

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.136 of 2024**

Arising Out of PS. Case No.-123 Year-2003 Thana- GOPALPUR District- Bhagalpur

Sanyukta Devi, W/o Late Vakil Mistri, Resident of village Bari Makandpur,
P.S.- Gopalpur, Distt. - Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. Subhash Mistri, S/o Late Uttam Mistri, R/o vill - Bari Makandpur, P.S. - Gopalpur, Distt. - Bhagalpur.
3. Laddu Mistri, S/o Late Ram Bishun Mistri, R/o vill - Bari Makandpur, P.S. - Gopalpur, Distt. - Bhagalpur.
4. Rajesh Mistri, S/o Laddu Mistri, R/o vill - Bari Makandpur, P.S. - Gopalpur, Distt. - Bhagalpur.

... .. Respondents

Appearance :

For the Appellant : Mr. Pratik Mishra, Advocate
For the State : Mr. Sujit Kumar Singh, Addl.PP
For the Resp Nos. 2 to 4 : Mr. Rajesh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 28-10-2024

This appeal has been preferred for setting aside the judgment of acquittal dated 21.12.2023 passed by learned Additional District & Sessions Judge-1st, Naugachia, District- Bhagalpur (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 1104 of 2006, G.R. No. 379 of 2003, Trial No. 174 of 2020 (arising out of Gopalpur P.S. Case No. 123 of 2003) by which the learned trial court has acquitted respondent nos. 2 to 4 of the charges under Sections 307 and 324 of the Indian Penal



Code (in short 'IPC'), whereas respondent nos. 2 to 4 have been convicted for the offences punishable under Sections 323, 341, 447/34 IPC.

2. Earlier *vide* order dated 25.06.2024, this Court called for the trial court records which have been received and are available on the record.

Prosecution case

3. As per the prosecution story, on 11.07.2023 at 8:00 AM, while the informant after coming from his field was at his door, Subhash Mistri (Respondent No. 2) armed with a *lathi* fixed with *farsa* came at his door and accused him of abusing. It is alleged that Subhash Mistri assaulted the informant by *farsa* on his head due to which his head got cut and he fell on the ground. The informant tried to escape by raising alarm but Laddu Mistri, Rajesh Mistri and Santosh Mistri all started assaulting him by *lathi*. Reason for the quarrel is that these accused persons had not participated in the *Shradh* of the informant's father, so the informant also did not participate in the marriage ceremony of the daughter of Laddu Mistri on 19.06.2003. It is alleged that due to this reason, all the accused persons assaulted the informant by *farsa* on his head causing serious injury on his right temporal



region. On hearing informant's *hulla*, informant's son Shankar Mistri and other villagers came and rescued him.

4. On the basis of this written application, formal FIR being Gopalpur P.S. Case No. 123 of 2003 has been registered under Sections 447, 324, 307, 341/34 IPC against accused persons, namely, (1) Subhash Mistri, (2) Laddu Mistri, (3) Rajesh Mistri and (4) Santosh Mistri.

5. After completion of investigation, police submitted a charge-sheet bearing number 78/2005 dated 31.05.2005 against accused Laddu Mistri, Rajesh Mistri and Santosh Mistri. Upon submission of this charge-sheet, the learned Magistrate took cognizance *vide* order dated 03.06.2005 of the offences under Sections 341, 323, 324, 447 and 307/34 IPC. Thereafter, a supplementary charge-sheet bearing No. 131 of 2005 dated 31.07.2005 was filed against Subhash Mistri showing him absconder. Finding that the offences of which cognizance was taken by the learned Magistrate are triable by the court of Sessions, the learned Magistrate committed the records to the court of Sessions *vide* order dated 24.05.2006. On receipt of the records, Sessions Trial No. 1104 of 2006 was registered. *Vide* order dated 27.05.2009, the Sessions Court split of the case of Santosh Mistri who claimed himself to be juvenile and framed the charges *vide*



order dated 30.07.2009 against accused Laddu Mistri and Rajesh Mistri under Sections 447, 324, 307 and 341 IPC. Later on after appearance of absconded accused Subhash Mistri his case was committed to the court of sessions on 10.05.2010 which resulted into registration of Sessions Trial No. 591 of 2010 in which charge was framed on 17.01.2011 for the offences under Sections 341, 323, 324, 307/34 IPC. Thereafter, both the trials were amalgamated on 25.07.2011.

