

IN THE COURT OF ADDITIONAL SESSIONS JUDGE- V, PATNA

Sessions Trial No- 34 of 2008 (C.I.S. No- 590 of 2014)

Present ;
Rajendra Kumar Sinha
A.S.J. -V, Patna

Phulwari Sharif P.S. Case No- 197/2006
State vs Ashok Yadav & Ors.
Date of Judgment → 27-03-2025

FORM – A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE- V, PATNA

DISTT- PATNA (BIHAR)

Present: Rajendra Kumar Sinha

Additional Sessions Judge- V

Civil Court, Patna

Date of Judgment: 27-03-2025

[Sessions Case No. 34/2008]

(Phulwari Sharif P. S. Case No-197/2006)

u/s 341, 323, 325, 337 and 427/34 of the I.P.C.

COMPLAINANT	State of Bihar Through: Vijendra Rai
REPRESENTED BY	Ld. APP Sri Onkar Pandey
ACCUSED	1. Manju Devi aged about 45 yrs. (A-1) W/O Shiv Bachan Rai 2. Shiv Bachan Rai aged about 55 yrs. (A-2) S/O Late Ram Ishwar Rai 3. Sunita Devi aged about 41 yrs. (A-3) W/O Ashok Yadav 3. Bundal Rai aged about 30 yrs. (A-4) 5. Ashok Yadav aged about 46 yrs. (A-5) Both S/O Ram Babu Rai All R/O Khushaal Chak, P.S. -Gaurichak, Distt- Patna
REPRESENTED BY	Ld. Adv. Sri Dineshwar Prasad Sharma

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FORM- B

Date of Offence	26-03-2006
Date of Institution of Case	27-03-2006
Date of Commitment	07-12-2006
Date of Framing of Charges	18-11-2008
Date of commencement of evidence	06-01-2009
Date on which judgment is reserved	19-03-2025
Date of the Judgment	27-03-2025
Date of the Sentencing Order, if any	27-03-2025

Accused Details:

S. No.	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention/ Undergone during Trial for purpose of section 428 Cr.P.C.
1.	Manju Devi	-	24-04-06	307, 323, 341, 504/34 I.P.C.	Convicted	-	-
2.	Shiv Bachan Rai	-	25-04-06	-Do-	Convicted	-	-
3.	Sunita Devi	-	24-04-06	-Do-	Convicted	-	-
4.	Bundel Rai	-	24-04-06	-Do-	Convicted	-	-
5.	Ashok Yadav	-	25-04-06	307, 325, 341, 504/34 I.P.C.	Convicted	-	-

JUDGMENT

1. The above-named accused persons have been committed to trial for the offences punishable u/s 307, 323, 325, 341, 504/34 of the I.P.C. It is alleged against the accused persons that on 25th day of March 2006 within local jurisdiction of Phulwari Sharif police station, they voluntarily caused hurt to Saguni Rai & Meena Devi whereas accused namely

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Ashok Yadav voluntarily caused grievous hurt to Bijendra Rai. It is further alleged that the accused persons also wrongfully restrained and insulted the informant & other victims, causing them grave provocation and further attempted to commit murder of the informant.

FACTUAL BACKGROUND

2. The facts of the case, as revealed from the written application of informant in brief, is that on 25-03-06 around 6:00 am, accused namely Manju Devi has torn his brother's vest, to know the reasons on next day around 10:00 am, he went at her place there accused namely Ashok Yadav hit on his head with iron rod, resulting head injuries. On raising alarm, informant's parents reached there but the accused persons also assaulted them.

3. On basis of written statement of informant, Phulwari Sharif P.S. Case No. 197/06 dated 27-03-06 for the offences punishable u/s 341, 323, 325, 337, 427/34 I.P.C. was registered and after completion of investigation, charge-sheet bearing No. 119/06 dated 30-04-06 was submitted on 05-05-06, subsequently, the cognizance of offences punishable u/s 307, 323, 325, 341, 504/34 I.P.C. was taken on 06-05-06 against the accused persons.

