IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.133 of 2009

Arising Out of PS. Case No.-67 Year-2005 Thana- HULASGANJ District- Jehanabad

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Akhilesh Prasad @ Akhilesh Singh, son of late Basudeo Prasad resident of village Keur P.S.- Hulashganj, District - Jehanabad

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Prabhat Ranjan Singh, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT

Date : 26.03.2026

Re: I.A. No. 03 of 2018

This Interlocutory Application has been filed on behalf of the appellant for recalling the order dated 27.11.2018.

2. By filing a supplementary affidavit, it has been submitted that appellant of this appeal namely Akhilesh Prasad @ Akhilesh Singh is still alive. It is further submitted that due to a *bona fide* misunderstanding arising out of a telephonic communication, learned counsel for the appellant inadvertently informed the Court that the appellant had expired, whereas in fact, it was the father of the appellant who

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had died and not the appellant. It has further been submitted that the incorrect statement was neither intentional nor deliberate and no benefit could have accrued to the appellant by making such a submission. However, an unconditional apology has also been tendered on behalf of the appellant for the inadvertent mistake.

3. Learned counsel for the State has not controverted the aforesaid submissions.

4. Having considered the facts and circumstances of the case and the submissions made by the learned counsel for the appellant, this Court is satisfied that the incorrect statement was made due to a *bona fide* misunderstanding arising out of a telephonic communication.

5. Accordingly, the order dated 27.11.2018 is hereby recalled. The Criminal Appeal is restored to its original file and number.

6. I.A. No. 3 of 2018 is allowed.

Cr. Appeal (S.J.) No. 133 of 2009

7. Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

8. The present appeal has been directed against the judgment of conviction dated 15.01.2009 and order of

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sentence dated 17.01.2009 passed by learned Additional District & Sessions Judge, F.T.C.-IV, Jehanabad in Sessions Trial No. 566 of 2006/138 of 2006, arising out of Hulasganj Ghosi P.S. Case No. 67 of 2005 (G.R. Case No. 413 of 2005) whereby and whereunder the appellant has been convicted for the offences punishable under Sections 447, 341 and 307 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 7 years along with fine of Rs. 2,000/- under Section 307 of IPC and further sentenced to undergo rigorous imprisonment for one month in each Sections 447 and 341 of IPC. In default of fine he is further awarded one month imprisonment. All the sentences have been directed to run concurrently.

9. As per prosecution case, the informant Bharteshwar Prasad (PW-6), while undergoing treatment at the clinic of Dr. Pravin Kumar, gave his *fardbeyan* before A.S.I. Balmiki Singh of Islampur Police Station on 21.03.2005 at about 10:30 A.M., stating *inter alia* that on 20.03.2005 at about 8:00 P.M., he returned to his house at village Keur from Islampur Bazaar. As soon as he opened his door, his co-villager Akhilesh Prasad (appellant), armed with a *farsa*, came to his door along with two unknown persons

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and abused him in filthy language. Upon protest by the informant, the accused persons disclosed that the informant used to demand the outstanding rent from the wife and sister of the appellant, who had been residing in the informant's house at Islampur without paying rent for the last two and a half years. On this issue, the accused/appellant allegedly threatened the informant that he would teach the informant and his son Arun such a lesson that they would forget to demand the rent. After a brief altercation, the appellant Akhilesh Kumar, who was having a farsa in his hand, assaulted the informant by giving a *farsa* blow on his head with an intention to kill him. Due to the said assault, the informant sustained bleeding injuries and he became unconscious. He raised alarm for help upon which the local residents assembled at the place of occurrence. After seeing them, the accused persons fled away. The informant was taken to the clinic of Dr. Pravin Kumar at Islampur by the neighbours for treatment. During the course of treatment, he gained consciousness.