6. During trial, the prosecution produced as many as 4 witnesses and proved some documentary evidences. The full description of the witnesses and the documents proved on behalf of the prosecution are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Vakil Mistri
PW-2	Shankar Mistri
PW-3	Sanyukta Devi
PW-4	Dr. Bhim Lal

List of Exhibits produced on behalf of the Prosecution

Exhibit-1	Signature of the Informant on the written application
Exhibit-2	Injury Report



Findings of the Learned Trial Court

7. Learned trial court after analysing all the evidences available on the record held that the prosecution witnesses have supported the prosecution case in respect of assault to the informant with *farsa* on his head in the background of a land dispute, as a result whereof blood started oozing out from the head injury. Learned trial court found that the Doctor (PW-4) who proved the injury report (Exhibit -2) has opined that the injury is of simple nature caused by hard and blunt substance. Learned trial court observed that the prosecution has failed to prove the offences under Sections 307 and 324 IPC against the accused persons as its essential ingredient- grievous injury which is fatal to life has not been proved. Learned trial court held that the prosecution is able to prove that the informant suffered injury on head which was simple in nature, hence, offence under Sections 341, 323 and 447/34 IPC has been proved beyond all reasonable doubts.

Submissions on behalf of the Appellants

8. Mr. Pratik Mishra, learned counsel for the appellant has assailed the impudent judgment on the grounds *inter alia* that the learned trial court has grossly erred in taking a view that injury of grievous nature which would be dangerous to life is an essential ingredient to bring home the guilt of the accused persons



under Sections 307 and 324 IPC. It is submitted that even as the learned trial court has held that all the prosecution witnesses have supported the prosecution case that the accused persons had assaulted the informant by *farsa* on his head causing him injury and bleeding, the learned court has erred in acquitting the accused (respondent nos. 2 to 4) of the charges under Sections 307 and 324 IPC.

9. Learned counsel submits that during the course of trial, the informant (PW-1) was murdered just after recording his evidence on 18.09.2012 by these accused persons (respondent nos. 2 to 4) for which the present appellant had lodged Gopalpur P.S. Case No. 303 of 2012 dated 19.09.2012 under Sections 147, 149 and 302 IPC.

10. Learned counsel submits that the accused persons are veteran criminals of the locality. Subhash Mistri and Laddu Mistri are accused in Gopalpur P.S. Case No. 60 of 2004 under Sections 147, 148, 149, 307 and 379 IPC read with Section 27 of the Arms Act. Laddu Mistri is also an accused in Gopalpur P.S. Case No. 4 of 2000 under Sections 302, 341/ 34 IPC and Section 27 of the Arms Act.

11. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ratan Singh Vs. State of**



Madhya Pradesh and Another reported in (2009) 12 SCC 585 and **Pasupuleti Siva Ramakrishna Rao Vs. State of Andhra Pradesh and Others** reported in (2014) 5 SCC 369 to submit that to justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. The Hon'ble Supreme Court has held that Section 307 IPC carries a distinction between an act of the accused and its result, if any. There may be cases in which an act may not be attended to by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. Learned counsel submits that on a proper appreciation of the evidences on the record, this Court would find that the respondent nos. 2 to 4 are liable to be convicted for the offences under Section 307 as well as Section 324 IPC.

Stand of the Respondents

12. On the other hand, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State as well as Mr. Rajesh Kumar, learned counsel for the respondent nos. 2 to 4 have defended the impugned judgment of the learned trial court. Learned counsel for the respondents has submitted that in this case although PW-2 and PW-3, who are the son and wife respectively of the informant, have deposed as eyewitnesses to the occurrence but on a close perusal of their depositions it would appear that they are not



the eyewitnesses. The whole prosecution case would be based upon the evidence of the informant (PW-1) who is the injured in this case.

13. Learned counsel submits that the prosecution case as alleged would not be getting corroborated from the injury report (Exhibit '2'). The Doctor (PW-4) has stated that the injuries were of hard and blunt substance and simple in nature. It is his submission that to attract Section 307 IPC, it would be essential to demonstrate that the accused persons intended to kill the informant. Whether there was an intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. It is his submission that as per prosecution story, respondent no. 2 had assaulted the informant on his head by *farsa* and thereafter the other accused persons had assaulted him by *lathi*, however, the injuries found on the body of the informant do not correspond to the nature of weapon allegedly used by the accused persons.

