

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.776 of 2012

Arising Out of PS. Case No.-13 Year-2004 Thana- GAMAHARIYA District- Madhepura

1. Rameshwar Mehta S/O Late Bauni Mehta Resident of Village Chandanpath, P.S. Gamharia, District Madhepura.
2. Chandra Bhushan Ravi, S/o Rameshwar Mehta Resident of Village Chandanpath, P.S. Gamharia, District Madhepura.
3. Birendra Mehta @ Birendra, S/o Late Buchan Mehta Resident of Village Bhelwa, P.S. Gamharia, District Madhepura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar, *Amicus Curiae*.
For the Respondent/s : Mr. Abhay Kumar, APP.

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

Date : 09-07-2026

Heard Mr. Sanjay Kumar, learned *Amicus Curiae*
and Mr. Abhay Kumar, learned APP for the State.

2. The appellants have preferred the present criminal appeals against the judgment of conviction and order of sentence dated 31.07.2012 passed in Sessions Trial No. 244 of 2005, arising out of Gamharia P.S. Case No. 13 of 2004, G.R. No. 267/2004 by learned Addl. Sessions Judge (Ad hoc)-I, Madhepura, whereby, the learned trial court has convicted the appellants under Section 323 of the Indian Penal Code and they have been released from judicial custody after due admonition under Section 3 of the Probation of the Offenders Act.



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 is that on 30.03.2004 at about 8:00 A.M., while the informant was fixing a stake (khunta) in his straw room (bhusa ghar), the appellants, namely Rameshwar Mehta, Chandra Bhusan Ravi, and Birendra @ Biren Mehta armed with lathi, danda and iron rod, arrived at the place and objected to the construction work. On protest by the informant, the appellants allegedly assaulted him. It was further alleged that the appellant Birendra Mehta dragged the informant to the ground and pressed his neck. When the informant's father, Nageshwar Mehta, intervened, he was also assaulted. The informant's wife, Kanchan Bala Sinha, came to rescue them, whereupon she too was assaulted and the appellant Rameshwar Mehta allegedly snatched her gold ear-ring. The prosecution further alleged that after the appellants initially left the place, appellant Birendra Mehta returned and attempted to commit rape upon Kanchan Bala Sinha by knocking her down and



removing her clothes. On her alarm, nearby villagers intervened and saved her. Upon investigation, charge-sheet was submitted against the accused persons. Charges were framed under Sections 323 and 342 IPC against all accused; additionally, accused Birendra Mehta was charged under Sections 376/511 IPC and accused Rameshwar Mehta under Section 379 IPC.

ARGUMENT ON BEHALF OF *Amicus Curiae*

5. Learned *Amicus Curiae* submitted that the prosecution case is the outcome of a long-standing dispute regarding the *Bhusaghar* (straw-room) and the right of passage between the parties, who are admittedly close agnates (*Gotias*). It was contended that the prosecution failed to produce any documentary evidence to establish its claim over the disputed property, whereas the appellants proved the existence of the dispute by exhibiting the *Khatian* and the orders passed in proceedings under Sections 144 and 145 Cr.P.C., thereby rendering the genesis of the occurrence doubtful. It was further submitted that the appellants, all being Government teachers and persons of respectable standing with no criminal antecedents, were falsely implicated to ruin their careers. Learned counsel further submitted that the learned trial court itself disbelieved substantial parts of the prosecution case by



acquitting the appellants of the charges under Sections 379, 342 and 376/511 of the Indian Penal Code and that the evidence regarding the alleged assault is vague and inconsistent, as no witness specifically attributed any overt act to any particular accused. The medical evidence is also unreliable since the examining doctor was not produced, while the prosecution witnesses are either interested or related witnesses and one independent witness was declared hostile. It was lastly submitted that the contradictions regarding the time and manner of occurrence, coupled with the admitted enmity and pending civil proceedings, probalilise the defence case that at best there was a verbal altercation arising out of the property dispute and that the prosecution has failed to prove the charges beyond reasonable doubt, making the impugned judgment liable to be set aside. Another point raised by Mr. Sanjay Kumar, learned *Amicus Curiae*, is that the appellants stand convicted only under Section 323 of the Indian Penal Code. It is submitted that the occurrence arose out of a dispute amongst members of the same family residing in the same locality. It is further pointed out that no adverse material regarding the antecedents or subsequent conduct of the appellants has been brought on record, nor is there any allegation that they have been involved in any offence



involving moral turpitude. In such circumstances, learned *Amicus Curiae* submits that the appellants deserve to be extended the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958.

