

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.391 of 2006**

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1. Jai Prakash Prasad.
 2. Bacha Lal Prasad.
 3. Nayan Prasad.
 4. Subash Prasad.

All Sons of Late Bhagwat Prasad, all are residents of Village- Giridharpur,
P.S. Baraharia, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vipul Sinha, Amicus Curiae
For the State	:	Mr. A. M. P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT

Date: 06-08-2025

Heard Mr. Vipul Sinha, Amicus Curiae, learned counsel for the Amicus Curiae and Mr. A.M.P. 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 to as 'Cr.P.C') challenging the judgment and order of sentence dated 27.05.2006 passed by the learned Additional District & Sessions Judge, (Fast Track Court No. III), Siwan in Sessions Trial No. 72 of 1986 arising out of



Barharia P.S. Case No. 89 of 1985 / G.R. No. 1408 of 1985 whereby and where under the learned trial Court has convicted the appellants under Sections 307 and 326 of the Indian Penal Code (hereinafter referred to as 'IPC') and Section 27 of the Arms and sentenced to undergo rigorous imprisonment for seven years to pay a fine of Rs.1,000/- and in default of payment of fine, further to undergo rigorous imprisonment for three months for the offence punishable under Section 307 of the IPC and they are further sentence to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, they will have to undergo rigorous imprisonment for three months for the offence punishable under Section 326 of the IPC. They are further directed to undergo rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act. All the sentences shall run concurrently. Bacha Lal Prasad, Nayan Prasad and Subash Prasad have also been convicted under Sections 147 and 323 of the IPC and directed to be released on their entry into bounds to Rs. 5,000/- with two sureties of like amount each for a period of one year.

3. The brief fact leading to the filing of the present appeal on the basis of the fardbeyan of the informant on



21.07.1985 at about 7.30 PM, accused Jai Prakash Prasad, Subash Prasad, Bachhalal Prasad and Nayan Prasad caught hold of Lallan Prasad when he was going to take meal and started assaulting Lallan Prasad with fists and slaps. On the cry of Lallan Prasad, the informant and villagers rushed there and tried to save Lallan Prasad. In the meantime, the accused Jai Prakash Prasad went inside his house and brought a pistol and he (Jai Prakash Prasad) fired from pistol on Lallan Prasad, who sustained injuries on left cheek, eye etc. and fell on the ground. Thereafter accused Hayan Prasad, Subash Prasad, Biralal Prasad, Bachha Prasad, Ashok Kumar Prasad, Habib Mian, Haider Mian having formed on unlawful assembly and started assaulting with lathi, bhala, farsa and bricks. The accused Nayan Prasad and Subash Prasad assaulted the informant with lathis. The accused Nayan Prasad assaulted Hridyanand Prasad on head with farsa. The accused persons assaulted the other injured persons. The injured Lallan Prasad was referred to Sadar Hospital, Siwan for treatment. The witnesses, namely, Vidya Ratna Prasad, Babulal Manjhi, Radha Bhagat, Vishwanath Bhagat and others saw the occurrence. The reason behind the occurrence is stated that the informant's father Binalal Prasad had of illicit connection with the mother of accused Jay Prakash



Prasad and his father Biralal Prasad intended to transfer the entire properties to the family of Jai Prakash Prasad for which a Panchayati was convened on that day.

4. On the basis of the fardbeyan of the informant Baharia P.S. Case No. 89 of 1985 the case was registered against the accused persons. The Police took up investigation and after completion of investigation, charge sheet was submitted before the Trial Court. After cognizance and commitment, the Sessions trial was transferred to the Court of 2nd Additional Sessions Judge, Siwan for disposal.

5. On behalf of prosecution total 6 witnesses were examined. Out of them, PW-1 Hridyanand Prasad PW-2 Vishwanath Prasad PW-3 Ramajee Prasad PW-4 Nagina Prasad PW-5 Lallan Prasad and PW-6 Dr. Anil Kumar.

