

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 1189 of 2008

Sanjay Paswan, son of Ram Pati Paswan @ Ram Pati Ram, Resident of village-Shekharpara, P.S.-Husainabad, Dist. Palamau (Jharkhand)

... .. Appellant

Versus

The State of Jharkhand

.... Respondent

For the Appellant : Mr. Surendra Prasad Sinha, Advocate

Mr. Birj Mohan Mishra, Advocate

For the Resp.-State : Mrs. Nehala Sharmin, Spl.P.P.

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

Dated: 04th May, 2026

By Court:- Heard Mr. Surendra Prasad Sinha, learned counsel for the appellant and learned Spl.P.P.

1. The instant criminal appeal is directed against the judgment of conviction dated 05.08.2008 and order of sentence dated 07.08.2008 passed by the learned Additional Sessions Judge, Fast Track Court No.III, Palamau at Daltonganj in Sessions Case No.379 of 2006, whereby and whereunder the appellant has been held guilty for the offence under section 307 of Indian Penal Code and sentenced to undergo R.I. for seven years along with a fine of Rs.3,000/- with default stipulation.

Factual Matrix:-

2. Factual matrix giving rise to this appeal is that on 26.04.2006 at about 8:00 am, while the informant along with his wife and his son, namely Dinanath Paswan were sitting in the courtyard (*aangan*), rinsing their mouth, the nephew of the informant came there and gave a *farsa* blow over the neck of the son of the informant, namely Dinanath Paswan with

intention to kill him and caused grievous injuries to him. It is further alleged that the occurrence took place due to longstanding land dispute between the parties.

3. On the basis of aforesaid information, Hussainabad P.S. Case No.39 of 2006 was instituted for the offences under sections 307, 324, 504 and 341 of IPC. After completion of investigation, charge-sheet was submitted against the appellant and after taking cognizance, the case was committed to the court of Sessions where S.T. 379 of 2006 was registered. The appellant has denied the charges leveled against him and claimed to be tried. After conclusion of the trial, the impugned judgment and order of conviction and sentence of the appellant was passed, which has been assailed in this appeal.
4. Prosecution has examined altogether 5 witnesses in this case and several documentary evidences have also been adduced.
5. On the other hand, one defence witness has been examined by the defence and one documentary evidence i.e. notice issued in Misc. Case No.47 of 2008 marked as Ext.A has also been adduced by the defence. However, no documentary evidence has been adduced. The case of defence is denial from occurrence and false implication due to land dispute between the parties.

Submission on behalf of appellants:-

6. Learned counsel for the appellant submits that there was a land dispute between the appellant and the informant. Learned counsel further

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submits that the appellant is cousin of the injured and the occurrence took place in a sudden manner and only allegation against the appellant is of giving one *farsa* blow over the neck of the injured. Although, the size of the injuries has been mentioned in injury report i.e. 3" X 1 ½" but after X-ray, it has been opined that X-ray of neck does not show any bony injury but inspite of that the nature of injury is opined to be grievous. It is further submitted that the injury caused to the injured apparently appears to be simple in nature and there was no repeated blow upon the injured by the appellant. As such, at best the offence falls under section 324 of IPC instead of Section 307 of IPC. The ingredients of which are absolutely lacking in this case, which has been ignored by the learned trial court. Learned trial court instead of convicting the appellant for the offence under section 324 of IPC, has acquitted for the offence under section 324 of IPC, however, the appellant was not charged under section 324 of IPC while he was charged under sections 326, 307 and 504 of IPC and was convicted for the offence under section 307 of IPC.

In alternative, it is submitted that the appellant has already been remained in custody for about 1 ½ years during trial of the case. Moreover, it was the first offence of the appellant, which finds mentioned in the impugned judgment itself but without recording any special reasons as required under law, learned trial court has declined to

give the benefit of Section 4 of Probation of Offenders Act for which the appellant deserves.

Submission on behalf of the State:-

7. On the other hand, learned Special Public Prosecutor appearing for the State has defended the impugned judgment on merits stating that the injured has sustained grievous injury on neck, which has been corroborated from the injury report. Therefore, it is a clear cut offence of section 307 of IPC and learned trial court has committed no illegality in convicting and sentencing the appellant for the said charge. This appeal has no merits and fit to be dismissed.

Analysis, Reasons and Decision:-

8. I have gone through the impugned judgments of court below in the light of rival contentions of the respective parties.
9. It appears that P.W.5, Dr. Dilip Kumar Singh has examined the injured Dinanath Paswan and found following injuries on his person:-

(i) A profuse bleeding, sharp-cut wound at (L) side of neck, which size is about 3" X 1 ½" depth with massive destruction of deep structures of neck, which may be fatal to his life, if treatment was delayed.

(ii) Generalized body ache.

X-ray neck showed no any bony injury.

As per opinion of the doctor, the nature of injury was grievous and caused by any sharp-cutting weapon.

Age of injury about 1 ½ hours at 10:00 am.

10. 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."

From the injury report of the injured, it appears that there is no any bony injury or blow by mighty force. Therefore, 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 may be held guilty for the offence under Section 324

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I.P.C. Accordingly, conviction of appellant for the 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.

11. So far the sentence is concerned, it appears that admittedly the appellant has taken plea that it was the first offence of the appellant but the learned trial court has not recorded any special reason for extending the benefit of sections 3/4 of Probation of Offenders Act to the appellant. The occurrence was of the year, 2006 and from the occurrence, two decades have elapsed. Therefore, considering his age, antecedent and character, the appellant deserves the benefit of section 4 of Probation of Offenders act.

12. Accordingly, 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.

13. 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.

14. 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.
15. Pending I.A(s), if any, is also disposed of accordingly.
16. Let a copy of this judgment along with Trial Court Record be sent back immediately to the concerned trial court for compliance.

(Pradeep Kumar Srivastava, J.)

Pappu/-

04/05/2026