

IN THE COURT OF ADDL. SESSIONS JUDGE-II, Katihar <i>Present:- Asutosh Rai, Addl. Sessions Judge, II, Katihar</i> <i>[Date of judgment- 19 May, 2026]</i> <i>[S. Trial No. 700/2012]</i> <i>Police-station-Korha</i> <i>Korha P.S. case No. 11/2009 u/s 447, 341, 323, 307, 504, 506 of the I.P.C.</i>	
<i>Complainant/Informant</i>	<i>State of Bihar through informant Babita Devi w/o Sanjay Chauhan R/O-Vill-Ahimachak, P.S.-Korha Distt.-Katihar</i>
<i>Represented By</i>	<i>Sri Md. Ezaj Alam Id. A.P.P.</i>
<i>Accused</i>	<i>1. Tetar Rai S/o- Late Sukhdev Rai, aged about 57 years,</i> <i>2. Santosh Rai, S/o-Naresh Rai, aged about 40 years,</i> <i>3. Pappu Ghosh S/O Avani Ghosh aged about 37 years</i> <i>4. Sanjiv Ghosh S/O Nathu Prasad Ghosh aged about 43 years,</i> <i>5. Raju Ghosh, S/o- Nathu Prasad Ghosh, aged about 42 years,</i> <i>6. Soni Devi, W/o- Tetar Rai, aged about 35 years, all R/o- Ahiyachak, P.S.-Korha, Distt.-Katihar</i>
<i>Represented By</i>	<i>Shri R. N. Prasad, Id. Advocate</i>

<i>Date of Offence</i>	<i>20.03.2011</i>
<i>Date of F.I.R.</i>	<i>20.03.2011</i>
<i>Date of Charge-sheet</i>	<i>30.06.11/11.07.11</i>
<i>Date of Framing of Charge</i>	<i>22.05.13</i>
<i>Date of Commencement of evidence</i>	<i>12.08.13</i>

Date of which judgment is reserved	05.05.26
Date of Judgment	19.05.26
Date of Sentencing Order, if any	N/A

Accused Details

Sl. No.	Name of Accused	Date of Arrest/ Surrender	Date of Release on Bail	Offences Charged	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428 of Cr.P.C.
01	Tetar Rai	05.04.11	25.05.11	u/s 341, 323, 307, 504/34 of the I.P.C.	Acquitted	N/A	N/A
02	Santosh Rai	24.08.11	24.08.11	Do	Do	Do	Do
03	Pappu Ghosh	05.04.11	25.05.11	Do	Do	Do	Do
04	Sanjiv Ghosh	24.08.11	24.08.11	Do	Do	Do	Do
05	Raju Ghosh	24.08.11	24.08.11				
06	Soni Devi	24.08.11	24.08.11				

JUDGMENT

1. The accused persons namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi stand charged for the offences

punishable u/s 341, 323, 307, 504/34 of the I.P.C. as leveled against them.

CASE OF PROSECUTION/BRIEF FACTS:

2. As per written report of informant namely Babita Devi prosecution case in brief is that on dated 20.03.2011 at around 3:00 PM, informant's husband Sanjay Chauhan was at his doorstep then Tetar Rai Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi having laced with Lathi and Danda came there and assaulted to the Sanjay Chauhan with Lathi and Danda. Informant's husband ran to the courtyard to save his life then those people chased him, entered into the courtyard and started beating him with the intention of killing him. When she tried to save her husband, Raju Ghosh, one Juvenile namely-X, Tetar Rai and Tetar Rai's daughter also arrived with Lathi and Danda and all together started beating. When she went there then all of them, with the intention of killing her, hit her on the head with a Danda and thereby caused injuries at two places. They also caused injuries on her husband's head and face. Somehow he was brought to Korha Hospital for treatment. Informant has further alleged that there has been previous enmity with these accused persons.

INSTITUTION OF CASE/ INVESTIGATION/ ENQUIRY

3. On the basis of Written report of informant namely Babita Devi formal F.I.R. bearing Korha P.S. case No. 11/2009 u/s 447, 341, 323, 307, 504, 506 of the I.P.C. was registered against the accused namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, one Juvenile namely-X and daughter of Tetar Rai and after investigation I.O. submitted the charge-sheet under section 341, 323, 307, 504/34 of the I.P.C. against the accused persons namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, one Juvenile namely-X and Soni Devi aforesaid all seven accused persons.

