

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.300 of 2012**

Arising Out of PS. Case No.-93 Year-2006 Thana- SONO District- Jamui

Luta Yadav s/o late banwari yadav resident of village- naiyadeeh, p.s.- Sono,
District- Jamui

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Pankaj Kumar Sinha, Advocate

For the Respondent/s : Mr.Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

CAV JUDGMENT

Date : 22-04-2026

Heard Mr. Pankaj Kumar Sinha, learned counsel
appearing on behalf of the appellant and Mr. Mukeshwar Dayal,
learned APP for the State.

2. The present appeal has been filed under Section
374(2) and 389(1) of the Code of Criminal Procedure
challenging the judgment of conviction dated 30.03.2012 passed
by the learned Additional District and Sessions Judge, Fast
Track Court-II, Jamui in Sessions Trial No. 377 of 2007 (arising
out of Sono P.S. Case No. 93 of 2006, G.R. No. 13.11.2006



dated 05.10.2006), whereby and whereunder, the appellant has been convicted for the offence punishable under Section 324 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for two years.

3. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal before this Court. The appellant has 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 appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

FACTS OF THE CASE

4. The prosecution case, in brief, is that on 03.10.2006 the calf of the informant grazed the saplings of beans, whereupon on 04.10.2006 the appellant, Luta Yadav, allegedly came to the house of the informant, Haricharan Yadav, armed with a *garasa* and started abusing him. Upon protest, it is alleged that the accused persons assaulted the informant with *garasa*, *lathi* and *danda*. When the wife of the informant intervened, the appellant allegedly assaulted her with *garasa*



with an intention to kill, causing injuries. On alarm being raised, villagers assembled and intervened, thereby saving the informant and his wife.

ARGUMENT ON BEHALF OF THE APPELLANT

5. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction is wholly unsustainable in the eyes of law as well as on facts. It is submitted that though the prosecution has examined seven witnesses, out of them four material witnesses have been declared hostile and have not supported the prosecution case. The conviction rests solely on the testimony of P.W.1, who, though an injured witness, has made statements which are not corroborated by the Investigating Officer and suffer from material contradictions, even the doctor (P.W.6) has found the injury to be simple in nature, which belies the allegation under Section 307 and 323 of the IPC. The informant himself has not been examined and there is complete absence of any independent witness to support the prosecution version.

6. Learned counsel further submitted that the case admittedly arises out of a land dispute between the parties, which provides strong motive for false implication. There is unexplained delay in lodging the FIR despite the police station



being situated at a short distance, and even the scribe of the written report has not been examined. Serious lapses in investigation are evident from the record, including the statement of P.W.1 that the police had not visited the village. In such circumstances, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled to benefit of doubt, and the impugned judgment is fit 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 both oral and documentary which have come in course of the trial, has not committed error of record or law in convicting the appellants for the offences on the basis of the material evidence which calls no interference of this Court.

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. 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.

10. During the trial, the prosecution has examined altogether eleven witnesses, namely:

1. PW-1 Jagia Devi (injured witness),
2. PW-2 Rameshwar Yadav,
3. PW-3 Ramdeo Yadav,
4. PW-4 Baleshwar Yadav,
5. PW-5 Sukhdeo Yadav,
6. PW-6 Dr. K.P. Ladia (Medical Officer) and
7. PW-7 Mukh Ram Tiwari (Investigating Officer).

11. The prosecution has also relied upon following documents exhibited during the course of trial:

Exhibit-1:-forwarding of injury of Haricharan Yadav

Exhibit-1/A:- Forwarding of injury of Jagia Devi

Exhibit-2:- Injury report of Jagia Devi

Exhibit-2/A:- Injury report of Haricharan Yadav

Exhibit-3:- Forwarding of written report

Exhibit-3/1:- Noting of registration of the case

Exhibit-4:- Signature on formal FIR

12. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be



summarised as follows:

(I) PW-1 Jagia Devi, wife of the informant and injured witness, supported the prosecution case and stated that on account of grazing of bean saplings by the informant's calf, the accused persons came and assaulted her husband, and she too was assaulted by Luta Yadav with a *garasa*.

(II) PW-2, PW-3, PW-4 and PW-5 did not support the prosecution case and were declared hostile.

(III) PW-6, Dr. K.P. Ladia, proved the injury reports of both the injured persons and found simple incised injuries on their persons caused by a sharp cutting weapon.

