

District- Giridih

In The Court of Abhijeet Pandey, JM 1st Class, Giridih

**Present: Abhijeet Pandey,
JM 1st Class, Giridih**

Dated- 23rd of March, 2023

G.R. case No-124/19

Jamua PS case no. 274/2018

Informant:	State of Jharkhand (through Md. Hazrat Ansari)
Represented by:	Sri Sarvesh Anand, Ld. APP
Accused:	1. Alam Ansari, S/o- Budhan Mian, aged about 26 years, 2. Islam Ansari S/o- Churaman Mian, aged about 43 years 3. Budhan Mian S/o Lt. Yugal Mian, aged about 71 years, 4. Afroz Ansari, S/o Kasim Ansari, aged about 31 years, 5. Rahman Ansari @ Abdul Rahman, S/o Lt. Noor Mohammad, aged about 35 years, 6. Imtiyaz Ansari S/o Kasim Ansari, aged about 29 years, 7. Mustafa Ansari S/o Lukan Ansari, aged about 43 years, 8. Rafique Ansari S/o Md. Lukman Ansari, aged about 36 years, 9. Kalim Ansari S/o Suleman Ansari, aged about 40 years, 10. Manowar Ansari S/o Abdul Karim, aged about 35 years, 11. Md. Lukman Ansari S/o Late Tulo Mian, aged about 70 years, 12. Mumtaz Ansari S/o Ramjan Ansari, aged about 39 years, 13. Shamim Ansari S/o Lt. Noor Mohammad, aged about 29 years, 14. Jalil Ansari S/o Suleman Ansari, aged about 38 years, 15. Rashid Ansari S/o Futu Mian, aged about 44 years, 16. Israil Ansari S/o Futu Mian, aged about 37 years, 17. Hussain Ansari S/o Late Fatu Mian, aged about 42 years, 18. Gafur Ansari S/o Budhan Mian, aged about 37 years, 19. Churaman Mian S/o Late Makur Mian, aged about 70 years, 20. Fatu Mian(since deceased) All r/o vill-Chandradih, PS-Jamua, Dist-Giridih
Represented by:	Sri Sunil Kumar Sinha, Ld. Advocate

Date of Offence	22.09.2018
Date of FIR	22.09.2018
Date of Chargesheet	04.12.2018
Date of Cognizance	04.12.2018
Date of framing of charges	02.05.2019

Date of commencement of evidence	15.06.2019
Date on which Judgment is reserved	23.03.2023
Date of Judgment	23.03.2023
Date of sentencing order, if any	NA

Rank of the Accused	Name of the Accused	Date of Arrest	Date(s) of release on bail	Offences charged with	Whether acquitted or convicted?	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 Crpc
A 1	Alam Ansari	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	33 days
A2	Islam Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A3	Budhan Mian	NA	29.03.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A4	Afroz Ansari	NA	29.03.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A5	Abdul Rahman	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A6	Imtiyaz Ansari	NA	29.03.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A7	Mustafa	NA	18.04.19	147, 148,	Acquitted	NA	NA

	Ansari			341, 323, 504, 506 r/w 149 IPC			
A8	Rafiq Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A9	Kalim Ansari	NA	29.03.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A10	Manowar Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A11	Md. Lukman Ansari	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	33 days
A12	Mumtaz Ansari	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	33 days
A13	Samim Ansari	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	33 days
A14	Jalil Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A15	Rashid Ansari	NA	18.04.19	147, 148, 341, 323,	Acquitted	NA	NA

				504, 506 r/w 149 IPC			
A16	Israil Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A17	Husain Ansari	NA	18.04.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A18	Gafur Ansari	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	33 days
A19	Churaman Mian	NA	29.03.19	147, 148, 341, 323, 504, 506 r/w 149 IPC	Acquitted	NA	NA
A20	Fatu Mian	23/09/18	25/10/18	147, 148, 341, 323, 504, 506 r/w 149 IPC	Proceedings dropped	NA	33 days

JUDGMENT

1. The above named accused persons are all facing trial for the offences punishable u/s 147, 148, 341, 323, 504, 506 r/w 149 IPC.
2. The story as per the written report of informant Md. Hazrat Ansari is that on 22/09/18 at around 9 AM, the accused persons arrived, having formed an unlawful assembly with a common object of killing the informant. All the accused persons had weapons like swords, *tangi*, *lathi*. The accused persons launched a concerted attack upon Abdul Sakur and Mahmood Ansari which led to severe head injuries and other injuries to them. They had to be treated at Jamua PHC and were then referred to a better medical facility. One of the accused also snatched a gold chain from the possession of Mahmood Ansari and

the accused persons have also threatened that they would kill the informant and his family.

