely, Birendra Das, Raghunath Das, Vishwanath Das and Ram Nath Das respectively, sentenced to undergo rigorous imprisonment for three years for the offence under Section 325 of IPC, two years for offence under Section 148 of IPC and one year for the offence under Section 147 of IPC. All sentences shall



ordered to run concurrently.

5. The crux of prosecution, as it appears from the written information of the informant/PW-5 namely, Nawal Kishore Jha, son of Pandit Anant Jha who recorded his statement on 13.12.1991 at 11:00 A.M. in Kiran Nursing Home stating that on 13.12.1991 at about 11:00 A.M., the informant (P.W.5) went to Chaksaho Chowk after taking meal on 12.12.1991 at 11:00 A.M. and when he returned home and saw that Sita Ram Rai (P.W.- 3) of his village was collecting leaves of Bamboo tree. The informant sold out the leaves of bamboo to him every year. During this, the accused Raghuath Das (appellant no. 2) lifting, plucking leaves and informant asked why he was carrying leaves. Thereafter, scuffle started in between informant (P.W.6) and Baijnath Das (Appellant No. 1). Baijnath Das called his brother, son and nephew, who arrived carrying *lathi* and *farsa*. The accused Jaggarnath Das and Baijnath Das gave *farsa* blow, which hit to the head of the informant and caused cut injury and blood oozed. Other accused persons assaulted him (informant P.W.5) with *lathi* and he sustained injuries. After



seeing, his wife Jiwach Devi (P.W.4) came to rescue him, then Jaggarnath Das (accused no. 7) and Amarnath Das (accused No.5) assaulted her with *farsa* and caused cut injury on her head and causing profused bleeding. The informant and his wife raised alarm and the witnesses came and noticed the incident. Further case of the informant is that the alleged field belonged to informant (P.W.5) which he got through gift and accused persons also put their claim over the same, due to this, occurrence took place. The statement of informant was recorded by A.S.I. of Patory Police station at Kiran Nursing Home.

6. On the basis of aforesaid written information and after completion of investigation police submitted charge-sheet against accused persons under Sections 147, 148, 149, 325, 324, 326 and 307 of Indian Penal Code. On the basis of which, learned trial court framed charges, which appellants/accused denied on explanation and claimed trial.

7. To established its case before the learned trial court, the prosecution altogether examined total of seven witnesses, namely, **PW-1** Dharmendra Kumar Jha, **PW-2**



Kundan Sinha, **PW-3** Sita Ram Rai, **PW-4** Jiwachh Devi,
PW-5 Nawal Kishor Jha (Informant), **PW-6** Binda Paswan,
PW-7 Dr. Shiva Shankar.

8. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1 - Signature of Nawal Kishore on FIR (PW-5/Informant).

Exhibit-2 Fardbeyan.

Exhibit-3 Endorsement of A.K. Khan on fardbeyan.

Exhibit-4: Formal FIR

Exhibit-5 to 5/1-: Injury reports

Exhibit-X to X/5 (X-ray plats) are marked for identification

Exhibit-6 Judgment of one Executive Courts.

9. After examination of the prosecution witnesses and by taking note of evidences and incriminating circumstances as surfaced during the trial, the statement of appellants/accused persons were recorded under Section 313 of the Cr.P.C., which was denied in totality by showing complete innocence



10. In support of defence, accused persons examined five witnesses, who examined before the learned trial court as **DW-1, namely, Hare Ram Singh, DW-2, namely, Ganga Pd. Rai, DW-3 Shiv Ratan Das, DW-4 Bindu Singh and DW-5 Ram Kripal Paswan.**

11. On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellants/convicts and passed order of sentences in aforesaid manner, being aggrieved with, appellants/convicts preferred the present appeal.

