

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.165 of 2014

Arising Out of PS. Case No.-142 Year-2006 Thana- DEHRI TOWN District- Rohtas

Chunmun Chaudhary, S/o Lakshmi Choudhary, Resident Of Village
Kamranganj, P.S. Town Dehri, District Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Dharmendra Kumar Singh, Adv. Mr. Manoj Kumar, Adv. Mr. Sada Nand Roy, Adv. Mr. Harsh, Adv.
For the State	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 03-02-2026

The instant appeal has been filed by the appellant, Chunmun Chaudhary, against the judgment of conviction dated 24.02.2014 and the order of sentence dated 04.03.2014, passed by the Court of the learned Ad hoc Additional Sessions Judge-I, Rohtas at Sasaram, in Sessions Trial Case No. 448 of 2006 (CIS Case Code No. 02965/2013). By the said judgment, the appellant has been convicted for the offence punishable under Section 308 of the Indian Penal Code (hereinafter referred to as “IPC”) and sentenced to undergo rigorous imprisonment for a period of three years, along with a fine of Rs. 50,000/-. In default of payment of fine, the appellant has been further directed to undergo simple imprisonment for a period of six



months.

Prosecution Story

2. The prosecution story as appearing from the FIR, in brief is as follows:

As per the informant, on 05.05.2006, his younger brother, Upendra Chaudhary along with one co-villager Sudhir Chaudhary came to his shop to roast a chicken. At that time, turmeric was not available at the shop then his brother went to the *chaat* shop of the appellant, situated near the shop of the informant to bring turmeric. As per the informant, the spice (turmeric) was not given then the appellant and others namely, Lalo Chaudhary, Munna Chaudhary and Bhoa Chaudhary all sons of Laxmi Chaudhary along with the said Laxmi Chaudhary assaulted his brother with lathi and danda and during the course of the assault, the appellant inflicted a knife blow at on right side of the body of his brother with an intention to kill him. On account of the assault committed by the accused, the informant's brother, sustained injuries on his stomach and other parts of his body.

3. The informant, Sikander Chaudhary, recorded his fardbeyan at Bose Clinic on 05.05.2006 at 8:15 hours, describing the aforesaid prosecution story. On the basis of the



fardbeyan of the informant, a formal FIR bearing Dehri Town P.S. Case No. 142 of 2006 was lodged for the offences punishable under Sections 341, 323, 324, 307, and 504 of the IPC read with Section 34 of the IPC against five accused persons, including the appellant, thereby setting the criminal law in motion.

4. After the completion of investigation, the police charge-sheeted all the FIR-named accused persons, including the appellant.

5. The appellant and the other four charge-sheeted accused persons faced trial jointly and were charged for the offences under Sections 341, 323, 324, 307, and 504, all read with Section 34 of the IPC. The charges were read over to the appellant and the other co-accused by the trial court, to which they pleaded not guilty and claimed to be tried. During the trial, one co-accused, namely Laxmi Chaudhary, died, and owing to that, the trial stood abated against him, while the remaining accused, including the appellant, continued to face trial.

6. During the trial, the prosecution examined altogether four witnesses to bring home the charges, who are as under:

Sl. No.	Name	Relevancy
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PW-1	Surendra Chaudhary	He claimed himself as an eye-witness
PW-2	Ram Pravesh Chaudhary	He claimed himself as an eye-witness
PW-3	Sikandar Chaudhary @ Sikendra Chaudhary	Informant
PW-4	Dr. Abdul Quam Khan @ Dr. Abdul Quiyyum Khan	He medically examined the injured

7. In addition to above ocular evidence, the prosecution produced and exhibited the following documents in documentary evidence:

Sl. No	Relevany
Exhibit-1	Signature of informant on the fardbeyan
Exhibit-1/1	Signature of one Nakul Chaudhary on the fardbeyan of the informant
Exhibit-2	Injury report of the injured Upendra Chaudhary

8. After completion of the prosecution evidence, the statements of the accused, including the appellant, were recorded under Section 313 of the Cr.P.C., giving them an opportunity to explain all the material circumstances appearing against them from the prosecution evidence. The appellant, while recording his statement, denied all the said material circumstances and claimed himself to be innocent, though he did not take any specific defence while recording his statement.

