

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.200 of 2014**

Arising Out of PS. Case No.-90 Year-2007 Thana- JAGDISHPUR District- Bhagalpur

1. Ram Prasad Mandal. S/o Chhedi Mandal
2. Fantush Mandal S/o Ram Prasad Mandal
3. Anirudh Mandal S/o Ram Prasad Mandal
4. Sudhir Mandal S/o Ram Prasad Mandal
All residents of Village- Kadwa Mohanpur, P.S- Goradih, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Davendra Kumar Pandey, Advocate.
For the Respondent/s : Mr.Abhay Kumar, APP.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT**

Date : 28-04-2026

Heard Mr. Davendra Kumar Pandey, learned counsel appearing on behalf of the appellants and Mr. Abhay Kumar, learned APP for the State.

2. The present appeal has been filed under Sections 374(2) and 389(1) of the Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 31.03.2014 passed by the learned Ad hoc Additional Sessions Judge-I, Bhagalpur in Sessions Trial No. 1185/2007 (Tr. No. 332/2013) (arising out of Jagdishpur (Goradih) P.S. Case No. 90 of 2007, G.R. No. 1290/07), whereby and



whereunder, the appellants have been convicted for the offence punishable under Section 323/34 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for six months.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed the impugned judgment primarily on the ground that the learned Trial Court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants despite the existence of serious contradictions and deficiencies in the prosecution case.

FACTS OF THE CASE

4. The prosecution case, in brief, is that as per the fardbeyan of the informant recorded on 13.05.2007 at about 4:00 P.M., on 12.05.2007 at about 11:00 A.M., a quarrel took place between the informant's son, Om Prakash Sah, and one Mukesh Mandal while they were playing, and when the informant's wife intervened to pacify the matter, accused Ram Prasad Mandal and Fantush Mandal, armed with lathi, arrived there, abused her and assaulted her, causing injuries on her



hand, forearm and waist; it is further alleged that upon the informant returning home, accused Anrudh Mandal and Sudhir Mandal, armed with danda and khanti, came to his door, abused and assaulted him, resulting in injuries on his head and right hand, and during the occurrence, accused Sudhir Mandal allegedly took away Rs. 5,000/- from his pocket along with a Sonata wristwatch and two silver rings, the entire incident having arisen out of a dispute between the children, and on the basis of the said fardbeyan, Jagdishpur (Goradih) P.S. Case No. 90 of 2007 dated 12.05.2007 was instituted under Sections 341, 447, 323 and 379/34 of the Indian Penal Code.

5. Charges were framed on 30.11.2007 under Sections 307, 323, 341, 379, 447 and 504/34 of the Indian Penal Code against all the accused persons, to which they pleaded not guilty and claimed to be tried.

ARGUMENT ON BEHALF OF THE APPELLANTS

6. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment of conviction and order of sentence passed by the learned Trial Court is wholly illegal, perverse, and unsustainable both in law and on facts. It is contended that there is unexplained delay in lodging the F.I.R., which casts serious doubt on the prosecution story



and suggests possibility of false implication due to admitted prior enmity between the parties. The counsel further submitted that although the appellants were charged under Sections 307, 323, 341, 379, 447 and 504/34 IPC, the medical evidence does not support the allegation of attempt to murder, as no grievous or cut injury has been found despite the allegation of use of a sharp weapon (Khanti), and all injuries are simple in nature. It is further argued that the testimonies of PW-2, 3 and 5 suffer from material contradictions and inconsistencies, which go to the root of the case and render the entire prosecution version unreliable.

