



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.61 of 2001

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

<i>Mahendra Giri</i>	<i>.....</i>	<i>Appellant</i>
	<i>-Versus-</i>	
<i>State of Orissa</i>	<i>.....</i>	<i>Respondent</i>

For the Appellant : Mr. Pratik Nayak, Advocate

For the Respondent : Mr. Sobhan Panigrahi,
Additional Standing Counsel

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 26.03.2026 : Date of Judgment: 16.04.2026

S.S. Mishra, J. The sole appellant has filed the present Criminal Appeal assailing the judgment of conviction and order of sentence dated 14.03.2001 passed by the learned Additional Sessions Judge, Rairangpur, District- Mayurbhanj in S.T. Case No.45/154 of 2000, whereby the learned Trial Court has convicted the appellant for the offences punishable under Section 324 of IPC instead of Section 307 of IPC though he was charged for that offence and sentenced him to undergo R.I. for three months and to pay a fine of Rs.2,000/- (Rupees



two thousand), in default, to undergo further R.I. for one month for the offence under Section 324 of IPC.

2. Heard Mr. Pratik Nayak, learned counsel appearing for the appellant and Mr. Sobhan Panigrahi, the learned Additional Standing Counsel appearing for the State.

3. The prosecution case as per the F.I.R. (Ext.1) lodged by the informant (P.W.1) is that on 27.04.2000 in the evening, there was a Namayogyan in Mandir premises of the village. On that day at about 8 P.M., the wife of accused Muralidhar Giri was quarrelling with the niece and wife of his elder brother. Hearing the quarrel, the injured Purusottam Giri attempted to pacify the matter. In the meantime, accused Mahendra Giri came to the spot by holding an axe and dealt blows on the right ear and neck as a result of which Purusottam Giri became senseless on sustaining severe bleeding injuries. Then the son of Muralidhar Giri dealt fist blows and kicks to the injured Purusottam Giri and attempted to kill him. They also abused by saying "SALA" etc. Hearing about the occurrence, when the informant came to the spot, he found that the accused Muralidhar Giri and one Samir Giri ran away. The informant and others took the injured to Hatabudala out post and lodged the report against the



accused persons. Thereafter, he sent the injured to Rairangpur Sub-Divisional Hospital for treatment. The plea of the accused person is of complete denial.

After the investigation, the charge sheet has been filed in the present case against two accused persons including the present appellant. Both the accused took a stance of complete denial and claimed trial. Therefore, the accused persons were put to trial after framing of the charges for commission of the offences punishable under Sections 294/506(ii)/307/34 IPC.

4. To prove its case, the prosecution has examined eight witnesses in support of its case. Out of them, P.W.1-Soran Giri was the informant in the present case. P.W.2-Smt. Subhadini Giri was an eye witness to the occurrence. P.W.3- Narendra Giri was a post-occurrence witness. P.W.4- Purusottam Giri was the injured. P.W.5-Smt. Duti Giri was an eye witness. P.W.6- Dr. Dayanidhi Barik, who examined the injured on police requisition. P.W.7- Pradip Kumar Mandal has investigated into the case. P.W.8- Dr. Durga Madhab Das has proved the bed head ticket of the injured Purusottam Giri. On the other hand, the accused persons have not adduced any witness to substantiate their plea.



5. The learned trial Court, after thorough analysis of the prosecution evidence and by taking into consideration the defence plea, came to the conclusion that the appellant is liable for the offence punishable under Section 324 of the IPC and accordingly, he was sentenced. However, in so far as Muralidhar Giri is concerned, it was found that the prosecution evidence vis-à-vis the said accused was not sufficient and reliable. Hence, he was let off from all the charges.

6. Mr. Pratik Nayak, learned counsel for the appellant and Mr. Sobhan Panigrahi, learned counsel for the State have taken this Court to the entire evidence on record. More emphasis was supplied to the evidence of P.W.4, who is an injured witness besides the evidence of P.Ws.1 and 2, those who were the eye witnesses to the occurrence. The testimony of those witnesses stood corroborated with the evidence of the doctor- P.W.6.

