

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.164 of 2004**

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Ram Dayal Paswan, Son of Sri Kari Paswan, Resident of village-Malwan,
P.S. Obra, (Khudwan), District- Aurangabad. Appellant/s

Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Saket Kumar Singh, Advocate
For the Respondent/s : Mr. Satyendra Narayan Singh, APP

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

Date : 06-12-2025

The present appeal preferred by appellant/convict against judgment of conviction dated 14.02.2004 and order of sentence dated 17.02.2004 passed by the learned 1st Additional Sessions Judge, Aurangabad, in S.Tr. No. 36/96 and 227/97 whereby and whereunder appellant/convict has been convicted for the offences punishable under Section 307 of the Indian Penal Code and for the offences punishable under Section 4 of the Explosive Substance Act and sentenced him to undergo rigorous imprisonment for seven years for the offence punishable under Section 307 of the IPC and further sentenced him to undergo rigorous imprisonment for seven years for the offence punishable under Section 4 of the Explosive Substance Act and fine of Rs. 3,000/-, in default of payment of fine, he shall further undergo S.I. for 3 months. Both sentences shall run concurrently.

2. The crux of prosecution, as it appears from the written information of the informant/PW-3 namely, Chandradeo



Yadav that on 08.07.1995 at village-Malwan informant's wife Laxminia Devi was going from home taking her she-goat and in the meantime, Ram Dayal Paswan S/o Karu Paswan caught hold of her and assaulted. When the informant went to the house of the accused he fled away. It is further alleged that on the next day i.e. on 09.07.1995 at about 4:00 P.M. accused Ramdayal Paswan attacked on the informant with intention to kill him but the informant escaped without any injury and informant's uncle Sarjun Yadav (PW-5) and Dilip Sah (PW-1) sustained injuries due to explosion of bomb hurled by the accused. Besides them one ox of Ramadhar Sao was also injured. The accused Ramdayal Paswan and Nathun Paswan who is son of Parikha Paswan having pistol in hand gave threats and uttered that "*markar khopdi ura do*". On hulla, the accused after hurling bomb fled away and the injured persons were taken to Obra hospital for treatment. Many persons were gathered at the time of occurrence.

3. On the basis of aforesaid written information and after completion of investigation police submitted charge-sheet against accused/appellant under Section 307 of the Indian Penal Code and Section 4 of the Explosive Substance Act.

4. After commitment, learned trial court explained charges to appellant/accused, on the basis of materials collected



during investigation, which he pleaded “not guilty” and claimed trial.

5. To established its case before the learned trial court, the prosecution altogether examined total of nine witnesses, namely, **PW-1** Dilip Sao, **PW-2** Imamuddin Ansari, **PW-3** Chandradeo Yadav (informant), **PW-4** Moti Yadav, **PW-5** Sarjun Yadav, **PW-6** Shankar Sao, **PW-7** Laxminia Devi, **PW-8** Indrajit Kumar Singh (formal witness) and **PW-9** Akshya Lal Singh, (Investigating Officer).

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

Exhibits 1 & 1/1 - Signatures of seizure list: Imamuddin Ansari and Ramadhar Sao.

Exhibit-2 Sanction order by DM, Aurangabad

Exhibit-3 Endorsement on the written FIR report.

Exhibit-4: Formal FIR

Exhibit-5 Seizure list, including, (a) small tin pieces. (b) a big piece of tin and (c) a small glass piece.

Exhibit-6 Forwarding Challan, sending seized items to the court during trial.

Exhibit-7 & 7/1 Injury reports of 2 injured persons prepared by the police

Exhibit-8 & 8/1 2 injury reports given by the doctor and these reports have also been proved by the I.O. himself.

Exhibit-9 Requisition letter seeking sanction



for prosecution sent by police to DM.

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

8. On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellant/convict and passed order of sentence in aforesaid manner, being aggrieved with, appellant/convict preferred the present appeal.