10. On the basis of fardbeyan given by the informant/PW-6, Hulasganj Ghosi P.S. Case No. 67 of 2005 dated 23.03.2005 was registered for the offence under

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Sections 447, 504, 341, 323, 324 and 34 of the I.P.C. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant under Sections 447, 341, 326, 307 and 34 of the IPC. Thereafter, the learned trial court took cognizance under the aforementioned Sections of the IPC. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant under Sections 447, 341, 307 and 34 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

11. In order to bring home the guilt of the accused persons, the prosecution has examined all together seven witnesses namely, PW-1 Ram Hari Prasad (retired teacher), PW-2 Md. Islam @ Bhutali Mian, PW-3 Arun Kumar (son of the informant), PW-4 Ramanuj Singh, PW-5 Surendra Prasad @ Lala Prasad, PW-6 Bharteshwar Prasad (victim as well as informant of this case), PW-7 Dr. Kumar Pravin (doctor).

12. Prosecution has relied upon following documentary evidences on record:-

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Ext. 1- Signature of the informant Bharteshwar Prasad on Fardbeyan.

Ext. 2- Signature of the informant Bharteshwar Prasad on the protest petition.

Ext. 3 – Injury Report.

13. Appellant has not produced any oral evidence in his support. However, defence has relied upon one exhibit i.e. Ext.-A namely, voter list of Ghosi Constituency in his support. However, the defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

14. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the 8th paragraph of the judgment.

15. Following submissions have been made on behalf of learned counsel for the appellant:-

15.1. Learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence are wholly unsustainable in law as well as on the facts and circumstances of the present case. The prosecution case arises on account of rent dispute between the

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informant and the appellant, which gives the incident a purely civil flavour and completely negates any intention to commit murder. The *fardbeyan* was not recorded at the place of occurrence but at a private clinic after considerable delay of about three days and no plausible explanation has been given for the said delay. He further submits that the fardbeyan was recorded by a police officer of a different police station though the place of occurrence falls under Hulasganj (Ghosi) Police Station, rendering the prosecution version doubtful. There is no independent eye-witness to the alleged occurrence and the entire case rests upon the interested testimony of the informant and a private doctor, who is admittedly a tenant of the informant. The medical evidence does not support the charge under Section 307 IPC, as the injury report does not opine the injury to be dangerous to life and there is an allegation of only a single blow with no repetition of assault. The doctor has contradicted himself during cross-examination and attempted to improve the prosecution case, which further creates doubt about the credibility of the medical evidence. The non-examination of the Investigating Officer has caused serious prejudice to the appellant, as material contradictions and lapses in investigation could not be brought on record.

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The prosecution story itself is inconsistent, as two unknown accused persons were named in the *fardbeyan* but were never identified or assigned any role during trial. The learned trial court has convicted the appellant on surmises and conjectures, ignoring settled principles of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt. In the absence of any cogent evidence establishing intention or knowledge to cause death, no offence under Section 307 IPC is made out. In support of his contention, learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in the case of ***Sivamani & Anr. vs. State Represented by Inspector of Police***, reported in ***2023 SCC OnLine SC 1581.***

15.2 It is further submitted on behalf of the appellant that a careful scrutiny of the evidence of PW-6, who is the informant as well as the alleged victim, itself demolishes the prosecution case so far as the charge under Section 307 IPC is concerned. PW-6 has supported the prosecution version regarding the time, place and manner of occurrence and has also spoken about the alleged motive. However, during cross-examination, he has categorically admitted that he was fully in the grip of the appellant at the

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time of occurrence and further admitted that had the appellant intention to kill him, he could have easily done so. He has specifically admitted that the appellant inflicted only a single blow by means of farsa. This admission clearly establishes that there was no intention on the part of the appellant to cause death as, despite having full opportunity, the appellant did not repeat the assault. The statement of PW-6, thus, itself clarifies that the intention of the appellant was not to kill but, at best, to cause injury. So far as the medical evidence is concerned, PW-7, the doctor, has also stated during cross-examination that only one injury was found on the body of the injured. The medical opinion, thus, clearly corroborates the version of PW-6 regarding a single blow, which completely rules out the ingredients of Section 307 IPC. Although the doctor has opined the injury to be grievous, the existence of only one injury, without repetition of blow, negates any intention or knowledge to cause death. The place, time and nature of injury may be consistent with the FIR, but such consistency alone cannot constitute the offence under Section 307 IPC. It is further submitted that since the Investigating Officer has not been examined, the defence did not get an opportunity to cross-examine the Investigating Officer and to

