

COURT OF ADDITIONAL SESSIONS JUDGE-III, BIHARSHARIF (NALANDA)

Criminal Appeal No. 46/2016

1. Jageshwar Gope, S/o.- Late Jittu Gope

2. Bhim Gope, S/o.- Late Ramotar Gope

..... Appellants

Vs.

The State of Bihar

..... Opposite Party

Learned Counsel for petitioner: Sri Shishupal Kumar, Learned Advocate

Learned Counsel for O.P.: Kumari Snehlata Sujal, Learned A.P.P.

[Judgment Dated - 5th day of June, 2026]

::::: J U D G M E N T :::::

Introduction

1. This appeal is directed against the judgment of conviction and order of sentence passed by the learned Chief Judicial Magistrate, Nalanda, on 27.07.2016, whereby accused Jageshwar Gop, Chamru Gop and Bhim Gop were convicted for the offence punishable under Section 323 of the IPC and were sentenced to undergo simple imprisonment for one year.

The appeal was filed on behalf of Jageshwar Gop, Chamru Gop and Bhim Gop. However, during the pendency of the appeal, Chamru Gop died and the proceedings against him stood abated. Thus, only two appellants remain in the present appeal.

Grounds of Appeal

2. The appeal was preferred on the following grounds:

(i) That the judgment and order passed by the learned Chief Judicial Magistrate are illegal and arbitrary.

(ii) That no independent witness has supported the prosecution case. PW-1, Dharmendra Paswan, stated in paragraph 4 of his deposition that he had only heard the scuffle between Rajendra Chaudhary, Jageshwar Yadav and Tapeswar Yadav.

(iii) That the informant, Rajendra Chaudhary, stated in the FIR as well as in his deposition that Jageshwar Gop and Chamru Gop were holding revolvers in their hands,

whereas PW-3, Saro Devi, stated in her examination-in-chief that accused Jageshwar Gop and Chamru Gop were holding rifles and the remaining accused were armed with Lathis. However, there is no evidence against Jageshwar Gop and Chamru Gop that they fired from their weapons. There is also no evidence on record to show that they caused injuries to the informant or his wife by means of the said weapons.

(iv) That there is no evidence to show that the convicts caused injuries to any particular person and there is no specific allegation of assault against the accused persons.

(v) That the medical evidence does not support the version of the injured persons.

(vi) That Rajendra Chaudhary stated that blood had fallen at the place of occurrence, but the Investigating Officer did not find any blood at the place of occurrence.

(vii) That the place of occurrence was not established by the Investigating Officer and the witnesses also failed to prove the place of occurrence.

(viii) That only the informant and his wife have been examined as eyewitnesses and there is no independent witness to support the prosecution case.

(ix) That the informant and his wife admitted the existence of a land dispute. The defence suggested that the informant had instituted the present case merely to exert pressure upon Jageshwar Gop so that he might relinquish possession over the land in question.

(x) That the other accused persons have been implicated because they had spoken the truth against the informant.

3. During the course of hearing of the appeal, the appellants filed a petition on 24.04.2026, stating that they did not wish to challenge the order of conviction and intended to confine the appeal only to the order of sentence. It was further stated that the appellants had never been convicted for any other offence and that this was their first conviction. They prayed for the benefit of the Probation of Offenders Act. It was submitted that the learned Trial Court had not even considered the applicability of the Probation of Offenders Act and, therefore, the order of sentence deserved to be set aside.

Point of Determination

4. Since the appellants, by petition dated 24.04.2026, have stated that they do not wish to challenge the conviction and seek to confine the appeal only to the

question of sentence, the sole question for determination before this Court is whether the order of sentence passed by the learned Trial Court warrants interference.

Prosecution Case and Trial

5. The prosecution case, in brief, is that on 20.06.2003, at about 9:00 A.M., the informant, along with his wife Taru Devi, was working in his field and constructing a house with the help of six labourers. At about 2:00 P.M., Jageshwar Gop, Chamru Gop, Bhim Gop, Birbal Gop and Kali Sao allegedly came armed with Lathis, a Garasa and revolvers and started abusing the informant. It is alleged that Jageshwar Gop and Chamru Gop assaulted the informant with the butt of their revolvers, Bhim Gop and Birbal Gop assaulted him with Lathis and Kali Sao assaulted him with a Garasa. It is further alleged that the accused persons snatched a nose-ring and earrings from TSaro Devi.

