

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

**CRIMINAL APPEAL No.2753 of 1998**

**Between:-**

**KAMLESH PATEL S/O BHAIYALAL  
PATEL AGED ABOUT 30 YEARS,  
R/O VILLAGE, GAHIRA, POLICE  
STATION, GOVINDGARH, REWA  
(M.P.)**

**.....APPELLANT**

**(BY SATISH CHATURVEDI, ADVOCATE )**

**AND**

**THE STATE OF MADHYA  
PRADESH.**

**...RESPONDENT**

**(BY SHRI TEEKARAM KURMI, PANEL LAWYER)**

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**RESERVED ON - 21/03/2022**

**DELIVERED ON - 29/06/2022**

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*This appeal coming on for final hearing this day, Justice Dinesh Kumar Paliwal, passed the following:*

## **JUDGMENT**

Appellant has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) being aggrieved by the judgment of conviction and order of sentence dated 11.11.1998 passed by III<sup>rd</sup> Additional Sessions Judge, Rewa in ST No. 202/96 (State of MP Vs Kamlesh Patel) whereby the appellant/Kamlesh Patel has been convicted for the offence punishable under Section 307 of IPC and has been sentenced to undergo R.I. for five years and fine of Rs. 500/- in default of fine further three months R.I.

2. Prosecution story, in short, is that on 16.03.1996 at around 9:30 am, Rajmani Patel (PW-1) resident of village Gahira who was brought at Police Sation Govindgarh lodged FIR stating that he and Kamlesh Patel has dispute over ancestral land and due to that enmity today at around 8:00 am when he at the behest of his son Sunil was going to meet a nurse in Korian Maholla reached almost 20 steps away from Sukhendra's house, Kamlesh armed with battle axe came from the opposite side and told him that "you are posing yourself as a rogue" and gave a battle axe blow on his neck causing injury from neck to ear. At this, he raised an alarm and reached at Sukhendra's house there Kamlesh gave another battle axe blow causing injury in his left rib. Budhsen and Sukhendra witnessed the incident. When other persons of the village reached there, Kamlesh Patel fled away from the spot. Kamlesh Patel with an intention to kill him has given battle axe blows on his person. He has been brought to police station by Shrinivas, Ramadhar, Molai, Shyamlal and Shukendra. At the time of registration of FIR, scribe of the FIR noticed injuries on the person of

Rajmani Patel. As per the narration given by Rajmani Patel (PW-1) FIR Ex. P-1 was registered in Police Station Govindgarh at FIR No. 27/96 for commission of offence under Sections 307, 341 and 323 of IPC by S.I. R.K. Singh (PW-10). He filled Ex. P-9 medical form and sent him to Government Medical College, Rewa for medical examination. He sent Ex. P-10 letter to the Magistrate for recording Rajmani's dying declaration .

3. In Medical College Rewa, Dr. D.S. Kapoor (PW-8) examined Rajmani Patel (PW-1) aged 30 years and found 5 incised wounds on his person. He referred him to surgical department for further treatment and gave Ex. P-6 report. In surgical ward Dr. A. Dildeep (PW-7) examined Rajmani Patel (PW-1) and found five incised wounds on his person. He prepared Ex. P-2 summary sheet of bed head ticket.

4. In course of investigation, ASI Janakdhari Sen (PW-9) visited place of occurrence and prepared site map Ex. P-7 before witnesses. He recovered blood stained earth and plain earth from the place of occurrence and prepared seizure memo Ex. P-8 before witnesses. He recorded the statements of witnesses Sukhendra, Pushpa, Chunki, Mulai, Shrinivas, Bisunthiya, Sunil, Rajmani and Budhsen under Section 161 of Cr.P.C., Seized articles were sent for chemical examination with Ex. P-11 memo FSL reports received are Ex. P-12 and 13.

5. After completion of investigation, Police Govindgarh filed charge sheet against appellant/accused Kamlesh Patel for commission of offence under Sections 307, 341 and 323 of IPC before Judicial Magistrate First Class, Rewa who in his turn committed the case to the Court of Sessions. Case was transferred to the Court of III<sup>rd</sup> Additional Sessions

Judge, Rewa for disposal in accordance with law.

6. Learned III<sup>rd</sup> Additional Sessions Judge, Rewa framed charge against the appellant/accused for commission of offence under Section 307 of IPC. Appellant/accused abjured his guilt and claimed to be tried.