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contradict the statements of the prosecution witnesses on the point of place of occurrence. PW-6 has given contradictory statements regarding the arrival of nearby people. In the initial version, he stated that people arrived during the scuffle, whereas in his deposition before the Court he stated that people came only after he had sustained the injury. This inconsistency on a material aspect of the occurrence casts doubt on the reliability of the prosecution story and further weakens its case. In view of the clear admission of PW-6 regarding the absence of intention to kill, the medical evidence of PW-7 establishing a single injury, and the inconsistencies in the prosecution version, it is submitted that no offence under Section 307 IPC is made out and the learned trial court has passed the impugned judgment of conviction and order of sentence without applying judicial mind. In the light of aforesaid facts and circumstances of the case, impugned judgment of conviction and order of sentence are liable to be set aside.

16. Learned counsel for the State submits that judgment of conviction and order of sentence passed by the concerned court is on the basis of material available on record and the prosecution has proved the case under Sections 447,

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341 and 307 of the IPC and the court has analysed and appreciated the evidence of all the prosecution witnesses in detail and there is no reason to differ from the finding of concerned court. Accordingly, the judgment of conviction and order of sentence passed by the concerned court are justified and legal and no interference is needed.

17. The question which arises for consideration is:-

> *"Whether the prosecution has proved its case under Sections 447, 341 and 307 of the Indian Penal Code beyond reasonable doubt or not?*

18. I have perused the impugned judgment and trial court records. I have given my thoughtful consideration to the rival contentions made on behalf of the parties as noted above.

19. It is necessary to evaluate, analyze and screen out the evidence of witnesses adduced before the trial court.

20. PW-1/ Ram Hari Prasad has stated that the occurrence is of 20.03.2005 at about 7:30 p.m. He further stated that he knew the accused Akhilesh Prasad, who was present in court. He stated that on the date of occurrence upon

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hearing alarm, he reached the place of occurrence and saw that the appellant assaulted the informant/victim by means of Farsa. He stated that there was a dispute between Bharteshwar Prasad and Akhilesh Prasad regarding rent.

20.1. In cross-examination, PW-1 stated that when he reached at the place of occurrence, Md. Islam (PW-2), Surendra Prasad (PW-5) and Ramanuj Singh (PW-4) were already present. He further stated that after his arrival, Akhilesh Prasad and several villagers reached the spot. Attention of this witness has been drawn to which he has stated that the injured was taken to hospital by jeep, but on the point of assault he has asserted that he saw the appellant assaulting on the head of the injured by means of Farsa.

20.2 From perusal of the evidence of PW-1, it is crystal clear that on the point of assault his statement is quite consistent with the story of prosecution regarding time of occurrence, place of occurrence and manner of occurrence and there is no reason to disbelieve the statement of P.W. 1.

21. PW-2 / Md. Islam @ Bhutali Mian has stated that about two years prior to his deposition, at about 7:45 P.M., he was going to tie his cattle in the cowshed of Bharteshwar Prasad (informant). He stated that he saw

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Bharteshwar Prasad and Akhilesh Prasad (appellant) quarreling and the appellant was armed with a farsa. He stated that Akhilesh Prasad assaulted Bharteshwar Prasad on his head by means of farsa, as a result of which Bharteshwar Prasad fell down unconscious. He stated that he took the injured to Islampur for treatment.

21.1. Attention of this witness has been drawn by the defence counsel where in cross-examination, PW-2 denied that he had not stated before the police that upon reaching the spot he came to know from others that Akhilesh Prasad (appellant) had assaulted Bharteshwar Prasad (informant). He admitted that he is a *bataidar* (co-sharer) of Bharteshwar Prasad and he still cultivates the land of the informant. He stated that Ram Hari Prasad (PW-1) and Surendra Prasad (PW-5) reached at the place of occurrence after his arrival.

