

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.416 of 2010

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Ramashish Pandey, son of Shiv Narayan Pandey, resident of village + P.O-
Garoul, P.S.-Bihra, District-Saharsa

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 09-07-2026

Heard Mr. Diwakar Prasad Singh, learned counsel
for the appellant and Mr. Ajay Mishra, learned APP for the
State.

2. The appellant has preferred the present criminal
appeal against the judgment of conviction dated 27.04.2010 and
order of sentence dated 29.04.2010 passed in S.Tr. No. 02 of
2009 (arising out of Bihra P.S. Case No. 96 of 2007) by learned
Additional Session Judge F.T.C. - 5th at Saharsa, whereby, the
learned trial court has convicted the appellant for the offence
committed under Section 326 of the Indian Penal Code and
sentenced him to undergo seven years Rigorous Imprisonment
(R.I.) and to pay a fine of Rs.5,000/- and in default of payment
of fine, to further undergo Simple Imprisonment (S.I.) for three
months.



3. The appellant has 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 appellant.

BRIEF FACTS OF THE CASE

4. The case of the prosecution, in brief, is that on the intervening night of 11/12 July 2007 at about 2:30 A.M., the informant was sleeping on a machan erected in his mango orchard for guarding the mango crop. It was alleged that the appellant, Ramashish Pandey, armed with a *Dabia* (a sharp cutting weapon), came near the informant. The informant stated that when he questioned the appellant regarding his presence in the orchard at such an odd hour, the appellant abused him and inflicted a single *Dabia* blow on his neck with the intention to kill him. The injury caused profuse bleeding. Upon hearing the informant's alarm, nearby villagers rushed to the orchard. By that time, the appellant allegedly fled away after taking away the informant's Nokia mobile phone and torch. The injured was first taken to his house and thereafter shifted to Sadar Hospital, Saharsa, where his fardbeyan was recorded. Subsequently, he was referred to PMCH, Patna, for better treatment. On the basis



of the fardbeyan, Bihra P.S. Case No. 96 of 2007 was instituted under Sections 324, 307 and 379 of the Indian Penal Code. After completion of investigation, charge-sheet was submitted and charges under Sections 307, 324 and 379 IPC were framed against the appellant. The defence pleaded false implication on account of an old land dispute. Upon conclusion of trial, the learned Trial Court acquitted the appellant of the charges under Sections 307 and 379 IPC but convicted him under Section 326 IPC.

ARGUMENT ON BEHALF OF THE APPELLANTS

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 are contrary to the evidence available on record and settled principles of criminal law. The prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The alleged occurrence took place at about 2:30 A.M. in a densely grown mango orchard on a dark night, making the identification of the appellant highly doubtful. Except the testimony of the injured (P.W.3), no witness actually witnessed the assault. P.W.1 and P.W.2 admittedly reached the place of occurrence after hearing alarm and merely claimed to have seen the appellant fleeing away. P.W.5, namely



Niranjan Pandey, the only independent witness and a named witness in the FIR, did not support the prosecution case and was declared hostile. The prosecution witnesses are close relatives of the informant and interested witnesses. The evidence of P.W.3 also suffers from material contradictions and omissions. Though the fardbeyan alleged that the appellant assaulted him and thereafter snatched his Nokia mobile phone and torch, P.W.3 did not depose regarding any theft before the Court, resulting in acquittal under Section 379 IPC. Further, while P.W.3 claimed that the appellant assaulted him from the front after he questioned him, the medical evidence shows that the injury was on the back/right side of the neck, thereby rendering the prosecution version doubtful. Even P.W.4, the doctor, admitted that such injury could be caused by falling on a sharp-edged bamboo. No blood-stained clothes were seized, no weapon of offence was recovered, and no forensic evidence was produced. Moreover, the admitted land dispute between the parties provided a strong motive for false implication, which the Investigating Officer admittedly failed to investigate.

