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THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.439 of 2005

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

Pankaj Baliarsingh

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Amit Prasad Bose, Amicus Curiae

For the Respondent : Mr. Ashok Kumar Apat, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 24.02.2026 :: 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 19.09.2005 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Bhubaneswar in S.T. Case No.9/419 of 2004/2003, whereby the appellant has been convicted for the offence under Section 324 of I.P.C. and on that count, he has been sentenced to undergo S.I. for two years.



2. The present appeal has been pending since 2005. When the matter was called for hearing, consistently none appeared for the appellant. Therefore, this Court requested Mr. Amit Prasad Bose, 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. Bose, learned counsel.

3. Heard Mr. Amit Prasad Bose, 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 informant, Ashok Kumar Pradhan (P.W.1), lodged a report stating that on 26.07.2002 at about 8:30 P.M., upon returning to his home from the bazaar, he found that his elder father, Jayakrushna Pradhan (P.W.2), had been assaulted by the accused, Pankaj Baliarsingh, by means of a *farsa*. He learnt from his elder father that while he was conversing with Dhulishyam Jena near the house of Hrushiksha Samantaray (P.W.8), the accused suddenly arrived there armed with a *farsa* and, with the



intention of taking his life, assaulted him on his left elbow and both legs, causing severe bleeding injuries. The informant further stated that, his elder father disclosed that the accused committed the assault on the allegation that Chitrasen, the son of his elder father, had misbehaved with the niece of the accused. The informant named, Dhulishyam Jena, Panchua Jena, and Santia Parida were witnesses to the occurrence. On the basis of the said report, the police registered the case, took up investigation, and upon completion thereof, submitted charge-sheet against the accused for the offences under Section 341/324/326/307 of I.P.C. On the stance of complete denial and claim of trial, the appellant was put to trial.

5. In order to establish its case, the prosecution examined eight witnesses. Out of them, P.W.1, the informant, is the nephew (younger brother's son) of the injured. P.W.2 is the injured. P.W.3 is the wife of the injured. P.W.4 and P.W.5, who were cited as eye witnesses, do not support the prosecution story. P.W.6 and P.W.7 were seizure witnesses, out of whom, P.W.6 admitted the seizure, whereas P.W.7 did not admit the seizure of the weapon in his presence. P.W.8,



Hrusikesh Samantaray, has partly denied having any knowledge with regard to the occurrence.

6. The learned trial Court, upon evaluating the evidence available on record, particularly the testimonies of the informant (P.W.1), the injured witness (P.W.2), the wife of the injured (P.W.3), the occurrence witnesses (P.W.4, P.W.5 and P.W.8), along with other circumstantial evidence came to the conclusion that the provisions of Section 307 of the I.P.C. were not attracted in the present case, as no injury had been caused to any vital part of the body and the injuries were simple in nature. However, the Court found that the injuries sustained were sufficiently grave to constitute an offence under Section 324 of the I.P.C. Accordingly, the accused person was convicted under Section 324 of the I.P.C. The relevant paragraph recording the reasons for conviction is reproduced herein below for ready reference:-

“6. From discussion of evidence of witnesses it is seen that the informant P.W.1, injured P.W.2, wife of the injured P.W.3, occurrence witness P.W.4 and material occurrence witness P.W.5 who has been named in the FIR have supported the prosecution case. Evidence of these witnesses have not been assailed by defence during their cross examination. There are only discrepancies



regarding time of occurrence. The above stated witnesses are not experts or technical persons but are laymen. It is not expected from them to say the exact time of alleged incident and other follow up relevant times. General common sense also does not say that at time of any alleged incident the concerned persons look to the watch to know the time. So there is no ground to doubt or disbelieve the evidence of the above stated material witnesses. The evidence of these witnesses is supported by seizure of wearing apparels of the injured vide seizure list and evidence of P.W.6. The alleged assault also gets support from the injury report marked exhibit. There is no discrepancy in the evidence of witnesses and in the injury report regarding place of injury of the injured. The F.I.R. has been proved by the informant. The only drawback of the case is that I.O. has not been examined. It is seen from the record that there is no material thing in the cross examination of witnesses to be confronted to I.O. So defence is no way prejudiced for non-examination of the I.O. On the other hand, prosecution has been prejudiced for non-examination of the I.O. being unable to confront suggestions made to hostile witnesses P.W.8 and P.W.7. On the whole non-examination of I.O. is not fatal to the prosecution case and in spite of all steps taken by the prosecution and Court the I.O. has not turned up to adduce evidence. From the entire discussion of evidence of record it is held that prosecution has been able to prove its case by beyond all reasonable doubt against the accused person regarding assault on injured by the accused but it is seen there is no iota of evidence or utterance by any of the witnesses that the alleged assault was done with intention to take away the life of the injured. It is also not