21.2. From perusal of the evidence of PW-2, it is clear that he also saw the appellant assaulting upon the head of informant/victim by means of Farsa. In this way, the statement of P.W. 2 on the point of time of occurrence and manner of occurrence is corroborated by the statement of P.W. 1.

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22. PW-3 Arun Kumar stated that at the relevant time he was at his medicine shop at Islampur. He stated that his father Bharteshwar Prasad (informant) was brought to him in an unconscious condition by villagers in a jeep. He stated that he came to know from villagers that Akhilesh Prasad (appellant) had assaulted his father by means of farsa. He further stated that after regaining consciousness, his father told him that Akhilesh Prasad had assaulted him.

22.1. In cross-examination, PW-3 admitted that there was a rent dispute between him and the accused. He stated that he did not get his father treated at a government hospital. He admitted that Dr. Pravin Kumar, who treated his father, was his tenant and that the clinic was situated in his own building. It is not stated before the police regarding the name of particular person as to who had informed him that his father was assaulted.

22.2. From perusal of the evidence of PW-3, it is clear that he is not an eye-witness to the occurrence as in paragraph-1, he categorically stated that at the time of occurrence he was at his medicine shop at Islampur and came to know about the incident from villagers. His entire testimony regarding the assault is, therefore, hearsay in

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nature, but he has supported the prosecution story on the point of assault.

23. PW-4/Ramanuj Singh has stated that about two years prior to his deposition, at about 7:30 P.M., he heard hulla while returning home with his jeep. He stated that he reached the place of occurrence and saw Bharteshwar Prasad and Akhilesh Prasad quarrelling over rent issue. He stated that Akhilesh Prasad assaulted Bharteshwar Prasad by means of farsa, after which the accused fled away along with two unknown persons. He stated that he took the injured to Islampurby his own jeep for treatment.

23.1. In cross-examination, P.W. 4 stated that the entire occurrence lasted about 2-3 minutes. He further stated that Bharteshwar Prasad was in the grip of the accused and if the accused had the intention to kill, he could have killed him.

23.2. From perusal of the evidence of PW-4, it is clear that his evidence on the point of assault has corroborated the story of prosecution, but he has stated that informant/victim was in the grip of the accused/appellant and if the appellant had intention to kill, he could have killed the informant/victim. In this way, from the evidence of P.W. 4 it is

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evident that there was no intention of appellant to kill the informant/victim.

24. PW-5/ Surendra Prasad @ Lala Prasad has stated that about two years prior to his deposition, at about 7-8 P.M., while returning from his field, he saw Akhilesh Prasad quarreling with Bharteshwar Prasad over outstanding rent. He stated that Akhilesh Prasad assaulted Bharteshwar Prasad on the head with a farsa, as a result of which Bharteshwar Prasad fell down unconscious. He stated that the injured was taken to Islampur in a jeep.

24.1. In cross-examination, PW-5 gave elaborate evidence regarding his name, identity and voter list entries. He admitted that he is a well-wisher of Bharteshwar Prasad. At one point, he stated that several persons were present nearby but at another place, he stated that they had not actually reached at the place of occurrence. He admitted that he stayed with the injured throughout the night at the doctor’s clinic.

24.2. From perusal of the evidence of PW-5, it is clear that his very identity as a prosecution witness is doubtful. From paragraphs-6 to 11, his evidence mainly centres around his name, parentage and voter list entries. It

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has been suggested to him that he is not the same Surendra Prasad as mentioned in the charge-sheet, and this discrepancy could not be clarified due to non-examination of the Investigating Officer. Though the statement of P.W. 5 on the point of appearance of witnesses at the place occurrence is inconsistent with other prosecution-witnesses, but P.W. 5 has supported the story of prosecution on the point of assault.

