

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J) No. 1213 of 2004

1.Asok Ghansi

2.Birbachan Ghansi

All of them S/o Sukara Ghansi, resident of village Biru Pithiya
Tola, P.S-Simdega, District-Simdega Appellants

Versus

State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellants : Mr. Atma Ram Choudhary, Advocate

For the State : Mr. Vishwanath Roy, Spl.PP

CAV on:27th January, 2026

Delivered on:12/06/2026

This Criminal Appeal has been filed on behalf of the appellants challenging the judgment of conviction and sentence dated 06.07.2004 passed in Sessions Trial No.48 of 2002 (arising out of Simdega P.S. Case No.22 of 2001) by Sri Sita Ram Mahto, then learned Additional Sessions Judge, Simdega by which the appellants and one Sulochan Ghansi (deceased) were convicted for the offence under section 307/34 of IPC and sentenced them to undergo R.I for a period of seven (07) years each and to pay the fine of Rs.1,000/- each. In default of payment of fine they were further directed to undergo S.I for a period of six months.

2. The prosecution case, in brief, is that while the informant along with his wife and father was sleeping in his house on 21.03.2001 at around 9.00 p.m., then at that time his co-villagers, Birbachan Ghansi (Appellant No.2), one Sulochan Ghansi (deceased) and Asok Ghansi (Appellant No.1) arrived at his residence and knocked his door and due to which he came outside of his room and had seen the appellants at his door. As soon as the informant came out, all the three accused persons named above started abusing him. When the informant protested

then Sulochan Ghansi (deceased) and Asok Ghansi (Appellant No.1) caught hold of him and instigated Birbachan Ghansi (Appellant No.2) to assault him. Thereafter the Appellant No.2- Birbachan Ghansi assaulted on the head of the informant by Tangi, due to which he became injured and fell on the ground and on alarm raised by him, his father Bahura Lohra and other co-villagers arrived there and took him to the hospital for his treatment. He also alleged that the motive of occurrence is previous enmity.

3. Heard Mr. Atma Ram Choudhary, learned counsel for the appellants and Mr. Vishwanath Roy, learned Spl.PP for the State.

4. Learned counsel for the appellants has submitted that the impugned judgment and sentence passed by the learned Trial Court is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the appellants are innocent and have committed no offence and have been falsely implicated in this case. It is submitted that P.W-1, P.W-2 and P.W-3 namely, Tankudar Lohra, Bahura Lohra and Marangi Lohrain are the interested witnesses and they were inimical terms with the appellants and even they have given contradictory evidence and as such the evidence of P.W-1, P.W-2 and P.W-3 namely, Tankudhar Lohra, Bahura Lohra and Marangi Lohrain are not reliable. It is submitted that there is contradiction in the oral evidence and medical evidence and as such the prosecution case is doubtful. It is submitted that P.W-7 has been declared hostile and he has not supported the prosecution case. It is submitted that even the informant who has been examined as P.W-1, admitted during his evidence that the wife of Shankar Ghansi had instituted a case against the informant which was later on compromised. Even P.W-3-mother of the informant also admitted that the wife

of Shankar Ghansi had instituted a case of attempt to commit rape upon her which was compromised. Even P.W-3 further admitted that the daughter in-law of P.W-3 had instituted a case against the Shankar Ghansi which was compromised. Even during his cross-examination P.W-3 denied the suggestion that he had put pressure on the wife of Shankar Ghansi for compromise and ran after her with sword to kill her and the appellants had prevented him to do so. It is submitted that P.W-6 is doctor of this case and is a formal witness and had found three injuries on the person of the informant whereas P.W-5-Tilleshwar Ram is the I.O of this case who has not conducted proper investigation. Hence, the judgment and sentence passed the learned Trial Court is illegal and may be set aside and the appellants may be acquitted.