6. PW-1 in his examination-in-chief stated that the occurrence took place 10 years ago on 21.07.1985 at approximately 6:30 PM. A *panchayati* was convened earlier that day, at 12:30 PM, for the informant and the accused. As per the *panchayati*, the *Panchas* partitioned the land in question and demarcated the boundaries. Both parties agreed to the partition, and the *Panchas* instructed that if any disputes arose, the parties should approach them for resolution. At about 6:30 pm that



same day, he heard shouting coming from the doorstep of Lallan and Nagina Prasad. Upon hearing the commotion, the villagers, including the witness, rushed to the place and saw Jai Prakash, Subhash, Nayan, Baccha Lal, and Biralal Prasad collectively assaulting Lallan Prasad.

6.i. He further stated that he attempted to intervene and free Lallan, but Jai Prakash threatened to shoot them if they did not leave. Despite the threat, they managed to free Lallan. Jai Prakash then ran to his house, returned with a pistol, and, as Lallan attempted to flee westward, Jai Prakash chased him and fired a gunshot. The shot struck Lallan in his left eye, neck, and temple. Lallan ran towards the corner of the *Baadi* (garden) and collapsed at the door of Jiut Bhagat. At the same time, Nayan Prasad attacked the witness with a *Farsa* (sharp-edged weapon), striking his head and left elbow as he attempted to protect Lallan. The women from the accused's side then climbed onto the roof and began throwing stones, injuring others in the vicinity.

6.ii. After the incident, the injured individuals, including the witness, went to Barharia Hospital for treatment. Lallan was later referred to Siwan Sadar Hospital. The witness confirmed that he recognized all the accused persons present,



with Subhash being identified in the courtroom. He also recognized the other accused involved. The occurrence was witnessed by several individuals, including Sukhdev, Nagina, Lallan, Radha Bhagat, Ramaji Prasad, Vidya Ratna Prasad, and Vishwanath Bhagat.

6.iii. In his cross-examination, he stated that the witness acknowledged that Jai Prakash had filed a counter-case against them in relation to this matter. The court's decision in that case had directed both parties to maintain peace and harmony, with eight individuals being made accused in the counter-case. Several villagers, including Vishnu Dayal Prasad, Biralal Prasad, and Shankar Prasad, arrived at the scene after the occurrence. The witness clarified that no verbal altercation preceded the assault. Jai Prakash was at that time in Siwan and continues to reside there.

6.iv. Upon finding, Lallan lying injured, the witness and others carried him to the courtyard of Radha Bhagat. He further stated that his own head was bleeding, and others had seen both his and Lallan's injuries. He informed Ramaji, Sukhdev Prasad, Nagina Prasad, and Vidya Prasad about the injuries. He confirmed that all the accused persons belong to two families, and that he himself is a co-sharer with



both parties involved.

6.v. He further clarified that Lallan had been shot before he fell and that Jai Prakash fired from a distance of approximately 10 feet. He along with Ramaji and Vidya Prasad, was positioned next to Lallan at the time of the shooting. Jai Prakash fired only one shot. Afterward, Nayan Prasad attacked the witness with a *Farsa*. Lallan's doorways and his are adjacent, and the *Oota* (raised platform) near their doorsteps measures about 1.25 spans. Lallan was shot while trying to flee. Sahadev Ram, the Chowkidar, arrived after the occurrence and went to the hospital about 45 minutes later, accompanying the injured parties.

6.vi. He further stated that the accused persons had first gone to the police station to file a report before proceeding to the hospital. Lallan was referred from Barharia Hospital to Siwan Sadar Hospital. The witness's statement was recorded at Barharia Hospital, where he told the doctor that he had been injured by a *Farsa* and that the edge of the weapon struck his head. He reached the hospital at approximately 9:00 PM. along with the other injured individuals. The police station is situated about half a kilometer from Barharia Hospital. Before the shooting, Lallan did not notice that Jai Prakash had a *katta*



(country-made pistol) in his hand, as Lallan was running away. However, the witness and others observed it. Lallan was shot about two *Laggi* north of where he was initially assaulted.

6.vii. He did not know how many individuals from the accused's side were injured. To his knowledge, no one from the accused's side had sustained any injuries. He further clarified that both parties are *Pattidar* (co-sharers) and that he himself is a co-sharer with both sides. He denied the suggestion that he had been convicted in the counter-case or that he was giving false testimony because he is a member of Lallan's group. He further denied that no such incident had occurred.

