

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.309 of 2004

1. Suresh Choudhary.
2. Heera Choudhary.
3. Sevalal Choudhary @ Subelal Choudhary
all are sons of Late Rameshwar Choudhary, R/o Village- Gaurakshni,
Warisaliganj, P.S.- Warisaliganj, District- Nawada.

... .. Appellants

Versus

State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Pramod Kumar Sinha, Advocate
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 31-01-2026

Heard Mr. Pramod Kumar Sinha, learned counsel for the appellants and Mrs. Anita Kumari Singh, learned APP for the State.

2. The present criminal appeal has been preferred against the judgment of conviction and order of sentence dated 19.03.2004 passed by learned Additional District and Sessions Judge (Fast Track Court-III), Nawada in Sessions Trial No.173 of 1995/147 of 2004, (arising out of Warisaliganj P.S. Case No.32 of 1995) whereby and whereunder appellants no.1 and 2, namely Suresh Choudhary and Heera Choudhary have been convicted under Sections 326 and 307/34 of the Indian Penal Code (hereinafter referred to as 'the I.P.C.'), while appellant no.3,



namely Sevalal Choudhary @ Subelal Choudhary along with Late Rameshwar Choudhary (against whom the appeal has abated), has been convicted under Section 307/34 of the I.P.C., however, all of them have been sentenced to rigorous imprisonment for seven years.

3. The case of the prosecution, based upon the *fardbeyan* of the informant, Kapil Prasad Sardar recorded on 07.05.1995 at 4:00 p.m., is that on the same day at around 2:30 p.m., he was going along with his brother-in-law, namely Yogeshwar Dhanuk towards the toddy shop of accused Rameshwar Choudhary where the said Rameshwar Choudhary along with his three sons, namely Suresh Choudhary, Heera Choudhary and Sevalal Choudhary were also present, while one Gokhul Mahto was also present along with the informant. It has been alleged that the money due on account of milk was demanded by his brother-in-law from Rameshwar Choudhary, on account of which the parties entered into some verbal altercation whereafter, the brother-in-law of the informant was caught hold of and the informant tried to intervene in the matter. It has, however, been stated that on the order of Rameshwar Choudhary, Suresh Choudhary and Heera Choudhary inflicted a Hausli (Pasuli) blow on head, neck, ear, hands and arm of the brother-in-law,



Yogeshwar Dhanuk causing him injuries. Rameshwar Choudhary and Sevalal Choudhary have been alleged to have caught hold of informant's brother-in-law and local people of the vicinity assembled at the place of occurrence subsequently, whereafter accused persons fled away. Informant has stated that since the injured was unconscious, the statement was being given by him.

4. Based on the said *fardbeyan*, Warisaliganj P.S. Case No.32 of 1995 was instituted and upon completion of investigation, the police submitted charge-sheet on 30.06.1995, finding the case true against the accused persons including the present appellants under Sections 341, 324, 326, 307 and 34 of the I.P.C., whereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of sessions. The present case, upon being committed, was numbered as Sessions Trial No.173 of 1995/147 of 2004 and charges were framed on 08.04.1996 under Sections 326 and 307/34 of the I.P.C. to which they pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution has examined altogether six witnesses out of whom, PW-1, Balmiki Raut happens to be the nephew of the informant and claims to be an eye-witness, PW-2, Yogeshwar Dhanuk, an injured eye-witness also the brother-in-law of the informant, PW-3, Dr. Rajendra



Prasad Mishra, the Doctor who examined the injuries of the injured, PW-4, Bhola Raut, who also claims to be an eye-witness, PW-5, Kapil Prasad Sardar, who is the informant himself and also an eye-witness to the occurrence and PW-6, Mahadev Murmu, who is the Investigating Officer of the case.

6. Two witness have also been examined by the defence, DW-1, Gokhul Mahto and DW-2, Ramswaroop Yadav.

7. The statement of the accused persons was also recorded under Section 313 of the Cr.P.C. and the case of the defence is complete denial of the occurrence, claiming themselves to be innocent.

8. The learned Trial Judge upon appreciation, analysis and scrutiny of the evidence adduced during the trial has found the appellants guilty of the offence and sentenced them to imprisonment by impugned judgment and order.

