

IN THE HIGH COURT OF JUDICATURE AT PATNA

Urmila Devi

vs.

The State of Bihar & Ors.

CRIMINAL APPEAL (DB) No.186 of 2024

10 September 2024

(Hon’ble Mr. Justice Rajeev Ranjan Prasad & Hon’ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether the impugned judgment acquitting the accused persons of the charges under Sections 147, 148, 149, 341, 323, 324, 325, 307, 504 and 506 of the IPC is sustainable or not?

Headnotes

Code of Criminal Procedure---section 378--- Indian Penal Code----Sections 147, 148, 149, 323, 325, 307---Unlawful Assembly---Attempt to Murder---Appeal against Acquittal whereby and whereunder the learned trial court has been pleased to acquit the accused persons who are Respondent Nos. 2 to 7 in the appeal of the charges under Sections 147, 148, 149, 341, 323, 324, 325, 307, 504 and 506 of IPC---allegation against all the six Respondents (accused) is of assaulting the informant on account of previous enmity.

Held: in view of glaring inconsistencies in the testimonies of the material prosecution witnesses with regard to the number of the accused persons as well as names of the accused persons who were present at the place of occurrence the basic requirement of an unlawful assembly which requires it to be an assembly of five or more persons becomes doubtful--- although presence of injury on vital part of the body is not required to bring home a case under Section 307 IPC but, in absence of any intent to kill the offence under Section 307 IPC could not be proved--- on the basis of the prosecution evidence, it may be safely concluded that the prosecution has been able to prove the place of occurrence also beyond all reasonable doubts--- prosecution has been able to prove the charge under Section 323 and 325 IPC against Ramesh Rai and Naresh Rai who are respondent nos. 3 and 4 respectively in this appeal as the injuries inflicted upon the informant are specifically attributed to them---impugned judgment set-aside in part--- Respondent nos.3 and 4 found guilty of the commission of offences under Section 323 and 325 IPC---impugned judgment affirmed in other aspects. (Para- 30-35, 39)

Principles governing exercise of Appellate Jurisdiction while dealing with an Appeal against the Acquittal---- acquittal of the accused further strengthens the presumption of innocence---- Appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence and is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record---- if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible---- Appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a

reasonable doubt and no other conclusion was possible. **(Para-37)**

Case Law Cited

H.D. Sundara vs. State of Karnataka **(2023) 9 SCC 581**Relied Upon.

List of Acts

Code of Criminal Procedure, Indian Penal Code.

List of Keywords

Appeal against acquittal; Attempt to Murder; Unlawful Assembly; Grievous Hurt; Injury Report; Place of Occurrence; Intent to Kill

Case Arising From

Judgment dated 31.10.2023 passed in Sessions Trial No. 615 of 2015 (hereinafter referred to as the ‘impugned judgment’) arising out of Gaighat P.S. Case No. 227 of 2014 by learned Additional Sessions Judge-I, Muzaffarpur.

Appearances for Parties

For the Appellant/s : Mr. Pradhan Murli Manohar Prasad, Advocate

For the State : Ms. Shashi Bala Verma, Addl.P.P.

For the Respondent No.2to7: Mr. Ganesh Prasad Singh, Advocate

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.186 of 2024

Arising Out of PS. Case No.-227 Year-2014 Thana- GAIGHAT District- Muzaffarpur

Urmila Devi, Wife Of Tapeswar Rai, Resident Of Village - Jaganiya, P.S. - Gaighat (Beniyabad), District - Muzaffarpur

... .. Appellant/s

Versus

- 1. The State of Bihar
- 2. Ram Ratan Rai Son Of Late Veer Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur
- 3. Ramesh Rai Son Of Ram Jatan Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur
- 4. Naresh Rai Son Of Ram Jatan Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur
- 5. Ranjit Rai Son Of Ram Jatan Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur
- 6. Sawan Rai Son Of Ram Jatan Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur
- 7. Sanjit Rai Son Of Ram Jatan Rai Resident Of Village - Jaganiya, P.S. - Gaighat, District - Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pradhan Murli Manohar Prasad, Advocate
For the State : Ms. Shashi Bala Verma, Addl.P.P.
For the Respondent No.2to7: Mr. Ganesh Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-09-2024

This Criminal Appeal has been preferred by the wife of the informant (since deceased) for setting aside the judgment dated 31.10.2023 passed in Sessions Trial No. 615 of 2015 (hereinafter referred to as the ‘impugned judgment’) arising out of Gaighat P.S. Case No. 227 of 2014 by learned Additional



Sessions Judge-I, Muzaffarpur (hereinafter referred to as the 'learned trial court') whereby and whereunder the learned trial court has been pleased to acquit the accused persons who are Respondent Nos. 2 to 7 in the appeal of the charges under Sections 147, 148, 149, 341, 323, 324, 325, 307, 504 and 506 of the Indian Penal Code (in short 'IPC').