7. PW-2 in his examination-in-chief stated that the occurrence took place 10 years ago at 6:30 PM. On that day, at 12:00 PM, a *Panchayati* was held between the informant and the accused persons. During the *Panchayati*, the *Ghur-Dandaar* (fixing of demarcation) on the land of both parties was finalized. The *Panchas* stated that if both parties faced any issues, they should inform them. However, later on that same evening, all the accused persons gathered at the spot. Lalan was shouting loudly. He along with others arrived at the scene, and people from nearby areas also joined. Among the accused, Subhash, Jaiprakash, Nayan, Bachcha Lal, and Biralal were all assaulting



Lalan by slapping him.

7.i. He along with the other individuals present tried to separate them. At this point, Jaiprakash threatened them, saying that they would be shot if they did not leave. Despite the threat, they intervened and stopped the fighting. Then Jaiprakash ran towards the west, went home, and returned with a pistol. Jaiprakash fired at Lalan, hitting him in the left eye, neck, and arm. As a result, Lalan lost his left eye due to the bullet fragments. Lalan fell near the door of Jiut after being shot. Subhash struck the witness with a stick, injuring his arm and elbow. Nayan hit Hridayanand with a *Farsa* (axe-like weapon), striking his head. After the incident, they went to Badharia Hospital and then to Siwan Sadar Hospital. The witness's statement was recorded by the police. He recognized all the accused persons.

7.ii. He further testified that he is the father of Hridayanand, witness number-1. Witness Ram Naresh is also his son, and he too witnessed the occurrence. In the *Panchayati*, the Mukhiya Indrasan Prasad, Isha Mian, and Mulayam Khan (Sarpanch) were present. He also stated that he has a half share in the land for which the *Panchayati* was held. This included plot numbers 426, 422, 428, 430, 431, 432, and other lands. The



Ghur-Dandaar (demarcation) was fixed on the southern side of plot number 426. However, no official papers were prepared for the fixing of the demarcation. The accused persons did not usurp the witness's share of the land.

7.iii. He confirmed that he had no connection with the land of Bujjhi and there had been no prior fight between the *Pattidar* (co-sharer) of Bujjhi and his family. Before the occurrence, Lalan did not consult his father, Biralal. He was unaware if Biralal had executed a sale deed of the land in favor of the accused persons, nor did he know whether any opinion was taken regarding this matter. He did not know who came to the scene after the occurrence, as it had become dark by then. When he first reached the spot, he saw Lalan lying on the ground. The accused persons were kicking and punching him. He could not determine where exactly Lalan was injured, but the people present had already removed those who were assaulting him. The Chowkidar himself arrived after the occurrence. He along with others went to Barharia along with the Chowkidar.

7.iv. In his cross-examination, he stated that there had been no fight among the members of the Bujjhi family. He confirmed that the informant and the accused persons belonged



to the same lineage. He further clarified that he had not discussed the incident with anyone. Approximately 100 people had gathered at the spot, but no other persons from the accused side were present. He did not go to the scene to take sides; rather, he was trying to separate both parties. He saw about 15-16 men involved in the fighting. He confirmed that Jaiprakash fired the shot from a distance of about 8-10 feet. No one was with Lalan when he was shot. After the shooting, the witness, along with Radha Bhagat, Ramaji, Hridayanand, Vidya, and Ram Naresh, went to Lalan's side. Lalan was wearing a vest and a dhoti, and there was a lot of blood on his clothes.

7.v. Before they reached the police station, the accused Jai Prakash and others had already gone to the police station and filed a case. He along with others met the police on the way to the police station. Upon seeing Lalan's injury, the doctor at Badharia Hospital immediately advised that he be taken to Siwan, as he could not be treated there. He did not stay at Badharia Hospital, as his injury was minor, and he was treated by the doctor that same day. Lalan's treatment started in Siwan at around 10:30 PM. He denied the suggestion that he became a witness in this case because he had been made an accused in the counter case. He further denied the suggestion



that the informant and his *Pattidar* (co-sharer) belonged to the same group, and that he had given false testimony against the accused.