9. I have heard the arguments of the learned counsel for the appellants and learned APP for the State.

10. Mr. Pramod Kumar Sinha, learned counsel for the appellants has contended that the prosecution case suffers from several infirmities and as such, the conviction of the appellants is not fit to be sustained. It has been submitted by him that all the witnesses examined by the prosecution are related and interested



witnesses and not a single independent witness has been examined by the prosecution although the occurrence is said to have taken place in broad daylight and it is also the case of the prosecution in the F.I.R. itself that a number of villagers had assembled at the place of occurrence. Further submission on behalf of the appellants is that the witnesses are not truthful and believable inasmuch as, PW-1, Balmiki Raut has himself stated in his evidence that he reached the place of occurrence ten minutes after the incident and at that time the assault was going on which is contrary to the evidence of PW-2, who is the injured witness, who has rather stated that the entire act of assault occurred within a minute, as such, the evidence of PW-1 as an eye-witness appears to be doubtful. The learned counsel has submitted that there are several loopholes in the case of the prosecution and the investigation has also been conducted in a perfunctory and shoddy manner inasmuch as, neither the blood nor blood-stained cloth was recovered from the place of occurrence, nor produced for examination. Further, the assault weapon Fausli (Pasuli) is also not said to have been recovered, either from physical possession of the appellants or from their house, which is said to be the place of occurrence, despite the fact that the appellants Sevalal Choudhary and Suresh Choudhary were arrested on the same day from their



house. It has rather been submitted that it was the informant's side who were the aggressors as even according to them, the place of occurrence is the shop of the accused Rameshwar Choudhary, where the informant and others had entered and made certain demands leading to verbal altercation which subsequently escalated into a physical fight between the parties.

11. Per contra, Ms. Anita Kumari Singh, learned APP for the State has submitted that the prosecution has examined as many as six witnesses in its favour and all have supported the case as eye-witnesses including the injured eye-witness, PW-2, Yogeshwar Dhanuk. It has also been submitted that the First Information Report has also been lodged with due promptness, on the same day, as such, there is no scope of any concoction of facts. She has also submitted that the statement of the injured witness, who has received grievous injury, cannot be doubted as the evidence of the injured witness stands on a higher pedestal, which even stands corroborated by the injury report (Exhibit-1) as also the evidence of the doctor (PW-3) during trial, inasmuch as, the doctor has clearly stated in his cross-examination that all the injuries were caused by sharp cutting weapon like Fasuli (Pasuli). Further submission on behalf of the State is that merely because the witnesses are related, their testimony as eye-witness cannot be



doubted or brushed aside as they were the most natural witnesses, who were present in the shop, by virtue of them being the family members of the informant and the injured.

12. A cursory perusal of the evidence would go to show that PWs-1, 2, 4 and 5 are all eye-witness of the occurrence, PW-2 being injured witness too, who have all supported the case of the prosecution. PW-3, Dr. Rajendra Prasad Mishra, is the Doctor who had examined the injuries of Yogeshwar Dhanuk (PW-2) and he has found following injuries on the person of the injured:

1. Incised wound in the front of scalp with cutting of the frontal bone of the scalp, longitudinally the size the injury was $3\frac{1}{2}$ X $\frac{1}{2}$ cutting deep up to bone. Grievous sharp cutting
2. One incised wound below left ear on left side of the neck parallel to injury no.4. dimension of the injury was $3\frac{1}{2}$ ' X $\frac{1}{2}$ ' X 1' simple sharp cutting.
3. Lower third of the left pinna was chopped off. Grievous sharp cutting
4. Incised wound on mandibular region on left side just below injury no.2, the dimension being $1\frac{1}{2}$ ' X $1\frac{1}{2}$ ' X $\frac{1}{2}$ '. Simple sharp cutting.
5. Incised wound on left upper arm middle portion anterior part, the dimension being 3' X 1' X $1\frac{1}{2}$ ' Simple sharp cutting.
6. Incised wound on the thenar area of the left palm being $2\frac{1}{2}$ X $\frac{1}{4}$ X $\frac{1}{4}$ Simple sharp cutting.
7. Incised wound on hypothenar area of left palm the dimension was 1" X $\frac{1}{4}$ X $\frac{1}{4}$. Simple sharp cutting.
8. All the injuries were caused by sharp cutting weapon like Fasuli.

