

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.220 of 2013**

Arising Out of PS. Case No.-48 Year-2008 Thana- BARARI District- Katihar

1. Naveen Yadav @ Naveen Kumar Yadav and Ors. S/O Late Sitabi Yadav Resident Of Adarsh Nagar, Darbe Purbi Bari Nagar, P.S. Barari, District Katihar.
2. Rakesh Yadav @ Rakesh Kumar Yadav S/O Anrud Prasad Yadav Resident Of Adarsh Nagar, Darbe Purbi Bari Nagar, P.S. Barari, District Katihar.
3. Ledan Yadav @ Ladhan Yadav S/O Bhabhi Lal Yadav Resident Of Adarsh Nagar, Darbe Purbi Bari Nagar, P.S. Barari, District Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shivendra Prasad, Advocate
For the Respondent/s : Mr. Anand Mohan Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 10-04-2025

Heard Mr. Shivendra Prasad, learned senior Advocate for the appellants and Mr. Anand Mohan Mehta, learned APP for the State.

2. The present appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the judgement of conviction dated 12.03.2013 and order of sentence dated 14.03.2013 passed in Sessions Trial No. 415 of 2010. in connection with Barari P.S. Case No. 48 of 2008 dated 30.04.2008 passed by, Adhoc Addl. Sessions Judge IV, Katihar, whereby and where-under the



appellants have been convicted for the offence under Sections 143, 323, 325, 307 and 504 of Indian Penal Code (hereinafter referred as 'IPC') and for the offence punishable under Section 143 of the IPC sentenced to fine of Rs. 500/- each and in default of payment of fine, to undergo imprisonment for 2 months and for offence punishable under Section 323 of the IPC sentenced to imprisonment for 9 months and to pay fine of Rs. 500/- each and to undergo imprisonment for 2 months in default of payment of fine and for the offence punishable under Section 325 of the IPC sentenced to rigorous imprisonment for 5 years and to pay fine of Rs. 3000/- each and to undergo imprisonment for 6 months in default of payment of fine and for the offence punishable under Section 307 of the IPC sentenced to rigorous imprisonment for 7 years and to pay fine of Rs. 5000/- each and to undergo imprisonment for 1 year in default of payment of fine and for the offence punishable under Section 504 of the IPC sentenced to imprisonment for 1 year and to pay fine of Rs. 500/- each and to undergo imprisonment for 3 months in default of payment of fine. However the sentence have been ordered to run concurrently.

3. The brief facts leading to the filing of the present appeal on the basis of the written information of



informant Md. Farookh Alam who is injured has given statement to the Officer-in-charge of Barari P.S. alleged that on 29.10.2008 in the night at about 11:00 PM, when the informant was irrigating his parwal field in Joniya Diyara they saw the accused persons came and started assaulting the informant asking him who had told them to do that. It was alleged that the informant replied that he was poor labourer and that he would not leave Diyara. It was further alleged that the accused person assaulted the informant with the intention to kill him. It was alleged further that the accused person assaulted Md. Tanbeer Alam, Md Qasim, and Md. Tauhid also.

4. Further on the basis of written information Barari P.S. Case no. 48 of 2008 dated 30.04.2008 under Sections 143, 323, 325, 307 and 504 of IPC has been registered and on completion of investigation charge sheet against these appellants have been submitted by the Investigating Officer and accordingly cognizance against these appellants have been taken by the learned Chief Judicial Magistrate, Katihar and after commitment, the trial proceeded which ended into conviction and sentence as aforesaid. The appellants have denied the evidence of prosecution taking plea of false implication in the case and declared themselves as innocent.



5. The prosecution examined seven witnesses to substantiate the charges levelled against the appellants, who are namely, PW-1 Dr. Om Prakash Singh, PW-2 Tanweer Alam, PW-3 Abdul Quashim, PW-4 Farookh Alam (Informant), PM-5 Adhin Yadav, PW-6 Md. Shamsuddin and PW-7 Md. Sabana have been examined.