8. PW-3 in his examination-in-chief stated that the occurrence took place a little more than 10 years ago, on 21.07.1985, at about 6:30 in the evening. He was at his door when he heard a commotion at Biralal and Jaiprakash's house. He went to the place of the occurrence, and other people also arrived at the spot. Upon arrival, he saw that Jaiprakash, Biralal, Subhash, Nayan Prasad, and Ashok were assaulting Lalan with slaps and fists. He attempted to intervene, but Jaiprakash threatened, by saying, "*Move aside, or else I will shoot you.*" Fearing for their safety, they stepped back. As Lalan moved towards an unknown direction, Jaiprakash fired a shot at him, which struck Lalan. The bullet caused Lalan's left eye to burst, and he sustained injuries to his left temple and right arm. The women of Jaiprakash's house then began pelting bricks, injuring other people present. He along with others took Lalan to Badharia Hospital, where the doctor advised them to take him to Siwan Sadar Hospital. Lalan was then treated at Siwan Hospital. He recognized all the accused persons, and he confirmed that Subhash, who is present in the courtroom, is one of the accused.



8.i. He further stated that Jaiprakash had filed a counter-case regarding the occurrence, in which both his father and he were made accused. They were eventually released. He also stated that Lalan's father, Biralal, is an accused in that case. The witness testified that Biralal had executed a sale deed (*Bainama*) of the land in favor of the accused. Lalan did not file a case regarding the land against the accused. Biralal has two sons, Lalan and Nagina. Of the land that Biralal transferred to the accused, the accused had left part of the land and had gained possession of the rest.

8.ii. He stated that neighbors arrived after the occurrence. The incident took place during the day. They went to the hospital immediately after the incident and did not go to the police station first. He also clarified that they were sent to the hospital by the police. He confirmed that Lalan was conscious at the time. After the shot was fired, the women began pelting bricks and stones. The distance between the spot where the scuffle took place earlier and the *Khop* (a round structure made of bamboo planks) was about 7-8 yards. Lalan was standing near the *Khop* when he was shot. At that time, Vidya Prasad, Hridayanand, and Vishwanath Bhagat were standing nearby.



8.iii. He further explained that Jiut Bhagat's house was located between his house and the spot of the occurrence. He could not say exactly where Lalan was struck by the fists. It may have taken Jaiprakash two to four minutes to return with the pistol. He added that no outsiders were present at the crime scene. He could not recall whether Lalan was wearing a lungi or a dhoti at the time, but there was blood on his clothes. Two to four drops of blood had fallen on the ground. Regarding the shooting, the witness stated that Jaiprakash fired the bullet from a distance of about 7-8 yards. Lalan was shot from the south direction. He denied the suggestion that he was giving false testimony because he belonged to Lalan's group and that no bullet had struck him.

9. PW-4 in his examination-in-chief stated that the occurrence took place on 21.07.1985, between 7:00 and 7:30 PM and he was at his home. *Panchayati* was held during the day. On the same day, his brother was going to the courtyard to eat food. At that time, Jaiprakash, Subhash Prasad, Bachcha Lal Prasad, Nayan Prasad came and caught hold of his brother, Lalan, and started beating him with slaps and fists. Upon hearing the commotion, the witness went to the scene. As he raised an alarm, many villagers arrived and stopped the fight.



Meanwhile, Jaiprakash went home, brought a pistol, and fired a shot at Lalan.

9.i. The shot struck Lalan in his left eye, left cheek, and left temple. Lalan fell down. During this time, Radha Bhagat arrived. Jaiprakash, Subhash, Bachcha Lal, Nayan Prasad, Ashok Kumar, Biralal, Haider Miyan, and Habib Miyan arrived with sticks and bricks and began assaulting the witness and the people trying to rescue Lalan. Hridayanand struck Nayan on the head with *farsa*, other accused assaulted them with sticks and bricks. After which they went to Siwan Hospital. Lalan was treated in Siwan. The Chowkidar arrived after the occurrence, and they went to the police station with him. At the police station, the police recorded their statement, which the witness signed after confirming its accuracy. The reason for the fight was a land dispute the panchas has fixed the demarcation on the land and thus altercation and rivalry took place. He identified Subhash Prasad as one of the accused, who is present in the courtroom, and stated that he recognized the other accused as well.

9.ii. In his cross-examination, he stated that the injured person (Lallan) is his brother. Jaiprakash had filed a counter-case regarding the occurrence, in which his father and



he were made accused. They were released on 13.06.1995 after being reprimanded. On hearing *hulla* he went to the scene of alleged occurrence and saw that people were assaulting Lallan. When Lallan was shot when he was leaving and no one was adjacent to him. Lallan received shot on left part of his body. The bullet shot from the distance of 7-8 yard at that time he was standing at distance of 1-1.5 *laggi* in the east direction from Lallan.