6. Learned counsel further submitted that the learned Trial Court failed to appreciate the serious contradictions and inconsistencies in the prosecution evidence and wrongly shifted



the burden upon the appellant. P.W.1 and P.W.2 gave contradictory versions regarding who first reached the place of occurrence, while none of the prosecution witnesses, except the injured, was an eyewitness to the actual assault. There was also inconsistency regarding the weapon of assault, as P.W.1 referred to a knife whereas the prosecution case alleged the use of a Dabia. The defence examined four witnesses who consistently stated that only a verbal altercation took place between the parties and no assault was committed, yet their evidence was not properly appreciated. Most importantly, the learned Trial Court acquitted the appellant of the charges under Sections 307 and 379 IPC but illegally convicted him under Section 326 IPC despite no charge having been framed under that provision, thereby causing serious prejudice to the appellant. The conviction is therefore legally unsustainable and liable to be set aside. In the facts and circumstances of the case, the prosecution has failed to prove the charge beyond reasonable doubt, and the appellant is entitled to the benefit of doubt and consequent acquittal.

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/appellant under Section 326 of IPC.

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

- (i). P.W.1 – Ramchandra Pawan
- (ii). P.W.2 – Pankaj Kumar Pandey
- (iii). P.W.3 – Dinesh Pandey (Informant)
- (iv). P.W.4 – Dr. S.N. Roy
- (v). P.W.5 – Niranjana Pandey (Hostile)
- (vi). P.W.6 – Sudhista Prasad Singh



(vii). P.W.7– Basudeo Das

During the trial, the defence has examined altogether four witnesses, namely:

(i) D.W.1 – Nityanand Pandey

(ii) D.W.2 – Dipu Mukhia

(iii) D.W.3 – Kusho Paswan

(iv) D.W.4 – Sanjay Paswan

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

(i) Ext.-1 - Signature of informant on fardbeyan

(ii) Ext.-1/1 - Signature of P.W.2 on fardbeyan

(iii) Ext.-1/2 - Fardbeyan

(iv) Ext.-2 - Injury Report by Dr. S.N. Roy

(v) Ext.-2/1 - Police injury report proved by I.O.

(vi) Ext.-3- Bed-head ticket

(vii) Ext.-3/A - Medical prescription

(viii) Ext.-3/B-Referral endorsement to PMCH

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 – Ramchandra Pawan has deposed that the occurrence took place in the year 2007 at about 2:00 A.M. while



he was present in a nearby orchard. Hearing the alarm raised by the informant, he rushed to the place of occurrence and found Dinesh Pandey lying injured on the machan with a bleeding injury on his neck. He also claimed to have seen the appellant running away from the place of occurrence. According to him, the clothes of the injured were soaked with blood and the injured disclosed that Ramashish Pandey had assaulted him with a Dabia. He further stated that the injured was first taken to his house and thereafter shifted to Saharsa Hospital by tempo. During cross-examination, he admitted that the appellant and the informant are cousin brothers and that the orchard belongs to the family. His testimony remained substantially unshaken.

(ii) P.W.2 – Pankaj Kumar Pandey, who is the nephew of the informant, has stated that upon hearing alarm at about 2:00–3:00 A.M., he rushed to the mango orchard and saw the appellant running away from the place of occurrence. He found the informant unconscious and bleeding from his neck. He stated that the injured was taken to Saharsa Hospital and thereafter referred to PMCH, Patna. He proved the signatures of the informant and his own signature on the fardbeyan as Exhibits 1 and 1/1 and also proved the fardbeyan as Exhibit 1/2. During cross-examination, he admitted that the appellant is also



his uncle and belongs to the same family. He denied the suggestion that he was falsely deposing against the appellant.

(iii) P.W.3 – Dinesh Pandey (Informant/Injured) is the informant as well as the injured eyewitness. He deposed that while sleeping on the machan in his mango orchard at about 2:30 A.M., he noticed the appellant standing beside him holding a Dabia. When he asked the appellant why he had come there, the appellant abused him and immediately gave one Dabia blow on his neck, causing a deep cut injury. Thereafter, the appellant fled from the place of occurrence. The witness stated that he regained consciousness in the hospital, where his fardbeyan was recorded, and thereafter he was referred to PMCH for better treatment. During cross-examination, he admitted that only one Dabia blow was inflicted and the appellant immediately fled away. He also admitted that the appellant is his cousin brother but denied the existence of any prior dispute. Significantly, although theft of a mobile phone and torch was alleged in the FIR, he did not depose regarding theft during his evidence before the Court.

