

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 70 of 2009

Badal Dutta Chowdhury & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Dipanjan Chatterjee
Ms. Kakan Das

For the State : Mr. Avishek Sinha

Judgment on : 25.03.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against a order of conviction and judgment dated 16.01.2009 and 17.01.2009 passed by the Learned Additional Sessions Judge, Fast Track, 2nd Court, Contai, Purba Medinipur in S.T. No.28/August-1999, thereby convicting the appellants under Section 307/324/323 of the Indian Penal Code and sentencing appellant no.1 to suffer rigorous imprisonment for 7 years and also to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for 6 months for the offence under Section 307 of the Indian Penal Code and appellant no.2 to suffer simple imprisonment for 3 months more and also to pay fine of Rs.500/- in default to suffer simple imprisonment for 1 month more for the offence under Section 324 of the Indian Penal Code. Furthermore, appellant no.3 and appellant no.4 to suffer rigorous imprisonment for 10 days and also to pay a

fine of Rs.100/- in default to suffer simple imprisonment for 2 days more, for the offence under Section 323 of the Indian Penal Code.

2. The prosecution case precisely stated the complainant on 03.06.1997 after school was returning to her house. When the complainant went towards her house crossing Bhaduamre, she noticed her brother Sumit Kumar Paul and nephew Chinmoy Paul were repairing fencing surrounding her land. Suddenly the appellant no.1 and his three sons being armed with deadly weapons, attacked the complainant's brother and nephew uttering abusive languages. The appellant no.1 caught hold of hair of the complainant's brother and kicked his belly and thrust him on the ground. Thereafter, the appellant no.2 assaulted complainant's nephew, on his neck by dint of "*Bhojali*" and threw him on the ground. The appellant no.3 and appellant no.4 kicked complainant's nephew and assaulted him by fists and blows and tried to kill him by throttling. The complainant being terrified cried aloud seeking for help of the nearby people. The appellant no.1 and his three sons thereafter attacked the complainant, uttering abusive languages and hit her by a "*Bhojali*" aiming her head. The complainant saved her head but the "*Bhojali*" fell on her shoulder. Instantaneously, the complainant lost her sense. Thereafter, the witnesses reached at the spot and saved the complainant from the clutches of the appellants.
3. On the basis of a written complaint lodged by the complainant, the Patashpur Police Station Case No. 37/97 dated 03.06.1997 under Sections 323/324/326/307/349 of the Indian Penal Code was initiated for investigation.

4. Upon conclusion of the investigation, the Investigating Agency submitted a charge-sheet being no.82/97 dated 30.10.1997 under Sections 323/326/341/307/34 of the Indian Penal Code against the appellants to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 17 witnesses and examined certain documents while the defence examined one witness.
6. The Learned Advocate representing the appellants submitted as follows:-
 - i. As per the prosecution version as the alleged incident took place at 10:30 a.m., and the complaint was received at 12:15 hours, whereas it was specifically stated by the PW-1 after having injury, the PW-1 became senseless and injury was so grievous that she could not be treated at Primary Health Centre. Therefore, in such a poor physical condition it was hardly possible for any person to lodge a complaint at Police Station without going to hospital at first.
 - ii. There was a previous dispute and a Title Suit pending before the Learned Civil Court which caused false implication of the appellants.
 - iii. The investigation by the police was improperly conducted and the result of such investigation was doubtful, on the basis of which the appellants could not have been charged and could not have been convicted.
 - iv. Recovery of offending weapons i.e., "*Hansua*" had not been conducted. At first, it was alleged that assault was by appellant no.1 upon the PW-1 i.e., the victim by a "*Bhojali*". Whereas subsequently,

it was stated by PW-1 that she was assaulted with "*Hansua*" and "*Hansua*" was called as "*Bhojali*" by PW-1. The Learned Trial Judge had failed to appreciate "*Bhojali*" and "*Hansua*" were two different articles and nature of injury inflicted by two different weapons were different in nature as stated by the doctor i.e. PW-9 in his evidence.

