

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.116 of 2004**

Uday Mahton, son of Baso Mahto, resident of Village-Jagodhar, P.S. Birpur,
(Barauni), District Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Piyush Kumar Pandey, *Amicus Curiae*
For the Respondent/s : Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 25-09-2025

None appears on behalf of the appellant. Heard learned Mr. Piyush Kumar Pandey, learned Amicus Curiae and Mr. Mukeshwar Dayal, learned Additional Public Prosecutor for the State.

2. By this appeal, sole appellant/convicted accused Uday Mahton has challenged the judgment of conviction and order of sentence dated 04.02.2004 and 06.02.2004 respectively, passed by the Presiding Officer, Fast Track Court, No.III, Begusarai in Sessions Trial No. 249 of 1996 and 138 of 2004 arising out of Barauni P.S. Case No. 396 of 1995 by which the appellant was convicted for the offence under Sections 307 and section 341 of the Indian Penal Code. The appellant was sentenced to undergo rigorous imprisonment for five years for the charge of Section 307 of the Indian Penal code and rigorous



imprisonment for six months for the charge under Section 341 of the Indian Penal Code. Both the sentences are directed to run concurrently.

3. The prosecution case is as follows :-

The prosecution case based on the fardbeyan of one Jagdambi Yadav, recorded by the Sub-Inspector of Beerpur Police Station on 04.12.1995 at about 6:30 P.M. It has been stated therein that on the same day at about 2:00 P.M., the informant's daughter, Bindu Kumari, was teaching around 16 to 17 children under the literacy campaign at the door of their house. In the meantime, accused Usha Devi and Bhatni Devi threw lumps of soil (dhela) at Bindu Kumari and the children and taunted her by calling her "Masterni". When the informant protested, accused Uday Mahton brought a bhala and assaulted Bindu Kumari on her thigh with the blunt portion of the same, as a result of which she fell unconscious. When the informant rushed to save his daughter, accused Uday Mahton, with an intention to kill him, hurled the *bhala* at his head, causing him head injury. The informant, however, managed to catch hold of Uday Mahton. Thereafter, Ramdeo Mahton, Baso Mahton, Laldhari Mahton, Binod Mahton, and Rajesh Mahton, all armed with lathi and danda, arrived and brutally assaulted the



informant and his wife. It is further alleged that accused Sushila Devi, Shyama Devi, and the wife of Saudagar Mahton caught hold of the hair of Bindu Kumari and assaulted her with fists and kicks. The accused persons also assaulted the wife of the informant. The informant has further alleged that being the only person of the Yadav community in the locality, the accused persons intend to oust him by dismantling his house. On the basis of the aforesaid fardbeyan, a formal F.I.R. was instituted against the accused persons under Sections 147, 341, 323, 324, and 307 of the Indian Penal Code.

4. After due investigation, charge-sheet was submitted under Sections 341 and 307/34 of the Indian Penal Code, and cognizance was taken accordingly. Thereafter, trial commenced. In total, six prosecution witnesses were examined. Exhibit-1 is the signature of PW-3 on the Fardbeyan, Exhibit-2 is the Fardbeyan, Exhibit-3 is the FIR, and Exhibits 4 to 4/2 are the three injury reports marked on behalf of the prosecution.

5. After examination of the accused persons under Section 313 of the Code of Criminal Procedure, the accused persons denied the allegations. Upon conclusion of trial, the present appellant was convicted under Sections 341 and 307 of the Indian Penal Code, whereas the other accused persons were



convicted under Sections 323 and 341 of the Indian Penal Code. After hearing on the point of sentence, the benefit of the provisions of the Probation of Offenders Act was extended to the other accused persons convicted under Sections 323 and 341 of the Indian Penal Code. However, the present appellant was taken into custody and sentenced to undergo rigorous imprisonment for five years for the charge under Section 307 of the Indian Penal Code and rigorous imprisonment for six months for the charge under Section 341 of the Indian Penal Code. Both sentences were directed to run concurrently.

6. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal.

7. In this case, six witnesses have been examined. PW-1 is the wife of the informant (injured), PW-2 is the informant himself, PW-3 is the daughter of the informant who also sustained injury, PW-4 is a hostile witness as he did not support the prosecution case, PW-5 is an independent witness, and PW-6 is the Investigating Officer of the case. The doctor has not been examined.

8. Learned Amicus Curiae submits that in the present case no offence under Sections 341 and 307 of the



Indian Penal Code is made out, as there are material contradictions in the evidence of the prosecution witnesses. He further submits that there is a clear inconsistency in the statement of the informant himself, as what he has deposed in his examination-in-chief and what he has stated in his cross-examination are in complete contradiction. Learned Amicus Curiae further contends that the exhibits on record reveal that the injuries sustained were simple in nature and caused by a hard and blunt substance, whereas the allegation in the prosecution case is that the victim sustained injuries caused by a *bhala* (a sharp-cutting weapon). He submits that the prosecution has failed to prove its case beyond reasonable doubt, as the doctor who examined the injured person has not been produced before the Court. It is further submitted that from the evidence of the Investigating Officer, it transpires that neither *bhala* nor *lathi* was recovered, no blood was found, nor were any blood-stained clothes recovered or produced before the Court. There is no medical or corroborative evidence in the present case. He also submits that there is no allegation of any overt act specifically attributed to the appellant. The materials on record indicate that the injury was caused by a hard and blunt substance, whereas a *bhala* is not such a weapon. Accordingly,



the offence under Section 307 IPC is not made out against the appellant.