25. PW-6/Bharteshwar Prasad (Informant/ Injured) stated in para 1 that on 20.03.2005 at about 8:00 P.M., he returned to his house and as soon as he was opening the door of his house, the accused Akhilesh Prasad came and assaulted him on his head by means of farsa. He further stated that there was a dispute regarding arrears of rent of his house situated at Islampur, where the wife and sister of the accused were residing. PW-6 further stated in para 2 that after receiving the blow, blood started oozing out from his head. PW-6 further stated in para 3 that he raised alarm and thereafter local people assembled at the place of occurrence. PW-6 further stated in para 4 that he became unconscious after receiving the injury. PW-6 further stated in para 5 that he was taken to the clinic of Dr. Pravin Kumar at Islampur for treatment. PW-6 further stated in para 6 that after regaining

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consciousness, the police recorded his statement at the clinic. PW-6 further stated in para 7 that the fardbeyan was written by the police and he put his signature on the same, which was marked as Ext-1. PW-6 further stated in para 8 that he had also filed a protest petition, on which he put his signature, marked as Ext-2.

25.1. In cross-examination, PW-6 stated in para 8 of cross-examination that he was not treated in any government hospital and that no X-ray examination was conducted. PW-6 stated in para 9 that there were government hospitals and police stations at Hulasganj and Ghosi, but he was taken to Islampur. PW-6 stated in para 10 that the police had prepared papers prior to the injury report prepared by the doctor. PW-6 further stated in para 11 that it is not correct to say that he was first examined by the police and thereafter by the doctor. PW-6 stated in para 12 that the accused inflicted only one blow upon him. PW-6 stated in para 13 that at the time of occurrence he was completely in the grip of the accused, and if the accused had intention to kill, he could have killed him. PW-6 stated in para 14 that he regained consciousness on the next day.

25.2 From perusal of the statement of the PW-

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6, it is crystal clear that PW-6 has given graphic details of the initial version of prosecution story and he has specifically stated that occurrence took place on 20.03.2005 at about 8:00 p.m. and accused/appellant came and assaulted outside the door of his house and motive behind dispute was regarding non-payment of arrears of rent of house and he was assaulted on his head by means of farsa. In this way he has supported the time of occurrence, place of occurrence and manner of occurrence and his presence at the place of occurrence cannot be doubted. However, there are some discrepancies in the statement adduced by PW-6 for which the whole prosecution story cannot be negated.

26. P.W. 7/Dr. Pravin Kumar has stated that on 20.03.2005 he was posted at his clinic at Islampur. On that date at about 9:00 p.m., he examined Bharteshwar Prasad/informant and found the following injuries:–

> *(a) Injuries – cut wound longitudinal at the right side of the scalp, bright red in colour with fresh hematoma – 4.5" long x 1.05" deep. In the centre 0.25" deep. Parietal bone was cut. Observation done for 48 hours – no sign of head injury was seen.*

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(b) Type of weapon used – Sharp cutting double-edged weapon.

(c) Age of injury – Within six hours.

(d) Nature of injury – Grievous in nature.

(e) M.I. - Wound mark on the ventral side of the right forearm.

26.1 PW-7/ Dr. Pravin Kumar has stated that on 20.03.2005 at about 9:00 P.M., he examined Bharteshwar Prasad and found one cut injury on the scalp. He opined that the injury was caused by a sharp cutting weapon and was grievous in nature. He proved the injury report (Ext.-3).

26.2 In cross-examination, PW-7 admitted that he had not mentioned in the injury report that the injury was dangerous to life and that he stated so for the first time in court. He admitted that he did not advise X-ray examination. He further admitted that he was a tenant of the informant at the time of occurrence.