- v. The recovery of incriminating weapons i.e. "*Hansua*" had not at all been established as the seizure witness Jogesh Bhowmik had not been examined on dock at the time of trial.
- vi. The Learned Trial Judge had failed to consider the offending "*Hansua*" was seized but the same was not sent for chemical examination to finger print experts to prove the prosecution case.
- vii. The Leaned Trial Judge failed to appreciate the complainant i.e. PW-1 was advised by the doctor i.e. Medical Officer, Patashpur, B.P.H.C to carry on treatment at Contai Sub-Divisional Hospital but the injured complainant was admitted at a private nursing home and the discharge certificate issued by the Private Nursing Home was highly doubtful so far as genuinity and authenticity was concerned and did not support the prosecution case as no rubber stamp or seal of the nursing home authority was affixed on the discharge certificate. The date written over the discharge certificate was over written and that was admitted by the concerned doctor i.e. PW-9. The discharge certificate also did not disclose the history of wounds and the discharge certificate was not bearing any chronological number.

- viii. The wearing apparels of injured victims of PW-1 was not seized and was not sent for chemical examination or forensic test.
- ix. The statements made by the defense witness were totally brushed aside without any reason at the time of delivering the judgment.
- x. The injury report and existence of injury issued by Dr. Ashish Ranjan Kuar, PW-17 who was a Medical Officer at Patashpur, B.P.H.C. was also doubtful.
- xi. If a fact in issue or a relevant fact was not supported by the evidence adduced by the parties, it was not open to the Court to hold that fact to have been proved on its own surmise and fanciful reasons. The instant Judgment and order of conviction and sentence was devoid of proper appreciation of the evidence on record was liable to be set aside.
- xii. The Learned Trial Judge failed to consider the fact that before the alleged occurrence happened, the appellant no.1 was assaulted on 03.06.1997 by certain persons at about 9 O' clock and due to such assault two legs were fractured and as a result, the appellant no.1 was treated in hospital for near about one month. The Learned Trial Judge failed to appreciate that over such issue another case being Patashpur P.S. Case No.39/97 dated 27.07.1997 under Sections 147/148/149/448/427/325/380 of Indian Penal Code was initiated and Charge-sheet No. 49/97 was filed and the case was pending now. Therefore, in such a condition, it was hardly possible for the appellant no.1 to assault others.

- xiii. The evidence of PW-16 i.e. the Investigating Officer was not at all reliable in support of the prosecution case and was full of contradictions.
- xiv. The Complainant went to the Patashpur P.S. on 03.06.1997 and lodged one written complaint addressing the Officer-in-Charge, Patashpur P.S. It was stated in the complaint that after closure of school on 03.06.1997.
- xv. PW-16 had stated in his evidence that in the case diary it was written that the *de facto* complainant handed over the medical documents and photocopies of certain medical documents were not seized under proper seizure list and the Investigating Officer did not collect any injury report of the victim from any hospital of Calcutta.

7. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.

8. A circumspection of prosecution witnesses reveals as follows:-

- i) PW-1 deposed when she was returning home from school and was proceeding towards her purchased plot, she saw that her brother namely Sumit Kumar Paul and nephew Chinmoy Paul were fencing the plot. At that time, appellant no.1 and his three sons being armed with sharp cutting weapons attacked PW-1's nephew and brother Chinmoy Paul and Sumit Kumar Paul respectively. The appellant no.1 grabbed the hair of her brother namely Sumit Kumar Paul and

kicked his abdomen and was also assaulted with blow of fists on his face by appellant no.4. The appellant no.2 assaulted PW-1's nephew namely Chinmoy Paul on his right shoulder at the neck, or on his right upper arm by "*Bhojali*" or "*Hansua*". Thereafter, PW-1 cried aloud seeking for help. The appellant no.1 rushed to PW-1, gripping the "*Bhojali*" in his hand, uttering words that expressed his intention to kill her and assaulted PW-1's right shoulder by a "*Bhojali*" causing bleeding injury.

