

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.329 of 2005

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1. Ganesh Sahni @ Ganesh son of Sri Sukhdeo Sahni.
 2. Laxman Sahni , son of Late Bauwe Lal Sahni.
 3. Sukhdeo Sahni, son of Late Thithar Sahni.
 4. Laxmi Sahni @ Laxmi, son of Sri Sukhdeo Sahni.
 5. Maheshwar Sahni @ Maheshwar, son of Sri Sukhdeo Sahni.
 6. Sheo Lal Sahni, son of Sri Sukhdeo Sahni.
 7. Amir Chand Sahni @ Amir Chand, son of Sri Sukhdeo Sahni.

All are residents of Village: Sahdullahpur, P.O. Khrauni, P.S. Bisfi, Distt: Madhubani.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sunil Kumar Verma, Adv
	:	Mr. Udeshya Kumar Yadav, Adv
For the Respondent/s	:	Mr. APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-09-2025

The present appeal has been preferred by the appellants-convicts under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 10.06.2005 and order of sentence dated 13.06.2005 passed by learned Additional Sessions Judge-cum-Fast Track Court No. 3, Madhubani in Sessions Trial No. 6 of 1993 arising out of Bisfi P.S. Case No. 147 of 1991 whereby appellant no(s). 1



and 7 have been convicted for the charges under Sections 307/149 of the IPC and Section 148 of the IPC and they have been sentenced to undergo R.I. for five and two years respectively and remaining appellant no(s). 2 to 6 have been convicted for charges under Section 307/149 of the IPC and Section 147 of the IPC and they have been sentenced to undergo R.I. for five years and one year respectively. All aforesaid sentences ordered to run concurrently.

2. The brief facts of the prosecution case is that on 04.08.1991 at about 8:00 AM the informant Ram Gopal Thakur (P.W. 4) was transplanting the paddy seedlings by the labourers in his filed bearing old khesra no. 2088/new khesra no. 2446 situated at village Pokhrouni Sahadulpurtola, P.S. Bisfi. Distt.-Madhubani. In the meantime his co-villagers accused Sukhdeo Sahani, Sheo Lal Sahani, Lakshmi Sahani and Maheshwar Sahani armed with lathi, Amir Chandra Sahani and Ganesh Sahani armed with garasa, Laxmi Sahani armed with lathi came to the field of the informant. Accused Sukhdeo Sahani forebade the informant from transplanting the paddy seedlings and asked why he purchased the same



land to which Sukhdeo Sahani intended to purchase. The informant did not reply and continued to transplant the paddy seedlings. Then accused Amir Chand Sahani ordered to kill the informant on which accused Ganesh Sahani gave a garasa blow on the head of the informant with intention to kill him by saying that today he will be killed. Accused Amir Chandra Sahani assaulted the informant by means of lathi which caused injury below the right knee of the informant. Accused Laxmi Sahani assaulted by means of lathi on his forehead above the right eye. Accused Sheo Lal Sahani assaulted by means of lathi which caused injury on the left hand of the informant. Accused Sukhdeo Sahani and Maheshwar Sahani assaulted severely to the informant by fists and slaps. The informant became seriously injured due to the assault caused by the accused persons and blood began to ooze from his head and he fell down. The informant made alarm on which co-villagers rushed there and saw the occurrence and saved the informant from further assault. They brought the informant to the clinic of doctor (P.W. 5), who treated the informant.



3. The fardbeyan of the informant was recorded on 06.08.1991 at 3:00 PM at the clinic at Chahuta on the basis of which Bisfi P.S. Case No. 147 of 1991, was registered against accused persons for the offences under Sections 147, 148, 149, 307, 323, 324 and 325 of the Indian Penal Code, later on Section 326 of the IPC was also added. Upon completion of investigation charge-sheet was submitted under Sections 147, 148, 149, 326, 307 and 323 of the IPC against all accused persons in the court of learned CJM, Madhubani, who took cognizance and subsequently the case was committed to the court of Sessions on 04.12.1992 under Section 209 of the Cr.P.C. for trial and disposal.

4. Learned Trial Court on the basis of materials available on record explained charges against appellants-accused, which they pleaded “not guilty” and claimed trial.

5. To substantiate its case, the prosecution has examined altogether 6 witnesses & 4 defence witness. They are as:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Ram Shankar Thakur
P.W. 2	Sheo Shankar Thakur



P.W. 3	Dhanbir Pandit
P.W. 4	Ram Gopal Thakur (informant)
P.W. 5	Dr. Shital Mishra
P.W. 6	Md. Hussain (formal witness)
Court Witness	Sudama Tiwari (I.O.)

Sr. No(s).	Defence Witnesses
D.W. 1	Bharat Mahto (formal witness)
D.W. 2	Bhaw Nath Thakur
D.W. 3	Shiveshwar Jha
D.W. 4	Sitaram Paswan

6. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges & two documents have been placed by defence:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Signature of P.W. 4 on the <i>Fardbeyan</i> .
2.	Exhibit-2	Injury Report.
3.	Exhibit-3	Formal FIR.
4.	Exhibit-4	Signature of Sudama Tiwari on the material list.

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-A	Sale deed of the year 1986.
2.	Exhibit-B	Formal witness of the person who proved the affidavit.

7. The statement of the appellants-accused were



recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

8. 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 no(s). 1 and 7 under Sections 307/149 of the IPC and Section 148 of the IPC and appellant no(s). 2 to 6 under Section 307/149 of the IPC and Section 147 of the IPC and sentenced them in the manner as stated above.

9. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellants/convicts have preferred the present appeal.

