



2026:AHC:25438-DB

Reserved on : December 10, 2025

Delivered on : February 05, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3265 of 2025

Sabir And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Mohd Faiz, Pulak Ganguly
Counsel for Respondent(s)	:	G.A., Rajendra Kumar Yadav

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE PRASHANT MISHRA-I, J.

(Delivered by Hon'ble Prashant Mishra-I, J.)

1. Heard Mr Pulak Ganguly, learned counsel for appellant No. 1; Mr. Mohd Faiz, learned counsel for appellant No. 2; Mr. Rajendra Kumar Yadav, learned counsel for the informant; Mr. Sushil Pandey, learned Additional Government Advocate-1 representing the State and perused the material on record.

2. The instant criminal appeal has been preferred by appellants, namely, Sabir and Tasleem alias Tehsil, against the judgment and order dated 21.03.2025 passed by learned Additional Sessions Judge [Fast Track Court]-Ist, Bareilly in Sessions Trial No. 388 of 2014, Session Case Computer No. 368 of 2014 [State Vs. Sabir and another], arising out of Case Crime No. 905 of 2011, under Sections 307/34, 504, 506 I.P.C., Police Station Aliganj, District Bareilly, whereby the appellants have been convicted and sentenced as under:

(i) Imprisonment for life, under Section 307/34 I.P.C. and fine of Rs. 50,000/- each, and in default of payment of fine, two years' additional rigorous imprisonment.

(ii) Two years' imprisonment for the offence under Section 504 I.P.C.

(iii) Seven years' imprisonment for the offence under Section 506 I.P.C.

3. As per the prosecution case in brief, informant Mohd. Umar got a first information report lodged against four accused persons, namely Sabir Khan, Tahsil Khan, Ilyas and Kasim with the allegations inter alia that 6-7 days before filing the complaint, Tahsil Khan of his village had purchased a tempo (*Chhota Haathi*) and regarding its parking, informant and his father had an argument with Tehsil's brother Sabir Khan and he threatened to kill his father. Today at around 3:30 PM informant and his father went to village market. He was buying some goods and his father was standing there. At that time, Sabir Khan arrived armed with a knife. Sabir's brother Tehsil Khan and Ilyas Khan and Kasim son of Aijoo Khan were also present. Sabir threatened his father. Meanwhile, Tehsil Khan and Ilyas Khan grabbed his father and Kasim said, "beat him so he can't escape". On this Sabir Khan holding a knife stabbed his father in the middle of his neck on the right side with the intention to kill him and before his father could say anything, Sabir Khan again attacked him on his hand. His father fell down struggling there. When the informant tried to save his father, they threatened to kill him also and went away. Gafur Khan, Bhole Khan and other people of his village, who were present in the market, saw the incident and saved him. On the written complaint of the informant the F.I.R. was lodged.

4. The appellants were charged with commission of offences under Sections 307/34, 504, 506 I.P.C. They denied the charges and sought trial.

5. To prove the prosecution case, the prosecution examined PW-1, Mohd. Umar (informant of the case); PW-2, Dulare Khan (injured); PW-3, Gafur Khan (eye witness); PW-4, Dr R. K. Dhaka (expert witness); PW-5, Bhole Khan (eye witness); PW-6, Sub Inspector Naresh Chandra Sharma (investigating Officer).

6. In documentary evidence original complaint (Exhibit Ka-1), injury report of injured-Dulare Khan (Exhibit Ka-2), supplementary medical report of the injured (Exhibit Ka-3), site plan (Exhibit Ka-3), charge sheet (Exhibit Ka-4) and chick F.I.R (Exhibit Ka-5), were filed.

7. Statements of the appellants were recorded under Section 313 Cr.P.C., wherein they claimed their innocence and said that they have been falsely implicated in this case. The appellants produced three defence witnesses to establish the false case against the appellants.

8. PW-1, PW-2 and PW-3 supported the prosecution case as per the allegations made in the F.I.R.

9. PW-4, Dr. R.K. Dhaka, stated that he found the following injuries on the body of the injured:

(i) Incised wound 4 cm x 1 cm to the lateral side of the neck, 6 cm below right ear, bleeding present.

(ii) incised wound 4 cm x 1 cm x 6 cm muscle deep, on left side of forearm, inner side 9 cm from left wrist, bleeding present. Advised X-Ray.

10. As per the doctor, injury No. 1 was simple in nature and injury No. 2 was kept under observation and X-Ray was advised. After X-Ray of the injury No. 2, no bony injury was found and it was found to be simple in nature.

11. PW-5, Bhole Khan did not support the prosecution case and stated that the injured suffered injuries because someone stated in the market that a bull is coming and thereafter commotion took place wherein the injured fell down and got crushed below the legs of the bull and suffered injuries.

12. PW-6, investigating officer of this case is formal witness.

13. DW-1, DW-2 and DW-3 repeatedly stated that the injured suffered injuries by falling, as a bullock was there running in the market.

