

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 744 of 2008**

[Against the Judgment of conviction dated 20.06.2008 and Order of sentence dated 23.06.2008 passed by learned Addl. Judicial Commissione- XXth, Ranchi in Sessions Trial No. 608 of 2002]

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1. Nasimul Ansari, son of Sharful Haque,
 2. Nafar Ansari,
 3. Shafia @ Safique Ansari, both are sons of Mansoor Ansari,
- All are residents of Village-Jhikpur Dumri, P.O.-Charki Dumri, P.S. Mander, Dist.-Ranchi

... .. **Appellants**

Versus

The State of Jharkhand

... .. **Respondent**

For the Appellants : Mr. A.K. Sahani, Advocate
For the Resp. State : Mr. Rajesh Kumar, APP
For the Informant : Mr. Dharmendra Kumar Malityar, Adv.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

CAV On 07/05/2026

Pronounced On 09/06/2026

Per- Pradeep Kumar Srivastava, J.

1. The instant criminal appeal is directed against the Judgment of conviction dated 20.06.2008 and Order of sentence dated 23.06.2008 passed by learned Addl. Judicial Commissioner- XXth, Ranchi in Sessions Trial No. 608 of 2002, whereby and whereunder, the appellants have been convicted for the offences under Sections 307/341 of the I.P.C. and sentenced to undergo R.I. for five years under Section 307 of the IPC and R.I. for one month for the offence under Section 341 of the I.P.C. Both the sentences were directed to run concurrently.
2. I have already heard learned counsel for the appellants as well as learned A.P.P. assisted by learned counsel appearing for the Informant.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that on 13.04.2000, at about 6:00 am, informant's father proceeded from his house to go to Ranchi via

Biju Para on his bicycle. It is alleged that at about 9:30 am, informant got message that Nafar Ansari, Nasimul Ansari and Shafia @ Safique Ansari have assaulted to his father by fire-arm and stones and he has been admitted in Ranchi Hospital for treatment. The motive behind the occurrence is alleged that one Jafar Ansari was murdered and, in that case, informant's uncle Anwar Ansari is also an accused, hence, due to above enmity, the accused persons might have caused injuries to his father.

4. On the basis of above information, F.I.R. was registered, for the offence under Section 341, 323, 324, 307 read with Section 34 of the I.P.C. and Section 27 of Arms Act. After completion of investigation, charge sheet was submitted against above named accused persons for the offences under Sections 341, 323, 324, 325, 307/34 of IPC.
5. The case was committed to the Court of Sessions, where S.T. No. 608 of 2002 was registered.
6. Charges for the offence under Section 323/34, 324/34, 341/34 and 307/34 of the I.P.C. were framed and read over and explained to the accused persons to which, they did not plead guilty and claimed to be tried.
7. In order to substantiate the aforesaid charges, altogether 8 witnesses were examined by the prosecution.

P.W.-1	Shafiuddin Ansari
P.W.-2	Sharafat Ansari
P.W.-3	Nand Kishore Singh (Seizure List Witness)
P.W.-4	Eqbal Ansari
P.W.-5	Ali Buksh Ansari (Informant)
P.W.-6	Nabi Hussain (Victim)
P.W.-7	Sanjay Kumar, Investigating Officer
P.W.-8	Dr. Vir Kumar Jain

8. Apart from oral testimony of the aforesaid witnesses, following documentary evidence has also been adduced by the prosecution: -

Ext.-1	Seizure List
Ext.-2	Fardbeyan of Ali Buksh Ansari
Ext.-3	Signature of Nabi Hussain on his fardbeyan

Ext.-4 Formal F.I.R.
 Ext.-1/1 Signature on seizure list
 Ext.-3/1 Fardbeyan of Nabi Hussain
 Ext.-5 Injury Report

9. On the other hand, the case of the defence is denial from occurrence and false implication due to previous enmity. Further no oral or documentary evidence has been adduced by the defence.

