



CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing : 26.02.2026 :: Date of Judgment: 12.03.2026

SASHIKANTA MISHRA, J.

Both these appeals, though filed against separate judgments, arise out of the same incident and were heard together. As such, both appeals are disposed of by this common judgment.

2. The appellants in CRA No. 36 of 1999 faced trial in SC Nos. 142/98 and 244/98 in the Court of learned Sessions Judge, Ganjam-Gajapati at Berhampur for the offences under Sections 148, 302/149 and 307/149 of IPC. They were convicted by judgment dated 11.01.1999 for the aforementioned offences and sentenced to undergo imprisonment for life for the offence under Section 302/149 IPC and R.I. for 5 years and 2 years respectively for the offence under Sections 307/149 and 148 of IPC. The sole



appellant in CRA No.5 of 2000 faced trial in SC No. 369 of 1998 for committing the offences under Sections 302/149 IPC and 307/149 IPC in the Court of learned Sessions Judge, Ganjam-Gajapati at Berhampur. He was convicted vide judgment dated 07.12.1999 for the said offences and sentenced to imprisonment for life for the offence under Sections 302/149 IPC and R.I. for 5 years under Sections 307/149 IPC and 2 years under Section of 148 IPC.

It is pertinent to note that the appeal in respect of appellant No.2- Narayan Ghadei and appellant No.5-Ashok Kumar Naik in CRA No. 36 of 1999 has abated due to their death during the pendency of the appeal.

3. Prosecution case, briefly stated, are as follows:

The accused persons led by Rameya Sethi were in the habit of eve-teasing one Bishnupriya Behera, daughter of Prakash Behera (deceased) by making indecent comments. The girl having complained to her father, he started taking her to the College on his scooter every day. On 21.09.1997, the accused persons went to the house of



the deceased and threatened Bishnupriya and her mother that the deceased would be killed if he interfered. On the next day, some of the accused persons led by Rameya Sethi came to Dhanamera Sahi, abused the family members of the deceased as well as people of the locality and posted red flags in front of the house of the deceased declaring that Bishnupriya is reserved for Rameya Sethi. When the relations of deceased protested, Rameya threw a bomb causing injury to Suresh Behera. Then Ugrasen dealt a sword blow on Tutu Behera causing bleeding injuries. The matter was reported at Badabazar Police Station and a case was registered. The injured persons were admitted to the hospital for treatment. On 23.09.1997 at about 10 p.m. when the deceased, Nunu Pujari, Runa Behera and Sunil Nayak were returning on cycles after giving food to the injured persons in the hospital, they were attacked by the accused persons, who had concealed themselves behind some cabins on Corporation Road of Sriram Nagar. They were armed with deadly weapons like kati, bhujali, sword, iron rod etc. They first attacked Nunu Pujari and Prakash



Behera. Rameya dealt bhujali blows on the neck of Nunu Pujari. Nunu and Prakash fell down from the cycle. Then Kailash Ghadei dealt a sword blow on the backside of Nunu Pujari and Narayan Ghadei also dealt a sword blow on the right arm of Nunu Pujari. When the deceased protested and requested them not to attack, Rameya Sethi caught hold of him and dragged him to one side and asked the other accused persons to kill him. All the accused persons thereafter hacked the deceased. Seeing this, Nunu Pujari and others fled away. Nunu collapsed near the tyre shop of Dhanamera Sahi where he narrated the incident to the wife and daughter of the deceased and other persons. The family members of the deceased and other persons of the locality went to the spot and found him lying dead with multiple injuries.

4. Sunil Nayak lodged report before Town Police Station leading to registration of P.S. Case No. 186 of 1997 under Sections 147/148/302/307/149 IPC followed by investigation. After completion of investigation, charge sheet



was submitted against the accused persons under Sections 148 of IPC, 307/149 IPC and 302/149 IPC. Initially, six persons were committed for trial in SC No.142/1998. Accused Raji Gouda was arrested subsequently and committed for trial in SC No. 244/1998. Accused Kailash Ghadei was absconder and he was arrested subsequently and faced trial separately in SC No.369/1998 also for the aforesaid offences.

