



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 197 of 1997

(In the matter of an application under Section 374(2) of Criminal Procedure Code)

Soundarjya Bhoi and others

Appellants

-Versus-

State of Orissa

Respondent

For the Appellants : Mr. D.P. Dhal,
Senior Advocate

For the Respondent : Mr. S. Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 05.02.2026 : Date of Judgment: 12.02.2026

S.S. Mishra, J. The present criminal appeal filed by the appellants under Section 374 (2) of Cr.P.C. is directed against the judgment of conviction and order of sentence dated 23.08.1997 passed by the learned Additional Sessions Judge, Titilagarh in Sessions Case No. 48/11 of 1997, whereby the learned trial Court has convicted the accused-



appellants for the offences punishable under Sections 148/149/307 of the I.P.C. and, accordingly, sentenced them to undergo R.I. for one year each for the offence under Section 148 I.P.C. and further sentenced to undergo R.I. for two years and to pay a fine of Rs.500/- each, in default to undergo R.I. for one month each for the offence under Sections 149/307 IPC.

2. Heard Mr. D.P. Dhal, learned Senior Counsel for the appellants and Mr. S. Panigrahi, learned Addl. Standing Counsel for the State.

3. The prosecution story as per the FIR is that on 15.07.1996 at about 7.00 A.M. at village Sandhisar the accused persons, namely, Soundarjya and Lalu scolded and threatened Hazari Hans. The brother of the informant protested to their easing in his land called 'Satlengi'. Thereafter, all the accused persons arrived on the thrashing floor of the informant situated over that 'Satlengi' land being armed with Thengas, Lathi and Axe. The accused Lalu scolded in filthy language and assaulted the father of the informant by a rod, accused Soundarjya assaulted Hazari with an axe on his head and leaving Hazari taking him to be dead accused persons chased the informant, his father and his



brothers. On the basis of the written report of the informant, Bangamuda P.S. Case No.23 dated 15.07.1996 was registered and investigation was conducted and charge sheet was filed. Hence, against all the eleven accused persons the learned trial court framed the charges under Sections 307/149/148 IPC and on their stance of complete denial and claim for trial, they were put to trial to face the charges, as mentioned above.

4. The prosecution in order to bring home charges examined as many as twelve witnesses. Out of them, P.W.1 was the informant, P.Ws.5, 6 and 8 are the victims, P.Ws.3, 4 and 9 were the co-villagers and the eye witnesses to the occurrence. P.W.7 was the doctor, who examined P.Ws.5 and 6. P.Ws.11 and 12 were two Investigating Officers, who investigated the present case.

5. By analyzing the evidence brought on record by the prosecution, the learned trial court convicted all the accused persons, as per the charges mentioned above, and on the said count, sentenced them to undergo R.I. for one year each for the offence under Section 148 I.P.C. and further sentenced to undergo R.I. for two years and to pay a fine of



Rs.500/- each, in default to undergo R.I. for one month each for the offence under Sections 149/307 IPC.

6. Aggrieved by the aforementioned, all the accused-appellants conjointly filed the present appeal. The appeal is pending since 1997. During pendency of the appeal, it was reported by the prosecution that appellant nos.6, 8, 10 and 11 have already expired. In the absence of any application either on behalf of their legal heirs or the next friends, the appeal qua those deceased appellants, stood abated. Hence, the present appeal is to be considered qua appellant nos.1 to 5, 7 and 9. The analysis of the prosecution evidence borne on record qua the surviving appellants are being done to examine the sustainability of the conviction and sentence recorded by the learned trial court.

