



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.205 of 2000

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

Keshab Naik

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Sasanka Sekhar Das, Amicus Curiae

For the Respondent : Mr. Ashok Kumar Apat, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 19.02.2026 :: Date of Judgment: 26.02.2026

S.S. Mishra, J. The present Criminal Appeal, filed by the appellant under Section 374 of Cr.P.C. is directed against the judgment and order dated 17.07.2000 passed by the learned Additional Sessions Judge, Bhanjanagar-Aska in Sessions Case No.58 of 1999 (SC No.16/99 ADJ-I), whereby the learned trial Court while acquitting the appellant for the offences under Sections 294/452/324/304 of I.P.C., convicted him for the offence under Sections 323/325 of I.P.C. and on



that count, he was sentenced to undergo R.I. for two years and to pay a fine of Rs.1,000/-, in default to undergo R.I. for one month for the offence under Section 325 of I.P.C., and also sentenced to undergo R.I. for six months for the offence under Section 323 of I.P.C.

2. The present appeal has been pending since 2000. When the matter was called for hearing, consistently none appeared for the appellant. Therefore, this Court requested Mr. Sasanka Sekhar Das, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Sasanka Sekhar Das, learned counsel.

3. Heard Mr. Sasanka Sekhar Das, learned Amicus Curiae for the appellant and Mr. Ashok Kumar Apat, learned Additional Government Advocate for the State.

4. The prosecution case, in brief, is that the accused is the son of the brother of the deceased, Sada Naik, and was residing as his front-door neighbour. On 28.02.1998 at about 10.00 P.M., while a quarrel was taking place between the deceased Sada Naik and his son,



Gandhia Naik, the accused allegedly intervened in the said quarrel and assaulted the deceased by means of a yoke (Juali), dealing a blow on his right thigh. As a result of such assault, the bone of the right thigh was fractured. It is further alleged that the accused abused Sairendri Naik, the daughter-in-law of the deceased, in obscene language and also assaulted her and her husband, Prakas Naik. The injured Sada Naik was immediately taken to Jagannathprasad Hospital for treatment. As his condition deteriorated, Sairendri Naik lodged the First Information Report at Buguda Police Station. Subsequently, since adequate treatment could not be provided at Jagannathprasad P.H.C., the deceased was shifted to the house of his daughter at Jagannathprasad. Despite treatment, he succumbed to his injuries on 31.03.1998 at his daughter's residence. On the basis of the aforesaid allegations, the accused has been charged for the offences under Sections 294/452/324/323/304 of I.P.C.

5. In order to establish its case, the prosecution examined ten witnesses. P.W.3 is the informant; P.W.5 is her husband; P.W.6 is the daughter of the deceased in whose house the deceased expired; P.W.1 was an independent eye witness; P.W.2 was a seizure witness; P.W.4



expressed his ignorance about the incident; P.W.8 was the A.S.I. who made inquest over the dead body in the house of the daughter of the deceased at Jagannathprasad; P.W.7 was the doctor, who treated deceased Sada Naik at Jagannathprasad Hospital; P.W.9 was the Investigating Officer; and P.W.10 was another I.O., who has only submitted the charge-sheet. The post-mortem report was admitted into evidence on the consent of the defence.

6. The learned trial Court, after analyzing the entire evidence brought on record by the prosecution, found the appellant guilty of offence under Section 323/325 of I.P.C. and accordingly sentenced him. The learned trial Court was of the view that the injury caused by the appellant to PWs.3 and 5 was simple in nature, therefore, he is guilty of offence under Section 323 of I.P.C. However, since one of the injuries sustained by the deceased Sada Naik was grievous one, therefore, the appellant is liable for offence under Section 325 of I.P.C. The learned trial Court, in conclusion has stated as under:-

“14. The eye witness account, the medical evidence, evidence of after occurrence witnesses and dying declaration of the deceased before his daughter pw.6 proved beyond doubt that the accused assaulted on the right side thigh of the deceased by a juali causing fracture of the bone



and he died due to proper medical care as he lacked in resources. It has also been proved that the accused caused hurt to Sairendri Naik and Prakas Naik. There is no evidence that the accused trespassed into the house of the deceased and uttered any obscene word. The accused had dealt a single violent blow on the right thigh of the deceased by a yoke which is an agricultural implement and cannot be termed as a deadly weapon. Such blow was not on the vital part of the body and in ordinary course could not cause death. The death was caused as the deceased could not get proper medical treatment due to poverty. Under the circumstances of this case no intention or knowledge to cause death is attributable to the accused.