7. P.W.1 was the informant in the present case, who has deposed that on 27.04.2000 at about 8 P.M., the occurrence had taken place. In the evening hour, there was a “Yagnya” in the village. At that time, the sister-in-law and the niece of P.W.4, the injured were quarrelling with the wife of Muralidhar Giri (the accused who has been acquitted). P.W.4 advised them not to quarrel. Thereafter, P.W.4



came outside on the call of the accused persons and started discussing with them. At the spur of the moment, the appellant dealt two axe blows on the head near the right ear and back side of the neck. The co-accused Muralidhar Giri also gave fist blow to P.W.4. Because of the injury, P.W.4 profusely bled and he was shifted to the Rairangpur Sub-Divisional Hospital. This witness has also exhibited the F.I.R. as Ext.1.

8. P.W.2 was another eye witness, who has also narrated the incident in exactly similar manner as has been deposed by P.W.1. He has very specifically deposed that he found the appellant dealing 2 to 3 axe blows on the right ear of P.W.4. Both the witnesses were extensively cross-examined by the defence, but their testimonies remained untainted.

9. P.W.3 was the post-occurrence witness, who has deposed that he reached at the spot after the incident and saw P.W.4 had received injury on the neck and the right ear. The defence has not questioned him much in the cross-examination.

P.W.4 was the injured witness. His testimony in the examination-in-chief runs similar to that of the narrative given by



P.Ws.1 and 2. However, in the cross-examination, he has stated as under:-

“After 12 days of the occurrence i.e. after my discharge from the hospital, police recorded my 161 Cr.P.C. statement. The weapon of offence is one of Tangia. The seized axe was not used at the time of occurrence. The seized axe has not been shown to me and for the first time I saw it in the Court. Accused Mahendra dealt Tabala blows from my backside from a very close distance. After the last blow I fell down.”

10. If the evidences of P.Ws. 1, 2 and 4 are read conjointly, though it is elucidated from the witnesses by the prosecution that P.W.4 received injury at the hands of the appellant, which is the weapon of offence used is apparently doubtful.

11. The injury sustained by P.W.4 has been confirmed by P.W.6, the doctor, who examined P.W.4. He in his deposition has stated as under:

“(i) Cut injury of size 2” x 1/3” bone deep, over the nape of the neck, placed horizontally. Nature of the injury is simple. Probably caused by weapon with sharp cutting margin.

(ii) Glancing abrasion over posterior aspect of the neck and placed obliquely towards right side. Size of the injury was 2” x 1/2” and simple in nature. Probably caused by sharp cutting marginated weapon.

(iii) Lacerated wound was bleeding profusedly of size 2” x 1/3” x bone deep on right side temporal region 3” above the right ear and nature of injury was simple. Probably caused by rough marginated weapon.”



The doctor has opined that the injuries sustained by P.W.4 are simple in nature which might have caused by the rough marginated weapon. The seized axe was also not shown to the doctor to obtain his opinion as to whether the injury could have been caused by use of such weapon.

12. The learned trial Court, while dealing with the nature of weapon used in commission of the crime, has observed as under:

“7....In para-3 he has stated that the seized axe has not been shown to him and for the first time he saw it in the Court. Accused Mahendra Giri had dealt tabala blows from his backside. However, from his evidence it transpires that the seized axe was not the weapon of offence. P.W.5 has stated that she found Parbati Giri was standing near her house and Ova, the wife of Mahendra Giri quarrelled with her. P.W.4 opposed the quarrel. At the instance of accused Mahendra Giri, P.W.4-injured came out from his house and accused Muralidhar Giri caught hold of P.W.4 and Mahendra Giri dealt tabala blows on the backside neck and right ear of P.W.4. Due to the assault P.W.4 become senseless by sustaining severe bleeding injuries. So the evidence of P.Ws.2,4 and 5 has not been shaken by the Learned Counsel for the Defence. So also their evidence finds full corroboration to each other regarding the assault.

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13. The learned trial Court is also of the view that the prosecution could not conclusively bring any evidence on record to establish the weapon used the appellant in the commission of the crime. However,



returned the finding that P.W.4 has indeed received the injury at the heads of the appellant.