4. After receiving the charge-sheet Id. C.J.M., Katihar took the cognizance of the offence u/s 341, 323, 307, 504/34 of the I.P.C. against the accused namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh,

Raju Ghosh, one Juvenile namely-X and Soni Devi and later on, the case record of one juvenile namely-X was seprated from original case record and the case record of the juvenile was sent before the J.J.B., Katihar and the original case record of rest 06 accused persons was committed to the court of sessions for further trial. Later on, as per order of the District and Sessions Judge, Katihar case record came to the file of my court for further trial and disposal.

CHARGES AGAINST ACCUSED PERSONS

5. Later on, after completion of the appearance of the aforesaid accused persons namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi before the court and after considering the materials available on record and on hearing the Id. A.P.P. for State as well as Id. counsel for the aforesaid all accused persons, my Id. Predecessor court framed the charges 341, 323, 307, 504,/34 of the I.P.C. in written against the aforesaid all accused persons and the contents of the same were read over and explained to the aforesaid accused persons in hindi to which they denied and pleaded to be not guilty and claimed to be tried.Hence the trial.

PROSECUTION EVIDENCE

6. In order to substantiate its case prosecution side has examined altogether five (05) witnesses in the support of its case. they are:-

RANK	NAME	NATURE OF EVIDENCE
1	P. W.-01- Dr. Ansar Alam	Expert Witness
2	P. W.-02- Sanjay Chauhan	Victim to this case
3	P. W.-03- Babita Devi	Informant to this case
4	P. W.-04- Amol Ray	Hostile Witness
5	P. W.-05- Nitu Ghosh	Hostile Witness

7. Prosecution side has adduced any documentary evidence on the record in the support of its case.

Sr. no	Exhibit No.	Description
1	Ext.-1	Injury report of Babita Devi
2.	Ext-01/1	Injury report of Snjay Chauhan

STATEMENTS OF ACCUSED PERSONS

8. After conclusion of the prosecution evidence, the statement of the accused persons namely Tetar Rai Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi were recorded under section 313 of the Cr.P.C. and all incriminating evidences were put to them but they denied veracity of prosecution evidences with the contentions that they are innocent and have falsely been implicated in this case. Accused persons have not examined any witness in their defense but they have adduced following documentary evidence in their defense:-

(i) Ext-A, certified copy of formal F.I.R. bearing Korha P.S. case No. 62/2011.

(ii) Ext-B- certified copy of the Charge-sheet No. 76/2011

(iii) Ext-C-certified copy of the Cognizance order passed in Korha P.S. case No. 62/2011

11. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused persons, beyond the shadow of all reasonable doubts ?

FINDINGS

12. From perusal of the case record it is evident that in order to prove and substantiate its case prosecution has relied upon the oral as well as documentary evidences. Prosecution has examined altogether five witnesses but out of them P.W.-02 Sanjay Chauhan is none else but the victim to this case has stated in his examination-in-chief that this incident is of two years ago on date 20.03.2011 at around 3:00 PM during daytime. At that time, he was at his doorstep. Tetar Rai, Santosh, Juvenile namely-X Raju, Sanjiv, Pappu, and Sonia Devi came and started abusing him. When he objected, those people started beating him. With view to save his life he ran towards the courtyard then those people came into the courtyard and continued beating him. When his wife came to save him, they also hit her with Danda. His head got cracked. Due to assaulting by the Tetar Rai his head got cracked. His wife's head was also got cracked from the front side. On the commotion people came then

accused persons fled away. Then they went to the police station and from there to the hospital for treatment. They were referred to Katihar Medical College Hospital for treatment from Korha Hospital where they were treated. His wife is the one who filed this case. P.W.-02 has further recognized to the accused persons present in the court and has further claimed to identify the rest upon seeing them.

During the cross-examination P.W.-02 has stated that there are 10 houses between his house and the houses of the accused persons. P.W.02 has further stated the boundary of the place of occurrence as follows:-In the north – his own house, South- Surendra Chauhan's house, East is the Soma Chauhan's house, West-Pradeep Chauhan's house. P.W.-02 has further stated that he was hit with 10-20 Danda. First, Tetar Rai, Santosh and one Juvenile namely-X beat him. His statement was not recorded by the police. Only his wife can tell who beat her. On the same day's incident, the accused persons have also filed cases against them.