(iv) P.W.4, the Medical Officer of Sadar Hospital, Saharsa, has deposed that he medically examined the injured Dinesh Pandey on 12.07.2007. He found one incised wound



measuring approximately 6 inches $\times$ 2 inches extending over the neck, which was muscle deep and caused profuse bleeding. He opined that the injury had been caused by a sharp-cutting weapon within six to twelve hours prior to examination and that the injury was grievous and dangerous to life. He proved the injury report as Exhibit 2. During cross-examination, he admitted that a similar injury could also result from falling on a sharp-edged bamboo. He further stated that the patient was conscious at the time of examination.

(v) P.W.5 – Niranjan Pandey did not support the prosecution case and was declared hostile. He denied having made any statement before the police during investigation. However, the Investigating Officer later stated that his statement had in fact been recorded during investigation.

(vi) P.W.6 – Sudhista Prasad Singh (Investigating Officer), has deposed that he took up investigation, inspected the place of occurrence, recorded the statements of witnesses and obtained the injury report from the hospital. He proved the police injury report as Exhibit 2/1 and stated that after completing investigation, he submitted charge-sheet against the appellant. During cross-examination, he admitted that he had not investigated the alleged land dispute between the parties. He



denied the suggestion that he had conducted a false investigation.

(vii) P.W.7 – Basudeo Das is a formal witness who proved the bed-head ticket, medical prescription and referral endorsement relating to the treatment of the injured. He proved the bed-head ticket as Exhibit 3, the medical prescription as Exhibit 3/A and the referral endorsement to PMCH as Exhibit 3/B. His evidence establishes that the injured was admitted to Sadar Hospital at about 4:15 A.M. on 12.07.2007 and was later referred to PMCH due to the seriousness of the injury.

14. From the perusal of records, I proceed to analyse the statements of the defence witnesses whether they have supported the defence version.

(i) D.W.1 – Nityanand Pandey has deposed that on the night of the occurrence he heard noise from the mango orchard and saw only a heated exchange of words between the informant and the appellant. He specifically denied having seen any assault by the appellant upon the informant.

(ii) D.W.2 – Dipu Mukhia has stated that his house is situated near the mango orchard. According to him, only an altercation took place between the appellant and the informant



and no assault was committed by the appellant.

(iii) D.W.3 – Kusho Paswan has also supported the defence version by stating that only a verbal altercation took place and no assault occurred. His testimony was consistent with that of the other defence witnesses.

(iv) D.W.4 – Sanjay Paswan has deposed that at about 2:00 A.M. on the date of occurrence he saw the appellant and the informant engaged in a heated discussion in the orchard. According to him, after the exchange of words, the appellant left the place and no assault was committed in his presence.

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

16. It would be appropriate to reproduce the provisions of Sections 319, 323 and 326 of I.P.C. for reappreciating the facts and circumstances of the case, which, *inter alia*, are reproduced as under:-

"Section 319. Hurt.—

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

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.

Section 326. Voluntarily causing grievous hurt by dangerous weapons or means—

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a 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 for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

17. The record reveals that **P.W.5 – Niranjana Pandey** 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.5 is not of much assistance to the prosecution case.

18. The prosecution case substantially rests upon the testimonies of P.W.-1, P.W.-2, P.W.-3, P.W.-4 (the Medical Officer), P.W.-6 (the Investigating Officer), and P.W.-7 (the formal witness who proved the hospital records). A careful appreciation of their evidence reveals that the prosecution has



succeeded in establishing a consistent and cogent chain of circumstances regarding the occurrence. P.W.-3, being the injured witness, has given a clear description of the assault and has categorically attributed the injury to the accused. His testimony finds substantial corroboration from P.W.-1 and P.W.-2 on the material particulars of the occurrence. Nothing substantial has emerged in their cross-examination to impeach their credibility or to establish any material contradiction affecting the core of the prosecution case. Although P.W.-5 turned hostile and did not support the prosecution during trial, the same does not adversely affect the prosecution case, particularly when the testimony of the injured witness stands corroborated by other reliable evidence. The Investigating Officer (P.W.-6) has duly proved the investigation, the place of occurrence, and the submission of the charge-sheet after completion of investigation. The defence witnesses merely attempted to project a land dispute between the parties but, significantly, admitted the presence of both the accused and the informant at the place of occurrence, thereby lending indirect support to the prosecution version rather than discrediting it.