14. Learned counsel for the respondents have relied upon a judgment of the Hon'ble Supreme Court in the case of **Parvinder Kansal Vs. State (NCT of Delhi) and Another** reported in (2020) 19 SCC 496. It is submitted that a victim's right of appeal is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. There is no provision for appeal by the



victim for questioning the order of sentence as inadequate. Section 377 CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. It is submitted that in the present case, the learned trial court has given benefit under the Probation of Offenders Act to the accused persons for committing the offence under Sections 323, 341, 447/34 IPC which cannot be questioned by the appellant.

15. Learned counsel has also relied upon a co-ordinate Bench decision of this court in **Criminal Appeal (DB) No. 923 of 2023** in which relying upon the judgment of the Hon'ble Supreme Court in the case of **Parvinder Kansal** (supra), this Court took the same view. Learned counsel submits that the learned trial court has not committed any error in appreciation of the evidences.

16. Learned counsel has further relied upon a judgment of the Hon'ble Supreme Court in the case of **Sivamani and Anr. Vs. State represented by Inspector of Police, Vellore Taluk Police Station, Vellore District** reported in **(2023) 14 SCR 849 : 2023 INSC 1027**. It is submitted that in the said case, having noticed that the injuries were found to be simple in nature, the Hon'ble Supreme Court held that it will be an additional point in the appellants' favour. The Hon'ble Supreme Court, therefore, accepted the submissions of the appellants that only offences under



Sections 323 and 324 IPC can be made out. The conviction under Section 307 IPC was, held unsustainable.

Consideration

17. We have heard learned counsel for the parties and learned Additional Public Prosecutor for the State as also perused the trial court records and judgments cited at the bar.

18. In the present case, the occurrence in which the informant (PW-1) suffered injuries took place on 11.07.2003 at about 8:00 AM when he was sitting at the *darwaja* of his house after returning from his field (*khet*). He has alleged that Subhash Mistri (Respondent No. 2) armed with *farsa* attached with a *lathi* came at the door and alleged that he abuses him. The informant denied the same but on this issue Subhash Mistri assaulted him by a *farsa* attached with *lathi* on his head as a result whereof the head of the informant was cut and he fell down. He has further stated in his written application (Exhibit '1') that when he tried to flee away raising *hulla* to save his life, Laddu Mistri, Rajesh Mistri and Santosh Mistri all assaulted him by a *lathi*. The cause of occurrence has been explained by the informant in his written application. According to him, the reason behind this quarrel is that in the *shradh karm* of his father, the accused persons had not participated and they had not attended the *bhoj*. On 19.06.2003, there was a marriage of the daughter of Laddu Mistri in which the



informant had not participated, taking this matter as an issue, the accused persons came with a common intention and caused injuries on his head and on the temporal region (*kanpatti*). On *hulla*, his son, Shankar Mistri and other villagers came and saved him from further assault, they had seen the occurrence and can say.

19. On the basis of the written application (Exhibit '1'), a First Information Report giving rise to Gopalpur P.S. Case No.123 of 2003 dated 11.07.2003 was registered at 11:00 AM.

20. From the evidence of informant (PW-1), it appears that he has supported his case. In his examination-in-chief, he has stated that Subhash Mistri had assaulted him by *farsa* on his head as a result whereof, he fell down on the earth and started bleeding. He has also stated that when he shouted, Laddu Mistri, Rajesh Mistri and Santosh Mistri came and they assaulted him by *lathi*. He somehow saved his life and reached the police station. In his cross-examination, he has stated that Laddu Mistri is related as brother in *gotia* and their houses are situated at same place but separate. There was a partition among the ancestors. He has stated in his cross-examination that when he was sitting alone at his *darwaja* and when he was assaulted, there was no other person. He has stated that he cannot say whether the injury was caused by full edge or half edge of *farsa* but he has stated that injury was caused