13. P.W.-03 Babita Devi who is non else but the informant and victim to this case has stated in her examination-in-chief that she is the informant of this case. The incident took place two and a half years ago at 3:00 PM during daytime. At that time, her husband was sitting at the doorstep when Tetar Rai, Juvenile namely-X, Santosh, Pappu Ghosh, Sanjeev, Rajiv and Sonia Devi came and started beating her husband. When she went to save, those people also beat her. She was beaten by Tetar, Santosh, and by one Juvenile namely-X. She was hit on the head with a Danda, due to which she sustained head injury and blood started oozing out. After that they fled away and her husband was taken to Gerabari Hospital and from there they were referred to Katihar Medical College Hospital. She filed the case at Korha Police Station. P.W.-03 has further claimed to identify the accused persons upon seeing them.

During the cross-examination P.W.-03 has stated that the incident occurred in the month of Phalgun. Date is no in her memory . The accused persons' house is 10 houses away from her house. The assaulting took places near about one hour. Three accused persons had Danda in their hands. They hit her on the head with Danda. Tetar

Rai hit her with one Danda, Juvenile namely-X also hit her with one Danda, and Santosh also hit her with one Danda. Blood started oozing out from her and her husband's injuries, and blood also got on the clothes. The blood-stained clothes were not seized by the police. The police recorded her statement 4 to 5 days later at the hospital. P.W.-03 has further stated the boundary of the place of occurrence as follows;- North-Her own house and next to it is the house of Vijay Chauhan, South-Surendra Chauhan's house, East- Vijay Chauhan's house, West-Pradeep Chauhan's house. Those people were not present at the spot at the time of the incident. They were at their respective houses and came after coming into knowledge of the incident. She is giving her statement in court after having given a statement to the Inspector at the hospital. The accused Tetar's wife has filed a case against the witnesses. It is not that no such incident occurred and she is giving false testimony.

14. P. W.-01 Dr. Ansar Alam who is expert witness has stated in his examination-in-chief that on dated 20.03.2011 he was posted at P.H.C. Korha as Medical Officer and on that day he examined Babita Devi, W/o- Sanjay Chauhan, R/o- Ahima Chak, P.S.-Korha, Distt.-Katihar, found following injuries:-

- (I) 5 C.M. X 1 C.M. X 1/4 C.M. on scalp.
- (II) Swelling and tenderness on occipital region 8 C.M. X 8 C.M.
- (III) Swelling and tenderness at wrist joint with tenderness.

All the injuries and wound are caused by hard and bound substances and nature of the same are simple. P.W.-01 has further proved the Injury report and accordingly same was marked as Ext-01

P.W.-01 has further stated that on the same day he examined Sanjay Chauhan, S/o- Jagdish Chauhan, R/o- Ahima Chak, P. S.-Korha, Distt.-Katihar and found following injuries:-

- (I) 5 C.m. X 1 C.m. X 1/4 C.m. on scalp
- (II) Tenderness has and swelling at right elbow joint. Above both the injuries are caused by hard and blow substances and nature is simple.

P.W.-01 has further proved the injury report of Sanjay Chauhan accordingly same was marked as Ext.-1/1.

During the cross-examination P. W.-01 has deposed that time of examination has not been mentioned in the above both injury reports. Injury of both the injured was within 6 hours. There injuries on both the persons may be possible by fallen on stone.

15. P.W.-04 Amol Roy has stated in his examination-in-chief that he does not know Babita. He knows Sanjay Chauhan. He does not know anything about the incident. The police did not interrogate him. He does not recognize the accused.

It would be pertinent to mention here that on the request of the Id. A.P.P. P.W.-04 was declared to be hostile by the court. After that, the prosecution cross-examined the aforesaid witness. But in his cross-examination, P.W.-04 has denied all the suggestions given by the prosecution side and has further stated that it is not true that he gave a statement to the police that on March 20, 2011, at 3:00 PM, Babita's husband, Sanjay Chauhan, was at the door and that time Tetar Rai, Santosh Rai, Pappu Ghosh, and Sanjeev Ghosh, armed with lathi-danda, came at the door and assaulted to the Sanjay Chauhan, who ran into the courtyard to save his life. It is not true that he gave a statement to the police that all the accused entered into the house and committed assaulting by the means of lathi-danda and they also gave a blow of lathi on the head of the informant namely Babita due to which she got injured and that she was brought to the Korha Hospital for treatment. P.W.-04 has further recognized to the accused namely Tetar Rai who was present in the court today. P.W.-04 has further stated that it is not the case that having gone into favour of the accused persons he is concealing the truth from the court.