13. The Doctor has further stated that all the injuries were caused by sharp cutting weapon like Fasuli and in the cross-



examination the Doctor has further stated that the injury no.4 cannot be manufactured and the above mentioned injuries cannot be possible due to fall from the tree with any deadly weapon or sharp cutting weapon.

14. PW-6, who is the Investigating Officer of the present case, has proved the First Information Report as Exhibit-5 and had also inspected the place of occurrence. He has further stated that he recorded the statement of the injured at Warisaliganj Hospital on 07.05.1995, at around 6:00 p.m., and at the time of taking his statement, Yogeshwar Dhanuk (PW-2) was in an injured condition, however he was conscious. In his cross-examination, this witness has stated that he saw four injuries on the body of the injured, but the same was not covered or tied up and also that he did not take the statement of other persons of the hospital. Upon inspection of the place of occurrence, this witness had found some broken container of toddy and also blood at the place of occurrence, however, he has stated that he did not seize any blood and he also did not mention in case diary with regard to blood-stains being found on the cloth of the injured. The attention of the Investigating Officer has also been drawn to the statements of the witnesses recorded by him during investigation, including the informant, and further, he has admitted that he had arrested Suresh



Choudhary and Sevalal Choudhary on the same day i.e. on 07.05.1995, from their house.

ANALYSIS AND CONSIDERATION

15. I have perused the impugned judgment of the learned Trial Court, entire materials on record and I have given thoughtful consideration to the rival submissions made on behalf of the learned counsel for the appellants as well as learned APP for the State.

16. The contents of the F.I.R. have already been discussed in detail, which discloses an allegation that the appellants had indulged in assaulting the injured PW-2, causing serious injury to him.

17. The moot question for consideration now is as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubt, so as to sustain the conviction, and for such purpose the evidence on record needs to be analyzed and examined.

18. At the outset, it has been noticed that the First Information Report lodged by the informant has been done with all promptness, inasmuch as, the *fardbeyan* had been recorded on the same day in the Warisaliganj hospital, where the injured was being treated. The reason for *fardbeyan* being recorded by the informant



has also been explained as the injured was not in a state to record his statement at that point of time. The story propounded in the *fardbeyan* recorded by the informant stands supported to a large extent by the witnesses of the prosecution and upon going through the narration of the prosecution witnesses, it would be apparent that out of the six witnesses examined on behalf of the prosecution, four are eye-witnesses and they have all stood the test of the cross-examination and there is nothing substantial or tangible to doubt their testimony. The only challenge to the evidence of these witnesses is that they are related and hence, are interested, as such, they are not worthy of reliance. This would not be the correct perspective to approach the issue as merely because the witnesses are related it is not proper to categorize them as interested witnesses, rather, it is to be considered that they were the competent witnesses who were present at the place of occurrence and could have given an eye-witness account of the same. It may be true, as argued on behalf of the appellants, that some of the witnesses may not have seen the entire occurrence, as they arrived later at the place of occurrence, but the very fact that the informant was very much present at the scene of occurrence, along with injured, PW-2, and if there is no sufficient reason to doubt their presence and the veracity of their testimony, the same



would be sufficient to establish the occurrence in the manner as alleged by the prosecution. So far as the injured witness, Yogeshwer Dhanuk is concerned, he is no doubt the brother-in-law of the informant, but his injury report (Exhibit-1) would indicate that he had suffered several injuries, out of which, two were grievous in nature and also on vital part of the body. The law is well settled with regard to injured witnesses that they are accorded a special status in law and the injury to the witness is an inbuilt guarantee of his presence at the scene of crime because the witness will not want to let his actual assailant go unpunished, merely to falsely implicate a third party for the commission of the offence. This proposition was laid down very clearly by the Hon'ble Supreme Court in the case of **Abdul Sayeed v. State of M.P.** reported in, **(2010) 10 SCC 259** and paragraph-30 of the same is being quoted herein:

“30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”



19. This Court would gainfully refer to another recent judgment of the Hon'ble Supreme Court rendered in the case of **Baljinder Singh @ Ladoo And Others vs. State of Punjab, (2024 INSC 738)**, wherein a reference has been made to the case of **Balu Sudam Khalde v. State of Maharashtra**, reported in **(2023) 13 SCC 365**, laying down the legal principles to be kept in mind while appreciating the evidence of an injured eyewitness. Paragraph-26 of the case of **Balu Sudam Khalde (supra)** is being quoted hereinunder:

“26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.