4. After supply of complete sets of police copies to the accused persons, the case record was committed to Court of Sessions, Patna on 07-12-06, accordingly, Sessions Case No. 34/2008 was instituted and in due course of time the case record was received to this court by the order of Sessions Judge, Patna for trial & disposal in accordance with law.

TRIAL PROCEEDINGS

5. Hearing rival arguments of both the sides, the charge was framed for the offences punishable u/s 307, 323, 341, 504/34 I.P.C. against the all accused persons and further added charge u/s 325 I.P.C. against accused A-5 only and the same was read over & explained to them in Hindi on 18-11-08 to which they pleaded not guilty and claimed trial. Accordingly, the case was fixed for prosecution evidence.

6. In order to substantiate its versions against the accused persons, the prosecution has

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examined following witnesses:

PW-1 Nagina Rai, PW-2 Mangru Rai, PW-3 Saguni Rai, PW-4 Dr Mahesh Prasad Sinha, PW-5 Meena Devi & PW-6 Bijendra Rai.

7. After completion of the prosecution evidence, the statements of the accused persons were recorded on 06-04-16 u/s 313 Cr.P.C in accordance with sec- 281 Cr.P.C, wherein, all the incriminating materials had been put to them in their vernacular language to which they stated that they have been falsely implicated in the present case and are innocent. Defence has also laid evidence in its support.

8. Following witnesses were examined during defence evidence:

DW-1 Sailesh Prasad, DW-2 Santosh Kumar & DW-3 Harvansh Prasad.

9. Now, the question for judgment before this court is that whether the prosecution has been able to prove its case against the accused persons?

APPRECIATION OF EVIDENCE

10. Now, this court shall discuss all the evidence available on the records in the light of charges leveled against the accused.

11. A brief scrutiny of the evidence recorded in the matter is as under: -

(i) PW-1; during examination supporting the prosecution story added that while returning from his fields, reaching at PO he saw hot talks were taking place between informant & accused A-1, all of a sudden accused A-5 appeared there and assaulted informant with iron rod, resulting head injuries. He added that the rest accused persons also came there and brutally assaulted him. He added further that when Saguni Rai and Meena Devi came there to save the informant, then the accused persons beat them too. He added further that on hullah the villagers gathered there and took the victims to the Police Station.

During cross-examination admitting himself to be informant's cousin, he deposed that when he reached at PO, he saw only informant & accused A-1 but correcting himself,

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deposed that informant's younger brother was also present there. He deposed further that informant has told him about tearing of vest one day prior to the incident and also shown the torn vest. He deposed further that accused A-5 reached there after two minutes on call given by accused A-1, however, he was not in intoxicated condition. He deposed that iron rod was around 12 mm and blood started oozing from informant's head and his cloth was also soaked with his blood but couldn't tell whether police seized the said soaked cloth. He didn't take the injured to the hospital for treatment, however, the incidence took place around five minutes and due to fear of his life, he didn't save the victims. It was suggested that he was deposing falsely and hadn't made the same statement before the police what has stated in the court.

(ii) PW-2; supporting the prosecution story narrated that the informant has gone to inquire the matter with accused A-1, there, accused A-5 attacked him with iron-rod on his head and the other co-accused persons assaulted his parents. He stated that he took the injured to the hospital but couldn't tell what happened next.

During cross-examination he deposed that the accused persons are his co-villagers. He could not tell when the incidence of tearing of vest occurred, but when the informant has gone to the place of accused, there was no one except him. He deposed that informant has not shown him the torn vest. He could not tell the length or breadth of the Iron rod. He did not see blood on the cloths of informant but it oozed over the soil. He could not tell the description of wound. He did not take the injured to the hospital nor could tell who took them to hospital. His statements were recorded by police after 4-5 days of incidence. It was suggested that informant side has beaten brother of Shiv Bachan (A-2) and to save themselves from the case has filed the present case and he was deposing falsely.