Prosecution case

2. The prosecution case is based on the fardebyan of one Tapeswar Rai recorded by Vivekanand Mishra, ASI, Gaighat police station in Shri Krishna Medical College and Hospital, Muzaffarpur ('SKMCH, Muzaffarpur'). The informant alleged that on 13.07.2014 at about 04:00 pm, while he was engaged in grazing his buffalo in Ladaur Gachhi, Ram Jatan Rai, Ramesh Rai, Naresh Rai, Ranjeet Rai, Sanjeet Rai and Sawan Rai came there. They had a previous enmity with the informant for the reason that the informant had deposed as a witness in Gaighat P.S. Case No. 309 of 2011. It has been further alleged that Ram Jatan Rai asked the informant as to why he had deposed and when the informant told him that he had deposed the truth, Ram Jatan Rai ordered for killing him, upon which Naresh Rai assaulted the informant on his head by a rod which was warded off by the informant with his right hand but Naresh



Rai again hit him causing fracture in his hand. Ramesh Rai assaulted him by lathi, causing fracture injuries on leg. Sawan Rai assaulted him with lathi on his chest and injured his ribs. Ranjit Rai assaulted him with butt of pistol. Thereafter, the accused persons fled away towards their house. On hearing his shouts, several people assembled and took him to Gaighat Hosptial from where he was referred to SKMCH, Muzaffarpur.

3. On the basis of the fardebyan of the informant, Gaighat P.S. Case No. 227 of 2014 was registered, after completion of investigation, police submitted a charge-sheet under Sections 147, 148, 149, 341, 323, 324, 325, 307, 504 and 506 of the IPC against all the accused persons (Respondent Nos. 2 to 7). The learned Magistrate took cognizance of the offences vide order dated 02.04.2015 and on finding that the offences are triable by the Court of Sessions, the records were committed to the Court of Sessions. After receipt of the records in the court of learned Sessions Judge, the charges were read over and explained to the accused persons who denied the charges and claimed to be tried.

4. On behalf of the prosecution, seven witnesses were examined and as many as six exhibits were exhibited. The list of prosecution witnesses and the prosecution exhibits are shown



hereunder in a tabular form for ready reference:-

Prosecution Witnesses

PW-1	Ram Padarath Rai
PW-2	Tapeshwar Rai (Informant)
PW-3	Sanjay Rai
PW-4	Vivekanand Mishra
PW-5	Dr.Sudhir Kumar
PW-6	Dr. Babua Nand Mishra
PW-7	Umesh Mishra

List of Exhibits

Exhibit-1	Fardbeyan
Exhibit-2	Signature of Sanjay Rai on fardebyan
Exhibit-2/1	Endorsement on Fardbeyan to register case
Exhibit-3	Signature of Officer Incharge on formal FIR
Exhibit-4	Requisition letter for injury report
Exhibit-5	Injury report
Exhibit-6	Injury report

Analysis of the oral testimonies of the Prosecution

Witnesses

5. Ram Padarath Rai (PW-1) has stated that he had seen the occurrence while returning home from Benibad. He had reached near Ladaur Gachhi at about 04:00 pm and saw that Ramesh, Naresh and Ranjit were arguing with Tapeshwar (the informant) for having deposed in some case. A large crowd had gathered there. This witness has stated that Ramesh, Naresh and Ranjit hit Tapeshwar with lathi and rod. His hand was fractured in warding off the blows and right leg was also fractured. He



had accompanied Tapeswar to Benibad, then to Gaighat Hospital from where he was sent for treatment to Muzaffarpur. According to this witness, Tapeswar had gone to police station also but he was told to go to Hospital first and then get his case registered. This witness has stated that he knows the accused persons, he had not seen Ram Jatan or Sawan at the place of occurrence and only three accused were there. About Tapeswar (informant), he has stated that he is his elder brother. He had taken Tapeswar to the police station on motorcycle which was being driven by Sanjay Rai (PW-3). Tapeswar was kept in Gaighat Hospital for two days and from there, he went for treatment to Muzaffarpur where he remained admitted for 7-8 days.