7. In the present case, there are three injured witnesses and one eye witness have been examined. P.Ws.1, 5 and 6 are the injured witnesses, whereas P.W.8 is the eye witness. P.W.10 is the doctor, who examined the injured P.W.6, whereas P.W.2, who was another doctor, had examined P.W.5. Apart from the ocular testimony of these witnesses, the other materials have been successfully brought on record by the



prosecution to establish its case and bring home the charges. Initially, the FIR was registered by P.W.1, the informant, who has narrated the incident in quite detail specifically attributing overt act against appellant nos.1 and 2. When the said informant stepped into the witness box as P.W.1, he has reiterated his version inter alia stating that appellant no.2-Lalu and appellant no.1-Soundarjya were easing themselves in their land called 'Satlengi'. His brother Hazaru protested and at that time he, his father and two brothers, namely, Subash and Rajendra were threshing the floor in the nearby field. He further stated that the two accused persons scolded Hazaru in filthy languages and left the place. After some time, they came with nine accused persons. He deposed that appellant no.2 was armed with iron rod and appellant no.1 was armed with an axe. The said witness appears to have named all the accused persons, but not found mentioned in the recorded evidence. He deposed that appellant nos.1 and 2 not only scolded them but also appellant no.1 assaulted on his head giving three strokes on the sharp edge and assaulted his brother Hazaru P.W.5, who fell down. Thereafter appellant no.2 assaulted his father with an iron rod, resulting fracture on his left hand and thereafter



all the accused persons went away towards their village. He disclosed the name of witnesses those who were present at the time of incident. He was also testified by the prosecution as one of the seizure witness. The said witness was subjected to cross examination by the defence, but nothing could be yielded to the advantage of the defence.

P.W.5, the brother of P.W.1 was also one of the injured, whose deposition stood corroborated with the evidence of P.W.1 without any variation.

P.W.6, who is the father of P.Ws.1 and 5, was the third injured. He has deposed that when he along with his sons P.Ws.1 and 5 and Subash were threshing their land, appellant nos.1 and 2 scolded them and left from there and after some time both of them came with all the accused persons. This witness has not named the other accused persons and not even identified them. But he has very specifically deposed that the appellant nos.1 and 2 armed with iron rod assaulted him as well as his son P.W.5. The narration of incidents made by P.W.6 finds no variation with the narration of the incident made by P.Ws.1 and 5.



P.W.8 was an eye witness to the occurrence, who in his testimony has deposed exactly the same version of the prosecution story, as has been narrated by the other witnesses. He has deposed that when he was preparing to plough their land near the river along with his father and elder brother, appellant nos.1 and 2 came near to the river to wash themselves and he was told by P.W.5 that appellant nos.1 and 2 have scolded and threatened P.W.5 and on the protest they immediately left the place. Little thereafter appellant nos.1 and 2 came with a large number of accused persons being armed with axe, rod and lathies etc. The appellant no.2 searched for his brother P.W.5 using filthy language and saying “Magiha Hazari kahi golu tote hanidebu”. On protest by his father he was assaulted on his head and left elbow with rod by appellant no.2. The appellant no.1 assaulted on the head of P.W.5 with an axe causing bleeding injury. P.W.5 caught hold of the axe when appellant no.1 made a second attempt to assault him and he fell senseless. He has further deposed that “*other accused persons had surrounded us and/were shouting. After the incident the accused persons fled away thinking that the injured persons are dead*”. He has also witnessed to the seizure of the



axe used by the appellant no.1 to assault P.W.5 which was M.O.IV. The defence failed to elucidate anything to their advantage in the cross examination.

P.W.2, the doctor, who had examined the injured P.W.5 found following injuries:-

- “1. Lacerated wound- 2cm x 1cm x 1cm over right side forehead 4cm above the centre of right eye brow.*
- 2. Lacerated wound 2cm x 1cm x 1cm over centre of right parital region of scalp.*
- 3. Lacerated wound 4cm x 1cm x 1cm anteroposterierl longitudinal over centre of vault of scalp.”*

He has opined that all the injuries were simple in nature and it is possible by sharp edge axe, if the edge was not sharp enough. P.W.2, the doctor further deposed that the injury could not be possible by the assault on the sharp edge of an axe, if the edge was sharp and not blunt. The sharp edge of the axe will be taken as blunt edge, if it has lost its sharpness. The fracture may be caused depending upon the force used, if the assault is made with axe.

