

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 113 of 2009

[Against the judgment of conviction dated 21.01.2009 and sentence dated 24.01.2009, passed in Sessions Trial No. 428 of 2007 by the learned Addl. Judicial Commissioner, F.T.C.-VIII, Ranchi.]

Shamim Khan, S/o. Usman Khan, R/o. Vill.- Hutar, P.S.- Chanho, Dist.- Ranchi.

... .. **Appellant**

Versus

The State of Jharkhand

..... **Respondent**

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. Sunil Kr. Ganjhu, Advocate
 : Mrs. Nanda Kumari, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.

J U D G M E N T

Dated: 30th April, 2026

1. Heard Mr. Sunil Kr. Ganjhu, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Special P.P.
2. This criminal appeal is directed against the judgment of conviction dated 21.01.2009 and sentence dated 24.01.2009 passed in Sessions Trial No. 428 of 2007 by the learned Addl. Judicial Commissioner, F.T.C-VIII, Ranchi, whereby and whereunder the appellant has been convicted under Sections 341, 379, 504 & 307 of the I.P.C. The appellant was sentenced to undergo S.I. for one month for the offence under Section 341 I.P.C., R.I. for three years for the offence under Section 379 I.P.C., R.I. for two years for the offence under Section 504 I.P.C. and R.I. for five years alongwith fine of Rs. 2,000/- for the offence under Section 307 I.P.C. with default stipulation. All sentences were directed to run concurrently.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that on 29.03.2007 at about 12:00 P.M., when the informant saw her cousin namely Sikandar Sao was arriving toward Bijupara, all of sudden the accused / appellant started abusing her cousin and asked him as to why he is trying to become very clever and sharp and the appellant started assaulting her cousin by knife with an intention to kill him due to which he sustained injuries on head, armpit and back. It is further alleged that the accused had taken out Rs. 15,000/- cash from the pocket of injured. It is also alleged that the accused / appellant was in usual habit of writing letters to girls, for that reason there was tension between the appellant and the injured. The injured was brought to Chanho hospital thereafter she submitted written report at police station.
4. On the basis of written report of the informant, Chanho P.S. Case No. 31 of 2007 was registered for the offence under Section 341, 324, 307, 379 & 504 of I.P.C.
5. After completion of investigation, the charge-sheet was submitted against the appellant for the offence under Sections 341, 324, 323, 307, 379 & 504 of I.P.C and after taking cognizance, the case was committed to the court of Sessions, where Sessions Trial No. 428 of 2007 was registered. The appellant denied the charges levelled against him and claimed to be tried. After conclusion of trial, the impugned judgment of conviction and sentence has been passed, which has been assailed in this appeal.

Submissions on behalf of the appellant:-

6. Learned counsel for the appellant, assailing the impugned judgment of conviction and sentence, has submitted that due to the trivial matter dispute had arisen and there is allegation against the appellant that he inflicted knife blow to the injured. The medical report of the injured proved by PW-8 Dr. Kapildeo Singh goes to show that there were four lacerated injuries skin deep but doctor had reserved his opinion. Further, the injured Sikandar Kumar was admitted at RIMS, Ranchi on 29.03.2007 and discharged on 03.04.2007 just after 06 days, but in the medical report issued by PW-9 Dr. Anil Kumar Kamal of RIMS, Ranchi, it has been mentioned that there were two stich wound injuries and the nature of injury was opined to be simple in nature and further in his cross examination doctor has deposed that the above injury was not fatal in nature. The velocity of blow alleged to be shown the medical report of the injured and the cumulative effect of circumstances proved by the prosecution does not attract the offence under Section 307 of the I.P.C. The learned Trial Court has miserably failed to properly appreciate the evidence of witnesses in the light of materials available on record. It is further submitted that the allegation of theft of Rs. 15,000/- was also not proved beyond doubt and nothing was recovered from possession of the appellant. Therefore, conviction of the offence under Section 379 of the I.P.C. is liable to be set aside. It is also submitted that at best, the case comes under Sections 341, 504 and 324 of the I.P.C. and it was appellant's first offence but he has not been extended the benefit of Section 4 of the Probation of Offenders Act. The

learned Trial Court has declined to extend the above benefit without recording any special reasons. Therefore, learned counsel for the appellant prays for releasing the appellant on probation bond under Section 4 of the Probation of Offenders Act instead of undergoing substantive sentence of imprisonment awarded to the appellant.

Submissions on behalf of the State:-

7. On the other hand, learned Special P.P. has defended the judgment of the learned Trial Court on merits but so far first offence of the appellant is concerned nothing adverse has been pointed out.

