

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.227 of 2014

Arising Out of PS. Case No.-27 Year-1996 Thana- SULTANGANJ District- Bhagalpur

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1. Bipin Yadav Son of Shiv Shahi Yadav
 2. Shiv Shahi Yadav Son of Late Mohan Yadav
 3. Umesh Yadav Son of Shiv Shahi Yadav

All resident of Village Mirhatti, P.S. Sultanganj, District Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms.Pravina Kumari, Advocate

For the Respondent/s : Mr. Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 10-03-2026

Heard Ms. Pravina Kumari, learned counsel appearing on behalf of the petitioner and Mr. Abhay Kumar, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure challenging the judgment of conviction dated 11.03.2014 and order of sentence dated 14.03.2014 passed by the Adhoc Additional District and Sessions Judge, Bhagalpur in S.T. No.1403/04, arising out of Sultanganj P.S. Case No. 27/1996, whereby and whereunder the appellants have been convicted for the offence punishable



under Section 307 and 34 of the Indian Penal Code and have been sentenced to undergo Rigorous Imprisonment for three years along with a fine of Rs.2,000/- each and in default of payment of fine to further undergo simple Imprisonment for six months. Further appellant no.3 has been convicted for the offence punishable under Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for two years and a fine of Rs.1,000/- and in default of payment of fine to further undergo imprisonment for three months.

3. During the pendency of this appeal, the appellant **no.2 namely, Shiv Shahi Yadav had died and as such the present appeal stood abated as against him and therefore, now, this appeal is restricted only with respect to appellants no.1 and 3.**

4. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants despite the existence of serious contradictions and deficiencies in the



prosecution case.

5. Prosecution case in brief is that on 31.1.1996, at about 5:30 a.m., while the informant after tying his cattle to the manger and was sitting near the bonfire, the accused persons, namely, Umesh Yadav (appellant no.3), Bipin Yadav (appellant no.1), and Shivshahi Yadav (deceased appellant no.2) came and complained that your elder brother/Surendra Yadav has uprooted their crops and thereafter the accused persons started abusing the informant and his own brother Sundar Yadav. When the informant stopped them to to abuse, then Shivshahi Yadav gave order for assaulting him, upon which Umesh Yadav (appellant no.3) fired upon the informant. The bullet hit the right paw of the informant. On hearing the noise, Naresh Kumar Yadav, Adhori Yadav, Tuntun Yadav and other people from the vicinity came and saw the incident. Seeing the people, the accused run away from the place of occurrence. Regarding the above incident, the fardebyan of the informant was recorded on 31.01.1996 at 07:00 a.m. at Referral Hospital, Sultanganj.

6. On the basis of the statement of the informant, the F.I.R being Sultanganj P.S. Case No. 27/1996 was registered for the offences under sections 324, 307, 504/34 of the I.P.C and under section 27 of the Arms Act. After institution of the FIR,



the police proceeded with the investigation and after completion of investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellants and the case was committed to the Court of Sessions for trial.

ARGUMENT ON BEHALF OF THE APPELLANTS

7. Learned counsel appearing on behalf of the appellants submitted that so far as appellant no.1 is concerned, from the allegation as alleged in the FIR, as well as, material which has surfaced during the course of trial, it appears that there is no specific allegation against appellant no.1 rather the main allegation is against appellant no.3, who is alleged to have fired upon the informant/PW4, who sustained firearm injury. Learned counsel placing the evidence of the PW 4/the informant, who is also the victim and he has alleged that he has sustained injury, in support of her argument, has referred to the evidence of PW/5 (investigating officer) to contend that the investigating officer has not prepared any seizure list on the spot and in his examination, he has admitted that he has not found any bloodstain from the place of occurrence, at the same time, he has denied that he has collected any empty cartridges or pellets to corroborate the prosecution story. Learned counsel further submitted that there is no eye-witness, which falsifies the



entire prosecution story. Even considering the version of PW 4, who is the informant and has sustained injury that he is the one who has seen the entire occurrence with his own eyes is also falsified on the ground that Naresh Yadav / PW 1 had come to the place of occurrence after he had heard the noise of firearm, while his own brother, Sundar Yadav, who was sitting along with the informant near the bonfire had not been examined by the trial court, which creates doubt. Learned counsel submitted that no witnesses have given any information regarding any overt act of the appellant no.1, against whom, there is general and omnibus allegation on the basis of hearsay witnesses. Even the informant/PW4 has not alleged anything against him in his cross-examination. Learned counsel informs that the appellants have remained in custody for 18 months and conviction is for three years and in absence of any evidence, the appellants deserve to be acquitted. In such circumstances, it was argued that the prosecution failed to prove the charges beyond reasonable doubt and the trial court has miserably failed to appreciate the evidence, leading to failure of justice and therefore the conviction of the appellants under Section 307/34 of the Indian Penal Code and Section 27 of the Arms Act is liable to be set aside.