P.W.10, the other doctor, who had examined the injured P.W.6 has found the following injuries:-



“1. Lacerated injury of size- 1 ½” x 1” partial thickness of the scalp on the scalp of the vertex.

The injury was simple in nature and caused by blunt force impact.

2. Fracture dislocation around left elbow fracture of upper end of ulna which was dislocated from humerus.”

He opined that the injuries are grievous in nature and caused by blunt force impact. The opinion given by the doctor, P.W.10 regarding the grievousness of the injury is based on the ex-ray examination, vide plate No.L-103, which was exhibited.

8. Mr. Dhal, learned Senior Counsel appearing for the appellants submitted that reading of the evidence of the doctor makes it clear that the injuries caused by the appellants were not aimed or intended to kill the injured persons. He submitted that lacerated injuries were found on the body of the injured persons, which is generally not caused by the use of sharp side of the axe. Though the appellants were armed with sharp edge weapons, but they did not use the sharp side of the weapon, hence only caused lacerated wound. But the learned trial court has gone wrong to arrive at a conclusion that the appellants were having intention to kill the injured. Therefore, he submitted that even if the prosecution evidence



is taken at its face value, no offence under Section 307 IPC could be established on record, rather it would be at best a case under Section 325 IPC.

9. I have taken into consideration the evidence in toto. It is ably establish on record by the prosecution that the incident had taken place on 15.07.1996 and the appellant nos.1 and 2 were the aggressors. They have initially quarreled with P.W.5 and P.W.6 and left the place. Subsequently, they gathered with other accused persons and came to attack P.Ws.1, 5 and 6 and caused bodily injury to the witnesses. Since the injuries sustained by P.W.5 are grievous in nature and in the vital part of the body, the learned trial court has rightly concluded that the prosecution could prove the charge against the appellants under Section 307 IPC. The learned trial court has meticulously dealt with the evidence of all the witnesses and arrived at the following conclusion:-

“..... Let us take first the injuries of P.W.5. Ocular evidence on the point is that three strokes were given on his head by the sharp edge of axe-M.O.IV and it is the medical evidence of the doctor-P.W.2 that he found three numbers of lacerated wounds on the head of the injured. The doctor gave out possibility of these injuries by the sharp edge of an axe, the edge not sharp enough, before



examining M.O.IV and after examining that M.O.IV opined that assault on the sharp edge of that axe might cause incised wound. So the opinion of the doctor is not definite on possibility of these injuries by the sharp edge of M.O.IV. On my scrutiny of this weapon its sharp edge was found not to be that sharp and assault with force by that edge on head is expected to cause incised wound. But in absence of any evidence or impact of force used during assault in that state of chaos there is scope to accept the opinion of the doctor on possibility of the injuries on P.W.5 even by assault on the sharp edge of M.O.IV. On the injury of the other injured-P.W.6 it is the consistent evidence of P.Ws.5,6 and 8 that P.W. 6 with an iron rod was assaulted on his head and left hand more specifically elbow causing fracture of that elbow. Of course-P: W:1' has only breathed about the assault on the left hand of P.W.6 by iron rod but the omission is explained in the cross-examination of P.W.8 which is that P. W.6 was assaulted once and the stroke slipped from his head and struck on left elbow. The doctor -P.W.10 examining this P.W.6 about 2 half hours after the alleged assault has found lacerated injury on his head and fracture of his left elbow caused by hard and blunt weapon. So there is no discrepancy in the ocular evidence and medical evidence as submitted by learned counsel for the accused.