5. Accused took the plea of denial and false implication.

6. To prove its case, the prosecution in CRA No.36 of 1999 examined thirteen witnesses and exhibited sixteen documents. In CRA No.5 of 2000, the prosecution examined twelve witnesses and exhibited sixteen documents. Besides, the prosecution proved three material objects in CRA No.36 of 1999 and three material objects in CRA No.5 of 2000. The defence, on the other hand, in CRA No.36 of 1999 did not adduce any evidence, whereas in CRA No.5 of 2000 the defence exhibited one document.



7. The trial Court, after analysing the evidence on record found the prosecution to have successfully established its case against the accused persons except accused Raji Gouda and Ashok Sahoo. All the other accused persons were however, held guilty of the offence under Sections 148, 302/149 and 307/149 and sentenced to undergo imprisonment for life for the offence under Section 302/149 IPC, 5 years and 2 years respectively for the offence under Sections 307/149 IPC and 148 IPC vide judgment dated 11.01.1999. In the separate judgment passed on 07.12.1999 in SC No. 369/1998 accused Kailash Ghadei was also similarly convicted and sentenced.

8. Heard Mr. Karnain Sattar, learned counsel for the appellant Nos. 1 & 3 in CRA No. 36 of 1999 and for sole appellant in CRA No.5 of 2000; Ms. Bharati Dash, learned counsel for the accused appellant no.4 in CRA No. 36 of 1999. Also heard Mr. Partha Sarathi Nayak, learned Addl. Government Advocate for the State.



9. Mr. Sattar has assails the impugned judgment of conviction on the following grounds:

- i. There are material contradictions in the evidence of the eyewitnesses, namely, PW-4, PW-8 and PW-9, which demolishes their credibility and should have been relied upon by the trial Court.
- ii. The time, place and the manner of alleged assault was such that the so-called eyewitnesses could not have seen the occurrence.
- iii. Only one weapon of offence was seized even though there were several accused persons, all of whom were alleged to be armed with deadly weapons.

10. Ms. Dash while adopting the aforementioned grounds further submits that there is doubt as regards the exact spot of occurrence in view of the prevaricating statements of witnesses. Further, there is clear evidence of prior enmity between the accused persons and the deceased



for which the possibility of false implication cannot be ruled out.

11. Mr. Nayak, learned State Counsel on the other hand would submit that none of the grounds raised to question the correctness of the findings of the trial Court are valid and tenable. He submits that the evidence of the eyewitnesses is clear, cogent, consistent and trustworthy. Further, the so-called evidence of prior enmity is nothing but the starting point of the dispute which led to the occurrence. The contradictions pointed out are minor in nature and cannot demolish the version of the eyewitnesses.

12. We have given our anxious consideration to the rival contentions and have also carefully perused the evidence on record including the impugned judgments. As already stated, prosecution examined 13 witnesses, out of whom PW-4- Nunu Pujari being an injured witness, PW-8- Sunil Kumar Nayak being present at the spot and PW-9- Runa Behera being also present at the spot are the most important witnesses. From the evidence of PW-4, PW-7 and



PW-8 it transpires that prior to the occurrence, which took place on 23.09.1997, there was another incident on 22.09.1997 when accused Rameya Sethi and his associates, namely Manas Bisoi, Ashok Nayak and others posted red flags on the street of Dhanamera Sahi and abused Bhim Behera, nephew of deceased Prakash Behera. Accused Rameya threw a bomb at Suresh Behera, brother of the deceased, due to which he was injured. Accused Ugrasen also assaulted Tutu Behera by means of a sword causing injuries. The matter was reported at the police station and both were treated at the hospital. On the night of the occurrence, Nunu Pujari (PW-4), Sunil Nayak (PW-8) and Runa Behera (PW-9) had gone to the hospital along with the deceased carrying food for the injured. After delivering food they returned on two cycles. Nunu and the deceased were on one cycle while the other two were on another cycle. Nunu was riding the cycle. While passing through the Corporation Road between Mochi Sahi and Patrapeta Sahi, the accused persons suddenly came out from behind a cabin being armed with deadly weapons. Accused Rameya