7. Learned counsel further submitted that the prosecution has failed to prove the charges against the appellants beyond reasonable doubt, and the learned Trial Court has erred in convicting the appellants without proper appreciation of evidence on record. It was also contended that the defence evidence has not been considered in its proper perspective and has been wrongly discarded. The appellants have remained on bail throughout the trial and have never misused the privilege granted to them, which reflects their *bona fide* conduct. On these grounds, learned counsel submits that the impugned judgment of conviction and order of sentence is liable to be set aside and the appellants deserve to be acquitted of all



the charges in the interest of justice.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing on behalf of the State while opposing the appeal submitted that the learned District court, after considering all the evidences, both oral and documentary, adduced during the course of trial, has committed no error, either of fact or of law, in recording the conviction of the appellants on the basis of cogent and reliable material on record, warranting no interference by this Court.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

11. During the trial, the prosecution has examined altogether nine witnesses, namely:

1. PW-1 Makhan Mandal
2. PW-2 Sita Devi,
3. PW-3 Om Prakash Sah



4. PW-4 Munia Devi
5. PW-5 Manoj Kumar Sah
6. PW-6 Pradip Sah
7. PW-7 Ram Pravesh Sharma
8. PW-8 Ajablal Mandal
9. PW-9 Dr. Manoj Kumar Jha

The Defence have also examined three witnesses, namely,

1. DW.1 – Pawan Mandal
2. DW-2 Jay Prakash Mandal
3. DW-3 – Om Prakash Mandal

12. The prosecution has also relied upon following documents exhibited during the course of trial:

- (i) Exhibit-1 – Signature of the informant on the fardbeyan
- (ii) Exhibit-1/1- signature of the brother of the informant on fardbeyan
- (iii) Exhibit-2- Formal FIR
- (iv) Exhibit-3- Marginal note
- (v) Exhibit-4- fardbeyan of the informant
- (vi) Exhibit-5- writing and signature of the chargesheet



(vii) Exhibit-6 and 6/A - injury report

13. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be summarized as follows:

(I) P.W.-1: Makhan Mandal: P.W.-1 has deposed that on the alleged date at about 11:00 A.M., while he was at his house, he came to know about an occurrence of assault between Ram Prasad Mandal and Manoj Mandal. He stated that he heard that Manoj Mandal was assaulted on his shoulder by lathi. However, he clearly admitted that he had not witnessed the occurrence and his knowledge is purely hearsay. He further stated that he had not heard about any bleeding injury and also admitted that he did not visit the place of occurrence. He could not say who took the injured to the hospital or for how long he was treated. PW-1 is a Hearsay witness and not an eye-witness.

(II) P.W.-2: Sita Devi (Injured Witness): P.W.-2 deposed that the occurrence took place on 12.05.2007 at about 11:00 A.M. While she was at home, she went to pacify a quarrel between Om Prakash and Mukshi Mandal. During this, accused Ram Prasad Mandal and Fantush Mandal, armed with lathi, came and assaulted her, causing injuries on her waist and hand. She further stated that when her husband (Manoj) came and



questioned the accused persons, Anirudh Mandal (armed with garasa) and Sudhir Mandal (armed with khanti/lathi) assaulted her husband on the head, causing bleeding and he fell down. She also alleged that the accused persons took away Rs. 5000/-, a Sonata watch, and a silver ring from her husband. She stated that she also sustained injury on her forehead. After the occurrence, they went to the police station and were sent to Mayaganj Hospital, where her husband was hospitalized for about 15 days.

(III) P.W.-3: Om Prakash Sah (son of the injured):

P.W.-3 deposed that the occurrence took place on 12.05.2007 at about 11:00 A.M. while he was playing cricket. A quarrel started with Mukshi Mandal, who assaulted him with a lathi. He stated that when his mother (Sita Devi) came to intervene, Ram Prasad Mandal assaulted her, causing bleeding injury. Thereafter, when his father Manoj came and questioned the accused, Anirudh Mandal assaulted his father with a garasa on the head and Sudhir Mandal assaulted him with a lathi. He further alleged that Sudhir Mandal took away Rs. 5000/-, a Sonata watch, and a silver ring. The injured was taken to police station and then to Mayaganj Hospital for treatment.

