

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1324 of 2025**

Arising Out of PS. Case No.-32 Year-2010 Thana- GARKHA District- Saran

=====

Ramwakil Singh S/O Late Ramvriksh Singh Resident Of Village- Majlishpur,
P.s.- Garkha, Dist.- Saran At Chapra

... .. Appellant/s

Versus

1. The State of Bihar
2. Mithilesh Singh @ Mithilesh Kumar Singh Son of Late Ramprit Singh @
Late Ramprut Singh Resident of Village- Majlishpur, Police Station-
Garkha, District- Saran at Chapra
3. Pawan Kumar Singh Son of Ram Swaroop Singh. Resident of Village-
Majlishpur, Police Station- Garkha, District- Saran at Chapra
4. Sanjay Singh @ Sanjay Kumar Singh Son of Late Rajendra Singh. Resident
of Village- Majlishpur, Police Station- Garkha, District- Saran at Chapra
5. Shailendra Singh @ Shailendra Kumar Singh Son of Late Bhagwan Singh
@ late bhagwat singh Resident of Village- Majlishpur, Police Station-
Garkha, District- Saran at Chapra
6. Manoj Singh @ Manoj Kumar Singh Son of Ram Swaroop Singh Resident
of Village- Majlishpur, Police Station- Garkha, District- Saran at Chapra

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Ram Binod Singh, Advocate
For the Respondent/s	:	Mr. Satya Narayan Prasad, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

4	06-02-2026	This is an appeal against acquittal filed by the informant assailing the judgment passed in Sessions Trial No.
---	------------	---

109 of 2012 on 14th May, 2025.

2. The learned Senior Advocate on behalf of the appellant submits that there were in all five accused persons among them accused no. 6 (Manoj Singh) was convicted under Section 325 of the Indian Penal Code (herein to referred as “IPC”). The learned Trial Court held that the prosecution failed to prove the charge under section 307 of the IPC against the accused persons. Therefore, the impugned judgment is perverse in order to substantiate his argument.

3. The learned Senior Advocate first takes us to paragraph 12 of the impugned judgment, where the learned Trial Judge recorded the injuries found by the Medical Officer at the time of medical treatment on the persons of the informant/appellant and his brother. Referring to the injury report, it is submitted by the learned Senior Advocate that injured *Ramvriksh Singh* was assaulted in such a way that the upper part of *fibula* in the left leg was fractured. The informant received sharp cut injury on left *parietal bone* of the scalp which is a vital organ of the body. It is also submitted by him that Section 307 of the IPC postulates that if any person attempts to commit 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, in such a case, it is open for the Court to hold the accused guilty of committing offence under Section 307 of the IPC. Even in order to prove a charge under Section 307 of the IPC, the accused need not commit any physical assault upon the victim. If he commits some act which prove his intention or knowledge that if such act would have been committed, the victim would have been murdered. It is open for the Court to hold the accused guilty under Section 307 of the IPC.

4. The learned Senior Advocate on behalf of the appellant submits that the intention or knowledge can be gathered from the sum-total of evidence. There cannot be any direct evidence of intention of the accused or their knowledge. Intention can be assessed from the act of the accused, the manner in which the victim was attempted to be assaulted and all other surroundings circumstances.

5. The learned Trial Court was absolutely wrong that the prosecution failed to prove the charge under Section 307 of IPC. Firstly, on the ground that the informant in his evidence as PW-1 failed to depose the names of the persons along with the types of arms being carried by them. Secondly, the informant and PW-4 stated that accused no. 1, Mithilesh Singh assaulted

his brother on his head by a sharp cutting weapon. However, the said injury was simple in nature. Therefore, the learned Trial Judge held that the ingredients of offence was not proved by the prosecution.

6. It is submitted by the learned Senior Advocate on behalf of the appellant that here lies the perversity in the finding of the learned Trial Judge. The nature of injury does not matter, the infliction of injury over the head of the brother of the informant by Mithilesh Singh, who was armed with a sharp cutting weapon along with four other accused persons, establishes the ingredients of offence under Section 307 of the IPC read with Section 149 of the IPC because of the fact that there is ample evidence that the accused persons came in a group and they had common object to commit murder of the informant and his brother.

7. In support of his contention, he referred to a judgment of the Hon'ble Supreme Court in the case on State of ***Madhya Pradesh Vs. Kashiram and Ors.*** reported in **2009 4 SCC 26**. In paragraph 13 of the aforesaid reported decision, it is observed by the Hon'ble Supreme Court that:-

“ 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. 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 circumstances mentioned in the Section. Therefore, an accused charged under Section 307 of I.P.C. cannot be acquitted merely because the injuries inflicted on the victim were in the nature of simple hurt.”

8. Having heard the learned Senior Advocate on behalf of the appellant and the learned Advocate on behalf of the State. This Court likes to record, at the outset, that in order to prove a charge under Section 307 of the I.P.C. It is the duty of the prosecution to establish all ingredients of murder, sort of death. It is true that an accused can be held guilty for the offence under Section 307 of the I.P.C., if any act is accomplished by him with intention or knowledge and under such circumstances that if such act was successful, the victim would have been murdered and he would have been charged under Section 302 of the I.P.C. In other words but for the death, the accused was charged under Section 307 of the I.P.C.

9. Now, the vital question that arises is as to how the intention or knowledge of the accused persons can be gathered by the Court because the intention and knowledge are mental act

and there cannot be any direct evidence of intention and knowledge. However, the informant who is best person to understand or apprise the intention or knowledge of the accused persons. In this Regard, First Information Report is a vital piece of evidence to gather the intention or knowledge of the accused persons. The informant did not state that the accused persons had the intention to commit murder of the informant and his brother who were working in the field or that they had the knowledge that by assaulting them the informant and his brother would be murdered. Only one sentence has been stated against one accused, *Shailendra Singh*, who allegedly open fire by a pistol in his hand with the intention to kill them. However, no firearm was recovered from *Shailendra Singh*, no blank cartridge was found from the place of occurrence by the Investigating Officer and nothing was seized in support of such allegation.

10. Learned Senior Advocate on behalf of the appellant also submits that all the accused persons formed an unlawful assembly common object of whom was to commit murder of the informant and his brother and in furtherance of such common object they assaulted the informant and his brother. Therefore, the respondents ought to be held guilty with

the aid of Section 149 of the I.P.C. on the principle of constructive liability.

11. We are in agreement with the learned Senior Advocate on behalf of the appellant that Section 149 has its foundations on constructive liability which is *sine qua non* for its operation. The emphasis is on the common object and not on common intention. By filing the instant appeal, the appellant assailed the judgment that the Trial Court failed to consider the case of the common object of the accused persons. However, on perusal of the F.I.R. itself, it is found that the accused persons attacked the informant and his brother over land dispute and cultivation on a *Benami* land by the appellant and his brother, so even if the accused persons constituted an unlawful assembly to commit some offence in furtherance of the common object of the assembly, the said common object as pleaded by the appellant was to resist them from cutting crops from the land cultivated by them. Therefore, the evidence on record does not justify the case of common object for committing murder of the informant/appellant and his brother.

12. Accordingly, we do not find any merit in the instant appeal and we also do not find any scope to revisit the judgment passed by the Trial Court in SC No. 109 of 2012.

13. Therefore, the instant appeal is summarily dismissed.

(Bibek Chaudhuri, J)

(Sunil Dutta Mishra, J)

Jyoti Kumari/-

U			
---	--	--	--