12. Hence the present appeal.

13. It is submitted by Ms. Jasjit Pranjali, learned amicus that the nature of injuries as found upon the injured was only taken into consideration by learned trial court while recording the conviction for the offence punishable under Section 307 of the IPC, which is not the correct position of law. It is submitted that the several factors are required to be established while recording such conviction i.e. nature of weapons, conduct of the parties, pre and post occurrence, manners of assault etc. In support of her submission, learned



amicus referred and relied upon the legal report of Hon'ble Supreme Court as available through ***Jage Ram & Others Vs. State of Haryana*** reported in ***(2015) 11 SCC 366***. It is also submitted that the occurrence is out of land disputes and the injured/informant was the aggressors. It is also pointed out that the injured examined themselves before private hospitals and, therefore, the manipulation in injury report cannot be ruled out. It is further submitted that witnesses who supported the occurrence are the immediate family members and, therefore, their testimony cannot be said wholly reliable *qua* occurrence being interested witness. In support of her submission, learned amicus relied upon the judgment of Hon'ble Supreme Court as available through ***Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470***. It is also pointed out that the doctor in this case was not fully examined as he did not turn up for his cross-examination and, therefore, it cannot be said that the injury which was brought before the court was proved to the extent that same can be relied upon to draw "**intention to cause death**".

14. Learned APP while opposing the appeal



submitted that almost nine injuries was noticed upon the injured in terms of Exhibit-5. It is pointed out that injury was multiple and repeated therefore the intention to cause death can be easily gathered and, as such, the conviction recorded by the learned trial court cannot be viewed with doubt.

15. 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 the learned counsel appearing on behalf of the parties.

16. For better understanding of this case, 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."

17. It appears from the available testimony that



PW-1, Dharmendra Kumar Jha, PW-5, Nawal Kishore Jha informant/injured and PW- 4, Jiwachh Devi, are the injured witnesses. PW-1 Dharmendra Kumar Jha claimed himself to be an eye-witness of the occurrence. The testimony of PW-2 Kundan Sinha, suggests that he is the chance witness, whereas PW-3 Sita Ram Rai only supported the occurrence. It appears that ten injuries was found by PW-7 Dr. Shiv Shankar Singh, who examined PW-5 and five injuries upon PW-4, namely, Jiwachh Devi who is the wife of PW-5.

18. The crux of their testimonies suggest that the disputes surfaced out of title regarding with one bamboo clumps who claimed by both sides i.e. the informant as well as accused/appellants. It also appears that out of ten injuries, one was abrasion, five was bruises, one was laceration, one dislocation of right shoulder joint, one tender swelling and one incised wound whereas the injury of PW-4 is bruise, laceration and incised wound.

19. Out of aforesaid injuries, the maximum of injuries are found upon non-vital part of the body and they appears to be caused in terms of the deposition of doctor



(PW-7) by hard and blunt substance except injury no. 10 of PW-5/informant which is incised wound 3"x1" bone deep on left side of scalp similarly, the nature of injury which found upon PW-4 i.e. Jiwachh Devi is of only one incised wound size 3"x1/2" bone deep on right side of scalp. Rests are bruise and laceration.

20. From the testimony of informant/PW-5, it appears that Jagarnath Das, accused/appellant no. 7 and Vaidnath Das, accused/appellant no. 6 assaulted him by using '*farsa*' where he also testified that Amarnath Das, accused/appellant no. 5 assaulted on the head of his wife/PW-4 whereas as per the testimony of PW-3, namely, Sita Ram Rai who is also claimed to be an eye-witness of the occurrence testified through his cross-examination that appellant/accused no. 5, namely, Amarnath Das was equipped with *lathi* whereas injured PW-4, namely, Jiwachh Devi who is the wife of PW-5 deposed that appellant no. 5 was equipped with *farsa*. It further appears from the testimony of PW-4 that the appellant no. 5, namely, Amarnath Das assaulted by *farsa* on left side of her forehead



and the appellant no. 7, Jaggarnath Das assaulted on her head by *farsa* whereas PW-5, informant/injured categorically stated through his examination-in-chief that appellant no. 5 assaulted on head of his wife. The manner of assault as alleged to be caused by appellant no. 5 appears contradictory in view of the testimony of PW-4 and PW-5 who are none but the wife and husband, which gets further doubtful in view of the testimony of PW-3, namely Sita Ram Rai who deposed that appellant no. 5 was equipped with *lathi*.