5. On the other hand, learned APP has opposed the prayer. It is submitted that judgment and sentence passed by the learned Trial Court is proper and no interference is required. It is submitted that P.W-1, P.W-2 and P.W-3 namely, Tankudhar Lohra, Bahura Lohra and Marangi Lohrain have supported the prosecution case. It is submitted that P.W-1 is the informant himself and he has fully supported the case of assault upon him by the appellants for causing head injuries to him and even he had stood the test of cross-examination. It is submitted that P.W-2 and P.W-3 namely, Bahura Lohra and Marangi Lohrain are the father and mother of the informant and they are the eye witnesses and they have fully supported the prosecution case against the appellants for assaulting the informant on his head and thus, the prosecution has successfully proved the case against the appellants. It is submitted that P.W-6 is the doctor of this case, who had found the injuries on the person of the informant and has supported the prosecution case. It is further

submitted that P.W-5-Tileshwar Ram is the I.O of this case and he has also supported and corroborated the prosecution case and has submitted charge sheet against the appellants. Thus, the prosecution has successfully proved its case against the appellants beyond shadow of all reasonable doubt. Hence there is no illegality and irregularity in the impugned and sentence passed by the learned Trial Court and hence this Criminal Appeal may be dismissed.

6. Perused the Trial Court Record and considered the submission of both the sides.

7. It transpires that the F.I.R was lodged on 21.03.2001 by the informant Tankudhar Lohra-P.W-1 against the appellants namely, Asok Ghansi and Birbachan Ghansi and one Sulochan Ghansi (deceased) for the offences under sections 341/324/307/34 of IPC.

8. The police, after completing investigation, had submitted charge sheet against the appellants namely, Asok Ghansi and Birbachan Ghansi and one Sulochan Ghansi (deceased) for the offences under sections 341/323/325/307/34 of IPC before the learned A.C.J.M on 21.07.2001.

9. Thereafter the In-charge A.C.J.M took cognizance against the appellants namely, Asok Ghansi and Birbachan Ghansi and one Sulochan Ghansi (deceased) under sections 341/323/325/307/34 of IPC.

10. After supplying the police papers to the accused persons, the case was committed to the Court of Sessions and which was later on transferred to the Court of learned Additional Sessions Judge.

11. It transpires that charges were framed against the appellants namely, Asok Ghansi, Birbachan Ghansi and Sulochan Ghansi (deceased) under section 307/34 of IPC by Sri

Satyendra Kumar Singh then learned Additional Sessions Judge, Simdega on 18.11.2002 and to which they pleaded not guilty and claimed to be tried.

12. During trial, the prosecution got examined seven (07) witnesses, who are as follows:-

- (i) P.W-1 is Tankudar Lohra-Informant,
- (ii) P.W-2 is Bahura Lohra (i.e. the father of the informant),
- (iii) P.W-3 Marangi Lohrain (i.e. the mother of the informant),
- (iv) P.W-4 is Bandha Baraik,
- (v) P.W-5 is Tileshwar Ram i.e. the I.O,
- (vi) P.W-6 is Krishna Kumar Sharma (i.e. doctor) and
- (vii) P.W-7 is Joharan Mistri.

13. The prosecution in support of its case also got proved following documents as exhibits as follows:-

- (i) Exhibit-1 is fardbeyan,
- (ii) Exhibit-1/1 signature of informant on fardbeyan,
- (iii) Exhibit-1/2 is signature of father of the informant on fardbeyan,
- (iv) Exhibit-1/3 is endorsement of Officer In-charge Jageshwar Prasad on fardbeyan,
- (v) Exhibit-2 is Formal FIR,
- (vi) Exhibit-2/1 is signature of Jageshwar Prasad on Formal FIR and
- (vii) Exhibit-3 is the injury report of injured-informant.

14. Thereafter the appellants namely, Asok Ghansi, Birbachan Ghansi and Sulochan Ghansi (deceased) were examined under section 313 Cr.P.C on 24.03.2004 by the learned Additional Sessions Judge and to which they denied the circumstances put forth before them.

15. Neither any defence witness has been examined nor any document had been marked as an exhibit on behalf of the defence side i.e. the appellants.

