

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.57 of 2012**

Arising Out of PS. Case No.-15 Year-2003 Thana- DURGAWATI District- Kaimur (Bhabua)

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1. Sukhari Ram son of Khobhari Ram.
2. Rajendra Ram son of Khobhari Ram.
3. Dularchand Ram son of Kishori Ram

All R/O Village- Khamindoura, P.S- Durgawati, Distt- Kaimur At Bhabua

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (SJ) No. 95 of 2012**

Arising Out of PS. Case No.-15 Year-2003 Thana- DURGAWATI District- Kaimur (Bhabua)

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Mahipat Ram, S/O Jokhu Ram, resident of village- Khamindoura, P.S.-  
Durgawati, District- Kaimur Bhabua

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 57 of 2012)

For the Appellant/s : Mr. Ravi Shankar Sahay, Advocate  
Mr. Abhishek Singh Rathour, Advocate

For the Respondent/s : Mr. Abhay Kumar, A.P.P.

(In CRIMINAL APPEAL (SJ) No. 95 of 2012)

For the Appellant/s : Mr. Ravi Shankar Sahay, Advocate  
Mr. Abhishek Singh Rathour, Advocate

For the Respondent/s : Mr. Abhay Kumar, A.P.P.

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

**Date : 30-04-2026**

Heard Mr. Ravi Shankar Sahay, learned counsel for  
the appellants and Mr. Abhay Kumar, learned APP for the State.



2. The appellants have preferred the present criminal appeals against the judgment dated 17-01-2012 and order of sentence dated 21-01-2012 passed in S.Tr. No. 118/2013 of 2003/2007 (arising out of Durgawati P.S. Case No. 15/2003) by learned 1<sup>st</sup> Addl. Sessions Judge, Kaimur at Bhabua, whereby, the learned trial court has convicted the appellants under Section 307/34 and 323 of the Indian Penal Code and sentenced them to undergo Rigorous Imprisonment for 10 years (for section 307 of IPC) and further these three appellants were also sentenced to undergo Rigorous Imprisonment for 1 years (for section 323 of IPC).

3. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court has failed to appreciate the evidence available on record in its proper perspective and has erred in recording the conviction of the appellants.

**BRIEF FACTS OF THE CASE**

4. The case of the prosecution, in brief, is that on 12.02.2003 at about 21:30 hours, the informant, Chhabilal Ram, was returning to his house from Durgawati Bazaar. When he reached near a well situated close to the house of Khobhari Ram in village Khaminaura, the accused persons, namely Rajendra



Ram, Dularchand Ram, Sukhari Ram and Mahipat Ram, allegedly surrounded him and, on account of previous enmity, formed an unlawful assembly and assaulted him. It is further alleged that during the course of the assault, accused Mahipat Ram dealt a *lathi* blow on the head of the informant, causing injury as a result of which he fell down and raised alarm. Upon hearing the alarm, nearby persons reached the place of occurrence, whereupon the accused persons fled away. Thereafter, the injured was taken for treatment by his nephew, Om Prakash Ram.

**ARGUMENT ON BEHALF OF THE APPELLANTS**

5. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and order dated 17.01.2012/ 21.01.2012 passed by Sri Rudra Pratap Singh, 1st Additional Sessions Judge, Kaimur at Bhabua, in S.T. No. 118/13 of 2003/07, whereby the appellants were convicted for offences under Sections 307/34 and 323 of the IPC and sentenced to 10 years and 1 year rigorous imprisonment respectively (to run concurrently), is bad in law and on facts, and is liable to be set aside. The sole eyewitness to the alleged assault, P.W. 2, is none other than the nephew of the informant, rendering his testimony interested and unreliable. P.W. 1 was



declared hostile, and P.W. 5, the informant himself, admitted in his deposition that the assault was committed solely by Mahipal Ram. The witnesses P.W. 3, 6, and 7, being close relatives of the informant, admitted the existence of prior enmity, giving rise to a strong inference of false implication.

6. Learned counsel further submitted that the Investigating Officer (P.W. 8) conceded that no signs of violence were found at the place of occurrence, no blood-stained articles were recovered, and no proper source of identification was established. The appellants admittedly did not physically touch the victim, and at best could only be characterized as instigators, for which the sentence of 10 years Rigorous Imprisonment is grossly disproportionate and harsh. The trial court failed to appreciate the material contradictions in the prosecution evidence, failed to consider the applicability of Section 360 Cr.P.C. inasmuch as the appellants were first-time offenders who had remained on bail throughout without any previous conviction, and failed to consider the absence of any intention on the part of the appellants to kill the victim.

**ARGUMENT ON BEHALF OF THE STATE**

7. *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.

**ANALYSIS AND CONCLUSION**

8. Heard the parties.

9. 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.