(iii) PW-3; informant's father; stated during examination that vest of Bijendra Rai was torn by accused A-1 & Rita Devi for which, his son has gone at PO to ask the matter on next day but hot talks started between the parties, in meanwhile Rita Devi called her husband, who attacked informant with iron rod, resulting head injury. He added that when he went

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there to pacify the matter then the accused persons also assaulted him and his wife. He added that all the injured persons went to the police station from there police sent them to the hospital at Gauri Chak for their treatment.

During cross-examination he neither could tell on which date the vest was torn nor has complained about it to Mukhiya but has gone PO on next day around 10:00 am along with informant & his wife. He deposed further that no one was present there prior to his arriving at PO. He deposed that accused A-5 fled away after attacking him from behind and the incidence took place for almost one hour. He denied any previous enmity between the parties. He deposed that his head was also fractured and they went to police station at 11:00 am and after ten minutes to the hospital. He deposed that police did not come at PO and his statement was recorded at first in the police station, however, after two days IO came at PO but he has not shown him the said PO. He admitted that brother of one co-accused has filed a case against them. He deposed that his house to be double story whereas accused house is *khaprail* one. It was suggested that their children climbing on the roof of the house used to urinate upon the houses of accused and when it was opposed, they were beaten.

(iv) PW-4; Medical expert; stated that on 26th March 2006 he was posted in a private Nursing Home at Gaurichak and around 01:40 pm, he examined one Meena Devi and found following injuries on her person:

(i) on right side of chest abrasion 1"x½" (red in colour)

(ii) on the back abrasion 1"x½"

examined within 6 to 8 hrs and all the injuries were caused by hard and blunt substance.

Nature of injuries - All simple

He further stated that on the same day he examined Saguni Rai and found following injuries on his person:

(i) on the back lacerated wound 1"x½" "x½"

(ii) on back a bruise 1"x½"

All the injuries are caused by hard blunt substance, examined within 6 to 8 hrs.

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Nature of injuries - All simple

He stated that on the same day he examined Bijendra Rai and found following injuries on his person:

(i) on the back of scalp lacerated wound 2"x½"x muscles deep damaging the occipital vessel endangering the life of patient (X-ray of scalp suggested).

(ii) below the left knee a lacerated wound 1"x½"

(iii) below the left knee a lacerated wound 1"x½" examined within 6 to 8 hrs. All the injuries are caused by hard blunt substance.

Nature of injuries - injuries No. (i) is grievous in nature, (ii) & (iii) are simple.

He identified all the injuries report to be in his own writing bears his signatures and the same were marked as Ext-1, 1/1 & 1/2 respectively.

During cross-examination, he deposed that his hospital to be a private hospital. He could not tell the name of the police, who brought the requisition for treatment of the injured but he admitted that injuries of all the injured persons could be caused by same type of object. He deposed that all three patient were admitted in his hospital but Meena Devi and Saguni Rai were discharged on same day, whereas, Bijendra Rai was admitted for seven days but he did not furnish the discharge report of victim Bijendra Rai. He deposed that such types of injuries could not be possible due to falling on the ground. It was suggested that his injuries report to be faulty and prepared in connivance with the injured.

(v) PW-5; informant's mother; during examination stated that Manju Devi has torn vest of her son, to which on next day he went at her place to ask reason for the same then the accused A-5 assaulted him which iron rod upon his head resulting head injury, later on accused A-2 assaulted Saguni Rai with stick on the head and the accused person also assaulted her. She added that the injured persons were first taken to police station from where they were sent to the hospital for treatment.

During cross-examination, she deposed that her son's vest was torn one day prior to the incidence but she could not remember the date, however, it was Saturday. She deposed further that no complain was made to the police station with respect tearing vest. She

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deposed that she reached at PO on hullah prior to the incidence. She could not tell the boundaries of PO, however, admitted that her house is adjacent to the PO. She could not tell whether accused A-2 has filed a case against her or not. She denied that she has not stated what has been mentioned in her statement u/s 161 Cr.P.C. It was suggested that her son used to urinate upon accused home, on protest, they beat accused A-2 and to save themselves, this case has been filed.