16. Thereafter the learned Trial Court, on the basis of evidence and documents of prosecution, has convicted the appellants namely, Asok Ghansi, Birbachan Ghansi and one Sulochan

Ghansi (deceased) on 06.07.2004 under section 307/34 of the IPC and sentenced them to undergo R.I for a period of seven (07) years each and to pay the fine of Rs.1,000/- each.

17. Therefore, the evidence of prosecution witnesses has to be seen.

18. It further transpires that this Criminal Appeal was filed on 26.07.2004 and admitted on 02.08.2004 and Trial Court Records were called for.

19. It further transpires that vide order dated 01.10.2004 both the appellants and also the Original Appellant No.1-Sulochan Ghansi were directed to be released on bail during pendency of this Criminal Appeal by the Co-ordinate Bench (Justice Vishnudeo Narayan, as then His Lordship was).

20. It further reveals from the Trial Court Record that the appellants had surrendered before the learned Trial Court on 18.05.2001 and they were released on bail by the learned Trial Court on 31.05.2001 and after passing of the impugned judgment of conviction dated 06.07.2004 they remained in custody from 06.07.2001 up to 01.10.2004. Thus, the appellants remained in custody for about three (03) months and six (06) days.

21. So far as oral evidence is concerned, P.W-6 is doctor, namely Krishna Kumar Sharma and who had examined the injured-informant on 21.03.2001 and found the following injuries on his person, as follows:-

- “(i) Lacerated wound of size about 2” x 1 ½ “ x ½” just above part of left eye brow caused by hard and blunt substance and grievous in nature.
- (ii) Lacerated wound of size about 1 ½ “ x 1/8” x bone deep over slightly left at the central vertex caused by hard and blunt substance and grievous in nature.

- (iii) Lacerated wound of the size about 1/2" x 1/8" x muscle deep situated slightly posterior to left pinna caused by hard and blunt substance and simple in nature."

22. During cross examination, he stated that all the above three injuries are possible by three separate blows and Injury No.1 to 3 are possible by fall.

23. Thus, from scrutinizing the evidence of P.W-6 i.e. the doctor Krishna Kumar Sharma, it would appear that he had found two grievous injury on the person of the informant Tankudar Lohra and one simple injury was found on his person and all the three injuries were caused by hard and blunt substance. He also stated that Injury No.1 to 3 are also possible due to fall.

24. P.W-1-Tankudhar Lohra is the informant of this case and he stated during his evidence that while he was sleeping on 21.03.2001 at 9.00 p.m along with his family members then someone knocked his door and after opening the door he came outside and had seen three person namely, Birbachan Ghansi (A2), Sulochan Ghansi (deceased) and Asok Ghansi (A1) and they started abusing him, who belong to his village. When he forbade them from abusing him then Asok Ghansi (A1) and Sulochan Ghansi (deceased) caught hold of him and Birbachan Ghansi (A2) assaulted him by the butt of Tangi on his head due to which he sustained head injury at two places and he raised alarm. Thereafter his father and other family members arrived and his father took him to Simdega Hospital for his treatment. The police arrived in the hospital and took his beyan and he put his signature which was marked as Exhibit-1 and Exhibit-1/1 and his father also put his signature on his fardbeyan marked as Exhibit-1/2.

25. During cross-examination, he stated about his neighbours Dehra Lohra, Kala Kharian, Ranthu Naik and Sukhdeo Naik who was having house near his house. He admitted to be acquainted with one Shankar Ghansi and the wife of Shankar Ghansi but he does not know her name.

He admitted that one case was instituted upon him on the complaint of Shankar Ghansi which was later on compromised.

26. He denied the suggestion for not instituting any case upon Shankar Naik (Ghansi) and he is not aware what happened in that case.

He also admitted that one rape case was instituted against him also. He also admitted that house of accused person and house of Shankar Ghansi are at nearby places.

He denied the suggestion for having any quarrel with the accused persons prior to occurrence. He denied the suggestion for putting upon wife of Shankar Ghansi for entering into compromise and for which he had made her ran away at the stroke of Shore and Shankar Ghansi was in jail.