In State Vs G. Narayana Murty, 1987 (I) L.L.R.397 it has been held that "in absence of intention or knowledge the offence committed may be one of causing grievous hurt or simple hurt as the case may be. When injuries have been followed by death and the question is what offence had been committed, it is not to be by any backward reasoning as to the presumable intention or knowledge from the mere fact that the injuries caused did in fact resulted in death, the degree of guilty of the accused is not to be extended beyond what he had intended or known as probable consequences of his act". The accused while inflicting injury with a yoke on the thigh of the deceased, he had knowledge that his action would result in causing grievous hurt. The assault of the accused on the thigh of the deceased comes under the mischief of Sec. 325 I.P.C.

15. In the result, the accused is found not guilty of the charge u/s.294, 452, 324 and 304 I.P.C. and acquitted. He is found guilty u/s.323 I.P.C. for causing hurt to Sairandri Naik and Prakas Naik



and u/s.325 I.P.C. for causing grievous hurt to deceased Sada Naik and convicted there-under.”

7. P.W.3 is the informant and injured in the present case. She has deposed that two years back at about 10 p.m. Gandhia Naik, her brother-in-law quarreled with the deceased and she admonished the same stating that why he was always quarreling with the deceased. She further deposed that the accused-appellant came carrying with a juali (yoke) and poked on her belly. At that time, she was pregnant and slumped down after receiving the blow. The deceased chided the appellant as to why he was assaulting the woman. The appellant then dealt a blow with the same juali on the right side of the deceased. She further deposed that when her husband interceded, the accused caught hold of his neck.

P.W.5 corroborated with the version of P.W.3 and stated that P.W.3 is his wife and the deceased Sada Naik is his father. He deposed that about two years back at 9.00 p.m., he had gone for shopping and while returning at 10.00 p.m., he saw the accused was quarreling with his wife and assaulted at her chest with a juali. When he asked the accused-appellant, why he assaulted his wife, the accused caught his neck, for which he felt suffocated and fell down



on the ground and sustained injury on his right forearm. He found his father lying in front of his house and learnt from P.W.3 that the appellant had assaulted him with a juali. Thereafter, he lifted his father (deceased) into his house as he was unable to move due to the injury on his right thigh. He had sustained bleeding injury on his head above the right ear.

P.W.6 is one of the brothers of P.W.5, who had not witnessed the occurrence, but he had narrated the incident as has been told to him by P.W.5.

P.W.7 was the doctor, who has examined the deceased, Sada Naik as well as the injured (P.W.3). He found the following injuries on the deceased, Sada Naik, which reads as under:-

- “1) Right side thigh was swollen and highly tendered.*
- 2) Right hip joint and buttock are swollen and tender.*
- 3) Fracture of neck of right side femur bone which can clinically be confirmed and also confirmed by x-ray.”*

The doctor (P.W.7) has also examined the injured (P.W.3) on police requisition and found the following injuries:-

- 1) Swelling injury of 1 x 1 over face on the right side.*
- 2) One swelling injury 3” x 2” present over right side buttock.*
- 3) One swelling injury 2” x 3” over back.*



The doctor (P.W.7) has also examined the injured (P.W.5) on police requisition and found the following injuries:-

- 1) *one lacerated injury ½” x ½” over forehead.*
- 2) *swelling injury 2” x 1” over right side face of zygomatic bone.*

The doctor opined that the injuries sustained by P.Ws.3 and 5 are simple in nature. However, one of the injuries sustained by the deceased, Sada Naik was grievous in nature.

8. Mr. Das, learned Amicus Curiae for the appellant strenuously argued that even after the evidence of the prosecution is taken at its face value, no offence under Section 325 of I.P.C. is made out. He has also highlighted the contradictions in the evidence of the witnesses and tried to create a doubt in the prosecution version. To substantiate his case, he has relied upon the judgment of the Himanchal Pradesh High Court in the case of *Dayal vrs. Union of India*, reported in 1962 *SCC OnLine HP 9*, wherein it has been held as under:-

“23. In the case of Jiba Bai v. Emperor, AIR 1917 Bom 259 it was held by Beaman, J. that any hurt which endangers human life must also be likely to cause death and where death is caused as a result of an injury which is not intended to cause death and was not in normal conditions likely to cause death the offence can neither be grievous hurt nor culpable homicide not amounting to murder and it



must then be a case of simple hurt. Shah, J. The other learned Judge constituting the Bench did not express any definite opinion on the question as to whether there was any real difference between the expression 'injury which is likely to cause death' and the expression 'hurt which endangers life'. The line of demarcation between culpable homicide not amounting to murder and grievous hurt under the first part of the 8th clause of section 320, I.P.C. if at all is a thin and subtle one. There appears to be a good deal of force in the opinion expressed by Beaman, J. An injury which is likely to cause death must under normal conditions be also a hurt which endangers life. In the instant case it has been held that the appellant did not intend to cause bodily injury likely to cause death nor did he know that the injury which he was causing was likely to cause death. It would, therefore, not be safe to convict him of an offence under section 325, I.P.C., either."

