

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No. 838 of 2008

[Against the judgment of conviction and order of sentence dated 14.05.2008 and 16.05.2008, respectively, passed by learned Additional Sessions Judge, Fast Track Court No.III, Hazaribagh, in Sessions Trial No. 362 of 2006]

Bilku Bhogta @ Bilku Bhagat, S/o Late Dubi Bhogta, resident of Village-Jangi, P.S.-Gola, District-Hazaribagh (Now Ramgarh)

... .. **Appellant**

Versus

1. The State of Jharkhand
2. Md. Nayeem Ansari, son of Late Khuda Baks @ Khuda Bux Miyan, resident of Village-Jangi, P.O. Sosokala, P.S.-Gola, District-Ramgarh

... .. **Respondents**

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. S.Y. Warsi, Advocate
Mr. Ranjit Kumar, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.
For the Victim/Resp.No.2 : Mr. Afaq Ahmad, Advocate
Mr. Aaryamann Relan, Advocate

J U D G M E N T

C.A.V. on 16.04.2026

Pronounced on 13/05/2026

1. Heard, Mr. S.Y. Warsi, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Spl.P.P. assisted by Mr. Afaq Ahmad, learned counsel appearing for the respondent No.2.
2. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 14.05.2008 and 16.05.2008, respectively, passed by learned Additional Sessions Judge, Fast Track Court No.III, Hazaribagh, in Sessions Trial No. 362 of 2006, whereby and whereunder the above named sole appellant has been held guilty for the offence under Section 307 of the I.P.C. and sentenced to undergo rigorous imprisonment of seven years.

Factual Matrix

3. Factual matrix giving rise to this appeal is that one Khuda Bux Mian lodged a report on 06.04.2006 at about 06:30 A.M., stating *inter alia* that on the same day at about 05:00 A.M., his son Md. Naim Ansari, aged about 28 years, had gone to discharge nature's call and reached near the house of Moti Lal Bhokta, all of sudden Bilku Bhokta (the present appellant) and Mithai Bhokta having *tangi* in their hands assaulted his son. Thereafter, it was further alleged that the injured was dragged from the courtyard of Moti Lal Bhokta towards their own house passing through the house of Rakesh Bhokta and again assaulted there. The informant's son had sustained injuries on his forehead and other parts of body. The motive behind the occurrence was said that the informant's son used to ply tractor through the lands of the accused persons for which the accused persons were threatening. It is further alleged that on 05.04.2006, in the evening one Dandu Ganjhu and Mandu Bhokta had also given threatening to informant's son. It is also alleged in the course of incident the accused persons snatched Rs.5,000/- from the injured.

On the basis of above *fardebayan* of the informant, Gola P.S. Case No. 33 of 2006 dated 06.04.2006 was registered for the offences under Sections 341, 342, 324, 379, 307/34 of the I.P.C. against Bilku Bhokta and Mithai Bhokta.

4. After completion of investigation, charge-sheet was submitted against above named accused person for the aforesaid offences. After taking cognizance, the learned C.J.M., Hazaribagh, committed the case

to the court of Sessions where S.T. No. 362 of 2006 was registered.

5. The accused persons denied the charges leveled against them and claimed to be tried.

6. In the course of trial altogether seven witnesses were examined by prosecution including the injured Md. Naim Ansari. Apart from oral testimony of witnesses following documentary evidence has been adduced by defence:-

Exhibit-1-Signature of Ahsanul Haque on the seizure list

Exhibit-2-Injury report of Md. Naim Ansari

Exhibit-3-Seizure list

Exhibit-4-Formal F.I.R.

7. On the other hand no oral or documentary evidence has been adduced by defence. The case of defence is denial from occurrence and false implication.

8. The learned Trial Court after scrutinizing the evidence available on record found the presence and participation of accused Mithai Bhokta to be doubtful and acquitted him. The present appellant was held guilty and convicted for the offence under Section 307 of I.P.C. which has been assailed in this appeal.

9. Learned counsel for the appellant has strenuously argued that admittedly there was dispute about ploughing the tractor crushing the field of the appellant by the injured Md. Naim Ansari. On several occasions he was prohibited from going so but did not mend himself. It is proved by the witnesses that the injured was assaulted by Mithai Bhokta and no specific role has been attributed against the present

appellant. The learned Trial Court ignoring the evidence on record acquitted the accused Mithai Bhokta and convicted the present appellant. In the statement under Section 313 of Cr.P.C. of both the accused persons a common question was asked as under:-

“आपके विरुद्ध साक्ष्य है कि आप अन्य अभियुक्त के साथ मिलकर जान मारने की नियत से दिनांक 06.04.2006 को प्रातः 05:00 बजे सूचक खुदा बख्श के पुत्र नईम अंसारी पर टांगी से हमला किये जिससे वह गंभीर रूप से जखमी हो गया क्या कहना है।”