27. He also denied the suggestion that accused persons had restrained him for not assaulting the wife of Shankar Ghansi. He also denied the suggestion that he had broken the door of the house of the appellants by Tangi. He admitted that all the appellants are own brothers. He admitted that his father and mother were in the house on the date of occurrence and all of them were sleeping in one room.

He also admitted that there was blood stains over his cloth and there is probability that blood has fell down on the earth/ground.

28. He also stated that on his alarm Bandha came there and several other people also arrived there and he became

unconscious and he was taken to hospital and he regained consciousness after 2-3 hours.

He claimed to be discharged from the hospital after 10-11 days and he was given discharge slip. The police have taken his statement on the next day of the occurrence at around 8.00 a.m.

He denied the suggestion that he had falsely implicated the appellants because they used to forbade him for not putting any pressure upon the wife of Shankar Ghansi.

29. Thus, from scrutinizing the evidence of P.W-1 i.e. the informant, it is evident that he came outside of his house after hearing the knocking the door and had stated that Appellant No.1-Asok Ghansi and Sulochan Ghansi (deceased) had caught hold of him whereas Appellant No.2-Birbachan Ghansi had assaulted him by the butt (i.e. reverse portion of Tangi) and which is completely different from the F.I.R. because he has stated in the FIR that he was assaulted by Tangi on his head due to which blood started oozing out whereas during his evidence he stated that Appellant No.2-Birbachan Ghansi had assaulted him by the butt of Tangi twice which is an improved version of prosecution case and which also cast doubt on the prosecution case regarding the manner of assault.

30. It is further evident from the evidence of P.W-1 i.e. informant that none of the family members of the informant had seen the occurrence and his version shows that one Bandha Baraik had helped him and he was taken to hospital.

31. The informant-P.W-1 also admitted that a rape case was pending against him prior to the occurrence. He also admitted that even the wife of Shankar Ghansi had instituted a case against him which was later on compromised. Although he denied the suggestion that he had not put any pressure upon the wife of Shankar Ghansi for entering into compromise but he

admitted during cross-examination that said Shankar Ghansi was in jail. He also admitted that all the family members were sleeping in the same room in which he was sleeping.

32. Thus, the evidence of P.W-1 clearly shows that he was having criminal antecedent of nature of serious cases and although he denied the suggestion for not making the wife of Shankar Ghansi to run away for her life while Shankar Ghansi was in jail but his conduct clearly shows that he was involved in a series of cases and he was forbidden by the appellants for not threatening the wife of Shankar Ghansi, who was living alone while her husband Shankar Ghansi was in jail.

33. Thus, from scrutinizing the evidence of P.W-1, it is evident that there is material improvement in his evidence while examined as P.W-1 because in the F.I.R he stated that Birbachan Ghansi had assaulted him by Tangi due to which he sustained cut injury on his head. However, during his evidence while examined as P.W-1, he stated that he was assaulted by Birbachan Ghansi (Appellant No.2) by the butt of Tangi.

34. It is further evident that the informant-Tankudhar Lohra was having criminal antecedent and he was accused not only in one rape case instituted against him by some one of the village but also he was an accused in the case instituted by the wife of Shankar Ghansi, but he could not take the name of wife of Shankar Ghansi against whom he got the case compromised while Shankar Ghansi was in jail.

Thus, the evidence of P.W-1 is also not reliable.

35. P.W-2 is Bahura Lohra (i.e. the father of the informant), who has stated during his evidence that on 21.03.2001 at around 9.00 p.m. while he was sleeping in his house then he came outside on hearing alarm of his son-Tankudhar Lohra and he had seen the appellants namely, Asok Ghansi, Birbachan Ghansi and

Sulochan Ghansi (deceased) and the appellants had assaulted his son Tankudhar by Tangi and Birbachan was having Tangi. He also stated that his son had having blood on his head and was lying in pool of blood. In the meantime, villagers assembled and he took his son by car to Simdega Sadar Hospital and the appellant had fled away. He proved his signature which was marked as Exhibit-1/2 on the fardbeyan.