(IV) PW-7, the Investigating Officer, proved the formal aspects of the investigation including the FIR and place of occurrence and stated that he recorded statements of the witnesses.

13. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the CrPC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

14. 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.

15. It would be appropriate to reproduce the provision of Sections 307 and 324 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].

324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as 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 of either description for a term which may extend to three years, or with fine, or with both.”

16. The record reveals that PW-2, PW-3, PW-4 and PW-5 were declared hostile during the trial, in absence of any corroboration of oral evidence of the other prosecution



witnesses who supported the prosecution case. Therefore, the testimonies of these witnesses are not relevant for the purpose of establishing the guilt of the accused/appellant.

17. The prosecution case substantially rests upon the testimony of PW-1, corroborated by the medical evidence of PW-6 and formal evidence of PW-7. The evidence of PW-1, though consistent regarding assault by Luta Yadav, contains general and omnibus allegations against the other accused persons. The medical evidence shows only simple injuries and does not fully support the allegation of multiple assailants causing injuries. Further, the case admittedly arises out of a land dispute, suggesting possibility of exaggeration. In such circumstances, the involvement of co-accused persons is not established beyond reasonable doubt, and their acquittal by the trial court appears justified.

18. 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 chance or whether there was any premeditation;
(vii) whether there was any prior 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.

19. It is 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. A reference in this regard has



been made by the Apex Court in the case of ***Sivamani v. State***, reported in, ***2023 SCC OnLine SC 1581***, wherein in paragraph no. 9 has been 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 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."

21. 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**.

22. Admittedly, from the prosecution case itself, it transpires that the alleged occurrence arose out of a trivial issue of grazing of bean saplings by the calf of the informant, which led to a sudden altercation and escalated into a physical scuffle without any premeditation or prior meeting of minds, the incident having occurred in the heat of passion upon a sudden quarrel. Further, the prosecution evidence suffers from material infirmities as PW-2 to PW-5 have been declared hostile and the case substantially rests upon the testimony of PW-1, an



interested and injured witness, whose evidence itself reflects the existence of a land dispute between the parties, suggesting possibility of exaggeration. The medical evidence shows that the injuries are simple in nature, not supporting the allegation of intention to commit murder, moreover, the informant has not been examined, there is no independent witness, and there is unexplained delay in lodging the FIR, all of which cumulatively cast serious doubt on the prosecution version and clearly demonstrate absence of intention to cause death, rendering the charge under Section 307 IPC unsustainable.

23. I find that facts of the case is squarely covered by the judgment passed by the Apex Court in case of *Sivamani (Supra)*. In view of aforesaid discussions of factual and legal aspects, and upon a comprehensive re-appreciation of the entire evidence available on record and admitted sequence in which the occurrence had taken place. The background of the occurrence was that the calf of the appellant was found grazing the crop of the informant which was objected by the informant and the on account of a trivial issue it escalated into a sudden quarrel between the parties without any premeditation or prior meeting of minds of the appellant. The nature of the incident, the surrounding circumstances, and the medical evidence



indicating only simple injuries do not establish the requisite intention or knowledge to cause death so as to attract the provisions of Section 307 IPC. Rather, the materials on record demonstrate that the act of the appellant falls within the ambit of voluntarily causing hurt by a dangerous weapon. Thus, this Court is of the considered opinion that the offence under Section 307 IPC is not made out and the learned trial court has rightly appreciated the evidence in convicting the appellant under Section 324 of the Indian Penal Code and also keeping in mind that the injury reports of both the injured persons are found to be simple incised injuries, caused by a sharp cutting weapon.

24. Accordingly, this Court finds that the impugned judgment of conviction dated 30.03.2012 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Jamui in Sessions Trial No. 377 of 2007 (arising out of Sono P.S. Case No. 93 of 2006, G.R. No. 1311/2006 dated 05.10.2006, whereby, the appellant has been convicted under Section 324 of the Indian Penal Code, does not warrant interference so far as the finding of conviction is concerned.

25. 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 appellant, the sentence of



rigorous imprisonment for two years is modified and reduced to the period already undergone. To that extent, the appeal stands allowed. It is directed that if the appellant has already undergone the modified sentence, he shall be set at liberty forthwith, unless required in connection with any other case. The appellant is discharged from the liabilities of his bail bonds, if any.

26. Accordingly, the present appeal stands partly allowed.

27. 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)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	20.04.2026
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