

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1422 of 2024

Arising Out of PS. Case No.-105 Year-2011 Thana- BRAHMPUR District- Buxar

Naresh Prasad Kanu @ Naresh Sah Son of Late Bhekha Kanu @ Bhekha Sah
@ Shekha Sah @ Late Shekha Kanu Resident of Village - Brahampur, P.S. -
Brahampur, District – Buxar. Appellant.

Versus

1. The State of Bihar
2. Ganesha Nand Pandey Son of Sri Shiv Je Pandey Resident of Village -
Brahampur, P.S. - Brahampur, District - Buxar
3. Pintu Pandey Son of Sri Shiv Je Pandey Resident of Village - Brahampur,
P.S. - Brahampur, District - Buxar
4. Mahesha Nand Pandey Son of Sri Shiv Je Pandey Resident of Village -
Brahampur, P.S. - Brahampur, District - Buxar
5. Shiv Je Pandey Son of Sri Ram Ekbal Pandey Resident of Village -
Brahampur, P.S. - Brahampur, District - Buxar

... .. Respondents.

Appearance :

For the Appellant/s : Dr. Kamal Deo Sharma, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

And

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 17-04-2026

Heard Dr. Kamal Deo Sharma, learned counsel for the
appellant and Mr. Syed Ashfaque Ahmad, learned Additional
Public Prosecutor for the State.

2. The present appeal has been preferred under proviso
of Section 372 of the Code of Criminal Procedure, 1973
challenging the judgment and order of sentence dated
24.09.2024 and 04.10.2024 respectively, passed by the Court of
learned Additional Sessions Judge-II, Buxar in Sessions Trial
No.334 of 2013 (arising out of Brahampur P.S. Case No. 105 of
2011), whereby and whereunder the respondent nos.2 to 5 have



been acquitted from the charges levelled against them under Sections 307 and 379 of the Indian Penal Code (hereinafter referred to as 'IPC') and the compensation amount of Rs.25,000/- each awarded to the injured victims to be paid by respondent nos.2 to 5 has also been challenged.

3. The respondent nos.2 to 5 have, however been convicted for the charges levelled against them under Section 341, 325 read with 34 of the IPC, whereunder they have been directed to be released on probation of good conduct upon furnishing bonds of Rs.50,000/- each with direction to make appearance for a period of three years, from the date of order of sentence, as and when required and maintain peace and good behaviour in the mean time. Further, respondent nos.2 to 5 have been directed to deposit a sum of Rs.25,000/-, each as compensation, in the Nazarat of the Civil Court, within a period of ten days, and this amount of Rs.1,00,000/- would be divided equally among both the injured persons, Naresh Prasad Kanu and his son, Suresh Prasad.

4. The records of this appeal have been placed before this Court for consideration of the prayer of the appellant.

5. The prosecution case, in brief, is that the informant, Naresh Prasad Kanu (P.W.6), submitted a written application



before the Station House Officer of the Brahmpur Police Station stating therein that he owns and runs a sweet and samosa shop situated to the west of the western gate road of Brahmpur Shiv Mandir, which stands on his own land. It is alleged that on 04.06.2011, while the informant was laying bricks on land adjacent to his shop to prevent rain water from entering the premises, the accused persons, namely, Ganeshanand Pandey, Pintu Pandey, Maheshanand Pandey and Shivji Pandey, all sons of Shivji Pandey, except Shivji Pandey, who is son of Late Ram Ekbal Pandey, arrived there armed with deadly weapons.

5.1. It is further alleged that Ganeshanand Pandey (respondent no.2) exhorted the others to kill the informant, whereupon all the accused persons assaulted him with mattock, lathi and spear with the intention to cause his death, resulting in grievous head injury to him, whereafter he fell on the ground. Further allegation is that thereafter Ganeshanand Pandey took away a sum of Rs.2500/- from the cash box of the shop and Pintu Pandey snatched a gold chain weighing about one bhar from the neck of the informant, while Mahesh Pandey is alleged to have taken away the watch from the hand of the informant. Further, upon alarm being raised, the informant's son, Suresh



Prasad Kanu, along with several villagers, rushed to the place of occurrence, whereupon the accused persons fled away.