9.iii. He further stated that he did not know whether his father had written the land in favor of the accused, causing this dispute. On the same day, before the occurrence, a *Panchayati* was held regarding the land, but he did not know whether the mutation case for the land that his father had written to the accused was pending in the court of the L.R.D.C. He further stated that he had informed the Mukhiya and the police about the occurrence. All the injured persons went to the hospital and the police station with him. He did not know how much money was spent on Lalan's treatment.

9.iv. He also stated that the Mukhiya and Chowkidar were present when his statement was recorded. Indrasan Singh, the Mukhiya, and other Panchas, including Narayan, Satyanarayan Prasad, Bhikhi Singh, and Devnarayan



Singh, were present during the *Panchayati*. He did not know the exact area of the land that had been demarcated. He did not show the demarcated land to the Sub-Inspector. Blood was spilled at the place of alleged occurrence. Lalan was wearing a vest and a lungi, with blood on his clothes. The Sub-Inspector saw the blood stain cloth of injured. He further stated that a piece of brick was found at the place of the occurrence.

9.v. He went to the police station after 3-4 hours of the alleged occurrence. First, he went to the police station, and then to the hospital. He stated that he had no enmity with the other injured parties. He further stated that the accused persons belonged to the same family. He stated that the police did not take his statement again and that he did not know whether the accused were also injured. He denied the suggestion that the occurrence had not taken place and that they had assaulted the accused, filing a fabricated case in connivance with the doctors to save themselves from a counter-case.

10. PW-5 in his examination-in-chief stated that the occurrence took place on 21.07.1985, at around 6:30 pm. A *Panchayati* had been held earlier that day regarding the division of land between the accused persons and the his family. The *Panchas* conducted the division and fixed the *Ghur-Dandaar*



(demarcation) of the land. The *Panchas* had ascertained that the accounts would be settled later as per their opinion, but Jaiprakash uprooted the demarcation fixed by the *Panchas* and threw it away. On the same day, at around 6:30 pm, he was returning home for dinner. As the food was not yet ready, he turned back and was going out.

10.i. At that time, Jaiprakash, Subhash, Nayan, Bachcha Lal, Ashok, Biralal, and two others were sitting in the Eastward *Palani* (a temporary hut-like shed) adjacent to his house. Jaiprakash, Nayan, Bachcha Lal, Subhash, and Biralal caught hold of him and started assaulting him. He started screaming, and upon hearing his shouts, villagers and his brother, Nageena Prasad, arrived at the spot. Biralal then told Jaiprakash, "What are you looking at? Kill this bastard with a pistol." Jaiprakash went to his house, retrieved a pistol, and fired at him. The bullet hit him in his left eye, left temple, and neck. His left eye was damaged due to the gunshot injury, and he fell down. The villagers then brought him to Barharia Hospital. The doctor at Barharia Hospital advised that he should be taken to Siwan Sadar Hospital, where he was treated. His statement was recorded at the hospital. He recognized Subhash, who is present in the court, and identified the other accused as well.



10.ii. In his cross-examination, he stated that accused Biralal is his father, and he would be 60-65 years old. He testified that Bhagwat Prasad and Biralal Prasad are real brothers. Bhagwat's sons, Jaiprakash, Nayan Prasad, Subhash Prasad, and Bachcha Lal were the accused and Ashok is the son of Subhash. He and the accused live in the same courtyard, and they have roofed houses. At the time of the occurrence, many women were on the roof. The women of the accused side were throwing bricks at the witness and others. It was a dark night, and four to five women were throwing bricks indiscriminately.

10.iii. He stated that Nagina Prasad, Vishwanath Prasad, Girjanand, and Ramaji Prasad were injured by bricks. The witness was also present among those who got hurt. He was not injured by sticks, but rather by punches and slaps. He was unsure of the severity of his injuries but stated that he was injured all over his body. The occurrence took place at the *Duaar* (an adjacent plot in front of the house). The fight occurred about 2-4 footsteps away from the *Duaar*. The witness did not lose consciousness and fell down. When he shouted, people came and tried to break up the fight. He further stated that Jaiprakash had filed a counter-case against him and Nageena Prasad in connection to this incident. They were



granted bail in that case and were found guilty but released on bond.