19. The medical evidence lends complete assurance to the ocular version of the prosecution witnesses. P.W.-4, Dr.



S.N. Roy, examined the injured shortly after the occurrence and found a grievous incised wound measuring approximately 6" × 2", extending from the back of the neck to the right side of the neck with profuse bleeding. The doctor opined that the injury was caused by a sharp-cutting weapon, was grievous in nature, and was dangerous to life. The injury report was duly proved by him. During cross-examination, although the doctor conceded that such an injury might also be caused by a fall on a sharp-edged bamboo, he consistently maintained that the injury was grievous in nature and dangerous to life. This hypothetical possibility, in the absence of any supporting defence evidence, does not dilute the evidentiary value of his testimony. Further corroboration is provided by P.W.-7, who proved the bed-head ticket, medical prescription, and referral records, establishing that the injured was admitted to the Sadar Hospital immediately after the occurrence and was subsequently referred to P.M.C.H., Patna, owing to the seriousness of the injury. These contemporaneous medical records fully corroborate the prosecution version regarding the nature, location, and gravity of the injuries. Thus, the medical evidence is wholly consistent with the ocular account and significantly strengthens the prosecution case by providing independent corroboration to the



testimony of the injured witness.

20. 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 326 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.

21. 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."*

22. The similar question came up before the Hon'ble 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."

23. 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**.

24. 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.'

25. Admittedly, from the prosecution case itself, it transpires that the alleged occurrence arose out of previous enmity between the parties and is stated to have taken place suddenly at night, without any clear evidence of premeditation or prior meeting of minds, the incident having occurred in the course of a sudden confrontation. Further, the prosecution evidence suffers from material infirmities as the case primarily rests upon the testimonies of **P.W.1- Ramchandra Pawan** and **P.W.3 – Dinesh Pandey (informant)**, with limited support from **P.W.2– Pankaj Kumar Pandey**, whose versions are not wholly consistent on material particulars, particularly with regard to the manner of occurrence, visibility due to darkness, and the role attributed to the accused persons, while independent witnesses do not lend reliable support inasmuch as **P.W.5 – Niranjan Pandey** has turned hostile and **P.W.7- Basudeo Das** is a formal witness. Moreover, the medical evidence of **P.W.4 – Dr. S.N. Roy**, though indicating a grievous head injury caused by an edged weapon, also admits the possibility of such injury being caused by a fall on the edged bamboo, thereby not conclusively supporting the prosecution version. When considered along with



the admitted background of prior enmity and the infirmities in investigation, the cumulative effect of these circumstances creates serious doubt regarding the manner of occurrence and the specific involvement of the accused persons.

26. In view of the aforesaid legal principles and discussion of factual and legal aspects, it emerges that the alleged occurrence took place on the spur of the moment on account of prior enmity between the parties and without any clear premeditation or prior meeting of minds of the accused persons. The nature of the incident, the surrounding circumstances, and the medical evidence, particularly the testimony of P.W.4 – Dr. S.N. Roy, indicate that although the informant sustained injury at the right side of the neck opined to be grievous in nature, the same has been attributed to sharp edged weapon and the doctor has also admitted the possibility of such injury being caused by a fall upon sharp edge bamboo, thereby creating doubt regarding the manner of assault. In the backdrop of inconsistent testimonies of the material witnesses, lack of reliable independent corroboration, and infirmities in investigation, the evidence on record does not conclusively establish the requisite intention or knowledge to cause death. Rather, the materials on record, at best, indicate an act of



causing hurt by use of a sharp edged weapon, and thus, this Court is of the considered opinion that the offence under Section 326 is not made out and the conviction, if any, can be sustained only for a lesser offence under Section 324 of the IPC.

27. In the background of the discussions made hereinabove and on taking an overall view, the Impugned judgment of conviction dated 27.04.2010 and order of sentence dated 29.04.2010 passed in S.Tr. No. 02 of 2009 (arising out of Bihra P.S. Case No. 96 of 2007) by learned Additional Session Judge F.T.C. - 5th at Saharsa, is varied only to the extent that the conviction of the appellant stands modified to that under Sections 324 of the IPC.

28. 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 seven year is modified and reduced to the period already undergone. 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 bond, if any.

29. Accordingly, the present appeal is partially



allowed.

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)

Niraj/-

AFR/NAFR	
CAV DATE	29.06.2026
Uploading Date	09.07.2026
Transmission Date	09.07.2026