PW-1 further deposed she was brought by a trolley to the P.S. and shifted therefrom to Patashpur B.P.H.C., for treatment. From Patashpur B.P.H.C., she was referred to Contai S.D. Hospital. PW-1 bleeding profusely went to Egra B.P.H.C., for treatment. Due to severity, PW-1 was treated at the Nursing Home of Dr. Deb Roy of Contai for considerable period. Thereafter, she was treated by Dr. Tapash Chakraborty.

- ii) PW-1 in her cross-examination reconfirmed the incident to be absolutely true. She clarified in their village "*Bhojali*" was also called as "*Hansua*" and according to her "*Bhojali*" and "*Hansua*" were the same type of weapons.
- iii) PW-2 deposed on 03.06.1997, he was posted at Egra B.P.H.C., as a medical officer. On that date he examined the complainant and on examination he found a large incised wound measuring 5" x 2" over the right shoulder girdle with profuse bleeding, pain, swelling and tenderness. The right shoulder joint was exposed and it was sliced

off. The bone was sliced off by 1" x ½". Acromion process of the right scapula was sliced off ½" x ½" bone and profuse swelling, tenderness, pain with difficulty in raising the right forearm, X-ray of the right shoulder grid confirmed the fracture. He referred the patient to the surgeon of Contai S.D. Hospital. He further deposed that the injury was grievous in nature and it could be caused by sharp-cutting weapon. The injury report prepared by him, was marked as Exbt.-2.

- iv) PW-2 in his cross-examination deposed the profuse bleeding for more than 3½ hours might have caused death. It was unlikely that such type of injury might be caused if any instrument like "*Hansua*" accidentally fell on the subject.
- v) PW-3, PW-5, PW-7, PW-8, PW-10 and PW-13 were eye witnesses to the occurrence. They all vividly described the incident corroborating the evidence of the victims i.e. PW-1, PW-4 and PW-6. From their oral evidence, it had been fully substantiated that the appellant no.1 assaulted PW-1 by a "*Bhojali*" or "*Hansua*" severely and the other appellants also assaulted the victims i.e. PW-4 and PW-6 by "*Hansua*", *lathi*, fists and blows.
- vi) PW-4 deposed he was one of the victims of the case. The appellant no.2 assaulted him on his right shoulder and right arm by a 'bhojali' and the appellant no.3 assaulted him on his right leg below the knee by a *lathi* and the appellant no.1 assaulted PW-1 by a "*Bhojali*". PW-4 in his cross-examination stated the appellant no.1 uttered certain words expressing his intention to kill PW-1.

vii) PW-6 deposed he was one of the victims of the case. His evidence corroborated with the evidence of PW-1 and PW-4 described on the date of occurrence he and PW-4 were repairing the fencing around a purchased land. The appellant no.1 and his three sons rushed to that land with *lathi*, "*Bhojali*" and "*Tangi*". The appellant no.1 caught hold his hair and kicked his abdomen and pushed him on the ground. The appellant no.4 throttled him and assaulted him by blows and fists, whereby he sustained bleeding and swelling injury on his nose.

PW-6 also deposed the appellant no.1 uttered words before assaulting PW-1, which expressed his intention to commit murder. He further stated PW-1 and PW-4 were sent to the hospital for treatment. PW-4 and PW-6 were discharged from the hospital but PW-1 was referred to Contai S.D. hospital for treatment. On their way to Contai S.D. Hospital from Patashpur B.P.H.C., condition of PW-1 deteriorated and she was taken to Egra hospital. The doctor of Egra hospital advised to take her to Contai S.D. hospital for better treatment and she was taken to the nursing home of Dr. B. Deb Roy, Contai.

