

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.25 of 2010**

Arising Out of PS. Case No.-110 Year-2006 Thana- GOGRI District- Khagaria

Ajay Yadav S/O Late Sitaram Yadav R/O Village- Itahari, P.S- Gogari, Distt.-
Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Praveen Kumar Agrawal, Advocate
		Mr. Mukesh Kumar, Advocate
		Mr. Santosh Kumar Singh, Advocate
For the State	:	Mr. Mukeshwar Dayal, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 16-01-2026

Heard learned counsel for the appellant and
learned Additional Public Prosecutor for the State.

2. The present appeal is directed against the
judgment of conviction dated 19.11.2009 and order of
sentence dated 20.11.2009 passed by learned Additional
Sessions Judge – 1st, Khagaria in Sessions Case No. 464 of



2006, arising out of Gogri P.S. Case No. 110 of 2006 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 307 and 387 of IPC and under Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs. 5,000/- under Section 307 of IPC and further sentenced to undergo rigorous imprisonment for 7 years along with fine of Rs. 1,000/- under Section 387 of the I.P.C. and further sentenced to undergo rigorous imprisonment of 3 years and also fine of Rs. 500/- for the offence under Section 27 of the Arms Act. All the sentences have been directed to run concurrently.

3. The prosecution case, in brief, is that on 21.04.2006 at 04:45 A.M., the informant (PW-4) was returning after attending the call of nature, and upon reaching north of Kali Asthan, about 100 yards ahead of the *basa* of Ram Sao in village Fudkichak, the appellant Ajay Yadav allegedly surrounded the informant while holding a pistol. The appellant questioned the informant as to why he and members of his caste had failed to fulfill the demand of *rangdari* amounting to Rs. 1,50,000/-. When the informant expressed his inability to pay the said amount due to his poor



economic condition, the appellant allegedly fired at him with the pistol, causing injury to the left thigh near the scrotum, as a result of which the informant fell down in a seriously injured condition. It is further alleged that Shiv Shankar Sharma (PW-2), Suresh Sharma (PW-3) and several other persons were present at the place of occurrence and they witnessed the incident. While narrating the prosecution story, it was further reiterated that on 20.04.2006 at about 6:00 A.M., Sudhir Yadav, the elder brother of the appellant, came to the informant while the informant was going to attend the call of nature and stated that appellant Ajay Yadav was demanding money. He allegedly ordered the informant and other members of his community to pay the demanded amount, failing which they would face dire consequences and would be driven out of the village. It is further alleged that while some persons were taking the injured informant to the hospital, the appellant again intercepted them on the way and threatened the informant not to lodge an F.I.R., failing which the appellant would kill the entire family of the informant.

4. On the basis of fardbayan recorded by the informant/PW-4, Gogri P.S. Case No. 110 of 2006 dated 21.04.2006 for the offence under Sections 341, 386, 387, 307



and 34 of the I.P.C. and Section 27 of the Arms Act was lodged. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant under Sections 341, 386, 387, 307 and 34 of the IPC. Thereafter, the learned trial court took cognizance under aforementioned Sections of the IPC. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant under Sections 307 and 387 of the IPC and Section 27 of the Arms Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt of the accused persons, the prosecution has examined altogether six witnesses, including four prosecution witnesses and two court witnesses viz. PW-1 Sujay @ Suraj Sharma (son of the informant), PW-2 Shivshankar Sharma, PW-3 Suresh Sharma, PW-4 Sadhusharan Sharma (victim as well as informant of this case), CW-1 Sanjiv Kumar (Investigating Officer) and CW-2 Dr. Arvind Kumar Gupta (doctor who has firstly examined the victim). I.O. has been examined under Section 311 of the Cr.P.C and thereafter Dr. Arvind Kr. Gupta



was also examined under Section 311 of the Cr.P.C.

6. Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Fardbeyan

*Ext. 1/1- Endorsement
on the margin of Fardbeyan for
registration of the case and
entrustment of investigation.*

Ext. 2 – Formal F.I.R.

Ext. 3 – Injury Report.

7. Defence has not produced any oral or documentary evidence in his support. However, defence of the appellant as gathered from the line of cross-examination of prosecution witnesses as well as from the statement of the accused under Section 313 of the Cr.P.C. is that of total denial.

8. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the 2nd paragraph of the judgment.

9. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant has



submitted that from the perusal of the F.I.R., it is evident that PW-2 (Shivshankar Sharma) and PW-3 (Suresh Sharma) were present at the place of occurrence; however, they have been declared hostile and have not supported the prosecution case. It is further submitted that opinion regarding the nature of all the injuries sustained by the injured was kept reserved. In the absence of a final medical opinion, no inference can be drawn as to whether the injuries were simple, grievous or dangerous to life. Consequently, the seriousness of the injuries cannot be assessed without a final medical opinion. PW-1/ Sujay @ Suraj Sharma is also not an eyewitness to the alleged occurrence. He is merely a hearsay witness. Learned counsel for the appellant has further submitted that the place of occurrence has not been proved. The Investigating Officer (I.O.) has conducted a very faulty and casual investigation and has failed to seize the blood-stained soil from the alleged place of occurrence and the same is admitted by the I.O. during his cross-examination. It is further contended that the investigation was not conducted in a fair and impartial manner. The I.O. failed to investigate the admitted fact that the appellant and the informant are neighbours and that their lands are adjacent to each other. The possibility that prior



animosity between the parties may have led to the lodging of a false case against the appellant, has not been examined at all. Moreover, not a single independent witness has been examined by the prosecution. Although it has come on record that the victim was allegedly carried on a *thela* by Jabbar Miyan, the said Jabbar Miyan has also not been examined by the prosecution. Except for the sole statement of the injured, there is no corroborative evidence to support the prosecution case. Learned counsel for the appellant further submits that from perusal of the impugned judgment itself the appellant is having no criminal antecedent. In light of the aforesaid facts and circumstances, it is submitted that the prosecution has failed to prove its case against the appellant beyond reasonable doubt.

10. Learned counsel appearing on behalf of the State has submitted that PW-4, who is the informant as well as the victim, is the star witness of the prosecution case. It is further submitted that PW-4 has fully explained the genesis of the prosecution case and has elaborately and consistently narrated each aspect of the occurrence, thereby substantiating the prosecution version. He has further submitted that the informant/victim was threatened at the



place of occurrence while he was defenceless. It is alleged that the appellant was demanding *rangdari* and upon refusal to meet the said demand, the informant sustained a firearm injury on the left thigh near the scrotum , which is a highly sensitive part of the body. It is further submitted that a firearm injury inflicted on the left thigh near the scrotum is sufficient to cause death. He further submits that so far as the number of witnesses is concerned, it is argued that the quality and credibility of the evidence, and not the number of witnesses, is determinative. Even the statement of a single witness, if found to be reliable and inspiring confidence, is sufficient to sustain the prosecution case in light of the facts and circumstances of the case. The manner in which occurrence has taken place, informant is found at a particular place after returning from call of nature and the very aggressive posture as posed by the appellant, the victim has to bear the consequences at the act of appellant. The appellant was having arms and he fired upon the victim, who sustained injury upon the left thigh near the scrotum. The manner in which the occurrence took place clearly establishes that the informant was returning after attending the call of nature when he was confronted by the appellant, who was in an



aggressive posture and armed with a firearm. The victim was compelled to bear the consequences of the appellant's act, as the appellant fired upon him, causing injury to his left thigh near the scrotum. Learned APP for the State has further submitted that while recording the conviction under Sections 307 and 387 of the I.P.C. and Section 27 of the Arms Act, the learned trial court has elaborately discussed the evidence on record and duly appreciated and evaluated the facts and circumstances of the case. It is contended that there is no reason to interfere with the judgment of conviction and the order of sentence passed by the learned trial court.

11. The question which arises for consideration is:-

“Whether the prosecution has been able to prove its case under Section 307 & 387 of the IPC and Section 27 of the Arms beyond reasonable doubts or not?”

12. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.



13. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

14. PW-4/ Sadhusharan Sharma is the informant of the case. He has clearly narrated the manner of occurrence, explaining how he sustained a firearm injury on the left thigh near the scrotum due to his refusal to pay the *rangdari* amount demanded by the appellant. He has also described the medical treatment he received at the hospital.

14.1. During cross-examination, the evidence of PW-4 is quite intact and there is nothing on record to disbelieve the prosecution version or to cast doubt on the statement of the injured victim. No material contradiction or infirmity has been elicited to disbelieve his evidence.