3. The FIR was lodged on 22.09.2018 for the offences punishable u/s 147, 148, 149, 323, 307, 379, 504, 506 r/w 34 of IPC giving rise to Jamua PS case no. 274/18. The I.O then submitted the chargesheet dated 31.01.18 u/s 147, 148, 341, 323, 504, 506 r/w 149 of the IPC upon investigation against three accused persons A1-A20.
4. The cognizance of offences punishable u/s 147, 148, 341, 323, 504, 506 r/w 149 of the IPC was taken on 04.12.2018. Thereafter, the charges has been framed u/s 147, 148, 341, 323, 504, 506 r/w 149 of the IPC on 02.05.2019 which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.
5. After the framing of charges, eight prosecution witnesses were examined on behalf of the prosecution. The summons to witnesses was issued on 08.05.2019. Thereafter, the BW was issued to the witnesses on 10/07/19 followed by NBW to witnesses on 17/08/19. When these processes did not suffice, a letter to SP, Giridih was issued for the production of witnesses on 21/08/19. The prosecution evidence stage was closed on 16.03.2023 after affording several opportunities to the prosecution. In the meantime, the proceedings against the accused A20 namely Fatu Mian were dropped vide order dated 23/03/23. Accordingly, the statement of the accused persons was recorded u/s 313 Cr.p.c on 23.03.2023.
6. After the recording of the statement, the defence was provided with an opportunity to examine the defence witnesses, if any. However, this right was not availed and the arguments were heard on 23.03.2023.

Prosecution Evidence: -

7. Eight prosecution witnesses have been examined on behalf of prosecution:

Sl. No.	Name of the Witness
PW-1	Nasir Ansari
PW-2	Md. Asgar Ansari
PW-3	Salamat Ansari
PW-4	Firoz Ansari
PW-5	Md. Muslim
PW-6	Chhota Suddin Mian
PW-7	Md. Salim Ansari
PW-8	Md. Hazrat Ansari

8. The **PW-1** stated in his examination in chief that he knew nothing about the incident and recognised the accused because they belonged to his village. He did not give any statement before the police. He was declared hostile on request of the prosecution.

In his cross-examination, he denied having made any statement before the police that there had been exchange of abuses and physical fight between the accused persons and the informant.

9. The **PW-2** stated in his examination in chief that he knew nothing about the incident and recognised the accused because they belonged to his village. He did not give any statement before the police. He was declared hostile on request of the prosecution.

In his cross-examination, he denied having made any statement before the police that there had been exchange of abuses and physical fight between the accused persons and the informant.

10. The **PW-3** stated in his examination in chief that he knew nothing about the incident and recognised the accused because they belonged to his village. He did not give any statement before the police. He was declared hostile on request of the prosecution.

In his cross-examination, he denied having made any statement before the police that there had been exchange of abuses and physical fight between the accused persons and the informant.

11. The **PW-4** stated in his examination in chief that he knew nothing about the incident and recognised the accused because they belonged to his village. He did not give any statement before the police. He was declared hostile on request of the prosecution.

In his cross-examination, he denied having made any statement before the police that there had been exchange of abuses and physical fight between the accused persons and the informant.

12. The **PW-5** stated in his examination in chief that the incident took place about an year prior to the date of his examination-in-chief at around 8-9 AM. There was a fight between Rashid Mian and Abdul Shakur and it resulted in injuries to Abdul Sakur, Mahmood and Firoz. The accused Rashid and Gafur had assaulted with sword and there were more than 20 persons from the side of the accused Rashid. He claimed to identify all the accused persons upon seeing them and he identified the accused Churaman Mian who was present in the Court.

In his cross-examination, he said that the informant was his nephew and the fight took place due to a land dispute between the parties. At the time of occurrence, he was at his house which is 100 metres away from the place of occurrence. He reached the place of occurrence after 10 minutes of the

occurrence and the fight was still ongoing when he reached. He could not tell which weapon was in hand of which accused.