9. The appellant produced and examined three



witnesses in defence, who are as under:

DW-1	Laxmi Chaudhary	One of the accused now deceased
DW-2	Mritunjay Kumar Singh	Formal witness
DW-3	Dr. Abdul Quam Khan @ Dr. Abdul Qaiyyum Khan	Medical Officer

10. In addition to oral defence evidence, the appellant produced and exhibited the following documents in documentary evidence:

Exhibit-A	The fardbeyan of Laxmi Chaudhary
Exhibit-B & C	Certified copy of the formal FIR and chargesheet in connection with Dehri Town P.S. Case No. 143/06
Exhibit D & E	Injury reports of co-accused Haridwar Chaudhary @ Lalo Chaudhary, Luxman Chaudhary @ Laxmi Chaudhary (DW-1)

11. The learned trial court acquitted the co-accused, namely, Munna Chaudhary, Bhola Chaudhary, and Lalo Chaudhary @ Haridwar Chaudhary, of the charged offences, holding that the prosecution failed to prove the charges against them. On the other hand, the appellant was convicted for the offence under Section 308 of the IPC, though he was not charged for the said offence; however, the same was a lesser offence than the charged offence punishable under Section 307



of the IPC. Surprisingly, the learned trial court did not record any final conclusion as to whether the prosecution had been able to prove the other charged offences punishable under Sections 324, 323, 504, and 341 read with Section 34 of the IPC or not, and sentenced the appellant only for the offence under Section 308 of the IPC for which he was convicted. While convicting the appellant for the said offence under Section 308 of the IPC, the learned trial court observed that the appellant, while stabbing the injured Upendra Chaudhary, had exercised his right of private defence excessively and, therefore, was not entitled to the benefit of the right of private defence as provided under Section 96 of the IPC; however, it found the appellant's act to fall within the purview of an attempt to commit culpable homicide not amounting to murder and, accordingly, convicted him for the offence under Section 308 of the IPC.

12. Before the trial court, the appellant mainly took the defence that at the time of the alleged occurrence, he was at his shop, and it was the prosecution party who came to his shop to demand spice (turmeric), which was initially denied, resulting in an altercation between them. Thereafter, the prosecution party allegedly became aggressive and started assaulting the appellant's father, including Laxuman Chaudhary, Haridwar



Chaudhary, and others, by using a *chiran lakdi* (wooden stick), which had not yet been sharpened for cutting. It was further contended that the aggressive act of the prosecution party with the said wooden stick gave reason to the appellant and others to apprehend the possibility of grievous injury from such an attack, and, in order to save himself, the appellant proceeded to defend himself. In that process, a simple knife generally used in the shop was allegedly used by him in self-defence, which resulted in an injury to the stomach of the injured. Accordingly, it was contended that he had no intention to assault the injured, Upendra Chaudhary, and, therefore, he was entitled to the benefit under Section 96 of the IPC.

Submissions on behalf of the appellant

13. Mr. Dharmendra Kumar Singh, learned counsel appearing for the appellant, has argued that there is sufficient evidence on record to establish the plea of private defence taken by the appellant before the trial court. In this regard, reliance can be placed upon the evidence of the defence witnesses, DW-1, DW-2, and DW-3, as well as the injury reports of accused Laxuman Chaudhary @ Laxmi Chaudhary (since deceased) and one Haridwar Chaudhary, which were filed before the trial court and exhibited as Exhibits D and E. It is submitted that from a



