IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 911 of 2005

[Against the judgment of conviction and sentence dated 19.07.2005 & 20.07.2005 respectively, passed by the learned 12th Addl. Sessions Judge, Dhanbad in Sessions Trial No. 340 of 1999.]

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1. Ashok Dan;
2. Lalu Dan;
3. Pradip Dan.

All are S/o. Sri Haradhan Dan, R/o. Vill.- Nawatand, P.O. & P.S.- Tundi, Dist.- Dhanbad, Jharkhand.

... ... **Appellants**

Versus

The State of Jharkhand …… **Respondent**

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. A. K. Kashyap, Sr. Advocate
: Mr. Anurag Kashyap, Advocate
: Mrs. Lina Shakti, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.
(Through V.C.)
For the Informant : Mr. Jayant Kumar Pandey, Advocate
: Mr. Anwar Hussain, Advocate

J U D G M E N T

Dated: 7th September, 2026
By Court:-

1. Heard Mr. A. K. Kashyap, learned senior counsel for the appellants and Mrs. Nehala Sharmin, learned Special P.P. through V.C. assisted by Mr. Jayant Kumar Pandey, learned counsel for the informant.

2. Instant criminal appeal is directed against the judgment of conviction and sentence dated 19.07.2005 & 20.07.2005 respectively, passed by the learned 12th Addl. Sessions Judge, Dhanbad, in Sessions

Trial No. 340 of 1999, whereby and whereunder, the appellants have been convicted for the offences under Sections 323/341/337/427 & 307/34 of the I.P.C. and sentenced to undergo R.I for 7 years alongwith the fine of Rs. 1,000/- each with default stipulation for the offence under Section 307/34 I.P.C.; S.I. for 15 days for the offence under Section 341 I.P.C. and R.I. for six months for the offence under Section 427 of the I.P.C. All the sentences were directed to run concurrently. No separate sentence has been awarded for the offence under Sections 323 and 337 of the I.P.C.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that on 22.10.1998 at about 7:00 A.M., the accused Ashok Dan came to the house of the informant (PW-5) and demanded to return his money, upon which the informant told him that at that moment his father is not present and as soon as he comes, he would pay back his money. In the meantime, other accused persons, namely, Lalu Dan, Pradeep Dan @ Lakhi Dan and Mochi Ram Dan came over there and they all surrounded to the informant and uttered that the informant was not paying back their money also. They also said to assault to the informant. Thereafter, all the accused persons in furtherance to their common intention, after having made an unlawful assembly, abused him and started assaulting the informant by means of lathi and bhala. In the course of assault, accused Pradeep brought iron rod from his hop and gave a blow by means of that rod upon the head of informant and as a result, the informant sustained serious injuries on his head and fell down. When uncle of the informant came for his rescue, he was also

assaulted by all the accused persons. It is also alleged that the accused persons committed mischief by damaging the Khaprail roof by throwing stone and bricks. When his father returned from the field, the informant was taken to Tundi hospital for his treatment.

4. On the basis of fardbeyan of information, police registered F.I.R. being Tundi P.S. Case No. 109 of 1998 for the offences under Sections 323, 341, 337, 427/34 of the I.P.C.

5. After completion of investigation, the charge-sheet was submitted against the appellants and co-accused persons for the offences under Sections 323, 341, 337, 307 427/34 of I.P.C and after taking cognizance, the case was committed to the Court of Sessions, where Sessions Trial No. 340 of 1999 was registered and charges were framed against the accused persons.

6. The accused persons denied the charges levelled against them and claimed to be tried.

7. The learned Trial Court after considering the evidence of prosecution and defence arrived at definite conclusion about guilt of the appellants for the offences under Sections 323/341/337/427 & 307/34 of the I.P.C and convicted and sentenced them accordingly, as stated above, which has been assailed in this appeal.

Submissions on behalf of the appellants:-

8. Learned senior counsel for the appellants without touching the merits of the impugned judgment has confined himself towards the quantum of sentence awarded to the appellants. It is submitted that there is an allegation of assault to the informant by the appellants. The appellant no. 1 Ashok Dan had gone to ask for his money borrowed by

the informant and due to some reason scuffle took place between the parties and the informant sustained injuries. It is the further submitted that it is the first offence of the appellants and in spite of that, considering the gravity of the offence, the learned Trial Court has declined to extend the benefit of Section 4 of the Probation of Offenders Act, 1958 without specifying any special reasons as mandated in the law. Hence, conviction and sentence of the appellant is not sustainable in law and fit to be set aside. The appellants are not habitual offenders and since the occurrence is of the year 1998 and more than 27 years have been elapsed, therefore, the appellants deserve to be extended the benefit of Section 4 of the Probation of Offenders Act, 1958.

Submissions on behalf of the Respondent:-

9. On the other hand, learned Special P.P. assisted by learned counsel for the informant has defended the impugned judgment on merits and has submitted that in the said occurrence, injured Prabhat Dan (PW-5) has sustained injuries on his head, which also finds support from the deposition of PW-4 Dr. N. R. Mahapatra. The Injury report of the injured shows that his injury was grievous in nature. Therefore, the learned Trial Court has rightly declined to extend the benefit of Section 4 of the Probation of Offenders Act, 1958. Hence, this appeal, being devoid of merit, is fit to be dismissed.