15. CW-1/ Sanjiv Kumar is the Investigating Officer of the case. He has deposed that on 21.04.2006 he reached Gogri Referral Hospital, where he recorded the *fardbayan* of PW-4 (informant). He proved the *fardbayan*, which was written by him and which bears the thumb impression of the informant, as well as the signature of Sujay Kumar Sharma (PW-1). The *fardbayan* was marked as Exhibit-1. He further stated that he inspected the place of



occurrence and found drops of blood there. He also recorded the statements of other witnesses. Though he has admitted that he has not examined the witnesses of boundary of place of occurrence but from the perusal of the evidence adduced by the I.O., it is crystal clear that he has proved the place of occurrence. Though his evidence indicated that investigation has not been conducted in a fair manner but he has proved the fact that *fardbayan* was read over to the informant and finding the same true the informant put his thumb impression on the *fardbeyan* and informant's son also put his signature upon the *fardbayan* and the same has been marked as Exhibit-1. Hence, there is no reason to disbelieve the core aspects of prosecution story. However, some infirmities have been found with regard to the investigation, but the whole prosecution story cannot be thrown away just because of a faulty investigation.

16. It is necessary to cite a decision passed by Hon'ble Supreme Court in the case of ***Dhanaj Singh alias Shera and Ors. v. State of Punjab***, reported in ***(2004) 3 SCC 654***, in which the Hon'ble Supreme Court has held in paragraphs 5 and 7 that:

“5. In the case of a defective investigation the court has to



be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

7. As was observed in Ram Bihari Yadav v. State of Bihar if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view as again reiterated in Amar Singh v. Balwinder Singh. As noted in Amar Singh case it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot



affect the credibility of the prosecution version.”

17. CW-2 / Dr. Arvind Kr. Gupta has examined Sadhusharan Sharma (informant) on 21.04.2006 in injured condition at 6:45 A.M. and has found the following injuries:

1. One lacerated injury 1/6” x 1/6” inner side of upper part of left thigh just beside scrotum (wound of exit).

2. One lacerated injury 1/6” x 1/6” on lateral side of left thigh in upper third with bleeding burning effect below the wound (wound of entry). X-ray of thigh advised. The patient was referred to Sadar Hospital, Khagaria for further treatment.

3. One lacerated injury of upper part of right side of scrotum 1/2” x 1/6” skin deep. The nature of injury opinion was reserved for report of X-ray and opinion of Sadar Hospital, Khagaria. Injury caused by firearm, the 3rd injury was caused by firearm.

17.1. From perusal of evidence of doctor, it clearly indicates that there is an injury caused by firearm and doctor has given the opinion that due to excessive blood flow, the patient may die and from the perusal of the evidence of CW-2, it is crystal clear that the allegation, as alleged in the



FIR, is totally corroborated the injury to the left thigh near the scrotum by the firearm and there is no reason to disbelieve the version of CW-2.

18. PW-1 is merely a hearsay witness and not an eye-witness to the alleged occurrence. The remaining witnesses (PW-2 and PW-3) have been declared hostile; therefore, their evidence carries no evidentiary value.

19. To constitute an offence under Section 307 of the IPC, the following ingredients of the offence must be present;

a. An intention or knowledge relating to commission of murder and

b. Doing of an act towards it.

For the purpose of Section 307 IPC, what is material is the intention or knowledge, and not the consequence of the actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with the intention of causing death but which fails to bring intended consequence on account of intervening circumstances. The intention or knowledge of the cause must be such as necessary to constitute a murder. In absence of intention or knowledge which is a necessary ingredient of



Section 307 IPC, there can be no offence of attempt to murder.

20. Considering the aforementioned facts and circumstances, the following judicial decisions are pertinent to cite:-

In ***Takdir Samsuddin Sheikh v. State of Gujarat and another*** reported in ***AIR 2012 SC 37***, the Hon'ble Supreme Court observed at para 10(ii) as follows:-

"10 (ii). This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value,



weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

In Brahm Swaroop and another v. State of U.P., reported in ***AIR 2011 SC 280***, the Hon'ble Supreme Court at para 22 of the judgment held as follows:

"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

In Ranjit Singh and others v. State of



Madhya Pradesh, reported in ***AIR 2011 SC 255***, the Hon'ble Supreme court at para 17 of the judgment held as follows:-

"17. Under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction."

In Mano Dutt and another v. State of Uttar Pradesh, reported in ***(2012) 4 SCC 79***, the Hon'ble Supreme Court at para 30 of the judgment observed as follows:-

"30... Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit."

In State of U.P. v. Kishan Chand and others reported in ***(2004) 7 SCC 629***, a similar view has been reiterated observing that the testimony of a stamped witness



has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony that he was present during the occurrence.