27. The presence of injured witness/informant at the place of occurrence cannot be discarded as he is sufferer of crime and has supported the story of prosecution on the point of place of occurrence, time of occurrence and manner

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of occurrence. As such, even if the Investigating Officer of this case has not been examined, the whole prosecution story cannot be thrown out in a case where the place of occurrence is otherwise proved. Even if some minor discrepancies or inconsistencies are found in the evidence of prosecution-witnesses regarding manner of appearance of some of the witnesses, the whole story of prosecution cannot be thrown out when crux of the prosecution story is quite intact and supportive of manner of occurrence, time of occurrence and how the injured/informant suffered injuries.

28. In the light of aforementioned facts and circumstances, the following judicial decisions are pertinent to cite:-

29. ***In Brahm Swaroop and another v. State of U.P.***, reported in ***AIR 2011 SC 280***, the Hon'ble Supreme Court at para 22 of the judgment held as follows:

> *"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his*

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> *actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."*

30. ***In Mano Dutt and another v. State of Uttar Pradesh***, reported in ***(2012) 4 SCC 79***, the Hon'ble Supreme Court at para 30 of the judgment observed as follows:-

> *"30... Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit."*

31. ***In State of U.P. v. Kishan Chand and others*** reported in ***(2004) 7 SCC 629***, *a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony that he was present during the occurrence."*

32. *"What is necessary to constitute offence under Section 307 of IPC?"*

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33. Intention under Section 307 of the IPC is not directly proven but inferred from surrounding evidence, such as the weapon used, the part of the body targeted, the nature of the injuries, the force applied, and the circumstances of the act. Since intent is a mental state, courts look at the objective actions of the accused to understand their subjective state of mind, focusing on factors like the type of weapon, how it was used, and the location and severity of the injury.

Factors used to infer intention:-

(i) **Nature of weapon used:-** The type of weapon (e.g., a firearm, a knife, a rod) and its dangerousness can indicate intent to cause death.

(ii) **Sheet of Injury:-** The body part where the injury was inflicted is a key factor. For example, hitting the head or vital organs is a strong indicator of intent to kill.

(iii) **Nature of Injury:-** The severity and extent of the injuries are considered. Even the injury is not fatal, a severe assault with a dangerous weapon can still suggest an intent to cause death.

(iv) **Circumstances of the Act:-** The context in which the act occurred, the relationship between the accused and the vicitm, and the force used can all provide clues to the

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accused's intent. For example, a pre-planned attack with a clear motive is more likely to be considered an attempt to murder.

(v) **The Intention of Action:-** The action must be directly linked to causing death. For the offence to be made out, the act must have been done with the intention or knowledge that it would cause death, irrespective of whether death was actually caused.

(vi) **Result vs. intent :-** It is crucial to understand that Section 307 does not require death to occur. The court assesses the intention behind the act, not the result. An act that is an attempt to murder can still be charged even if the victim survives due to chance.

34. From perusal of evidence of prosecution witnesses, it is clear that the appellant had assaulted the informant/P.W.6 by means of farsa causing injury on his head. The testimony of PW-6 (injured) is supported by the medical evidence of doctor/PW-7, who found one cut injury on the scalp of the injured. Other prosecution-witnesses have also supported the story of prosecution on the point of assault. It is pertinent to note here that whenever statements of witnesses are taken during course of investigation and when the

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statement of witnesses are taken in court, there is a time gap and even if some inconsistencies are found, the same are bound to occur and upon the said inconsistencies, the story of prosecution cannot be thrown away when crux of the prosecution story is quite intact and evidence of prosecution-witnesses are supportive of prosecution story on the point of assault.

35. The only question which now remains for consideration is as to whether the said act of the appellant would attract the ingredients of Section 307 of the Indian Penal Code or not.