During the cross-examination on behalf of the learned defence counsel, P.W.-04 has stated that he is testifying today voluntarily without any pressure. He has come to testify today on notice from the court. Accused Tetar Rai is his villager, that's why he knows him.

16. P.W.-05 Nitu Ghos has stated in her examination-in-chief that she does not know anything about the incident. The police did not interrogate

her. P.W.-05 has further recognized to the accused namely Tetar Rai who was present before court and she has further claimed to identify other accused persons upon seeing them.

It would be pertinent to mention here that on the request of the Id. A.P.P. P.W.-05 was declared to be hostile by the court. After that, the prosecution cross-examined the aforesaid witness. But in his cross-examination, P.W.-05 has denied all the suggestions given by the prosecution side and has further stated that it is not true that she gave a statement to the police that on 20-03-2011, at about 3:00 P.M. Babita's husband, Sanjay Chauhan, was at the door and that time Tetar Rai, Santosh Rai, Pappu Ghosh, and Sanjeev Ghosh, armed with lathi and danda, came to the door and assaulted Sanjay Chauhan, who ran into the courtyard to save his life. It is not true that she gave a statement to the police that all the accused entered into the house and committed assaulting with lathi and also gave a blow of lathi on the head of informant namely Babita due to which she got injured and she was taken to the Korha Hospital for treatment. It is not so that having gone into favour of the accused persons she is concealing true facts from court.

During the cross-examination on behalf of the learned defence counsel, P.W.-05 has stated that she is testifying today voluntarily without any pressure. She has come to testify today on notice from the court. Accused Tetar Rai is her villager, that's why she recognizes him.

17. While at the time of final argument, Id. A.P.P. for the state has submitted before this court that prosecution witnesses, including informant to this case, have fully supported the prosecution case and they have also given constant and reliable testimonies on the point of time and date of occurrence, place of occurrence, nature and manner of occurrence as alleged in the written report and injury report is also in the support of prosecution case. So the aforesaid accused person may be held guilty for committing offense u/s 341, 323, 307, 504, /34 of the I.P.C. as leveled against them.

18. *Per contra* Id. Counsel for the defense has submitted that:-

(i) Any reliance can not be placed upon the oral depositions of the OF p.w.-02 and P.W.-03 because they are the victims to this case.

(ii) Prosecution did not examine to the I.O. of this case and non examination of I.O. to this case has caused much prejudice because the P.W.-02 and P.W.-03 have given much contradictory oral testimonies on the point of P.O. land and they have clearly stated that their statements were not recorded by the I.O. during the investigation.

(iii) Id. defense counsel has further submitted that P.W.-1 Dr. Ansar Alam has clearly stated in his cross-examination that injuries occurred on both the injured persons may be possible by fall on stone. Moreover, time of examination is not mentioned in the injury reports.

(iv) There are material inconsistencies and discrepancies in the oral testimonies of P.W.-2 and P.W.-3 even on vital points such as the place of occurrence, duration of assault (one hour as stated by P.W.-3), and presence of accused persons at the spot.

(v) He has further submitted that Ext-A, certified copy of formal F.I.R. bearing Korha P.S. case No. 62/2011, Ext-B- certified copy of the Charge-sheet No. 76/2011 and Ext-C-certified copy of the Cognizance order go to show that there is counter case between the both parties and as per written report there is previous enmity between the both parties So the possibility of false implication of accused persons in this alleged occurrence can not be outrightly rejected.

(vi) Learned counsel for the defense has further submitted that there is no repetition of lethal blow on the body of victims to this case so it is evident that there is no intention on the part of the accused to cause murder, if accused persons had the intention to murder the informant or other victims to this case they must have attempted twice- thrice on the body of victims/injured of this case by the means of Danda or other lethal weapons as there was no intervening circumstances to prevent them to achieve their goal. So, any point of view accused persons can not be held guilty for the offence punishable under section 307 of the I.P.C.