Analysis, discussion and reasons:-

10. I have gone through the record of the case alongwith the impugned judgment of conviction and sentence passed by the learned Trial Court

11. It appears that altogether Seven (06) witnesses have been examined by the prosecution, apart from following documentary evidences:-

I. Exhibit-1: Injury report of the informant

II. Exhibit -2: Discharge slip

III. Exhibit- 2/1 & 2/2: Signature of the informant (PW-5) and Adhar Dan on fardbeyan.

IV. Exhibit- 3: formal F.I.R.

V. Exhibit-4: certified copy of judgment of G.R. Case No. 4153/1998

12. On the other hand, no witness has been examined on behalf of defence. However, following documentary evidence has been adduced by the defence:-

i. Ext.-A: Certified copy of F.I.R. in G.R. Case No. 4153/1998

ii. Ext.-B: Certified copy of fardbeyan of informant Smt. Bisaka Dan in G.R. Case No. 4153/1998

iii. Ext.-C: Certified copy of Charge sheet in G.R. case No. 4153/1998

iv. Ext.-D: License granted by CMADA authority Dhanbad, in the name of Mochi Ram Dan.

13. I have given anxious consideration to the records of the case alongwith the impugned judgment in the light of contentions raised on behalf of both the parties.

14. It appears that in this case the genesis of the occurrence and dispute is over transaction of money between the appellants alongwith co-accused persons and the informant, who is also injured in this case. The accused Ahok Dan (appellant no. 1) had come to the house of the

informant for asking his money and the informant had also assured that as soon as his father come, he would pay the money. In the meantime, other accused persons came there and suddenly the quarrel took place between the informant and the accused persons. The accused persons restraining and assaulting the informant have broken the tiles of his house. In the course of quarrel due to heat of passion, one of the accused Pradip Dan (appellant no. 3) had been given rod blow on the head of the informant, due to which he sustained grievous injuries on his head. The doctor, who first attended the informant at Tundi Government Hospital has not been examined due to his transfer. However, PW-4 Dr. N. R. Mahapatra, who is Neurologist at Central Hospital, Dhanbad, who later on treated the injured, has been examined and has fully proved the injury sustained by the injured. Doctor has stated that injured had sustained grievious injury on his head and his parital bone was fracture. The injured was admitted in the hospital since 03.11.1998 to 02.12.1998 almost one month. Therefore, the evidence of injured witness finds corroboration from the injury report. As such, I don't find any illegality or infirmity in the conviction of the appellants for the offences under Sections 323/341/337/427 of the I.P.C, which is hereby upheld.

15. So far conviction of the appellants for the offence under Section 307/34 of the I.P.C. is concerned, the informant has sustained the injury in sudden quarrel, which took place due to heat of passion over the transaction of money without pre-meditation of mind.

16. It has been held by the Hon'ble Apex Court in the case of ***Hari Singh Vrs. Sukhbir Singh & Others*** as reported in ***(1988) 4 SCC 551***,

at para-7 that:-

> *"7. ……..Under Section 307 I.P.C. 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 consequence 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."*

17. Further, the Hon'ble Apex Court in the case of ***Jage Ram Vrs. State of Haryana*** as reported in ***(2015) 11 SCC 366***, has held at para-12 that:-

> "12. *For the purpose of conviction under Section 307 I.P.C., 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 I.P.C., it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be 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."

18. In view of the above, the required intention or knowledge to constitute the offence under Section 307 I.P.C. is not proved from the facts and circumstances. Accordingly, conviction of appellants offence under Section 307 of the I.P.C. is hereby set aside.

19. So far sentence is concerned, considering the facts and circumstances of the case, genesis and manner of occurrence, their age, antecedents and character and considering that it was the first offence of the appellants, I am of the view that the appellants deserve the benefit of Section 4 of the Probation of Offenders Act, 1958.

20. In view of the above, this appeal is **dismissed on merits with modification in conviction and sentence** to the extent that instead of undergoing substantive sentence of imprisonment awarded to the appellants by the learned Trial Court, the appellants are hereby directed to be released on furnishing bond of Rs. 5,000/- (Rupees Five Thousand) each with one surety of like amount to the satisfaction of learned Trial Court under Section 4 of the Probation of Offenders Act, 1958 **within two months from the date of this order** for maintaining peace and be of good behavior for one year from the date of furnishing the bond.

21. If the bond is not furnished within above stipulated time, the learned Trial Court shall issue notice upon the appellants to secure their attendance for furnishing the bond.

22. It is further directed to the appellants to pay **Rs. 10,000/- collectively as compensation to the injured/victim, namely, Prabhat**

Dan or his dependents at the time of furnishing bond, which shall be paid before the concerned Trial Court and the learned Trial Court, after proper verification, shall hand over the same amount to the injured/victim or his dependents.

23. In case of violation of terms and conditions of the bond and compensation amount, the appellants shall be called upon to receive the sentence already awarded to them.

24. Pending I.A(s), if any, is also disposed of accordingly.

25. Let a copy of this judgment along with Trial Court Record be sent back immediately to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated: 7th September, 2026
Rahul / NAFR-
Uploaded on 10/09/2026