6. PW-1 Dr. Om Prakash Singh stated in his examination-in-chief that on 03.04.2008 he was being posted as Medical Officer at referral hospital Barari he had examined Md. Farookh aged 30 years and found the following injuries:

i. Injury on the left forearm. There were multiple injuries and the affected part has swelling. The X-ray of affected part had shown fracture of left forearm bones. The swelling was of 8 cm x 2 ½ cm x 0 in size.

ii. Multiple injuries over the right arm and forearm 7 cm x 2 ½ cm x 0.

iii. Multiple injuries over the left lower limb as the size of all injuries were of more or less 8 ½ cm x 2 ½ cm x 0.

iv. Multiple injuries on the back 10 in number and their size was 10 cm x 3 cm. x 0 cm.

Opinion: All the injuries were caused by hard and blunt substance

Age of injuries was within 12 hours.

Nature of Injury: injury no.1 to 4 were grievous in nature and the rest injuries were of simple nature.

6.i. On the same day he had examined Md.



Tanweer Alam aged about 28 years and had found the following injuries:

i. on the right forearm and the part affected was having swelling and the size of swelling was 5 cm x 2 cm x 0 cm.

ii. The X-ray of affected part did not show any bone injury.

Opinion: the injury was caused by hard and blunt substance and

Age of the injury was within 12 hours and

Nature of the Injury was simple.

6.ii. On the same day he had examined Md.

Abdul Kashim aged about 60 years and had found following injuries:

i. on the right forearm and there was swelling of 8 cm x 4cm X 0.

ii. The X-ray of the affected part was showing multiple fracture of the right radius and ulna.

iii. There was an injury on the left arm at left elbow joint.

iv. The x-ray of the affected part was showing fracture on the lower end of the humerus.

Opinion: The injuries were caused by hard and blunt substance

Age of the injury was within 12 hours

Nature of the injury: both the injuries were grievous in nature.

6.iii. On the same day he had examined Md.

Sehwaj aged about 50 years and had found following injuries:

i. Injuries on his left arm, left elbow joint



and left forearm. The part affected was swelling. The X-ray of the affected part had shown fracture of upper part of the left forearm bone. The size of swelling was 10 cm x 8 cm x 0 cm.

ii. The injury of right arm had shown no fracture and the size of swelling was 7 cm x 5 cm x 0 cm.

Both the above injuries were caused by hard and blunt substance and the age of injuries was within 12 hours and natures of injury no.1 was grievous whereas that of other injury was simple.

6.iv. On the same day this witness had examined, Md. Habib aged about 45 years and had found following injuries:

i. on the right shoulder joint. The affected part was swelling. x-ray of right shoulder joint had shown no bone injury. Size of the injury was 10 cm x 6 cm x 0 cm.

ii. Injury of left elbow joint had not shown any bone injury. According to the x-ray plate, size of the swelling was 9 cm x 6 cm x 0 cm.

iii. Injury on back and the size of the swelling was 10 cm. x 3 cm x 0 cm.

All the above injuries were caused by hard and blunt substance and the age of the injury was within 12 hours.

This witness has proved the injury reports and the same have been marked as Ext.1. 1/I, 1/II, 1/III and 1/IV, respectively. In his cross examination he has simply said that all the injuries of



the injured may be caused due to one's fall on any hard substance,

7. PW- 2 Tanweer Alam in his examination-in-chief stated that the alleged occurrence took place in the night of 29.04.2008 at about 11 PM when he was in his Parwal field and in the mean time 15 to 16 accused persons came and started demanding ransom. Among them he had identified Ajay Yadav, Rahul, Majid, Mannu Yadav, Dilip Yadav, Ramu Yadav, Janamat Yadav, Rambriksh Yadav, Fekan Yadav. According to PW-2 the accused persons came and assaulted informant with lathi, he stated that Sabana Hafik, Tahir and Kashim came to rescue him, and the accused persons assaulted them also. He stated that injured were treated next day.