viii) PW-6 in his cross-examination stated PW-1 purchased 22 decimals land out of 102 decimals land being dag no.105/690 in the year 1995. Originally the entire land was in the name of Ananda, Sunil and Gita Dutta Chowdhury. Gita was the wife of appellant no.1. Vendors of PW-1 purchased the land from Ananda and Sunil. Out of total 102 decimals of land Gita Dutta Chowdhury was owner of only

34 decimals of land and rest 68 decimals of land was owned by Ananda and Sunil. So, Ananda and Sunil did not sell in excess of their share to Badal Jana and Narayan Jana, who again sold 12 decimals of land to the complainant. It further revealed that neither the appellant no.1 nor the appellants no.2, 3 and 4 were co-owners of the plot no.105/690. So their criminality could not be guarded under cover of the terms of nature of civil dispute. The witness PW-6 also could not be shaken by the defence during cross-examination. The cross-examination of PW-1 and PW-4, the cross-examination of PW-6 also proved the incident really occurred.

- ix)PW-9 deposed he was an Orthopedic Surgeon. He proved the prescription which was marked as Exbt.-4. On 02.09.97, he treated the complainant as an indoor patient in South Kolkata clinic and nursing home with a history of discharging of sinus from old wound over her right shoulder.
- x) PW-11 deposed the plot no.105/690 originally belonged to his father who gifted the said land, to his mother. His mother, thereafter disposed of the plot by way of Nirupanpatra to him, Anadbandu and Gitarani Dutta Chowdhury each having 34 decimals of land. Thereafter, each of them started to possess their respective portion of 34 decimals of land. Anadbandu and PW-11 sold their portion to Narayan and Badal Jana. Narayan and Badal Jana then sold 12 decimals of land out of 68 decimals of land to the complainant. From the oral evidence in record, they find that the complainant was

possessing her 12 decimals of land by raising fencing all around. Therefore, in no way it could be said that by purchasing 12 decimals of land and by raising or repairing fencing the complainant provoked the appellants to create such an incident.

xi) PW-15 deposed he was the S.I. of police. He proved his endorsement on the complaint which had been marked as Exbt.-1/1. The formal F.I.R. had been proved by him and marked as Exbt.-1/2.

xii) PW-16 deposed he was the Investigation Officer of that case. He proved the seizure list which was marked as Exbt.-3/2. He identified the material Exbt. or the 'hansua' which was used to assault the victims. The 'hansua' was not sent for chemical examination to compare the blood of the victim with the blood stained in weapon nor it was sent to the finger print expert. There was sufficient direct evidence of the eye witnesses as well as substantive oral evidence of the victims that the appellant no.1 assaulted the complainant by dint of a sharp-cutting weapon. Even if "*Hansua*" was not exhibited it would not be fatal for the prosecution since the incident of assault had already been proved by sufficient substantive evidence. The Investigating Officer collected the injury reports which had been exhibited and proved by the doctors.

xiii) PW-17 deposed on 03.06.1997 he was posted at Pataspur B.P.H.C., as a Medical Officer and he examined the complainant at Patashpur B.P.H.C. On examination he found 5" x 1½" incised wound over right shoulder of the complainant with exposure of joint. He

further deposed the age of injury was recent within 6 hours of his examination. The injury report was marked as Exbt.-6. On the same day, he also examined one Chinmoy Paul and found 1½" x 2⅔" incised injury over the right neck with bleeding. He also found lacerated wound measuring 1" x ½" over his right leg and another incised injury measuring 2" x ⅓" over his right arm. Age of injury was recent within 6 hours of his examination. According to PW-17 all the injuries of Chinmoy Paul were simple in nature. He prepared the injury report which was marked as Exbt.-7.

