

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.426 of 2005**

=====

Sitaram Sao @ Sitaram Sah son of late Indu Sah, r/o Village-Chandramandih,
P.S. Chandramandih, District Jamui. Appellant/s

Versus

The State of Bihar. Respondent/s

=====

Appearance :

For the Appellant/s : Ms. Priti, *Amicus Curiae*
For the State : Ms. Anita Kumari Singh, APP

=====

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 29-11-2025

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

2. The present appeal has been preferred by appellant/convict against judgment of conviction and order of sentence dated 20.08.2005 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Jamui in Sessions Trial No. 103 of 1998 (arising out of Chandramandih P.S. Case No. 71/1996 G.R. No. 1194/1996), whereby and whereunder appellant/convict has been convicted for the offences punishable under Sections 325 and 307 of the Indian Penal Code and further accused/appellant was sentenced to undergo rigorous imprisonment for ten years for the offence punishable



under Section 307 of the Indian Penal Code and rigorous imprisonment for one year for the offence under Section 325 of IPC.

3. Prosecution case, as speaks in brief is that on 10.12.1996 Sitaram Sao (the appellant), Jiwan Sao, Parwati Devi and Rekha Kumari were cutting paddy crops of the informant (PW-5) and when she went there to stop the harvesting, all the four accused persons manhandled with her. It is further alleged that Laxmi Prasad Sah (brother of the informant), Sujit Kumar Sah (informant's brother's son) and Kailash Sah (son of the informant) also came there and assaulted her. It is further alleged that the appellant assaulted the informant with *Kachia* on her head and also tried to cut her neck with *Kachia*, Sujit Kumar Sah was assaulted on his head by Jiwan Sah by means of *Kachia*. Accused Parwati Devi assaulted Laxmi Sah with *lathi* causing injury on the middle finger of his right hand. It is further alleged that the appellant gave fist blow on the nose of Kailash Sah causing bleeding injury.

4. On the basis of aforesaid information, Chandramandih P.S. Case No. 71/1996 dated 20.08.2005 was registered for the offences punishable under Sections 325 and



307 of the Indian Penal Code.

5. Learned Magistrate on the basis of materials collected during investigation took cognizance and committed this case to learned trial court for its trial and disposal. Learned trial court accordingly framed charges against appellant-accused, which upon explanation to him pleaded as “not guilty” and claimed trial.

6. To substantiate its case, before learned trial court, prosecution has examined altogether 7 witnesses. One witness was examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Kailash Sah
P.W. 2	Laxmi Sah
P.W. 3	Ramkishun Sah
P.W. 4	Sujit Kumar
P.W. 5	Parmeshwari Devi/informant
P.W. 6	Prasidh Narain Singh
P.W. 7	Dr. Abhay Kumar Yadav
Defence Witness	
D.W. 1	Mahesh Kumar Yadav

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

Sl. No.	Exhibit Nos.	List of documents
---------	--------------	-------------------



1.	Exhibit-A	Malguzari/Rent Receipt for the year 2004-2006 in the name of accused-appellant Sitaram Sao.
2.	Exhibit-A/1	Malguzari/Rent Receipt for the year 2004-2006 in the name of accused-appellant Sitaram Sao.

8. The statement of the appellant/accused was recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which he denied and shows his complete innocence.

9. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences punishable under Sections 325 and 307 of the Indian Penal Code and sentenced him in the manner as stated above.

10. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

11. Hence, the present appeal.

12. It is submitted by Ms. Priti learned *amicus* appearing for appellant that the occurrence is of free fight in nature as it appears from the testimony of all prosecution witnesses particularly of PW-1 where both parties received



injuries and for the same set of occurrence appellant's side also lodged a case.