8. PW-3 Md. Abdul Quasim stated in his examination-in-chief that at the alleged time of occurrence he was in his field. He went to the place of occurrence on hulla and saw Ledan, Jalwa, Mantoo and others about 10 persons. He stated that Farookh PW-4 and Tanweer PW-2 were assaulted with lathi, pistol and knife. He was assaulted too and as consequences he became unconscious and his hand was fractured. According to him he was brought to the Police station by the villagers and he stated that he was treated in K.M.C.H.



He stated that the sight of the alleged occurrence was dark night and his visibility was low. Further he has stated that he has received injuries over whole of his body.

9. PW-4 Md. Farookh the informant stated in his examination-in-chief that on the alleged date and time of occurrence when he was in his parwal field the accused person who was 15 to 16 in number including Ajay Yadav, Rahul Yadav, Navin Yadav, Rambriksh Yadav, Mantoo Yadav, Ritesh Yadav, Dilip Yadav and Ledan Yadav, came and asked him to leave Diyara land and asked to pay Rs. 50,000/- as ransom. On that he replied that he is a poor person so how he can pay that much amount. Thereafter the accused persons started assaulting him with *lathi* etc. and fractured his left hand. They wanted to kill him. On hulla Kashim, Sabana and others came. Kashim, Tanwari, Sabana and Safique were also assaulted. He had given a written application of the occurrence in the Police Station. In his evidence he stated that the Parwal field stands in the name of his grand father who had died about 20 yrs. ago. He further stated that on the alleged occurrence, it was a moon night. According to him he had under gone for treatment at KMCH and remained there for one month.

10. PW-5 Adhin Yadav is the I.O. of the case and



has fully supported the prosecution case by saying that he had verified the Place of occurrence.

11. PW-6 Md. Tasamuddin stated in his examination-in-chief that on 29.04.2008 he was also in the Parwal field. Farookh and Tanweer were also in the Parwal field and in the meantime Ajay Yadav, Rahul Yadav Navin Yadav, Rambrikan Yadav, Mantoo Yadav, Dilip Yadav, Rakesh Yadav and Nirdhan Yadav were demanding money. On that Farookh told them that he was a poor fellow so from where he will give money. On his reply the accused persons started assaulting him. Ajay Yadav had a gun in his hand whereas rest of the accused persons had *lathies* in their hands. According to this witness his field is situated at a distance of 200 hands from the field of Farookh. He has stated that the night of occurrence was a moon night.

12. PW-7 Md. Sabana stated in his examination-in-chief that on alleged date of occurrence at about 11 PM, he was guarding his parwal field. He stated that he went to the place of occurrence on alarm raised by Farookh and Tanweer and saw Rakesh Ledan, Navin, Ajay, Mantoo, etc. assaulting Farookh and Tanweer. He stated that they assaulted him also. The villagers brought him to the Sadar hospital next day where



he under gone treatment for 2 days. He was refered to KMCH thereafter where he remained for 16 days.

13. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

14. The learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear from the statement of PW-1 that the injuries caused by hard and blunt substance and major portion of injuries were of simple in nature. It can be stated that none of the injuries were on vital parts of the body and the injuries were on arm, forearm, elbow ulna, shoulder, and



hand and also no bone injury. PW-2 in her deposition stated that the appellants assaulted him and other injured persons with *lathi*. PW-3 in his deposition stated that that the sight of the alleged occurrence was a dark night and his visibility was low whereas PW-4 stated that night of the alleged occurrence was a moon night which is in contradiction with the statement of PW 3. From the statement of PW 4 it is also evident that the *lathi* had been used for alleged assault.