(v) PW-6; informant; during examination fully supporting his case identified his signature upon his written application and the same was marked as Ext-2. He added further that in police station, the inspector sent them to a private nursing home for their treatment where he and his parents were treated.

During cross-examination he deposed that no written information was made with the police station with respect to tearing of vest. He deposed that his brother was around 15-20 years at the time of incidence and his statements were also recorded by police after two days of incidence at around 12:00 pm. It was suggested that he and his family had assaulted accused A-2 and to save themselves, he has filed this false case.

(A) DW-1; during examination got identified certified copy of original FIR of Gaurichak P.S. Case No. 199/06 and the same was marked as Ext- B.

During his cross-examination, he admitted to see the process of making true/certified copy of the said exhibit.

(B) DW-2; during examination stated that Birendra used to urinate from his house or Ram Bachan's house and when was objected then Bijendra, Saguni Rai & Vishwanath Rai on 26-03-06 around 9:00 am came at Ram Bachan's house and assaulted him. He added that on hullah villagers gathered there and during scuffle Bijendra Rai's head hit with an wood resulting his head injury. He added that for the said incidence Ram Bachan Rai has also filed a case bearing Gaurichak P.S Case No. 199/06.

During cross-examination, he deposed that he has also gone to PO along with other villagers and returned home after the incidence. He deposed further that there to be case

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and counter case between the parties.

(C) DW-3; during examination he stated that on 26-03-06 around 10:00 am son's of Saguni Rai namely Bijendra Rai & Vishwanath Rai assaulted Ram Bachan Rai and on hullah, when the people gathered, the accused persons started fleeing and in due course Bijendra Rai sustained head injury. He added that reason for scuffle was stopping for urinating upon Ashok Rai's house from Saguni Rai's house.

During cross-examination, he deposed that he was going to his fields at the time of incidence and neither intervene in the scuffle nor has deposed in any case. It was suggested that to save the accused person was deposing falsely.

ARGUMENT OF RIVAL CONTENDERS

12. BY PROSECUTION: -

Placing his case before the court, Ld. Additional Public Prosecutor for state during his course of argument submitted that the witnesses produced on behalf of the prosecution have consistently supported the case throughout their examinations before the court & contradictions; if any; pointed out by accused persons are of minor in nature. Learned Additional Public Prosecutor summing up his case finally submitted that the prosecution has by way of his arguments has been able to duly prove the case and therefore, the accused persons be convicted and sentenced accordingly.

14. BY DEFENCE: -

The learned counsel arguing for defence submitted that the whole prosecution story to be false and concocted one. It was argued that the prosecution has not proved its case beyond all reasonable doubts. It was argued that the present case is nothing but the counter blast case filed by real brother of co-accused to save themselves. It was also argued that the injuries upon the said victims are also fake and prepared in a private hospital in connivance with the informant and no reasons whatsoever has been placed for not going in local P.H.C. or in government hospital moreover, the X-ray as advised by the said doctor has not

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been produced either before the court or hospital suggesting the fact that x-ray may not been got conducted by the said victim and even none presentation of discharge slip of the said victim shows that the story of admission in the said private hospital to be untrue.