ARGUMENT ON BEHALF OF THE STATE

6. *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. On a specific query made by this Court, learned counsel for the State submitted that, having regard to the fact that the informant and the appellants are closely related and belong to the same locality, and there being no adverse material regarding their conduct, the appellants may appropriately be released on probation upon their executing bonds for maintaining peace and good conduct for a period of one year before the jurisdictional trial court, with adequate sureties.

ANALYSIS AND CONCLUSION

7. Heard the parties.

8. 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.

9. 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 Section 323 of the Indian Penal Code.

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

- i. **P.W.1 – Nageshwar Mehta** – Father of the informant
- ii. and an injured witness.
- iii. **P.W.2 – Mukesh Bhagat** – Alleged eye-witness to the occurrence.
- iv. **P.W.3 – Panchlal Mehta** – Witness declared hostile by the prosecution.
- v. **P.W.4 – Turanti Mehta** – Alleged eye-witness to the occurrence.
- vi. **P.W.5 – Nasima Khatoon** – Alleged eye-witness to the occurrence.
- vii. **P.W.6 – Chandra Kishor Bidyarthi** – Informant of the case and injured witness.
- viii. **P.W.7 – Domi Bhagat** – Alleged eye-witness to the occurrence.
- ix. **P.W.8 – Kanchan Bala Sinha** – Wife of the informant, injured witness and alleged victim of the offence under Sections 376/511 IPC.
- x. **P.W.9 – Anmol Singh** – Brother of P.W.8 Kanchan Bala Sinha and alleged eye-witness.
- xi. **P.W.10 – Sushil Kumar Yadav** – Investigating Officer of the case.

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

Ext.-1 – Written application/fardbeyan submitted by the



informant.

- Ext.-2 – Endorsement on the written application.
- Ext.-3 – Injury report of P.W.6 Chandra Kishor Bidyarthi.
- Ext.-3/A – Injury report of P.W.8 Kanchan Bala Sinha.
- Ext.-3/B – Injury report of P.W.1 Nageshwar Mehta.
- **Defence Exhibits**
 1. Ext.-A – Certified copy of order passed under Section 144 Cr.P.C.
 2. Ext.-B – Certified copy of Khatian.
 3. Ext.-C – Carbon copy of notice issued under Section 144 Cr.P.C.

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

P.W.1 – Nageshwar Mehta (Injured Witness) -

P.W.1 Nageshwar Mehta, father of the informant and an injured witness, deposed that on the date of occurrence at about 8:00 A.M., his son Chandra Kishor was fixing a stake in the straw room. At that time, all the accused persons came there and objected to the same. When his son protested, the accused persons assaulted him with lathi, danda and rod. When he intervened to save his son, he was also assaulted by the accused persons. He further stated that when the wife of the informant came to rescue them, she too was assaulted and accused Rameshwar Mehta snatched away her right ear-ring. He also stated that accused Birendra Mehta followed Kanchan Bala,



dragged her into a room and attempted to commit rape upon her. In cross-examination, he admitted that there was a land dispute between the parties and that they had been living separately since 1962. He further admitted that the facts relating to the alleged attempt to rape were narrated to him by Kanchan Bala and were not witnessed by him personally.

P.W.2 – Mukesh Bhagat – He deposed that on the date and time of occurrence he was proceeding towards the house of one Luxman Mahto. When he reached near the place of occurrence, he saw Chandra Kishor repairing the straw room. At that time, the accused persons arrived and objected to the work. Thereafter, a quarrel ensued and both sides engaged in a scuffle. He stated that when Nageshwar Mehta and the wife of the informant came to intervene, they too were assaulted by the accused persons. He further stated that villagers assembled there and separated the parties. However, he did not state anything regarding the allegation of attempted rape by accused Birendra Mehta or the alleged snatching of the ear-ring by accused Rameshwar Mehta.

