

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.815 of 2006

1. Krishnandan Pd.Mahto @ Krishna Mahto, son of Saudi mahto
2. Naveen Kumar
3. Shishu Kumar
Appellant Nos. 2 & 3 are the sons of Krishnandan Mahto, Residents of village Sarva, P.S. Barbiga, District- Sheikhpura.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dr.Anjani Pd. Singh, Advocate Mr. Sunny Kumar, Advocate
For the Respondent/s	:	Mr. A.M.P. Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 23-09-2025

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State.

2. *Vide* order dated 27.06.2024, learned counsel for the appellants submitted that appellant No. 1, namely Krishnandan Pd. Mahto @ Krishna Mahto, has passed away. This Hon'ble Court directed the Superintendent of Police, Sheikhpura, to verify the same and submit a report to this Court.

3. The report has been received, and from the said report, it transpires to this Court that appellant No. 1, namely Krishnandan Pd. Mahto @ Krishna Mahto, has indeed died. As such, the present appeal stands abated as against appellant No. 1, namely Krishnandan Pd. Mahto @ Krishna Mahto.



4. By this appeal, appellants/convicted accused Naveen Kumar & Shishu Kumar are challenging the judgment of conviction and order of sentence dated 20.09.2006 and 21.09.2006 respectively, passed by the Additional Sessions Judge (Fast Track Court Vth), Sheikhpura, in Sessions Case No. 479 of 1996 / Trial No. 75 of 2006 , arising out of Barbigha Police Station Case No. 14 of 1996, by which the appellants were convicted for the offence under Sections 307/34 and 323/34 of the Indian Penal Code. The appellants are sentenced for a period of five year rigorous imprisonment for the charge of Section 307/34 of the Indian Penal code. They are further fined Rs. 5,000/- each in addition to the above sentence and on default to pay such fine they will have to suffer further rigorous imprisonment for a month. Further all the convicts are sentenced to under go one year rigorous imprisonment for the charge under Section 323/34 of the India Penal Code. Sentences awarded for both of the charges will run concurrently.

5. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

“The informant, who is a teacher at a middle school, submitted a written complaint on 19-01-1996 to the in-charge of P.S. Barbighe, stating therein that on the aforesaid



date, when he returned home from school, he saw his neighbour, accused Krishna Mahto, constructing a stair that touched the *ohari* of his (informant's) house. In the course of construction, the accused also damaged the informant's drain. It is stated that when the informant tried to prevent the accused from constructing the stair, the accused abused him. Again, when the informant asked him (accused) not to abuse, he went to his house and returned with his two sons, namely Navin Kumar and Shishu Kumar (accused). At that time, Navin was armed with a *farsa*, while accused Shishu was carrying a *lathi*. It is alleged that accused Krishna Mahto ordered his sons to assault the informant upon which accused Navin Kumar charged Farsa on the informant's head with an intent to kill while accused Shishu Kumar started assaulting him by lathi on his waist. The informant fell down due to the injuries caused. During the assault, the informant raised a *hulla*, upon which some witnesses arrived and saved him (informant) from further assault. Further, the informant was taken to the police station where the information was recorded."

6. Learned counsel for the appellants submits that the appellants deserve acquittal in the present case due to the reason that, during trial, the prosecution failed to produce the



I.O. as well as the doctor for examination. He further submits that, due to the non-examination of the doctor and in the absence of the injury report, it is impossible to ascertain the nature of injury, and hence neither Section 307 nor Section 304 of the Indian Penal Code is made out. Counsel further submits that the Investigating Officer has not been examined, and it is due to this reason the prosecution's case has failed to ascertain the place and time of occurrence. It is due to this reason, the case of the prosecution has completely failed, and without any material, the Trial Court has convicted the accused persons under Sections 307/34 and 323/34 of the Indian Penal Code.