Submissions on behalf of appellants: -

10. Assailing the impugned judgment of conviction and sentence, the learned counsel for the appellants has submitted that except the injured Nabi Hussain (P.W.-6), there is no other eye witness of the occurrence. Other witnesses of facts namely P.W.-1 Shafiuddin Ansari, P.W.-2 Sharafat Ansari have been declared hostile by the prosecution. P.W.-3 Nand Kishore Singh is a witness of seizure list and P.W.-4 namely Eqbal Ansari is also hearsay witness from the informant. The informant Ali Baksh Ansari (P.W.-5) is admittedly not an eye witness of the occurrence. P.W.-7, S.I., Sanjay Kumar is the Investigating Officer and P.W.-8 Dr. Vir Kumar Jain has proved the injury report of the injured Nabi Hussain. The sole injured Nabi Hussain (P.W.-6) has stated about sustaining two fire arm injuries caused by appellant No. 2 (Nafar Ansari) and there is no specific allegation against appellant No. 1 (Nasimul Ansari) and appellant No. 3 (Shafia @Safique Ansari) showing any kind of involvement in the alleged occurrence except presence on the spot. It is further submitted that fardbeyan of injured Nabi Hussain (P.W.-6) was also recorded at RIMS, Ranchi by the local police, therefore, there are two fardbeyans in this case, which are not consistent with each other and hit by the provision of Section 162 of the Cr.P.C. It is further submitted that there are material contradictions and discrepancies in the evidence of P.W.-1, P.W.-2 and P.W.-5 regarding information of occurrence received by them and sending the injured to Hospital. Therefore,

the learned trial Court has committed serious error of law in believing the evidence of P.W.-1, P.W.-2 and P.W.-5. It is also submitted that injury report of the injured Nabi Hussain proved by the Dr. Vir Kumar Jain (P.W.-8) is also not corroborative of the factum of injury caused to injured as stated by him (P.W.-6) during trial. Therefore, impugned judgment of conviction and order of sentence is absolutely unwarranted and based upon beyond the weight of evidence available on record, which is fit to be set aside and this appeal may be allowed.

Submissions on behalf of the State

11. On the other hand, learned A.P.P. assisted by learned counsel for the informant has opposed the aforesaid contentions raised on behalf of the appellants and submitted that there are un-rebutted clinching evidence of the injured himself which finds corroboration from medical treatment report proved by P.W.-7 Dr. Veer Kumar Jain and also corroborated by the attending circumstances of the case, as proved by other witnesses, who immediately heard about the occurrence and brought him to Hospital for treatment. The investigating officer has also proved the place of occurrence and involvement of present appellants in the alleged offence. The learned trial Court has committed no error of law in arriving at conclusion about the guilt of the appellants and rightly sentenced them, which does not call for any interference in this appeal. This appeal is devoid of merits and fit to be dismissed.
12. I have gone through the record of the case along with the impugned judgment in the light of rival contentions raised on behalf of the parties.
13. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellants suffers from any error of law, which requires any interference in this appeal?”

Analysis, reasons and decision:

14. It appears that F.I.R. was lodged by Ali Baksh Ansari (P.W.-5), son of the injured and his fardbeyan was recorded by S.I. Sanjay Kumar, Officer-in-Charge, Mander Police Station, at about 12:30 hours on 13.04.2000 at Mander Police Station. Admittedly, he is not an eye witness of the occurrence but received information from villagers that the present appellants have shot fire arm to his father and he has sustained severe injuries and admitted to Ranchi, Hospital. He also corroborates the above fact during examination as a witness during trial.

It further transpires that the fardbeyan of injured Nabi Hussain (P.W.-6) was also recorded at RIMS, Ranchi in surgical ward, Bed No. 226 by A.S.I., Indrajit Singh of Mander Police Station on 18.04.2000. At that time, the F.I.R. was already registered. Therefore, the statement of injured will be treated as statement recorded under Section 161 Cr.P.C. and cannot form basis of F.I.R. and admittedly this fardbeyan is not basis of F.I.R. and simply objected by the learned counsel for the appellant that there was two F.I.Rs, which is not true.

15. Before adverting to adjudicate the above point, it is necessary to take brief resume of the evidence of the witnesses examined in this case.