13. The **PW6** stated in his examination-in-chief that the incident took place around 1 year prior to the date of his examination-in-chief at around 9 AM. On that day, there was a fight between the accused Gafur and the informant and it resulted in injuries to Abdul Sakur, Mahmood. The accused Gafur and Rashid assaulted on their head and they were taken to the hospital. There were around 20 persons who were engaged in the assault. He identified the accused Churaman Mian who was present in the Court room.

In his cross-examination, he said that the fight took place due to a land dispute between the parties. He was near the school situated 50 m away from the place of occurrence when the fight began and reached there after 5 minutes. He said that the accused Gafur had a spear in his hand but he could not tell as to which other weapons were in the hands of which accused?

14. The **PW7** stated in his examination-in-chief that incident took place around 1 year prior to the date of his examination-in-chief at around 8-9 AM. On that day, the accused Gafur, Rashid and 15-20 persons assaulted Sakur and Mahmood. The accused Rashid used a *farsa* to hit Sakur and the accused Gafur hit Mahmood with a *farsa*. This resulted in bleeding head injuries to Sakur and Mahmood. That is when he took them both to Jamua Hospital from where they were referred to Dhanbad. He claimed to identify all the accused persons upon seeing them and he identified the accused Churaman Mian who was present in the Court.

In his cross-examination, he said that the informant was his nephew in terms of village relations. The fight took place between the parties due to a land dispute and he was 100 m away at his house at the time of occurrence. He reached 10 minutes after the fight began upon hearing the commotion. There were 40-50 other people gathered at the place of occurrence apart from the parties to the dispute. He could not tell which accused had which weapon in hand. The victims of the assault Sakur and Mahmood were unconscious when they were taken to hospital and thereupon, referred to Dhanbad. They were admitted at Dhanbad for 8-10 days and the treatment papers could be filed before the court.

15. The **PW8**, who is the informant in the case, was partially cross-examined and he did not turn up for his complete cross-examination due to which the defence could not question him on his statement in examination-in-chief.

Defence Evidence: -

16. Neither a single witness nor any document has been produced on behalf of the defence. The prosecution has not produced any evidence to support its story and the guilt of the accused persons could not be established beyond any reasonable doubts. Thus, it was prayed to acquit the accused persons from the charges levelled against them.

POINTS FOR DETERMINATION:

17. Whether the prosecution was able to establish the guilt of the accused persons under the charges levelled against them beyond all reasonable doubts ?

FINDINGS:

18. From a perusal of the material on record, it transpires that the PW1, PW2, PW3 and PW4 turned hostile. The PW8, who is the informant, did not turn up for cross-examination and hence, his testimony cannot be taken into consideration. The PW5, who is the informant's uncle, stated that incident took place about an year prior to the date of his examination-in-chief at around 8-9 AM. There was a fight between Rashid Mian and Abdul Shakur and it resulted in injuries to Abdul Sakur, Mahmood and Firoz. The accused Rashid and Gafur had assaulted with sword and there were more than 20 persons from the side of the accused Rashid. This version was supported by the PW6 and PW7 as well.

19. However, it must be noted that the PW7 said that the accused Rashid used a *farsa* to hit Sakur and the accused Gafur hit Mahmood with a *farsa*. On the other hand, the PW6 said in his cross examination that the accused Gafur had a spear in his hand. The PW5, interestingly, said in his examination-in-chief that the accused Rashid and Gafur had assaulted with swords. This clearly shows a variance as to the **“weapon of offence”** amongst the three P.W.s who supposedly reached the place of occurrence a few minutes after the start of the fight. Further, the PW5, PW6 and PW7 all said in their cross-examinations that they could not tell as to which accused was holding which weapon in their hand?

20. As regards the **“motive”** to file the instant case, the PW5, PW6 and PW7 have consistently stated that there exists a land dispute between the parties due to which the fight took place between the parties. Yes, it could also have been the factor which sparked a physical contest between the parties but there is a likelihood that it could be the other way round.