(vii) The ld counsel has further submitted that so far the charge u/s 323/34 is concerned it is notable that prosecution has not adduced any independent witness in this case, while it is admitted fact by the prosecution witnesses that near the place of occurrence there are houses of other person. Further P.W.-04 and P.W.-05 who appears to be independent witness have not supported the case of prosecution at all and they have turned hostile. Further there is no material on the record to prove the charge u/s 504 of the I.P.C as leveled against accused persons. So it may be easily held that prosecution has not succeeded to prove the charge u/s 341, 323, 307, 504/34 of the I.P.C. as leveled against the accused persons. Accordingly. It has been submitted that accused persons are entitled to get the benefits of doubts with respect of the all charges u/s 341, 323, 307, 504/34 of the I.P.C. as leveled against them and accordingly they are entitled for acquittal from the all charges as leveled against them.

19. Heard the both parties at length and perused the entire case record as well as the evidences available on the record. Now the court will analyse the evidences brought on the record by the prosecution and the contention of the both parties. The prosecution has relied upon the statements of the eye witnesses, namely P.W.-2 Sanjay Chauhan (victim) and P.W.-3 Babita Devi (informant and victim), as well as on the expert witness namely P.W.-1 Dr. Ansar Alam who medically examined to the Sanjay Chauhan and Babita Devi as well as on the Ext-01 and Ext1/1 Injury report of the aforesaid both victims.

20. Now the court will analysis the evidences brought on the record by the prosecution and the contention of the both parties. The prosecution has relied upon the statement of the eye witnesses . Court would first of all, like to deal with respect to charge U/S 341/34 of the I.P.C. as leveled against the accused persons. In order to reach on the right conclusion, it is proper to refer Section 339, 341 of the IPC . Section 339 of the I.P.C which provides as “Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any

direction in which that person has right to proceed, is said wrongfully to restrain that person. While section 341 of the I.P.C which is penal provision which provide as "Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term, which may extend to one month, or with fine which may extend to five hundred rupees, or with both." So from the aforesaid enabling provision of section 339 of the I.P.C it is evident that in order to constitute the offence under section 341 IPC, the following ingredients are required to be proved by the prosecution : (1) The accused obstructed a person (2) Such obstruction was caused voluntarily. (3) Such obstruction prevented him from proceeding in the direction in which he had a right to proceed. Mens Rea is an essential ingredient to this section. But from the perusal of the depositions of the prosecution witnesses it is evident that any prosecution witnesses have nothing stated as to how the accused persons committed wrongful restraint, by prevented them from proceeding in some particular direction. From perusal of the oral testimonies of P.W.-02 and P.W.-03 it is quite clear that they have only stated that accused persons came at the place of occurrence and committed alleged assaulting. But they have never stated that any of the accused persons voluntarily obstructed them or prevented them from proceeding in any particular direction. The allegations are entirely focused on the act of assault with lathi and danda at the doorstep and inside the courtyard. Furthermore, the essential mens rea for the offence of wrongful restraint is entirely absent in the oral testimonies of the prosecution witnesses. As any prosecution witness has nothing stated as to how the accused persons committed wrongful restraint, by preventing them from proceeding in some particular direction.. So having consideration of all the facts and evidences available on record, this court finds and holds that the prosecution has miserably failed to prove the charge under Section 341/34 of the I.P.C. beyond all shadows of reasonable doubt against the accused persons. Hence, accused Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, and Soni Devi are found to be entitled to get the benefit of doubt in the respect of the charge u/s 341/34 of the I.P.C. as leveled against them.