perusal of the FIR itself, it is clearly evident that the injured himself had gone to the shop of the appellant to obtain spices (turmeric), which clearly shows that the appellant had no intention to assault him at that time. It is further contended that when an altercation took place between the appellant and the injured after the appellant refused to give turmeric, the first blow was inflicted by the prosecution party using a wooden stick, which was in a somewhat sharp condition, upon persons from the appellant's side. Thereafter, the occurrence escalated, resulting in injuries to the injured as well as others. It is further submitted that the prosecution party, particularly PWs-1, 2, and 3, concealed the true manner of occurrence, as the prosecution failed to explain the injuries sustained by accused Laxmi Chaudhary and Haridwar Chaudhary, who were injured at the same time when the informant's brother is said to have sustained injuries. All of them were medically examined by the same doctor, PW-4, on the same day and around the same time. Learned counsel further submits that the prosecution failed to produce the injured, Upendra Chaudhary, the most crucial witness, before the trial court without furnishing any explanation, despite sufficient attempts noted by the trial court in the impugned judgment. Such non-production of the injured



witness is completely fatal to the prosecution case. It is lastly submitted that the Investigating Officer was also not produced or examined by the prosecution without any explanation, which seriously prejudiced the appellant. In the absence of the Investigating Officer's evidence, the appellant was deprived of an opportunity to cross-examine him on vital aspects such as the actual place of occurrence, the manner of occurrence, the weapons allegedly used by both sides, and the genesis of the occurrence. Further, the contradictions emerging in the statements of prosecution witnesses PWs-1, 2, and 3 could not be confronted to the Investigating Officer in light of their statements recorded under Section 161 of the Cr.P.C., thereby depriving the appellant of a valuable statutory right.

Submissions on behalf of learned APP for the State

14. On the other hand, Mr. Bipin Kumar, learned APP appearing for the State, submits that from the prosecution story, it is evident that the injured, who is the brother of the informant, innocently went to the shop of the appellant to bring turmeric, and such an act does not fall within the purview of any aggressive conduct on his part. It is further submitted that the manner of assault and the nature of the weapon used by the appellant are sufficient to reject the appellant's plea of the right



of private defence, particularly to the extent of attempting to commit culpable homicide not amounting to murder. It is further argued that the non-examination of the injured is not fatal to the prosecution case, as, in view of the defence evidence itself, it is an admitted position that the informant's brother sustained an injury on a vital part of his body, which has been duly proved by the medical evidence of PW-4. Hence, the conviction of the appellant under Section 308 of the IPC is proper and legal and does not call for any interference, and the appeal is devoid of merit and fit to be dismissed.

Consideration and analysis

15. I have heard both sides and perused the impugned judgment, the evidence adduced by both sides available on the trial court record, and also taken into account the statement of the appellant. From the prosecution story, one thing is quite clear that at the time of the alleged occurrence, the appellant was at his shop, and it was the injured himself who went to the appellant's shop to bring turmeric for the purpose of roasting chicken. The shop of the appellant and the shop of the informant are situated nearby, at a distance of about 10 to 15 feet, and in both shops knives were frequently used for the purpose of their work, which fact is not under dispute. From a perusal of the



evidence of PW-4, who was also produced and examined by the appellant in his defence, it is further clear that on the same day and at the same time, the informant's brother, accused Laxuman, and one Haridwar Chaudhary from the accused side were examined by him in respect of their injuries, and their injury reports were exhibited by appellant side before the trial court. The said medical evidence suggests that some free fight took place between both parties, which was concealed by the prosecution witnesses.

15.1. In light of the defence evidence, particularly DW-1, which finds support from DW-3 an important witness who was also produced by the prosecution to the extent of the injuries of the said injured it can be deemed that the informant attempted to change the manner of occurrence in his fardbeyan, which goes against the prosecution case. In this regard, the evidence of PW-2 is important. The witness (PW-2) claimed himself to be an eye-witness and deposed in his chief-examination that he saw the accused Laxhami, Bhola, Lalo, and Chunmun (the appellant) assaulting the informant's brother. However, in his cross-examination, at paragraph 4, he stated that the *marpit* took place in the middle of the road, from where the appellant's shop was situated about 15 feet away. The said place