36. It is well settled that in order to attract Section 307 IPC, intention or knowledge to cause death is the essential ingredient. Mere causing of grievous injury by a sharp cutting weapon is not sufficient to bring the case within the ambit of Section 307 IPC, unless intention or knowledge to cause death is clearly established. From perusal of the evidence of PW-6/informant, it is evident that only one blow was inflicted by the appellant. PW-6 has categorically stated in paragraph-13 of his cross-examination that he was completely in the grip of the accused and if the accused had intention to kill him, he could have killed him. This admission

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is very material on the point of intention. There is no allegation that the appellant repeated the assault. So far as the medical evidence is concerned, doctor/PW-7 has found only one injury on the scalp of the informant/injured. Though he has opined the injury to be grievous in nature, but he has admitted at para-8 of his cross-examination that he had not mentioned in the injury report that the injury was dangerous to life and he stated so for the first time before the Court. He has further admitted that no X-ray examination was advised. Thus, there is no clear evidence to show that the injury was sufficient in the ordinary course of nature to cause death.

37. It has rightly been admitted by P.W. 6/informant that there was no intention on the part of appellant regarding causing death as despite having full opportunity, the appellant did not commit any act of assault repeatedly. The very act of appellant clarifies that the intention was not to kill the informant/victim and, at best, inference can be drawn with regard to causing injury to informant. Considering the fact that only a single blow was inflicted, there was no repetition of assault and there is absence of clear evidence regarding intention or knowledge to cause death, the submission advanced by the learned counsel

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for the appellant is quite tenable and sustainable in the light of given facts and circumstances of the case that from the materials on record, only offence under Section-324 of I.P.C. can be made out and, as such, conviction of appellant under Section-307 of I.P.C. is not sustainable.

38. In the background of the discussions made hereinabove and on taking an overall view, the impugned judgment is varied only to the extent that the conviction of appellant stands modified to that under Section-324 of I.P.C.

39. So far conviction of the appellant under Section 341 of the IPC is concerned, there is no specific and categorical evidence of restraining or preventing the informant/victim by the appellant which is quite obvious from the initial version of the prosecution story as well as from the evidence adduced by the PW-6/informant and other prosecution-witnesses during their deposition. In absence of said evidence, no offence is made out under Section 341 of the IPC. Accordingly, appellant is acquitted of the charge under Section-341 of I.P.C.

40. So far conviction under Section-447 of I.P.C. is concerned, it provides for the punishment for criminal tresspass as defined in Section-441 of Indian Penal

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Code which reads as under:-

> ***"441. Criminal tresspass--*** *Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal tresspass".*

41. In the present case, there is no allegation of criminal trespass against the appellant either in the initial version of the prosecution-story or in the evidence of the prosecution-witnesses, including the informant. The informant's version in the initial version of the prosecution story as well as in his evidence is that on 20.03.2005 at about 8:00 P.M., he returned to his house and as soon as he was opening the door of his house, the accused Akhilesh Prasad came and assaulted him on his head by means of *farsa*. Hence, it is evident that the incident of assault took place outside the door of informant's house. In view of the above, no offence is made out under Section 447 of the IPC.

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Accordingly, appellant is acquitted of the charge under Section-447 of I.P.C.

42. So far as sentence of appellant under Section-324 of I.P.C. is concerned, learned counsel for the appellant submits that the appellant is aged about 90 years, he is a first offender and appellant has remained in judicial incarceration for one year, one month and nine days. Occurrence is of the year 2005 and appellant has already suffered 21 years in litigation and he has suffered mental agony of facing the trial since 2005 and he has lost his precious time being a first offender. Hence, if the appellant is sentenced to the period undergone, that would meet the ends of justice.

43. From perusal of record, it is evident that occurrence is of the year 2005 and appellant has already suffered 21 years in litigation and he has suffered mental agony of facing the trial since 2005 and he has lost his precious time being a first offender. The appellant has remained in judicial incarceration for one year, one month and nine days. Hence, to put the appellant in jail for remaining period is too harsh as appellant is aged about 90 years. Hence,

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the court is of the view that if sentence of the appellant is reduced to the period already undergone that would meet the ends of justice. Accordingly, the sentence of the appellant is reduced to the period already undergone.

44. With the aforesaid modification in sentence, the instant appeal stands partly allowed.

45. The interlocutory application, if any, also stands disposed of.

46. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

47. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

Nilmani/-

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CAV DATE	21.01.2026
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