6. Tapeswar Rai (PW-2) is the informant and injured witness of this case. In his examination-in-chief, he has stated that the occurrence took place on 13.07.2014 at around 04:00 PM when he was grazing his buffalo near Ladaur Gachhi. He has named six persons who are Respondent Nos. 2 to 7 in this case and has stated that they suddenly came to him. Ram Jatan (R-2) asked the informant as to why he had deposed and when he replied that he had told what was truth, Ram Jatan ordered his five sons to kill him. Naresh Rai (R-4) hit him on his head with



an iron rod with an intention to kill, he warded it off with his right hand. According to PW-2, Naresh Rai once again hit him and when he warded off this blow, his right hand was fractured. Ramesh (R-3) hit him with lathi and broke his right leg. Sawan hit him with lathi on his chest and injured his right rib. Ranjit hit him several times with revolver butt which injured his neck. He has stated that on his shouts, when Ramchandra Rai, Sanjay Rai, Uday Rai, Ram Padarath Rai, Ram Bali Rai and Ashok Rai came, the accused ran away. His nephew Sanjay Rai took him to the police station on his motorcycle where he was told to first get himself treated. He went to Gaighat where he was treated and thereafter referred to SKMCH, Muzaffarpur where Umashankar Singh, ASI from Ahiyapur Police Station came and took his statement. PW-2 has proved his fardebyan which has been marked Exhibit '1'. In his cross-examination, he has stated that 'Ladaur Gachhi' is at a distance of 7-8 yards (Gaj) from his house and in between, there is only agricultural land. He grazed his buffalo from 02:00 to 04:00 pm and the accused persons attacked him at 04:00 pm when people were passing through. He named Ram Bali Rai and Ashok Rai as passerby.

7. Sanjay Rai (PW-3) is the nephew of PW-2. He has also supported the prosecution case. He has stated that he had



seen that on the side of the road, Ram Jatan Rai, Naresh Rai, Ranjit Rai and Sawan Rai were arguing with Tapeswar Rai about having deposed against him. Ram Jatan Rai ordered to kill him whereupon Naresh Rai hit Tapeswar Rai on his head with a rod with intention to kill him. Tapeswar warded it off with his hand but the second blow fractured his hand. Ramesh hit him with lathi and broke his leg. Ranjit hit him with pistol butt. Sawan hit him with lathi on his chest and injured him on the side. He had taken Tapeswar on his motorcycle to the police station where they told him to first get himself treated. Even at Gaighat Tapeswar was given some treatment for a while and then he was referred to SKMCH, Muzaffarpur. Police had recorded the fardebyan of the informant there and this witness had put his signature on the fardebyan. He has proved his signature which has been marked Exhibit '2'.

8. Vivekanand Mishra (PW-4) is the Investigating Officer (in short 'I.O.') of this case. He has stated in his examination-in-chief that on 22.04.2014, he was posted as ASI in Benibad O.P. under Gaighat Police Station. The statement of Tapeswar Rai (PW-2) was recorded by ASI Umashankar Singh of Ahiyapur Police Station and the same was sent to him with a forwarding letter of SHO, Gaighat. He was given charge of



investigation of the case. PW-4 has proved the pagination and signature of FIR which has been marked Exhibits '2/1' and '3' respectively. He has given the description of the place of occurrence in his examination-in-chief. He has stated that the place of occurrence is situated in village Ladaur Chaur which is a ditch beside the brick soling road west to Ladaur Pokhri (pond), it goes from Jagania to Ladaur. In north, there is a brick soling road which merges with Ladaur Pakki road, in south it is the 'parti' land of Kishore Jha, brick soling road which goes to Jagania, in west there is a water filled land of Dasrath Jha and in east there is 'parti' land of Tapeshwar Jha. He has stated that he had recorded the statement of Sanjay Rai, Ram Padarath Rai, Tapeshwar Rai, the informant and Ram Chandra Rai, all of them had supported the occurrence. He had sent a report to the Sub-Divisional Officer, East for initiation of a proceeding under Section 107. He had demanded the injury report from Primary Health Centre (in short 'PHC'), Gaighat. This witness has stated that he received the injury report from SKMCH, Muzaffarpur which he entered in the case diary. He proved the letter which he had sent to PHC, Gaighat for sending the injury report, which has been marked as Exhibit '4'. In his cross-examination, he has stated that he had not found any sign of occurrence at the place



of occurrence, he had recorded the statement of the informant on 05.08.2014 and had mentioned the same in the case diary. PW-4 has stated that both the parties had prior litigation and that is the cause of occurrence.