established from circumstantial evidence on record. Altogether there are only three injuries on the person of the injured. The said three injuries are on elbow and two legs of the injured and not on any vital part of the body. The nature of injuries as per report of the Doctor is simple in nature. So the ingredients of section 307 I.P.C. are not attracted and established.

7. In the result, the accused is found guilty u/s 324 I.P.C. instead of 307.I.P.C. and is convicted thereunder.”

7. The plea of defence in the present case is that the son of the injured namely Chitrasen was allegedly involved in a molestation case with the niece of the accused and on account of such prior enmity, the accused has been falsely implicated. It is contended that, apart from the evidence of the informant (P.W.1), the injured (P.W.2) and the wife of the injured (P.W.3), who claims to be an eye-witness to the occurrence, no other independent evidence has been adduced by the prosecution. Incidentally, the I.O. of the case has not been examined in this case. The doctor who allegedly treated the injured has also not been examined. In the name of medical evidence, Ext.3 has been brought on record. Ext.3 is a letter written by the S.I. of Jatni P.S. to the Medical Officer of D.H.H., Khurdha. In the said letter, the S.I. of Police has written that the present accused assaulted the injured



on 26.07.2002 at about 8.30 P.M. by means of farsa, causing two injuries, which reads as under:-

- “(1) Bleeding injury on his left side hand.
- (2) Bleeding injury on his legs.”

In the said exhibit, certain endorsements appear to have been made by one Dr. L.D. Sahoo. In the latter part of the report, it is noted that there was an old stich wound which was operated on 02.09.2002 and the said doctor appended his signature on 09.10.2002. However, neither the said doctor, who has written the “so called medical report”, nor the S.I. of police has been examined during trial. In view of the specific defence taken by the accused, it was imperative that the presence and examination of the Investigating Officer was essential, particularly for the purpose of confronting him on material aspects of investigation. Therefore, Mr. Bose, learned Amicus Curiae for the appellant has submitted that non-examination of the I.O. has caused serious prejudice to the defence.

8. Mr. Apat, learned Additional Government Advocate for the State, on the contrary, submitted that the evidence of P.Ws.1, 2 and 3 are strong enough to sustain the conviction recorded against the appellant. P.W.2 is the injured, who has clearly implicated the



appellant. P.W.3, the wife of the injured being the eye witness to the occurrence has given detail account of the incident in minutely detail. P.W.1 is the informant, he has also deposed that he heard the incident from P.Ws.2 and 3 and scribed the F.I.R. These three evidences brought on record by the prosecution stood corroborated with each other and the appellant has no escape from his guilt.

9. I have carefully gone through the materials available on record and taken into consideration the rival submission of both the learned counsel for the parties. No doubt, the injured (P.W.2), in the present case, has deposed that on 26.07.2002 at about 8 p.m., while he was standing in front of the verandah of Hrushiksha Samantaray (P.W.8), he heard from his wife (P.W.3) that while the niece of the accused passed bowel, his son passed on that way. The parents of the niece of the accused suspected that his son to have told something and they came and forcibly took away his son from their house. When the same incident was being discussed, at that time, the accused came and assaulted him by means of farsa on his left elbow and two legs causing profuse bleeding. His wife and other persons gathered and



took him to P.S. from there, he was taken to Khurda hospital and then to capital hospital.

The wife of the injured (P.W.2) has been examined as P.W.3. She has given the account of the incident in similar line with certain variation. The variations are not material.

P.W.1 deposed that on the date of incident, when he was returning from the market, he found his elder father (P.W.2) lying injured in front of the house of Hrusikesh Samantaray (P.W.8). His elder father disclosed to him that he was assaulted by the accused-appellant by means of a farsa. Then his father, brother and other family members came and took the injured to P.S. and report was submitted being Ext.1 and thereafter the injured was taken to hospital.