36. During cross-examination, he admitted that he was sleeping and awoke on the alarm of his son but he had not got awoke his wife and daughter in-law, but all of them were sleeping in one door. As soon as he came out, he had seen blood oozing out from the head of his son from two places and his son was lying in pool of blood and had fell down by becoming unconscious. He admitted that his son had raised alarm and he had not shouted or raised alarm. He could not identify the persons of the crowd except one Bandha Baraik although 20-25 persons had assembled. He could not say as to whether blood was floated in the cloth of his son which he had borne or not?

He also admitted that the accused persons had previous enmity with his family members and his daughter in-law had instituted a case against one Shankar Ghansi and Shankar Ghansi was in jail but later on the case was compromised.

37. He also admitted that when appellants had assaulted his son then at that time, Shankar Ghansi was in jail.

He also admitted that the wife of Shankar Ghansi had instituted a case upon his son Tankudhar but later on the case was compromised but he had not put any pressure upon her. But he also admitted that after institution of this case the said case was compromised.

He denied the suggestion for instituting false case against the appellants.

He also denied the suggestion that his son Tankudhar had made the wife of Shankar Ghansi ran away and hence he is giving false evidence against the appellants because the appellants had forbade his son for putting pressure upon wife of Shankar Ghansi

38. Thus, from scrutinizing the evidence of P.W-2-Bahura Lohra, it is evident that he is not the eye witness of the occurrence and he awoke only on the alarm raised by his son and thus he had not seen any of the appellants assaulting upon his son Tankudhar. He also admitted that his wife-Marangi Lohrain (i.e. P.W-3) was sleeping and he could not identify 20-25 villagers of his village except one Bandha Baraik. He also admitted that even the wife of Shankar Ghansi had instituted a case against his son (case was instituted under section 376 of IPC against the informant. Although he denied the suggestion for not putting pressure upon the wife of Shankar Ghansi but he himself admitted that after institution of the FIR against the appellants, the case instituted by the wife of Shankar Ghansi against his son was got compromised. He also admitted that his son was lying in the pool of blood and the blood was fully clotted in his cloth but no such blood stained cloth was seized by the police thus, the evidence of P.W-2 is not reliable.

39. P.W-3 is Marangi Lohrain and although she claimed to be the eye witness by stating that when her son Tankudhar Mahto opened the door on hearing knocking at his door then she came from behind and had seen that Asok Ghansi (Appellant No.1) and sulochan (deceased) had caught hold of his son whereas Birbachan Ghansi (Appellant No.2) had assaulted his son by Tangi due to which his son sustained injury and was in pool of blood and thereafter all the three accused persons fled away. However, her evidence is contradicted from the FIR as well as also from the evidence of

P.W-1 i.e. informant and P.W-2 namely, Bahura Mahto (i.e. her husband) who had stated that only Tankudhar Mahto came outside the door after hearing knocking on his door and thus she has not seen the occurrence.

40. During cross-examination, she stated that wife of Shankar had instituted a case against her son for attempt to commit rape and for which he went to jail. Thereafter her daughter in-law had instituted a case upon Shankar for committing rape and in which Shankar had gone to jail and after 2-3 months her son Tankudhar was granted bail but Shankar Ghansi was in jail at that time.

41. She has also denied the suggestion that her son Tankudhar Mahto was putting pressure on the wife of Shankar upon the wife of Shankar for compromise and for which her son made the wife of Shankar Ghansi ran away for killing her.

She admitted that all the three accused persons belong to same caste of Shankar Ghansi and are relatives. However, she denied the suggestion that all the three accused persons had forbade her son for not putting pressure upon the wife of Shankar Ghansi. She also shown ignorance that she is not aware as to in how many cases her son had gone to jail but the police had interrogated him 2-3 times.