9. Dr. Sudhir Kumar (PW-5) was the Medical Officer posted at PHC, Gaighat, Muzaffarpur who had examined Tapeswar Rai (PW-2) and had found the following injuries on his body:- (i) lacerated wound 3cm x muscle deep on left arm above elbow; (ii) a lacerated wound 3 cm x muscle deep on left leg; (iii) diffused swelling on left forearm. PW-5 has stated in his examination-in-chief that the first injury was simple, about the second injury, it is stated that the fracture of shaft fibula, hands injury was grievous in nature and regarding the third injury, he has stated that the X-ray shows fracture of shaft of ulna, hence, grievous in nature. Regarding the nature of weapon, PW-5 has stated that the injury nos. 1 to 3 have been caused by hard blunt. In his cross-examination, he has stated that such injuries may be caused due to fall from height such as tree. He has further stated that the injuries are not on vital part of the body. Dr. Babua Nand Sharma, PW-6 was posted at SKMCH, Muzaffarpur as Senior Resident in the Department of Surgery. He had examined Tapeswar Rai (PW-2) after he was referred



by PHC, Gaighat. He had found that there was stitched wound over right arm 4cm in length and tenderness around right ankle. X-ray was advised and X-ray plate no. 9675 dated 13.07.2014 showed fracture of shaft of right ulna and fracture of shaft of tibia fibula. He has proved the injury report in his pen as Exhibit '6'. In his cross-examination, he has stated that the time of injury is not mentioned in the injury report because the patient had come to him on reference. He has further stated in his cross-examination that such injury may be caused due to fall from high standing tree.

10. Umesh Mishra, PW-7 is a retired Sub-Inspector who had filed the charge-sheet in this case. He has stated that he had not recorded the statement of the witnesses and had not inspected the place of occurrence.

11. After prosecution evidence, the statement of the accused persons were recorded under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., the accused persons have been apprised of the incriminating materials against them which they claimed to be wrong and pleaded innocence. Ram Jatan Rai, Ramesh Rai and Naresh Rai have stated that they have been falsely implicated because of old enmity. The other witnesses have also stated that they are innocent and have been



falsely implicated.

Findings of the trial court

12. The learned trial court proceeded to consider as to whether the prosecution has been able to prove the guilt of the accused persons for the charged offences beyond all reasonable doubts. Regarding the offences punishable under Sections 147, 148 and 149 of the IPC, the learned trial court has upon analysis of the statement of the prosecution witnesses found that while PW-2 who is the informant has named all the six persons as having committed the occurrence, PW-1 has named only three accused Ram Naresh, Naresh, and Ranjit. He has stated in his examination-in-chief that he identifies the accused persons, he had not seen Ram Jatan and Sawan at the place of occurrence. Only three persons were there. Sanjay Rai (PW-3) has stated that Ram Jatan Rai, Naresh Rai, Ramesh Rai, Ranjit Rai and Sawan Rai were quarreling with PW-2 and on the order of Ram Jatan, Naresh Rai had assaulted Tapeswar by rod on his head and while trying to save himself by hand, when another attack was made by rod, the hand of Tapeswar was fractured. Ramesh assaulted Tapeswar and fractured his leg. Ranjit Rai assaulted him by butt of pistol and Sawan assaulted him by lathi on his chest which hit him on the side. At this stage, this Court finds



that the learned trial court has recorded in paragraph '16' of the impugned judgment that PW-3 Sanjay Rai has named four accused Ram Jatan Rai, Naresh Rai, Ranjit Rai and Sawan Rai but this Court finds on perusal of the examination-in-chief of PW-3 that he has named Ramesh Rai also and has stated that Ramesh had assaulted Tapeswar by lathi and fractured his leg. The learned trial court has held that only three material witnesses have been examined including the informant and none of them are in agreement regarding the number as well as the names of the accused who were present at the place of occurrence. Under these circumstances, the trial court has held that the very basic requirement of an unlawful assembly which requires it to be an assembly of five or more persons, comes under doubt.

13. As regards the offence under Section 307 IPC, the learned trial court has held that the section requires proof of a clear intent to kill and this intention has to be ascertained from the weapon used, body part chosen for assault and nature of injury. It has been further held that from the evidence of the prosecution witnesses, one thing is quite clear that the accused were armed with a revolver but they did not use it to shoot the informant, rather they used the butt of the revolver to hit him. It



is for this reason the learned trial court held that there is absence of any intention to kill. Hence, offence under Section 307 IPC has not been proved.