on his head and he was bleeding. He had fallen down on the earth but he had not seen whether blood had fallen on the earth or not. Gopalpur Police had arrived in the hospital and had seen the injury. Police had not taken the blood-soaked *ganji* and had not seized any article. PW-1 has stated that at the time of assault, no one had come to save him. The police station is situated at a distance of 6-7 kilometre and he had gone to police station by a rickshaw with his son Shankar Mistri. He had also gone to hospital with Shankar Mistri. PW-1 has categorically stated that there is no land dispute with the accused persons. He denied the suggestion that there was a proceeding under Section 106 of the B.T. Act between Ram Prasad Mistri and his father. He denied the suggestion that any dispute had arisen with regard to the plot of Khata No. 515, Khesra No. 547. He has stated that he was not aware of any proceeding under Section 107 CrPC/144 CrPC. Defence has not led any evidence to prove land dispute. PW-1 has stated that Subhash Mistri had assaulted him by *farsa* and when he fell down then rest of the accused persons had assaulted him. The defence suggested to this witness that he had not received any assault by *farsa* and he was wrongly giving the place of occurrence. PW-1 denied the suggestions given by the defence and stated that Darogaji had seen the place of occurrence.



21. From the evidence of PW-1, this Court finds that he has supported his case as regards date, time, place and manner of occurrence. He has consistently stated that Subhash Mistri had assaulted him by *farsa* and the rest of the accused had assaulted thereafter, when he had fallen down. He has also given the place of occurrence which is the *darwaja* of his house. He has stated that at the time of occurrence, he was alone sitting at *darwaja* but he has stated that his son Shankar Mistri had taken him to police station and also to the hospital. The defence has not taken any contradiction from this witness with reference to his earlier statements made in course of investigation.

22. Shankar Mistri (PW-2) has deposed that after the occurrence, he had taken his father to the police station where a written application was given regarding the occurrence. He has stated that the cause of occurrence is the issue of participation in the '*bhoj*'. He has given the boundary of the place of occurrence. He has stated that when the occurrence took place, he was at the *darwaja* of his house. Subhash was armed with *farsa* and the accused persons were armed with two and half - three hand long *lathi*. He has stated that the occurrence took place besides the *darwaja* at the common road. He has stated that his father had fallen down after receiving assault from *farsa* whereafter accused



persons Laddu Mistri, Rajesh Mistri and Santosh Mistri assaulted him about fifty times by *lathi*. His father had suffered injuries all over his body and had become unconscious whereafter he was put on a rickshaw and was taken to hospital, first he was taken to police station then to the hospital. In his cross-examination, he has stated that he cannot say whether police had arrived at the place of occurrence, he cannot say whether police had collected the blood stained soil from the place of occurrence. He has stated that his statement was recorded by police at the police station on the date of occurrence itself. He denied the suggestion that no such occurrence had taken place and his father had falsely implicated the accused persons.

23. Sanyukta Devi (PW-3) is the wife of the informant.

In her deposition, she has stated that Subhash Mistri had assaulted her husband at the *kanpatti* by *farsa* as a result whereof her husband started bleeding, thereafter Laddu Mistri, Rajesh Mistri and Santosh Mistri assembled and they assaulted her husband by *lathi*. She has stated that when she and her son Shankar came then they were not assaulted, however, she later on stated that her son Shankar Mistri was assaulted by Subhash on his head and his head had swollen. She has also given the same reason for the cause of action.



24. It is noted that the informant (PW-1) was examined in this case on 21.04.2012. He was discharged after completion of evidence on date 04.05.2012. PW-2 was examined on 30.08.2012. Thereafter, PW-3 came to depose on 12th July, 2013 but in between this period, the informant (PW-1) was murdered. PW-3 has stated in paragraph '4' of her examination-in-chief that when her husband returned home after recording his evidence, the accused persons abused him and threatened him and only ten days thereafter her husband was murdered in the orchard of the village. She has stated in paragraph '8' of her deposition that when quarrel was taking place, she was in her house, children were also there. She reached the place of occurrence immediately and her husband told her that these accused persons had assaulted him. She has stated that police had arrived at the place of occurrence and had inquired from her. She had given her statement before police. The defence suggested that no such occurrence had taken place and she has falsely deposed.