P.W.3 – Panchlal Mehta (Hostile Witness) -- He was declared hostile by the prosecution. He stated that in March, 2004, some altercation and scuffle had taken place between



Rameshwar Mehta and Nageshwar Mehta concerning a dispute over a pathway. He admitted that his statement had been recorded by the police. However, he stated that he had not actually witnessed the occurrence and did not support the prosecution case regarding assault, attempted rape or theft.

P.W.4 – Turanti Mehta – He deposed that on the relevant day he was present at his house and upon hearing alarm, he reached the place of occurrence. He saw that the accused persons were objecting to the informant fixing a stake in the straw room. When the informant protested, the accused persons assaulted him. He further stated that when Nageshwar Mehta and Kanchan Bala came to save the informant, they were also assaulted by the accused persons. He supported the prosecution allegation that accused Rameshwar Mehta had taken away the ear-ring of Kanchan Bala. However, he did not depose anything regarding the allegation of attempted rape.

P.W.5 – Nasima Khatoon – She stated that at the relevant time she was engaged in separating grain from chaff. She saw Chandra Kishor fixing a stake near the straw room. At that time, all three accused persons arrived and started assaulting him. When Kanchan Bala came to rescue her husband, she was also assaulted. She further stated that after the



initial occurrence, accused Birendra Mehta returned and started misbehaving with Kanchan Bala and attempted to outrage her modesty. She supported the prosecution case regarding the assault but did not give a detailed account of the alleged attempted rape.

P.W.6 – Chandra Kishor Bidyarthi (Informant) --

P.W.6 Chandra Kishor Bidyarthi, the informant and injured witness, stated that on 30.03.2004 at about 8:00 A.M., he was fixing a stake in the straw room situated near his house. At that time, the accused persons came there armed with lathi, danda and rod and questioned him as to why he was fixing the stake. When he replied that it was his room, the accused persons started assaulting him with fists, slaps and lathi blows. He specifically stated that accused Birendra Mehta dragged him down and pressed his neck. When his father came to save him, he was also assaulted. He further stated that when his wife arrived there, accused Rameshwar Mehta snatched away her right ear-ring. He stated that due to fear, he and his father moved away from the place. Thereafter, when his wife started weeping, she informed him that accused Birendra Mehta had knocked her down and attempted to commit rape upon her. He then proceeded to the police station and lodged the written report.



P.W.7 – Domi Bhagat – He deposed that on the date of occurrence he had gone to fetch milk from the house of one Harial Yadav. On hearing alarm, he reached the place of occurrence and found the accused persons assaulting Chandra Kishor with lathi and danda. He stated that when Mukesh Bhagat, Nageshwar Mehta and Kanchan Bala attempted to intervene, they were also assaulted. He further stated that accused Birendra Mehta had knocked Kanchan Bala down and caught hold of her. He supported the prosecution case regarding assault and also partially supported the allegation against Birendra Mehta relating to Kanchan Bala.

P.W.8 – Kanchan Bala Sinha (Victim and Injured Witness) – She is the wife of the informant and the alleged victim of attempted rape. She stated that on the date of occurrence her husband was fixing a stake in the straw room. At that time, all the accused persons arrived there and objected to the work. Accused Birendra Mehta knocked down her husband and pressed his neck. When she and her father-in-law intervened, they too were assaulted. She further stated that accused Rameshwar Mehta snatched away her right ear-ring worth about Rs. 3,000/-. According to her, after the informant and his father had left the place, accused Birendra Mehta



returned, caught hold of her hand, knocked her down, removed her clothes and attempted to commit rape. On her raising alarm, several villagers arrived there and saved her. She also stated that she sustained injuries during the occurrence.

