

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.226 of 2004

1. Prayag Choudhary, son of Late Khedan Choudhary
2. Lal Babu Choudhary, son of Late Ram Preet Choudhary
3. Ram Nath Choudhary, son of Late Ram Preet Choudhary

All are resident of village – Purandarpur, P.S. - Nautan, district – West Champaran at Bettiah.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Shashank Shekhar, Advocate

For the Respondent/s : Mr. Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-12-2025

Heard Mr. Shashank Shekhar, learned counsel appearing on behalf of the appellants and Mr. Satyendra Narayan Singh, learned Additional Public Prosecutor for the State.

2. From perusal of record, it appears that appellant nos. 1 and 2 were on bail in terms of order dated 23.04.2004 whereas appellant no. 3 was granted bail in terms of order dated 25.06.2004 as passed by one of the learned coordinate Bench of this Court.

3. 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 and sentence dated 28.01.2004 passed in Sessions Trial No. 162 of 1993 by learned Additional District & Sessions Judge, F.T.C.-I, Civil Court, Bettiah, whereby and whereunder the appellant namely, Ram Nath Choudhary has been sentenced to undergo rigorous imprisonment for six years for the offence under section 307 of the I.P.C. and further sentenced to undergo simple imprisonment for one month under section 341 of the I.P.C., whereas appellant namely, Prayag Choudhary and Lal Babu Choudhary are sentenced to undergo rigorous imprisonment for six months under section 323 of the I.P.C. and one month simple imprisonment under section 341 of the I.P.C. and directed that sentences of each appellant shall run concurrently.

4. The brief facts of the case is that while the informant on 31.10.1992, was scrapping grass of Chhath Ghat of the village for celebrating Chhath Puja, then, all the accused persons including appellants arrived there and stopped him to do the same. When the informant protested, altercation took place between both sides. It is alleged that



co-accused Ram Preet Choudhary ordered the other accused persons to kill the informant, thereafter, appellant namely, Ram Nath Choudhary gave 'Farsa' blow on the head of the informant causing head injury. When the brother of informant came to rescue him, he was also assaulted by the appellant by means of 'Farsa' on his head, and when he fell down, accused persons started assaulting him with lathi. Thereafter, villagers reached there and taken them to the hospital for treatment.

5. On the basis of aforesaid statement of the informant, Nautan P.S. Case No. 273 of 1992 was registered for the offences punishable under section 341, 323, 324, 307/34 of the Indian Penal Code.

6. After conclusion of investigation, police submitted charge-sheet against all the accused persons under section 323, 324, 341, 307/34 of the I.P.C. and, thereafter, learned Chief Judicial Magistrate took cognizance of the offences and committed the case to the court of sessions for its trial and disposal.

7. Accused Ram Preet Choudhary died during pendency of this case, hence, proceeding against him was



dropped. Appellant no. 1 and 2 were charged under section 323 and 341 of the I.P.C. whereas appellant no. 3 was charged under section 341 and 307 of the I.P.C. Charges were explained to these accused/appellants to which they plead not guilty and claimed to be tried.

8. To establish its case before the learned trial court, the prosecution altogether examined total of nine (9) prosecution witnesses and they are:

PW-1 Satya Narain Mahto;

PW-2 Gajadhar Mahto;

PW-3 Dr. S.P. Verma;

PW-4 Kedar Choudhary;

PW-5 Jai Choudhary;

PW-6 Ramdeo Mahto;

PW-7 Surendra Mallah;

PW-8 Baijnath Choudhary and

PW-9 Kapildeo Choudhary (the informant).

9. **Chandeshwar Choudhary** was examined as **DW-1** and filed C.C. of order dated 01.11.93 marked as **Exhibit 'A'** and rest of the documents were marked as **Exhibit 'B'**.

10. After examination of prosecution witnesses and



by taking note of evidence as surfaced during trial, statement of accused/appellants was 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.

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

12. Hence, the present appeal.

13. It is submitted by Mr. Shashank Shekhar, learned counsel appearing for the appellants that during course of occurrence two prosecution witnesses namely, PW-4 Kedar Choudhary and PW-9 Kapildeo Choudhary who are full brothers received injury, and deposed to be caused by Farsa blow but upon medical examination, same was found simple and caused by hard and blunt object as deposed by PW-3 doctor, who examined these two injured witnesses making allegation of assault doubtful.