7. In order to prove its case, the prosecution has examined as many as 13 prosecution witnesses namely Rajmani Patel (PW-1), Pushpa (PW-2), Bisunthiya (PW-3), Chunki (PW-4), Shrinivas (PW-5), Badri Singh (PW-6), Dr. A. Dildeep, (PW-7), Dr. D.S. Kapoor (PW-8), ASI Janakdhari Sen (PW-9), SI R.K. Singh (PW-10), Molai (PW-11), Rajmani (PW-12) and Rajeev Shrivastava (PW-13). In defence, appellant/accused has examined his wife Usha (DW-1).

8. Learned III<sup>rd</sup> Additional Session Judge after recording the evidence of prosecution witnesses and defence witness and hearing the parties, convicted the appellant/accused Kamlesh Patel for commission of offence under Section 307 of IPC and sentenced him as aforementioned.

9. Being aggrieved by the conviction and sentenced imposed upon appellant/accused, this appeal has been filed by the appellant on the ground that learned trial Court has not properly appreciated the evidence of prosecution witnesses as their evidence is false, ridiculous and self contradictory. Except injured Rajmani Patel, his sister Pushpa and wife Bisunthiya nobody has supported the fact that appellant/accused caused injuries to the Rajmani Patel. Learned trial Court has committed an error by not believing the evidence of defence witness Usha. Learned trial Court has not taken into consideration the fact that injured had clasped with the wife

of appellant/accused and under fit of rage appellant had caused the injuries. Learned trial Court was not justified in convicting the appellant/accused for commission of offence under Section 307 of IPC. Incident took place on the spur of moment as injured/Rajmani Patel was outraging the modesty of wife of appellant/accused and was trying to undress her. At the most, appellant/accused ought to have been held guilty for commission of offence under Section 324 of IPC. It was also submitted by learned counsel for appellant that the sentence imposed upon the present appellant was disproportionate and therefore, it has been prayed that it should be reduced to the period already undergone by the appellant/accused, in case he is not acquitted of the offence and his conviction is affirmed by this Court.

**10.** On the other hand, learned Government Advocate has supported the impugned judgment of conviction and sentence passed by the trial Court and submitted that prosecution has proved its case beyond all reasonable doubts. Learned trial Court has not committed any error in convicting the appellant/accused for commission of offence under Section 307 of IPC as there is overwhelming evidence available on the record that appellant/accused intentionally caused life threatening injuries to the injured Rajmani Patel. Thus, he has prayed to dismiss the appeal.

**11.** Injured Rajmani Patel (PW-1) in his evidence has deposed that on 16.03.1996 at around 8:00 am he was standing at his field in the south side of Sukhendra's house, his wife Bisunthiya (PW-3) and sister Pushpa (PW-2) were reaping the crop and his son Sunil and Chunki (PW-4) were taking care of the paddy crop. His sister Pushpa (PW-2) and his son Sunil told him that nurse has called him. At this, he turned to leave for nurse's

place that very time, Kamlesh Patel armed with battle-axe came there and told him that “you are posing yourself as a rogue” and gave a blow in the back side of his neck. When he raised alarm Kamlesh gave another battle axe blows on his head and stomach. His wife Bisunthiya (PW-3), sister Pushpa (PW-2) and son Sunil reached on the spot, at this appellant/accused Kamlesh Patel fled away from there. When his wife Bisunthiya (PW-3) and sister Pushpa (PW-2) raised alarm other persons reached there and took him to police station Govindgarh, where he had lodged FIR Ex. P-1. From police station he was sent to Rewa Hospital, where he remained admitted till 27.03.1996. Police had recorded his dying declaration. In his cross examination, Rajmani Patel (PW-1) has admitted that Jagat Dev and Baldev were real brothers, Kamlesh is descendant of Baldev and he is descendant of Jagat Dev. He further admitted that Kamlesh Patel is his nephew. He has stated that his house is built on survey No. 284 and appellant/accused house is adjoining to his house. Sukhendra’s house is in the south side of his house. Exit of Sukhendra’s house is towards north and east. He has admitted that Kamlesh Patel is married and is blessed with three daughters. He has stated that at the time of incident, he was not going to meet the nurse and had not reached 20-25 steps away of the Sukhendr’s house. He has made it clear that B to B part of the FIR has been written as per his narration. He has specifically stated that his and Sukhendra’s houses are adjoining. He has stated that after sustaining battle-axe blows when he reached to Sukhendr’s house Kamlesh Patel was giving repeated blows and had given one blow in the Sukhendra’s courtyard also. When he was confronted with B to B part of Ex. P-2 dying declaration that “at

Sukhendra's house, his younger sister had said him that nurse has called him and when he came out of Sukhendra's house, Kamlesh Patel came from behind and gave battle axe blow in his neck and when Kamlesh Patel gave another battle axe blow he entwined with him due to which his battle axe had fallen down". He made it clear that he had not stated the same.

**12.** Witness Rajmani Patel has denied the suggestions offered by learned counsel for the defence that at the time of incident, he had trespassed into the accused Kamlesh's house and was clasped with his wife and when his wife raised alarm, appellant/accused came and beat him just to save the honor of his wife. He has also denied the suggestion offered by the defence that he had opened the sari of appellant/accused's wife. In his cross examination, he has remained firm and consistent that it was appellant/accused Kamlesh Patel who had caused injuries on his person by means of battle axe with an intention to kill him. As far as the B to B part of dying declaration is concerned that has not belied the truthfulness of the evidence of the witness Rajmani Patel as the houses of injured Sukhendra and appellant/accused are adjoining and are situated near each other house. Therefore, whatsoever omissions and contradictions have appeared they are not material as they have surfaced due to different expressions by the witness. As far as the truthfulness and reliability of the evidence of Rajmani Patel (PW-1) is concerned that does not get belied in his cross examination as nothing could have been elicited in his cross examination. As far as the evidence of Rajmani Patel (PW-1) that appellant/accused had given blow by battle axe on his person is concerned that is unrebutted. He has been firm and consistent in his cross examination.

13. Pushpa (PW-2) is the sister of Rajmani Patel (PW-1), he has supported the evidence of his brother, she has deposed that on the date of incident at around 8:00 am she alongwith her sister-in-law Bisunthiya (PW-3) was in the field as they were cutting wheat crops. Sukhendra's house is situated near his field. When his brother Rajmani Patel came there, her sister-in-law Bisunthiya asked her to tell her brother that nurse has called him. At this, he informed the same to his brother Rajmani Patel who was standing by the side of field. When his brother started to proceed and could proceed only 8 to 10 steps, accused Kamlesh intercepted his brother and told him that you pose yourself as a rogue. Kamlesh who was armed with battle axe gave a battle axe blow on his brother's neck and when his brother ran towards Sukhendra's house, Kamlesh chased him and gave another battle axe blow on his brother's body causing injuries on his stomach. When he raised alarm, Sukhendra, Budhsen, Chhote and other persons reached there, at this, Kamlesh fled away from the spot. She further deposed that there is some property dispute between his brother and Kamlesh Patel and Kamlesh Patel has caused injuries to his brother over that dispute. The evidence of Pushpa (PW-2) is unrebutted. She was subjected to prolix cross examination but nothing could be elicited in her cross examination to discredit her evidence. She has denied the suggestion offered by the defence that on the date of incident she was in her matrimonial home. She has specifically stated that she was present on the spot and had witnessed the incident. She has denied the suggestion offered by the defence that on the date of incident her brother Rajmani Patel (PW-1) had trespassed into the Kamlesh's house and was clasped with his wife.



**14.** Bisunthiya (PW-3) has also supported the evidence of her husband Rajmani Patel (PW-1) and sister-in-law Pushpa (PW-2). She has deposed that Rajmani Patel (PW-1) is her husband and Pushpa is her sister-in-law. In the morning time, she alongwith Pushpa was reaping the crop and her husband was standing there that time she had asked her sister-in-law Pushpa to tell his brother that nurse has called him. When her husband Rajmani Patel (PW-1) started to proceed, Kamlesh Patel armed with battle axe came and gave battle axe blow on the neck of her husband then her husband ran and raised alarm, then Kamlesh chased him and gave another battle axe blow in Sukhendra's house, when they raised alarm, Kamlesh fled away from there. She has deposed that Kamlesh had caused injuries due to property dispute. Nothing could be elicited in her cross examination to discredit her evidence. She has been firm and consistent in her evidence. When she was confronted with her Ex. D-1 police statement, she stated that she had not given A to A part of Ex. D-1 that when Kamlesh Patel again ran to cause injury to her husband Rajmani Patel he was shielded by her brother-in-law Budhsen. She has denied the suggestion offered by defence that her husband after trespassing into Kamlesh's house was trying to outrage Kamlesh's wife modesty and when Kamlesh reached there, he saw her husband clasped with his wife, due to which, with a view to save his wife he had caused injuries to Rajmani Patel.

**15.** As far as the truthfulness and reliability of the evidence of Pushpa (PW-2) and Bisunthiya (PW-3) is concerned they are the sister and wife of the injured Rajmani Patel (PW-1). Undoubtedly they are close relatives of injured Rajmani Patel but only on that basis their evidence

cannot be discarded as they are the natural eye witnesses of incident because at the time of incident they were in the field and were cutting the crops. Houses of the injured Rajmani Patel, accused-Kamlesh Patel and Sukhendra are situated near the field where Pushpa and Bisunthiya were reaping the crop. Therefore, the evidence of Pushpa (PW-2) and Bisunthiya (PW-3) appears truthful as their presence in the field appears natural.

16. Chunki (PW-4) is the resident of same village, she has deposed that Bhaiya Lal was her nephew and Kamlesh is the son of Bhaiya Lal. Rajmani Patel (PW-1) is also her nephew. Last year, in the month of Falgun, at the morning time when she was sitting at her house door. Rajmani Patel was talking with his wife as his wife and sister were cutting the crops, Sunil was also there. In the meantime, Kamlesh came there and gave battle axe blows on the person of Rajmani Patel and fled away from the spot. She has deposed that there is some property dispute between Bhaiya Lal and Rajmani Patel. In her cross examination, Chunki (PW-4) has stated that Bhaiya Lal has instituted a property suit against her. When this witness was confronted with her Ex. D-2 statement, she stated that she had given above entire statement to police but as to why that does not find place in her Ex. D-2 statement she cannot say anything. Chunki (PW-4) does not appear an eye witness as she has reached on the spot after the incident. However, from her evidence, it can be inferred that she had seen injuries on the person of Rajmani Patel (PW-1).

17. Shrinivas (PW-5) is also not an eye witness. He and Molai (PW-11) had taken injured Rajmani to Govindgarh police station. Rajmani

(PW-12) has accepted his thumb impression on site map Ex.P-7. Chunki (PW-4), Shrinivas (PW-5) and Molai (PW-11) are not eye witnesses of incident but from their evidence, it is transpired that after the incident they had seen injuries on the person Rajmani Patel and Rajmani Patel (PW-1) was taken to police station Govindgarh by Shrinivas (PW-5) and Molai (PW-11).

**18.** S.I. R.K. Singh (PW-10) is the scribe of FIR. He has written FIR Ex. P-1 as per the narration given by Rajmani Patel.

**19.** As far as the veracity of evidence of Rajmani Patel (PW-1) is concerned that finds corroboration not only from the evidence of eye witness Pushpa (PW-2) and Bisunthiya (PW-3) but also from the evidence of medical witnesses and promptly lodged FIR.

**20.** Dr. D.S. Kapoor (PW-8) in his evidence has deposed that on 16.03.1996, he was posted as Causality Medical Officer in Medical College Rewa. Rajmani Patel S/o Ramkhilawan Patel aged 30 years was brought for medical examination by constable Balmik Prasad of P.S. Govindgarh, he had examined him and had found following injuries on his person:-

(1) एक कटा हुआ धाव सीनें के सामने के हिस्से में बाईं तरफ मौजूद था। जो कि सातवीं या आठवीं रिब से ऊपर की तरफ मेट अकजलरी प्वाइंट पर था जिसके आकार 10 से.मी. x 5 से.मी. 5 से.मी. एवं मास पेशियों की गहराई तक था। उस स्थान से हल्का रक्त स्राव हो रहा था।

(2) एक कटा हुआ धाव गर्दन के दाहिने हिस्से में जो कि दाहिने कान के निचले हिस्से से गर्दन की तरफ सातवीं सर्वाइकल स्टेन तक था। जिसका आकार 15 से.मी. x 5 से.मी. एवं गहराई मास पेशियों तक थी।

(3) एक कटा हुआ धाव दाहिने कान के निचले लिब्यूल हिस्से में था। जो कि आगे से पीछे की तरफ पूरी गहराई पर था।

(4) एक कटा हुआ धाव दाहिने तरफ के चेहरे पर था जो कि दाहिने मॅन्डिनिबल के एंगिल से 3 सें.मी. ऊपर था। जिसका आकार 5 सें.मी. x 1 सें.मी. था। एक कटा हुआ धाव सिर के दाहिने हिस्से पर पैराईटल बोन पर जिसका आकार 5 सें.मी. x 2 सें.मी. x 1 सें.मी. था।

**21.** Dr. D.S. Kapoor further deposed that injuries found on the person of Rajmani Patel were caused within 4 to 8 hours of the examination. He has mentioned that the nature of injuries be ascertained from the doctor of ward. He has proved MLC report Ex. P-6.

**22.** Dr. A. Dildeep (PW-7) has deposed that on 15.03.1996, he was on duty in surgical ward No. 2 of M.H. Hospital Rewa. At around 11:10 am, Rajmani Patel S/o Ramkhilawan Patel aged about 30 years was admitted in surgical ward No. 2. He had treated him and found following injuries on his person:-

1. Incised wound over ant chest wall on left side extending from ant chest wall laterally at level of 7<sup>th</sup> and 8<sup>th</sup> rib. No air was seen leaking from wound muscle deep. Ribs are not seen. No fresh bleeding margins regular size 10 cm x 5 cm x muscle deep.

2. Incised wound over right side of neck extending from right ear lobule to tip of 7<sup>th</sup> cervical spine margins regular muscle deep. No fresh bleeding size 15 cm x 5cm x muscle deep.

3. Incised wound over right ear lobule cutting through and through. No fresh bleeding transverse wound margins regular.

4. Incised wound over right side of face 3 cm over right angle of mandible oblique. No fresh bleeding margins regular size 5 cm x 2 cm x 1 cm.

5. Incised wound over scalp over right parietal bone oblique. Margins are regulars. Linear no fresh bleeding. Size 5 cm x 2 cm x 1 cm.

**23.** According to Dr. A. Dildeep (PW-7), patient was conscious though injuries caused to him were dangerous to life. He had stitched the injuries, patient's condition was satisfactory. Injuries were caused by some sharp weapon. He has proved Ex. P-5 summary sheet of bed-head ticket. In his cross examination, Dr. A. Dildeep (PW-7) has stated that except injury No. 2 which was on neck, no other injury was dangerous to life. He has admitted that grievous injuries and injuries dangerous to life are different and if no internal damage was caused injury would not be dangerous to life.

**24.** Learned trial Court in para 13 of judgement has concluded that injuries caused to the injured Rajmani Patel (PW-1) were not dangerous to life. In para 14 of the judgement, learned trial Court has given specific findings that injuries caused to the Rajmani Patel (PW-1) were simple in nature.

**25.** It is undisputed that Dr. D. S. Kapoor (PW-8) has not given any opinion about the nature of injuries. Dr. A Dildeep (PW-7) has clearly

admitted that he has not mentioned anything in his report on the basis of which it may be said as to what damage was caused to the neck and how it was dangerous to life. Therefore, in absence of specific opinion by the Doctor the view taken by learned trial Court that injuries found on the person Rajmani Patel (PW-1) were simple in nature cannot said to be incorrect. Thus, I am also of the view that injuries caused on the person of Rajmani Patel (PW-1) were simple in nature at the same time it also cannot be over looked that Rajmani Patel (PW-1) remained admitted in Medical Hospital, Rewa only for 11 days. Therefore, injuries sustained by him does not fall within the premise of Section 307 of IPC.

**26.** Learned counsel for the defence has argued that learned trial Court has committed error in not accepting the evidence of Usha (DW-1) the wife of appellant/accused Kamlesh Patel. Usha (DW-1) in her evidence has deposed that on the date of incident she in her courtyard was cleaning rice. Her husband had gone for working in the field. Rajmani came to her house and inquired about her husband. When she told him that he has gone to field, Rajmani Patel (PW-1) hugged her. At this, she raised alarm and took out Tangi kept in courtyard and gave a Tangi blow on the person of Rajmani Patel. Hearing her shriek, her husband Kamlesh Patel, Chhote Lal and Chunki reached there and Rajmani Patel fled towards Sukhendra's house. In her cross examination, she has specifically stated that her husband had not caused any injury to Rajmani Patel (PW-1). It was she who had caused injuries to Rajmani Patel.

**27.** In cross examination, she has admitted that she had not lodged any report against the Rajmani Patel about attempting to outrage her

modesty. She further admitted that for the very first time she is stating this before the Court that Rajmani Patel had hugged her and she had given tangi blow on his person. The evidence of Usha (DW-1) does not inspire confidence as no such suggestion was offered to prosecution witnesses in cross examination. No question was put to the Rajmani Patel in his cross examination that injuries were caused to him by Usha (DW-1) and not by the Kamlesh Patel. Accused/appellant Kamlesh Patel in his statement under Section 313 of Cr.P.C. in response to question No. 73 has stated that her wife had raised alarm due to which Rajmani Patel tried to jump from his garden and had fallen down on the tin plates and had sustained injuries. The evidence of Usha (DW-1) is in complete contradiction to the defence taken by her husband Kamlesh in his statement under Section 313 of Cr.P.C. Therefore, the view taken by the trial Court that accused has taken different defence at different stages of trial due to which same is not worth acceptance appears just and plausible.

**28.** Next question arises whether the injuries caused to injured Rajmani Patel (PW-1) was sufficient for death or not has already been discussed and it has been hold that injuries found on the person of injured Rajmani Patel were simple in nature and he remained admitted only for 11 days in the hospital. Thus, it can be inferred that injuries caused to the Rajmani Patel by appellant/accused were caused voluntarily but he had no intention to kill him.

**29.** In regard to constitute the offence under Section 307 of IPC, an intention of or knowledge relating to commission of murder and the doing of an act towards it is necessary for the purpose of Section 307. For

an offence under Section 307 intention or the knowledge is material and not the consequence of the actual act done for the purpose of carrying out the intention. Section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence of attempt to murder. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.

**30.** On the basis of evidence on record, prosecution has been able to prove that Rajmani Patel had sustained injuries by sharp object but it can not be overlooked that they had property dispute and their houses are adjoining. They belong to the same family. There is difference in the evidence of prosecution witnesses and medical evidence as to how many injuries were caused by the appellant/accused because as per Rajmani Patel only 2 battle axe blows were given by the appellant/accused. Whereas Doctor has found 5 injuries on the person of appellant/accused.

**31.** It is true that incised wounds were caused by the appellant/accused on the neck and other parts of body but all the aforesaid injuries were simple in nature. If appellant had an intention to cause the death of Rajmani Patel, he was not prevented to fulfil his desire since none



intervened to prevent him from doing so. It is true that accused may be held liable for the offence under Section 307 of IPC even if no injury was suffered by victim, or even if it was simple in nature, but intention or knowledge of the assailants has to be gathered objectively from the nature of injuries on the part of body whereon the injury was caused. It is important to mention here that Dr. D.S. Kapoor has stated nothing about the nature of injuries and Dr. A Dildeep (PW-7) has clearly admitted that he has not mentioned anything in his report about the damage caused to the muscle of the neck. Therefore, in such a situation where appellant/accused remained admitted only for 11 days, the act of appellant/accused shall fall under Section 324 of IPC.

**32.** In the case of Pashora Singh and another Vs. State of Punjab, 1993 Supp (2) SCC 33, where 5 incised wounds were found on the person of injured. Supreme Court held as under:-

*“8. In our view, in the facts and circumstances of the case, no offence under Section 307 of the Indian Penal Code is held established against the appellant Pashora Singh. According to the statement of Pal Singh (himself injured), Pashora Singh had first given a Gandasa blow on right knee of Amar Singh. Lahora Singh then gave Gandasa blow on the right hand of Amar Singh from the reverse side. Pal Singh thereafter states that he raised an alarm and tried to intervene, when Lahora Singh gave two Gandasa blows to him. Pashora Singh also gave a Gandasa blow on his head. According to the above*

*statement of Pal Singh, two injuries on his head were inflicted by Lahora Singh and the third one by Pashora Singh. It is an admitted case of the prosecution that the accused persons had a grievance against Amar Singh and his uncle Malkiat Singh for having launched some security proceedings against the accused persons and they had come with an intention of taking revenge on, Amar Singh and Malkiat Singh. According to the statement of Pal Singh, Pashora Singh had given a Gandasa blow on the right knee of Amar Singh and Lahora Singh also gave a Gandasa blow on the right hand of Amar Singh from the reverse side. Admittedly, the injuries on Amar Singh are found to be simple in nature and this clearly goes to establish that the accused persons had no intention of causing death of any person nor any injuries found on Pal Singh were stated to be sufficient in the ordinary course of nature to cause death. According to Pal Singh, when he raised an alarm and tried to intervene, Lahora Singh inflicted two Gandasa blows and Pashora Singh gave third blow on his head and thereafter the accused persons ran away. In the circumstances mentioned above, we are clearly of the view that the High Court was not right in holding that the accused had an intention to cause the death of Pal Singh or the knowledge of possible death of Pal Singh. Only*

*injury No. 1 on the head of Pal Singh has been described as dangerous to life and the High Court has itself recorded a finding that the previous litigation between the parties had nothing to do with Pal Singh and it was not established as to which of the two accused had inflicted injury No. 1 on the head of Pal Singh. Thus, in the above facts it cannot be held that Pashora Singh had committed any offence under Section 307 read with Section 34 of the Indian Penal Code. The appellant Pashora Singh in the facts and circumstances of the case can only be held guilty for an offence under Section 326 read with Section 34 of the Indian Penal Code”*

**33.** Another in the case of Fireman Ghulam Mustafa Vs. State of Uttaranchal, 2015 (9) SCALE 237 Apex Court held as under:-

*“8. To justify a conviction under Section 307 IPC the Court has to see whether the act was done with the intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.*

*9. Just before the occurrence PW1 Munnu Lal came to the Fire Station for surprise check and recorded the absence*

*of the accused in the general diary and returned home. Within few minutes the appellants/accused armed with lathis went to his house and indiscriminately beat him with lathis causing injuries in neck, chest, hands, buttocks and thighs. PW3 Dr. N.D. Punetha mentioned in her report that injury nos.11, 17 and 18 are grievous in nature. In fact the grievous injuries are the fractures of wrist bones in both the hands. Though the injuries caused were 18 in number they were not on vital parts of the body. It is true that the appellants had acted in a state of fury but it cannot be said that they caused those injuries with the intention to cause death. The appellants are not liable to be convicted for the offence under Section 307 IPC and at the same time for having voluntarily caused grievous hurt they are liable to be punished under Section 325 of the Indian Penal Code.”*

**34.** In the case in hand, injuries found on the person of injured Rammani Patel are simple in nature. It is also clear that Injured and appellant/accused are from the same family and they have some land dispute. Appellant/accused has given two blows but five injuries have been found on the person of injured Rajmani Patel. Therefore, no intention can be attributed against the appellant/accused to commit murder of Rajmani Patel (PW-1). Although the injured Rajmani Patel has sustained one of the injury on the vital part of body i.e. neck but all injuries have to be considered simple in nature as Doctor who has opined that one of the injury was life threatening has not given any specific finding as to how it was dangerous to life. Hence, it can be inferred that injuries caused to the victim

was voluntarily but not with an intention to commit murder. Therefore, the learned trial Court has committed error in convicting the appellant for offence under Section 307 of IPC.

**35.** Looking to the injuries caused to the injured offence under Section 324 of IPC is made out against the appellant/accused Kamlesh Patel. Hence, the conviction of the appellant/accused Kamlesh Patel is required to be modified. So far as the period of sentence is concerned, although the appellant is not having any criminal record but at the same time it cannot be overlooked that incident took place 26 years back but he gave battle axe blow on the vital part of injured Rajmani Patel due to which he sustained injuries on the neck and other part of the body. In these circumstances, the conviction and sentence imposed upon the appellant/accused Kamlesh Patel for the offence under Section 307 of IPC is set aside and instead he is convicted under Section 324 of IPC and sentenced to undergo 2 years RI and fine of Rs.10,000/- (Rs. Ten Thousand) and in default, further RI for 3 months. On payment of fine by appellant/accused Rs.8,000/- be paid to the injured Rajmani Patel as compensation under Section 357 (1) of Cr.P.C.

**36.** With the aforesaid modification in conviction and sentence, the appeal is partly allowed. Appellant-Kamlesh Patel is on bail. His personal bond and bail bond are hereby discharged. Appellant is directed to surrender before the trial Court henceforth for undergoing the remaining part of the jail sentence. Registry of this Court is directed to arrange for issuance of super-session warrant against the appellant Kamlesh Patel. In case the appellant Kamlesh Patel S/O Bhaiyalal Patel fails to surrender for

undergoing remaining part of jail sentence, the trial Court shall take all necessary steps to commit him to jail for undergoing remaining part of jail sentence.

37. With the aforesaid modification, this Criminal appeal No.2753/1998 is **disposed off**. A copy of judgment be sent immediately to the Trial Court along with the record for information and compliance.

**(DINESH KUMAR PALIWAL)**  
**JUDGE**

L.R.