10.iv. He further stated that no one from his side was present at the time of the fight. People came after hearing the commotion, and no one shielded him to protect him from being beaten. When the accused were assaulting him, Jaiprakash did not have the pistol. He got injured by sharpnells. he was unable to confirm if he was injured by bullets. Jaiprakash attacked him from the door and was hit at the *Duaar*, which was about 5-6 footsteps away from the door. Jaiprakash shot him while he was running towards the west, and as he took a step forward, he was shot. The door faces north, and he was not injured on the back of his shoulder or head. Jaiprakash hit him from distance of 4-5 footstep and he did not faint. He got his eye treated at Sitapur for recovery of his eye sight his injury got treated in Siwan.

10.v. At the time of the occurrence, he was wearing a vest and a *lungi*. There were no marks of injury on the vest or *lungi*. He further stated that as soon as he heard about the pistol, he started running. It took no time for Jaiprakash to take the pistol out of his house. Jaiprakash lives in the room to the east of the courtyard, facing west, while his room is in the same



courtyard, facing north. His wife and son were at home, and his wife was trying to free him. However, his wife and son are not witnesses in this case. He did not know for how many days Jaiprakash had been keeping the pistol, but they knew that he had the pistol at home. He had not reported the pistol to the police station earlier.

10.vi. He in his cross-examination stated that people from all castes reside in their village. There are three houses next to theirs, but there was no enmity with them. These people are not witnesses in the case, but they came to the scene of the occurrence. After the occurrence, he first went to the Badharia police station, where he reported the incident, but his statement was later recorded in the hospital. After visiting the police station, the witness went to Badharia Hospital, and then to Siwan Hospital. After getting injured, the witness fell at a distance of 5-7 steps. Blood spilled on the witness's vest and *lungi* and on the ground. The police saw the blood-stained cloth.

11. PW-6 in his examination-in-chief stated that on 21.07.1985 he was posted at Sadar Hospital at Siwan and on that day at about 11:30 pm he had examined Lalan and found following injuries:

i. Pellet injury on left side of face and neck about 1 mm diameter; sixteen such counted.



ii. Perforating in fury of left eye with complete loss of vision.

iii. Pellet injury on left hand on dorsal about 10 could be counted.

iv. Pellet injury on neck, five could be counted, 1 mm diameter.

Injury No. (i), (iii) and (iv) are simple caused by fire arm. Injury no. (ii) is grievous caused by fire arm.

Age within 6 hours.

He has proved the injury report which has been marked as Ext.2.

On the same day he examined Bishwanath Prasad and found the following injuries on his person: -

(i) Swelling on Right fore arm 3"x2".

(ii) Abrasion on Right knee.

(iii) Swelling on left ankle 1k2x 1".

(iv) Abrasion on nose "x".

All injuries are simple caused by hard blunt substance.

Age-within 6 hours.

He has proved the in jury report which has been marked as Ext.2/a.

On the same day he examined Ram Naresh Prasad and found the following injuries on his person:-

(i) Swelling on Right scapular region 1"x1/2".

(ii) Swelling on left thigh anterior aspect 1 1/4" x 1/3".

All injuries are simple caused by hard blunt substance,

Age-within 6 hours.

He has proved the injury report which has been marked as ext. 2/b.

11.i. In his cross-examination, he stated that all



the injury report were written on 22.07.1985 and he has not mention the depth of pellet injury. He further stated that X-Ray report was produced before him. If injury is made at a distance of 15ft. it will cause chavod. Injury of Lalan are no chavod injury and he do not remember that Lalan had also told him that he had lost his vision of left eye.

12. Learned Amicus Curiae for the appellants submits 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 that the place of occurrence in this case has not been shown by the prosecution. It has not been established and there is contradiction in the statements of witnesses regarding the place of occurrence.

12.i. Learned Amicus Curiae further submits that PW-1 stated in his examination-in-chief that accused Nayan Pd. assaulted him with *farsa* resulting injury on head and left elbow, however, from the perusal of record as well as injury report on the record it will appear that this witness was never medically treated. Further PW-2 stated that accused Subhash assaulted him



with *lathi* resulting injury on his elbow, meaning thereby he received only one blow, however as per injury report (Ext. 2/a) he received four (4) injuries, which are simple in nature [All bruise, swelling & Abrasion]. PW-3 stated in his deposition that he received injury from the bricks which were being thrown by the ladies from the house of accused Jai Prakash. As per injury report (Ext- 2/b) 2 (two) injuries were found on his person which were simple in nature.