14. While considering the charge under Sections 323 and 325 IPC, the learned trial court examined the evidence of the doctors who are PW-5 and PW-6. The learned trial court held that in view of the evidence of PW-2, PW-3, PW-4 and PW-5 along with the injury reports – Exhibit ‘5’ and Exhibit ‘6’, it appears proved that the accused Naresh Rai, Ramesh Rai, Ranjit Rai and Sawan Rai voluntarily caused hurt and grievous hurt to the informant Tapeswar Rai. Having said so, the learned trial court proceeded to observe that apart from the inconsistency in the evidence of the material witnesses regarding the accused who are alleged to have committed the occurrence, there are other glaring contradictions and inconsistencies that cast a dark shadow of doubt over the entire occurrence and shake the very basis of this case. The trial court observes that these pertain to the place of occurrence. It has been observed that PW-1 and PW-2 have specifically and clearly stated that the place of occurrence is next to Ladaur Gachhi, however, PW-3 has stated that the occurrence took place on the side of the road. I.O. of this case (PW-4) has described the place



of occurrence in detail as a ditch next to the brick soling road to the west of the Ladaur Pokhri (pond) situated in the village Ladaur. The learned trial court recorded that there is no mention of any orchard even in the vicinity of the place of occurrence in the description of the place of occurrence given by the I.O., thus, the fact that the witnesses are not deposing truly about the place of occurrence casts a doubt on their credibility and their evidences clearly not reliable.

15. On the strength of aforesaid findings and observations with regard to the place of occurrence, the learned trial court held that there is vital contradiction regarding the place of occurrence and the accused persons who are alleged to have committed the assault. It has been observed that the contradictions are indicative of suppression of material facts by the witnesses and it appears that there has been a deliberate attempt at twisting the actual facts. In these circumstances, all the accused persons have been acquitted of the charges leveled against them and they have been discharged from the liability of their previous bail bonds.

Submissions on behalf of the Appellant

16. While assailing the impugned judgment of the learned trial court, learned counsel for the appellant submits that



the learned trial court has wrongly and erroneously held that the prosecution has failed to prove the charge beyond all reasonable shadow of doubts. The trial court has not considered the entire evidence as a whole and has just relied on an individual contradiction. It is submitted that all the material witnesses are consistent and they have supported the prosecution case. PW-1 has deposed in his examination-in-chief that Ramesh, Naresh and Ranjit (R-3 to R-5) assaulted Tapeshwar (injured) by means of lathi and rod. Tapeshwar sustained injuries in his hand and left leg. The injured was admitted in hospital for 7-8 days. The injury reports which are Exhibits '5' and '6' have been duly proved by the Medical Officer of PHC, Gaighat and the Senior Resident Medical Officer of SKMCH, Muzaffarpur who have deposed as PW-5 and PW-6.

17. Learned counsel submits that the informant (PW-2) is an injured witness of this case and his testimony cannot be discarded likely. He has relied upon a judgment of the Hon'ble Supreme Court in the case of **Abdul Sayed Vs. State of M.P.** reported in **(2010) 10 SCC 259** (paragraph '28') to submit that the testimony of an injured witness may be discarded only when there is a convincing evidence to discredit him.

18. Learned counsel submits that the learned trial court



has completely erred in saying that in this case an offence under Section 307 IPC would not be made out. It is submitted that the learned trial court has committed an error in reaching to a conclusion in this regard by saying that no intent to kill seems to be present on the part of the accused persons. It is submitted that Section 307 IPC would be attracted when any person 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. In this case, it is evident that the accused persons had attacked the informant (PW-2) by rod and lathi and repeated assaults were given upon him causing fracture of his hands and two grievous injuries have been found by the doctor.

19. It is submitted that to bring a case under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **R. Prakash Vs. State of Karnataka** reported in **AIR 2004 SC 1812**.

20. It is submitted that the learned trial court has recorded a finding that the accused Naresh Rai, Ramesh Rai, Ranjit Rai and Sawan Rai had voluntarily caused hurt and grievous hurt to the informant Tapeswar Rai. On this finding of



the learned trial court four accused persons (PWs-3, 4, 5 and 6) were liable to be convicted for the charges under Sections 323 and 325 IPC but the learned trial court has acquitted the accused persons (R-2 to R-7) by doubting the truthfulness of the prosecution evidence with regard to the place of occurrence.