7. Learned APP for the State submits that it is true that the injury could not be proved and cannot be proved without medical evidence, but on the other hand, the corroboration of the earlier statement under Section 156 of the Evidence Act has been made out by the prosecution witnesses. Whatever has been narrated in the FIR and by the other witnesses has come in the prosecution evidence of other witnesses, particularly PW-3, PW-4, and PW-7 (the informant). He further submits that in paragraph No. 22 of the Trial Court's order, it has been ascertained from the evidence that accused Krishnandan Pd. Mahto went to his house, and after a while, he



returned with his two sons, who were armed with *farsa* and *lathi*. The appellant Krishnandan Pd. Mahto ordered his two sons to kill the informant, whereupon appellant No. 2 gave a *farsa* blow to the head of the informant, while appellant No. 3, namely Shishu Kumar, assaulted him by inflicting several blows with a lathi, due to which the informant fell down. According to the prosecution, in view of this matter, the assault was committed by all the accused in furtherance of the common intention, and hence Section 34 of the Indian Penal Code is applicable by virtue of the ocular evidence, which is the best evidence. Therefore, learned counsel for the State submits that the appeal be dismissed on this ground alone.

8. Upon hearing the parties and perusal of the record, it transpires to this Court that, admittedly, the Investigating Officer and the Medical Officer have not been examined. Due to the non-examination of the Medical Officer, the injury report could not be brought on record, and hence the injury could not be proved. However, from the observation made by the Trial Court in paragraph No. 22 of the judgment, and particularly from the evidence of PW-7 (the informant), PW-2 (wife of the informant), and PW-3 (a co-villager), it has been adduced that Krishnandan Pd. Mahto went to his house,



and after a while, he returned with his two sons, who were armed with *farsa* and *lathi*. On the order of Krishnandan Pd. Mahto, his sons attacked the informant, due to which he was injured and fell down.

9. For better appreciation of this case, this Court feels it necessary to quote Section 34 of the Indian Penal Code, which reads as follows:-

“Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

10. The crux of this Section is that if any one of the accused has committed an act in furtherance of the common intention, then all the accused shall be held responsible. Here in the present case, it is true that injury has not been proved, but assault has been established. Therefore, this Court is of the firm view that, due to the lack of injury report, Section 307 of the Indian Penal Code is not made out, but Section 323 read with Section 34 of the Indian Penal Code is made out. Hence, for this reason, the conviction for the charge and the corresponding sentence under Section 307 are hereby set aside, but the conviction under Section 323/34 of the Indian Penal Code is



affirmed.

11. For the offence under Section 323/34 of the Indian Penal Code, one year rigorous imprisonment has been imposed by the Sessions Court. This Court, prior to forming an opinion on the point of sentence, analyzes Section 323, which states as follows:-

“Punishment for voluntarily causing hurt.-Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both”

12. Section 323 of the Indian Penal Code provides that the punishment may extend to imprisonment for a term which may extend to one year, or with a fine which may extend to one thousand rupees, or with both.

13. This Court, considering the age of the present appellants at the time of the occurrence in 1996, where the age of appellant No. 2 was 20 years and appellant No. 3 was 18 years, notes that they came forward with a view to helping their father. Taking into account their young age, this Court, adopting a liberal approach in sentencing, hereby reduces the sentence imposed on them from one year rigorous imprisonment to five



months simple imprisonment, along with a fine of Rs. 1000/-.

14. It further transpires to this Court from the record that the appellants were in custody for 10 days during the trial, i.e., from 20.05.1996 to 30.05.1996, and further, upon conviction, they were in custody from 20.06.2006 and were released after 14.11.2006 by the order passed by this Hon'ble Court, meaning they were in custody for five months and odd days.

15. Hence, the custody period of five months and odd days already undergone by the appellants shall be set off, and upon deposit of Rs. 1000/- each as fine, they shall be exonerated from all liabilities of bail bond.

16. Accordingly, the judgment of conviction and order of sentence dated 20.09.2006 and 21.09.2006 respectively, passed by the Additional Sessions Judge (Fast Track Court Vth), Sheikhpura, in Sessions Case No. 479 of 1996 / Trial No. 75 of 2006, arising out of Barbiga Police Station Case No. 14 of 1996 is hereby set aside. Therefore, the appellants are hereby acquitted of the charge under Section 307/34 of the Indian Penal Code, and the sentence under Section 323/34 of the Indian Penal Code is treated as the period already undergone.

17. In the result, the appeal is dismissed with the



aforesaid modification in conviction and sentence.

18. Since the appellants, namely, Naveen Kumar & Shishu Kumar of Cr. Appeal (SJ) No. 815 of 2006, are already on bail, and having been acquitted under Sections 307/34 of the Indian Penal Code, let them be discharged from the liabilities of bail bonds and sureties, if any.

19. Let a copy of this judgment be sent to the concerned Court below along with the LCR.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA

