

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.739 of 2015**

**CNR No. BRHC010443662015**

Arising Out of PS. Case No.-48 Year-2001 Thana- KARJA District- Muzaffarpur

Nandu Thakur, Son of Late Bhikar Thakur, Resident of village -  
Raksadih, P.S. Karja, District - Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

For the Appellant/s : Mr. Amit Anand, Advocate  
For the Respondent/s : Mr. Abhay Kumar, APP

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

**Date : 13-10-2026**

Heard the parties.

**2.** The present appeal has been preferred against the judgment of conviction and order of sentence dated 06.11.2015 passed by the learned Additional Sessions Judge-2nd, Muzaffarpur in Sessions Trial No.295 of 2002 arising out of Karja P.S. Case No.48 of 2001, whereby the appellant has been convicted for the offences punishable under Sections 307/34 and 341 of the Indian Penal Code (in short 'IPC') and sentenced to undergo rigorous imprisonment for three years along with a fine of Rs. 3,000/- for the



offence punishable under Sections 307/34 IPC and rigorous imprisonment for one month for the offence punishable under Section 341 IPC. Both the sentences have been directed to run concurrently.

**3.** The prosecution case, in brief, is that on 07.06.2001, at about 11:00 a.m., the informant, Shambhu Mahto, was returning to his house after taking certain articles from his kirana shop. When he reached near the place of occurrence, the accused persons allegedly intercepted him and threatened to kill him. It is alleged that Fanindra Thakur fired at the informant with a firearm, intending to kill him, but the bullet struck his right thigh. The prosecution further alleged that the appellant, Nandu Thakur, caught hold of the informant from behind and that Fanindra Thakur fired at him. On hearing the sound of firing, villagers assembled at the place of occurrence, whereupon the accused persons fled away.

**4.** On the basis of the *fardbeyan* of the informant, the police registered the case and commenced investigation. Upon completion of the investigation, the police submitted a



charge-sheet against Fanindra Thakur and Nandu Thakur for the offences punishable under Sections 341, 324, 504 and 307/34 IPC and Section 27 of the Arms Act. The learned Magistrate took cognizance of the offences on 19.04.2002 and subsequently committed the case to the Court of Sessions on 16.05.2002.

**5.** During the pendency of the trial, co-accused Fanindra Thakur died, and the proceeding against him was dropped on 24.01.2005. The appellant alone faced trial. Charges were framed against him under Sections 307/34, 341 and 504 IPC. Upon conclusion of the trial, the learned court below acquitted the appellant of the charge under Section 504 IPC but convicted and sentenced him for the offences punishable under Sections 307/34 and 341 IPC. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal.

**6.** Learned counsel appearing on behalf of the appellant submitted that the impugned judgment is unsustainable in law and on facts, as the learned trial court



has failed to appreciate the evidence in its proper perspective. It is contended that the specific allegation of firing is against the deceased co-accused, Fanindra Thakur, whereas the allegation against the appellant is essentially that he caught hold of the informant from behind. It is argued that the prosecution has failed to establish beyond reasonable doubt that the appellant shared the common intention to commit murder.

**7.** It is further submitted that the prosecution witnesses have made inconsistent statements regarding the time and manner of occurrence, while P.Ws. 5 and 7 have not supported the prosecution case. P.Ws. 6 and 8 are not eyewitnesses to the actual assault. It is also contended that the IO has not been examined, thereby depriving the defence of an opportunity to confront the prosecution witnesses with their previous statements and to bring on record material contradictions and omissions. Learned counsel places reliance upon **Gambhir Singh v. State of Uttar Pradesh**, reported in **2025 SCC OnLine SC**, **Munna Lal v. State of Uttar Pradesh**, reported in **(2023) 18**



**SCC 661**, and **State of Himachal Pradesh v. Shamsher Singh**, reported in **2025 SCC OnLine SC 807**.

**8.** *Per contra*, learned APP appearing for the State submitted that the informant and other prosecution witnesses have consistently stated that the appellant caught hold of the informant and that Fanindra Thakur fired at him. It is argued that the testimony of the injured informant is corroborated by the medical evidence and that the learned trial court has rightly convicted the appellant. It is further submitted that the non-examination of the IO, by itself, cannot be a ground for discarding otherwise reliable prosecution evidence.

**9.** I have heard learned counsel for the appellant and learned APP for the State and have carefully perused the materials available on the record.

**10.** The prosecution has examined altogether nine witnesses. **P.W. 1** is Ganesh Mahto; **P.W. 2** is Shambhu Mahto, the informant and injured witness; **P.W. 3** is Fudani Mahto; **P.W. 4** is Ramdeo Mahto; **P.W. 5** is Jagadish Paswan; **P.W. 6** is Shiv Govind Mahto; **P.W. 7** is Rabindra



Singh; **P.W. 8** is Kailash Pandit; and **P.W. 9** is Dr. Satish Kumar, who examined the injured informant. The signature of the informant on the fardbeyan has been marked as **Exhibit 1.**

**11. P.W. 1,** Ganesh Mahto, has deposed that the occurrence took place at about 11:00 a.m. He stated that the appellant caught hold of Shambhu Mahto and that Fanindra Thakur fired at the informant. According to him, the shot was aimed at the chest of the informant but struck his right thigh. In his cross-examination, he supported the allegation of firing and the injury sustained by the informant.

**11.1.** The testimony of this witness supports the prosecution version regarding the occurrence and the role attributed to the appellant. However, the question remains whether the act attributed to the appellant, considered along with the other evidence, establishes the common intention required to sustain his conviction under Sections 307/34 IPC.

**12. P.W. 2,** Shambhu Mahto, is the informant and injured witness. He has stated that on 07.06.2001, at about



11:00 a.m., he was returning home from his shop after taking surf (detergent) and soap. When he reached the place of occurrence, Fanindra Thakur and four or five other persons arrived there. He further stated that a dispute had arisen in connection with a local election, as the accused persons suspected that he and his associates had not voted in their favour.

**12.1.** According to this witness, the accused persons threatened him, the appellant caught hold of him, and Fanindra Thakur fired at him. The bullet struck his right thigh, causing him to fall down. He was thereafter taken to Sadar Hospital with the assistance of the villagers and the police. He also stated that the bullet had not touched his temple.

**12.2.** The testimony of P.W. 2 is material, as he is the injured informant. His presence at the place of occurrence is supported by the medical evidence. Nevertheless, the specific role attributed to the appellant and the allegation of common intention must be examined in the light of the entire evidence and the surrounding



circumstances.

**13. P.W. 3,** Fudani Mahto, has stated that the occurrence took place between 10:00 and 11:00 a.m. near Raksa Chowk, close to a pakar tree, where the informant had his shop. According to him, the informant was returning home after taking certain articles from his shop when the appellant and Fanindra Thakur arrived from the western side. He stated that the appellant caught hold of the informant and directed Fanindra Thakur to kill him. Thereafter, Fanindra Thakur fired at the informant, and the bullet struck his thigh, causing him to fall down. In his cross-examination, this witness stated that the occurrence had taken place on account of an election dispute and that he had been examined by the police.

**13.1.** This witness has supported the prosecution allegation regarding the participation of the appellant. However, the reliability of his testimony, particularly with respect to the alleged persuasion and the common intention to commit murder, has to be considered along with the other evidence, including the circumstances brought out during



cross-examination.

**14. P.W. 4,** Ramdeo Mahto, has deposed that the occurrence took place between 9:00 and 10:00 a.m. near the temple of Raksa Dih. According to him, the informant was returning home after closing his shop when the appellant intercepted him near a pakar tree. He further stated that the appellant asked the informant about his father and thereafter told Fanindra Thakur to fire at him. The first shot allegedly missed the informant, while the second shot struck his right thigh. This witness further stated that the informant fell down and was taken to the hospital by the villagers.

**14.1.** The time of occurrence stated by P.W. 4 differs from the time stated by P.Ws. 1 and 2, who placed the occurrence at about 11:00 a.m., and P.W. 3, who placed it between 10:00 and 11:00 a.m. Such a discrepancy, by itself, may not be sufficient to reject the prosecution case. Nevertheless, the testimony of this witness must be considered together with the other circumstances to determine whether the prosecution has established the



appellant's guilt beyond reasonable doubt.

**15. P.W. 5**, Jagadish Paswan, and **P.W. 7**, Rabindra Singh, have been declared hostile. Their testimony, as described in the trial court judgment, does not provide material support to the prosecution case, even during their cross-examination by the prosecution. Their evidence, therefore, does not furnish substantial corroboration of the allegations against the appellant. At the same time, their testimony cannot be treated as automatically destroying the prosecution case, which must be assessed on the basis of the entire evidence.

**16. P.W. 6**, Shiv Govind Mahto, is the father of the informant. He has stated that he was at Lohsari at the time of the occurrence. Upon receiving information about the incident, he reached the place of occurrence and found that his son had sustained a bullet injury on his thigh and was unconscious. He further stated that the persons present there informed him that the appellant had caught hold of the informant and that Fanindra Thakur had fired at him.

**16.1.** Thus, **P.W. 6** is not an eyewitness to the



actual occurrence. His evidence regarding the identity and role of the assailants is hearsay and cannot independently establish the appellant's participation. His testimony may, however, lend support to the subsequent condition of the injured and the fact that he was taken for medical treatment.

**17. P.W. 8,** Kailash Pandit, has stated that upon hearing the sound of firing, he went to the place of occurrence and found the informant injured. In his cross-examination, he stated that the persons present there told him that the bullet had struck the informant. He, therefore, did not claim to have witnessed the actual firing. His testimony supports the fact that the informant was found injured after the sound of firing, but it does not independently establish the identity of the person who fired the shot or the specific role of the appellant.

**18. P.W. 9,** Dr. Satish Kumar, examined the injured informant and found firearm injuries on his right thigh. The medical evidence records wounds of entry on the lateral aspect of the right thigh and corresponding wounds of



exit. The doctor opined that the injuries had been caused by a firearm and were *simple* in nature. He further stated that the injuries were not fatal. In his cross-examination, he admitted that the time of examination had not been mentioned in the injury report.

**18.1.** The medical evidence corroborates the prosecution case to the extent that the informant sustained firearm injuries. However, it does not identify the assailant or establish the common intention allegedly shared by the appellant. The nature of the injuries is a relevant circumstance, but it cannot be treated as conclusive either in favour of or against the applicability of Section 307 IPC.

**19.** It is an admitted position that the IO has not been examined in the present case. The importance of examining the IO depends upon the facts and circumstances of each case. Non-examination of the IO does not invariably render the prosecution case doubtful; however, where the defence is deprived of an opportunity to confront the witnesses with their previous statements or to establish material omissions and contradictions, such non-examination



may cause prejudice to the accused.

**20.** In **Munna Lal Case (Supra)**, the Hon'ble Supreme Court reiterated that the effect of non-examination of the IO has to be examined in the factual context of the case. The Court observed that where the eyewitnesses are not found to be wholly reliable and the IO could have clarified material gaps in the prosecution case, his non-examination may create a lacuna giving rise to reasonable doubt.

**21.** The principle laid down in the aforesaid judgment is not that non-examination of the IO must invariably result in acquittal. Rather, the court must examine whether the omission has caused prejudice to the accused and whether the missing evidence was material for a just determination of the case.

**22.** In the present case, the evidence of P.Ws. 6 and 8 is not direct evidence of the assault, while P.Ws. 5 and 7 have not supported the prosecution case. The testimony of P.Ws. 1 to 4 requires scrutiny regarding the precise role of the appellant and the inference of common



intention. In such circumstances, the examination of the IO could have assisted the court in examining the previous statements of the witnesses, the alleged omissions or contradictions, and other relevant aspects of the investigation.

**23.** The absence of the IO assumes significance only to the extent that it has prevented the defence from testing material aspects of the prosecution evidence. Considered alongside the other circumstances discussed above, this omission is a relevant factor in assessing whether the prosecution has discharged its burden beyond reasonable doubt.

**24.** The central question for consideration is whether the prosecution has established that the appellant shared the common intention to commit murder and, in furtherance of that intention, participated in the criminal act attributed to him.

**25.** The prosecution has attributed the act of firing to the deceased co-accused, Fanindra Thakur. The allegation against the appellant is that he caught hold of the



informant from behind. P.Ws. 1 to 4 have attributed this role to the appellant, and P.W. 3 has additionally stated that the appellant directed Fanindra Thakur to kill the informant.

**26.** It is well settled that common intention under Section 34 IPC may develop at the spur of the moment and may be inferred from the conduct of the accused and the surrounding circumstances. It is not necessary that there should be proof of a prior meeting of minds in the sense of a pre-arranged plan. However, the prosecution must establish that the criminal act was committed in furtherance of the common intention shared by the accused.

**27.** The mere act of catching hold of a person from behind does not, in every case, automatically establish a common intention to commit murder. Its significance depends upon the surrounding circumstances, including whether the accused restrained the victim to facilitate the firing, whether an exhortation to kill is reliably proved, and whether the conduct of the accused demonstrates participation in the criminal act with the requisite intention.

**28.** In the present case, the allegation of catching



hold of the informant is supported by P.Ws. 1 to 4. This evidence cannot be ignored merely because the appellant is not alleged to have fired the weapon himself. At the same time, the prosecution must establish beyond reasonable doubt that the appellant's act was in furtherance of the common intention to commit the offence punishable under Section 307 IPC.

**29.** The Court is, therefore, required to consider the specific role attributed to the appellant, the reliability of the testimony concerning the alleged exhortation, the evidence of the witnesses who did not see the actual assault, the medical evidence, and the effect of the non-examination of the Investigating Officer. The conclusion must emerge from a cumulative assessment of these circumstances rather than from the allegation of catching hold of the informant alone.

**30.** In **Gambhir Singh Case (Supra)**, the Hon'ble Supreme Court reiterated that, irrespective of the gravity or nature of the charge, the prosecution must establish the guilt of the accused by convincing evidence



linking him with the crime beyond all reasonable doubt. The Court emphasised the distinction between a conclusion that an accused **"may be guilty"** and a conclusion that the accused **"must be guilty"** on the evidence adduced.

**31.** The aforesaid principle is fundamental to criminal jurisprudence. Suspicion, however strong, cannot take the place of proof, and the prosecution must establish the essential ingredients of the offence through reliable evidence.

**32.** Applying the aforesaid principle to the present case, it is necessary to distinguish between proof that the informant sustained firearm injuries and proof that the appellant shared the intention to commit murder. The medical evidence establishes the former. The latter must be established through reliable evidence concerning the appellant's conduct and the circumstances in which the firing occurred.

**33.** The statements of P.Ws. 1 to 4 support the prosecution allegation that the appellant caught hold of the informant. However, the testimony of the remaining



witnesses does not provide direct corroboration of the actual assault. The alleged exhortation, the circumstances indicating common intention, and the prejudice arising from the non-examination of the Investigating Officer must be considered together. If, upon such assessment, a reasonable doubt remains regarding the appellant's participation in furtherance of the common intention alleged, the benefit of that doubt must go to him.

**34.** Learned counsel for the appellant has also relied upon **Shamsher Singh Case (Supra)**. In the said judgment, the Hon'ble Supreme Court explained that, for attracting Section 307 IPC, it is not necessary that the injury caused should be grievous or life-threatening. The decisive consideration is whether the act was committed with the intention or knowledge necessary to constitute an attempt to murder.

**35.** The aforesaid judgment makes it clear that the simple nature of the injuries sustained by the informant cannot, by itself, exclude the applicability of Section 307 IPC. The intention or knowledge of the accused must be



gathered from the totality of the circumstances, including the weapon used, the part of the body targeted, the manner of assault, and the conduct of the accused.

**36.** In the present case, the medical evidence establishes firearm injuries on the right thigh of the informant. The allegation of firing is directed against the deceased co-accused, while the appellant is alleged to have caught hold of the informant and facilitated the assault. Therefore, the question is not merely whether the injury was simple, but whether the prosecution has proved that the appellant shared the requisite common intention.

**37.** The principle laid down in **Shamsher Singh Case (Supra)** must, accordingly, be applied to the facts of the present case without treating the medical opinion that the injury was simple as a conclusive ground for acquittal.

**38.** On a careful consideration of the evidence of all the prosecution witnesses, the medical evidence and the submissions advanced on behalf of the parties, it emerges that the occurrence of firing and the injury sustained by the informant are supported by the medical evidence. The



principal issue, however, is whether the prosecution has established beyond reasonable doubt the appellant's criminal liability under Sections 307/34 and 341 IPC.

**39.** The allegation against the appellant is that he caught hold of the informant from behind while the deceased co-accused fired at him. Although P.Ws. 1 to 4 have attributed this role to the appellant, the Court must be satisfied that the evidence establishes the requisite common intention and that the appellant's participation is proved beyond reasonable doubt. The evidence of P.Ws. 6 and 8 is not direct evidence of the actual assault, P.Ws. 5 and 7 have not supported the prosecution case, and the Investigating Officer has not been examined.

**40.** The non-examination of the Investigating Officer, considered in isolation, would not be sufficient to discard the prosecution case. However, where the defence has been deprived of an opportunity to test material contradictions or omissions, and the other evidence leaves a reasonable doubt regarding an essential ingredient of the offence, such omission becomes a relevant circumstance.



The principle explained in **Munna Lal Case (Supra)** requires the Court to examine the actual prejudice caused rather than apply an inflexible rule.

**41.** In the present case, upon an overall assessment of the evidence and the circumstances discussed above, this Court finds that the prosecution has failed to establish beyond reasonable doubt that the appellant shared the common intention to commit murder. The allegation that the appellant caught hold of the informant, in the absence of reliable evidence establishing that such act was done in furtherance of a common intention to commit the alleged offence, is insufficient to sustain his conviction under Sections 307/34 of the IPC.

**42.** Reliance is placed on the judgment of the Hon'ble Supreme Court in **Sanjay Singh v. State of Madhya Pradesh**, reported in **2026 SCC OnLine SC 825**, wherein the Court reiterated that mere presence at the place of occurrence cannot be treated as proof of common intention and that the prosecution must establish, from the evidence and surrounding circumstances, that the accused



shared the common intention and acted in furtherance thereof. Reference may also be made to **Constable 907 Surendra Singh and Another v. State of Uttarakhand**, reported in **(2025) 5 SCC 433**, wherein the Hon'ble Supreme Court reiterated that the prosecution must establish the requisite common intention for attracting Section 34 IPC.

**43.** In the facts of the present case, the evidence, at best, indicates a *similar intention* and does not establish the existence of a common intention to commit murder. The distinction between similar intention and common intention is material, as the former, by itself, does not attract the principle of constructive liability under Section 34 IPC. Consequently, the prosecution has failed to prove the charge against the appellant beyond reasonable doubt, and the appellant is entitled to the benefit of doubt.

**44.** So far as the conviction under Section 341 IPC is concerned, the prosecution was required to establish that the appellant voluntarily obstructed the informant and thereby prevented him from proceeding in a direction in



which he had a right to proceed. Although the prosecution witnesses have alleged that the appellant caught hold of the informant, the finding of guilt must be supported by a reliable assessment of the evidence establishing the ingredients of wrongful restraint. For the reasons discussed above, the evidence, when considered as a whole, does not inspire sufficient confidence to sustain the conviction under Section 341 IPC either.

**45.** In view of the foregoing discussion, this Court finds that the prosecution has failed to establish the charges against the appellant beyond reasonable doubt. The impugned judgment of conviction and order of sentence, therefore, cannot be sustained.

**46.** Accordingly, the judgment of conviction and order of sentence dated 06.11.2015 passed by the learned Additional Sessions Judge-2nd, Muzaffarpur against the appellant, Nandu Thakur, for the offences punishable under Sections 307/34 and 341 IPC are hereby set aside. The appellant is acquitted of the aforesaid charges by extending to him the benefit of doubt.



**47.** The present appeal stands allowed.

**48.** Since the appellant was on provisional bail, he is discharged from the liabilities of his bonds and sureties, subject to compliance with Section 437-A of the CrPC as applicable.

**49.** Fine, if any, deposited shall be returned to the appellant.

**50.** Let a copy of this judgment be communicated to the learned trial court forthwith, along with TCR.

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

Sanjeet/-

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