42. Thus, from scrutinizing the evidence of P.W-3, it is evident that she is not the eye witness of the occurrence and she had not seen the occurrence and her evidence is exaggerated one. Even she has admitted that her son came outside the jail who was accused in rape case instituted by the wife of Shankar Ghansi and even her daughter in-law had instituted a rape case against Shankar Ghansi. Thus, P.W-3 is an interested witness and her evidence cannot be relied upon.

43. P.W-4 is Bandha Baraik who stated during his evidence that while he was returning to his house after completing the work on 21.03.2001 at around 9.00 p.m. then he had seen the parents of Tankudhar Lohra and had also seen Tanku in pool of blood and the accused persons namely, Asok Ghansi, Birbachan Ghansi and one Sulochan Ghansi (deceased) were going there and Birbachan was having Tangi.

44. During cross-examination, he stated that the police had not taken his statement regarding the occurrence and he is giving evidence for the first time in the Court.

He also stated that he had not seen the wife of Tankudhar and he had not seen injuries on the person of Tankudhar but his cloth was having blood stain.

During cross-examination, he further stated that he has shown unawareness as to whether Tankudhar had gone to jail or not. He stated to be working at Rourkela and had arrived at the residence 2-3 days prior to the occurrence. He admitted that Chamra Lohra, brother of Tankudhar (i.e. informant) used to come to his house. However, he had neither friendship nor enmity with him. He denied the suggestion for giving evidence in favour of the informant due to having friendship with his brother.

45. Thus, from scrutinizing the evidence of P.W-4, it is evident that he is also not the eye witness of the occurrence and he has merely seen the informant Tankudhar Lohra having blood stained on his cloth and had seen the accused persons going towards his house.

46. Therefore, the evidence of P.W-4 is not believable as the accused persons had already fled away after the occurrence as per evidence of P.W-1, P.W-2 and P.W-3.

47. He admitted during his cross-examination that the police had not recorded his evidence and he is giving evidence for the first time in the Court.

Thus, the evidence of P.W-4 is also not reliable.

48. P.W-5 is Tileshwar Ram, who stated during evidence that on 21.03.2001 while he was posted as A.S.I at Birjheraga P.S. then the fardbeyan of Tankudhar Lohra was recorded by A.S.I. Ramnath and he was handed over investigation of this case. He had proved the signature and writing of the A.S.I-Ramnath Ram which was earlier marked as Exhibit-1.

He further proved the formal FIR marked as Exhibit-2 and also the writing of S.I-Jageshwar Prasad marked as Exhibit-2/1 and also proved the endorsement of Jageshwar Prasad on fardbeyan marked as Exhibit-1/3.

After taking over investigation of this case, he (i.e. P.W-5) had recorded the statement of injured Tankudhar Lohra and also recorded the statement of Bahura Lohra and Marangi Lohrain i.e. P.W-2 and P.W-3. After completion of investigation, he had submitted charge sheet against three accused persons namely, Asok Ghansi (Appellant No.1), Birbachan Ghansi (Appellant No.2) and one Sulochan Ghansi (deceased).

49. During cross-examination, he stated that A.S.I Ramnath Ram is in service. He has shown unawareness about the name of doctor who had treated the injured and he had not prepared any requisite for treatment of the injured. He had gone to the place of occurrence on 22.03.2001 at around 1.30 hours and taken the details from Chandeswar Das. He admitted that no sign of blood was found at the place of occurrence. He has shown unawareness about the number of house near the place of occurrence. He also learnt during investigation that there was prior litigation between both the sides. He further admitted that

he is not aware that there was dispute /case between the wife of Shankar Ghansi and Tankudhar. He admitted that at the time of occurrence the accused was sleeping in the room.

50. Thus, from scrutinizing the evidence of P.W-5- Tileshtar Ram (i.e. I.O), it is evident that he had not done proper investigation rather he had done perfunctory. He could not say the names of nearby persons/neighbours near the house of the informant. He admitted to be not aware regarding litigation between the wife of Shankar Ghansi and Tankudhar. He had also not seen the blood stained cloth of the injured i.e. informant.