It was also argued by the Ld. Defence Counsel that it both the parties are neighbour to each other and in reality children of informant side used to urinate upon the house of accused persons and when objected, it were the informant side initiated altercation and in result thereof they assaulted them and when witnesses gathered there then during fleeing informant got injury which has been supported by the independent witnesses. Pointing out the contradictory versions of the witnesses, Ld. Counsel submitted that the witnesses produced in the case are highly interested and are the family members or relatives of the informant and they have given not only conflicting statements to each other but were also inconsistent throughout their depositions and couldn't be relied upon. Arguing over the injury-report & evidence of medical expert, Ld. Counsel submitted that however the doctor was private medical practitioner but has not found any life threatening injury being simple in nature and for one injury his opinion couldn't be believed as he has made his remarks without viewing X-ray plate, and interestingly x-ray was not got conducted, however, it has been alleged that the victim was admitted in the said private hospital for almost seven days, creating doubts over the nature of injuries. It was submitted that accused persons have been implicated without any basis, accordingly, it was summed-up by the defence praying to acquit the accused persons from all the charges leveled against them as the prosecution has failed to prove its case beyond shadow of all reasonable doubts.

DECISION AND REASONS FOR THE DECISION

15. Having heard the lengthy arguments advanced by Ld. Addl. P.P. for state as well as the Ld. Counsel for accused and have meticulously perused the material available on record.

16. Before going through the appreciating the evidences on record, I would like to state that it is settled proposition of criminal law that prosecution has to prove its case on the

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judicial file beyond all reasonable doubts by leading reliable, cogent and convincing evidence and any such doubts in the prosecution story entitle the accused to acquittal. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence or from the lack of it, as opposed to mere vague apprehensions. The concepts of probability, and the degrees of it, cannot obviously, be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt.

17. Further prosecution is not required to meet any and every hypothesis put forwarded by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether if the meticulous hypersensitivity for eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

18. In **State of U.P. vs Anil Singh, AIR 1988 SC 1998**, the Supreme Court deprecated the practice of rejecting the prosecution version either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. The Court held that:

“If there is a ring of truth in the main, the case should not be rejected. The Supreme Court observed that it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. It is unfortunate to note that the trend is to have easy recourse of appreciating evidence and reject it on the ground of some discrepancy here and there without making any effort to disengage the truth from falsehood. The pertinent observations of the Supreme Court are as under (para 13):

Of late this Court has been receiving a large number of appeals against acquittals and in

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*the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In **Bankim Chander v. Matagini**, 24 Cal WN 626: (AIR 1919 PC 157), the Privy Council had this to say (at P. 628) (of Cal WN): (at p. 158 of AIR): "That in Indian litigation it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue, since there is, on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated evidence."*

19. In the present case, the accused persons are facing trial for the charge of offences punishable u/s 307, 323, 341, 504/34 I.P.C. and also of additional charge of section 325 I.P.C. Now, in the light of evidences adduced by prosecution, taking the charges one by one starting with the charge of attempt to murder, i.e. sec- 307 I.P.C. which say:

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein-before mentioned..."

20. Thus, first part of section 307 I.P.C. refers to an act with such intention or knowledge, and under such circumstances that, if the accused by that act caused death, he would be guilty of murder and the second part of section 307 I.P.C. carries a heavier punishment,

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refers to hurt caused in pursuance of such an act.

21. There are plethora of judgments in which The Hon'ble Supreme Court has interpreted Section 307 of the Penal Code. In **State of Maharashtra vs Balram Bama Patil (1983) 2 SCC 28**, The Apex Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted:

“The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

22. In **Jage Ram v State of Haryana (2015) 11 SCC 366**, the Hon'ble Apex Court held that to establish the commission of an offence u/s 307 I.P.C. it is not essential that a fatal injury capable of causing death should have been inflicted:

“For the purpose of conviction under Section 307 I.P.C., the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 I.P.C., it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

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23. The above judgment of the Hon'ble Apex Court suggests that the intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

24. Therefore, having regard to the law laid down in the above cases, the nature of injury will not have any role to decide whether an act committed comes within u/s 307 I.P.C. and it is only the intention coupled with some overt-act in execution, thereof will decide the issue and in this case, even if the prosecution version taken to be true on face of it doesn't suggest that the act/intention of the accused persons was such a nature which come into the purview of 307 I.P.C. as it was result of hot talks between the parties over silly matter i.e. tearing of vest/urinating over roof of the house, resulting scuffle, moreover, the testimonies of the said private doctor couldn't be relied in to-to as his opinion regarding injury No- (I) of the informant was without any corroborating test as he mentioned it grievous without X-ray of scalp. None production of discharge slip from the said private hospital also creates doubt as the said hospital was private and there is higher possibilities tampering with the such medical report at the time of its preparation. Getting treatment at private hospital without any sufficient reason nearby place of capital of Bihar also creates doubt that for creating favorable report the injured persons have visited in the private hospital and doubts become graver when the report has been given without proper medical tests. Therefore, it could safely be said that charge u/s 307 I.P.C. is not made out against the accused persons.