chased Nunu with a bhujali and struck a blow on the backside of his neck causing a cut injury, due to which they fell down from the cycle. Accused Kailash Ghadei dealt a blow with sword on the back of Nunu's head while Narayan dealt a sword blow on his right arm. The deceased asked the accused persons as to why they were attacking and requested them not to do so but they caught hold of him, dragged him to one side of the road and dealt sword blows and bhujali blows on him. Seeking this, Nunu ran away towards Aska Road and collapsed near the tyre company. Sunil Kumar Nayak also stated more or less the same thing and so also Runa Behera (PW-9).

13. We have carefully perused the cross-examination of these witnesses and do not find anything material therein to doubt the veracity of their versions. The trial Court believed the eyewitness accounts.

14. Though the defence has not specifically challenged the finding of homicidal death of the deceased, in order to be subjectively satisfied ourselves, we have looked into the



evidence of the autopsy surgeon (PW-10). He stated that at the time of conduct of postmortem examination over the dead body of the deceased he found the following injuries:

“External injuries :

(i) Superficial cut wound 1cm x 0.25 cm x skin deep situated transversely on the radial side of fight forearm.

(ii) Deep cut wound (chopped wound) 16 cm x 7.5 cm x joint cavity deep situated little obliquely over the left popliteal fossa, i.e., the back of knee. The wound has cut the muscles, vessels and nerves and had chopped out the medial condyle of left femur.

(iii) Linear superficial cut 5cm x 2 cm part thickness of skin on the posterior aspect of left thigh being surrounded by an abraded contusion of size 7cm x 3cm looking purplish row in colour.

iv. Cut wound 2.5 cm x 1 cm x bone deep situated transversely on the outer aspect of right leg and had made a cut fracture over the under lying fibula bone.

v. Linear curved abrasion 9cm long situated on the left side front of the abdomen

vi. An ole partly heeled ulcer 3cm x 1.5 cm with scab situated over the shin of left tibia in its middle portion.

Internal Injuries:

On dissection I found the following injuries:

1. Corresponding to external injury no. 2 the upper belly of gastrocnemius muscle and other popliteal muscles of left popliteal fossa were cut popliteal vessels and nerves were cut long with cut fracture of medial condyle of left femur, where the condyle portion was chopped out and the wound communicates into the knee joint.



11. Corresponding to external injury no.4 the wound has made a cut fracture to the lower end of fibula.

111. Stomach was intact looking pale, contains 300 mls. litres of brownish colour fluid in which oil droplets were floating but no characterise smell could be appreciated.

iv. Cerebral oedema could be noted to a mark extend in the brain and the brain was intact and pale.”

He submitted his opinion as follows:

I. All the injuries were antemortem in nature. External injury No. 6 was partly heeled ulcer which was of about 7 to 10 days old. Rest of the injuries other than the six might have been caused just before the death of the deceased.

II. Internal injury 1 to 5 and their corresponding internal injuries were probably caused by moderately heavy sharp cutting weapon.

III. The injuries were homicidal in nature.

IV. All the injuries combinedly were fatal in ordinary course of nature. External injury no.2 and its corresponding internal injury were also fatal in nature.

Death of the deceased was due to haemorrhage and shock resulting from the injuries. The death occurred about 12 hours before the P.M .examination.”

He also stated that injuries noted by him are possible to be caused by bhujali. We thus, find that the medical evidence fully supports the ocular. Having noted the above, we shall now proceed to deal with the rival contentions.



15. The first ground urged by the appellants is that the evidence of the eyewitnesses is marred by several contradictions. In this context, it is submitted that PW-4 initially stated that the accused Rameya chased him with a bhujali but later he stated about a sword blow being inflicted on his neck. This, according to us, is immaterial as there is no dispute that PW-4 sustained cut injuries on his neck and other parts of the body. So, whether the weapon of offence was bhujali or sword cannot nullify his statement that he was so attacked.

