

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 1075 of 2011**

ANIRUDH PRASAD S/O Manharan Raut R/O Village Basant, P.S. Janta
Bazar, Distt. Chapra, Saran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rudra Pratap Singh, Amicus Curiae

For the Respondent/s : Mr. S.Nr.Prasad, APP

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

Date : 16-03-2026

Heard Mr. Rudra Pratap Singh, learned *Amicus Curiae* appearing on behalf of the Appellant and Mr. S. Nr. Prasad, learned APP for the State.

2. The present appeal has been filed under Sections 374 (2) read with 389(1) of the Code of Criminal Procedure challenging the judgment of conviction dated 24.08.2011 passed by the learned Additional Sessions Judge-4, Saran at Chapra arising out of Janta Bazar P.S. Case No.17/1993 whereby and whereunder the appellant has been convicted for the offence punishable under Section 307 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for five years under Sections 307 of Indian Penal Code along with fine of Rs.1000/-.



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.

4. The prosecution story, in brief, is that on 09.03.2003 at about 7:30 P.M., the villagers were celebrating the festival of Holi. Upon hearing sounds of abuse, the father of the informant, along with the informant, reached at the place of alleged occurrence. The informant saw one Bhuvar Rai @ Lapa Raut and Anirudh Raut armed with *farsa* and *lathi*, who were abusing Javala Prasad and Brij Kishor Pandey. The father of the informant, with folded hands, requested them, stating that the people were celebrating the Holi festival and asked them to return to their house. Thereafter, one accused namely Anirudh Raut assaulted the father of the informant with a *farsa* blow on his head, causing a cut injury, as a result of which he fell down on the ground. Thereafter, the persons present at the spot, who



were celebrating the Holi, intervened and took the injured to Janta Bazar Hospital, where he was treated. The father of the informant was not in a condition to give his statement, hence, the statement of the informant was recorded by A.S.I. Sitaram Singh at Janta Bazar Hospital at about 10:45 P.M.

ARGUMENT ON BEHALF OF THE APPELLANT

5. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence passed by the learned Trial Court is unsustainable in the eye of law, as the same is based on inconsistent and unreliable evidence. Learned counsel submitted that the judgment of conviction dated 24.08.2011 passed by the learned Additional Sessions Judge-4, Saran at Chapra arising out of Janta Bazar P.S. Case No.17/1993 is wholly illegal, arbitrary and contrary to the evidence available on record. The prosecution case suffers from material contradictions and inconsistencies regarding the place and manner of occurrence, which creates serious doubt about its veracity. The informant and other witnesses have given conflicting versions, and one of the material witnesses has turned hostile, thereby weakening the prosecution case. He further submitted that the prosecution witnesses are mostly interested and related, and there is no independent corroboration



of their testimony. The medical evidence also does not fully support the prosecution case, as most of the injuries are simple in nature and even the doctor has reserved opinion regarding the alleged grievous injury.

6. Learned counsel submitted that there was no intention or knowledge on the part of the appellant to commit an offence under Section 307 of the Indian Penal Code, as the allegation is only of a single blow without repetition, which does not satisfy the essential ingredients of attempt to murder. It is also argued that on the same set of evidence, co-accused persons have already been acquitted, and therefore, the appellant is entitled to the benefit of parity. Moreover, the existence of a counter case indicates that the occurrence was a result of a sudden quarrel during Holi festival, and the prosecution has suppressed the true genesis of the case. The appellant has no criminal antecedent and have been falsely implicated due to previous enmity. As such, the impugned judgment is liable to be set aside and the appellant deserves to be acquitted.

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 appellant for said offences as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

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. The learned Trial Court, on the basis of materials as collected during the course of investigation, passed the Judgment of Conviction dated 24.08.2011 for the offences under Section 307 of the IPC.

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

P.W.-1- Mahesh Kr. Pandey

P.W.-2-Pashupatinath Pandey

P.W.-3-Suman Pandey(Informant / victim)

P.W.-4-Krishna Pandey (Independent witness)

P.W.-5-Hemanshu Raj (Formal witness)

P.W.-6-Dr. Rajeshwar Prasad

P.W.-7-Raj Kishor Pandey (Formal witness)



12. 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.

13. 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.

14. 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].”

15. 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.

16. 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.’

(emphasis supplied)

17. The record reveals PW-4 was declared hostile during the trial as nothing transpired from his testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who supported the crime in question during the trial. Therefore, the testimony of the PW-4 is not relevant qua establishing guilt of the accused/appellant.

18. Considering the facts and circumstances of the case, as also the submissions advanced by Mr. Rudra Pratap Singh, learned *Amicus Curiae* appearing on behalf of the appellant, this Court finds that the entire gamut of the prosecution case indicates that the alleged occurrence took place on the occasion of Holi, a festival during which the villagers had assembled and were celebrating. From the evidence on record, it transpires that certain altercations arose, and it is alleged that the appellant, along with other accused persons, was abusing Jawala Prasad and Brajendra Pandey. Upon hearing the commotion, the



victim, namely Pashupatinath Pandey (PW-2), intervened, whereupon he sustained an injury on his head, which has been attributed to the appellant. The other co-accused persons have been acquitted by the learned Trial Court. Though the injury sustained by PW-2 has been opined by the Medical officer (PW-6) to be grievous in nature, the surrounding facts and circumstances do not suggest any premeditation or prior meeting of minds. The occurrence appears to have taken place in the heat of passion, upon sudden provocation, during a festive gathering. There is a case and counter-case between the parties, as one Dinanath Raut had also instituted a case against Brij Bihari Pandey and others which led to the existence of a sudden quarrel rather than a pre-planned assault. On perusal of the testimonies of PW-1, PW-2, and PW-3, it is evident that only three out of seven witnesses have supported the prosecution case. PW-4 has turned hostile, while PW-5 and PW-6 are formal witnesses, PW-6 being the medical officer found the injury to be grievous in nature (Exhibits 2 and 2/A). The non-examination of material witnesses, namely Jawala Prasad and Brajendra Pandey, further weakens the prosecution case to the extent of establishing any intention to commit murder or culpable homicide as defined under Section 299 of the Indian Penal



Code.

19. In view of aforesaid discussions of factual and legal aspects, this Court is of the opinion that the act attributed to the appellant was not committed with any intention to cause death, but rather in the course of a sudden quarrel and in the heat of passion.

20. Accordingly, the judgment of conviction dated 24.08.2011 passed by the learned Additional Sessions Judge–IV, Saran at Chapra, arising out of Janta Bazar P.S. Case No. 17 of 1993, is modified to the extent that the conviction of the appellant shall stand under Sections 323 and 324 of the Indian Penal Code.

21. So far as, the sentence is concerned, having regard to the fact that the appellant has already undergone approximately two years of custody, the sentence is reduced to the period already undergone. The fine imposed by the trial court is maintained. The appellant is discharged from the liabilities of his bail bonds, if any.

22. Accordingly, the present appeal is allowed.

23. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand) to Mr. Rudra Pratap Singh, learned



Amicus Curiae, as consolidated fee, for rendering his valuable professional service for disposal of the present appeal.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
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