Learned defence counsel next contended to disbelieve the prosecution charge unfolding the short falls in the investigation. The I.O.-P.W.11 has admitted not to have seized the patches of blood found by him at the spot and both the I.Os -P..11 and 12 have admitted not to have sent the seized articles for chemical examination. Non-seizure of blood patches from the spot and non-sending of seized articles for chemical examination are accepted negligence of the I.Os. but are considered not enough to pull down the prosecution case established otherwise. P.W..11 has tried to reason out non-sending of P.W.1 for his medical examination who he was not required to do so there being no fact and evidence of and that P.W1. had



sustained any injury. Citing the decision reported in (1995) 8 OCR-494 learned defence counsel submitted that defence has been prejudiced for non-examination of the police officer of Khariar P.S. who has examined P.W. 6. In the cited decision His Lordship has held:-

"B. CRIMINAL TRIAL- Non-examination of investigating police officer in trial- Defence unable to put material omission in evidence of witnesses _ relating to the alleged assault- Held, non-examination, of I.O. a serious infirmity resulting in prejudice to the accused".

This P.W.6 has been examined twice, once by police officer of Khariar P.S. and again by P.W.12 and no police officer of Khariar P.S. has been cited as a C.S. witness. Since prosecution has depended on the statement of P.W.6 recorded by P.W.12 no prejudice has been caused to the defence for non-examination of any police officer of Khariar P.S. As such, in my humble opinion, the dictum of law pronounced in the cited decision has no bearing to the present case, both the cases standing on different footings. Learned defence counsel citing the decision reported in 1991(1) O.L.R.289 and (1995) 8 OCR-568 urged to discard the evidence of P.Ws. for their delayed examination U/S.161 Cr.P.C. by the I.O. In the first cited decision, Their Lordships have held:

"1.CRIMINAL TRIAL Appreciation of evidence-Witnesses giving inconsistent versions regarding scribing of FIR- Prosecution unable to establish the authorship of FIR-Non-disclosure of occurrence by witnesses to doctor and co-villagers at the earlier opportunity- inordinate and unexplained delay in examination of material



witnesses-Acquittal justified and not to be interfered with."

In the second cited decision His Lordship has held:-

"D. CRIMINALTRIAL- Appreciation of evidence-Witness examined about a month after the occurrence -In absence of plausible explanation for the delayed examination, evidence to be discarded".

As it appears from the C.D. only P.Ws.6 and 8 have been examined by the I.O. P.W.12 on 27.11.96 after he took charge of the investigation on 26.11.96. Non-examination of these witnesses before hand has been explained in the evidence of the first I.O.-P.W.11 which is that he could not examine them as he failed to find them out. As such the contention of the learned defence counsel has no force.

Learned defence counsel next contended that prosecution case is to be disbelieved in view of use of different filthy languages by the witnesses developing a story from time to time, discrepancy in the evidence of presence of Rajendra one of the brother of the informant and of shifting of P.W.5 to the threshing floor of one Rama Laxman Tiwari and non-examination of two of the four independent witnesses without any reason. Discrepancy is there on presence of Rajendra (not clear) is not in the F.I.R. and on the obscene words used by accused Lalu in the evidence of the witnesses but that is very natural when the witnesses, rustic villagers have been brought to witness box about 10 months after the alleged incident. Also there is discrepancy as to how P.W.5 reached the threshing floor of Rama lexman Tiwari situated on the other side of the river. Arjuni soonafter the alleged assault on him. Creeping in of this discrepancy is not unnatural for the reason mentioned above and also the discrepancy is not considered material to shatter the credibility of the witnesses. Thus, prosecution has not examined other eye



witnesses Neheru Tandi and Hruda Hans, may be getting alarmed on P.W.3 and 4 going hostile to the prosecution whose evidence might have further cerented the prosecution case but their non-examination has not weakened the -prosecution case well established otherwise. It may be mentioned here that nothing has seen elicited from the evidence of P.Ws.1,5,6 and 8 to discredit them.”