51. Thus, the investigation of the Investigating Officer is perfunctory and cannot be relied upon.

52. P.W-7 is Joharan Mistri, who stated during his evidence that he had not heard anything about the occurrence and he was in his house on the date of occurrence. This witness was declared hostile by the prosecution.

Thus, the evidence of P.W-7 is also not reliable.

53. The informant had also not produced the blood stained cloth to the police which also makes the prosecution case doubtful.

54. It further transpires that the police had not seized the blood stained cloth of the informant-Tankudhar Lohra and had not made any effort to press the same and for being sent to F.S.L.

55. It further transpires that the informant and the police have not produced the discharge slip of Simdega Hospital where the informant was said to be admitted for 10-11 days. Thus, the prosecution case becomes doubtful.

56. It transpires that nowhere there is allegation of assault against the Appellant No.1-Asok Ghansi either in the FIR or in

evidence and the allegation of assault is only against Appellant No.2-Birbachan Ghansi.

57. On the facts and in the circumstances of this case, the judgment of conviction and sentence dated 06.07.2004 against Appellant No.1-Asok Ghansi, passed in Sessions Trial No.48 of 2002 (arising out of Simdega P.S. Case No.22 of 2001) by the Trial Court i.e. learned Additional Sessions Judge, Simdega, is set aside and the Appellant No.1-Ashok Ghansi is acquitted against the charges levelled against him.

58. The Exhibit-3 is the injury report of the informant and in which the following injuries have been found:-

- “(i) Lacerated wound of size about 2” x 1 ½ “ x ½” just above part of left eye brow caused by hard and blunt substance and grievous in nature.*
- (ii) Lacerated wound of size about 1 ½ “ x 1/8” x bone deep over slightly left at the central vertex caused by hard and blunt substance and grievous in nature.*
- (iii) Lacerated wound of the size about 1/2” x 1/8” x muscle deep situated slightly posterior to left pinna caused by hard and blunt substance and simple in nature.”*

59. It appears that Injury No.1, 2 and 3 are lacerated injuries and Injury No.3 is said to be simple in nature. But, Injury No.1 and 2 are stated to be grievous in nature. But, nature of injury shows that it was not dangerous to life and as such no offence under section 307 of IPC is made out and as such conviction of the Appellant No.2-Birbachan Ghansi under section 307 IPC is altered to Section 323 of IPC.

60. There is no X-ray Plate/C.T. Scan/MRI etc. has been produced by the injured-informant.

61. Neither the informant-P.W-1, namely, Tankudhar Lohra nor any of the witnesses have brought on record the document which shows that the informant had remained in hospital for 10-11 days.

62. Even the Doctor who had been examined as P.W-6, has not stated that he was admitted to hospital and discharged.

63. It appears that the evidence of P.W-1-Tankudhar Lohra (i.e. the informant) is exaggerated one.

64. So far as Appellant No.2-Birbachan Ghansi is concerned, it is evident that the occurrence took place in the year, 2001 and he has faced long protracted trial for approx 25 years and hence, Appellant No.2, namely Birbachan Ghansi can be given the benefit of Section 4 of Probation of Offenders Act.

65. At this stage, it would be relevant to refer Section 4 of the Probation of Offenders Act, 1958 which reads as under:-

“4. Power of Court to release certain offenders on probation of good conduct. - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such

conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under subsection (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

66. Under the circumstances, Appellant No.2, namely Birbachan Ghansi is being given the benefit of Section 4 of the Probation of Offenders Act on execution of bond of Rs.5,000/- for a period of one year before the learned Trial Court i.e. learned Additional Sessions Judge, Simdega.

67. Thus, this Cr. Appeal (SJ) No.1213 of 2004 is allowed in part with the observation as mentioned above.

68. Let the original Trial Court Record and a copy of this judgment be also sent to the learned Trial Court by the office.

(Sanjay Prasad, J.)

Dated: 12.06.2026
Saket/-