5.2. It is lastly alleged that the informant's son, Suresh Prasad Kanu also sustained an injury on his right shoulder during the occurrence. It is asserted that the accused persons assaulted the informant with the intention to kill him. Hence, a prayer was made for taking appropriate action against the accused persons.

6. On the basis of the above-mentioned written report of the informant-Naresh Prasad Kanu, Brahmpur P.S. Case No. 105 of 2011 dated 04.06.2011 under Section 341, 323, 504, 324, 379, 307 read with 34 of the IPC was registered by the police officials against four named accused persons (respondent nos.2 to 5).

7. After completion of the investigation, police submitted charge-sheet on 30.08.2011 vide charge-sheet No. 190 of 2011 under Sections 341, 323, 504, 325, 307 and 34 of the IPC, against four accused persons, namely, Ganeshananad Pandey (R-2), Maheshanand Pandey (R-4) and Shivji Pandey (R-5), showing accused Pintu Pandey (R-3) as not sent up for trial. However, learned Magistrate took cognizance against all the four accused persons (Respondent Nos.2 to 5) under the aforementioned sections vide order dated 24.07.2013, whereafter



the case was committed to the Court of Sessions for trial. The learned Trial Court framed charges against the respondents under Section 307, 341, 323, 325, 379 and 34 of the IPC vide order dated 13.11.2014, which were explained to them to which they pleaded not guilty and claimed to be tried.

8. The prosecution, in order to substantiate its case, during the trial, examined as many as seven witnesses and exhibited two documents. The defence did not examine any witness but adduced documentary evidence. The list of prosecution witnesses and the documents exhibited on behalf of the prosecution and the defence are mentioned herein-below in a tabular chart.

List of Prosecution witnesses

Prosecution witness No.	Name of the witness	Description
P.W.1	Hari Narayan Yadav	Independent witness
P.W.2	Rajendra Prasad Yadav	Independent witness
P.W.3	Deepak Prasad	Independent witness
P.W.4	Suresh Prasad	Informant’s son (injured witness)
P.W.5	Dr. Kumar Gaurav	Medical Officer
P.W.6	Naresh Prasad Kanu	Informant (injured witness)
P.W.7	Raghuvir Singh	Investigating Officer



List of Exhibits on behalf of Prosecution

Exhibit No.	Description of Exhibit	Proved by/Attested by
Ext.1	Injury report of Naresh Prasad Kanu/Informant	P.W.5
Ext.1/A	Injury report of Suresh Prasad Kanu/Informant's son	P.W.5

List of Exhibits on behalf of the defence

Exhibit No.	Description of Exhibit	Proved by/Attested by
Ext.A	Certified copy of new survey khatian of land bearing Khata No.1276, Khesara No.1788	N/A
Ext.B	Certified copy of the G.R. register (Court of C.J.M., Buxar) showing the entry regarding sending of Brahmpur P.S. Case No.104/2011 to the Gram Kutchery	N/A
Ext.C	Certified copy of the order datred 02.06.2022 passed by the District Magistrate, Buxar	N/A
Ext.D	Certified copy of the order dated 25.02.2022 passed by the Additional Collector (Public Grievance Redressal), Buxar.	N/A
Ext.E	Certified copy of the order dated 24.02.2022 passed by the Additional Collector (Public Grievance Redressal), Buxar.	N/A
Ext.F	Certified copy of Civil Suit No.371/2017 (Shivji Pandey Vs. Naresh Prasad Kanu and others)	N/A

9. The statement of the accused persons under Section 313 Cr.P.C was recorded on 04.01.2017, wherein they have denied the allegations and have claimed to be innocent.