25. From the deposition of PW-2 and PW-3, this Court finds that they cannot be put in the category of eyewitnesses. They had reached the place of occurrence immediately after the occurrence. PW-2 had reached after hearing hulla and had taken the informant (PW-1) to the police station and had also



accompanied to the hospital where PW-1 was admitted and was released after two days. In his deposition, PW-1 has stated that his son Shankar Mistri had taken him to police station and hospital by a rickshaw. PW-3 has stated that she reached the place of occurrence immediately and her husband had told her that these accused persons had assaulted him. It is evident from the deposition of PW-2 and PW-3 that even as they were not present at the place of occurrence when the occurrence started but they immediately reached there. PW-2 and PW-3 both are consistent in their statement as regards the accusation, manner of occurrence, date and time of occurrence. There is a minor discrepancy in the statement of PW-2 that PW-1 was assaulted on the '*rasta*' besides the '*darwaza*'. It is evident that as a result of assault by Subhash Mistri, PW-1 first tried to flee away but he fell down, thereafter other accused had assaulted him. In the evidence of PW-2 and PW-3, it has come that PW-1 had become unconscious but that part of their deposition would be liable to be discarded inasmuch as it is crystal clear that PW-1 does not claim so, he had gone to the police station where he had also put his signature on the written application after reading the same.

26. Bhimlal (PW-4) had examined the informant (PW-1). He found the following injuries on his body:-



(I) Lacerated wound on right side of head. Red in colour. Age of injury within 6 hours. It is about 1½”x1/2”x1/4”.

(II) Lacerated wound on back of head. Red in colour. Age of wound within 6 hours. It is about 1/2”x1/2”x1/4”.

(III) Swelling and complaining of pain on left shoulder. Red in colour. Age of injury within 6 hours 1”x1”.

(IV) Swelling and complaining of pain on right side of shoulder. Red in colour. Age of injury within 6 hours 1”x1”.

27. PW-4 has proved the injury report which has been marked (Exhibit ‘2’). In his cross-examination, he has stated that such injuries are not possible by fall on the ground. On perusal of the injury report, it would appear that PW-1 had suffered lacerated wound on the right side of head, lacerated wound on the back side of head, he had complained of swelling and pain on left shoulder and complained of swelling and pain over right side of shoulder. These injuries are suggesting that PW-1 had been brutally assaulted and repeated assaults were inflicted upon him on various parts of his body.

28. While appreciating medical evidence, this Court would keep in mind the principles settled by Hon’ble Supreme Court in catena of judgments. In the case of **State of M.P. vs.**



Dharkole @ Govind Singh and Another reported in (2004) 13

SCC 308, the Hon'ble Supreme Court observed as under:-

“9. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the “credit” of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

29. In the State of Uttar Pradesh vs. Krishna Gopal and Another reported in (1988) 4 SCC 302, the Hon'ble Supreme Court observed in paragraph '24' as follows:-

“24. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story;”.



30. In Baso Prasad and Others vs. State of Bihar

reported in **(2006) 13 SCC 65**, the Hon'ble Supreme Court opined in paragraph '27' as under:-

“27. In some cases, medical evidence may corroborate the prosecution witnesses; in some it may not. The court, however, cannot apply any universal rule whether ocular evidence would be relied upon or the medical evidence, as the same will depend upon the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor.”

31. Modi a Textbook of Medical Jurisprudence and

Toxicology. 27th Edition, Chapter 25, page 691, in paragraph 25.5.5 describes lacerated wounds:-

“25.5.5 Lacerated Wounds

Laceration means the edges are irregular without surrounding abrasion or bruises. The deeper tissues are torn irregularly.

Types of Laceration

1. Tears: Caused due to projecting object.
2. Split: Incision like wounds occur when the skin is closely adherent the bone-iliac crest, scalp. To differentiate it from incised wound, examination with hand lens is a must.
3. Stretch: Caused in a run over by a motor vehicle. A wheel goes over the skin, which is fixed and stretches it. The skin is split off and the whole skin comes off. Hanging skin is an indication of a run over.
4. Avulsion: It is otherwise known as degloving or destocking of the skin. Skin is overstretched. The skin and the wheel move together and the skin comes off. The skin of the affected limb is separated from the underlying tissues and hangs loosely.
5. Crushing: Wheel stays over the skin and causes grinding compression, crushing the underlying tissues and bones with partial or total amputation. It is also associated with avulsion and stretch laceration.



Lacerated wounds are tears or splits produced by blows from blunt objects and missiles, by violent falls on hard projecting surfaces, by machinery and railway accidents, by the wheels of a vehicle causing a grinding compression by their weight resulting in avulsion of the skin. They can also be caused by the claws, teeth or horns of animals and by projecting nails, or by over stretching of the skin over broken bones. These wounds do not generally correspond in shape or size to the weapon producing them. Their edges are torn, jagged, irregular and swollen or contused. The tissues are torn and the skin beyond the seat of injury is ecchymosed and the underlying bones are likely to be fractured, while the internal organs may be injured. Foreign bodies, such as earth, grease, machine oil, cinders, hair, or fibres of clothing are frequently found in the wound and hence they are also predisposed to infection.”