14. In paragraphs-9 and 10 of the judgment, the learned trial Court has further observed as under:

9. In course of argument the Learned Counsel for the Defence contended that when the real weapon of offence has not been seized by the I.O. (P.W.7) for that the accused person's are no way connected with the crime. P.Ws1,2,4 and 5 have clearly stated that in their presence accused Mahendra Giri had dealt tabala blows on the head and right ear of P.W.4. The seized axe has been shown to P.W.4. In para-3 P.w.4 has stated that the weapon of offence was one Tangia and the seized axe was not used on him at the time of occurrence. So it is clear that the I.O. has seized an axe instead of one tabala. In evidence P.W.7 has stated that in course of his investigation he had seized an axe on production by accused Mahendra Giri vide Ext. 4. No doubt, before the seizure of the axe, P.W.7 might have examined the witnesses, So why P. W.7 had seized the axe instead of one tabala? So I think he has not properly and perfectly 'investigated into the case. Here the question will arise mere the wrong investigation of. P.W.7, the accused persons should not be escaped from the criminal liability. Already I have discussed P.Ws.1,2,4 and 5 have clearly stated that in their presence accused Mahendra Giri had dealt tabala blows on the person of P.W.4. When the eye witnesses have clearly stated that accused Mahendra Giri had dealt tabala blows on P.W.4 for that reason I have nothing to disbelieve their evidence.

10. P.W.3 has stated that hearing the quarrel he came to the spot and found there was bleeding injuries on the neck and right ear of Purusottam Giri. Seeing the blood he tied a small napkin on the injuries of Purusottam Giri. Before his arrival many persons were gathering at the spot. In cross-examination he has stated that he has not asked anything, about the assault to the injured. So it is clear that soon-after the occurrence he had reached at the spot and had tied, one, napkin on the injuries of P.W.4. From the evidence of the above noted witnesses I come to know



that none of the witnesses has implicated the accused Muralidhar Giri in this case. Of course, P.W.5 has stated that accused Muralidhar Giri had caught hold of P.W.4 and Mahendra Giri had dealt tabala blows. Except P.W.5 the other witnesses have not implicated the accused Murali in this case. So accused Mahendra Giri is the real culprit who had an intention to assault P.W.4. Hence accused Mahendra Giri is found guilty for the offence U/S.324 I.P.C.”

15. On a cumulative reading of the evidence brought on record and a careful analysis of the impugned judgment, the only conclusion that can be drawn is that P.W.4 indeed was assaulted by the present appellant causing simple injury, but the prosecution could not conclusively prove regarding the use of any dangerous weapon in the offence. To attract the offence under Section 324 of the IPC, one of the essential ingredients is use of dangerous weapon for causing hurt. Since the prosecution has failed to prove which weapon was used by the appellant to cause hurt to P.W.4, the offence under Section 324 of the IPC is not made out.

16. However, from the evidence of all the witnesses, it could be safely held that the appellant is found guilty for the offence punishable under Section 323 of the IPC. Accordingly, the conviction recorded by the learned trial Court for the offence under Section 324



of the IPC against the appellant is modified to that of the offence under Section 323 of the IPC. Accordingly, the appellant is convicted.

17. At this stage, Mr. Pratik Nayak, learned counsel for the appellant submitted that the appellant has already undergone custody for about 35 days during the trial. He further submitted that at the time of the incident, the appellant was 51 years of age. At present, he will be about 75 years of age. So, it is prayed that the sentence may be modified to that of the period of sentence the appellant has already undergone, as his further incarceration will have a cascading effect on his own self and his family members.

18. Regard being had to the circumstances in its entirety and keeping in mind the age of the appellant and the incident is of the year 2000, I am of the view that the prayer made by the learned counsel for the appellant deserves merit. Much water has flown under the bridge, sending the appellant back to custody to serve out further sentence would not serve any purpose. Hence, the sentence of the appellant is reduced to that of the period he has already undergone. However, to balance the scale of Justice, this Court deems it appropriate to impose a fine of Rs.5,000/-(Rupees Five Thousand), in default of which the



appellant shall undergo R.I. for 10 days. The fine amount so deposited shall be disbursed to P.W.3 in accordance with Section 357 of Cr.P.C. as compensation.

19. Accordingly, the CRA is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 16th Day of April, 2026/ Subhasis Mohanty