Findings of the learned Trial Court

10. The learned Trial Court, after considering and analyzing the materials available on record, including the evidence of witnesses, found that the prosecution witnesses were all either interested or inimical to the accused persons on account of an old dispute with regard to property. The reason for dispute between the parties is said to be their claim over a shop. It has also been found that three independent witnesses, being P.Ws. 1, 2 and 3, have been examined as eye witnesses of the occurrence. So far as P.W.4, Suresh Prasad (Informant' son) and PW-6, Naresh Prasad Kanu (Informant), are concerned, they are also eye witnesses of the said occurrence and have sustained injury in the said occurrence.

11. The learned Trial Court, while analysing the evidence of P.W.5, Kumar Gaurav, the Medical Officer, who examined the injured persons and issued the injury reports (Ext. 1 and 1/A), has observed that from his evidence that it does not appear that the injuries were either dangerous to life or there was even any possibility that death would be caused on account of same. Considering the said fact, the learned Trial Court has concluded that the prosecution has not been able to prove the charge under Section 307 IPC against the accused persons. On the



basis of the facts and circumstances of the basic dispute being that of claim over a shop, with respect to which the defence has also exhibited some documents and also upon consideration of other other evidence on record, the charge under Section 379 of the IPC has also not been found to be proved.

12. The learned Trial Court has, however, given the finding that the prosecution witnesses, giving an eye witness account of the occurrence, appeared to be credible witnesses and especially the testimony of P.W.4 and P.W.6, who are also the injured witnesses, cannot be held to be doubtful. It has also been considered by the learned Trial Court that since the accused persons and the witnesses belonged to the same village and are neighbours, the identification of the accused persons cannot be doubted. Minor inconsistencies and contradictions in the evidence would not have any adverse impact on the case of the prosecution. On the basis of the evidence on record, the learned Trial Court has concluded that the charges under Sections 341, 325 and 34 of the IPC are established by the prosecution against the accused persons, beyond reasonable doubt, as such, all the four respondents i.e. respondent nos.2 to 5 have been found guilty under the above-mentioned charges, while acquitting them of the charges under Section 307 and 379 of the IPC.



Submission on behalf of the Appellant (informant)

13. Mr. Kamal Deo Sharma, learned counsel for the appellant submits that the impugned judgment, so far as it relates to acquittal of the respondent nos.2 to 5 from charges under Section 307 and 379 of the IPC, is fit to be set aside and further submitted that the compensation awarded by the learned Trial Court is inadequate. It is stated that on account of a land dispute, all the accused persons, in collusion with each other, inflicted serious injuries on the informant and his son. It has further been submitted that all the seven prosecution witnesses have supported the case of the prosecution and the injuries suffered by the two injured witnesses, P.W.4 and P.W.6 stand corroborated by the medical evidence in the form of injury report proved by the Medical Officer.

14. It is, thus, submitted on behalf of the appellant that both the oral evidence, which is an eye witness account of the witnesses, coupled with the medical evidence corroborating the same, establishes the case of the prosecution beyond reasonable doubt. Therefore, acquittal from the charges under Section 307 and 379 of the IPC is against the weight of evidence and the findings to such extent are not legally sound.



Submission on behalf of the respondent (State)

15. Mr. Syed Ashfaq Ahmad, learned Additional Public Prosecutor for the State, has submitted that the present case arises out of a land dispute and there are vital contradictions in the evidence of the witnesses, coupled with several improvements having been made by them during trial, rendering the entire prosecution case doubtful. It is contended that there is a dispute between the parties with respect to a shop and the adjacent land which was the ancestral property of the accused persons given on rent to the informant, whereupon the informant and others are claiming their possession illegally. Reference has been made to the Civil Suit bearing No.371 of 2017 (Ext. F) which is pending adjudication. It is pointed out that documents have also been produced by the defence with regard to an earlier case being Brahmpur P.S. Case No.104 of 2011 (Ext.B).

16. It has also been argued that the independent witnesses have not supported the occurrence and the prosecution has not been able to prove its case beyond all reasonable doubt. It has thus been contended that there is no illegality in the impugned judgment of the learned Trial Court while acquitting the accused persons from the charges under Section 307 and 379 of the IPC.



Analysis and Consideration

17. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the learned counsel for the appellant as well as the learned APP for the State.