of occurrence, as disclosed by this witness, was not revealed by the informant in the fardbeyan. In this regard, the examination of the Investigating Officer as a prosecution witness was very important, but he was not produced and examined by the prosecution. However, one thing is quite clear that the manner of occurrence remained somewhat different from that detailed in the fardbeyan by the informant. Nevertheless, in view of the evidence of PW-4, who medically examined the injured, and also in light of the defence evidence, particularly the appellant's plea of the right of private defence, the use of a sharp weapon in assaulting the injured on the abdominal area, as deposed by the prosecution witnesses, can be deemed to be proved. But, the non-examination of the informant's brother the most important witness for the prosecution without any explanation appears to be fatal to the prosecution case for proving the actual manner of occurrence and the non-explanation of injuries sustained by two persons from the accused side at the same time of alleged occurrence also proves the occurrence being happened in different manner. His evidence was most crucial not only for explaining those injuries but also for examining the appellant's plea of private defence. In this regard, reference may be made to the observation of the Hon'ble Apex Court in *Prabhat @ Bhai*



Narayan Wagh and Others v. State of Maharashtra, reported in (2013) 10 SCC 391. The relevant observation contained in paragraph 11 of the said judgment is reproduced hereinbelow:

" 11. We find discrepancies in the version given at the very initial stage. The discrepancies and contradictions noticed by the trial court were found to be minor in nature by the High Court, but in our view, there is serious flaw in the conduct of the case by the prosecution and the discrepancies and contradictions pointed out by the trial court cannot be ignored as minor. No explanations is forthcoming as to why Shobhana Parkar was not examined in this case. Even according to the prosecution, Shobhana Parkar had also received injuries on her arm when she tried to intervene. The prosecution story is that the deceased Sanjay Gaonkar ran to the house of Shobhana Parkar and that he was attacked just inside the door of the house of Shobhana Parkar. If that being so, in our view, Shobhana Parkar, who herself was injured and tried to intervene, was a crucial witness. Non-examination of Shobhana Parkar as well as the contradictory versions in Ext. 28 and Ext. 27 as well as the discrepancies and omissions pointed by the trial court, create a dent in the prosecution story."

16. The learned trial court did not grant protection to the appellant under Section 96 of the IPC, though it concluded in the impugned judgment that the defence was able to show that the accused had acted in the exercise of their right of private defence and to that extent, were protected by the provisions of Section 96 of the IPC. However, in the same paragraph of judgment, it was held that the act of the appellant



in causing a knife injury to the victim could not be considered to be within the parameters of the right of private defence and, as such, no protection could be granted to him for this violent act, even though it was claimed to be in exercise of the right of private defence. From this finding, it can safely be inferred that an incident of *marpit* or a free fight took place between both the parties. In such circumstances, the degree of provocation used by either side was not easy for the trial court to determine, particularly in the absence of the evidence of the most important witness, the injured himself. On the other hand, the conduct of the prosecution party, such as, going to the appellant's shop, demanding spices, the subsequent altercation between the parties, and the use of a wooden stick (*lakri chiran*) by the prosecution party in assaulting two persons from the accused side can reasonably be deemed sufficient to show prosecution party to be aggressor to some extent and an apprehension in the mind of the appellant that the acts of the prosecution party might result in hurt to him. In the light of these circumstances particularly in the absence of the evidence of sole injured and further owing to non-examination of I.O., the prosecution can not claim to be able to have proved all main ingredients of the offence under Section



308 of the I.P.C. for which the appellant has been convicted and sentenced.

Conclusion

17. Accordingly, I find that the approach of the trial court in convicting the appellant for the offence under Section 308 of the IPC is not proper and legal. Consequently, the conviction of the appellant under Section 308 of the IPC is not sustainable in the eye of law. As such, the impugned judgment of conviction dated 24.02.2014 and order of sentence dated 04.03.2014 are hereby set aside, and the appeal stands allowed.

18. The appellant is on bail, accordingly, his bail bonds are cancelled, and he and his sureties are discharged from their respective liabilities.

19. Let a copy of this judgment along with the trial court records be sent to the trial court forthwith for necessary compliance.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.02.2026
Transmission Date	10.02.2026