12.ii. He further submitted that PW-4 (Informant) in para 4 of his deposition stated that there is a case and counter case in which the informant side were convicted and released on admonition. As per para 7 both parties belong to the same family. In his examination-in-chief he stated that he also received injury, but there is no medical report regarding his injury. He also admitted that there is a land dispute between the parties. PW-5 stated that Jai Prakash fired from pistol resulting injury in his left eye, left side of face and neck. Injury report also goes to suggest That Shot he received 4 (four) gunshot injury on his person and due to injury in left eye there was complete loss of vision.

12.iii. He further submitted that IO has not been examined in this case which has caused prejudice to the



prosecution story and no independent witness has been examined as there were altogether 15 charge-sheeted witnesses. All witnesses examined were admittedly interested and witnesses land dispute between the parties case & counter case (Ext. A). Therefore, appellants have acquitted out rightly. In view of the above facts it can be said that the appellants are innocent and have not caused any injury to the deceased.

12.iv. Learned counsel further submitted that as this appeal is of the year 2006 and occurrence is of the year 1985, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 19-20 years. So, the appellants should have been acquitted from the conviction as sentenced against them.

13. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond shadow of all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.



14. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

15. On deeply studied and scrutinized all evidences, it is evident to note that in the present case there is specific allegation against all the appellants that Jaiprakash fired the shot at Lallan from a distance of about 8-10 feet. Lallan was wearing a vest and a dhoti, and there was a lot of blood stains on his clothes which has also been corroborated by all the prosecution witnesses. Therefore it is crystal clear that all the prosecution witnesses has corroborated the manner, place and time of alleged occurrence. Further doctor (PW-6) an independent witness has stated in his deposition that injured (Lallan) has received 4 injuries out of which injury no. (i), (iii) and (iv) are simple caused by fire arm, injury no. (ii) i.e., perforating in fury of left eye with complete loss of vision is grievous caused by fire arm. He also examined PW-2 and proved his injury that all injuries are simple caused by hard blunt substance. Here, it is imperative to recall Section 320 of the IPC. Section 320 read as follows:-



The following kinds of hurt only are designated as "grievous":-

First.- Emasculation.

Secondly.-Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear,

Fourthly.-Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent dis-figuration of the head or face.

Seventhly.-Fracture or dislocation of a bone or tooth.

Eighthly.-Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

16. A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. So far non-examination of IO is concerned, it cannot in all cases would not render the prosecution case fatal and be a determinative factor to throw out a credible prosecution version. In the present case, there is adequate eye witness's testimony to establish the offence against the accused/appellants. Further, even if the Investigating Officer has not been examined in the present case, it is not fatal to the prosecution case as the place of occurrence has not been challenged at any point of time. The place of occurrence is well established, so it creates no



suspicion on prosecution case and also not prejudiced the accused. Moreover, in the entire evidence of the present case, the statement of informant is not challenged by defence that his statement is in contradiction with fardbeyan. The essential ingredients of Section 145 of the Indian Evidence Act has not fulfilled as no attention on previous statement has been drawn. Section 145 read as follow:-

“Section 145 Cross-examination as to previous statements in writing- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

17. It is evident that to take any contradiction of the facts, it is necessary to draw the attention from the previous statement of the witnesses and if he deny from that statement then he should be granted proper opportunity to explain how and why it is written. This will be proper compliance of Section 145 of the Evidence Act, 1872 as laid down by the Hon'ble Supreme Court in the case of **Karan Singh And Ors. Vs. Sate of M.P. (2003) 12 SC Cases 587** in Paragraph No. 5:



“5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement, it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must withdrawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining discrepancies or inconsistencies and to clear up the particular point of ambiguity or dispute. In the instant case Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW-1 Hari Singh, that is, of no assistance to prove their case of private defence.”