16. The star witness of the case is the injured himself who has been examined as **P.W.-6 Nabi Hussain**. According to his evidence, his statement was recorded by police at RMCH, Bariyatu by A.S.I. Indrajit Singh of Mander Police Station, while he was admitted at Bed No. 226, at surgical ward at RIMS, Ranchi. He has further deposed that on 13.04.2000, in the morning, at about 6:30 am, he proceeded from his house to go to Ranchi, when he reached near slope of Koyal River, in the meanwhile, Nafar Ansari armed with Revolver, Shafia with stones and Nasimul with stones were standing and Chand Ansari standing near the river bank. While, this witness was proceeding towards

slope of the river, Nafar Ansari shot fire arm which caused injuries at his left chest. Then, he fell down from his cycle, thereafter, Shafia and Nasimul assaulted on his mouth by stone and Nafar also started assaulting by Butt of the Revolver causing severe head injuries. This witness was under semi-consciousness, when the accused persons fled away, he got up after some time and saw his co-villagers Shafiuddin and Sharafat were coming also on bicycle, who helped him and brought to Bakhar Basti and also informed to his son Ajmul Ansari. His son approached with some villagers in a Maruti vehicle and brought him to Police Station, thereafter, he was sent immediately to RMCH for treatment. He has further stated that his teeth were broken due to assault given on mouth and face. He was treated at Hospital about 52-53 days. He has proved his fardbeyan recorded by A.S.I., Indrajit Singh as Exhibit-3.

In his cross-examination, this witness admits that when his son brought him to police station, his statement was not recorded, rather, immediately sent to Hospital for treatment and in the way to RIMS Ranchi, he disclosed about the occurrence to his son Ajmul Ansari. He further reiterates that the shot was fired at close range and only one fire arm injury caused to him.

This witness has been cross-examined at length but no material contradiction or discrepancies have been crept to disbelieve or discard his testimony. This witness has denied the suggestion of defence that some robbers have assaulted him and he lodged this case against accused persons due to previous enmity because his brother is also accused in murder case of Jafar.

P.W.-8 Dr. Vir Kumar Jain, professor of Surgical Ward, RIMS, Ranchi has examined the injured Nabi Hussain, who was admitted vide registration No. ERS/1021 dated 13.04.2000, at about 10:25 am and found following injuries on his person:-

- i. Lacerated wound about 2 cm diameter with charred margins at left lower back about 16cm above left iliac crest. Probably wound of entry.
- ii. Clinically fracture of mandible.
- iii. Incised wound about 6cm x ½ cm x scalp deep in right parietal area.
- iv. Lacerated wound at chin 2"x1/2"x1/2" size.

Age of injuries was within 6 hours.

In para 3, he has further stated that he was of the opinion that injury No. (ii) and (iv) were caused by hard and blunt substance whereas injury No. (i) was caused by fire arm and injury No. (iii) was caused by sharp cutting weapon.

Nature of injuries:-

Injuries Nos. (i), (iii) and (iv) were simple whereas injury no. (ii) was grievous in nature.

In para 5, he has further said that he has also seen X-ray report of the injured and it was suggested therein that "fracture of anterior portion of mandible, extending on left side is seen. A large hazy opacity is seen in the upper abdomen right side at the level of L-2 vertebra and 2-1/2 anterior to L-2 vertebra" X-ray place no. was 875 dated 13.04.2000, 1118 dated 19.04.2000 and 1274 dated 2.5.2000 and thus, opinion about the injuries was also confirmed by the X-ray report. He has proved the photocopy of injury report of the injured which has been marked as Ext.-5

P.W.-1 Shafiuddin Ansari and P.W.-2 Sharafat Ansari have simply stated that they saw Nabi Hussain in injured condition lying near river, then they left him at Bakhar Basti, from where, the villagers took him to Hospital.

P.W.-3 Nand Kishore Singh has only proved his signature on seizure list of blood-stained soil seized by the Police at the place of occurrence. At that time, he was proceeding from the place of occurrence.

