



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 293 of 1998

(In the matter of an application under Section 374 (2) of the Criminal Procedure Code, 1973)

Sridhar Jena

.....

Appellant

-Versus-

State of Odisha

.....

Respondent

For the Appellant : Mr. Amulya Ratna Panda,
Amicus Curiae

For the Respondent : Mr. Aurobinda Mohanty, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 26.02.2026 : Date of Judgment: 16.04.2026

S.S. Mishra, J. This Criminal Appeal is directed against the judgment of conviction and order of sentence dated 27.10.1998 passed by the learned Additional Sessions Judge, Balasore in S.T. No. 23/90 of 1997 arising out of G.R. Case No. 731 of 1996, whereby the learned trial court convicted the appellant under Section 307 of IPC and sentenced him to undergo R.I. for five years and to pay a fine of



Rs.5,000/- (rupees five thousand), in default to undergo R.I. for one year.

2. This appeal is pending since 1998 and none appeared for the appellant on several dates of hearing. Therefore, vide order dated 26.02.2026, this Court requested Mr. Amulya Ratna Panda, Advocate who was present in Court, to assist the Court in the capacity of *Amicus Curiae* and he has readily accepted the same and after obtaining the entire record, assisted the Court very effectively.

On 26.02.2026, the judgment was reserved and the parties were directed to file their written notes of submission. Subsequently, Mr. A.R. Panda, learned *Amicus Curiae* has filed written notes of submission on 05.03.2026 and the learned State Counsel has also filed written notes of submission on 05.03.2026.

3. Heard Mr. Amulya Ratna Panda, learned *Amicus Curiae* for the appellant and Mr. Aurobinda Mohanty, learned Additional Standing Counsel for the State.

4. The prosecution case, in nutshell, is that on 19.06.1995 at about 6.30 P.M. Biduit Kumar Chakravarty (P.W.8), the informant along



with Sudansu Sekhar Panda, Jr. Engineer Telecom Sub-Division were coming out of the premises of Balasore Town Phone Exchange. The informant was sitting on the pillion of Scooter, which was being driven by S.S. Panda (P.W.1). It is alleged that the informant was assaulted by Katari by the accused Sridhar Jena on his head, shoulder and back of neck, therefore he sustained injuries and fell down.

5. On the basis of the written report of the informant, police registered the case and investigation was conducted and charge sheet has been filed in the present case against the accused for the alleged commission of offence u/s.307 of I.P.C. The accused took a stance of complete denial and claimed trial. Accordingly, he was put to trial on the charge, as mentioned above.

6. The prosecution in order to bring home the charges examined as many as nine witnesses and exhibited three documents. Out of nine witnesses, P.W.1 was the Jr. Engineer of Telecom, P.W.8 was the informant; P.Ws.2, 3, 4 and 5 were the witnesses to the occurrence; P.W.6 was a post occurrence witness; P.W.7 was the doctor, who examined the informant and P.W.9 was the I.O. of the present case.



7. The learned trial court analyzing the evidence on record convicted the appellant under Section 307 of IPC and sentenced him to undergo R.I. for five years and to pay a fine of Rs.5,000/- (rupees five thousand), in default to undergo R.I. for one year.

8. Aggrieved by the judgment of conviction and order of sentence dated 27.10.1998 passed by the learned trial court, the appellant has filed the present appeal.

9. Mr. Panda, learned *Amicus Curiae* for the appellant submitted that the entire case of the prosecution rests on the shoulder of the evidence of P.W.8, the injured and P.W.7, the doctor, who examined the injured. Although the prosecution has examined as many as three witnesses projecting them to be the eye witnesses, but none of the eye witnesses have supported the prosecution version. P.W.8, the informant has not supported the prosecution case to its fullest and he was also declared hostile. Therefore, this is a case of no evidence.

10. Per contra, Mr. Mohanty, learned counsel for the State has vehemently argued and justified the impugned judgment. He has taken me to the evidence of all the witnesses and submitted that even



the witnesses have not supported the prosecution in entirety, but their evidence cannot be discarded. The learned trial court has analyzed the evidence of all the witnesses in detail and formed the conclusion, which is justified on the face of record. Hence no interference is called for in the present appeal.

11. With the help of learned counsel appearing for both the parties, I have gone into the oral as well as documentary evidence *in extenso*.

P.W.8 was the injured and informant. He in his testimony has deposed that on 19.06.1996 at about 6:30 P.M. he was coming out from Balasore Town Phone Exchange premises sitting along with one S.S. Panda (P.W.1) in the Scooter being a pillion rider. On the way, he got a stroke on the back of his neck just outside the gate. He fell down from the Scooter and lost his senses. When he regained his sense, he found himself in the premises of the phone exchange and the staff was around him. He sustained cut injury on his head and a fracture on his left side collar bone. He was medically examined. He further deposed that he lodged the report before the police by getting it scribed through P.W.1, S.S. Panda. He has very specifically deposed that he did not know who was the assailant and attacked on



his back. At that stage, the learned Public Prosecutor declared him hostile and sought for cross examination. In the cross examination, he further deposed that although he suspected the accused attacked on him, but that out of grudge. He further stated that the FIR Ext.3 written at his instance and he has not written that and he suspected the accused.

