

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.779 of 2006**

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Guddu Singh @ Ghutuk Singh @ Gutuk Singh son of Mathura Singh,  
resident of village- Gosaipur Nilami, P.S. Shyampur Bhataha, Distt- Sheohar

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s	:	Mr. Shailendra Kumar Singh, Adv
	:	Mr. Karu Kumar, Adv
	:	Mr. Chhotelal Mishra, Adv
For the Respondent/s	:	Mr. APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL JUDGMENT**

**Date : 20-09-2025**

The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 31.05.2005 and order of sentence dated 07.06.2005 passed by learned 1<sup>st</sup> Additional Sessions Judge, Sitamarhi in Sessions Trial No. 71 of 2002/14 of 2003, whereby the concerned Trial Court has convicted appellant under Section 307/34 of the IPC, where appellant sentenced to undergo rigorous imprisonment for five years along with fine of Rs. 2,500/- and in in default of payment of fine further directed to undergo rigorous imprisonment for six months. All



aforesaid sentences ordered to run concurrently.

2. The brief facts of the prosecution case as it is apparent from written application lodged by the informant Bhagya Narain Singh (**P.W.4**) that on 01-03-2001 at 9.55 P.M. while he was talking with his nephew Dinesh Singh to participate in “*bhoj*” given by co-villager Indrajit Singh, at the same time, Pappu Singh came holding knife along with Guddu Singh and started abusing him. They demanded money from his nephew Dinesh Singh, when Dinesh Singh forbade them from hurling abuses and uttered that if the amount is due, then, they can demand the same, but it is not their right to abuse. On this, altercation took place. Vijay Singh and Sanjay Singh both brother of Pappu Singh also arrived and started hurling buses. They had also come for demanding money and were uttering that Dinesh Singh was making false pretext. They said to kill Dinesh Singh. On this, Ghuttuk Singh let down Dinesh Singh to the ground. Pappu Singh assaulted repeatedly. Dinesh Singh sustained injury and started crumbling. There had been a lot of bleeding. He became unconscious. He tried to save Dinesh, but as he was pushed



by Sanjay Singh and Vijay Singh he failed to do so. On his shouting, persons from the vicinity arrived. The reason for the occurrence is altercation for demand of dues.

3. On the basis of aforesaid written application, given by P.W. 4, namely, Bhagya Narain Singh (informant) Shyampur Bhataha P.S. Case No. 08 of 2001, was registered for the offences punishable under Sections 307, 341, 324, 447 and 504/34 of the Indian Penal Code.

4. Learned Magistrate on the basis of materials collected during investigation took cognizance and committed this case to learned Trial Court for its trial and disposal. Learned trial court accordingly framed charges against appellant-accused, which upon explanation to them pleaded as “not guilty” and claimed trial.

5. To substantiate its case, before learned Trial Court the prosecution has examined altogether 6 witnesses. One defence witness was examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Umesh Singh
P.W. 2	Raj Narain Singh
P.W. 3	Dinesh Singh
P.W. 4	Bhagya Narain Singh



	(informant/injured)
P.W. 5	Dr. Ramesh Chandra Singh
P.W. 6	Dipankar Srigyan (I.O.)
<b>Defence Witness</b>	
D.W. 1	Chandan Singh

6. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Injury report of Dinesh Singh
2.	Exhibit-2	Formal FIR.
3.	Exhibit-3	Blood stained jacket and shirt.

7. The statement of the appellant-accused were recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

8. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under Section 307 and 307/34 of IPC and sentenced them in the manner as stated above.

9. Being aggrieved with the aforesaid judgment



of conviction and order of sentence, the appellant/convicts have preferred the present appeal.

10. Hence, the present appeal.

11. It is submitted by learned counsel appearing on behalf of the appellant/accused that main assailant is Pappu Singh, whereas the conviction of other appellant appears to be recorded with the aid of Section 34 of the IPC. The most important witness of this case is P.W. 3-Dinesh Singh, who received knife injury. In terms of his deposition three knife injuries were inflicted upon him during the course of occurrence, while he was caught hold by other co-accused person. The doctor who examined the injured deposed before the learned Trial Court as P.W. 5 and stated that injury was found simple in nature.