21. Now the next question before this court is as to whether prosecution has succeeded in proving the charge under Section 323/34 of the I.P.C. as leveled against the aforesaid all accused persons. From perusal of the case record it is evident that in her written report informant to this case has stated that on the alleged date and time of occurrence her husband namely Sanjay Chauhan was at his doorstep then Tetar Rai Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi having laced with Lathi and Danda came there and assaulted to the Sanjay Chauhan with Lathi and Danda. Informant's husband ran to the courtyard to save his life then those people chased him, entered into the courtyard and started beating him with the intention of killing him. When she tried to save her husband, Raju Ghosh, one Juvenile namely-X, Tetar Rai and Tetar Rai's daughter also arrived with Lathi and Danda and all together started beating. When she went there then all of them, with the intention of killing her, hit her on the head with a Danda and thereby caused injuries at two places. They also caused injuries on her husband's head and face. So from perusal of the written report it is evident that in her written report informant has not leveled any specific allegation against the any accused persons. Further P.W.-02 Sanjay Chauhan has deposed before this court that at the time of alleged occurrence he was at his doorstep. Tetar Rai, Santosh, Juvenile namely-X Raju, Sanjiv, Pappu, and Sonia Devi came and started abusing him. When he objected, those people started beating him. With view to save his life he ran towards the courtyard then those people came into the courtyard and continued beating him. When his wife came to save him, they also hit her with Danda. His head got cracked. Due to assaulting by the Tetar Rai his head got cracked. His wife's head was also got cracked from the front side So it is evident that P.W.-02 has leveled only specific allegation of assaulting against the accused namely Tetar Rai. But in his cross-examination P.W.-02 has stated that his statement was not recorded by the police. So it is evident that at the during the investigation his statement was not recorded by the I.O. to this case. So his oral testimonies does not appear to be fully reliable. P.W.-02 has

further stated that only his wife can tell who beat her. So, it appears that at the time of alleged assaulting of his wife P.W.-02 was not at the place of occurrence, because if he had been present at the place of occurrence he must have seen as to who assaulted to his wife. Further P.W.-03 Babita Devi has deposed before this court that at the time of alleged occurrence her husband was sitting at the doorstep when Tetar Rai, Juvenile namely-X, Santosh, Pappu Ghosh, Sanjeev, Rajiv and Sonia Devi came and started beating her husband. When she went to save, those people also beat her. She was beaten by Tetar, Santosh, and by one Juvenile namely-X. She was hit on the head with a Danda, due to which she sustained head injury and blood started oozing out. But P.W.-03 has never specifically stated as to who all assaulted to her husband namely Sanjay Chauhan. While if she had been present she must have seen as to who assaulted to her husband. Further from perusal of the oral deposition of the P. W.-01 Dr. Ansar Alam it is evident that he has stated that in his examination in chief that on examination of Babita Devi, he found following injury on her body (I) 5 C.M. X 1 C.M. X 1/4 C.M. on scalp, (II) Swelling and tenderness on occipital region 8 C.M. X 8 C.M. (III) Swelling and tenderness at wrist joint with tenderness. But P.W.-01 has not made clear that what was the nature of the injury No (I) as to whether same was contusion or lacerated or something else. Further from perusal of the Ext-1/1 Injury report of Sanjay Chauhan it is evident that in said injury report it has been opined that Sanjay Chauhan sustained following injuries on his body:-(I) 5 C.m. X 1 C.m. X 1/4 C.m. on scalp (II) Tenderness has and swelling at right elbow joint. Above both the injuries are caused by hard and blow substances and nature is simple. But in injury report it has not been made clear that as to whether said injury No-(i) was lacerated wound or contusion or something else. Further it is notable that P.W.-01 Dr. Ansar Alam has stated in his cross-examination that the injuries found on both the injured persons "may be possible by fallen on stone". This means the injuries sustained by victims to this case may occur by accident and not necessarily by any assault. Moreover, the doctor admitted that the time of examination is not mentioned in the injury reports. Therefore, the medical evidence does

not strongly support the prosecution story. The doctor himself has given a possibility that the injuries could be occur due to falling on stone, which creates a reasonable doubt in the case of the prosecution case. Hence, in light of the discrepancies, the damaging admission in the cross-examination of the doctor and the complete failure to produce independent cogent and reliable corroborative evidence on the point of alleged assaulting. So court finds that the prosecution has failed to prove the charge under Section 323/34 I.P.C. beyond a reasonable doubt as leveled against the accused persons. Hence, accused namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, and Soni Devi are found to be entitled to get the benefit of doubt in the resect of the charge u/s 323/34 of the I.P.C. as leveled against them.