16. It is further submitted that PW-4 clearly stated that after the initial assault, he ran for his life from the spot towards Aska Road and collapsed near the tyre company. As such, he could not have seen the occurrence, particularly when he has not stated that he stopped on the way and turned back to see the assault on the deceased. It has been further urged that the fact that since PW-4 could not state about the exact injuries to the deceased and by what weapon they were inflicted, his evidence has to be



discarded. We do not agree for the reason that the proof of assault by accused Rameya and others on the deceased using deadly weapons resulting in several injuries on his body are otherwise proved. Prosecution does not rely only on the evidence of PW-4 in this regard.

It has been further argued that according to PW-4, Basanta Mukhi, Rama Naik and another person of his sahi took him to Bada Bazar Police Station but he did not lodge any report at the Police Station as he was not in a condition to do so. He further stated that his mother, another girl and police personnel came with him to the Medical College and that he was conscious during the journey. He told the doctor that he was attacked with sword but did not disclose the name of the assailants. Non-lodging of report at the first instance at Bada Bazar Police Station cannot be a material omission for the simple reason that being injured by the assault, the first reaction would be to avail treatment. In fact, this is what the police appears to have done by taking him to the hospital. The omission of PW-4 to disclose the



name of the assailants before the doctor does not appear to be of any consequence to us for the reason that it was necessary for him at that point of time to explain what had caused the wounds on his body and not who had caused them. There is a doubt as to who actually accompanied him to the hospital. PW-4 says that he went with his mother and another girl but the doctor (PW-3) says that one Balaram Pujari was with him. Even accepting that this is a discrepancy in the statement, we fail to see as to how this can shake his credibility. PW-4 denied the suggestion that a criminal case had been lodged against him and others relating to the incident on 22.09.1997 but PW-7 admitted that such a case had been registered. Again, we fail to see as to how this denial of PW-4 can demolish his otherwise reliable version of the incident. Some other minor discrepancies have been pointed out as regards the manner of assault on the deceased but as is well settled, the witnesses are not expected to recount past incidents with mathematical precision. Some improvements,



contradictions, embellishments are bound to occur, which is in line with ordinary human nature.

Reference in this regard may be made to the decision of the Supreme Court in **Balu Sudam Khalde v. State of Maharashtra**¹, wherein the Court observed as follows:

“26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

¹ (2023) 13 SCC 365



26.6. *The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*

[Emphasis added]

17. As regards the version of PW-8, the informant, it is submitted that in the FIR lodged by him, he named more than seven persons but could not specify the roles allegedly played by all, for which two persons were ultimately acquitted though they were named in the FIR. This, according to defence suggests that he was giving a distorted version of the occurrence. P.W.-8 stated that some people of the area saw the occurrence but he never named them. This, according to the defence, proves that the version of PW-8 is entirely concocted. We are not impressed by these arguments for the reason that law is well settled that FIR is not supposed to be an encyclopaedia, it merely sets the criminal law into motion. What the witnesses say in Court only matters. Of course, wide variations from the FIR story and the version of the witnesses can be questioned but such is not the case at hand. Reading of the FIR shows that PW-8



has related the occurrence in detail with reference to the occurrence that took place on the previous day.

18. As regards PW-9, it is submitted that though he named Rameya Sethi, Kailash Ghadei, Manas Bisoi and other accused persons of having come out from darkness from behind the cabins armed with deadly weapons, yet PW-8 admitted that he was not aware of Ashok Naik and Manas Bisoi and that PW-9 had told him about their involvement. This, according to defence, implies that their names were included after discussion and deliberation. PW-9 further admitted that he cannot say the names of all the witnesses who attacked Prakash Behera though they were all members of the locality. We are not inclined to place much importance on these minor gaps in the version of PW-9 so as to be persuaded to discard it entirely. Thus, we have seen that the eyewitness accounts are clear and consistent and can be relied upon. The contradictions pointed out are not material.



