

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 712 of 2005

Nago Yadav, Son of Sri Sudin Yadav, permanent resident of Village-
Baran (Maheshpur), P.S. Hilabai, P.S. Pathargama, Dist.-Godda

... .. **Appellant**

Versus

The State of Jharkhand

..... **Respondent**

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant

:Mr. Vinay Tiwary, Advocate

For the State

:Mrs. Nehala Sharmin, Spl.P.P.

For the Informant

:Mr. Ranjit Kumar Tiwari, Advocate

J U D G M E N T

Dated: 02nd July, 2026

By Court:- Heard Mr. Vinay Tiwary, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Spl.P.P. assisted by Mr. Ranjit Kumar Tiwari, learned counsel appearing for the Informant.

2. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 25th May, 2005 passed in S.T. No. 130 of 1999 by the learned Sessions Judge, Godda, whereby and whereunder, the appellant has been convicted for the offences under Sections 147 & 307 of the IPC and sentenced to undergo R.I. for seven years for the offence punishable under Section 307 of the IPC. No separate sentence was passed for the offence under Section 147 of the IPC.

Factual Matrix

3. The factual matrix giving rise to this appeal is that on 27.06.1999, at 06:00 AM, the accused (present appellant) was digging the road in front of the house of the informant, where the informant used to keep his cattle. When the objection was raised by the informant, the accused persons namely Sudin Yadav, Jamal Yadav, Ino Yadav,

Hiralal Yadav and Laxman Yadav came duly armed with Lathi, Bhala and Garasa and gave order to kill upon which accused Nago Yadav gave a blow by Spade, on the head of the informant, due to which, the informant fell down. Then, the uncle of the informant along with other family members came to rescue the informant and brought to Maheshpur Hospital, where First Aid was given and further referred to Pathergama Government Hospital.

4. On the basis of written report of the informant, Pathergama P.S. Case No. 89/1999 was registered for the offence under Section 147/148/149/324/307/504 of the IPC. After completion of investigation, the charge-sheet was submitted against the accused persons and after taking cognizance, the case was committed to the court of Sessions, where S.T. No.130 of 1999 was registered. The accused persons pleaded not guilty and claimed to be tried.
5. In course of trial, altogether 9 (Nine) witnesses were examined by the prosecution apart from documentary evidence.
6. On the other hand, no oral or documentary evidence has been adduced by the defence. The case of the defence is complete denial from the occurrence and false implication.

Submissions on behalf of the appellant:-

7. Learned counsel for the appellant has submitted that the admitted case of the prosecution is that a sudden scuffle and dispute took place between the parties due to discharge of drainage water of rain. It is submitted that the genesis of the occurrence is that the accused person was cutting the road for further flow of the rainy

water. It is also admitted by the witnesses that due to rain water, the road was slippery and after Lathi blow, the injured Chulhai Yadav (informant) fell down and sustained simple injuries and the infliction of assault given by Farsa is attracted against Sudin Yadav who has died and other four accused persons were acquitted by the learned trial Court itself, therefore, the prosecution has not proved any overt act and participation of the present appellant in the alleged offence, similarly, the conviction of the appellant for the offence under Section 147 is not attracted in as much as there is no element of constituting the unlawful assembly with specific common object as defined under Section 147 of the IPC.

In the alternative, it is further submitted that the injury was sustained by informant (P.W.-5) by falling that was simple in nature but even if some of the witnesses have alleged that the present appellant has also assaulted the informant then offence is attracted against him under Section 323 & 324 of the I.P.C. Therefore, the conviction of the appellant under Section 307 and 147 of the IPC is absolutely unwarranted and beyond the weight of evidence available on record, which is liable to be set aside. It is further contended that it was the first offence of the appellant and that fact has not been considered by the learned trial Court while hearing on the point of sentence and without recording any specific reasons as required under law, the appellant has been declined to extend the benefit of Section 4 of the Probation of Offender's Act.

Submissions on behalf of the State as well as Informant:-

8. Learned Spl.P.P. assisted by learned counsel appearing for the Informant has opposed the aforesaid contention defending the impugned judgment on merits. It is admitted that it was the first offence of the appellant and there is nothing on record showing any previous conviction or involvement in any other criminal case, hence, appropriate order may be passed.

Analysis, reasons and decision

9. I have gone through the record of the case along with the impugned judgment and order of conviction and sentence in the light of the contentions raised on behalf of parties.
10. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellant suffers from any error of law, which requires any interference in this appeal?”
11. I have meticulously examined the evidence of the witnesses as available on record.
12. It appears that the learned trial court has held the appellant guilty for the offences under Sections 147 & 307 of the I.P.C. and from perusal of evidence of prosecution witnesses including the injured witness i.e. informant himself (P.W.-5) who has deposed that except the present appellant, another accused Sudin Yadav (since deceased) has also assaulted the informant with Garasa on his head and the above factum was also corroborated by the prosecution witnesses including P.W.-6 Suresh Yadav, P.W.-7 Sundar Yadav

who are cousin brother and father of the informant, respectively.

The Doctor who has examined the informant on the date of occurrence has found one incised wound on right side of forehead 2"x1¼"x1/2 besides two edema, one on left temporal region 4"x3" and another on right temporal 3"x3". The doctor has opined that injury No.1 was caused by sharp weapon such as Spade and Garasa while other injuries were caused by hard blunt substance.

13.The Hon'ble Apex Court in the case of **Jage Ram vs. State of Haryana, (2015) 11 SCC 366** has laid down some basic ingredients that has to be established for conviction under Section 307 of the IPC. Relevant para 12 of the above judgment is extracted as under:-

"12. For the purpose of conviction under Section 307 IPC, 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 IPC, 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."

14. Similarly, the relevant para 7 of the judgment of Hon'ble Apex Court in the case of **Hari Singh Vs. Sukhbir Singh & Ors. (1988)**

4 SCC 551 is extracted as under:-

“7. On the first question as to acquittal of the accused under Section 307/149 IPC, some significant aspects may be borne in mind. Under Section 307 IPC 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 consequences 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.”

15. In the given factual background, I find that the requisite intention and knowledge to constitute offence under Section 307 IPC is absolutely lacking in this case rather it appears that the occurrence took place in a sudden manner, when the informant objected the accused person from digging the road for smooth flow of rainy water, thereafter, altercation took place between both the parties resulting in assault caused by Spade and Garasa by the accused person and Sudin Yadav, hence, at best, the case falls under Section 323 of the IPC. Therefore, the conviction of appellant for the offence under Section 307 is not justifiable under law, therefore, he deserves acquittal from the charge under Section 307 of IPC. But at

the same time, there is specific allegation against appellant for causing Spade blow injury to the informant, which finds corroboration from the injury report, therefore, I hold the appellant guilty for the offence under Section 323 IPC. I further find that appellant has already undergone around one and half months imprisonment during pendency of this case, therefore, he has sufficiently been punished for the offence committed by him as discussed above.

16. In result, the appellant is held guilty for the offence under Section 323 of the IPC and sentenced to imprisonment already undergone by him.

17. Accordingly, this appeal is **dismissed on merits with modification in conviction and sentence** of the appellant as stated above

18. The appellant is on bail, hence, he is discharged from the liabilities of bail bonds. The sureties are also discharged.

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

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

(Pradeep Kumar Srivastava, J.)

02.07.2026

Basant/

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