32. A farsa may be completely or partly sharp and partly blunt, therefore, even farsa may also cause laceration. In this case PW-1 was assaulted first by farsa and lathi both.

33. The Doctor has though opined that the injury is due to hard and blunt substance and simple in nature, in the opinion of this Court, the nature of injury alone cannot be a guiding factor to reach to a conclusion that the charge under Section 307 IPC would not be proved. This Court finds that the informant (PW-1) is a wholly reliable witness.

34. In the case of **Ratan Singh** (*supra*), the Hon’ble Supreme Court has discussed as to what would be required to justify a conviction under Section 307 IPC. Paragraphs ‘3’ to ‘5’ of the judgment in the case of **Ratan Singh** (*supra*) are quoted hereunder for a ready reference:-



“3. Learned counsel for the appellant submitted that the scope and ambit of Section 307 has not been kept in view. The stand was supported by learned counsel for the State. Learned counsel for Respondent 2, on the other hand, supported the judgment.

4. “11. It is to be noted that the alleged offences are of very serious nature. Section 307 IPC relates to attempt to murder. It reads as follows:

‘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.’

12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.



An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. 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. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil*¹ *Girija Shankar v. State of U.P.*² and *R. Prakash v. State of Karnataka*³.”

See *State of M.P. v. Saleem*⁴ (SCC pp. 559-60, paras 11-14) and *State of M.P. v. Imrat*⁵.

5. “15. In *Sarju Prasad v. State of Bihar*⁶ it was observed in para 6 that [the] mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

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1. (1983 2 SCC 28 : 1983 SCC (Cri) 320
 2. (2004) 3 SCC 793 : 2004 SCC (Cri) 863
 3. (2004) 9 SCC 27 : 2004 SCC (Cri) 1408 : JT (2004) 2 SC 348
 4. (2005) 5 SCC 554 : 2005 SCC (Cri) 1329
 5. (2008) 11 SCC 523 : (2009) 2 SCC (Cri) 558
 6. AIR 1965 SC 843



17. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine.”*

35. In the case of Pasupuleti Siva Ramakrishna Rao
(*supra*), the Hon’ble Supreme Court *inter alia* observed in paragraph ‘18’ as under:-

“18....It must be noted that Section 307 IPC provides for imprisonment for life if the act causes “hurt”. It does not require that the hurt should be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangled after throwing a telephone wire around his neck and telling him that he should die. We also do not find any merit in the contention on behalf of the accused that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums up bottle and a telephone wire used, as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused.”

***Ed.** : As observed in State of M.P. v. Saleem, (2005) 5 SCC 554, p. 560, paras 15-17



36. Learned counsel for the respondent nos. 2 to 4 has relied upon a judgment of the Hon'ble Supreme Court in the case of **Sivamani and Another** (*supra*). This Court has gone through the same and finds that the said judgment is distinguishable in the facts of this case. What has been observed in paragraphs '10' and '11' of the said judgment are quoted hereunder for a ready reference:-

“10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is convinced that the Impugned Judgment of the High Court requires to be interfered with. Admittedly, there is no allegation of repeated or severe blows having been inflicted. Even the injuries on PW1 and PW2 have been found to be simple in nature, which is an additional point in the appellants' favour.

11. We are further inclined to accept the submissions of the learned counsel for the appellants that from the materials on record, only offences under Sections 323² and 324³ of the IPC can be made out. As such, the conviction under Section 307, IPC is unsustainable.”

(underline is mine)

² ‘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.’

³ ‘324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.’



37. It is evident that in **Sivamani Case** (*supra*), the Hon'ble Supreme Court found that there was no allegation of repeated or severe blows having been inflicted by the accused persons. In the present case, the prosecution has proved that the accused persons had given repeated blows on the head and other parts of the body of the informant (PW-1).

38. In the opinion of this Court, the learned trial court has not taken note of the judicial pronouncements on the subject as to what would be required to prove a case under Section 307 IPC. The learned trial court took a view that because grievous injuries were not found and that being an essential ingredient of offences under Sections 307 and 324 IPC, the accused persons are entitled for acquittal for those offences. This view is not correct.

