

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.197 of 2016**

Arising Out of PS. Case No.-84 Year-2014 Thana- GOVINDPUR District- Nawada

Dharmendra Rajbanshi Son of Late Baleshwar Rajhanshi, Resident of  
Village- Dhankuri, P.S.- Govindpur, District- Nawada.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

|                   |   |                                                             |
|-------------------|---|-------------------------------------------------------------|
| For the Appellant | : | Mr. Sheo Kumar Prasad, Advocate<br>Mr. Vakil Kumar Advocate |
| For the State     | : | Mr. A.M.P. Mehta, APP                                       |
| For the Informant | : | Mr. Ram Pravesh Kumar, Advocate                             |

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH  
ORAL JUDGMENT**

**Date : 07-05-2026**

Heard learned counsel for the appellant, learned A.P.P.  
for the State and learned counsel for the informant.

2. This appeal has been filed challenging the judgment of conviction dated 10.02.2016 and order of sentence dated 12.02.2026 passed by the learned Sessions Judge, Nawada in Sessions Trial No. 139 of 2015, arising out of Govindpur P.S. Case No. 84 of 2014 (G.R. Case No. 2388 of 2014), whereby and whereunder the appellant has been convicted for offence under Sections 452 and 307 of the Indian Penal Code (for short "I.P.C.") and sentenced to undergo rigorous imprisonment for two years for the offence under Section 452 of the I.P.C. and further for offence under Section 307 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- and in default of payment of fine, he was directed to



further undergo rigorous imprisonment for six months. Both sentences were directed to run concurrently.

3. The prosecution case, in brief, is that on 25.08.2014 at about 4 P.M., wife and daughter of informant namely Kalo Devi Asho Devi went to take water from a Government hand-pump in their village Dhanpuri, in the meantime, this appellant came there and forbade them from taking water from that hand-pump. Thereafter he entered into the house of the informant and assaulted on the head of informant's daughter Asho Devi by means of *Tangi* which resulted in a bleeding cut injury and also pelted stones on her. Accordingly, thereafter the informant went to local police station with his injured daughter and gave his *Fardbeyan*.

4. In this case, on the basis of the *Fardbeyan* of the informant, Govindpur P.S. Case No. 84 of 2014 was registered for the offence punishable under Sections 323, 324, 341, 448 and 307 of the I.P.C. against this appellant and after completion of the investigating, charge-sheet was submitted under aforesaid sections of the I.P.C. and thereafter, cognizance was taken in the case and in due course the case was committed to the Court of *Sessions*.

5. In this case, the prosecution has examined altogether nine witnesses in order to prove its case. Injured Asho Devi is **P.W.1**, her mother Kalo Devi is **P.W.2**, her brother Mukesh



Rajbanshi is **P.W.3**, Bhola Yadav @ Bhola Prasad Yadav, who is common neighbour of the both side is **P.W.4** and all the aforesaid four witnesses have supported the prosecution case. Dr. Basudeo Prasad Verma, Incharge Medical Officer of Primary Health Center, Govindpur, who prepared the injury report, is **P.W.5**, Jamuna Rajbanshi (brother of the informant) is **P.W.6**, Ravi Shankar Paswan @ Ravinandan Paswan, who is co-villager of both parties, is **P.W.7** and both have corroborated the prosecution story. Jagdish Paswan (S.I. of Police and the I.O. of the case) is **P.W.8**, who proved Exts. 2, 3 and 4 and after investigation submitted charge-sheet and the informant is **P.W.9**, who supported his case in his examination-in-chief.