9. Learned Amicus Curiae further submits that the appellant had in custody for one month and two days during trial and, after conviction, for about two months and thirteen days. Thus, in total, the appellant has undergone custody of about three and a half months. He further submits that at the time of trial, in February 2004, the appellant was aged about 31 years, and now, after more than 21 years, he is aged about 52 years or more. In view of the above, learned Amicus Curiae submits that this appeal is fit to be allowed and the judgment of conviction and order of sentence passed by the learned Sessions Court be set aside.

10. On the other hand, learned APP for the State opposes the submissions advanced on behalf of the appellant and contends that the Sessions Court has rightly imposed punishment upon the accused persons after finding them guilty beyond all reasonable doubt. He submits that the allegation of assault is consistently reflected in the FIR as well as in the depositions of prosecution witnesses Nos. 1, 2 and 3. He further submits that the testimonies of these witnesses cannot be ignored as they are injured witnesses, namely PW-1, PW-2 and



PW-3. He also points out that the injury reports were exhibited without any objection. Learned APP submits that the evidence of injured witnesses carries great weight and cannot be discarded lightly, and the trial Court, upon due consideration of such evidence, has rightly convicted the appellant under Section 307 of the Indian Penal Code. Hence, no interference is warranted in the present appeal.

11. Upon hearing the parties, it is necessary to quote the relevant extracts from the depositions of PW-1, PW-2 and PW-3, who are the injured witnesses. PW-1 is the wife of the informant, PW-2 is the informant himself, and PW-3 is the daughter of the informant. Their injury reports have been exhibited as Exhibits 4, 4/1 and 4/2. From the examination-in-chief of PW-2 (the informant), it appears that he alleged the accused persons assaulted his daughter with a *lathi*, and the present appellant assaulted him with a *bhala* on his head. He also deposed that his wife was assaulted. However, in his cross-examination (para 3), he stated that on hearing noise, he came outside the house and saw a gathering of 100–200 persons. He further stated that his daughter was in the midst of the gathering, and when he entered, he found her unconscious. He categorically stated that at the time of entering the gathering, he



himself received an injury on his head and became unconscious, regaining consciousness only later in the presence of police. Thus, there is a clear contradiction between his examination-in-chief and cross-examination, and on the basis of PW-2's evidence alone, it cannot be conclusively held that the appellant assaulted him with a *bhala*. On the other hand, the testimony of PW-3 (daughter of the informant) is also relevant. In her examination-in-chief (para 1), she stated that the appellant came with a *bhala* and attacked her on her thigh 3–4 times. In para 2, she further stated that the appellant struck her father with a *bhala*, causing a small cut injury on his head. However, in her cross-examination, she narrated a different version, stating that around 12 P.M. she was teaching students at her door when one of the accused made a remark against her, which led to a commotion and a gathering of 10–20 persons. She stated that “no one assaulted” at that time and thereafter they went towards their house. She also admitted that she became unconscious for a short period, and upon regaining consciousness, the police (Daroga Ji) questioned her. As regards the independent witnesses, PW-4 was declared hostile, and no permission for his cross-examination was granted. PW-5, another independent witness, supported the prosecution story in examination-in-



chief, but in cross-examination his testimony reflected that he was only a hearsay witness. PW-6, the Investigating Officer, formally proved the exhibits, including the injury reports, which were marked without objection. However, in para 7 of his deposition, he stated that the informant had come to the police station along with his injured wife and daughter, but he could not recollect whether their clothes were bloodstained, nor did he seize any such clothes during investigation. He also admitted that although the injury report noted a bleeding wound on the head of the informant, the injured persons were not admitted to hospital. He further admitted that he did not record the statements of the informant, his wife or daughter at that time, nor did he examine residents of the surrounding locality. No material exhibit was recovered during the search of the accused persons' house. He also failed to ascertain the reason for the dispute, and no blood or other physical evidence was found at the place of occurrence. Moreover, he did not examine any of the children or their guardians who were allegedly being taught by PW-3 at the relevant time.

12. It is true that the injury report has been exhibited and injuries have been found, though the nature of injury has been opined as simple and caused by a hard and blunt



substance. However, it is also true that the alleged weapon has neither been recovered, nor seized, nor produced before the Court. Further, the doctor who examined the injured has not been examined. There are material contradictions in the testimony of the informant between his examination-in-chief and cross-examination. PW-3, the daughter of the informant, has categorically stated that the appellant assaulted her with the backside of the *bhala*. It, therefore, transpires that the injuries sustained were consistent with the medical opinion that they were simple in nature and caused by a hard and blunt substance.

13. In light of the submissions advanced and the observations made above, and upon careful consideration of the evidence and materials on record, this Court finds that the ingredients of Section 307 IPC as well as Section 341 IPC are not made out. However, since the injuries sustained are simple in nature, the ingredients of Section 323 IPC are attracted in the present case.

14. Accordingly, this Court sets aside the conviction of the appellant under Sections 307 and 341 IPC and discharges him from the liabilities of bail bonds and sureties, if any. The appellant is, however, convicted under Section 323 IPC and sentenced to undergo imprisonment for a period of two



months. As the appellant has already remained in custody for more than two months, the sentence imposed is deemed to have been undergone.

15. The present appeal is dismissed with the modification in the judgment of conviction and order of sentence dated 04.02.2004 and 06.02.2004 respectively, passed by the Presiding Officer, Fast Track Court, No.III, Begusarai in Sessions Trial Non 249 of 1996 and 138 of 2004 arising out of Barauni P.S. Case No. 396 of 1995.

16. Let a copy of this judgment be sent to the concerned Court below along with the LCR.

17. This Court records its appreciation for the valuable assistance rendered by Mr. Piyush Kumar Pandey, learned Amicus Curiae. With regard to the direction for payment through the Patna High Court Legal Services Committee, he has submitted that he has assisted this Court on a *pro bono* basis.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	27/09/2025
Transmission Date	