22. Now next question arises before this court is as to whether the prosecution has succeeded in proving the charge u/s 307/34 of the I.P.C. against the accused persons. In order to reach on the right conclusion, it would be proper to refer Section 307 of the I.P.C. which provides as :-
“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 1[imprisonment for life], or to such punishment as is herein before mentioned. Attempts by life convicts.—
2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.] So from the bare perusal of the provision of section 307 of the I.P.C. it is evident that the main ingredients under section 307 I.P.C are (i) the act attempted should be of such a nature that if not prevented or intercepted it would lead to the death of the victim as observed in Indian Penal Code by Ratanlal and Dheerajlal, (ii) the intention or mens rea to kill needs to be proved without doubt and for this purpose the prosecution can make use of circumstances like attack by dangerous weapons on vital parts of the body. Thus, for conviction under section

307 of the I.P.C. more importance has been given to mens rea or the intention than the actual act itself. The attempt should rise out of a specific intention or desire to murder to the victim. The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are all to be taken into consideration and which determines the intention of the accused persons as held in *Harikishan vs. Sukhbir Singh* (AIR 1988 SC 2127). Therefore, in view of the above of case law and discussion, it has to be seen whether the prosecution has succeeded to establish that accused persons committed the offence with an intention to kill to the informant and other victims to this case. While coming on the merit of this case court finds that P.W.-02 and P.W.-03 have never stated that accused persons assaulted them with view to cause murder. Further, this court finds much force in the submission of the ld. defense counsel that there is no repetition of lethal blow on the body of victims to this case so it is evident that there is no intention on the part of the accused to cause murder to the victims to this case, because if accused persons had the intention to murder to the informant or other victims to this case they must have given lethal blow of lathi and danda on the vital part of the bodies of the victims to this case. Further prosecution has not made clear as to what was the intervening circumstances which prevented to the accused persons from achieving their goal. From perusal of the Ext-01 and Ext1/1 it is quite clear that there were only two to three simple head injuries as well as swelling on joints of the bodies of the victims to this case have been found at the time of alleged medical examination. While P.W.-01 has opined that said injuries sustained by the victims to this case may occur due to falling on the stone. Furthermore, from the discussion as made in previous paragraph it is evident that P.W.-02 and P.W.-03 have given much contradictory oral evidence on all the vital points just as place of occurrence and nature of the occurrence. Moreover prosecution witnesses have never stated about the specific intention of accused persons to cause murder. So court finds and held that the prosecution has failed to prove the essential ingredient of "intention of accused persons to cause death to the victims to this case" as required u/s 307 of

the I.P.C. Hence, having consideration of the nature of the weapons used, the minor and simple nature of the injuries, the lack of any lethal or repetitive blows on vital parts, and the overall circumstances of the case, this court finds and holds that the prosecution has miserably failed to prove the charge under Section 307/34 of the I.P.C. beyond all reasonable doubt as leveled against the accused persons. The prosecution has failed to prove the charge under Section 307/34 I.P.C. beyond a reasonable doubt as leveled against the accused persons. Hence, accused namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, and Soni Devi are found to be entitled to get the benefit of doubt in the respect of the charge u/s 307/34 of the I.P.C. as leveled against them.

23. Now, the next question is whether the prosecution has succeeded in proving the charge under Section 504/34 of the I.P.C. Before coming on the merit of the case it would be pertinent to refer to the case *Jodha Singh V. State of U.P.* (1991 Cri. L.J. 3226) in which it has been observed that to prove the offence u/s 504 of the I.P.C. it is must for the prosecution to prove that (a) the accused insulted the victim, (b) the insult was of such a nature as to provoke the victim, and (c) the accused intended or knew that such provocation would likely cause the victim to break the public peace or commit any other offence and (d) the actual words used by the accused persons. While from perusal of the written report, it is evident that the informant, Babita Devi, alleged that the accused persons "started abusing him." But written report is completely silent as to what those actual abusive words were by the accused persons. Further P.W.-2-Sanjay Chauhan has only stated in his examination-in-chief that the accused persons "started abusing him," but P.W.-02 as well P.W.-3-Babita Devi also did not state what actual words were used by the accused persons. Hence in the light of above facts, this court finds that the prosecution has failed to meet the essential legal requirement for an offence under Section 504 I.P.C. Furthermore, the prosecution has not led any evidence to show that the accused persons intended or knew their words would likely cause a breach of the peace. Hence in the light of above discussed facts this court finds and holds that

the prosecution has not succeeded in proving the charge u/s 504/34 of the I.P.C. beyond a reasonable doubt as leveled against the accused persons. Hence, accused namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh, and Soni Devi are found to be entitled to get the benefit of doubt in the respect of the charge u/s 504/34 of the I.P.C. as leveled against them.