P.W.9 – Anmol Singh – He is the brother of Kanchan Bala Sinha. He stated that on the date of occurrence he was present in the informant's house and was taking breakfast. On hearing alarm, he came outside and saw the informant fixing a stake in the straw room and the accused persons objecting to it. He stated that the accused persons assaulted the informant with lathi and danda and also assaulted Nageshwar Mehta and Kanchan Bala when they intervened. He further stated that accused Birendra Mehta pressed the neck of the informant and accused Rameshwar Mehta snatched the right ear-ring of Kanchan Bala. He deposed that after some time accused Birendra Mehta returned, knocked Kanchan Bala down on the verandah and attempted to commit rape upon her. On hearing her cries, people gathered there and she was rescued.

P.W.10 – Sushil Kumar Yadav (Investigating Officer) -- He stated that on receiving the written report, he made the formal endorsement and instituted the case. He inspected the place of occurrence and found it situated near the



sahan of the informant. He stated that there existed a prior dispute between the parties regarding a pathway. He further deposed that during investigation, witnesses informed him that the alleged attempt to rape had taken place in the verandah of the informant's house. He proved the written report, endorsement and the injury reports of the injured persons marked as Exts. 1, 2 and 3 series. During cross-examination, he admitted that there was an ongoing dispute regarding the pathway between the parties and described the location of the houses and straw room involved in the occurrence.

13. 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 which arises before this Court is whether conviction under Section 323 is sustainable?

14. It would be appropriate to reproduce the provisions of Sections 307 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."

15. 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."*

16. 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."

17. 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**.

18. 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.'

19. The record reveals that P.W.3 – Panchlal Mehta was declared hostile during the trial, as he did not support the prosecution case on the material aspects of the occurrence and categorically stated that he had not witnessed the incident. Though he admitted that some altercation had taken place between the parties on account of a pathway dispute, he failed to support the prosecution version regarding assault, attempted rape or theft. In view of his hostile stand and absence of any incriminating evidence against the accused persons, his testimony does not advance the prosecution case. Accordingly, the evidence of P.W.3 is of no substantial assistance in establishing the charges against the accused persons.

20. The prosecution case substantially rests upon the testimony of P.W.6 – Chandra Kishor Bidyarthi, the informant, and P.W.8 – Kanchan Bala Sinha, the alleged victim of the offence under Sections 376/511 IPC. Though these witnesses have attributed specific overt acts to the accused persons, particularly accused Birendra Mehta and Rameshwar Mehta, their versions are not free from inconsistencies and do



not receive uniform corroboration from the other prosecution witnesses. Significantly, P.W.2 – Mukesh Bhagat and P.W.4 – Turanti Mehta, who were projected as eye-witnesses, did not support the prosecution case regarding the alleged attempt to commit rape, while the evidence of P.W.1 on this aspect is admittedly hearsay in nature. The learned trial court further noticed that the medical evidence did not fully support the manner of occurrence alleged by the prosecution and that the testimony of P.W.9 – Anmol Singh appeared unnatural and unreliable. It has also come on record that there existed a long-standing land and pathway dispute between the parties, who are closely related to each other. In such circumstances, the possibility of exaggeration and embellishment in the prosecution story cannot be ruled out. Accordingly, the learned trial court rightly held that the prosecution failed to establish the charges under Sections 376/511 IPC, 379 IPC and 342 IPC beyond reasonable doubt. However, so far as the charge under Section 323 IPC is concerned, the evidence of the injured witnesses was found consistent and duly corroborated by the medical evidence, leading to the conviction of the accused persons under the said provision.

21. 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.