10. P.Ws.1, 2 and 3 are closely related to each other. From the F.I.R. as well as from the evidence of all the three witnesses, it has come on record that the occurrence was alleged witnessed by Dhulishyam Jena (P.W.5), Panchanan Jena @ Panchu (P.W.4) and Hrusiksha Samantaray (P.W.8). However, all the three independent witnesses, those who have been examined by the prosecution as eye witnesses to the occurrence have flatly denied having any knowledge



regarding the incident. Therefore, all three of them have been declared hostile. Conspicuously, the prosecution did not examine the doctor, who treated the injured or anyone from the hospital to prove the so called injury report. Further, the I.O. of the case has also not been examined by the prosecution. Whether non-examination of these witnesses prejudiced the accused is a point to be delved upon. To prove the injury, the prosecution has relied upon Ext.3. Ext.3 consists of two letters. The first letter is written to the O.I.C., Jatni P.S., which reads as under:-

To

The OIC, Jatani PS.

Sub-Ref. to Jatani P.S. Case No.154/26.02.02

Sir,

I have the honour to submit herewith the injury report of Jayakrushna Pradhan, 53 yrs. S/o Gokula Pradhan (unclear) of Vill-Taraboi, PS-Jatani as follows:-

Examined at COPD on 26/07/02, 9.30 p.m.

I. Mark- A black raised mole on arm (unclear)

Injury:- (1) Lacerated injury 2 left elbow

(2) Abrasion of Rt. leg 2" below knee 1" x 1"

(3) Abrasion of left leg below knee 1 ½" x 1"

No.2 x No.3 are simple. The nature of No.1 is reserved till final opinion to be given by Orthopaedic specialist, who inter-treated the case & seen this x-ray.

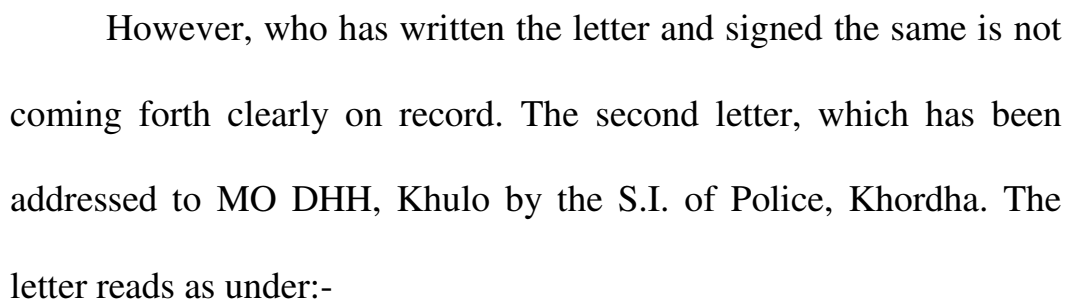
Age of injury is within 24 hrs.

Sd/-

*Jayakrushna Pradhan
(signed in odia)*

Sd/-

*(illegible signature)
Dt. 26.07.2002*



TO
The M O D H H Khelo

Ref Jatan. ps. COX NO 154 - H 26/7/02
VL 341/326/3021R

Sub Injury report of Joya Krishna Pradhan
age 53 S/O Gupkela Panalhan w/o
Tarabari Koringasht. ps Jatan.
Dist Khelo

S10,

I beg to report that the above
order entered received testimony in
as he was assaulted by persons
Bdwanah on 26/7/02 at about 8.30 PM
by means of force.

- 1- Bleeding injury on his inside hand
2) Bleeding injury both legs.

Please examine & open case, return
to museum & in return.

Copy no. 46067
2618

Indon no 4962 Yours faithfully

Dayanidhe Prabu S/o Govind Prabu

Pt. came for operation after receiving \$1000 from Carina Hospital. Peter John B

There was an old (thick) wood on the east part of
land off from with # of houses (1/2) & a barn.
(opened on 2/9/22) on opposite side from that there is
a burned old & cut trees & Redwood (1).