13. It is further submitted that merely the cut mark injury was found upon injured/informant side and one of the injured was medically said to be remained in unconscious condition for some time, the learned trial court convicted the appellant accused for the offence punishable under section 307 of the IPC which is apparently not a convincing & cogent reason. It is submitted that the occurrence took place when the informant and the appellant fought over harvesting of paddy for a disputed piece of land and therefore the assault alleged was made by the *Sickle (Hasiya)* which was being used for harvesting the crops. It is pointed out that there was no plan regarding occurrence and even after medical examinations the nature of injury was found simple and there was nothing available on record which may suggest that the alleged assault was made with an '**intention to cause death**' or assault as alleged was made with knowledge that same may likely to cause death of the injured. In this context, it is further submitted by learned *amicus* that there are several factors which are required to be taken into consideration while establishing a case within the meaning of Section 307 of the IPC, like the nature of injuries, conduct of the



parties, nature of the occurrence, nature of the weapons pre and post occurrence, conduct of accused etc., in view of ***Jage Ram v. State of Haryana, (2015) 11 SCC 366***. The factual aspects of this case nowhere suggest that this case falls within the law as laid down in ***Jage Ram Case (supra)*** and arguing further it is submitted that all the injured witnesses are from the same family and they are also accused of the counter case lodged by the appellant's side and therefore their interest *qua* conviction cannot be ruled out. In this context, learned counsel relied upon ***Namdeo v. State of Maharashtra*** reported in ***(2007) 14 SCC 150***, stating that merely on the ground that the prosecution witnesses are injured, their testimony cannot be wholly accepted. It is also submitted by learned *amicus* that with same set of evidence, the other accused persons were acquitted by the learned Trial Court itself but the appellant/accused without assigning any reason was convicted for the offence punishable under section 307 of the IPC.

14. It is also pointed out by learned *amicus* that the investigating officer of this case was not examined during the trial and therefore, in want of his examination, place of occurrence was not established and also the accused/appellant was deprived to contradict the testimony of the witnesses who



supported the occurrence during the trial and as such valuable legal right of accused/appellant was defeated. It appears that non-examination of I.O. is fatal to the prosecution case. In support of his submission learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through ***Rajesh Patil Vs. State of Jharkhand, [(2013) 3 SCC 791] & Sher Singh @ Partapa Vs. State of Haryana, [(2015) 3 SCC 724]***.

15. comprising all such aforesaid submissions, it is finally submitted by learned *amicus* that in present case conviction under Section 307 of the IPC is not convincing and, therefore, the impugned judgment be set aside.

16. Learned APP while opposing the appeal submitted that the injured witnesses supported the occurrence and merely they are relative of the informant, their testimony cannot be discarded wholly. However, it is conceded that I.O. of this case was not examined during the trial. It is submitted that non-examination of I.O. is not always proved fatal for the prosecution. However, it is conceded that the injury as found upon injured by the Doctor was simple in nature and also that occurrence was of free fight in nature for which a criminal case was also lodged by the appellant side against informant and



other prosecution witnesses making them accused.

17. 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 learned counsel appearing on behalf of the parties.

18. PW-1 is Kailash Sah. He supported the occurrence as stated through FIR **(Exhibit-1)**. It appears from his injury report that he received single injury which was swelling with tenderness of size 1"x1/2" and bleeding on nose was present, nasal system and nasal bridge were swollen and depressed. Upon X-ray it was found grievous. It appears from his testimony that he received only single injury during the occurrence. He appears to support through his testimony that the parties are fighting over land dispute and the present occurrence also took place due to land dispute.

19. It appears from his **(PW-1)** examination-in-chief itself that he was assaulted on his nose by appellant using his fist, but from his cross-examination it appears that he received injury on his nose during the occurrence. It also not appears from his testimony that the appellant accused was equipped with *Sickle (Hasiya)* in his hand. There is nothing on record to suggest that before making assault by fist the *Sickle (Hasiya)*



was either passed over to someone else or was thrown to the ground. Therefore, the testimony of this witness *qua* injuries as received by him during the occurrence appears doubtful.

20. PW-2 is Laxmi Sah. No injury was received by him during the occurrence as he was not alleged to be assaulted by the appellant-accused. It appears from his testimony that he supported the occurrence and also the land dispute between the parties. It appears from his testimony that though he received injury during the occurrence but the injury report out of testimony of PW- 7 suggest that this witness was not medically examined.

21. PW-3 is Ram Kisun Sah. He is the own brother of the informant. It appears from his testimony that he arrived at the place of occurrence after the actual occurrence and he came to know about the appellant who assaulted the injured persons from the mouth of Parmeshwari Devi, who is also one of the injured. He also supported land dispute between the parties. He failed to notice any bloodstain mark at the place of occurrence.