18. The focal point for consideration is as to whether the acquittal of the accused persons (respondent nos.2 to 5) from the charges under Section 307 and 379 of the IPC is justified and whether the prosecution has been able to bring home the aforesaid charges levelled against them beyond all reasonable doubts. This Court would confine its findings and conclusion to the aspect of the legality/illegality of the acquittal of the respondents from the aforementioned charges.

19. On going through the narration of the prosecution witnesses, it would be apparent that out of the seven witnesses examined by the prosecution, P.Ws.1, 2, 3, 4 and 6 claim to be the eye witnesses of the occurrence, out of whom P.Ws.1, 2, and 3 are independent witnesses, while P.W.4 is the son of the informant and P.W.6 is the informant himself who also happen to be the injured witnesses as they are said to have suffered injuries at the hands of the accused persons in the alleged occurrence. P.W.5 is



the doctor who examined the injuries of the injured persons and the Investigating Officer of the case has been examined as P.W.7.

20. Upon going through the evidence of the aforesaid prosecution witnesses, we find that while P.W.1 and P.W.3 have claimed to be eye witnesses in their examination-in-chief, during the cross-examination, they have stated that when they reached the place of occurrence they saw blood oozing out from the head of the injured persons. P.W.2 has also stated before the Investigating Officer (P.W.7) that the allegation of theft is false. P.W.3 has admitted that his statement was recorded by the police, 15 to 20 days after the occurrence. These independent witnesses have admitted that they are not related to the informant but are his neighbours. The evidence of these witnesses may be viewed with some suspicion with regard to they being eye witnesses of the occurrence as from the trend of their examination and cross-examination, it appears that they have made some noticeable improvements during trial.

21. We also proceed to consider here that none of these independent witnesses have stated that any assault was made with the intention to kill, although they have stated that the accused persons were armed with sticks, spear and country made pistol, but for the fact that Ganesh Pandey (respondent no.2) had



exhorted to kill the informant. It is also noticed from their evidence that there are several inconsistencies with regard to the weapons with which the accused persons were allegedly armed.

22. Coming to the evidence of P.W.4, the son of the informant, it appears from his evidence that upon exhortation given by Ganeshanand, *mar-pit* ensued between the parties in course of which he along with his father got injured and some ornamental allegation of taking away of some cash and chain was also imputed. However, in the cross-examination he has stated that he does not remember which weapon was used to cause injury on his father's head. P.W.6, the informant himself has also deposed on the same lines but has admitted in paragraph-4 of his deposition that while he suffered only one injury, his son sustained 2-3 injuries caused by lathi blow.

23. At this juncture, it would be pertinent to refer to the evidence of the doctor (P.W.5), who had examined the injuries of the two injured persons P.W.4 and P.W.6 and found the following injuries on their person:-

Informant (Naresh Prasad Kanu) :

(i) Lacerated injury on the left upper side of the skull 1' x 0.2" x 0.3"

(ii) Abrasion on right knee joint with pain & swelling.

Injury no.1 is grievous as X-ray report shows fracture of parital bone. Injury no.2 is simple in nature.

Informant's son (Suresh Prasad):

(i) Lacerated injury and swelling with rib on right side of shoulder.



(ii) Abrasion on right ankle joint.

(iii) Body pain.

Injury no.1 is grievous as X-ray shows fracture of 3rd rib on right side. Injury no.2 and 3 are simple in nature.

24. In the cross-examination, the doctor has clearly stated that injury no.2 suffered by the informant on the knee joint could not lead to death, while injury no.1 on the informant's son (P.W.4) was found grievous but there was no memo number indicated on any injury.

25. From the evidence of the Investigating Officer (P.W.7), it appears that cases have been filed from both the litigating sides with respect to the same incident and both have been investigated by him and in both the cases, he had submitted the chargesheet. However, he has stated that he had found no blood or any sign of violence on the place of occurrence.

26. The moot question, thus, to be adverted to, is whether the present case would fall within the ambit of Section 307 of the IPC or under Section 325, as has been concluded by the impugned judgment, convicting the accused persons/respondents under Section 325 along with Section 341 and 34 of the IPC, while acquitting them from the charges levelled against them under Section 307 and 379 of the IPC.