10. The evidence of P.Ws.1, 5, 6 and 8 if read in unison and in conjunction, one thing would very apparent that none of the witnesses have attributed any overt act to any other accused persons except appellant nos.1 and 2. The witnesses have not appropriately identified the accused persons, i.e., remaining appellants. From the reading of the evidence of P.W.1, it is clear that he has given the name of all the accused persons, but the names are not reflecting in the recording of evidence. Besides that P.W.8, the only witness who deposed that the other accused persons had surrounded them and were shouting. Save and except this isolated statement of P.W.8, there is nothing brought on record by the prosecution to show the complicity or involvement of the other appellants in the commission of crime. Therefore, barring appellant nos.1 and 2, the remaining appellants are directly entitled to the benefit of doubt, as the evidence of the prosecution is not full proof against any



of them. Hence, qua those appellants, interference with the judgment by this Court is called for. Accordingly, barring appellant nos.1 and 2, all other appellants are entitled to acquittal, as the prosecution has miserably failed to prove its case beyond all reasonable doubt to bring home the charges under Sections 147/149/307 IPC.

In view of the foregoing discussion, the conviction recorded by the learned trial court against appellant nos.1 and 2 under Section 307 IPC is affirmed and the conviction recorded against all other appellants are set aside.

11. At this stage, Mr. Dhal, learned Senior Counsel appearing for the appellant submitted that the incident relates back to the year 1996 and at that point of time the appellant nos.1 and 2 were 45 and 35 years of age. The appeal is pending since 1997. At present the appellants are senior citizens. Appellant no.1 is now 74 years of age and appellant no.2 is 64 years of age. Therefore, in the late evening of their life sending them to serve out the remaining period of sentence could be harsh. He has relied upon the judgment of this Court in the case of *Chinta Marandi @ Chintamani Marandi vrs. State of Orissa*, CRREV No. 393 of 2000



disposed of on 14.07.2022 and submitted that regard being had to the age of the appellants and prolongation of the judicial proceeding for about more than three decades, the appellants may be entitled to the benefit of the Probation of Offenders Act.

12. The present appeal stands rejected qua appellant nos.1 and 2 vis-à-vis their conviction under Section 307 IPC. However, taking into consideration the overall fact scenario of the case and the fact that the occurrence relates back to the year 1996 and the appellant nos.1 and 2 are senior citizens, I accede to the prayer made by Mr. Dhal, learned Senior Counsel appearing for the appellants. Accordingly, while extending the benefit under Section 4 of the Probation of Offenders Act, I direct the appellant nos.1 and 2 to be released under Section 4 of the Probation of Offenders Act for a period of one year on their executing bond of Rs.5,000/- (Rupees Five Thousand) each within one month with one surety each for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the appellant nos.1 and 2 shall keep peace and good behavior and they shall remain



under the supervision of the concerned Probation Officer during the aforementioned period of one year.

13. Section 357 Cr. P.C. and Section 5 of the Probation of Offenders Act empowers the Court to award compensation to the victim(s) of the offence in respect of loss/injury caused to them. The object of the provision is to meet the ends of justice. This section was enacted to reassure the victim that he/she is not forgotten in the criminal justice system. The amount of compensation to be awarded under Section 357 Cr.P.C. depends upon the nature of crime, extent of loss/damages suffered and the capacity of the accused to pay, which the Courts should elucidate on the facts of each case. This Court is convinced from the fact and circumstances of the case that the appellant nos.1 and 2 although are entitled to the benefit of Section 4 of the Probation of Offenders Act as first time offenders, they are also liable to pay fine of Rs.15,000/- (rupees fifteen thousand) each under Section 5 of the Probation of Offenders Act.

14. Accordingly, both the appellant nos.1 and 2 are directed to deposit Rs.15,000/- (rupees fifteen thousand) each within a period of one month



hence. The total amount of Rs.30,000/- to be deposited by the appellant no.1 and 2 shall be disbursed to three of the injured, namely, P.Ws.1, 5 and 6 equally. In case any of the injured person(s) is/are not surviving, their L.Rs are entitled to the compensation.

15. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 12th February, 2026/Ashok