10. The above question was answered negative by both the accused persons. No other question showing exclusive assault given to the informant by the present appellant has been put on record even injured Md. Naim Ansari (P.W.-4) has not stated about the specific overt act of the present appellant in assaulting. In spite of that the co-accused was acquitted on the basis of same evidence. Therefore, impugned judgment suffers from serious error of law and based upon beyond the weight of evidence. It is further submitted that the injured Md. Naim Ansari has sustained two incised wounds on his scalp and forehead which was opined to be grievous in nature and he allegedly remained under treatment for 20-25 days. Therefore, in the entire spectrum of the facts and circumstances under which the occurrence took place, the offence under Section 307 of the I.P.C. is not attracted in this case due to lack of required intention and knowledge to constitute the said offence. At best the nature of injury shows to be grievous caused by sharp cut weapon it falls under Section 326 of the I.P.C.

In the alternative, it is argued that the appellant has remained in custody during trial and post conviction for about 1 year 08 months and

has sufficiently been punished for his guilt. The occurrence is of the year 2006, the appellant has undergone the agony of trial for about two decade, hence, his sentence may be reduced to imprisonment already undergone along with some fine/compensation.

11. On the other hand, the learned Spl.P.P. assisted with learned counsel for the victim/respondent No.2, refusing the aforesaid contentions raised on behalf of the appellant has submitted that the victim/injured (P.W.-4) has categorically proved the actual participation of present appellant in assaulting him by use of *tangi*. He has also proved that he sustained head injuries extending towards his ear and eye, his eyesight of one eye has been lost due to said injuries. He has undergone treatment up to month in R.I.M.S., Ranchi. The evidence of P.W.-4 further finds corroboration from his injury report proved by Dr. Ajit Kumar (P.W.-6). There is no reason to disbelieve the evidence of injured eye-witness. Moreover, the incident took place in the early morning and no dispute about identity can be raised. The learned Trial Court has taken all the aspect of the case and properly appreciated the evidence available on record, while arriving at conclusion about the guilt of the present appellant. There is no illegality or infirmity in the impugned judgment and order calling for any interference. This appeal is devoid of merits and fit to be dismissed.

12. I have gone through the record of the case along with impugned judgment in the light of contentions raised on behalf of both the parties. The only point for determination in this appeal is as to whether the impugned judgment and order of conviction and sentence suffers from

any serious error of law calling for any interference in this appeal.

13. Before adverting to imparting my verdict on above point, it is desirable to take brief resume of ocular testimony of witnesses examined during trial.

P.W.-4-Md. Naim Ansari is the sole injured in this case. According to his evidence, on 06.04.2006 at about 05:00 A.M., he was going to discharge nature's call in the way Bilku Bhokta and Mithai Bhokta armed with *tangi* intercepted him and took away dragging towards the courtyard of Moti Lal Bhokta and started assaulting by *tangi* due to which he sustained injuries on his left hand and back side of head and fell down and his Rs. 5,000/- were also snatched by the accused persons. The accused persons again dragged him towards the courtyard of Ramesh and brought to their own house and again assaulted him and fled away thinking that this witness has died. He became unconscious and was admitted to R.I.M.S., Ranchi by family members where he got consciousness. He has also undergone treatment for 25 days in R.I.M.S., Ranchi, thereafter, he also got his treatment of eyes and orthopedic doctor for 15 days. There is nothing in his cross-examination to disbelieve or discard his above testimony.

P.W.-1-Ahsanul Haque has also claimed to come out from his house after hearing *hulla* and saw that Bilku Bhokta and Mithai Bhokta were assaulting to Md. Naim Ansari by *tangi*. The accused persons dragged the injured towards their courtyard. He saw injuries on forehead, eyes and back side of head and left hand. The injured was brought to hospital for treatment. He has also proved his signature on

seizure list of blood stained soil seized by police.

P.W.-2-Mumtaz Ansari has also went towards the place of occurrence after hearing *hulla* and saw that Bilku Bhokta and Mithai Bhokta were assaulting by *tangi* to Md. Naim Ansari who has sustained injuries on his forehead, eyes and he has claimed to see the occurrence himself.

P.W.-3-Khuda Bux Ansari is the informant-cum-father of the injured. He has also proved the contents of his *fardbeyan* and deposed as an eye-witness of the occurrence. He also heard *hulla* and went towards the place of occurrence and saw that his son was dragged towards the house of accused persons who assaulted him by *tangi*. His son became unconscious then he was brought to hospital and further to R.I.M.S., Ranchi. There is nothing in his cross-examination to disbelieve his testimony.

