

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.220 of 2014

Arising Out of PS. Case No.-40 Year-2005 Thana- ARA MUFFASIL District- Bhojpur

1. Binod Kumar, Son of Yogendra Ram
2. Yogendra Ram, Son of Late Ram Dayal Ram
3. Rajan Kumar @ Ranjan Kumar Son of Yogendra Ram.
4. Suchita Kumari, Daughter of Yogendra Ram.
All Resident of Village - Chitansenpur, P.S. - Ara Muffassil, District - Bhojpur
at Ara, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Bhawana Jha, Advocate.
For the State	:	Mr. S. N. Prasad, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 01-07-2026

Heard Ms. Bhawana Jha, learned counsel
appearing on behalf of the appellants and Mr. S. N. Prasad,
learned APP for the State.

2. The appellants have preferred the present criminal
appeals against the judgment of conviction and order of
sentence dated 19.04.2014 passed in Sessions Trial No. 84 of
2007, arising out of Ara Muffassil P.S. Case No. 40 of 2005 by
learned Adhoc Addl. Sessions Judge-II, Bhojpur at Ara,
whereby, the learned trial court has convicted the appellants
under Section 323/34 of the Indian Penal Code and sentence has



been awarded to the appellants under Section 4 of the Prohibition of Offenders Act for maintaining peace and they were released on personal bail bond of Rs.1000/-.

3. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court has failed to appreciate the evidence available on record in its proper perspective and has erred in recording the conviction of the appellants.

BRIEF FACTS OF THE CASE

4. The prosecution case, in brief, as per the written report of the informant, is that on 27.02.2005 at about 7:30 A.M., when the informant had gone out for attending the call of nature and was pouring water into the basin, thereafter, accused Binod Kumar allegedly assaulted him with a khanti on his back, whereupon he attempted to flee, but accused Yogendra Ram assaulted him with a lathi on his head with an intention to kill, causing head injuries. It is further alleged that accused Yogendra Ram snatched a gold chain from the neck of the informant and again assaulted him with a lathi. On hearing the alarm raised by the informant, his mother arrived at the place of occurrence, where the accused Binod Kumar allegedly had assaulted her with an iron *khanti* causing injury on her right hand, resulting in



bleeding, while accused Ranjan Kumar assaulted her with a lathi and accused Suchitra Kumari caught hold of her hair and slapped her. On the basis of the aforesaid written report, the First Information Report was instituted. Chargesheet was submitted against the accused persons under Sections 323, 324, 307, 379 and 34 of the Indian Penal Code and the trial court convicted them for the offence under Section 323/34 of the Indian Penal Code.

ARGUMENT ON BEHALF OF THE APPELLANTS

5. Learned counsel for the appellants submitted that the impugned judgment of conviction and order of sentence is bad both in law and on facts and is based merely on conjectures and surmises. It was contended that the genesis of the occurrence itself, as admitted by the informant, was a long-standing land dispute and previous criminal litigations between the parties, which furnished a strong motive for false implication. It was further submitted that the prosecution examined only two witnesses, out of whom P.W.1 Md. Pravej Khan @ Parvej did not support the prosecution case and was declared hostile, whereas P.W.2 Rahul Kumar, the informant, though supporting the prosecution story, admitted in his evidence that the occurrence stemmed from the land dispute and earlier criminal



cases. Learned counsel further pointed out that in cross-examination the informant stated that the place of occurrence was situated at a distance of 20 to 50 feet from the house of Yogendra Ram and that he was returning after attending the call of nature when allegedly the appellants assaulted the informant with an iron Khanti. According to the learned counsel, the informant kept changing his version and there was no consistency in his allegations, thereby rendering his testimony unreliable and unworthy of credence.

6. Further case of the defence is that no occurrence had taken place. The implication of the appellants is owing to dirty village politics and previous enmity with the sole object of sending them behind bars. The appellants belong to respectable and educated families; appellant no.2 is a retired Judicial Officer, appellant no.1 is a practicing Advocate at Patna, appellant no.4 is a Teacher in Ekawan Primary School and appellant no.3 is the proprietor of a Dairy. The appellants have clean antecedent. Therefore, in the absence of reliable and consistent evidence and in view of the admitted enmity between the parties, the learned Trial Court erred in recording the conviction, and the impugned judgment and order being unsustainable in the eyes of law are liable to be set aside.



ARGUMENT ON BEHALF OF THE STATE

7. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. 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.