21. It is submitted that it would appear from the fardbeyan of the informant (PW-2) that he has clearly stated that on 13.07.2014 at about 4.00 PM he was engaged in grazing his buffalo in Ladaur Chaur Gachhi. It is submitted that Ladaur is the name of the village and in common parlance the villagers call such places where the animals are taken for grazing and where some plantations are available as Chaur Gachhi. The learned trial court has while recording the deposition of the prosecution witnesses has on its own given the interpretation of the word Ladaur Chaur Gachhi as if it was an orchard. Even if in his examination-in-chief, PW-2 has stated that he was grazing his buffalo at Ladaur Chaur and from the pattern of cross-examination of the prosecution witnesses, it would appear that the defence never suggested to the prosecution witnesses that no occurrence had taken place at Ladaur Chaur Gachhi. In fact, PW-2 was suggested by the defence that he was engaged in grazing his buffalo and was riding the buffalo when he was put



down and from that he got injured. Learned counsel submits that at several places the learned trial court has on its own put an alternative word ('orchard') or ('Bagicha') while recording the deposition. The defence has not questioned the presence of PW-2 in Ladaur Chaur Gachhi which is situated at a distance of 7-8 hundred yards from the house of PW-2.

22. It is submitted that the I.O. has given the description of the place of occurrence in which he has stated that the place of occurrence is situated at Ladaur Chaur. While giving the boundary of the Ladaur Chaur, the I.O. has stated that in the north there is a brick soling road which connects with Ladaur Pacci road. What is important to note is that the I.O. found that there were Parti land in the south and in the east side. Therefore, it is clear that because of the Parti land the informant had taken his buffalo there for grazing and this was the season when in Parti land plenty of grass would be available.

23. It is submitted that all the prosecution witnesses are consistent with regard to the place of occurrence describing it either as Ladaur Gachhi or Ladaur Chaur Gachhi. It has also come in the evidence that the boundary of Ladaur Chaur Gachhi a brick soling road passes from north to south. It is submitted that the learned trial court has erred in appreciating the



evidences available on the record.

24. It is submitted that from the materials on the record, there would be no iota of doubt that the place of occurrence has been duly proved beyond all reasonable doubts by the prosecution and there cannot be any second opinion about it.

25. It is lastly submitted that while appreciating the evidences on the record, the prosecution case as well as the defence both are to be considered keeping in view that there should not be any travesty of justice. While it is important that an innocence person should not be declared guilty, it is equally important that the victim of the crime gets justice and the culprit be punished in accordance with law. It is not one of those cases in which two views are possible with regard to place of occurrence on the basis of the evidence available on the record, therefore, the judgment of the learned trial court is liable to be set aside and the respondent nos.2 to 7 be punished for the charged offences.

Submissions on behalf of the respondent nos.2 to 7.

26. The appeal has been opposed by learned counsel for the respondent nos.2 to 7. Defending the judgment of the learned trial court, learned counsel for the accused persons-respondent nos.2 to 7 would submit that the learned trial court



has rightly appreciated the prosecution evidences on the record. In the fardbeyan the informant (PW-2) has named six persons who had come to the place of occurrence, however, he has stated that on the order of Ram Jatan Rai, Naresh Rai, Ramesh Rai, Sawan Rai and Ranjit Rai were involved in causing assault upon him. In his examination-in-chief, once again PW-2 has taken name of the six accused persons but his brother Ram Padarath Rai who has deposed as PW-1 has stated that when he reached near Ladaur Gachhi, he had seen that Ramesh, Naresh and Ranjit were quarreling with Tapeswar. PW-1 has specifically stated that he had not seen Ram Jatan and Sawan at the place of occurrence. PW-3 who is nephew of PW-2 has stated about presence of Ram Jatan Rai, Naresh Rai, Ramesh Rai and Sawan Rai, he has not stated about presence of Sanjit Rai. He has named Naresh Rai as the person who had assaulted PW-2 by rod causing fracture of his hands, Ramesh had assaulted PW-2 causing fracture of his leg, Ranjit had assaulted by butt of the pistol and Sanjit had assaulted by lathi beside the chest but the doctor (PW-5) had not found any injury of the butt of pistol and injury on the chest. Thus, the learned trial court has rightly concluded that the prosecution witnesses are not consistent with regard to the number of the witnesses at the place of occurrence.



27. Learned counsel further submits that the learned trial court is fully justified in saying that the prosecution evidence could not show that any intent on the part of the accused persons to kill the informant. The use of the butt of the pistol shows that there was no intent to kill, therefore, Section 307 IPC would not be attracted.