39. The judgment of the learned trial court, therefore, suffers from infirmities, in the matter of appreciation of evidences as well as on the law settled by the Hon'ble Supreme Court in the matter of the essential ingredients of Section 307 IPC.

40. Section 307 IPC has already been quoted hereinabove. At this stage, this Court would quote Section 324 IPC hereunder for a ready reference:-

“324. Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to



cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

41. In the case of **Gopal Singh and Others vs. The State of Bihar** reported in **1993 (1) PLJR 236**, this Court has held that the totality of the prosecution case is to be judged on the basis of entire evidences and it cannot be thrown out taking note of minor discrepancies. The totality of the circumstances as also broad probabilities of the case cannot be lost sight of.

42. In this case, the evidences on the record prove that Subhash Mistri had assaulted the informant by *farsa*, hence, he would be liable to be convicted for the offence under Section 307 as well as Section 324 IPC. The respondent nos. 3 and 4 had repeatedly assaulted the informant by *lathi* and caused multiple injuries to him, therefore, their intention may be easily deduced and asserted. Even as the result of the assault given by the accused persons (respondent nos.2 to 4) resulted in simple injuries, the intention may be gathered from the fact that while Subhash Mistri assaulted PW-1 on his head, respondent nos. 3 and 4 assaulted PW-1 when he fell down, on the various parts of his body repeatedly. In the opinion of this Court, the intent of respondent nos.2 to 4 coupled with the overt act committed by them in execution thereof would be sufficient to convict the



respondent nos.2 to 4 under Section 307 IPC. This Court, therefore, hold respondent nos.2 to 4 guilty of the offences under Section 307 IPC. The respondent no.2 is also held guilty of the offence under Section 324 IPC.

43. This Court further finds that even as the learned trial court found the accused (Respondent nos. 2 to 4) guilty of committing offences under Section 341, 323, 447/34 IPC, no compensation has been awarded to the victim of the crime.

44. In the case of **Suresh vs. State of Haryana** reported in **(2015) 2 SCC 227** (paragraphs '16' and '19'), the Hon'ble Supreme Court has observed as under:-

“**16.** We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.

19. In the present case, the impugned judgment shows that the de facto complainant, PW 2 Raman Anand, filed Criminal Revision No. 1477 of 2004 for compensation to the family members of the deceased Devender Chopra and



his son Abhishek Chopra. The same has been dismissed²¹ by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim's family should not be awarded compensation under Section 357-A CrPC by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lakhs, without prejudice to any other rights or remedies of the victim's family in any other proceedings.”

45. Recently, in the case of **Harendra Rai vs. State of Bihar and Others** reported in **(2023) 9 SCC 702**, the Hon'ble Supreme Court resorted to Section 357 CrPC and while allowing an appeal against acquittal, convicting the accused-respondent for the offence under Sections 302 and 307 IPC, the Hon'ble Supreme Court imposed a fine of Rs.25 lakhs upon the accused and directed that the same be paid to the legal heirs of the deceased. This Court is of the view that the appellant in this case would also be entitled to get compensation from the accused Respondent Nos. 2 to 4.

46. In result, the trial court judgment to the extent acquitting the accused of the offence under Section 307 IPC and respondent no. 2 of the offence under Sections 307 as well as 324 IPC are not sustainable and liable to be interfered with. Respondent No. 2 is also held guilty for the offence under Section 307/34 IPC as well as Section 324 IPC. Respondent Nos. 3 and 4 are further held

21. [*Raman Anand v. Ashok Kumar*, Criminal Revision No. 1477 of 2004, order dated 2-9-2004 (P&H)]



guilty for the offences under Sections 307/34 IPC. Since they were armed with lathi only, the charge under Section 324 IPC is not made out. Accordingly, this appeal is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

**Later on
28.10.2024**

47. Today, this Court has delivered its judgment in this case holding respondent nos. 2, 3 and 4 guilty of the offences under Section 307/34 IPC. Respondent no. 2 is also held guilty under Section 324 IPC.

48. They are present in the Court. This Court directs that they be taken into custody and forwarded to Beur Jail, Patna.

49. Let this case be listed day after tomorrow i.e. on 30.10.2024 at 12:30 PM under the heading for orders for hearing on the point of sentence and compensation. Respondent nos. 2, 3 and 4 shall be produced in Court at the time of hearing.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/Rishi

AFR/NAFR	AFR
CAV DATE	07.10.2024
Uploading Date	28.10.2024
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