10. With reference to the aforesaid rival legal contention urged on behalf of the parties, I have carefully examined the case to find out whether the impugned judgment warrants interference by this Court on the charge levelled against the accused/appellants under Sections 307/34 and 323 of IPC.

11. During the trial, the prosecution has examined altogether two witnesses, namely:

(i). P.W.1 – Md. Pravej Khan @ Pravej (Hostile)

(ii). P.W.2 – Rahul Kumar (informant)

12. The prosecution has also relied upon following



documents exhibited during the course of trial:

(I) Exhibit-1- Signature and writing on FIR

13. From the perusal of records, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

(i) P.W.1- Md. Pravej Khan @ Pravej, has been declared hostile by the prosecution as he has not supported the prosecution case in material particulars.

(ii) P.W.2- Rahul Kumar (informant) - P.W.-2 has supported the prosecution case as narrated in the written report (Ext.-1) and has corroborated the date and time of occurrence, i.e., 27.02.2005 at about 7:30 A.M. He has stated that while returning from the bathroom after attending the call of nature, accused Binod Kumar Ram assaulted him by means of an iron rod and thereafter accused Yogendra Ram dealt a lathi blow on his head, causing bleeding injury. On his alarm, his mother came to rescue him, whereupon accused Binod Ram assaulted her by means of a khanti causing injuries to her fingers. He has further alleged that accused Yogendra Ram snatched away his golden chain and that accused Rajan Ram and Suchitra Kumari also participated in the assault. According to him, the occurrence took place due to the existing land dispute between the parties.



In his cross-examination, he admitted the pendency of civil and criminal litigations between the parties and reiterated the manner of occurrence. He also stated that his clothes were stained with blood after the occurrence. Although the defence suggested false implication on account of land dispute, nothing substantial could be elicited to discredit his testimony. His evidence supports the prosecution case regarding the date and time, place and manner of occurrence as well as its genesis.

14. On the basis of materials surfaced during the trial, the appellants/accused were examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and showed their complete innocence.

Moot question for determination which arises before this Court is whether conviction under Section 323/34 is sustainable?

15. It would be appropriate to reproduce the provisions of Sections 307/34 and 323 of I.P.C. for the sake of convenience and better understanding of the facts, which are 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.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

323. 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."

16. The Apex Court laid down the litmus test for determination of nature of offence in ***Pulicherla Nagaraju v. State of A.P. reported in (2007) 1 SCC (Cri) 500***. In the facts and circumstances of a particular case, the Court needs to decide the pivotal question of existence of intention with care and



caution. The following factors needs to be examined:

- "(i) nature of the weapon used;*
- (ii) whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) whether the blow is aimed at a vital part of the body;*
- (iv) the amount of force employed in causing injury;*
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) whether the incident occurs by enmity or whether the deceased was a stranger;*
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;*
- (ix) whether it was in the heat of passion;*
- (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;*
- (xi) whether the accused dealt a single blow or several blows."*

17. The similar question came up before the Supreme Court in the case of ***Joseph v. State of Kerala***, reported in ***1995 SCC (Cri) 165*** has observed in para 3 which is reproduced hereinafter:

"3. In this appeal the learned counsel for the appellant submits that the intention to cause the injury which was found sufficient to cause the death in the ordinary course of the nature was not established. In support of this submission he relied on the circumstances namely that the whole incident took place because of a trivial incident which resulted in a quarrel and that the weapon used was only a lathi and in the circumstances it cannot be said that the accused intended to cause the death by inflicting that particular injury which objectively was proved by the medical evidence to be sufficient in the ordinary course of nature to cause death. In other words he submits that clause 3rdly of Section 300 IPC is not attracted in this case. We find considerable force in the submission. The



weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (sic). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years' RI."

18. The judgment of **Joseph (supra)** was referred by the Apex Court in the case of **Jugatram Vs. State of Chhattisgarh**, reported in **(2020) 9 SCC 520**.

19. Further to sustain a conviction under Section 307 IPC, the Apex Court in the case of **Sivamani v. State**, reported in, **2023 SCC OnLine SC 1581**, in paragraph no. 9 has 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.'

20. The record reveals that **P.W.1 – Md. Pravej Khan alias Pravej** has been declared hostile during trial as he has not supported the prosecution case on material particulars. In absence of any reliable and independent corroboration from other prosecution witnesses, the testimony of this witness loses its evidentiary value for the purpose of establishing the guilt of the accused/appellants. Accordingly, the evidence of P.W.1 is not of much assistance to the prosecution case.