25. Further, taking into account of grievous hurt caused to informant under the purview of 325 I.P.C. its better to reproduced section 320 I.P.C. which defines Grievous hurt:

The following kinds of hurt only are designated as "grievous":-

First.-Emasculation

Secondly.-Permanent privation of the sight of either eye.

Thirdly.-Permanent privation of the hearing of either ear.

Fourthly.-Privation of any member or joint.

Fifthly.-Destruction or permanent impairing of the powers of any member or joint.

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Sessions Trial No- 34 of 2008 (C.I.S. No- 590 of 2014)

*Present ;
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*Phulwari Sharif P.S. Case No- 197/2006
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Sixthly.-Permanent disfiguration of the head or face.

Seventhly.-Fracture or dislocation of a bone or tooth.

Eighthly.-Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

26. Thus, presuming the injury report to be true without any interference then too, none of the injuries falls under any of the categories as mentioned in the definition of Grievous Hurt, therefore the charge of section 325 I.P.C. also get failed.

27. Now, the case of prosecution is that informant has himself gone to the place of accused persons, where during altercation between the parties, he was attacked by the accused persons and on hullah, the witnesses gathered there and took the injured persons to the police station. During examination too, none of the witnesses produced on behalf of prosecution stated that the informant of his parents were voluntarily obstructed by the accused persons so as to prevent them to proceed in any direction in which they have a right to proceed withing the meaning of 'Wrongful Restrain' thus, the charge of section 341 I.P.C. also get failed against the accused persons.

28. True, it is that all witnesses examined on behalf of prosecution are either the injured of their family members but it is established by the evidences of defence witnesses that heated arguments was exchanged which resulted into free fight between the parties, at place of accused persons for which case & counter-case were filed and at the same time it couldn't be denied that the informant side sustained injuries for which treatment was also done in a private hospital. It is also true that Investigating Officer was not examined to get attention or contradictions on the statements of witnesses examined before court and their statement recorded during the investigation but it is admitted position that the incidence of scuffle between the parties had happened, though it couldn't be safely said that who were the aggressor though informant's side has definitely sustained injuries, thus it could safely be said that the prosecution has been able to prove the charge u/s 323 & 504 I.P.C. against the accused persons.

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CONCLUSION

29. Accordingly, the accused persons namely Manju Devi, Shiv Bachan Rai, Sunita Devi, Bundal Rai and Ashok Yadav are hereby acquitted from the charge punishable 307, 341/34 I.P.C. and accused namely Ashok Yadav is further acquitted from the charge u/s 325 I.P.C. but all these accused persons are held guilty and convicted of charge punishable u/s 323, 341/34 I.P.C.

30. Accused persons are on bail, therefore, their bail bond is cancelled and they are taken into custody.

45. A copy of this judgment be supplied to the accused persons free of cost and the matter be listed for arguments under provisions of 235 (2) Cr.P.C. on today i.e., 27-03-25 after post sessions.

Dated: The 27th day of March 2025

Rajendra Kumar Sinha
Additional Sessions Judge- V
Civil Court, Patna

This judgment has been written, corrected, signed, dated and pronounced by me in open court today i.e., on 27-03-25 and contains sixteen pages each bearing my signatures thereof.