P.W.-4 Eqbal Ansari is the son of Injured Nabi Hussain. At the time of occurrence, he was at home and his father had gone to Ranchi by his cycle. He got information from P.W.-1 and P.W.-2 that his father has been injured receiving fire-arm injury, then he along with villagers and his elder brother

Ali Baksh brought his father to Hospital. He has further stated that his uncle Anwar Ansari has been falsely implicated in the case of murder and in that revenge, this occurrence has taken place.

In his cross-examination, he admits that Jafar Ansari was murdered who happened to be brother of accused Nafar Ansari in which uncle of this witness is an accused. Shafia is also brother of accused Nafar. Admittedly, this witness is not an eye witness of the occurrence.

P.W.-5 Ali Baksh Ansari is the informant-cum-son of the injured. He has proved the contents of his fardbeyan and stated that his father was assaulted by Revolver and stones and he got knowledge from Sharafat and Shafiuddin. He has proved his signature on his fardbeyan as Exhibit-2.

In his cross-examination also, this witness affirmed that he is not an eye witness of the occurrence. He also admits that in the murder case of Jafar Ansari, his uncle Anwar Ansari is an accused. There is nothing else in his cross-examination.

P.W.-7, S.I., Sanjay Kumar is the investigating officer of this case. According to his evidence, on 13.04.2000, at about 10 am, he got information through rumor that in village Dumri, some occurrence of assault has taken place. He entered the station diary and along with A.S.I. Indrajit Singh went to village Dumri and reached there about 12:30 pm, where he recorded fardbeyan of Ali Baksh Ansari, which is previous Ex.-2. He assumed charge of investigation itself. He has further proved the formal F.I.R. as Ex.-4. He visited the place of occurrence and also seized blood-stained soil and seizure list was prepared in the presence of witness, which is marked as Ex.-1/1. He has also interrogated with the witness Eqbal Ansari, Shafiuddin Ansari and Sharafat Ansari, etc. The statement of injured was recorded by A.S.I. Indrajit Singh at RMCH, Hospital, which is previous Ext. 3/1. He also issued requisition slip for injury report of the injured to Chief Medical Officer,

RMCH, Ranchi and it was informed that original injury report has been taken by someone, hence, he issued duplicate injury report issued by Dr. V.K. Jain. He inspected the place of occurrence on identification of Sharafat Ansari (P.W.-2). He found profuse blood stained at the place of occurrence which was seized in presence of Nand Kishore Singh (P.W.-3). After collecting sufficient evidence against the accused persons, he submitted charge sheet. The attention of this witness has been drawn towards the statement under Section 161 Cr.P.C. of witness Sharafat Ansari P.W.-2 who has disclosed before him that he had gone to bring Ice from Biju Para and when reached near Koyal River, then saw Nabi Hussain was lying injured and he brought him by cycle to village Bakhar Basti. He has also stated that Nabi Hussain told him that Nafar, Shafia and Nasimul assaulted him by fire arm or stone. The attention of this witness has also been drawn towards statement under Section 161 Cr.P.C. of witness Shafiuddin, P.W.-1 who has stated before him that when he reached near Koyal River slope along with Sharafat (P.W.-2) then, found Nabi Hussain in injured condition. He along with Sharafat brought to Bakhar Basti and he has also stated that Nabi Hussain told them that Nafar, Shafia and Nasimul have assaulted him by fire arm and stone.

In his cross-examination, he admits that this witness has not found empty cartridge from the place of occurrence and blood-stained stone was also not found. Statement of injured was recorded after 5 days of occurrence. There are no substantial discrepancies in the cross-examination of this witness reflecting any infirmity in the investigation.

17. From the aforesaid discussion of evidence led by the prosecution, it is crystal clear that there was enmity between the parties and the informant's uncle Anwar Ansari was accused in murder of Jafar Ansari, who happened to be brother of accused Nafar Ansari. This fact as a motive has been projected by prosecution and defence. It is time tested maxim that enmity is double edged

weapon from one end it supplies motive for commission of offence and from another end, it supplies motive for false implication. **In Akalu Ahir & Ors. Vs. Ramdeo Ram, (1973) 2 SCC 583**, it has been held by Hon'ble Apex Court that 'Enmity as usual is a double-edged weapon, providing motive both for the offence as well as for false implication.