24. Further, court finds much force in the submission of the ld. defence counsel who has pointed out Ext-A, certified copy of formal F.I.R. bearing Korha P.S. case No. 62/2011, Ext-B- certified copy of the Charge-sheet No. 76/2011 and Ext-C-certified copy of the Cognizance order passed in Korha P.S. case No. 62/2011 and has submitted that there is counter case between the both parties and as per written report there is previous enmity between the parties, so the possibility of false implication cannot be ruled out. Further court finds much force in submission that prosecution has not examined any independent witness before court. While P.W.-04 Amol Roy and P.W.-05 Nitu Ghosh who appear to be independent witness have not supported the case of prosecution and they have turned to be hostile. Furthermore prosecution witnesses have never stated that accused persons assaulted them with view to cause murder. Further, this court finds much force in the submission of the ld. defense counsel that there is no repetition of lethal blow on the body of victims to this case so it is evident that there is no intention on the part of the accused to cause murder to the victims to this case, because if accused persons had the intention to murder the informant or other victims to this case they must have given lethal blow of lathi and danda on the vital part of the bodies of the victims to this case. Further prosecution has not made clear as to what was the intervening circumstances which prevented to the accused persons from achieving their goal. Therefore, having consideration of all the facts of this case, I find and hold that prosecution has not fully succeeded to prove the charge u/s 341, 323, 307, 504/34 of the I.P.C. beyond all shadows of reasonable doubts against the accused persons.

25. So, having consideration the above facts and circumstances of this case as well as contentions raised by Id. Counsel for the defence, I find and hold that prosecution has miserably failed to prove the charges u/s- 341, 323, 307, 504,/34 of the I.P.C. as leveled against aforesaid accused person namely Tetar Rai, Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi. Hence, it is found and hold that aforesaid all six accused persons are not guilty for the commission of the offence punishable u/s 341, 323, 307, 504,/34 of the I.P.C. Accordingly they are acquitted from the charges u/s 341, 323, 307, 504,/34 of the I.P.C. as leveled against them. Since, the accused namely Tetar Rai Santosh Rai, Pappu Ghosh, Sanjiv Ghosh, Raju Ghosh and Soni Devi are on bail, so aforesaid accused persons and theirs bailors are hereby absolved from the liabilities of the respective bail bonds.

26. Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 365 of the Cr.P.C.

27. Office is further directed to consign the case record to the D.R.R, Katihar after necessary compliance, if any.

Judgment was dictated and corrected by me and same was pronounced by me in open court

(Asutosh Rai)
Addl. Sessions Judge II
Katihar
19-05-2026

(Asutosh Rai)
Addl. Sessions Judge II
Katihar
19-05-2026

IN the COURT OF ADDL. SESSIONS JUDGE-II Katihar
Sessions Trial Case No.-700/2012

List of Witnesses

RANK	NAME	NATURE OF EVIDENCE
1	P. W.-01- Dr. Ansar Alam	Expert Witness
2	P. W.-02- Sanjay Chauhan	Victim to this case
3	P. W.-03- Babita Devi	Informant to this case
4	P. W.-04- Amol Ray	Hostile Witness
5	P. W.-05- Nitu Ghosh	Hostile Witness

LIST OF PROSECUTION EXHIBITS

Sr. no	Exhibit No.	Description
1	Ext.-1	Injury report of Babita Devi
2.	Ext-01/1	Injury report of Snjay Chauhan

LIST OF DEFENCE WITNESS

RANK	NAME	NATURE OF EVIDENCE
1	N/A	N/A
2	N/A	N/A

LIST OF DEFENCE EXHIBITS

Sr. NO.	Exhibit Number	Description
1	Ext-A	Certified copy of formal F.I.R. bearing Korha P.S. case No. 62/2011.
2	Ext-B	Certified copy of the Charge-sheet No. 76/2011
3	Ext-C	Certified copy of the Cognizance order passed in Korha P.S. case No. 62/2011

(Asutosh Rai)
Addl. Sessions Judge-II, Katihar
19-05-2026

<i>Date of Judgment</i>	<i>19.05.2026</i>
<i>Date of Reserving order</i>	<i>05.05.2026</i>
<i>Uploading Date</i>	<i>26.05.2026</i>
<i>Uploaded By</i>	<i>Prakash Kumar Singh</i>