(IV) P.W.-4: Muniya Dev: P.W.-4 deposed that the



occurrence took place at about 11:00 A.M. due to a quarrel between children over cricket. She stated that Sita Devi was assaulted and fell unconscious. She further deposed that when Manoj Sah came and questioned the accused persons, all accused assaulted him. Specifically, Sudhir Mandal assaulted Manoj with a garasa on the head causing bleeding, while others assaulted him with lathi. She stated that Manoj was taken to Goradih Police Station and then to Mayaganj Hospital where he remained admitted for about 8 days. She is the Eye-witness of the occurrence and supports the prosecution case.

(V) P.W.-5: Manoj Kumar Sah (Informant & Injured): P.W.-5 is the informant of the case. He proved his signature and that of his brother on the fardbeyan (Exhibit-1 series). He deposed that on 12.05.2007 at about 11:00 A.M., his wife informed him about a quarrel between children and subsequent assault. Later, accused Ram Prasad Mandal and Fantush Mandal came to his house and assaulted his wife. When he went to question them, Anirudh Mandal (armed with khanti) and Sudhir Mandal (armed with lathi) along with others assaulted him. He specifically stated that Anirudh Mandal caused injury on his head and Sudhir Mandal assaulted him on his waist. He further alleged that Rs. 5000/-, a Sonata watch,



and two silver rings were taken away. He was taken to Mayaganj Hospital, where his fardbeyan was recorded.

(VI) **P.W.-6: Pradeep Sah:** P.W.-6 deposed that the occurrence took place on 12.05.2007 at about 11:00 A.M. due to a quarrel between Om Prakash and Mukshi Mandal during cricket. He stated that Sita Devi was assaulted by Muski and Fantush. He further stated that later he heard from Om Prakash that Manoj Sah was assaulted by accused persons. Upon reaching the place, Manoj told him that Ram Prasad and Anirudh Mandal had assaulted him. He helped in taking Manoj to the police station and then to hospital, where he was treated for about 6–7 days. He stated that he has no knowledge regarding theft.

(VII) **P.W.-7 (Investigating Officer):** Ram Pravesh Sharma (Investigating Officer): P.W.-7 deposed that he investigated the case, visited the place of occurrence, and recorded statements of witnesses. He described the place of occurrence as a *parti* land in front of the informant's house at village Kadwa Mohanpur, with specific boundaries. He proved:

- Formal FIR (Exhibit-2)
- Marginal note (Exhibit-3)
- Fardbeyan in his handwriting (Exhibit-4)
- Charge-sheet (Exhibit-5)



He stated that after investigation, he found the case true and submitted charge-sheet.

(VIII) P.W.-8: Ajab Lal Mandal (Hostile Witness): P.W.-8 deposed that he neither witnessed nor had direct knowledge of the occurrence. He only heard that a quarrel had taken place. He was declared hostile by the prosecution.

(IX) P.W.-9: Dr. Manoj Kumar Jha (Doctor): P.W.-9 deposed that on 12.05.2007, he examined Manoj Sah at about 3:00 P.M. and found the following injuries:

1. Lacerated injury on right side of skull
2. Swelling and bruise on right hand
3. Abrasion on left hand
4. Complaint of body ache

He advised X-ray and CT scan and reserved opinion. He opined that injury no. 3 was simple and caused by hard and blunt substance. Injury report was marked as Exhibit-6.

He further examined Sita Devi at 4:00 P.M. and found:

1. Lacerated injury on forehead
2. Complaint of body ache

Her injury report was marked as Exhibit-6/A.

14. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of the CrPC by putting incriminating circumstances/evidences surfaced against them, which they denied and showed their complete innocence.



15. It would be appropriate to reproduce the provisions of Sections 307 and 323 of IPC for the sake of convenience and better understanding of the facts, which is as under:-

“ 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 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].

323. Punishment for voluntarily causing hurt.—

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

16. The record reveals that PW-8 was declared hostile during the trial, in absence of any corroboration of oral evidence of the other prosecution witnesses who supported the prosecution case. Therefore, the testimony of PW-8 is not relevant for the purpose of establishing the guilt of the accused/appellant.