27. From the medical evidence, as discussed earlier, it would be apparent that there is one lacerated injury found on the



skull of the informant, which has been found to be grievous but the other injury is on the right knee in the nature of pain and swelling, opined to be simple in nature. So far as the informant's son, Suresh Prasad (P.W.4) is concerned, a lacerated injury was found on the right side of the shoulder, which was opined to be grievous in nature, but the other two injuries, which were in the nature of abrasion on right ankle joint and body pain were found to be simple in nature.

28. It is apparent from a bare look at the injuries received by the injured persons, that in case of the informant's son (P.W.4), no assault has been made on the vital part of the body and with regard to the informant, Naresh Prasad Kanu (P.W.6), it is found that although one grievous injury has been found on the vital part, there is no repetition of any blow, indicating thereby that there was no intention of the assailant to cause the death of the injured.

29. It is also a fact that the prosecution story does not reveal any premeditated plan or mindset to cause death of the injured persons and, as a matter of fact, it is only on account of the dispute which took place between the parties on the alleged date of occurrence, with regard to laying down bricks by informant adjacent to his shop over which there were competing



claim by the accused persons/respondent nos.2 to 5 also, that the altercation ensued between the parties. As per the evidence of the I.O., Raghuvir Singh (P.W.7), cases were filed from both the sides and chargesheet was also filed in both the cases finding them to be true. The matter thus escalated at the spur of the moment upon exhortation given by respondent no.2.

30. From the evidence of P.Ws.1 and 4, it also appears that the accused persons were also armed with country made pistol but the same is not said to be used in the said occurrence, which is a vital circumstance to indicate that, had there been an intention to kill, there was nothing deterring the accused persons from using the same for achieving their objective.

31. The law is settled that for constituting an offence under section 307 of the IPC, there has to be clear evidence that the intent behind an act is to cause death of the person. In the case of **Shoyeb Raja vs State of Madhya Pradesh and Ors.** reported in **2024 SCC Online SC 2624**, the said principle was reinforced and while reiterating the well-settled legal principles governing Section 307 IPC, the Hon'ble Apex Court referred to the three essential ingredients which must be present for the application of the aforesaid section as enumerated in the case of **State of**



Maharashtra vs Kashirao & Ors. reported in (2003) 10 SCC

434. The above-mentioned ingredients are as follows:

- 1. An attempt to cause death.*
- 2. The act must be capable of causing death or should be done with the intent to cause death.*
- 3. The action taken by the accused should be imminently dangerous, and no excuse should justify the risk of death or serious injury.*

32. Thus, it has been held that the critical element is the intent, regardless of the extent of physical injuries. It has been highlighted that even minor injuries can lead to serious charges if the intent to cause death is evident.

33. In the case at hand, none of the above-mentioned ingredients can be said to be in existence and the very fact of not using the firearm is a clear pointer towards the fact that there was no intention to kill. Section 307 of the IPC would not be attracted merely because a person has received a grievous injury and for the application of the said provision, the entire background has to be viewed and analyzed to reach to an irresistible inference that the intention was only to cause death. In the entire fact scenario, the dispute between the parties with regard to land and the shop is an admitted one, for which cases were filed from both the sides. It is also a fact that it has not been indicated in the injury report as to from what kind of weapon the said injuries were caused.



However, considering the lacerated nature of injury, it can be inferred that the same was caused by hard and blunt substance. The nature of injury has been based upon the report of the Radiologist/X-ray report, but the said expert, conducting the same, has not been examined.

34. From the foregoing analysis of evidence, it transpires that the occurrence took place on account of a dispute between the parties which escalated, eventually leading to a fight between the parties, and subsequently led to injuries being caused during the course of such altercation.