10. With reference to the aforesaid rival legal contention urged on behalf of the parties, I have carefully examined the case to find out whether the impugned judgment warrants interference by this Court on the charge levelled against the accused/appellants under Sections 307/34 and 323 of IPC.

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

- (i). P.W.1 – Ghuna Ram (Hostile)
- (ii). P.W.2 – Om Prakash Ram
- (iii). P.W.3 – Bikrama Ram
- (iv). P.W.4 – Dr. Vinod Kumar Kashyap
- (v). P.W.5 – Chhabilal Ram (Informant)



(vi). P.W.6 – Surendra Ram

(vii). P.W.7– Nibulal Prasad

(viii). P.W.8 – Daroga Rai

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

(i) (Exhibit-1) - Signature of Om Prakash Ram on the fardbeyan.

(ii) (Exhibit-1/1) - Signature of Chhabilal Ram on the fardbeyan.

(iii) (Exhibit-2) - Injury report of Chhabilal Ram

(iv) (Exhibit-2/1) - Another injury report of Chhabilal Ram

13. From the perusal of records, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

(i) P.W.1- Ghuna Ram, has been declared hostile by the prosecution as he has not supported the prosecution case in material particulars.

(ii) P.W.2- Om Prakash Ram, He is the nephew of the informant, Chhabilal Ram, he supported the prosecution case in his examination-in-chief. His signature on the fardebeyan was



marked as Exhibit 1. He stated that by the time he reached the place of occurrence, the accused persons had already fled. He also noted that the incident occurred on a dark night.

(iii) P.W.3.- Bikrama Ram, He testified that the informant told him directly that Mahipat Ram had assaulted him on the head with a lathi. He deposed that he saw the informant's head was cracked and blood was oozing out. In paragraph 9, he claimed there was no previous enmity between the accused persons and the informant.

(iv) P.W.4.- Dr. Vinod Kumar Kashyap, he found a lacerated wound on the fronto-parietal region with bleeding from the nose. Based on the report, he found a mildly depressed communicated fracture of the right basi-frontal with a small extra-dural haematoma. He classified the injuries as grievous and dangerous to life, caused by a hard and blunt substance. He admitted that the injuries could potentially be caused by falling on a hard stone. He also noted that he did not take the signature or thumb impression of the injured on the report.

(v) P.W.5. - Chhabilal Ram (Informant) The informant and victim in the case. He supported the facts of the prosecution case as originally stated in his fardebeyan. His signature on the fardebeyan was marked as Exhibit 1/1. He admitted there was



previous litigation with the accused persons. He testified that it was a dark night and he had turned off his motorcycle lights. He denied the defense suggestion that his injury resulted from falling into a drain.

(vi) P.W.6. - Surendra Ram, he testified to seeing the informant in an injured and unconscious state, with his head drenched in blood. He admitted he was sleeping in his house at the time of the occurrence and was only informed of the incident later that night. He denied the defense theory that the informant fell into a drain.

(vii) P.W.7. - Nibulal Prasad, he went to the place of occurrence after hearing a "hulla" (commotion) and found the informant unconscious and injured. He stated in cross-examination that Chhabilal Ram is his brother by village relationship. He admitted he was sleeping when the incident occurred. In paragraph 5, he deposed that no previous enmity existed between the informant and the accused.

(viii) P.W.8. - Daroga Rai, he Investigating Officer (I.O.) of the case. He recorded the fardebeyan and identified the place of occurrence near a well in village Khaminaura. He admitted he did not record statements from the accused or nearby residents. He did not find motorcycle tracks on the road,



nor did he collect blood-drenched clothes or samples from the scene.

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

15. It would be appropriate to reproduce the provisions of Sections 307/34 and 323 of I.P.C. for the sake of convenience and better understanding of the facts, which are 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.*

*Illustrations*

*(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder: A is liable to punishment under this section.*

*(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.*

*(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such*



*firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.*

*(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.*

**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 **P.W.1 – Ghuna Ram** has been declared hostile during trial as he has not supported the prosecution case on material particulars. In absence of any reliable and independent corroboration from other prosecution witnesses, the testimony of this witness loses its evidentiary value for the purpose of establishing the guilt of the accused/appellants. Accordingly, the evidence of P.W.1 is not of much assistance to the prosecution case.

17. The prosecution case substantially rests upon the testimonies of **P.W.2 – Om Prakash Ram** and **P.W.5 – Chhabilal Ram (informant)**, with limited support from **P.W.3 – Bikrama Ram**, while **P.W.1 – Ghuna Ram** has not supported the prosecution case and has been declared hostile, and **P.W.6 – Surendra Ram** and **P.W.7 – Nibulal Prasad** do not provide any direct evidence of the occurrence, being post-occurrence



witnesses. The testimony of the material witnesses attributes specific overt acts mainly against accused Mahipat Ram; however, their version is not free from inconsistencies, particularly with regard to the manner of occurrence, visibility at the place of occurrence in a dark night, and the presence or absence of prior enmity. Furthermore, the evidence suffers from infirmities in investigation, as reflected from the testimony of **P.W.8 – Daroga Rai (I.O.)**, who has admitted not examining independent witnesses and not collecting material evidence from the place of occurrence. In such circumstances, the prosecution version does not inspire full confidence for sustaining the conviction of the accused/appellants.