14. The trial court after considering the evidence on record convicted and sentenced the appellants as aforesaid.

15. Learned counsel for the appellants submits that the punishment awarded to the appellants is highly disproportionate to the offence allegedly committed by them. It was also argued that the testimony of the doctor has not been considered by the learned trial court as the injuries caused to the victim was simple in nature and was caused by falling down in the vegetable market, as bull was running there. Further it was also argued that the testimony of independent witnesses PW-3 and PW-5 has been disbelieved by the learned trial court even they have repeatedly stated that the injury sustained by Dulare Khan was result of falling down in the market as an angry bull was running there creating havoc. He has relied upon the judgement of the Hon'ble Supreme Court in the case of ***Sivamani and Another vs. State Represented by Inspector of Police, Vellore Taluk Police Station, Vellore District, [2023] 14 S.C.R. 849.***

16. On the other hand, learned Additional Government Advocate representing the State and learned counsel for the informant vehemently opposed the argument of the learned counsel for the appellants and submit that in the case of attempt to murder the intention is more important than the nature and gravity of injury and therefore, the conviction of the appellants for life imprisonment under Section 307/34 I.P.C. is justified.

17. After hearing the rival submissions and going through the materials on record, we find that:

18. In **State of Madhya Pradesh vs. Saleem, (2005) 5 SCC 554**, the Court held that to sustain a conviction under Section 307 I.P.C., it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307 I.P.C. on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.' The position that because a fatal injury was not sustained alone does not dislodge Section 307 I.P.C. In **Jage Ram vs. State of Haryana, (2015) 11 SCC 366** and **State of Madhya Pradesh vs. Kanha, (2019) 3 SCC 605** it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307 I.P.C., 'The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.'

19. Section 307 I.P.C. states as follows:

"307. Attempt to murder.-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

20. It is very clear from the above section that the act of the offender must be sufficient to cause death. If the act of the offender is not sufficient to cause death, he cannot be held guilty of attempt to murder.

21. The essential ingredients required to be proved in the case of an attempt to murder under Section 307 I.P.C. are - (i) that the death of the human being was attempted; (ii) that such death was attempted to be caused by, or in consequences of the act of the accused and; (iii) that such act was done with the intention of causing death, or that it was done with the intention of causing such bodily injury- as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or

bodily injury as is likely to cause death.

22. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section.

23. To sustain conviction under Section 307 I.P.C., the intention to kill should be clearly proved by the prosecution like, persistence of attack on the vital parts of the body. For the purposes of Section 307 I.P.C., what is material is that it is the intention or knowledge not the consequence of the actual act done for the purpose of carrying out the intention.

24. The essential ingredients of Section 307 I.P.C., as mentioned above, are in consonance with the evidence adduced by the learned trial court.

25. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is convinced that the impugned judgment and order of the trial court requires to be interfered with. Admittedly, there is no allegation of repeated or severe blows having been inflicted. Even the injuries on PW-2 (injured) have been found to be simple in nature, which is an additional point in the appellants' favour.

26. It comes out in the evidence that Tehsil Khan grabbed the father of the informant and Sabir Khan holding knife stabbed his father in the middle of his neck on the right side with the intention to kill him. In the instant case, the injured Dulare Khan is the father of the informant who sustained incised wound also on the left side of his forearm. Although in the opinion of the doctor PW-4, injury No. 1 was simple in nature and injury No. 2 was kept under observation, X-Ray was advised. The X-Ray revealed no bony injury and the nature of injury No. 2 was also found to be simple.

27. We are further inclined to accept the submissions of the learned counsel for the appellants that from the materials on record, only offences under Sections 323 and 324/34 of the I.P.C. can be made out. As such, the conviction under Section 307/34 I.P.C. is unsustainable.

28. In the background of the discussions made herein above and on taking an overall view as well as considering the injuries suffered by the injured we are of the view that the offence committed by the appellants will not travel beyond Sections 323 and 324 I.P.C. Therefore, the impugned judgment and order passed by the trial court stands modified and conviction of the appellants is ordered under Sections 323 and 324/34 I.P.C. They are sentenced to period of one

year and fine of Rs. 1,000/- under Section 323 I.P.C. and sentence of three years with fine of Rs. 5000/- under Section 324/34 I.P.C. each. Sentence awarded under Section 504 I.P.C. is maintained with fine of Rs. 5000/- and sentenced awarded under Section 506 I.P.C. is reduced to a period of three years with fine of Rs. 10,000/-. All the sentences shall run concurrently.

29. In case of non deposit of the fine by the appellants they shall undergo further simple imprisonment for six months.

30. The period of incarceration already undergone shall be adjusted.

31. Accordingly, the instant appeal is hereby **partly allowed**.

32. Office is directed to return the trial court record as expeditiously as possible and notify this judgment to the trial court too.

(Prashant Mishra-I,J.) (Siddharth,J.)

February 5, 2026

Kashifa