19. Learned counsel for the appellants have vehemently argued that considering the time and spot of occurrence, the eyewitnesses could not have seen the occurrence and given the evidence regarding previous enmity, it must be held that they had implicated the accused persons falsely. We have perused the evidence carefully, particularly the spot map, marked Ext-12. There is an electric light on a pole very near to the spot being at a distance of about 40 feet. So, it cannot be said that the spot was plunged into darkness. That apart, both parties are known to each other. So, it cannot be said that assailants were strangers so as to make them identifiable. What we find on the other hand is that all of them have been named individually as being part of the group that assaulted Nunu Pujari (PW-4) as well as the deceased. The grounds raised by the defence are therefore, untenable.

20. The defence has tried to take mileage of the fact that only one weapon, i.e., bhujali was recovered which weakens the prosecution story that several persons had assaulted all



being armed with deadly weapons. It is trite law that recovery of weapon of offence is not material when there is clear ocular and medical evidence regarding the assault. At best, it would go down as a lapse in investigation, the advantage of which cannot, at least in the present case, be taken by the defence.

21. Coming to the spot of occurrence, it is alleged that the version of witnesses varies in this regard. PW-4 stated as follows:

“We came via Kampali Chhak, old Bus stand while we were passing the corporation Road and were between Mochi Sahi and Patrapeta Sahi, suddenly the accused persons came out from behind the cabin armed with deadly weapons.”

Such statement was not shaken in cross-examination. PW-8 stated as follows:

“We passed old bus stand and reached the Corporation Road. While we were near a cabin, Rameya Sethi, Kailash Ghadei, Naryan Ghadei, Ashok Naik, Manasa Bisoi, Kamaraju Lingam and some others suddenly came out to the road armed with Bhujali, swords, and other weapons.”

PW-9 stated as follows:



“We took the route via old Bus stand and Corporation Road. When we were nearing the Electric Office on Corporation Road, suddenly accused Rameya Sethi, Kailash Ghadei, Manasa Bisoyi and other accused persons came out from the darkness behind the cabins armed with deadly weapons.”

We find that all the three witnesses have consistently stated that the spot of occurrence was on the Corporation Road. We fail to understand what more is necessary to describe the spot of occurrence.

22. Much has been argued about the previous enmity between the parties as being a reason for false implication. The evidence relating to the incident taking place on the previous day has been highlighted in this regard. It is well settled that previous enmity works both ways. It militates against normal human conduct that by not naming the actual assailants and naming others, the victims of crime would allow the real assailants to escape. That apart, previous enmity itself provides the motive for the subsequent assault. Of course, in a case of direct evidence, motive is not very relevant but in the context of the ground of previous enmity raised, it assumes significance.



23. The genesis of the occurrence lies in the incident that took place on previous day i.e., 22.09.1997. The matter appears to have arisen out of eve-teasing habit of accused Rameya and his associates, the victim being the daughter of the deceased. This was the bone of contention between the parties which led to red flags being posted by the accused persons near the house of the deceased with threats being given to his mother of causing his death. This was further followed by hurling of bombs causing injury to the brother and nephew of the deceased. Thus, as on the date of occurrence, there was serious ill-feeling between the two groups.

24. We thus find that none of the grounds raised by the accused appellants to find fault with the judgment of the trial Court are valid or tenable so as to persuade us to take a different view. On the contrary, we find the evidence overwhelming and cogent, clearly pointing at the guilt of the accused appellants. Having examined the evidence on record independently and considered the same vis-à-vis the



contentions raised by the parties before us, we find the prosecution case fully established to the effect that on the fateful night the accused appellants assaulted Nunu Pujari (PW-4) causing injuries on his person and hacked the deceased- Prakash Behera jointly by assaulting him with deadly weapons causing his death. The impugned judgment of conviction therefore, warrants no interference.

25. In the result, the appeals fail and are therefore, dismissed. The accused appellants being on bail, their bail bonds be cancelled and they be taken to custody forthwith to serve the remaining part of their sentence.

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(**Sashikanta Mishra, J**)

Manash Ranjan Pathak, J. I agree.

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(**Manash Ranjan Pathak, J**)

Orissa High Court, Cuttack
The 12th March, 2026/A.K. Rana/P.A.