ARGUMENT ON BEHALF OF THE STATE

8. *Per contra*, Mr. Abhay Kumar, learned APP appearing on behalf of the State submitted that there is ample evidence of the eye-witnesses, who have seen the occurrence. Naresh Yadav/PW1 has supported the prosecution story. He is the one who has seen the entire incidence with his own eyes and it is not a case that the trial court has not appreciated the evidence of Naresh Yadav/PW1, who is the eye-witnesses. In these backgrounds, learned counsel submitted that the trial court has well appreciated all the evidences and the materials on record and has also taken into consideration the Ext.2/1, the medical report, which was prepared by the medical officer, who had attended the PW 4 and in his medical examination report, has found several charred injury and who later referred him to be treated at Jawaharlal Nehru Chiktisa Mahavidaylya, Bhagalpur, where he remained under treatment for one month after the removal of bullet. The assault as per the PW 1 and PW 4 and other witnesses goes to prove beyond reasonable doubt that the appellants with an intention to kill the PW 4 had fired upon him in a planned manner.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and



proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of conviction dated 11.03.2014 and order of sentence dated 14.03.2014 for the offences under Section 307/34 of the IPC and Section 27 of the Arms Act.

12. During the trial, the prosecution has examined altogether seven witnesses, namely:

- (i) (P.W.-1),- Naresh Yadav
- (ii) (P.W.-2),- Aghori Yadav
- (iii) (P.W.-3),- Sakaldeo Yadav
- (iv) (P.W.-4/ , - Upendra Yadav/informant
- (v) (P.W.-5),- Mundrika Singh/investigating officer
- (vi) (P.W.-6),- Dr. Ajay Kumar Singh
- vii) (P.W.-7),- Harendra Prasad Das/formal witness

13. The prosecution has also relied upon following document exhibited during the course of trial:-

- (i) Fardebyan (Exhibit-1),
- (ii) injury report (Exhibit-2),
- (iii) medical report (Exhibit-2/1),

14. On the basis of materials surfaced during the trial,



the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and shows their complete innocence.

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

16. It would be appropriate to reproduce the provision of Section 307 of IPC for the sake of convenience and better understanding of the facts, which is as under:-

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder; shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death].”

17. An attempt to commit murder must be clearly distinguished from a mere intention to commit the offence or from acts that amount only to preparation for its commission. The law recognizes that the existence of a guilty intention alone is not sufficient to constitute an attempt. There must be



something more than planning or arranging the means to commit the crime. Therefore, in order to secure a conviction under Section 307 of the Indian Penal Code, the prosecution must prove the presence of a definite intention or knowledge to cause death, accompanied by some overt act that directly moves towards the execution of that intention. In other words, the accused must not only possess the intention to commit murder but must also perform an act that clearly demonstrates the commencement of the offence.

18. Law in this regard is well settled by the Apex Court in case of **Sivamani v. State**, reported in, **2023 SCC OnLine SC 1581**, wherein in paragraph no. 9, the court held as under:

“ 9. In ***State of Madhya Pradesh v. Saleem*, (2005) 5 SCC 554**, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...*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.*’ The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in *Jage Ram v. State of*



Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, 'The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.'

19. Having heard the rival submissions made on behalf of the parties and considering the evidence on record, it appears that the prosecution has miserably failed to support any evidence collected against the appellant no.1.

20. So far as the appellant no.3 is concerned, against whom there is allegation that he had fired upon the informant/PW4 in presence of his own brother/Sundar Yadav, while they were sitting near the bonfire, the said Sundar Yadav has not been examined. Prosecution has not been able to prove that appellant no. 3, acting together with appellant nos. 1 and 2 (now deceased), had the intention to commit the murder of PW4. Furthermore, the allegation that he had fired upon PW4 with the intention of causing his death, thereby inflicting a firearm injury, has not been supported by reliable evidence on



record. The prosecution evidence does not satisfactorily demonstrate that any such act was carried out with the requisite intention. Additionally, the medical evidence does not corroborate the prosecution's version. The opinion of the doctor fails to support the claim that the injury sustained by PW4 was caused by firearm discharge in the manner alleged. In the absence of convincing ocular evidence and supportive medical testimony, the prosecution's allegation that the accused attempted to murder PW4 remains unsubstantiated. The injury caused by the firearm is also not established on the basis of the medical evidence and at the same time, the investigating officer, who has been examined as PW 5, has also not found any bloodstain and question of seizing any firearm from the place of occurrence has been denied by him, which falsifies the entire prosecution story.

21. Accordingly, the present appeal is allowed.

22. The impugned judgment of conviction dated 11.03.2014 and order of sentence dated 14.03.2014 passed by the Adhoc Additional District and Sessions Judge, Bhagalpur in S.T. No.1403/04, arising out of Sultanganj P.S. Case No. 27/1996 is hereby set aside. Consequently, the above-named appellants **Bipin Yadav (appellant no.1) and Umesh Yadav**



(appellant no.3) are acquitted from all the charges levelled against them. Since the aforesaid appellants are on bail, they are discharged from the liability of their bail bond. The fine deposited by the appellants, if any, shall be refunded to them.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2026
Transmission Date	11.03.2026