17. The prosecution case substantially rests upon the testimony of P.W.-2 Sita Devi, P.W.-3 Om Prakash Sah and P.W.-5 Manoj Kumar Sah, with partial support from P.W.-4



Muniya Devi, while P.W.-1 Makhan Mandal and P.W.-6 Pradeep Sah do not provide direct evidence of the occurrence. The testimony of the material witnesses attributes specific overt acts mainly against Ram Prasad Mandal, Fantush Mandal, Anirudh Mandal and Sudhir Mandal; however, their version contains embellishments and inconsistencies, particularly regarding the nature of assault, the weapons used (lathi, garasa, khanti), and the manner of occurrence. Allegations of theft of Rs. 5,000/-, a Sonata wristwatch and silver rings are also not consistently supported, as P.W.-6 Pradeep Sah has categorically stated having no knowledge of such occurrence.

18. The medical evidence of P.W.-9 Dr. Manoj Kumar Jha indicates only simple injuries, such as lacerations, abrasions and swelling, caused by hard and blunt substance, and does not fully corroborate the prosecution version of assault by multiple accused persons with different weapons, including sharp-cutting instruments like *garasa or khanti*. P.W.-8 Ajab Lal Mandal has turned hostile and other independent witnesses have not supported the prosecution case on material particulars. It is also evident that the occurrence arose out of a quarrel which took between children while playing cricket, which subsequently escalated into free fight. Simple injury suggests possibility of



exaggeration and false implication of all the accused persons.

COMMON INTENTION WHETHER PROVED?

19. It is well settled that an attempt to commit murder must be clearly distinguished from a mere intention to commit the offence or from acts that amount only to preparation for its commission. The law recognizes that the existence of a guilty intention alone is not sufficient to constitute an attempt. There must be something more than planning or arranging the means to commit the crime. Therefore, in order to secure a conviction under Section 307 of the Indian Penal Code, the prosecution must prove the presence of a definite intention or knowledge to cause death, accompanied by some overt act that directly moves towards the execution of that intention. In other words, the accused must not only possess the intention to commit murder but must also perform an act that clearly demonstrates the commencement of the offence.

20. The Apex Court laid down the litmus test for determination of nature of offence in ***Pulicherla Nagaraju v. State of A.P. reported in (2007) 1 SCC (Cri) 500***. In the facts and circumstances of a particular case, the Court needs to decide the pivotal question of existence of intention with care and caution. The following factors needs to be examined:



- (i) *nature of the weapon used;*
- (ii) *whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) *whether the blow is aimed at a vital part of the body;*
- (iv) *the amount of force employed in causing injury;*
- (v) *whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) *whether the incident occurs by chance or whether there was any premeditation;*
- (vii) *whether there was any prior enmity or whether the deceased was a stranger;*
- (viii) *whether there was any grave and sudden provocation, and if so, the cause for such provocation;*
- (ix) *whether it was in the heat of passion;*
- (x) *whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;*
- (xi) *whether the accused dealt a single blow or several blows.*

21. The similar question came up before the Supreme Court in the case of ***Joseph v. State of Kerala***, reported in ***1995 SCC (Cri) 165*** has observed in para 3 which is reproduced hereinafter:

“3. In this appeal the learned counsel for the appellant submits that the intention to cause the injury which was found sufficient to cause the death in the ordinary course of the nature was not established. In support of this submission he relied on the circumstances namely that the whole incident took place because of a trivial incident which resulted in a quarrel and that the weapon used was only a lathi and in the circumstances it cannot be said that the accused intended to cause the death by inflicting that particular injury which objectively was proved by the medical evidence to be sufficient in the ordinary course of nature to cause death. In other words he submits that clause 3rdly of Section 300 IPC is not attracted in this case. We find



considerable force in the submission. The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (sic). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years' RI."