35. There is no doubt on the fact that the informant (P.W.6) and his son, (P.W.4) are the injured witness and the evidence of an injured witness has a greater evidentiary value and cannot be discarded or brushed aside lightly unless strong and compelling grounds exist, however, even for accepting the testimony of an injured witness, there has to be a *prima facie* satisfaction that he is a truthful witness and has no reason to falsely implicate the accused persons. It has been laid down in the case of **Santosh Vs. State of Bihar** reported in **(2020) 3 SCC 443**, that ordinarily, an injured witness would not lie as to actual assailants but there can be no presumption or any basis for



assuming that the statement of such a witness is always correct or without any embellishments or exaggeration.

36. Thus, viewing the entire case from the standpoint of the backdrop of the case, the injuries indicated in the injury report in the nature of laceration, abrasion etc., non use of firearm weapons, coupled with the fact that there were no repetition of blows, it is difficult to infer that the acts of assault were made with the intention to cause death of any person. The essential ingredients in order to constitute an offence under Section 307 of the IPC, do not seem to be established in order to justify a conviction thereunder. The allegations of theft, in the background of the fight between the parties, appears to be totally ornamental and not all prosecution witnesses have mentioned the story of running away with cash, watch and chain. Thus, the offence under Section 379 of the IPC also remains not established and the charges as levelled against the accused persons (respondent nos.2 to 5) with respect to both Section 307 and 379 of the IPC have not been proved by the prosecution beyond reasonable doubts.

37. Thus, taking an overall perspective of all the above-mentioned facts and circumstances and after having examined and analyzed the evidence led by the prosecution, as also taking a holistic view of the entire case, we find no illegality



or perversity in the findings recorded by the learned Trial Court with respect to non-applicability of Section 307 and 379 of the IPC, leading to the acquittal of the respondents from the charges levelled under the said provisions.

38. At this stage, it also needs to be considered that the present appeal is one against acquittal from certain charges. It is well settled that in cases of appeals against acquittal, unless and until the finding of the learned trial court is found to be palpably perverse or illegal, the appellate court would not interfere with the same for the purposes of reversing the finding of acquittal. This proposition has been clearly laid down by the Hon'ble Apex Court in the case of **Nikhil Chandra Mondal vs. State of W.B.**, reported in **(2023) 6 SCC 605** and also in a case of **Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar**, reported in **2024 SCC OnLine SC 2623**.

39. Further, in the case of **Rajesh Prasad vs. State of Bihar**, reported in **(2022) 3 SCC 471**, which also took note of the case of **Chandrappa v. State of Karnataka**, reported in **(2007) 4 SCC 415**, the Hon'ble Apex Court specifically held that an appellate court must bear in mind that in cases of acquittal, there is double presumption in favour of the accused, one being the presumption of innocence available to him under the principles of



criminal jurisprudence and the second being, acquittal of the accused, thereby reinforcing the presumption of his innocence.

40. Thus, in view of the above discussion and analysis based on facts and law, impugned judgment dated 24.09.2024 passed by the Court of learned Additional Sessions Judge-II, Buxar in Sessions Trial No.334 of 2013 (arising out of Brahmpur P.S. Case No. 105 of 2011) to the extent of acquittal under the aforementioned provisions, as challenged by the appellant, is based on sound reasons and the same warrants no interference.

41. So far as the challenge by the appellant with regard to the compensation of Rs.25,000/- each, imposed upon respondent nos.2 to 5, to be deposited for payment to the two injured persons, is concerned, this Court finds no reason to interfere with the same, as the learned Trial Court has exercised its discretion in judicious and equitable manner.

42. However, we hasten to add that our observation in the present case, is strictly confined to the legality/illegality of acquittal of the respondents from the charges levelled against them under Section 307 and 379 of the IPC and the amount of compensation directed to be paid by each respondents.

43. It is thus made clear that in case the respondents have preferred any appeal against their conviction as recorded by



the present impugned judgment/order rendered by the learned Trial Court, the observations and findings of this Court, would not prejudice either of the parties in any manner and the same would be decided on its own merits.

44. Accordingly, the present appeal stands dismissed.

45. The records of the present appeal be sent down to the learned Court below.

(Rajeev Ranjan Prasad, J.)

(Soni Shrivastava, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.04.2026
Transmission Date	23.04.2026