- xiv) DW-1 deposed on 03.06.97 he was attached to Patashpur B.P.H.C., at a medical officer. On that date, he examined one Puspendu Dutta Chowdhury i.e. the appellant no.3 with the history of assault by one Saraswati Pal with an axe. On examination he noticed 5" linear incised injury over left arm and scapular region. He also found swelling on left hand with fracture 5th metacarpal bone. The third injury which he found was abrasions over neck. The nature of injury was grievous but was to be confirmed after radiological investigation. Prognosis was favourable. He mentioned the identity mark of the patient in the injury report which was marked as Exbt.-A. He opined the injury might be caused if someone was assaulted by a sharp cut weapon and the fracture injury might be caused if assaulted by any hard and blunt weapon. The third injury might be caused if the victim was throttled.

On 07.06.1997, he examined one Badal Dutta Chowdhury i.e. the appellant no.1 with the history of physical assault by one Sumit Pal by boulder. On examination, he found fracture on right leg with gross swelling of the leg with lacerations. The injury no.2 was 1½” laceration on right elbow dorsal aspect. The injury no.3 was abrasion on back. The patient was advised admission and X-ray of the injured places, age of injury was 4/5 days. Cause of injury might be assaulted by blunt weapon. Nature of injury was grievous. Prognosis was favourable. He had noted the identification mark of the patient in the report which was marked as Exbt.-B. The injury no.1 was grievous injury. Gross swelling meant inflammation of the entire effected portion. Patient with fracture of leg injury could not even walk.

- xv) DW-1 in his cross-examination stated the linear incised injury on Puspendu Dutta Chowdhury i.e. appellant no.3 was a superficial one and for that reason he did not mention its depth. If an axe was used for assaulting a person for the purpose of assault, then some deeper incised injury was expected. However it depended upon the manner of use. Such type of linear incised injury might be caused by a blade. Such incised linear injury on the scapular region could not be self-inflicted but the other linear injury might be self-inflicted.

He did not mention the measurement of the swelling of left hand of appellant no.3. He did not mention the dimension of the abrasion on neck. Such abrasion on neck might be self-inflicted. He was not sure

about the fracture on metacarpal region and for that reason he advised X-ray of the injured portion. From Exbt.-A and Exbt.-B, it was not possible for him whether he informed the police station or not of injuries caused or when he sent such information. Since there was no X-ray machine at Patashpur B.P.H.C., patients were referred to Sub-Divisional Hospital. In the reports, it was not mentioned whether he referred the patient to Contai S.D. Hospital or not.

The patient/appellant no.1 stated to him that the incident of assault on him took place at 12:00 p.m. on 03.06.1997. It was not mentioned in the Exbt.-B as to whether before coming to him for treatment, the patient was treated by any other doctor on that date or on previous dates after receiving injury.

9. The Hon'ble Supreme Court, in the case of **STATE OF MAHARASHTRA vs. BALRAM BAMA PATIL AND OTHERS**¹, has made the following observations:-

“9. Shri Rana appearing for the State strenuously contended that the High Court has committed a grave error in holding that the offence under Section 307 IPC was not made out merely because the injuries inflicted on the witnesses were in the nature of a simple hurt and in these circumstances it is not possible to hold any of the accused persons guilty in respect of that offence. We find considerable force in this contention. A bare perusal of Section 307 IPC would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307 IPC reads:

“Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be

¹(1983) 2 SCC 28

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.”

To justify a conviction under this section 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 an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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 this 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.

10. *The High Court, in our opinion, was not correct in acquitting the accused of the charge under Section 307 IPC merely because the injuries inflicted on the victims were in the nature of a simple hurt. Therefore, that part of the judgment of the High Court acquitting Accused 1, 2 and 11 of the offence under Section 307 IPC cannot be sustained and must be set aside. ”*

10. The Hon'ble Supreme Court, in the case of **HARI SINGH vs. SUKHBIR SINGH AND OTHERS**², has made the following observations: -

“7. ...Under Section 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of “attempt to murder”. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention...”