Mr. Das, learned Amicus Curiae has also relied upon the judgment of the Bombay High Court in the case of ***Mushirkha Bashirkha Musalman vrs. The State of Maharashtra*** reported in ***1982 SCC OnLine Bom 266*** to support his contention.

9. In the present case, no doubt the deceased has received grievous hurt as per the evidence of the doctor (P.W.7). The learned trial Court by relying upon the said evidence, convicted the appellant for the offence under Section 325 of I.P.C. To appreciate the offence



being committed by the appellant, the provision of Section 325 of I.P.C. needs to be empathetically relied upon, which reads as under:-

“Section 325- Punishment for voluntarily causing grievous hurt- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 335 of I.P.C. provides for punishment where grievous hurt is voluntarily caused on grave and sudden provocation, which reads as under:-

“Section 335-Voluntarily causing grievous hurt on provocation:-Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.”

10. To bring home the charge under Section 325 of I.P.C., the prosecution needs to prove that the accused has voluntarily caused grievous hurt except when he causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But if he voluntarily to cause grievous hurt intending or knowing himself to be likely to cause grievous hurt of one kind, but he actually causes



grievous hurt of another kind. Though grievous hurt may be caused in any assault, it does not always follow that the person who has assaulted is guilty of causing grievous hurt under Section 325 of I.P.C. A person is only liable for the offence under Section 325 of I.P.C., if he voluntarily caused grievous hurt and “voluntarily causing hurt” according to Section 322 means if he intends to cause grievous hurt or knows himself to be likely to cause such hurt. The eye witnesses count although suggest that the appellant out of sudden provocation, gave a blow to the deceased, but the prosecution could not convincingly bring on record any evidence to show that the appellant had the intention to cause grievous hurt voluntarily or knowingly that he would cause grievous hurt. There is no material to indicate premeditation, repeated assault, or targeting of any vital part of the body. In the circumstances, the requisite intention or knowledge to cause grievous hurt cannot safely be attributed to the appellant. Therefore, the offence under Section 325 of I.P.C. in the facts scenario of the present case may not be made out.

However, the evidence clearly establishes that the appellant voluntarily caused hurt by using the juali as a weapon of offence.



Though primarily an agricultural implement, the instrument, by the manner of its use, was capable of causing serious bodily injury. As the essential ingredients of voluntarily causing hurt by means of an instrument used as a weapon are established, the conviction is appropriately altered from Section 325 of I.P.C. to Section 324 of I.P.C. Accordingly, taking into account the entire conspectus of the evidence on record, I am of the view that the conviction recorded by the learned trial Court needs to be modified to that of the offence under Section 323/324 of I.P.C. in place of Section 323/325 of I.P.C.

11. At this stage, Mr. Das, learned Amicus Curiae appearing for the appellant, submitted that the incident relates back to the year 2000, at which point the appellant was about 26 years of age. At present, he is aged about 52 years. He also submitted that the appellant has already undergone incarceration for a period of fifty-two days. Over the years, he has led a dignified life, integrated well into society, and is presently leading a settled family life. Incarcerating him after such a long delay, it is argued, would serve little penological purpose and may in fact be counter-productive, casting a needless stigma not only upon him but also upon his family members, especially when there is



no suggestion of any repeat violation or ongoing non-compliance with regulatory norms. Therefore, in the fitness of the situation, a lenient view should be taken and the sentence of the appellant may be modified.

12. The contention raised by Mr. Das, learned Amicus Curiae for the appellant, is not seriously controverted by the learned counsel for the State. Otherwise, the submission made by Mr. Das, deserves attention in view of the fact that the present appeal itself has been pending for more than two decades.

13. Taking into account the entire circumstances of the case, and the gravity of the offence, the age of the appellant, the sentence awarded to the appellant deserves modification. Hence, the sentence of two years is accordingly modified. Accordingly, without altering the sentence awarded by the learned trial Court in so far as the offence under Section 323 of I.P.C. is concerned, the appellant is sentenced to undergo R.I. for a period of six months and to pay a fine of Rs.5,000/- (Rupees five thousands), in default of payment of the fine amount, to undergo R.I. for a further period of one month on the count of the conviction under Section 324 of I.P.C. The period the



appellant has already undergone shall be set off from the substantive sentence.

14. Accordingly, the CRA is partly allowed.

15. This Court acknowledges the effective and meaningful assistance rendered by Mr. Sasanka Sekhar Das, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 26th February, 2026/ Swarna