P.W.1, who was accompanying P.W.8 in his deposition, has stated that while they were travelling in the Scooter, he fell down in one side of the road and the injured P.W.8 also fell down. At this, P.W.8 raised hulla and immediately he saw they were surrounded by many persons. He gained comfort after applying water on his face and they were removed to the Telephone Bhawan. This witness, who was declared hostile by the prosecution, was subjected to extensive cross examination only to further elucidate that the accused has never attacked P.W.8.

Similarly, P.Ws.2, 3 and 4 were also examined by the prosecution as eye witnesses and post occurrence witnesses. All three of them have deposed that they have no idea about the incident. The



cross examination by the prosecution to these witnesses also yield no material to substantiate the case of the prosecution.

P.W.5 is a witness to the seizure of the weapon of offence. He straight away denied to have witnessed to the seizure. His cross examination also remained fruitless for the prosecution.

P.W.7 was the doctor, who examined P.W.8 in his deposition he has stated that he found the following injuries:-

- “(i) One lacerated injury on the left side of scalp placed 2" above the outer margin of the left orbit of size 1/2" and 1/4" bone deep with fresh dried blood.*
- (ii) Swelling on the left clavicle on the junction of Lateral 1/3rd and medial 2/3rd. of the size 1" x 1" pinkish red in colour.*
- (iii) A linear swelling with contusion on the right side of the neck obliquely placed of the size 3" x 1/2" with a linear scratch on it at its centre, pinkish red in colour with dried blood.”*

He has stated in the cross examination that the injury is possibly by fall. He has exhibited the injury report as Ext.2. Reading of Ext.2 reveals that all the three injuries sustained by P.W.8 are simple in nature.



12. This being the nature of evidence, the learned trial court formed the opinion that the prosecution has established the case against the appellant for commission of offence under Section 307 of IPC. Interestingly, the learned trial court records the finding that all the witnesses have turned hostile and even went to the extent recording that the witnesses being the Government officers should have been responsible enough to speak truth before the court. Since the witnesses have turned hostile, the learned trial court directed the concerned authority to initiate proceeding against them. In paragraphs-15 and 17 of the impugned judgment, the following observations have been made:-

“15. The evidence of the Doctor (P.W.7) and his report Ext.2 revealed he examined P.W.8 and found following injuries on his person.

(i) One lacerated injury on the left side of scalp placed 2" above the outer margin of the left or hit of size 1/2" and 1/4" bone deep with fresh dried blood.

(ii) Swelling on the left clavicle on the junction of Lateral 1/3rd and medial 2/3rd. of the size 1" x 1" pinkish red in colour.

(iii) A linear swelling with contusion on the right side of the neck obliquely placed of the size 3" x 1/2" with a linear scratch on it at its centre, pinkish red in colour with dried blood.

Thus, from the evidence of P.W.8 and report it is established that P.W.8 sustained injuries and that too



on vital part of his body. For the said reason it cannot be said that there was no truth in the prosecution case.

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17) Notwithstanding fact that the prosecution witnesses did not whole heartedly support the prosecution case in their evidence, but I consider the fact and circumstances as revealed from the evidence enumerated in the above is sufficient to hold the accused guilty for committing offence U/s.307 I.P.C.”

13. Having admitted the fact that the informant and all the witnesses have not supported the prosecution, the learned trial court found sufficient materials to hold that the accused is guilty of commission of offence under Section 307 of IPC. This Court is not in agreement with the reasoning recorded by the learned trial court. But the reasoning recorded by the learned trial court which is reflecting in paragraphs-14 and 15 sounds logical. However, the logic is not the law. None of the witnesses including the injured witness have identified the appellant to have caused the injuries and dealt the blows. Even if the evidence of P.W.8 to some extent is believed, as per his version that someone had given a single blow from the back side, but the evidence of the doctor reveals that P.W.8 has received as many as three injuries. That part of the evidence has also gone unexplained by the prosecution. The evidence of P.W.9, the I.O. will also lend no support to the prosecution to substantiate its case.



Therefore, the only inevitable conclusion that could be drawn from the right appreciation of the evidence is that the prosecution could not prove its case beyond all reasonable doubt to bring home the charges leveled against the appellant. Therefore, the appellant is entitled to acquittal.

14. Hence, the judgment of conviction and order of sentence dated 27.10.1998 passed by the learned Additional Sessions Judge, Balasore in S.T. No. 23/90 of 1997 arising out of G.R. Case No. 731 of 1996 is set aside. The appellant is acquitted of all the charges. The bail bond furnished by the appellant stands discharged.

15. Accordingly, the Criminal Appeal is allowed and disposed of.

16. This Court records the appreciation for the effective and meaningful assistance rendered by Mr. Amulya Ratna Panda, learned *Amicus Curiae*. He is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 16th of April, 2026/Ashok