11. The Hon'ble Supreme Court, in the case of **STATE OF MAHARASHTRA vs. KASHIRAO AND OTHERS**³, has made the following observations: -

“20. So far as the assaults on PW 1 are concerned, the nature of the assaults and the injuries found clearly bring in application of Section 307 IPC. The trial court was therefore justified in convicting accused-Respondent 1 under Section 307 IPC. The essential ingredients required to be proved in the case of an offence under Section 307 are:

- (i) that the death of a human being was attempted;*
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and*
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so*

²(1988) 4 SCC 551

³(2003) 10 SCC 434

imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

21. *In offence under Section 307 all the ingredients of the offence of murder are present except the death of the victim. For the application of Section 307, it is not necessary that the injury capable of causing death should have been actually inflicted. The injuries sustained, the manner of assaults and the weapons used clearly make out a case of Section 307 IPC.”*

12. The Hon’ble Supreme Court, in the case of **VASANT VITHU JADHAV vs. STATE OF MAHARASHTRA**⁴, has made the following observations: -

“9. *In the aforesaid factual scenario it has to be seen whether Section 307 has application. Section 307 IPC reads as follows:*

“307. 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.”

To justify a conviction under this section, 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 an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It

⁴(2004) 9 SCC 31

is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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.

10. *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, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.*

...

13. *Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.*

14. *In the case at hand the accused fired the gun from a very close range of about 6-8 feet aiming at the victim when he was sleeping. The bullet broke into pieces and three such pieces struck the victim. Both intention and knowledge in terms of Section 307 can be attributed to the accused. Therefore, the High Court was justified in recording conviction of the accused-appellant under Section 307 IPC.”*

13. The Hon'ble Supreme Court, in the case of **PARSURAM PANDEY AND OTHERS vs. STATE OF BIHAR**⁵, has made the following observations: -

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder; and*
- (b) the doing of an act towards it.*

For the purpose of Section 307 what is material is the intention or the 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 intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence “of attempt to murder”. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.”

14. The Hon'ble Supreme Court, in the case of **STATE OF MADHYA PRADESH vs. MOHAN AND OTHERS**⁶, has made the following observations: -

“14. The High Court was of the opinion that the injuries have not been caused on the vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word “hurt” which has been explained in Section 319 IPC and

⁵(2004) 13 SCC 189

⁶(2013) 14 SCC 116

not “grievous hurt” within the meaning of Section 320 IPC. Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gunshot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307.”

15. The Hon’ble Supreme Court, in the case of **JAGE RAM AND OTHERS vs. STATE OF HARYANA**⁷, has made the following observations: -

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

16. The Hon’ble Supreme Court, in the case of **SURINDER SINGH vs. STATE (UNION TERRITORY OF CHANDIGARH)**⁸, has made the following observations: -

“19. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves

⁷(2015) 11 SCC 366

⁸(2021) 20 SCC 24

of the case law qua the essential conditions, requisite for bringing home a conviction under Section 307IPC. In *State of M.P. v. Saleem* [*State of M.P. v. Saleem*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329], this Court, while re-appreciating the true import of Section 307IPC held as follows:

“12. To justify a conviction under this section, 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 an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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.

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. 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 307IPC cannot be

acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

(emphasis supplied)

20. *These very ingredients have been accentuated in some of the later decisions, including in State of M.P. v. Kashiram [State of M.P. v. Kashiram, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40] , Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] and State of M.P. v. Kanha [State of M.P. v. Kanha, (2019) 3 SCC 605 : (2019) 2 SCC (Cri) 247] .*

21. *It is by now a lucid dictum that for the purpose of constituting an offence under Section 307IPC, there are two ingredients that a court must consider, first, whether there was any intention or knowledge on the part of the accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307IPC.*

22. *It would also be fruitful at this stage, to appraise whether the requirement of “motive” is indispensable for proving the charge of attempt to murder under Section 307IPC.*

23. *It is significant to note that “motive” is distinct from “object and means” which innervates or provokes an action. Unlike “intention”, “motive” is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing “motive” is akin to an exercise of manual brain-mapping. At times, it becomes Herculean task to ascertain the traces of a “motive”.*

24. *This Court has time and again ruled : (Bipin Kumar Mondal case [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150]*

“23. ... that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.”