6. On the basis of the aforesaid fardbeyan, Bihar P.S. Case No. 150 of 2003 was registered. Upon completion of investigation, cognizance was taken for offences under Sections 341, 323, 324, 379 and 504/34 of the IPC.

7. Charge was framed against the accused persons on 18.04.2007, for offences punishable under Sections 341, 323, 324, 504 and 379/34 of the IPC. The charges were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

8. The statements of all the accused persons were recorded under Section 313 CrPC on 01.02.2010, wherein they claimed the evidence adduced against them to be false and pleaded innocence as their general defence.

9. To prove its case, the prosecution examined five witnesses, namely PW-1 Dharmendra Paswan, PW-2 Rajendra Chaudhary, PW-3 Saro Devi, PW-4 Dr. Awadhesh Kumar Sinha and PW-5 Nageshwar Prasad Singh. No evidence was adduced from the side of the defence.

FINDINGS

10. Since the conviction is not being challenged in the present appeal and the only point for consideration is whether the sentence imposed was proper, there is no necessity to discuss the testimony of each witness in detail. The only material consideration is the sentencing order passed by the learned Trial Court.

11. In the sentencing order, the learned Trial Court observed:

"From the perusal of the record, it is evident that the benefit of the Probation of Offenders Act should not be granted to the convicts considering the nature of the

offence."

Thus, no specific reason was assigned as to why the benefit of the Probation of Offenders Act should not be extended to the convicts/appellants. A vague observation that, considering the nature of the offence, it would not be just to grant such benefit does not amount to proper compliance with the statutory mandate.

12. In this connection, Section 361 CrPC is worth consideration. It provides as under:

"Where in any case the Court could have dealt with—

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958; or

(b) a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so."

Section 3 of the Probation of Offenders Act provides as under:

"Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4. for release after due admonition in appropriate cases."

13. In the case of Surendra Kumar Jha Vs State of Bihar, **(2017) 4 PLJR 869**, the Hon'ble Patna High Court gave the benefit of section 3 of Probation of Offenders Act in a case where the accused were found guilty of offences under section 323, 324 and 504 of IPC.

14. In the present case, the appellants were found guilty for the offence punishable under Section 323 IPC, which is punishable with imprisonment up to one

year, or fine, or both. No previous conviction has been proved against them. Thus, the case squarely falls within the ambit of Section 3 of the Probation of Offenders Act. However, the learned Trial Court neither granted the benefit of Section 3 of the Act nor recorded any special reason for refusing such benefit. I, therefore, find that the order of sentence was not proper.

15. There is nothing on record to indicate that the nature of the offence or the manner of occurrence was such as to warrant denial of the benefit of the Probation of Offenders Act. On the contrary, the occurrence took place in the year 2003. The judgment of the Trial Court was delivered on 27.07.2016, and the appeal has remained pending thereafter until the present date. Thus, the appellants have undergone the ordeal of a long and protracted criminal proceeding. Both the appellants are now more than sixty years of age and have no previous conviction to their credit.

16. Considering all these circumstances, I am of the view that the appellants deserve the benefit of Section 3 of the Probation of Offenders Act. It is therefore

Ordered

17. Accordingly, the appeal is partly allowed on the question of sentence.

The judgment of conviction passed by the learned Chief Judicial Magistrate, Nalanda, is hereby affirmed. However, the order of sentence is set aside. In exercise of powers under Section 3 of the Probation of Offenders Act, 1958, the appellants Jageshwar Gop and Bhim Gop are released after due admonition.

18. Let the lower court records be transmitted forthwith along with a copy of this judgment.

19. Appeal disposed of accordingly.

(Dictated & corrected by me)

Additional Sessions Judge-III,
Biharsharif, Nalanda
05.06.2026

Addl. Sessions Judge-III,
Biharsharif, Nalanda
05.06.2026.