21. It is an admitted position that the doctor PW-7 could not fully examined as his cross-examination was left, though his cross-examination was adjourned on the request of learned counsel appearing for the defence but it nowhere appears that any attempt *qua* delaying the trial was made on part of the accused/appellants.

22. Absence of complete examination of PW-7 appears depriving the valuable legal right *qua* defence of appellants/accused.

23. None of the seized materials produced before the learned trial court during trial in support of prosecution.



The deposition of I.O. though appears to support the occurrence and involvement of the accused/appellants but it also appears from his deposition that some of the version *qua* occurrence was raised before the learned trial court first time on instance of prosecution witnesses as improved version, making credibility of their testimony particularly being interested witnesses.

24. It would be apposite to refer **para Nos. 32 and 33** of the legal report of Hon'ble Supreme Court in the matter of ***Nand Lal (supra)***, which reads as under:-

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness,



incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

25. From the testimony of all the aforesaid prosecution witnesses, it transpires that occurrence was free fight in nature, where out of physical assault the informant’s side received more serious injuries comparing accused sides, out of which the present criminal case was lodged in the background of the land dispute.

26. In view of the nature of injury, the testimony of injured eye-witnesses *qua* manner of assault and contradictions also regarding the weapons alleged to be



actually equipped by the appellants/accused, makes further a serious doubt regarding manner of assault. In view of same, it can be said safely that the appellants/accused was not under intention to cause death of the injured.

27. Aforesaid factual aspects can be appreciated through legal report of Hon'ble Supreme Court available through para nos. **12, 13 & 14** of the ***Jage Ram case (supra)***, which reads as under for a ready reference:

"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)"

28. At this stage, learned amicus pointed out that the accused/appellants was examined before the learned trial court in very cryptic manner without explaining all incriminating evidences surfaced during the trial against them and, therefore, on the basis of cryptic statement as recorded under Section 313 of Cr.P.C., the present conviction as imposed by the learned trial court is likely to be quashed/set aside.

29. In support of her submission, learned amicus relied upon para nos. **10, 11, 12 & 13** of the legal report of Hon'ble Apex Court in the matter of ***Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]***. 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.”

30. As allegation *qua* grievous injuries is available only against appellant nos. 5, 6 and 7. Out of whom appellant nos. 6 and 7 already died.

31. In view of aforesaid particularly taking note of contradiction of prosecution witnesses *qua* manner of assault and also the weapons was actually they equipped during the



occurrence, the nature of injury, the manner in which the occurrence took place it cannot be said that accused/appellants were under intention to cause death particularly in view of the legal ratio as discussed aforesaid in ***Jage Ram's case (supra)***.

32. It appears that these questions must requires answered by prosecution during the trial.

33. Statement of accused/appellants also appears to be recorded in very cryptic and mechanical manner as discussed aforesaid.

34. In view of aforesaid discussions, as certain doubts surfaced during trial which could not properly answered by prosecution, the benefit of which must be extended to appellants/accused.

35. Accordingly, appellants are acquitted from the charges levelled against them, by giving benefits of doubt.

36. Hence, appeal stands allowed.

37. The impugned judgment of conviction and order of sentence dated 26.03.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 3,



Samastipur in Sessions Trial No. 62 of 1992 (arising out of Patory P.S. Case No. 119/91) is hereby set aside. Appellants/accused are acquitted of the charges levelled against them.

38. Appellants are on bail as submitted, Upon acquittal, their bailor and sureties stand discharged from their respective liabilities.

39. TCR, if any, be sent back to learned trial court along with the copy of this judgment immediately.

40. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- (Rupees Five Thousand only) to Ms. Jasjit Pranjal, *Amicus Curiae* as consolidated fee for rendering her valuable professional service for the disposal of present appeal.

41. I.A., if any, stands disposed of.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
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