9. No defence witnesses/documents were examined on behalf of accused/appellant during the trial.

10. Hence the present appeal.

11. It is submitted by learned counsel appearing for the appellant that out of two injured witnesses, **PW-1** namely, Dilip Sao and **PW-5**, namely, Sarjun Yadav, the PW-1 become hostile, making a serious doubt *qua* occurrence. In this context, it is submitted that doctor who is the most important witness of the entire occurrence as to prove the injury report or to suggest that the nature of injury which may likely to cause death of the injured



was not examined during the course of trial. It is pointed out that nothing transpired during the trial out of testimony of prosecution witnesses who supported the occurrence that bomb thrown was with intention to cause death and, moreover, the **Exhibit-3** which is the injury shows that the injured received simple injury. It is submitted that interestingly, the petitioner was not found guilty for the offence punishable under Section 5 of the Explosive Substance Act by the learned trial court and, therefore, the conviction under Section 307 of the IPC as recorded by the learned trial court appears bad in eye of law. In this context, it is also pointed out that the seized materials like tin plates etc. were not sent for forensic examination to ascertain whether it was the part of bomb or not and in want of FSL report, it can be said safely that prosecution failed to established its case during the trial, beyond all reasonable doubts as to convict the appellant/convict for the charges leveled against him. While concluding argument, it is submitted that nature of injury, manner of assault and post conduct occurrence of the appellant is not suggesting that the bomb as alleged thrown with intention to cause death. In support of his submission, learned counsel 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**.



12. Learned APP while opposing the appeal submitted that the eye-witness supported the occurrence, whereas he fairly conceded that one of the injured turns hostile. It is also conceded that seized articles were not sent for forensic examination, however, the investigating officer of this case was examined. It is pointed out that non-examination of doctor and non-sending the seized materials for forensic examination not appears fatal for the prosecution, therefore, the judgment as recorded by the learned trial court cannot be viewed with doubt.

13. 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.

14. PW-1 is Dilip Sah, who is the injured witness of the occurrence but turned hostile during the trial saying that he could not see that who threw the bomb.

14.1 In cross-examination he testified that his statement before the court was out of his free will.

15. PW-2 is Imamuddin Ansari, who is the eye-witness of the occurrence and deposed that he saw bomb in the hand of the appellant. He also deposed that Sarjun (**PW-5**) and Dilip (**PW-1**), both were injured due to throwing of bomb by



appellant.

15.1 In cross-examination, it was stated by him that bomb was thrown in the street and it exploded there. He denied that explosion was of firecrackers exploded by the children.

16. PW-3 is the Chandradev Yadav, who is the informant of this case. It appears from his deposition that appellant threw a bomb on his house which hit his uncle Sarjun Yadav and Dilip Sah. The Oxen of Ramadhar Sah were also injured. The injured were taken to the hospital. The informant also visited hospital and recorded his statement thereof.

16.1 It appears from his cross-examination that he only found Sarjun Yadav fallen to the ground, who are unconscious and taken to the hospital. Contrary to the fact that Dilip Sah (PW-1) also received injury as he deposed through his examination-in-chief.

17. PW-4 is Moti Yadav. He also saw the occurrence and found appellant carrying a bomb in his bag. It appears from his deposition that appellant threw bomb on Sarjun Yadav. Contrary to the statement of the informant that same was thrown on his house. It appears from his deposition that due to quarrel between the wife of Chandradeo and appellant, the present occurrence took place. It appears from his deposition that bomb



was exploded at gate of the house of PW-3, namely, Chandradeo Yadav.

18. PW-5 is Sarjun Yadav, who is injured in this case. He supported the occurrence and said that bomb was thrown upon him and was taken to Obra Hospital for treatment. It appears from his deposition that out of explosion, his *lungi* and *ganji* (vest) were burnt and several wholes were created. Blood was also noticed on his *lungi* and *ganji* (vest) but he failed to produce the same with Investigating Officer of this case. It was deposed by him that bomb first hit to the ground. He remained conscious, contrary to the statement of PW-3/informant, namely, Chandradeo Yadav that after explosion and receiving bomb injury, this witness become unconscious. He did not take the name of person, who threw the bomb while going from the village to the hospital. It was deposed by him that accused/appellant took out the bomb from his bag and threw it over his nephew, the sparks of which came to him also.

19. PW-6 is Shankar Sah, who supported the occurrence and deposed to arrive on the place of occurrence after the actual occurrence of throwing the bomb. He came to know from his nephew that Ram Dayal threw the bomb and thereafter fled away.