10. Hence, the present appeal.

11. It is submitted by learned counsel appearing on behalf of the appellants/accused that P.W. 3 failed to support the prosecution case and was, therefore, declared hostile. It is submitted that P.W. 1 and 2 are own brother and therefore they are interested witnesses and hence their deposition cannot be treated as reliable. It is submitted that



the occurrence took place in the paddy field out of land dispute without any planned manner. It is pointed out that the injury was single on head, which found grievous, but rest of the injury were simple. It is submitted that appellant no. 1 gave single “*garasa*” blow on the head without any intervening circumstances, which negates the prime consideration to convict appellants under Section 307 of the IPC i.e., **intention to cause death**. It is also pointed out that weapon as alleged to inflict injury was also not seized by investigating officer, who has been examined during the course of trial as court witness. It is submitted that in view of the testimony of prosecution witnesses and injury as found upon injured/P.W. 4, it cannot be said that prosecution established its case beyond all reasonable doubt *qua* appellants/convicts for the offence under Section 307 of the I.P.C., during the trial. In support of his submission 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] & Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470.**



12. It is also submitted by learned counsel that the statement of appellants/convicts was recorded during the course of trial in very cryptic and mechanical manner without placing any incriminating substances as surfaced during the trial and, therefore, on this ground alone this judgment of conviction is liable to be set aside and quashed. It is submitted that such type of examination is not permissible under law, in terms of legal report of Hon'ble Supreme Court as available through **Sukhjit Singh Vs. State of Punjab [(2014) 10 SCC 270]**.

13. Learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that though the prosecution witnesses deposed that occurrence took place due to land dispute, but injury as found upon informant/P.W. 4 suggest that he received total of five injuries. It is submitted that one of the injury was found on the middle of scalp and it was a cut wound which appears corroborating with the ocular testimony of injured that he was assaulted by “*garasa*” by appellants/convicts and therefore, the judgment of conviction can not be viewed with doubt.



14. 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.

15. It would be apposite to reproduce para **12, 13 & 14** of the judgment of Hon'ble Apex Court in the case of **Jage Ram (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)"

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.”

16. It would be apposite to reproduce para **10, 11, 12 & 13** of the legal report of Hon’ble Apex Court in the matter of **Sukhjit Singh** (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.”

17. It would be apposite to refer **para 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.”

18. Upon perusal of record it transpires that present occurrence took place in a paddy field bearing old khesra no. 2088/new khesra no. 2446 situated at village Pokhrouni Sahadulpurtola P.S. Bisfi, Distt: Madhubani, while informant/P.W. 4 was planting paddy seedlings. It also transpires from the testimony of P.W.4 that some altercation and scuffling took place in the field between informant’s side and appellant’s side as both of them claiming their ownership



over the said paddy field.

19. It is a case of collective assault, where informant/injured/P.W. 4 received injuries. In terms of his testimony, appellant no. 1 gave *garasa* blow on his head, rest of the appellants assaulted him by *lathi*. It is also deposed that appellant no. 4 assaulted him by the end of lathi due to which he lost his one tooth. He also deposed to received injury on his right eye.

20. In view of aforesaid, testimony of informant/P.W. 4 it would be apposite to record the testimony of P.W. 5 Dr. Shital Mishra, who is a private doctor and treated the informant in his clinic situated at Chahuta and issued injury report **(Exhibit-2)**, which is as under:-

- (i) Incised wound 2 $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " on middle of scalp up to bone cut filled with blood clots.
- (ii) Bruise $\frac{1}{2}$ " x 1" over the right upper eye lid with tender.
- (iii) Bruise 1 $\frac{1}{2}$ " x 1" on right cheek with tender. Tooth bite right upper.
- (iv) Bruise 1" x $\frac{1}{2}$ " on left hand (dorsum) with tender.
- (v) Bruise 1" x $\frac{1}{2}$ " on right leg below knee laterally.



21. Out of aforesaid five injuries, four injuries are bruise and was maximum showing tenderness. Injury no. 1, which is incised wound was caused by appellant no. 1 as deposed by P.W. 4 and was not repeated without having any intervening circumstances. Therefore in view of **Jage Ram Case (supra)**, it is difficult to gather that appellant no. 1 was under intention to cause death of the informant/P.W. 4. It also appears from the testimony of I.O. who was examined before learned Trial Court as court witness that he could not produce material exhibits before court i.e., blood stained cloths, jackets and broken tooth of informant/P.W. 4 during the trial. P.W. 1, P.W. 2 & P.W. 3 are relative of injured and they can not be denied as interested witnesses as occurrence took place in the background of the dispute. Their testimony not appears wholly reliable, in view of **Nand Lal Case (supra)**.

22. It appears from the statement as recorded under Section 313 of the Cr.P.C. that all the incriminating circumstances as surfaced during the trial was put before the



appellants/convicts and was recorded in very cryptic and mechanical manner, which is not sustainable under the eyes of law, in view of legal ratio of Hon'ble Supreme Court as available through **Sukhjit Singh Case (supra)**.

23. In view of the aforesaid discussions and considering the testimony of prosecution witnesses it transpires that prosecution has failed to establish its case beyond all reasonable doubts before the learned Trial Court the benefit which must be extended to accused/appellants.

24. Accordingly, the appeal stands allowed.

25. The impugned judgment of conviction dated 10.06.2005 and order of sentence dated 13.06.2005 passed by learned Additional Sessions Judge-cum-Fast Track Court No. 3, Madhubani in Sessions Trial No. 6 of 1993 arising out of Bisfi P.S. Case No. 147 of 1991 is hereby quashed and set aside.

26. The appellants, above-named, are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds. Sureties stands discharged. Fine if any paid, be



returned to appellants henceforth.

27. Office is directed to send back the trial court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.09.2025
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