28. Learned counsel for the respondent nos.2 to 7 has further defended the judgment of the learned trial court as regards the appreciation of the evidences on the point of place occurrence. It is submitted that the place of occurrence as stated by the prosecution witnesses and the I.O. are different, therefore, the learned trial court has rightly stated that there is no mention of any orchard in the vicinity of the place of occurrence.

29. The learned Addl. P.P. for the State has also defended the judgment of the learned trial court and endorsed the submissions of learned counsel for the respondent nos.2 to 7.

Consideration

30. Having heard learned counsel for the appellant, the learned Addl.P.P. for the State and learned counsel for the respondent nos.2 to 7 and upon going through the trial court's records, we find that the learned trial court having examined the testimonies of the material prosecution witnesses found that they



are not consistent with regard to the number of the accused persons as well as names of the accused persons who were present at the place of occurrence. As regards the number of accused persons, we agree with the view of the learned trial court that the prosecution witnesses namely PW-1, PW-2(informant) and PW-3 have given different statements. While PW-2 has claimed that there were six persons, PW-1 has stated that he had seen only three persons but PW-3 has stated about the presence of five accused persons. The learned trial court has wrongly recorded in paragraph '16' of it's judgment that PW-3 Sanjay Rai has named four accused persons. We find on perusal of the examination-in-chief of PW-3 that he had named five accused persons. All the witnesses are consistent with regard to the presence of Naresh Rai, Ramesh Rai and Ranjit Rai. Therefore, it may be safely concluded that Naresh Rai, Ramesh Rai and Ranjit Rai were present at the place of occurrence which took place at Ladaur Chaur Gachhi in which the informant (PW-2) was assaulted. We find that Ram Padarath Rai (PW-1) being own younger brother of the informant (PW-2) is a reliable witness as he has not tried to implicate any other member of the family of these three accused persons. He has stated in paragraph '4' of his examination-in-chief that only



three persons namely Ramesh, Naresh and Ranjit were involved in assaulting and he had not seen Ram Jatan and Sawan at the place of occurrence. We are of the considered opinion that the learned trial court is correct in coming to a conclusion that the basic requirement of an unlawful assembly which requires it to be an assembly of five or more persons becomes doubtful.

31. As regards the finding of the learned trial court that in absence of any intent to kill the offence under Section 307 IPC could not be proved, we are of the opinion that even as there may be two opinions on this point, this Court while hearing the appeal against the acquittal would not impose its own opinion in place of the opinion of the learned trial court. Section 307 IPC reads as under:-

“307. Attempt to murder.--

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 to¹(imprisonment for life], or to such



punishment as is hereinbefore mentioned.

Attempts by life-convicts-

²[When any person offending under this section is under sentence of ¹[imprisonment for life], he may, if hurt is caused, be punished with death.]

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of ³[the first paragraph of] this section.

1. Subs. by Act 26 of 1955, s. 117 and the Schedule, for “transportation for life” (w.e.f.1-1-1956).
2. Added by Act 27 of 1870, s.11



(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.”

32. It has been contended before us that presence of injury on vital part of the body is not required to bring home a case under Section 307 IPC. While we agree with the propositions and ingredients of law with regard to the proof of a case under Section 307 IPC, as stated above, we find that the views expressed by the learned trial court is not required to be disturbed.

33. As regards offence under Sections 323 and 325 IPC, the learned trial court has upon appreciation of the evidences of PW-2, PW-3, PW-4, PW-5 and PW-6 together with the injury reports Exhibits-5 and 6 has found that they proved that the accused Naresh Rai, Ramesh Rai, Ranjit Rai and Sawan Rai had voluntarily caused hurt and grievous hurt to the informant Tapeswar Rai. On a careful perusal of the injury report proved by PW-5, we find that the doctor had found lacerated wound 3cmxMuscle Deep on left arm above elbow, a lacerated wound



3cmxMuscle Deep on left leg and defused swelling on left forearm. Those injuries are specifically attributed to Naresh Rai and Ramesh Rai. The informant (PW-2) has stated that Sawan Rai had assaulted him by lathi which fractured his right rib near the chest and Ranjit Rai had assaulted him by butt of the pistol causing him injuries on his neck and his neck has swollen but the injury reports and the evidence of the doctors (PW-5 and PW-6) are not showing any injury present on the right rib and on the neck of the informant (PW-2). This Court, therefore, finds that the prosecution has been able to prove the charge under Section 323 and 325 IPC against Ramesh Rai and Naresh Rai who are respondent nos. 3 and 4 respectively in this appeal. We find that the presence of Ram Jatan and Sanjit has not been supported by PW-1 whom we take as a very reliable witness in this case. At the same time, the allegations made against Ranjit and Sawan of causing injuries to PW-2 are not getting corroborated from the injury reports and the evidence of the doctors. In these circumstances, we are of the considered opinion that in this case the prosecution has been able to prove a case under Section 323 and 325 IPC only against the respondent no.3 and respondent no.4.