26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

20. Upon perusal of the above mentioned judgments, it would be apparent that the evidence of the injured witness, who happens to be an eye-witness, has a greater evidentiary value, and the same cannot be lightly discarded or brushed aside unless, compelling reasons for the same exists.

21. Non-examination of independent witnesses is one of the grounds urged on behalf of the appellants and it is true that when witnesses in the form of local persons were available, the withholding of such witnesses by the prosecution can be viewed with suspicion, but such non-examination of independent witnesses cannot be the sole ground for doubting the case of the prosecution when it stands supported not only by the other prosecution witnesses but also by the medical evidence. The law is clear in accordance with Section 134 of the Evidence Act, that it is not the quantity but quality of evidence which has to be considered as the determinative factor for proving and deciding a case and when there is no material to doubt the veracity of the witnesses who have been examined on behalf of the prosecution, mere non-examination of the independent witnesses would not have any adverse impact on the prosecution case.



22. The medical evidence as discussed earlier in the form of the injury report (Exhibit-1) as also the evidence of the Doctor (PW-3), goes to demonstrate clearly that the injured, PW-2, has suffered a number of injuries as alleged by the prosecution and the medical evidence is as such, corroborative of the ocular testimony of the witnesses as it lends further strength and support to the truthfulness of their evidence.

23. There may be certain defects in the investigation but the Investigating Officer has been examined and he has also supported the prosecution case in its material particulars. The existence of some discrepancy or inconsistency in the evidence, not going to the core of the case, would not materially affect the credibility of the prosecution case, as a whole, and they could be only termed as some trivial embellishments and exaggerations not shaking the very foundation of the prosecution case.

24. Thus, in the background of the consistent nature of evidence, imputing allegations of assault upon the appellants, coupled with the existence of injury on the person of the injured (PW-2), establishes the manner of occurrence and leads to the irresistible conclusion that the injured had suffered injuries at the hands of the appellants.



25. Further argument on behalf of the appellants points towards the informant's side being the aggressor, leading to a provocation caused and the occurrence having happened only in self defence. However, from a perusal of the evidence and on examining the other attending facts and circumstances, it does not appear that any attempt has been made on behalf of the defence to put forward such a plea and conclusively establish the same through any cogent evidence. There is virtually no evidence on record to show that some injuries were being caused to the accused persons and in retaliation of the same, the accused persons had caused the injuries as alleged upon the injured (PW-2). In complete dearth of any such evidence, the aforesaid argument of the defence is rejected.

26. Thus after a careful scrutiny of the entire evidence on record, I find that the evidence of prosecution witnesses are cogent, convincing and reliable and in such view of the matter, the prosecution has been able to prove its case beyond reasonable doubt, to the extent that injured Yogeshwar Dhanuk (PW-2) had suffered injuries on account of assault inflicted upon him by the appellants, by means of Fasuli (Pasuli) or any other sharp cutting weapon.



27. Now, the question which remains to be determined is as to whether in the facts and circumstances of the case, an intention to kill can be gathered in order to justify the conviction of the appellants under Section 307 of the I.P.C. The medical evidence no doubt demonstrates the existence of a number of injuries on the injured and out of those injuries, two have also been found to be grievous in nature but the fact remains that the entire dispute between the parties had taken place on account of asking for some due amount of milk from the accused Rameshwar Chaudhary and upon refusal of the same, verbal altercation took place which, subsequently, escalated into a physical assault being made on Yogeshwar Dhanuk (PW-2) by the appellants. In such background of the fact that the occurrence had taken place at the '*spur of the moment*', and injuries were caused only to PW-2 and not others, and also considering that barring two, the other injuries were found to be simple in nature it can be concluded safely that the appellants never had any intention to kill, as such, the essential element of *mens rea* required for an act of assault to be brought within the ambit of Section 307 of the I.P.C., seems to be missing.