(emphasis supplied)

25. *We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record.”*

17. The Hon’ble Supreme Court, in the case of **AMIT RANA AND ANOTHER vs. STATE OF HARYANA**⁹, has made the following observations:-

“5. *It is worthwhile to extract Section 307IPC for a proper consideration of the aforesaid question. It reads thus:*

“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*

⁹(2024) 15 SCC 42

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.]”*

6. *A perusal of Section 307IPC, would make it clear that it really imbibes the true spirit of the maxim “culpa poena par esto” — means “let the punishment be proportionate to the offence; let the punishment fit the crime”. It itself prescribes three types of sentences imposable on a convict thereunder. If it is an attempt to murder simpliciter, the offence is punishable maximum with by a term of imprisonment of either description up to ten years and fine. The last part of Section 307 prescribes death sentence as the only punishment when the offender during the commission of the crime is under the sentence of imprisonment for life and hurt is caused to the victim.*

9. *Section 307IPC makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a “sine qua non”. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307IPC.”*

18. At the inception, it is apposite to note that an offence under Section 307 of the Indian Penal Code is constituted, not merely by the nature of injury, but by the intention or knowledge with which the act is perpetrated. Such intention is discernible from the weapon used, the part of the body targeted, the severity of the blow and the attendant circumstances. Section 324 and 323 of the Indian Penal Code, though of lesser gravity are equally anchored in the proof of voluntary, causing of hurt by dangerous weapons and simple hurt, respectively.
19. PW-1, the injured witness, has furnished a vivid and cogent account of the occurrence. Her testimony, disclosed while proceeding towards her purchased plot, she witnessed her brother and nephew, engaged in fencing when the appellant armed with sharp-edged weapons descended upon them. The narrative of assault wherein appellant no.1 inflicted a blow by a "*Bhojali*" on her right shoulder, accompanied by utterances evincing a lethal intent, remained unshaken in material particulars. PW-1 is not a mere spectator, but a victim of the assault. Her testimony, therefore assumed a position of evidentiary primacy, for her presence at the scene is indubitable and her testimony projected credibility which had been failed to be uncontroverted through cross-examination. She had narrated with commendable consistency that the appellant armed with sharp-edged weapons and without provocation, launched an assault upon her and her family members.
20. The role attributed to the appellant no.1 is both specific and grave, he not only assaulted PW-1 with "*Bhojali*" on a vital part of the body, but verbally

threatened which conceivably disclosed a premeditated and malicious intent. Such pernicious act constitutes contemporaneous expressions of *mens rea* to attract the element of criminality. The attempt to trivialize her testimony on minor lexical variations, whether the weapon is described as “*Bhojali*” or “*Harsha*” is entirely misconceived. PW-1 has clarified the interchangeable local usage and this Court finds no inconsistency of a nature that will impair the essential framework of the prosecution case.

21. The testimonies of PW-4 and PW-6, being the victims of the same transaction reiterated substantial corroboration. They consistently deposed as to the participation of the appellants, the weapons used and the manner of assault. The account of PW6, detailing the acts of abusing, kicking and assault by fists reinforces the prosecution version in its essential features. The presence of multiple injured witnesses lends a compelling episode of truth. Their accounts are mutually consistent in material particulars and the defence has failed to elicit any contradiction that strikes at the core of the prosecution narrative.
22. Independent eye-witnesses, namely PW-3, PW-5, PW-7, PW-8, PW-10 and PW-13 have also supported the occurrence and affirmed the overt acts attributed to the appellant. Their evidence conjointly establishes a consistent and coherent chain of events, eradicating possibility. Their depositions converge on the essential features of the occurrence, namely the unlawful assembly of the appellants, the weapons carried, and the coordinated assault. This convergence rather than mechanical uniformity is the hallmark of truthful testimony.