34. This brings us to the last point of the judgment. The



learned trial court has disbelieved the place of occurrence. The learned trial court has recorded that PW-1 and PW-2 have clearly stated that the place of occurrence is next to Ladaur Gachhi. In the impugned judgment, the learned trial court has recorded ('orchard') which would give an impression that the learned trial court has assumed that Ladaur Gachhi is an 'orchard' in 'English' which in our opinion would not be a correct way to construe the meaning of the place of occurrence.

35. We find from the evidence of PW-1 that he has clearly stated that when he reached near Ladaur Gachhi, he had seen the occurrence. PW-2 has stated that he had taken his buffalo for grazing in Ladaur Chaur besides Bagicha. In paragraph '3' of his cross-examination, he has once again stated that Ladaur Gachhi is situated at a distance of 7-8 hundred yards from his house. We find that at almost all the places while recording the deposition of the prosecution witnesses the trial court has itself interpreted the Hindi word 'Gachhi' as 'Bagicha' or (orchard) and has put the substituted words. This, in our opinion, is an error on the part of the learned trial court. The learned trial court has recorded that the I.O. (PW-4) has described the place of occurrence in detail as a ditch next to the brick soling road to the west of Ladaur Pokhri (pond), situated



in village Ladaur. We find from the evidence of PW-4 that in his examination-in-chief, he has stated that the place of occurrence is situated in village Ladaur Chaur which is a ditch beside the brick soling road west to Laduar Pokhri (pond) and about this brick soling road, he has stated that it goes from Jagania to Ladaur.

36. We find that the learned trial court has disbelieved this place of occurrence saying that in the evidence of the I.O. there is no mention of any orchard even in the vicinity of the place of occurrence. We find that the learned trial court has grossly erred on this point. It is nowhere the prosecution case that there was any orchard in the vicinity of the place of occurrence. The learned trial court has taken an erroneous view because somewhere in the back of the mind of the learned trial court the word 'Ladaur Chaur Gachhi' was being seen as a place which is an orchard. We agree with the contention of learned counsel for the appellant that in the villages 'chaur' is usually called to a place where the animals are taken for grazing and in a particular area a particular grazing place may be called as 'chaur' or 'chaur gachhi'. Even the I.O. has found that in the boundary of the place of occurrence there were parti vacant land and in the month of July the availability of grasses in the parti



land are well known. We are of the view that on the basis of the prosecution evidence, it may be safely concluded that the prosecution has been able to prove the place of occurrence also beyond all reasonable doubts. The learned trial court has completely erred in appreciating the evidences on the record.

37. We are conscious of the fact that this is an appeal against the acquittal and the High Court should not likely interfere with the order of acquittal. In the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581**, the Hon'ble Supreme Court has considered the principles which governed the exercise of appellate jurisdiction while dealing with an appeal against the acquittal under Section 378 Cr.P.C. The principles have been summarized in paragraph '8.1' to '8.5' which are being reproduced hereunder:-

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;



8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

38. We have already held hereinabove that with regard to the place of occurrence the one and only conclusion which may be reached on the basis of the prosecution evidences and the pattern of cross-examination that there is no doubt about the place of occurrence being Ladaur Chaur Gachhi where the informant had taken his buffalo for grazing. The date of occurrence, time of occurrence, place of occurrence and manner of occurrence have been duly proved.

39. In the light of the aforementioned discussions, we set aside the impugned judgment as against the respondent nos.3 and 4, namely, Ramesh Rai and Naresh Rai. They are found guilty of the commission of offences under Section 323 and 325 IPC.

40. The judgment of the learned trial court acquitting R-



2, R-5, R-6 and R-7 is not interfered with for the reasons mentioned hereinabove.

41. List this matter on 12.09.2024 at 12.30 PM for hearing on sentence.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

arvind/-

AFR/NAFR	
CAV DATE	31.08.2024
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