In State of Madhya Pradesh v. Imrat and another reported in ***(2009) 2 SCC (Cri) 558***, the Hon'ble Supreme Court at para 11 of the judgment observed as follows:-

"11. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Lachman Singh v. State of Haryana reported in ***(2006) 10 SCC 524***, the Hon'ble Supreme Court at para 13 of the judgment observed as follows:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled



with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Sadakat Kotwar and another v. The State of Jharkhand passed in ***Criminal Appeal No. 1316 of 2021***, the Hon'ble Supreme Court held at para 4.1 as follows:-

"4.1. As observed and



held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon-dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

21. In the light of the aforesaid facts and circumstances of the case where witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness. In the present case there was nothing on record to disbelieve the



statement of victim. In the present case, the statement of victim that victim was being threatened for giving the *rangdari* amount and when the same was not given by the victim on account of such defiance he was being fired upon by the appellant and he sustained injury to the left thigh near the scrotum.

22. In the present case, the prosecution story, as narrated by PW-4, is in complete consonance with the evidence adduced during the course of trial. No material contradiction has been elicited during cross-examination so as to discredit the prosecution case. PW-1 has supported and corroborated the initial version of the prosecution story. There is nothing on record to disbelieve the testimony of PW-4. CW-2, the doctor is an expert witness who examined the injured/victim and analysed the injury sustained by the victim. The examination by the doctor clearly indicates that the place of injury, as alleged in the F.I.R., is in consonance with the injury shown in the injury report. The injury report clearly indicates that it is a firearm injury. Although the nature of the injury has not been specifically mentioned, but from the perusal of the medical evidence, it is crystal clear that the place of injury is clearly identified and that it is a firearm



injury and the doctor has clarified that in case of excessive bleeding, such injury may cause death to the patient who suffered the said injury. The victim, being a man of common prudence the prosecution-case, as stated in the initial version of the prosecution story, is fully supported by the doctor in his evidence. CW-1, the Investigating Officer of the case, took up the investigation, visited the place of occurrence, recorded the statement of the informant, found the occurrence to be true and thereafter submitted the charge-sheet. In this way, the evidence of the Investigating Officer does not, in any way, derogation from the evidence of prosecution witnesses, particularly PW-4 (informant). The statement of PW-4 as well as the statements of the doctor and the Investigating Officer, remain consistent throughout cross-examination and there is no reason to disbelieve the statement of prosecution witnesses merely because some other witnesses have not supported the prosecution case.

23. PW-4 (the informant) as well as the victim has clearly supported the initial version of the prosecution story on the core aspects of the offence as alleged in the light of Sections 307 and 387 of the IPC and Section 27 of the Arms Act, and there is no reason to disbelieve the version of



the victim, whose presence at the scene of the crime cannot be doubted. It is also natural that he will not spare his actual assailant. The statement of CW-2 (the doctor) has clearly supported the allegation of injury on the left thigh near the scrotum, and the injury is a firearm injury. The doctor has also stated that in case of excessive bleeding, such an injury could cause the death of the patient who suffered the said injury, and the informant is corroborated by the injury report given by the doctor. The statement of CW-1 (Investigating Officer) has supported and corroborated the specific place of occurrence. He has also supported and corroborated the story of prosecution regarding place of occurrence. He has pointed out the place of occurrence and his statement is quite corroborative with the statement of story of prosecution and his statement is also supported the story of prosecution particularly regarding place of occurrence.

24. It is quite evident that appellant is the sole person for making firing upon the informant causing injury on his left thigh near the scrotum in order to extort money of Rs. 1,50,000/- and in that course he put the informant in fear of serious injury for the offences under Section 307 and 387 of the IPC. Since the appellant has inflicted the injury by firearm



having pistol in his hand and he was being responsible for committing the offence under Section 27 of the Arms Act, I find no reason to differ with the findings given by the learned trial court on the point of Sections 307 and 387 of the IPC and 27 of the Arms Act and submission advanced on behalf of learned A.P.P. is quite tenable in the light of said offences and hence, in my view, judgment of conviction on the point of Sections 307 and 387 of the IPC and Section 27 of the Arms Act requires no interference.

25. However, on the point of sentence under Sections 307 and 387 of the IPC and Section 27 of the Arms Act, learned counsel for the appellant submits that the appellant has already suffered 5 years and 13 days in the custody, the occurrence took place in the year 2006 and he has already suffered near about 20 years in litigation and he has sufficiently been punished and the appellant is having no criminal antecedent. The Court is of the view that if sentence of the appellant is reduced to the period already undergone, that would meet the ends of justice. Accordingly, the sentence of the appellant is reduced to the period already undergone.

26. With the aforesaid modification in the sentence, the instant appeal stands dismissed.



27. The interlocutory application, if any, also stands disposed of.

28. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

29. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

Nilmani/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23.01.2026
Transmission Date	23.01.2026