21. There is no injury report which was marked as an exhibit and the doctor who treated the victims could also not be examined. The PW7 said in his cross-examination that the victims were under treatment for 8-10 days at Dhanbad and the medical reports could be placed before the Court but the prosecution failed to produce any such document in evidence. The PW5, PW6

and PW7 have stated that the victims Abdul Sakur and Mahmood could not be examined sustained bleeding head injuries as a result of the assault but in absence of any medical report or injury report, this fact could not be sufficiently proved by the prosecution. Furthermore, the two victims of the occurrence Abdul Sakur and Mahmood could not be examined. Another victim of the occurrence as per the PW5 namely Firoz Ansari turned hostile and did not support the prosecution story.

22. The IO of the case was also not examined by the prosecution and the place of occurrence could also not be proved as a result of this. The PW5 said that the *chauhaddi* of the place of occurrence was N-Gafur's house, S, W and E- vacant land. The PW6 said that the *chauhaddi* of the place of occurrence was N-Karbala land, S- vacant land, W- forest land and E- forest road. The PW7 said that the *chauhaddi* of the place of occurrence was N-Karbala land, S- field, W- house and E- Budhan Mian's house. This shows that there is a clear variance between the P.W.s in respect of the *chauhaddi* of the place of occurrence. Hence, the prosecution failed to establish the place of occurrence which is an essential element when it comes to examining where did the unlawful assembly actually get formed?

23. The P.W.s also vaguely stated that the incident took place around 1 year prior to the date of their examination-in-chief at around 8-9 AM. They could not tell the exact date, month or even year of the incident and this creates a doubt regarding the prosecution story. The informant himself could not be cross-examined after his examination-in-chief and his testimony cannot be taken into consideration. There lack of the informant's evidence in the case erodes the very basis of the case and the written report could not be proved. Further, the informant, being an eyewitness, could have deposed as to the particulars of the occurrence.

24. The P.W.s claimed to identify all the accused persons upon seeing them but named only the accused Gafur and Rashid as the ones who assaulted the victims Sakur and Mahmood. If they truly would have seen the 15-20 persons who came there in support of the accused Rashid, they could have added a few more names who took part in the occurrence in various capacities as described in the written report. They also failed to state as to in which manner did those 15-20 accused persons take the side of the accused Rashid. The P.W.s did not state anything about the fact that the said accused surrounded or at least aided the accused Rashid and Gafur in effectuating the assault. Thus, the allegations of the formation of an unlawful assembly stand in doubt. The PW7 stated in his cross-examination that 40-50 onlookers had gathered at the place of occurrence but the prosecution failed to ascribe a role different to the 15-20 accused persons than that of those onlookers. There is no mention of any

sort of “**abuse, insulting words or threatening words**” used by any of the accused persons against the victims. Thus, the story of the prosecution suffers from many infirmities and they could not be explained by the Id. APP. The P.W.s have supported the prosecution story to an extent but the prosecution failed to bring home the guilt of the accused persons owing to the lacunae discussed in the preceding paragraphs.

25. In view of the above discussion, the prosecution has miserably failed to prove the charges levelled u/s **147, 148, 341, 323, 504, 506 r/w 149 of the IPC** against the accused persons A1-A19 beyond all reasonable doubts.

ORDER

26. In the above facts and circumstances, the guilt of the accused persons namely **1. Alam Ansari, 2. Islam Ansari, 3. Budhan Mian, 4. Afroz Ansari, 5. Rahman Ansari, 6. Imtiyaz Ansari, 7. Mustafa Ansari, 8. Rafique Ansari, 9. Kalim Ansari, 10. Manowar Ansari, 11. Md. Lukman Ansari, 12. Mumtaz Ansari, 13. Shamim Ansari, 14. Jalil Ansari, 15. Rashid Ansari, 16. Israil Ansari, 17. Hussain Ansari, 18. Gafur Ansari, and 19. Churaman Mian**, have not been proved under the charges levelled u/s **147, 148, 341, 323, 504, 506 r/w 149 of the IPC** by the prosecution beyond reasonable doubts. Accordingly, the accused persons named above are hereby acquitted from the above-mentioned charges. The accused persons alongwith their bailors are also discharged from their respective liabilities of bail bonds.

The office clerk is directed to deposit the record in the record room.

This judgment was pronounced by me in open court on 23rd of March, 2023.

(Self typed and corrected by me)

(Pronounced by me)

**Abhijeet Pandey,
JM 1st Class, Giridih
Dated: 23.03.2023**

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JM 1st Class, Giridih
Dated: 23.03.2023**