P.W.-5-Bikiya Devi also heard *hulla* and came out from her house in the courtyard then saw that Bilku Bhokta was assaulting to Md. Naim Ansari on head but she could not identify the weapon.

P.W.-6-Dr. Ajit Kumar has examined the injured on 06.04.2006 at about 06:30 A.M. and found following injuries:-

- (A) Cut injury right frontal and facial area 4" x 1/1/2" x 1/2"
- (B) Cut injury left scalp 2/1/2" x 1/1/2" x 1/2"
- (C) Abrasion left leg

Above injuries A & B caused by sharp cut weapon and opined to be grievous in nature. Injury C is simple in nature caused by hard blunt object. He has proved the injury report marked as Exhibit-2.

P.W.-7-S.I., Nageshwar Prasad Singh is the Investigating Officer of this case. According to his evidence on 06.04.2006, he was posted as Officer-in-charge at Gola, P.S. At about 05:15 A.M., information was received that in village Jangi some occurrence of assault has taken place. He went to the place of occurrence where *fardebayan* of informant Khuda Bux Ansari was recorded by him. He has recorded re-statement of the informant and also statement of injured and other witnesses. He visited the place of occurrence and inspected the same place of occurrence which is situated in village Jangi near the house of Moti Lal Bhokta. The first occurrence took place in the courtyard of Moti Lal Bhokta where injured Md. Naim Ansari was assaulted thereafter, Md. Naim Ansari was passing through the house of Ramesh Bhokta brought towards the house of accused persons. He also noticed blood stains from where the injured was dragged. He also noticed blood stains on the wall of house of Moti Lal Bhokta. He also seized slipper and blood stain soil from the place of occurrence. A seizure list was prepared in presence of witnesses marked as Exhibit-3. He recorded the statement of witnesses Ahsanul Haque, Mumtaz Ansari, Khuda Bux Ansari & Bikiya Devi. He has further proved the formal F.I.R. as Exhibit-4. After finding sufficient evidence he submitted charge-sheet against the accused.

In the case of *Hari Singh versus Sukhbir Singh & Ors. reported in (1988) 4 SCC 551*, the Hon'ble Apex Court has held in para 7 as under:-

“.....*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."

14. From the discussion of aforesaid evidence of witnesses and the nature of injuries sustained by the injured, it is crystal clear that two sharp cut injuries have been sustained by the injured on vital part of body. The injured has undergone his treatment for about one month. The injuries were not found to be likely to cause death in ordinary course of nature rather the same was grievous in nature. The intention/knowledge as required to constitute the offence under Section 307 of the I.P.C., appears to be lacking in the instant case, as the circumstances proved by the witnesses including the injured nothing prevented to the appellant to cause such injury which might have resulted in instantaneous death of the deceased. The force even of *tangi* has been slightly used with a view to teach him a lesson. Therefore, the injuries have been voluntarily caused by sharp cut weapon by the appellant to the injured as such the offence committed by the appellant comes under Section 326 of the I.P.C. instead of Section 307 of the I.P.C.

The defence plea that one of the co-accused has been acquitted

does not give a licence or any right to another accused to be acquitted in case where there are direct and specific allegations against him. In the instant case, the prosecution has not challenged the acquittal of another co-accused. Therefore, the judgment of learned Trial Court in respect of co-accused has become final.

15. In view of above discussion and reasons, the conviction of appellant for the offence under Section 307 of the I.P.C. is altered and modify to the offence under Section 326 of I.P.C. It further transpires that it was the first offence of the appellant and he was never convicted for any offence as is apparent from the impugned judgment. More than 20 years have elapsed from the date of commission of the alleged offence. Therefore, considering the nature of offence committed by the appellant, his age, character and antecedent, it appears expedient in the ends of justice to award him sentence of imprisonment already undergone by him i.e., 1 year 6 months during the trial of the case.

16. The appellant is further directed to pay compensation of Rs.25,000/- to the injured, Md. Naim Ansari or his dependents, in order to meet the ends of justice. The compensation amount of Rs.25,000/- shall be deposited before the concerned Trial Court/successor within two months from the date of this judgment, failing which the learned Trial Court shall take all necessary steps to realize the compensation amount from the appellant. The compensation amount, when realized, shall be paid to the victim after proper identification.

17. In the result, the conviction of the appellant for the offence under Section 307 of the I.P.C. is set aside and he is found guilty for the

offence under Section 326 of the I.P.C. His sentence is also modified as stated above. Accordingly, this appeal stands **disposed of**.

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

19. 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.)

*Jharkhand High Court
Dated 13/05/2026
Arpit/ N. A. F. R.
Uploaded on 15/05/2026*