(opened on 2/9/1971)
 # human (old) cut traps & Ratner H-1.
 natural grinders, sharp cutting weapon. Caliber 4-buss.
 Date 7/10/82 with
 On 2/10/82 with



11. The injuries mentioned in the first letter and the second letter are not identical. Apart from that, who is the doctor who has found these injuries are also not mentioned in either of the letters. In the second letter, certain endorsements have been made by one Dr. L.D. Sahoo, wherein he has noted the presence of an old stitched wound on the posterior part of the left arm, which had been operated upon on 02.09.2002 and Dr. Sahoo has appended his signature on 09.10.2002 in the extreme right side below. This document has been heavily relied upon by the prosecution to prove the injury sustained by P.W.2. However, neither the S.I. of Police nor any doctor, staff of the hospital or that of the matter, Dr. L.D. Sahoo has been examined.

The submission of Mr. Bose, learned Amicus Curiae for the appellant that non-examination of the I.O. of the case by the prosecution has seriously prejudiced the accused deserves merit particularly because of the nature of defence taken by the accused. The son of the injured is admittedly involved in a molestation case with the niece of the accused. On account of the past enmity, the accused has been falsely implicated in the case. That being the defence, it was obvious that the defence could have confronted with



the I.O. as to who has reported the case to the police and in what circumstances. Non-availability of such opportunity is definitely prejudicial to the accused.

The prosecution is left with the ocular evidence of the injured and his family members i.e. P.Ws.1, 2 and 3. All the eye witnesses, those who are independent, namely, P.Ws.5, 6 and 8 have not supported the prosecution. In such circumstances, while the evidence of related or interested witnesses cannot be discarded solely on the ground of relationship, the Court is required to scrutinize the same with greater caution. When the independent witnesses, who were allegedly present at the spot, do not corroborate the prosecution story, the evidentiary weight of the remaining testimony becomes correspondingly fragile.

Further, the prosecution has failed to adduce cogent medical evidence to substantiate the injuries allegedly sustained by P.W.2. The absence of satisfactory proof of such injuries assumes significance, particularly when the prosecution seeks to rely upon the version of the injured witness to lend assurance to its case.



Compounding these deficiencies is the non-examination of the Investigating Officer as previously discussed. The Investigating Officer is a material witness, whose testimony is often essential to unfold the genesis of the occurrence, the manner of investigation, recovery of incriminating materials, and to clarify contradictions or omissions in the statements of prosecution witnesses. Such scrutiny assumes even greater significance in the backdrop of the admitted animosity between the parties, particularly when the son of the injured was allegedly implicated in a molestation case concerning the niece of the accused. In the present case, the defence has been deprived of the opportunity to test the fairness and completeness of the investigation through cross-examination of the Investigating Officer. The prejudice caused thereby cannot be said to be insignificant, especially when other infirmities in the prosecution evidence are apparent on record.

The Hon'ble Supreme Court in the case of *Habeeb Mohd. V. State of Hyderabad*¹ has held thus:-

¹ (1953) 2 SCC 231



“.....but at the same time their Lordships affirmed the proposition that it was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

Similarly, the Hon’ble Supreme Court in ***Munna Lal v. State of U.P.***²

has held in a similar vein; the relevant extract is reproduced herein below:

“39.Secondly, though PW 4 is said to have reached the place of occurrence at 1.30 p.m. on 5-9-1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses i.e. PW 2 and PW 3, not being found by this Court to be wholly reliable. The missing links could have been provided by the investigating officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the investigating officer could not depose as a witness, as told by PW 4, is that he had been sent for training. It was not shown that the investigating officer under no circumstances could have left the course for recording of his deposition in the trial court. It is

² (2023) 18 SCC 661



worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the investigating officer.

40. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW 2 and PW 3 not being wholly reliable, this Court holds the present case as one where examination of the investigating officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.

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43. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the investigating officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth.”

In view of the aforesaid legal position and the cumulative effect of the infirmities noticed hereinabove, this Court finds that the prosecution has failed to establish the charges against the appellant beyond reasonable doubt. The evidence on record does not inspire the degree of confidence necessary to sustain a conviction. The benefit arising from such doubt must necessarily enure to the accused.

Accordingly, extending the benefit of doubt, the appellant is acquitted of all the charges levelled against him. The judgment and order dated 19.09.2005 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Bhubaneswar in S.T. Case No.9/419 of



2004/2003 is set aside. The bail bonds furnished by the appellant stand discharged.

12. Accordingly, the CRLA is allowed and disposed of.

13. This Court acknowledges the effective and meaningful assistance rendered by Mr. Amit Prasad Bose, 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