

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.344 of 2011**

1. Kishori Mahato son of Late Mahadeo Mahato

2. Ranjan Mahato son of Sri Kishori Mahato

3. Nathun Mahato son of Late Mahadeo Mhato

All resident of village-Manpur Pehani, P.S.-Buniyadganj, Dist.-Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Atul Dayal, *Amicus Curiae*

For the Respondent/s : Mr.Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 11-03-2026

Learned Advocate-on-Record for the appellants/accused has failed to appear on repeated dates. Accordingly, this Court has appointed Mr. Atul Dayal, learned Advocate, as *amicus curiae* to assist in the disposal of the appeal.

2. Heard Mr. Atul Dayal, learned *Amicus Curiae* appearing on behalf of the Appellant and Mr. Abhay Kumar, learned APP for the State.

3. The present appeal has been filed under Sections 374 (2) of the Code of Criminal Procedure challenging the judgment of conviction dated 10.02.2011 and order of sentence dated 14.02.2011 passed by the learned Additional Sessions



Judge-4, Gaya arising out of Sessions Trial No.317/2009/518/2006 arising out of Buniyadganj P.S. Case No.13/2006 whereby and whereunder the appellants have been convicted for the offence punishable under Section 307/34 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for ten years under Sections 307/34 of Indian Penal Code along with fine Rs.1000/- each.

4. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal before this Court. The appellant has 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 appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

5. The prosecution story, in brief, is that one Krita Devi, wife of Sri Nathun Mahato (Appellant no.3), is the informant of the case. On 25.02.2006 at about 7:00 P.M., when the informant returned to her house after selling vegetables, Nathun Mahato (Appellant no.3), Kishori Mahato (Appellant no.1), and Ranjan Mahato (Appellant no.2) came there. Nathun



Mahato allegedly demanded Rs. 1,000/- from the informant and, upon her refusal to give the said amount, Kishori Mahato and Ranjan Mahato allegedly abused the informant in filthy language and instigated Nathun Mahato to kill her. Thereafter, the said Nathun Mahato attacked the informant with a knife, as a result of which she sustained injuries on her chest, hand, and other parts of the body.

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 unsustainable in the eye of law, as the same is based on inconsistent and unreliable evidence. Learned counsel submitted that the judgment of conviction dated 10.02.2011 and the order of sentence dated 14.02.2011 passed by the learned Additional Sessions Judge-IV, Gaya in Sessions Trial No. 317/2009/518/2006 arising out of Buniyadganj P.S. Case No. 13/2006 are wholly illegal, arbitrary and contrary to the evidence available on record. The prosecution case suffers from serious contradictions and inconsistencies. Out of the ten witnesses examined by the prosecution, P.W.-3, P.W.-4 and P.W.-5, who were independent witnesses, have been declared hostile, while the evidence of P.W.-2 Manoj Kumar, the son of



the informant, has been expunged as his cross-examination could not be completed. The conviction has thus been based mainly on the testimonies of P.W.-1 and P.W.-9, who are daughters of the informant, and P.W.-6, the informant herself, all of whom are highly interested witnesses. It is further submitted that although these witnesses alleged that the informant was assaulted by a knife (chhura), the medical evidence of P.W.-7, Dr. Kishore Kumar Sinha, who examined the informant on the date of occurrence, clearly states that the injuries found on the body of the informant were caused by a hard and blunt substance and no sharp-cut or penetrating injury was found. Thus, the medical evidence does not corroborate the ocular version of the prosecution witnesses, creating serious doubt about the prosecution story.

7. Learned counsel further submitted that the allegations against the appellants Kishori Mahato and Ranjan Mahato are vague and unsupported by reliable evidence. P.W.-1 herself has admitted that Kishori Mahato had been living separately from the informant's family for the last three years and that the informant was assaulted only by co-accused Nathun Mahato. Similarly, the statement of the informant (P.W.-6) that Kishori Mahato had given the knife to Nathun Mahato is an



improvement over the F.I.R. and is not supported by the testimonies of P.W.-1 and P.W.-9. The informant has also admitted the existence of a land dispute between the families, indicating a motive for false implication of the appellants. The Investigating Officer (P.W.-8) has also stated that there was no criminal antecedent of the appellants and that Kishori Mahato was found to be living separately during investigation, and no corroborative or material evidence was found against them. In such circumstances, it is submitted that the prosecution has failed to prove the charge under Section 307/34 of the Indian Penal Code beyond reasonable doubt and the appellants are entitled to the benefit of doubt. Hence, the impugned judgment of conviction and order of sentence are fit to be set aside.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences as the offences alleged against the appellants appears to be serious in nature and also constitutes cognizable offence.