12. It is further submitted that I.O./P.W. 6 upon inspection of place of occurrence failed to collect any blood stains or any material in support of the occurrence or bleeding as alleged to be made from the wounds of P.W. 3-Dinesh Singh at the place of occurrence.

13. Learned counsel appearing for the appellant



further submitted that with aforesaid evidence the conviction as recorded under Section 307 of the IPC is not sustainable under the law as prime consideration to establish crime under Section 307 of the IPC is the intention to cause death and merely as multiple blow of knife injury was found upon injured P.W. 3 the conviction as recorded by learned Trial Court under Section 307 of the IPC appears bad in the eyes of law and same deserves to be set aside. It is submitted that the “**intention to cause death**” can be gathered from different aspects as nature of weapon, manner of assault, pre and post conduct qua occurrence of the accused-appellant etc., In support of his submission learned counsel relied upon the legal report of Hon’ble Supreme Court as available through **Jage Ram and Others Vs. State of Haryana, [(2015) 11 SCC 366] & Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470.**

14. It is also submitted by learned counsel that from the testimony of prosecution witnesses it can be said safely that other appellant was not under common intention. It is submitted that it may be a case of similar intention, but



cannot be said a case of common intention. It is submitted that similar intention is something different from common intention. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Abdul Sayeed Vs. State of Madhya Pradesh, [(2010) 10 SCC 259]**.

15. Taking note of aforesaid testimony of the witnesses it is also submitted that the knife which alleged to used for inflicting injury upon P.W. 3 was also not seized. The blood stained jacket and shirt of injured was not sent for forensic examination, as to ascertain, whether it was the blood of injured or not. It is submitted that merely upon the basis of ocular evidence and injury, conviction was recorded.

16. It is also pointed out from perusal of the records, it also appears that statement of appellant/convict under Section 313 of Cr.P.C. was recorded in very cryptic and mechanical manner, without putting the relevant evidence as surfaced during the trial against them. It is submitted that such type of recording statement of accused is not permissible under law, in terms of legal report of Hon'ble Supreme Court



as available through **Sukhjit Singh Vs. State of Punjab [(2014) 10 SCC 270]** and therefore judgment of conviction and order of sentence are liable to be set aside.

17. Learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that informant/injured/P.W. 4 categorically deposed that Pappu Singh assaulted him with aid of Vijay Singh and Sanjay Singh. It is submitted that in view of repeated knife blow intention to cause death can be gathered safely as it is established principle of law that nature of injury is not only the criteria to gather intention *qua* causing death and, therefore, judgment of conviction as recorded by learned Trial Court cannot be viewed with doubt.

18. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

19. It would be apposite to reproduce para **12, 13 & 14** of the judgment of Hon'ble Apex Court in the case of **Jage Ram (supra)**, which reads as under for a ready





reference:

**"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.

**13.** In *State of M.P. v. Kashiram* [*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court



has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [*State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28 : 1983 SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [*Girija Shankar v. State of U.P.*, (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408] .

\* \* \*

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.’

See *State of M.P. v. Saleem* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC pp. 559-60, paras 13-14 and 16.

13. ‘6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated



by this Court in *Sevaka Perumal v. State of T.N.* [*Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ' (*Saleem case* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC p. 558, para 6)"

**14.** Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under Section 307 IPC is unassailable."

20. It would be apposite to reproduce para **10, 11, 12 & 13** of the legal report of Hon'ble Apex Court in the matter of **Sukhjith Singh** (supra), which reads as under:

"**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in ***Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

**11.** In this context, we may profitably refer to a four-Judge Bench decision in ***Tara Singh v. State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ**



**1491]** wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each



case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

**12.** In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

**13.** The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case



generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

21. It would be apposite to reproduce para no. 49 of the legal report of Hon'ble Apex Court in the matter of **Abdul Sayeed** (supra), which reads as under:

49. Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the "common intention" to commit the offence. The phrase "common intention" implies a prearranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there



prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different sense from the “same intention” or “similar intention” or “common object”. The persons having similar intention which is not the result of the prearranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC. (See *Mohan Singh v. State of Punjab* [AIR 1963 SC 174 : (1963) 1 Cri LJ 100] .)