22. The judgment of **Joseph (supra)** was referred by the Apex Court in the case of **Jugatram Vs. State of Chhattisgarh**, reported in **(2020) 9 SCC 520**.

23. Further, to sustain a conviction under Section 307 IPC, the Apex Court in the case of **Sivamani v. State**, reported in, **2023 SCC OnLine SC 1581**, in paragraph no. 9 has held as under:

" 9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '...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.' The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of



Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, 'The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.'

24. Admittedly, from the prosecution case itself, it transpires that the alleged occurrence arose out of a trivial quarrel between children while playing cricket, which suddenly escalated into a physical scuffle without any premeditation or prior meeting of minds, the incident having taken place in the heat of passion upon a sudden altercation; further, the prosecution evidence suffers from material infirmities as the case primarily rests upon the testimonies of P.W.-2 Sita Devi, P.W.-3 Om Prakash Sah and P.W.-5 Manoj Kumar Sah, whose versions are not wholly consistent on material particulars, particularly with regard to the manner of assault, weapons allegedly used, and specific roles of the accused persons, while independent witnesses do not lend reliable support inasmuch as P.W.-1 Makhan Mandal is admittedly a hearsay witness, P.W.-6 Pradeep Sah has only limited knowledge and does not support the allegation of theft, and P.W.-8 Ajab Lal Mandal has turned hostile; moreover, the medical evidence of P.W.-9 Dr. Manoj Kumar Jha shows that the injuries are simple in nature and



caused by hard and blunt substance, which does not substantiate any grievous or life-threatening assault, and when considered along with the admitted background of a minor dispute giving rise to the occurrence, the cumulative effect of these infirmities clearly indicates exaggeration and absence of intention or knowledge to cause death, thereby rendering the charge under Section 307 of the Indian Penal Code unsustainable.

(emphasis supplied)

25. I find that the facts of the present case are squarely covered by the judgment passed by the Apex Court in ***Sivamani (supra)*** in view of the aforesaid discussion of factual and legal aspects and upon a comprehensive re-appreciation of the entire evidence available on record, it emerges that the occurrence took place in a sudden manner on account of a trivial quarrel between children while playing cricket, which escalated without any premeditation or prior meeting of minds of the appellant; the nature of the incident, the surrounding circumstances, and the medical evidence, particularly the testimony of P.W.-9 Dr. Manoj Kumar Jha, indicate that the injuries sustained by the injured persons are simple in nature, and although incised in character, do not establish the requisite intention or knowledge to cause death so as to attract the



provisions of Section 307 of the Indian Penal Code; rather, the materials on record demonstrate that the act of the appellants falls within the ambit of voluntarily causing hurt by a dangerous weapon, and thus, this Court is of the considered opinion that the offence under Section 307 IPC is not made out and the learned trial court has rightly appreciated the evidence in convicting the appellants under Section 323/34 of the Indian Penal Code, particularly in view of the injury reports showing simple incised injuries caused by a sharp-cutting weapon.

26. Accordingly, this Court finds that the impugned judgment of conviction dated 31.03.2014 passed by the learned Ad hoc Additional Sessions Judge-I, Bhagalpur in Sessions Trial No. 1185/2007 (Tr. No. 332/2013) (arising out of Jagdishpur (Goradih) P.S. Case No. 90 of 2007, G.R. No. 1290/07) whereby, the appellants have been convicted under Section 323/34 of the Indian Penal Code, does not warrant interference so far as the finding of conviction is concerned.

27. However, so far as, the sentence is concerned, having regard to the facts and circumstances of the case and the period already undergone by the appellants, the sentence of simple imprisonment for six months is modified and reduced to the period already undergone. It is directed that if the



appellants have already undergone the modified sentence, they shall be set at liberty forthwith, unless required in connection with any other case. The appellants are discharged from the liabilities of their bail bonds, if any.

28. Accordingly, the present appeal stands partly allowed.

29. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	21.04.2026
Uploading Date	28.04.2026
Transmission Date	28.04.2026