Analysis, discussions and reasons: -

8. It appears that altogether nine witnesses have been examined by the prosecution: -

P.W.-1	Sikandar Kumar (Injured)
P.W.-2	Pawan Sao
P.W.-3	Awanti Kumari
P.W.-4	Basudeo Sao
P.W.-5	Mukesh Sao
P.W.-6	Prem Sahu
P.W.-7	Ram Chandar Chaudhary
P.W.-8	Dr. Kapildeo Singh
P.W.-9	Dr. Anil Kumar Kamal

Apart from oral evidence, following documentary evidences have been adduced by the prosecution:-

- I. Exhibit-1 Discharge report of medical treatment
- II. Exhibit -2 Signature of PW-3 Awanti Kumari on written report

- III. Exhibit- 3 Written report
- IV. Exhibit-4 registration at the margin of the written report
- V. Exhibit-5 formal F.I.R.
- VI. Exhibit-6 police injury requisition
- VII. Exhibit-7 & 8 two injury reports of the injured Sikandar Kumar
- VIII. Mat. Ext.- 1 Shirt
- IX. Mat. Ext.-2 Pant
- X. Mat. Ext.-3 Belt

9. On the other hand, no oral or documentary evidence has been examined on behalf of defence.

10. I have gone through the records and considered the relevant arguments contended on behalf of both the parties. It appears that **PW-8 Dr. Kapildeo Singh** has examined the injured Sikandar Kumar and found following injuries on his person:-

- i. Lacerated wound ½" x ½" x skin deep behind left coracoclavicular joint at left shoulder.
- ii. Lacerated wound ½" x 1½" x skin deep left scapular region on the back.
- iii. Lacerated wounds 1" x ½"x skin deep over left scapular axillary fold.
- iv. Lacerated wound 1" x ½" x skin deep right parietal area of head.

As per opinion of the doctor, the time of injury was within one hour and regarding nature of injury, the doctor kept his

opinion reserved till the final disposal from the RIMS, Ranchi, where he referred the injured for better treatment.

In his cross-examination, this witness has deposed that the above noted all injuries are not sufficient to cause the death of the injured.

PW-9 Dr. Anil Kumar Kamal, Assistant Professor in the Department of Surgery, RIMS, Ranchi is the another witness who examined Sikandar Kumar and found the following injuries on his person:-

- i. Stitch wound at left scapular region.
- ii. Stitch wound at forehead.

As per opinion of the doctor, the time of injury was within six hours and **nature of injury is simple.** Doctor has further mentioned that both the injuries were found on the vital party of the body.

In his cross-examination, this witness has deposed that **the above injuries were not fatal in nature.**

11. It appears from the medical report of both the doctors PW-8 and PW-9 that injury was not fatal in nature or sufficient to cause death of the injured.

12. It has been held by the Hon'ble Apex Court in the case of ***Hari Singh Vrs. Sukhbir Singh & Others*** as reported in ***(1988) 4 SCC 551***, at para-7 that:-

"7.Under Section 307 I.P.C. 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

that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequence that ensue. The nature of the weapon used, 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 some of the factors that may be taken into consideration to determine the intention."

In view of the above, the required intention or knowledge to constitute the offence under Section 307 I.P.C. is not proved while from the facts and circumstances, it appears that appellant is found guilty for the offence under Section 324 I.P.C. Accordingly, conviction of appellant offence under Section 307 of the I.P.C. is hereby set aside, while he is found guilty for the offence under Section 324 I.P.C., conviction under Section 341, 379 & 504 I.P.C. is upheld.

So far as sentence for the offences under Sections 324, 341, 379 & 504 of the I.P.C. is concerned, it appears that it was the first offence of the appellant and the learned Trial Court has not recorded any reason for not extending the benefit of Section 3/4 of the Probation of Offenders Act to the appellant. The occurrence was of the year 2007 and from the occurrence, two decades have elapsed. Therefore, considering age, antecedent and character of the appellant, he deserves the benefit of Section 4 of the Probation of Offenders Act.

13. In view of the above, this appeal is **dismissed** on merits with modification in conviction and sentence to the extent mentioned above.

Instead of undergoing substantive sentence of imprisonment awarded to the appellant by the learned Trial Court, the appellant is hereby directed to be released on furnishing bond of Rs. 10,000/- (Rupees Ten Thousand) with one surety of like amount to the satisfaction of learned Trial Court under Section 4 of the Probation of Offenders Act, 1958 within two months from the date of this order for maintaining peace and be of good behavior for one year from the date of furnishing the bond.

14. If the bond is not furnished within above stipulated time, the learned Trial Court shall issue notice upon the appellant to secure his attendance for furnishing the bond.

15. In case of violation of terms and conditions of the bond, the appellant shall be called upon to receive the sentence already awarded to him.

16. Pending I.A(s), if any, is also disposed of accordingly.

17. Let a copy of this judgment along with Trial Court Record be sent back immediately to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

30.04.2026

Rahul

Uploaded on 05/05/2026