6. The prosecution has also adduced documentary evidences, which are marked as:-

|             |                                                                                        |
|-------------|----------------------------------------------------------------------------------------|
| Exhibit 1   | <i>Injury report of injured Asho Devi</i>                                              |
| Exhibit 1/1 | <i>Supplementary injury report of injurded Asho Devi</i>                               |
| Exhibit 2   | <i>Endorsement of S.H.O. of Govindpur P.S. on the written report of the informant.</i> |
| Exhibit 3   | <i>Formal F.I.R.</i>                                                                   |
| Exhibit 4   | <i>Requisition of I.O. for medical examination of injured Asho Devi</i>                |
| Exhibit 5   | <i>Bed heat ticket of Asho Devi of PMCH, Patna.</i>                                    |
| Exhibit 6   | <i>Discharge ticket of Asho Devi from PMCH, Patna.</i>                                 |

7. On the other hand, on behalf of defence, certified copy of the F.I.R. of the counter case, which has been marked as Ext. A.



8. After hearing the parties, the learned Trial Court has convicted and sentenced this appellant, as indicated in the opening paragraph of this judgment, which has been challenged by the appellant by this appeal.

9. Learned counsel for the appellant assails the judgment of conviction and sentence on several grounds. He contends that even if the entire prosecution case is believed to be true, the ingredients of the offence punishable under Section 307 of the I.P.C. would not be attracted in the present case, as there is no allegation against this appellant that he repeated assault upon the informant's daughter. At best, the ingredients of Section 325 of the I.P.C. would be attracted. He further contends that prosecution has failed to establish the place and manner of occurrence. As per P.W.-1, the assault took place in the *Angan* (courtyard), whereas, P.W.-2 stated that assault took place inside the house and P.W.-7 deposed that assault took place in the *Verandah*, so place of occurrence is not established. There is also contradictions between the statements of P.Ws. 1, 2 and 4 about the genesis of the occurrence. On aforesaid grounds, the impugned judgment of conviction and order of sentence are fit to be set aside.

10. *Per Contra*, learned A.P.P. for the State and learned counsel for the informant opposed the appeal and submitted that



the evidence on record unmistakably points to the guilt of appellant. Charge against the appellant was proved by the prosecution witnesses beyond all reasonable doubt. They further contended that though there are some minor contradictions in the depositions of witnesses with regard to place of occurrence, but those are ignorable and do not affect the merit of the case. Accordingly, the learned Trial Court was fully justified in convicting the appellant under Sections 452 and 307 of the Indian Penal Code, which may not be interfered with by this Hon'ble Court.

11. After hearing learned counsel for the parties and perusing the materials available on record, this Court is in agreement of learned counsel for the appellant that Section 307 of the I.P.C. is not made out in the present case, as there is no allegation against this appellant that he repeated assault upon the informant's daughter. Despite there being no intervening circumstances, the informant's daughter's life was saved. In my view, it is clear case of Section 325 of the I.P.C. and as such, the conviction and sentence can be converted into Section 325 of the I.P.C. instead of Section 307 of the I.P.C.

12. Keeping in view the fact that the incident is of the year 2014 and there is no complaint against this appellant after



institution of the present F.I.R. Accordingly, impugned judgment of conviction & sentence is converted into Section 325 of the I.P.C. instead of Section 307 of the I.P.C. and the sentence, imposed upon appellant, is reduced to the period already undergone. In this case, the appellant was in custody since 26.08.2014 and was bailed out, vide order dated 27.04.2016 passed by a coordinate Bench of this Court and thus, he (appellant) remained in custody for 1 year & 8 months.

13. Accordingly, the impugned judgment of conviction dated 10.02.2016 and order of sentence dated 12.02.2026 passed by the learned District & Sessions Judge, Nawada in Sessions Trial No. 139 of 2015, arising out of Govindpur P.S. Case No. 84 of 2014 (G.R. Case No. 2388 of 2014) is modified to the extent that instead of conviction & sentence to the appellant for offence under Sections 452 & **307** of the I.P.C., he (appellant) be convicted & sentenced under Sections 452 & **325** of the I.P.C. Accordingly, the sentence is reduced to the period, already undergone by this appellant.

14. In that view of the matter, the appellant is discharged from the liability of his bail bond in connection with this case.



15. Accordingly, the appeal stands disposed of.

**(Prabhat Kumar Singh, J.)**

Anay

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| AFR/NAFR          | NAFR       |
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