22. PW-4 is Sujit Kumar Sah. He is the nephew of the informant and he also received injury during the occurrence. As per testimony of PW-7, he received incised wound having clot. He received one incised wound of size 1"x1/4"x1/16" inch over



left parietal area of head. It was found simple in nature. There is no repetition of assault as alleged to be caused by appellant to this injured. It was also deposed by him that Parmeshwari Devi, even after receiving injury inflicted by appellant-accused, was in her sense. It was also deposed by him that saree of Parmeshwari Devi was found stained with blood.

23. PW-5 is Parmeshwari Devi, who is the informant of this case. She was also examined by PW-7 and total four injuries were found upon her out of which two injuries were incised, one was abrasion and another was lacerated wound. While deposing through her examination-in-chief she stated before the trial court that she was assaulted by appellant-accused by *Hasiya (Sickle)* on her neck. She failed to depose that how many assault was caused by this appellant-accused upon her. It appears from the testimony of PW-7 that first incised wound of size 2"x1/4"x1/6" was found upon right side of occipital area of head which was simple in nature, whereas other incised wound of size 1/2"x1/8"x1/16", red colour with clot was found upon her right hand. None of the injury was found upon her neck as deposed. 3rd and 4th injuries are abrasion and lacerations of size 1 1/2"x1/16" and 1/2"x1/8"x1/16", respectively. Both are simple in nature. There is no allegation out of her testimony that she



was assaulted by using other weapons also by this appellant accused. It also appears doubtful that how by using a single nature of weapon, three different kinds of injury like incised, abrasion and laceration were caused. Her statement before PW-7 that she became unconscious after the occurrence does not appears reliable in view of the testimony of other injured witness i.e. PW-4, who categorically stated that she was in her sense even after receiving injuries.

24. One of the injured namely Kante Sah not appears to be examined during the trial.

25. PW-7 upon cross-examination categorically stated that these type of injuries are possible to be caused by fall on piece of glass or on land. Possibility of self inflicted injuries cannot be ruled out straightaway.

26. In view of the aforesaid factual aspects, it appears that the occurrence was of free fight for which the counter case was also lodged by the appellant-accused as it was gathered from the testimony of the prosecution witnesses itself, the nature of weapons not appears in corroboration with the nature of injury as found upon injured/informant-PW-5 and, moreover, Same was also found simple in nature.

27. In want of different nature of injuries, it also can



be said safely that same was not repeated by the appellant-accused which was said repeatedly by all prosecution witnesses to be equipped with *Hasiya(Sickle)* which by all probability may cause only incised wound. The occurrence took place in the background of land dispute as supported by the prosecution witnesses, altogether sufficient to suggest that the assault as caused by the appellant-accused was not made with an intention to cause the death of the injured in view of ***Jage Ram Case (supra)***. Merely, the prosecution witnesses as discussed aforesaid received certain injuries during the occurrence does not mean that they are wholly reliable as they are also accused in the criminal case lodged by appellant's side, for same occurrence.

28. In this context, it would be apposite to reproduce the relevant part of ***Namdeo Case (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."

29. It also appears that the IO of this case was not examined during the trial, therefore, the place of occurrence and different incriminating materials as collected during the occurrence in support of the prosecution case could not be examined during the trial.

30. Therefore, it can be said safely that the different questions which must be answered during the trial by the prosecution to establish its case could not be answered, in view of the aforesaid settled legal proposition, the benefit of which must be extended to the accused/appellant.

31. Accordingly, appellant is acquitted from the charges levelled against him, by giving benefit of doubt. Hence, appeal stands allowed.

32. The impugned judgment of conviction and order of sentence dated 20.08.2005 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Jamui in Sessions Trial No. 103 of 1998 (arising out of Chandramandih P.S. Case No. 71/1996 G.R. No. 1194/1996), is hereby set aside. Appellant/accused is acquitted of the charges levelled against



him.

33. Appellant is on bail as submitted, upon acquittal, his bailor and sureties stand discharged from their respective liabilities.

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

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

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

(Chandra Shekhar Jha, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.12.2025
Transmission Date	05.12.2025