20. PW-7 is Lakshminia Devi @ Lakshmi Devi. She supported the occurrence and rivalry between the two community of the village.

21. PW-8 is Indrajeet Kumar Singh, who is typist of S.C. Mishra, District Magistrate, who issued sanction report for prosecution. This witness identified his signature, which upon his identification marked as **Exhibit -2** before the learned trial court.

21.1 Upon cross-examination, it was deposed that the **Exhibit-2** was not typed in his presence and the District Magistrate did not sign the same in his presence.

22. PW-9 is Akshya Lal Singh, who is the I.O. of this case. It was stated by him that he seized seven pieces of tin and a piece of glass at the place of occurrence and prepared the seizure list and took the statement of two independent witnesses, which upon his identification, exhibited before the learned trial court as **Exhibit-5**. The seven pieces of tin and piece of glass, which he seized was produced before the learned trial court. He took statement of injured Dilip Sah and Sarjun Yadav, who confirmed about the occurrence and issued the injury report of both the injured which is **Exhibit-7 and Exhibit-7/1**.

22.1. Upon cross-examination, it was deposed by him that when he removed the bamboo basket, he found pieces of



tin and glass there. The land was found flat. He did not find any black mark there. He did not find any paper, clothes or jute ropes there. He did not even mention the size of the seized articles and also its colour. It was said by him that he found “**Ratna Brand Jafrani Patti**” written on a piece of tin. He did not seize the bamboo basket. He did not send the seized articles to expert for examination and also not taken permission for the same.

23. From the depositions of aforesaid prosecution witnesses, it transpires that prosecution failed to explain during the trial, the most vital question, whether the bomb was thrown targeting the person or it was thrown on the house. In view of deposition of PW-3, it appears that same was thrown on his house. It also appears from the testimony that the place where bomb was thrown a dig was created but same was not found by investigating officer of this case and he categorically deposed that the place was flat. The occurrence was not supported by one of the injured witness i.e. PW-1. The injury report of the injured witnesses were not brought before the learned trial court as doctor could not examine during the trial, It also appears from the deposition of PW-9/I.O. that only certain tin pieces and one glass piece was seized from the place of occurrence and same was not sent for forensic examination to ascertain, whether it was the part of bomb



or not and in want of same, it cannot be said that the tin pieces and glass which was seized and produced before the learned trial court was the composition of the bomb, which was thrown by the appellant/accused, as no further incriminating materials like burnt paper, jute rope etc. found at place of occurrence. Even PW-3 deposed that the injured Sarjun Yadav was unconscious and regained his consciousness in the hospital only, whereas the injured Sarjun Yadav being injured witness/PW-5 himself deposed that he was never loosed his sense due to injury. It also transpires from his testimony that bomb was thrown targeting his nephew and only spark of it hit to him. The nephew of this witness i.e. Chandradeo Yadav/PW-3 did not receive any injury during the occurrence and it was not deposed by him that the bomb was thrown targeting him. Moreover, PW-3 deposed that it was thrown on his house without targeting any individuals.

24. It also transpires that the witnesses are from the same family having inimical terms with appellant/accused and, therefore, their depositions cannot be taken as **"wholly reliable"** being interested witness.

25. It would be apposite to reproduce 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)"

26. In view of aforesaid contradictions, it can be said safely that the several major doubts discussed as aforesaid (para no. 23) remains unanswered during the course of trial, which must to be answered by the prosecution, as to establish its case beyond all reasonable doubts. The benefit of doubt, therefore must be extended to the appellant/accused.

27. Accordingly, appellant is acquitted from the charges levelled against him, by giving benefits of doubt.

28. Hence, appeal stands allowed.

29. The impugned judgment of conviction dated 14.02.2004 and order of sentence dated 17.02.2004 passed by



the learned 1st Additional Sessions Judge, Aurangabad, in S.Tr. No. 36/96 and 227/97 is hereby set aside. Appellant/accused is acquitted of the charges levelled against him. Fine, if any, paid shall be returned to appellant immediately.

30. Appellant is on bail as submitted, Upon acquittal, his bailor and sureties stand discharged from his respective liabilities.

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

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

(Chandra Shekhar Jha, J)

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AFR/NAFR	AFR
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