22. It would be apposite to reproduce injury found upon P.W. 3, which was issued by P.W. 5/doctor (**Exhibit-1**), which is as under:-

- (i) Sharp cut wound on right side of the back below scapula  $\frac{1}{2}$ " x  $2\frac{1}{2}$ " x  $3\frac{1}{2}$ " deep in antero-interior direction;
- (ii) Two side by side placed sharp cut wound on the top of the shoulder  $\frac{1}{2}$ " x  $1\frac{1}{2}$ " x skin deep;
- (iii) Small sharp cut wound on the mid of the forehead.

All these injuries found simple in nature caused by sharp edged weapon.



23. Considering the statement of P.W. 4/informant of this case, it transpires that Pappu Singh gave repeated knife blow to P.W. 3 out of which he received one knife blow on his head and repeated knife blows on his right lungs, but in view of testimony of P.W. 5 as noted aforesaid the place of injury found different as injuries received by injured not appears properly explained it, creating a doubt *qua* manner of assault as alleged. From the depositions of P.W. 3/injured, it transpires that he did not gave any statement before police at police station. It is also stated by him that blood stained shirt, jacket and vest was not collected by police. It appears from his depositions that only Pappu Singh assaulted him.

24. From the testimony of I.O., who was examined before learned Trial Court as P.W. 6, it transpires that while preparing the requisition of the injury report of injured/P.W. 3 he had not stated the name of the culprits. He visited place of occurrence on 02.03.2001 at 6:30 hours and did not find sign of blood or dragging or footmarks at the place of occurrence and also no blood stained cloth was





produced before him, which creates a doubt *qua* testimony of P.W. 3/injured that same was produced before police but not seized. He also deposed that P.W. 1 did not stated before him that upon order of Vijay Singh, Pappu Singh gave knife blow on the back, left shoulder and head of P.W. 3. Even P.W. 2 did not stated before him that he was standing in his courtyard of Ram Swarth Singh at the time of occurrence. He also failed to disclosed that Vijay Singh and Sanjay Singh ordered to kill and appellant-convict caught hold P.W. 3/Dinesh Singh, where Pappu Singh gave knife blow.

25. Summarizing aforesaid testimony of prosecution witnesses, it transpires that the manner of assault as deposed by prosecution witnesses particularly by informant/P.W. 4 & injured/P.W. 3 as discussed aforesaid appears doubtful and moreover, injury was found simple in nature. Alleged knife also not appears seized. The I.O. while deposing before the court contradicted the version of witnesses, suggesting that the witnesses being interested witness deposed improved version first time before the court during the trial and, therefore, their testimony cannot be said



wholly reliable in view of **Nand Lal Case (supra)**.

26. The statement of accused persons also appears recorded in very cryptic and mechanical manner without putting all incriminating circumstances to them and therefore same also appears questionable, in view of **Sukhjit Singh Case (supra)**.

27. In view of the aforesaid discussions and considering the testimony of prosecution witnesses it can be safely established that prosecution has failed to established its case beyond all reasonable doubts and this judgment of conviction was merely recorded on the basis of testimony of injured/P.W. 3 that he received 3 knife blow which also negating prima-facie "**intention to cause death**" in view of **Jage Ram Case (supra)**. Benefit of doubts must be extended to accused/appellant.

28. Accordingly, the appeal stands allowed.

29. The impugned judgment of conviction dated 31.05.2005 and order of sentence dated 07.06.2005 passed by learned 1<sup>st</sup> Additional Sessions Judge, Sitamarhi in Sessions Trial No. 71 of 2002/14 of 2003 arising out of



Shympur Bhataha P.S. Case No. 08 of 2001 is accordingly set aside.

30. The appellant, above-named, is acquitted of the charges levelled against him. Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged. Fine if any paid, be returned to appellant hence forth.

31. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
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