28. For constituting an offence under Section 307 of the I.P.C., there has to be clear evidence that the intent behind the act is to cause death of the person. In the case of **Shoyeb Raja v.**



State of M.P., reported in **2024 SCC OnLine SC 2624**, the said principle was reinforced, while reiterating the well settled legal principles governing Section 307 of the I.P.C. and the Hon'ble Apex Court referred to the three essential ingredients, for constituting an offence under the aforesaid Section as enumerated in the case of **State of Maharashtra v. Kashirao**, reported in **(2003) 10 SCC 434**. The above-mentioned ingredients are as follows:

- i. an attempt to cause death,
- ii. the act must be capable of causing death or should be done with the intent to cause death.
- iii. the action taken by the accused should be imminently dangerous and no excuse should justify the risk of death or serious injury.

29. Thus, the critical element which is required to be present, regardless of the extent of physical injuries, is the intent. It has been highlighted that even minor injuries can lead to serious charges if the intent to cause death is evident.

30. On going through the facts of the present case, this Court finds that none of the above-mentioned ingredients can be said to be in existence, leading to the inevitable conclusion that there was no intention to cause death. Thus, it is on account of such unproved foundational facts, that this Court would come to the considered conclusion that the prosecution has not been able to



bring home the charges under Section 307/34 of the I.P.C. and thus, the conviction of the appellants under Section 307/34 of the I.P.C. cannot be sustained.

31. However, this Court needs to consider the alternative argument made on behalf of the appellants that the conviction under Section 326 of the I.P.C. against appellants no. 1 and 2, Suresh Choudhary and Heera Choudhary can also not be sustained and at best, a case under Section 325 of the I.P.C. would be made out as against them for voluntarily causing grievous hurt. With regard to such submissions, this Court finds that the present case involves not only voluntary causing of grievous hurt but also the weapon used is a sharp cutting weapon, which has been consistently stated by all the prosecution witnesses to be a Hasuli (Pasuli) which no doubt, is a dangerous weapon. Thus, this Court finds no legal basis for converting the conviction of Section 326 I.P.C. into one under Section 325 I.P.C. As such, since the prosecution has been able to prove its case beyond all reasonable doubts with regard to the assault made by appellants no. 1 and 2, Suresh Choudhary and Heera Choudhary respectively, upon Yogeshwer Dhanuk (PW-2), this Court finds no reason to interfere with the conviction of these appellants under Section 326/34 of the



I.P.C. However, it has been pointed out that these appellants have remained in custody for more than two years.

32. On the question of sentence, this Court would take into consideration the attending circumstances, that the occurrence had taken place at the '*spur of the moment*', in view of a verbal embroil getting escalated into a physical altercation, coupled with the fact that there was no premeditated action and that the appellants have suffered rigors of this case for substantially long period of time, as both the occurrence and the trial is of the year 1995 and their appeal is now finally being heard after about 31 years of the occurrence. In such view of the matter, considering the above factors as the mitigating circumstances, this Court is of the opinion that maintaining the conviction of appellants no.1 and 2, Suresh Choudhary and Heera Choudhary under Section 326/34 of the I.P.C., the ends of justice would be met, if their sentence is reduced to the period already undergone by them.

33. So far as the appellant no.3, Sevalal Choudhary @ Subelal Choudhary is concerned, the charges and conviction as against him was only under Section 307/34 of the I.P.C. which has been found to be not sustainable. Considering the fact that there is no other allegation against him of having indulged in any act of assault, the appellant no.3, Sevalal Choudhary @ Subelal



Choudhary deserves to be acquitted, and he is hence, acquitted of the charges levelled against him.

34. It would appear from the records of this case that the appellants had been granted bail, but on account of their non-appearance at the time of hearing of this case at one point of time, their bail bonds had been cancelled on 20.09.2025, as such, all three of them are presently lodged in custody. In view of the acquittal of appellant no.3 Sevalal Choudhary @ Subelal Choudhary and the sentence of appellant nos. 1 and 2, namely, Suresh Choudhary and Heera Choudhary, reduced to sentence already undergone by them, all the three appellants are directed to be released forthwith, if not required in any other case.

(Soni Shrivastava, J)

anand/-

AFR/NAFR	AFR
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