23. The medical evidence furnishes formidable corroboration to the ocular account. PW-1, the Medical Officer found a large incised wound measuring 5"x2" inches over the right shoulder with exposure of the joint and fracture of the underlining bone. The nature of injury described as grievous and attributable to a sharp cutting weapon is consistent with the assault described by PW-1. Such injury is not superficial or accidental, it is decisively destructive, indicative of a forceful and targeted blow by a sharp-cutting weapon. The opinion that such injury could not result from an accidental fall of "Harsha" effectively neutralises the defence suggestion of accidental causation. The site of injury, proximate to a vital joint with exposure of bone, coupled with the severity and profused bleeding, evinced an act executed with knowledge of its potentially fatal consequences. The continuity of treatment as stated by PW-9 and others further underscores the gravity of the injury and its enduring impact. PW-17's testimony corroborates the injury sustained by other victims, while PW-9 stated the continuous medical treatment necessitated by the grievous injury suffered by PW-1. The medical evidence form an unbroken corroborative chain reinforcing the prosecution case.

24. The intention to commit murder seldom admits of direct proof; it must be gleaned from the totality of circumstances. In the present case, the course of events, coalesce to establish the requisite *mens rea*. The appellants appeared armed with deadly weapons, not in a spontaneous quarrel, but in a prepared manner. The assault was directed at a vital anatomical region. The blows were delivered with such force so as to cause fracture and exposure of bone.

The appellant no. 1 uttered words that explicitly conveyed an intention to kill. The attack was unprovoked and concerted, indicating a shared design. These elements when read cumulatively obliterate doubt that the act was momentary and impulsive on these threshold ingredients of Section 324 Indian Penal Code and Section 307 of the Indian Penal Code are attracted.

25. The defence had sought refuge in an alleged land dispute. However, the evidence on record particularly that of PW-6 and PW-11 unequivocally established that the complainant was in lawful possession of the land and was merely raising fencing.
26. Even assuming the existence of a civil dispute, it cannot legitimise an act of violent aggression resulting in grievous injuries sustained by the victims. Criminal law does not countenance private retribution under the guise of property claims. The conduct of the appellant was not defensive, but offensively unlawful. The testimony of DW1 was sought to be relied upon to demonstrate injuries on the appellants was marked by ambiguity and lack probative strength. The absence of clarity regarding the nature, causes and timing of such injuries rendered the defence version speculative. It is well settled that the defence is not required to prove its case beyond reasonable doubt. However, it must at least present a plausible alternative. In the present case, the defence falls short, even of that modest threshold. The plea of a civil dispute over land does not detract from the criminality of the act proved. The evidence on record clearly establishes that the complainant has been in possession of the land and has been raising fencing when the

appellants have inflicted the assault. The suggestion of provocation is thus entirely untenable.

27. The non-examination of the weapon for forensic analysis, does not cover the prosecution case where there exists clear, cogent and corroborated ocular evidence supported by medical testimony. The law is settled that lapse in investigation cannot automatically render to the benefit of the accused unless there has been a miscarriage of justice. No such prejudice is demonstrable here.
28. The prosecution has established beyond reasonable doubt that appellant no. 1 inflicted agrees incised injury upon PW-1 with a sharp cutting weapon on a vital part of the body. If it all PW-1 had not shifted her head, the blow would have affected her head exuding fatality. Under such circumstances, evincing clear intention to cause death, the act constitutes offence of Section 307 of the Indian Penal Code. The assault upon the other victims are duly proved and fall within the ambit of Section 324 and 323 of the Indian Penal Code. The evidence is cogent, consistent, and corroborated in all material particulars, precluding no reasonable ground for interference.
29. In view of the above discussions, the sentence is reduced to the extent of imprisonment suffered.
30. Accordingly, the instant criminal appeal being CRA 70 of 2009 is dismissed.
31. There is no order as to costs.
32. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

33. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)