Dated: The 27th day of March 2025

Rajendra Kumar Sinha
Additional Sessions Judge- V
Civil Court, Patna

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ORDER

1. Convicts namely Manju Devi, Shiv Bachan Rai, Sunita Devi, Bundal Rai and Ashok Yadav are present along with their counsels. Arguments heard on the point of the provisions of 235 (2) Cr.P.C. and perused the records carefully.

2. The learned defence counsel submitted that convicts have been facing rigors trial for around seventeen years and the same itself has been enough punishment for them. It is also submitted that accused persons are rustic villagers being from same family and two out of them are women whereas rest are old aged. It was further submitted that they are not involved in any other criminal activity, having clean antecedents and never misused the privilege of bail during the trial, hence, accordingly prayed that the accused be given the benefits u/s 360 Cr.P.C. or be released under Probation of Offenders, Act.

3. Per contra, Ld. APP has very vehemently argued that the acts of the accused persons are unpardonable and it is argued that keeping in view the nature of the offence and circumstances under which the offence was committed, accused persons are not entitled to be released on probation. It is also prayed that appropriate punishment be awarded to them.

4. Section- 235 (2) of Cr.P.C. says that “*If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.*” but at the same time the Hon’ble Patna High Court in the case of **Upendra Nath Chaudhary vs. High Court of Judicature at Patna and Anr. 2007 (2) PLJR 554** has concluded that provisions of Section 360 of the Code have no application in the State of Bihar and issue of release of convict on probation of good conduct must therefore be dealt with under the provisions of the said Act.

“In light of the decisions of the Supreme Court, the inescapable conclusions are as follows:

(1) The provisions of Section 360 of the Code have no application to this State and the issue of release of the convict on probation of good conduct must, therefore, be dealt with under the provisions of the Act.

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(2) Under Section 4(2) of the Act, though the Court is not bound to follow the report, it is mandatory to call for and consider the report and it is a condition precedent for the release of the convict on probation of good conduct".

5. The Hon'ble High Court again quoting the above citation in **Criminal Revision No- 238 of 2014, Nepali Giri & Ors. vs State of Bihar & Anr on 19-08-14** observed that:

"The Division Bench directed all the trial Courts to strictly follow the decision of the Apex Court in the trial proceedings and the order was circulated to all the Sessions Judges and the Magistrates in their respective divisions. The order was also directed to be transmitted to the Director, Judicial Training Academy for holding special classes of Judicial Officers for making them conversant with the provisions of the Act and the Rules framed thereunder but after several years of such direction still the provisions of Section 360 of the Code are being applied."

6. Thus, its crystal clears that in our state there is no applicability of sec-360 Cr.P.C. but instead of the same, benefits of Probation of Offenders Act, 1958 may be given to the convicts as per provisions. Again, in **Ved Prakash v/s state of Haryana AIR 1981 SC 649** it was observed that:

"Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice criminal courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if sec 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have bearing on punishment with a rehabilitating slant. The offender is a young person and his antecedents have no blemish. His life is not unsettled or restless and the report indicates that he is an agriculturist pursuing a peaceful vocation. His parents are alive and he has a wife and children to maintain. There are established factors in life. A long period of litigation and the little period of imprisonment suffered, will surely serve as a deterrent."

7. In consonance with the above mentioned judgment as well as taking into account the

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nature of the offences; the long-drawn trial; the fact that this is their only involvement, the court is of considered opinion that it shall solely be in the interest of justice that the accused instead of awarding substantial punishment be given the benefits of Probation of Offenders Act.

8. Therefore, it will serve the interest of justice in my considered view the accused persons be released on probation after due admonition under. **It is ordered, accordingly.**

9. File be consigned to Record Room after due recall of process; issued if any; and return of original documents; if any; to the parties and seized article if any; be disposed of as per rule.

10. Let the copy of judgment be sent to Ld. District Magistrate, Patna u/s 365 Cr.P.C. and and be also uploaded on District Court's website immediately.

Dated: The 27th day of March 2025

Rajendra Kumar Sinha
Additional Sessions Judge- V
Civil Court, Patna