14. It is submitted that in view of this major contradiction, it can be safely said that the assault, as alleged,



was not made with intention to cause death. The nature of weapon also appears disputed.

15. It is further submitted that the investigating officer of this case also not examined during the trial and, therefore, place of occurrence was not established beside other material aspects. It is submitted that non-examination of I.O. may deprive appellant as to contradict or corroborate the material aspect during the trial in their defence. It is also submitted that the version of defence witnesses altogether rejected by learned trial court. In support of his submission learned counsel 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 submitted that non-examination of I.O. is serious infirmity in the prosecution case and in support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Munna Lal v. State of Uttar Pradesh (2023) SCC Online SC 80.**

17. It is submitted by learned A.P.P. that on the ground of minor contradiction the prosecution case cannot be



disbelieved. It is submitted that non-examination of I.O. is not only fatal to the prosecution, and, in support of his learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat** reported in **(1983) 3 SCC 217**.

18. It is submitted by learned A.P.P. that every contradiction or omission is not a ground to discredit the witness or to disbelieve his oral testimony and in support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Alauddin Vs. The State of Assam & Anr. reported in (2024 INSC 376)**.

19. 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.

20. As to re-appreciate the evidences and witnesses, while dealing with present appeal, it would be necessary to discuss the evidence on record for better appreciation of the



case. PW-1 and PW-2 namely, Satya Narain Mahto and Gajadhar Mahto turned hostile, but they had said that occurrence took place in the morning.

21. **PW-4 namely, Kedar Choudhary**, who is the most important witness, has supported the prosecution case. He said that occurrence took place at 6:00 A.M., when his brother was cleaning the chhath Ghat for celebrating Chhath Puja. PW-4 stated that when his brother did not stop cleaning the Chhat Ghat, accused Ram Nath Choudhary gave a Farsa blow on his head with an intention to kill him, but he stated in examination in chief that accused Ram Prit assault Kapil Deo with Bhala and Lal Babu Choudhary and Prayag Cchoudhary assaulted with Lathi. PW-4 also stated that I.O. of this case never visited the Chhath Ghat. He further stated that I.O. never asked for blood stained cloths from the injured.

22. **PW-5 is Jai Choudhary** and he is not the eye witness of the occurrence. He stated that when he heard the noise of people he reached at the place of occurrence and saw farsa injury on the head of Kapil Deo Choudhary and kedar Choudhary. PW-5 stated that his father told him that Ram



Nath is responsible for the injuries caused to Kapil Deo and Kedar Choudhary by Farsa. In cross examination he said that he found only one injury at the head of Kapil Deo Choudhary.

23. **PW-6 is the Ram Deo Mahto.** He is also not the eye witness of the occurrence. PW-6 stated that at the time of occurrence he was at his tailor shop and after hearing the noise of people he reached at the place of occurrence and found Kapil Deo and Kedar Choudary in injured condition. He also stated that there was no land dispute between the parties.

24. **PW-7 is Surendra Mallah.** He also stated that he was cleaning the Chhath Ghat for celebrating Chhath Puja at 6:00 A.M. PW-7 is also an accused in the counter case.

25. **PW-8 is Baij Nath Choudhary.** He has supported the case of the prosecution and stated that he was present when the occurrence took place. He also admitted that he had intervened into the matter and also sustained injuries. Thereafter, he ran from the spot and could not see who assaulted to whom.

26. In view of aforesaid discussion of testimony, it



transpires that the injured persons are relative and for the occurrence the counter case was also lodged. It also appears out of testimony, the injury was not repeated and same was found simple in nature, which is sufficient to suggest that assault, as alleged, was not made with intention to cause death or was in knowledge of the appellant/accused that same may likely to cause death of the injured.

27. In view of same, the conviction, as recorded by the learned trial court for the offence under section 307 of the I.P.C. appears doubtful and benefit of same be extended to the accused/appellants.

28. Hence, the judgment of conviction dated 28.01.2004 passed in Sessions Trial No. 162 of 1993 by learned Additional District & Sessions Judge, F.T.C.-I, Civil Court, Bettiah, is hereby set-aside.

29. Accordingly, this appeal stands allowed.

33. In view of the aforesaid, appellants 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.

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

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

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2025
Transmission Date	10.12.2025