14.i. Learned counsel further contended that no sophisticated weapon has been used in the alleged offence and all the injuries caused to the victims were caused by hard and blunt substance. The learned trial court has failed to appreciate that the prosecution witnesses have improved their cases in trial and their evidence is inconsistent and contradictory. PW-2 Tanweer who had suffered injuries at the hands of accused person claimed to identify only Ajay Yadav by voice before police and improved his evidence during the trial. PW-3 Md. Quashim the injured witness had claimed to identify only Ajay Yadav by voice and about rest of the accused persons he had stated that he had not identified them.

14.ii. The Learned trial Court has failed to appreciate the evidence it's right perspective and impugned



judgment of conviction is bad in law as well as on fact and such to set aside. Learned counsel further submitted that this appeal is of the year 2013 and occurrence is of the year 2008, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 16-17 years. So, the appellants should have been acquitted from the conviction as sentenced against them or period undergone.

15. On the other hand, learned Additional Public Prosecutor has vehemently opposed these appeals and submits that there is direct allegation against the present appellant, for committing an offence under Sections 143, 323, 325, 307 and 504 of IPC. Further it is submitted that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

18. The Hon'ble Apex Court in the case of *State of M. P. v. Saleem (2005) 5 SCC 554*, where Hon'ble Apex court has categorically held that 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, Relevant portion of the judgement reads as under:

"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...."

19. The Hon'ble Apex Court in the case of **Jage Ram v. State of Haryana** reported in **(2015) 11 SCC 366** the paragraph No. 12 and 13 which are 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.”

20. On deeply studied and scrutinized all evidences, it is evident to note that no sophisticated weapon has been used in the alleged offence and all the injuries caused to the victims were caused by hard and blunt substance. PW-3, 4, 6 and 7 have identified the accused/appellants in their deposition



stating that the accused/appellants came and demanded ransom of Rs. 50,000 and on denying the same accused/appellants gave several blows of *lathi* to the informant and others which is corroborated by the injury report examined by the medical officer PW-1. Although the nature of injury 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 occurrence, 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.

21. It is crystal clear from the statement of PW-1 that the injuries caused by hard and blunt substance and major portion of injuries were of simple in nature. It can be stated that none of the injuries were on vital parts of the body and the injuries were on arm, forearm, elbow ulna, shoulder, and hand and also no bone injury. PW-2 in her deposition stated that the appellants assaulted him and other injured persons with *lathi*. PW-4 stated that night of the alleged occurrence was a moon night and it appears that at the time of occurrence there was sufficient source of light. From the statement of PW 4 it is also



evident that the *lathi* had been used for alleged assault respectively have been levelled to cause injuries by means of *lathi* and *danda*, so the offence under Section 307 of the IPC against appellants is not proved and the charge frame against appellants not in accordance with law. Hence, the judgment of conviction dated 12.03.2013 and order of sentence dated 14.03.2013 passed in Sessions Trial No. 415 of 2010 in connection with barai P.S. Case No. 48 of 2008 passed by learned Additional Sessions Judge, Katihar, is hereby modified to the extent that appellants are acquitted from the charge under Section 307 of the IPC and the charges against appellants is upheld and affirmed under Sections 143, 323, 325 and 504 of the IPC.

22. The Hon'ble Apex Court, in the case of ***State of U.P vs Tribhuwan, (2018) 1 SCC 90*** has laid down that, time spent in custody by a convicted persons, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set off under Section 428 of Cr.P.C.

23. Hence, keeping in view all the material on record and the observation of the Hon'ble Apex Court, it is observed that the appellants have been in judicial custody for



approx 5 months and the judgment of conviction dated 12.03.2013 and order of sentence dated 14.03.2013 passed in Sessions Trial No. 415 of 2010 in connection with Barari P.S. Case No. 48 of 2008 passed by learned Additional Sessions Judge, Katihar, is hereby modified to the extent that the appellants have got sufficient judicial custody. There is no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State. and the sentence of the appellants is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

24. Accordingly, this appeal is partly allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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