22. Admittedly, from the prosecution evidence itself, it transpires that there existed a long-standing land and pathway dispute between the parties, who are closely related to each other. This fact has been admitted by P.W.1 – Nageshwar Mehta, P.W.6 – Chandra Kishor Bidyarthi (informant) and has also been corroborated by P.W.10 – Sushil Kumar Yadav, the Investigating Officer. However, the existence of prior enmity by itself cannot be a ground to discard the prosecution case in its entirety, particularly when the same may also furnish a motive



for the occurrence. The prosecution case is that the occurrence took place when the informant was fixing a stake in his straw room and the accused persons objected to the same, resulting in an altercation and assault. P.W.6 – Chandra Kishor Bidyarthi has consistently narrated the occurrence of assault both in the written report and in his deposition before the learned trial court. Although P.W.3 – Panchlal Mehta did not support the prosecution case and was declared hostile, the evidence of the injured witnesses, namely P.W.1, P.W.6 and P.W.8, regarding the occurrence of assault finds substantial corroboration from the testimony of P.Ws.2, 4, 5 and 7, as well as, from the injury reports marked Exts. 3, 3/A and 3/B. At the same time, the trial court found that the allegations relating to attempted rape, theft of ear-ring and wrongful confinement were not consistently supported by the prosecution witnesses and suffered from material discrepancies and lack of reliable corroboration.

23. I find that the whole occurrence was a result of a trivial incident and in those circumstances the accused dealt blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient. 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 and 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 litigation 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. Furthermore, the allegations and evidence available on record primarily disclose an occurrence of assault resulting in injuries to P.W.1 – Nageshwar Mehta, P.W.6 – Chandra Kishor Bidyarthi and P.W.8 – Kanchan Bala Sinha. The testimony of the injured witnesses regarding the assault has been consistently supported by the other prosecution witnesses and finds due corroboration from the injury reports marked Exts. 3, 3/A and 3/B.

24. At the same time, the evidence adduced by the prosecution does not satisfactorily establish the ingredients of the offences punishable under Sections 376/511 IPC, 379 IPC and 342 IPC. The learned trial Court has assigned cogent reasons for disbelieving the allegations relating to attempted



rape, theft of ear-ring and wrongful confinement, noticing material inconsistencies in the testimony of witnesses, absence of reliable corroboration and the improbabilities appearing in the prosecution version. In such circumstances, the learned Trial Court has properly appreciated both the oral and documentary evidence on record and rightly come to the conclusion that the prosecution has succeeded in proving the offence punishable under Section 323 of the Indian Penal Code against all the accused persons beyond reasonable doubt, while extending the benefit of doubt in respect of the remaining charges. Accordingly, this Court finds no illegality, perversity or misappreciation of evidence in the impugned judgment warranting interference with the finding of conviction recorded under Section 323 IPC.

25. In the background of the discussions made hereinabove and on taking an overall view, the impugned judgment of conviction and order of sentence dated 31.07.2012 passed in Sessions Trial No. 244 of 2005, arising out of Gamharia P.S. Case No. 13 of 2004, G.R. No. 267/2004, whereby, the appellants have been convicted under Section 323 of the Indian Penal Code, does not warrant interference, so far as, the finding of conviction is concerned.



26. However, question arises whether in the facts and circumstances of the present case, it would be expedient to extend the benefit of Section 4 of the Probation of Offenders Act, 1958. The appellants have been convicted under Section 323 of the Indian Penal Code, which prescribes a maximum punishment of one year's imprisonment. The occurrence admittedly arose out of a dispute between closely related persons residing in the same locality. There is no material on record to indicate that the appellants have any criminal antecedents or have subsequently indulged in any criminal activity involving moral turpitude reported by the learned APP at the time of hearing of the appeal.

27. Having regard to the nature of the offence, the relationship between the parties, the absence of any adverse antecedents, and the overall facts and circumstances discussed hereinabove, this Court is of the considered opinion that the learned trial court has erred no mistake in convicting the appellants under Section 323 of IPC and while maintaining their conviction under section 323 of IPC, appellants were released on probation of good conduct under Section 3 of the Probation of Offenders Act, 1958, upon their executing bonds to maintain peace and good behaviour for a period of one year. I



find that the appellants have already been released *vide* order/judgment dated 31.07.2012 and no adverse report against the appellants is placed before this Court, they are accordingly directed to be released.

28. Accordingly, the present appeal is partially allowed.

29. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees ten thousand) to Mr. Sanjay Kumar, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service.

30. 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	25.06.2026
Uploading Date	09.07.2026
Transmission Date	09.07.2026