In the instant case, the prime witness is P.W.-6, the injured Nabi Hussain himself. Although, he has stated that fire arm injury was caused by Nafar Ansari (Appellant No. 2) from behind the back, thereafter, Nafar Ansari assaulted him by Butt of Revolver. This witness has also stated that other two appellants namely appellant No. 1 Nasimul Ansari and appellant No. 3 Shafia @ Safique Ansari were armed with stone and assaulted him on face and mouth, due to which, five teeth were broken but this injury is not available and mentioned in the injury report of this witness. Moreover, there is no injury at all on face and mouth, rather, one lacerated wound has been found on chin of small size measuring 2" x 1/2" x 1/2" which may be caused by falling from his bicycle and not by assaulting through stone by two accused persons i.e. appellant No. 1 Nasimul Ansari and appellant No. 3 Shafia @ Safique Ansari. Other injuries sustained by this witness clearly indicates that injury No. (i) was fire-arm injury above left iliac chest probably wound of entry. The next injury caused by Butt of Revolver was also found on right partial area and fracture of mandible as injured No. (ii) and (iii). Admittedly, the fire arm injury and the head injury were dangerous to life and the injured was under treatment about two months at RIMS, Ranchi. Therefore, evidence of P.W.-6 finds corroboration from his medical treatment report proved by Dr. V.K. Jain (P.W.-8).

18. The appellant No. 1 namely Nasimul Ansari and appellant No. 3 Shafia @ Safique Ansari have been convicted with aid of Section 34 of the IPC but from the factual aspects of the case, as disclosed by the injured witness P.W.-

6, who is the sole eye witness of the occurrence, the role attributed to them in assault by stone on mouth does not find corroboration from injury report of the injured (P.W.-6). Therefore, their participation in the alleged occurrence appears to be doubtful although they might have been present at the place of occurrence. It appears that the learned trial Court has failed to take into account the aforesaid fact, while considering the evidence of informant showing assault given to him on mouth by stone by appellant No. 1 and appellant No. 3 and committed serious error of law in convicting the above two appellants namely Nasimul Ansari and Shafia @ Safique Ansari.

19. In view of the aforesaid discussions and reasons, I find that the charge under Section 307 of the IPC has been conclusively proved against appellant No. 2 Nafar Ansari, who has not only shot fire against the injured Nabi Hussain causing injuries on his back side of left chest but also assaulted by Butt of Revolver on head and also fracture injury on mandible with intention to kill him. So far as the appellant No. 1 and 3 are concerned, there is lack of evidence showing their involvement in assaulting the injured by stone on his mouth breaking his teeth as claimed by the injured in his evidence.

So far as charge under Section 341 of the IPC is concerned, there is no evidence that injured was wrongfully restrained by any of the appellants, hence, conviction and sentence under Section 341 of the IPC is not justifiable, and set aside.

20. In result, this **appeal is partly allowed** in respect of appellant No. 1 namely Nasimul Ansari and appellant No. 3 namely Shafia @ Safique Ansari, their conviction and sentence **is hereby set aside**.

The conviction and sentence of appellant No. 2 namely Nafar Ansari for the offence under Section 307 of the IPC is hereby **upheld and confirmed**.

21. Consequently, the appellant No. 1 namely Nasimul Ansari and appellant No. 3 namely Shafia @ Safique Ansari are acquitted from the charges leveled against them. The above two appellants are on bail, hence, they are discharged from the liabilities of bail bonds. The sureties are also discharged.

The suspension of sentence granted to appellant No. 2 namely Nafar Ansari during pendency of this appeal, is hereby cancelled and the appellant No. 2 namely Nafar Ansari is directed to surrender before the learned Trial Court within two months from the date of this Judgment and undergo the remaining period of sentence awarded to him by the learned trial Court, failing which, the learned trial Court shall take all coercive steps for arrest and detention of the appellant namely Nafar Ansari for sustaining the remaining period of sentence awarded to him.

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

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

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 09/06 /2026

Basant/-N.A.F.R.

Uploaded on 10/06/2026