21. The prosecution case substantially rests upon the testimony of P.W.2 – Rahul Kumar who is the victim and informant of the case. The testimony of PW-2 who is the informant attributes specific overt acts against the appellants, however, his version is not free from inconsistencies. Furthermore, the evidence suffers from infirmities in investigation. In such circumstances, the prosecution version does not inspire full confidence for sustaining the conviction of the accused/appellants. It is also evident that the case arises out of prior enmity between the parties. In such circumstances, the possibility of exaggeration and false implication cannot be ruled



out, and the prosecution has failed to establish, beyond reasonable doubt, the common intention and specific involvement of all the accused persons.

22. It is equally well settled that 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.

23. Admittedly, from the prosecution case itself, it transpires that the genesis of the occurrence lay in a long-standing land dispute and previous litigations between the parties, a fact candidly admitted by P.W.2 – Rahul Kumar (informant) in his evidence. However, the existence of prior



enmity, by itself, cannot be a ground to discard the prosecution case, particularly when the same also furnishes a plausible motive for the occurrence. The alleged occurrence took place when the informant was returning after attending the call of nature, and P.W.2 has consistently narrated the manner of occurrence both in the First Information Report and in his deposition before the Court. Though P.W.1 – Md. Pravej Khan @ Pravej did not support the prosecution case and was declared hostile. In case of *Neeraj Dutta Vs. State (Government of NCT of Delhi) (Criminal Appeal No. 1669 of 2009)*, the Hon'ble Supreme Court has held that the testimony of a hostile witness does not render the entire prosecution case unreliable when there is otherwise cogent and trustworthy evidence available on record. The evidence of P.W.2 attributes specific overt acts to the accused persons and nothing substantial could be elicited in his cross-examination to discredit his testimony or to demonstrate that he had falsely implicated the appellants. The Hon'ble Supreme Court has held that merely because no independent witness has been examined or because the parties were on inimical terms does not, in the facts of the present case, dilute the evidentiary value of the testimony of the informant, particularly when his version regarding the date, time, place,



genesis and manner of occurrence has remained substantially consistent. The prosecution evidence clearly establishes that the informant was subjected to assault by the accused persons and sustained injuries during the occurrence. At the same time, the materials on record do not establish the ingredients necessary to attract the offence under Section 307 of the Indian Penal Code or the allegation of robbery beyond reasonable doubt. Nevertheless, the evidence is sufficient to prove that the accused persons, acting in furtherance of their common intention, voluntarily caused hurt to the informant and his mother.

24. I find that the facts of the present case are squarely covered by the judgment passed by the Apex Court in case of *Sivamani (supra)* and in view of the aforesaid discussion of factual and legal aspects, It emerges from the evidence available on record that the alleged occurrence took place on account of the existing land dispute and previous litigations between the parties. Merely because there was prior enmity between the parties, the testimony of the injured informant cannot be discarded, rather such enmity may constitute a motive for the occurrence itself. Consequently, this Court is of the considered opinion that the learned trial court has rightly appreciated the evidence on record and correctly



convicted the appellants under Section 323 read with Section 34 of the Indian Penal Code, and no interference with the impugned judgment of conviction and order of sentence is warranted.

25. The evidence on record discloses an assault causing simple injuries by means of hard and blunt objects, but do not establish the requisite intention or knowledge necessary to attract the ingredients of Section 307 of the Indian Penal Code. In such circumstances, the learned trial court has rightly appreciated the oral and documentary evidence and correctly come to the conclusion that the prosecution has succeeded in proving the offence under Section 323 read with Section 34 of the Indian Penal Code beyond reasonable doubt. Accordingly, this Court finds no illegality or perversity in the impugned judgment of conviction and the order of sentence warranting interference in the present appeal.

26. In the background of the discussions made hereinabove and on taking an overall view, the Impugned judgment of conviction and order of sentence dated 19.04.2014 passed in Sessions Trial No. 84 of 2007, arising out of Ara Muffassil P.S. Case No. 40 of 2005 whereby, the appellants have been convicted under Section 323/34 of the Indian Penal Code,



does not warrant interference so far as the finding of conviction is concerned.

27. However, so far as, the sentence is concerned, having regard to the facts and circumstances of the case and the period already undergone by the appellants, the sentence awarded to the appellants is modified and reduced to the period already undergone by them and in case the appellants have already undergone the modified sentence, they shall be set at liberty forthwith, unless required in connection with any other case. The appellants are discharged from the liabilities of their bail bonds, if any.

28. Accordingly, the present appeal stands partially allowed.

29. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	
CAV DATE	16.06.2026
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