18. The medical evidence of **P.W.4 – Dr. Vinod Kumar Kashyap** indicates that the informant sustained a lacerated wound on the head along with a fracture, which has been opined to be grievous and caused by a hard and blunt substance; however, the doctor has also admitted that such injuries could be caused by a fall on a hard surface, thereby not fully ruling out an alternative mode of injury and weakening the certainty of the prosecution version. Furthermore, independent witnesses have either not supported the prosecution case or are not eyewitnesses to the occurrence, inasmuch as **P.W.1 –**



**Ghuna Ram** has been declared hostile, while **P.W.6 – Surendra Ram** and **P.W.7 – Nibulal Prasad** are admittedly post-occurrence witnesses. It is also evident that the case arises out of prior enmity between the parties, and the occurrence is alleged to have taken place in a dark night, which raises doubt regarding identification of the assailants. In such circumstances, the possibility of exaggeration and false implication cannot be ruled out, and the prosecution has failed to establish, beyond reasonable doubt, the common intention and specific involvement of all the accused persons.

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 previous enmity between the parties and is stated to have taken place suddenly at night, without any clear evidence of premeditation or prior meeting of minds, the incident having occurred in the course of a sudden confrontation. Further, the prosecution evidence suffers from material infirmities as the case primarily rests upon the testimonies of **P.W.2 – Om Prakash Ram** and **P.W.5 – Chhabilal Ram (informant)**, with limited support



from **P.W.3 – Bikrama Ram**, whose versions are not wholly consistent on material particulars, particularly with regard to the manner of occurrence, visibility due to darkness, and the role attributed to the accused persons, while independent witnesses do not lend reliable support inasmuch as **P.W.1 – Ghuna Ram** has turned hostile and **P.W.6 – Surendra Ram** and **P.W.7 – Nibulal Prasad** are not eyewitnesses to the occurrence. Moreover, the medical evidence of **P.W.4 – Dr. Vinod Kumar Kashyap**, though indicating a grievous head injury caused by a hard and blunt substance, also admits the possibility of such injury being caused by a fall on a hard surface, thereby not conclusively supporting the prosecution version. When considered along with the admitted background of prior enmity and the infirmities in investigation, the cumulative effect of these circumstances creates serious doubt regarding the manner of occurrence and the specific involvement of the accused persons, thereby rendering the charge under Section 307 of the Indian Penal Code unsustainable.

25. I find that the facts of the present case are squarely covered by the judgment passed by the Apex Court in case of *Sivamani (supra)* and in view of the aforesaid discussion of factual and legal aspects, it emerges that the



alleged occurrence took place in a sudden manner on account of prior enmity between the parties and without any clear premeditation or prior meeting of minds of the accused persons. The nature of the incident, the surrounding circumstances, and the medical evidence, particularly the testimony of P.W.4 – Dr. Vinod Kumar Kashyap, indicate that although the informant sustained a head injury opined to be grievous in nature, the same has been attributed to a hard and blunt substance and the doctor has also admitted the possibility of such injury being caused by a fall on a hard surface, thereby creating doubt regarding the manner of assault. In the backdrop of inconsistent testimonies of the material witnesses, lack of reliable independent corroboration, and infirmities in investigation, the evidence on record does not conclusively 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, at best, indicate an act of causing hurt by use of a blunt object, and thus, this Court is of the considered opinion that the offence under Section 307 IPC is not made out and the conviction, if any, can be sustained only for a lesser offence in accordance with law. The learned trial court has rightly appreciated the evidence in convicting the appellants under



Section 323 of the Indian Penal Code, particularly in view of the injury reports showing injuries caused by hard and blunt substance.

26. In the background of the discussions made hereinabove and on taking an overall view, the Impugned judgment dated 17-01-2012 and order of sentence dated 21-01-2012 passed in S.T. No. 118/13 of 2003/07 (arising out of Durgawati P.S. Case No. 15/2003) is varied only to the extent that the conviction of the appellants stands modified to that under Sections 323 of the IPC.

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 rigorous imprisonment for one year 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 appeals are partially 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)**

Niraj/-

<b>AFR/NAFR</b>	N.A.F.R.
<b>CAV DATE</b>	23.04.2026
<b>Uploading Date</b>	30.04.2026
<b>Transmission Date</b>	30.04.2026