18. Informant in his deposition stated that he went to the police station after the alleged occurrence and narrated the occurrence to IO and IO wrote the said fardbeyan which after finding to be true informant signed the same. Further, no objection was raised by the defence in regard to the fardbeyan at the time of deposition of informant whether the contents written in the fardbeyan was same as narrated by the informant or not. Neither learned counsel for the defence raised any objection regarding place of occurrence for which it would be necessary to examine IO to corroborate the prosecution case.



Forthcoming on the point that non examination of IO makes the prosecution case fatal is wrong as Doctor in his deposition corroborated the case of the prosecution as both Investigating Officer and Doctor are corroborative evidence and their examination is required to see that prosecution story is being corroborated by the evidences available on record or not.

19. It is well settled principle of law that the testimony of any family members of the victim cannot be discarded only on account of his/her relationship with the victim, especially when the related witnesses is natural witness and injured witness. So, their presence is proved beyond shadow of all reasonable doubts. The injury of Lallan is caused by gun shot and not falsely implicated. The occurrence is of July month at about 6.30 PM it is natural that sufficient light was available to identify the accused and see the occurrence. Further the place of occurrence is nearby place of the house so, the presence of family members were considered as natural witnesses. There are no material inconsistencies in the deposition of the witnesses as the informant and other prosecution witnesses were consistent on each substantive point in their deposition. So, the prosecution has been completely successful in proving the date of occurrence, genesis of



occurrence, manner of occurrence, motive of occurrence and place of occurrence in the present case and proving the allegations levelled against the appellants beyond all reasonable doubt. Due to which the charge under Sections 307, 326 of the IPC and Section 27 of the Arms Act is rightly proved against them.

20. Further, on the basis of the above circumstances, facts and evidence, this Court comes to the conclusion that the prosecution has been successful in proving its case against the accused/appellants beyond shadow of all reasonable doubts. The Hon'ble Supreme 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 judgment 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....”



21. 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 incoming 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.

22. The Hon'ble Apex Court in the case of **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.”

23. Moreover, in the present case it is evident from the facts and material available in record that the grievous injury has been caused by the deadly weapon to the injured person resulted in the lost of vision of left eyes it attributed that the appellants liable under Section 326 of the IPC which provides the punishment for voluntarily causing grievous hurt by dangerous weapon or means, Section 326 of the IPC reads as follow:

“326. Voluntarily causing grievous hurt by dangerous weapons or means *Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument*



which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

24. It is crystal clear that appellants, namely, Subash Prasad, Nayan Prasad and Bacha Lal Prasad have the common intention to cause injury to the victim by means of fists and slaps whereas appellant, namely, Jai Prakash Prasad used fatal weapon to cause grievous injuries and had the intention to kill the informant which is proved by the prosecution beyond shadow of all reasonable doubts. So, considering all the materials available on record, it is evident that the learned trial Court has rightly ordered to release appellants, namely, Subhash Prasad, Nayan Prasad and Bachhalal Prasad on probation of good conducts by entering into bonds of Rs. 5,000/- with two sureties of like amount each under Section 4 of the Probation of Offenders Act and convicted appellant, namely, Jai Prakash Prasad under Sections 307 and 326 of the IPC and Section 27 of the Arms Act. Hence, the



judgment and order of sentence dated 27.05.2006 passed by the learned Additional District & Sessions Judge, (Fast Track Court No. III), Siwan in Sessions Trial No. 72 of 1986 arising out of Barharia P.S. Case No. 89 of 1985 / G.R. No. 1408 of 1985 is upheld and sustained.

25. Accordingly, this appeal stands dismissed.

26. The appellant, namely, Jai Prakash Prasad is on bail, hence he is directed to surrender before the learned Trial Court within ten days from the date of receipt of a copy of this judgment by the learned Trial Court and his bail bonds stands cancelled and he is directed to serve the remaining part of his sentence awarded by the learned Trial Court.

27. Before parting with this appeal, the Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 8,000/- (eight thousand) to the learned Amicus Curiae, namely, Mr. Vipul Sinha towards honorarium for assisting this Court in the present appeal.

28. Let a copy of the first and last page of this judgment be handed over to the advocate Mr. Vipul Sinha, learned Amicus Curiae and Office is directed to proceed further for grant of honorarium to him which is to be paid by the Patna High Court Legal Services Committee.



29. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith for necessary compliance.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	30.06.2025
Uploading Date	06.08.2025
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