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.

11. The learned Trial Court, on the basis of materials as collected during the course of investigation, passed the Judgment of Conviction dated 10.02.2011 and order of sentence dated 14.02.2011 for the offences under Section 307/34 of the IPC.

12. During the trial, the prosecution has examined altogether ten witnesses, namely:

P.W.-1-Pinki Kumari (daughter of informant)

P.W.-2-Manoj Kumar (son of informant)

P.W.-3-Manju Devi (Independent witness)

P.W.-4-Ram Swarup Prasad (Independent witness)

P.W.-5-Rameswar Mahato (Independent witness)

P.W.-6-Krita Devi (Informant / victim)

P.W.-7-Dr. Kishore Kumar Sinha

P.W.-8-Sri Sadanand Singh (Investigating Officer)

p.w.-9-Pinki kumar (Daughter of informant)

P.W.-10-Birendra Singh(Formal witness)



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

- (i) Injury report(Exhibit-1),
- (ii) FIR (Exhibit-2),
- (iii) Endorsement of FIR (Exhibit-3),
- (iv) Written Report (Exhibit-4)

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

15. 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.

16. It would be appropriate to reproduce the provision of Section 307 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].”

17. 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.

18. Law in this regard is well settled by the Apex Court in case of **Sivamani v. State**, reported in, **2023 SCC OnLine SC 1581**, wherein in paragraph no. 9, the court 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.’”

19. The record reveals P.W.-3, P.W.-4 and P.W.-5 were declared hostile during the trial as nothing transpired from their testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who supported the crime in question during the trial. Therefore, the testimony of these three witnesses are not relevant qua establishing guilt of the accused/appellants.

20. Upon a careful re-appraisal of the evidence available on record, I find that the statement of the informant, who is the wife of appellant no. 3 and the sister-in-law of appellant nos. 1 and 2, alleges that the appellants assaulted her for not paying a sum of Rs. 1,000. However, this allegation is not substantiated by the evidence brought on record. From the statement of the informant (PW-6), it appears, at best, that a



quarrel arose because she had not paid Rs. 1,000 to her husband (appellant no. 3), which led to a dispute between the husband and wife and also involved appellant nos. 1 and 2. The daughter of appellant no. 3 was examined with regard to the injuries, and upon examination the doctor found one injury on the chest, another near the rib, and one on the arm. The opinion of the doctor (PW-7) is that the injuries were caused by a hard and blunt substance. The Investigating Officer (PW-8) has also been examined. The medical evidence, as given by the doctor (PW-7), indicates that the injuries were caused by a hard and blunt substance, which is inconsistent with the prosecution story wherein it has been alleged that the injuries were caused by a knife attack. It is further evident that all the independent witnesses have turned hostile. The conviction of the appellants is thus primarily based on the statements of the family members who have supported the prosecution case.

21. Upon careful consideration of the materials available on record and having regard to the provisions of Section 307 of the Indian Penal Code, it appears that the doctor (PW-7) has not given any opinion that the injuries sustained by the informant (PW-6) were capable of causing death. Moreover, no specific overt act has been attributed to any of the three



appellants demonstrating an intention to commit murder, nor does the evidence suggest that they had come prepared to commit such an offence or had made any attempt with the motive to commit murder. The prosecution case itself suggests that due to the refusal of PW-6 to part with Rs. 1,000 demanded by her husband (appellant no. 3), a sudden quarrel arose, and in the heat of the moment the parties may have indulged in a scuffle which resulted in the injuries sustained by the informant. The injuries, as opined by the doctor, are not such as would endanger the life of the injured informant.

22. In view of aforesaid discussions of factual and legal aspects, it appears that the prosecution has miserably failed to establish the charges levelled against the appellant/accused during the trial.

23. Accordingly, the present appeal is allowed.

24. The impugned judgment of conviction dated 10.02.2011 and the order of sentence dated 14.02.2011 passed by the learned Additional Sessions Judge-IV, Gaya in Sessions Trial No. 317/2009/518/2006 arising out of Buniyadganj P.S. Case No. 13 of 2006 are hereby set aside. Consequently, the above-named appellant/accused are acquitted from all the charges levelled against them. Since the aforesaid appellants are



on bail, as such, they are discharged from the liability of their bail bond. The fine deposited by the appellants, if any, shall be refunded to them.

25. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand) to Mr Atul Dayal, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service for disposal of the present appeal.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
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