



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.204 of 1995

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

(1) *Karunakar Joshi*
(2) *Niranjana Joshi*
(3) *Hadudev Joshi*

..... ***Appellants***
-Versus-

State of Orissa ***Respondent***

For the Appellants : Mr. D.P. Dhal, Senior Advocate
For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 19.02.2026/26.02.2026 :: Date of Judgment: 16.04.2026

S.S. Mishra, J. The present Criminal Appeal, filed by the appellants is directed against the judgment and order dated 22.07.1995 passed by the learned Additional Sessions Judge, Balangir in Sessions Case No.114/30 of 1993, whereby the appellants have been convicted for the offences



under Sections 324/326/307/34 of I.P.C. and on that count, they are sentenced to undergo R.I. for one year each for the offence under Section 324 of I.P.C. and to undergo R.I. for five years and to pay a fine of Rs.1,000/- each, in default to undergo R.I. for six months for the offences under Section 326 and 307/34 of I.P.C.

2. Heard Mr. D.P. Dhal, learned Senior Counsel for the appellants and Mr. Jateswar Nayak, learned Additional Government Advocate for the State.

3. The prosecution case, in brief, is that on 28.03.1993, the informant, Sarangadhar Hota (P.W.9), was constructing a boundary wall over the land purchased by him. At that time, the accused Adikanda along with his family members arrived at the spot and demolished the said wall, asserting that the land on which it was being constructed belonged to them. Sarangadhar Hota and his family members protested, claiming lawful ownership over the land. Upon hearing the commotion, some local respectable persons (bhadraloks) intervened and advised the accused persons not to take the law into their own hands. However, it is alleged that accused Niranjan (appellant No.2), Karunakar (appellant



No.1) and Hadudev threw acid at Sarangadhar Hota, his family members and other persons present at the scene. It is further alleged that Bhargabi, the wife of accused Adikanda, supplied the acid to the aforesaid accused persons, thereby abetting the commission of the offence. As a result of the acid attack, Sarangadhar Hota (P.W.9) and Tarangini (P.W.1) sustained grievous injuries, while other injured persons suffered simple injuries. The occurrence was reported by P.W.8, Saroj Kumar Joshi, at the Bandhapada Outpost to the A.S.I. concerned. Upon completion of investigation, Tusra Police submitted charge-sheet against the accused persons for the offences indicated above. On the stance of complete denial and claim of trial, the appellants were put to trial after framing of charges.

4. The prosecution in order to prove its case examined ten witnesses whereas defence has examined two witnesses. Out of whom, P.Ws.1 and 2 are the niece and nephew of P.W.9, P.W.3 is the father of the informant, PWs.4 and 5 were the Medical Officers, who examined the injured persons. P.W.6 was the doctor, P.W.7 was the seizure witness,



P.W.8 was the informant, P.W.9 was the injured and P.W.10 was the I.O. of the case.

5. Initially six accused persons stood charged for the offences under Sections 324/326/307/34 of I.P.C. However, the learned trial Court by analyzing and appreciating the entire evidence brought on record by the prosecution, particularly the evidence of the informant (P.W.8) and the injured witnesses and the doctors, acquitted the other accused persons, namely Jayadev Joshi, Adikanda Joshi and Bhargabi Joshi of all the charges, however, convicted the present appellants for the offences as mentioned above. Relevant part of the said judgment which deals with acquittal and analysis of conviction is reproduced for convenience of ready reference:-

“5. Let me now come to analysis the evidence as against each accused person and to examine if the evidence is sufficient to sustain the charges against each. This dissection will make easy to meet the ends of justice. For this reason, I want to take up the evidence available against the lady accused Bhargabi.

P.W.1 had not stated to police the story what she deposed right from the stage of calling



the 5 gentlemen by Sarangadhar to solve the problem till acid was thrown on her by Hadudev. This is apparent from her statement at paragraph 5 when her previous statement was confronted to her. In this connection, defence has also cross-examined the investigating officer who deposed at paragraph 12 that P.W.1 did not state to him that Bhadraloks came and supported Sarangadhar and the male accused persons did not listen to him and threatened Sarangadhar to kill him and the I.O. deposed that she did not state to him all the subsequent events as stated by her in her chief till acid was thrown to her by accused Hadudev. The role played by accused Bhargabi was also not stated by this witness to the investigating officer which is one of the events of the incident stated by her in the chief. Hence, on the point of contradiction, the evidence of p.w.1 should not be relied on to implicate accused Bhargabi. The reason of the aforesaid huge contradiction in the evidence of p.w.1 is that she reached the spot at a later stage which is apparent from the cross-examination of p.w.3 at paragraph 7. Here the witness stated that Sana Majhi and Gandaram Pradhan (the two field servants of Sarangadhar Ramesh, Sarangadhar, Jyotish and some small children were present at the spot besides the accused persons, when he and other bhadraloks reached the spot. So he did not say that p.w.1 was present at the spot when bhadraloks reached at the spot. Therefore, p.w.1 did not state to I.O. anything from the very beginning of the occurrence till acid was thrown to her. Now, let me go to the evidence of p.w.2 to scan if he had implicated accused Bhargabi and in what manner,



P.W.2 deposed at paragraph 1 that Karunakar and Hadudev asked their mother to bring acid and thereafter Bhargabi came with two bottles with acid and a mug. He further deposed that Bhargabi poured the acid in the mug and Niranjana took the mug and threw the acid to the face of Sarangadhar. He added that Niranjana thereafter gave the mug to Bhargabi and again she poured some more acid in the mug and Karunakar took that mug with acid and threw the same to Sarangadhar which fell on his right hand and left shoulder and some part of the acid also fell on Saroj Kumar Joshi, Hemanta, Sana Majhi and Ramesh Chandra Hota who were standing behind Sarangadhar. The witness further deposed that Karunakar gave a mug to Bhargabi and she again poured acid in the same mug and Hadudev brought the mug with acid. This evidence of p.w.2 shows that Niranjana, Karunakar and Hadudev had gone to Bhargabi and brought acid. This witness did not state to police that Niranjana gave the mug to Bhargabi who poured more acid in the mug and Karunakar took the mug with acid and threw the same to Sarangadhar which fell on his right hand and left shoulder and also some part of the acid fell on Saroj, Hemanta and others who were standing behind Sarangadhar and Karunakar gave the mug to the lady accused who again poured some acid in the mug and Hadudev brought the mug with acid. It is ascertained from the I.O. (p.w.10) at paragraph 13 by the defence that p.w.2 did not state to him that Niranjana gave the mug to Bhargabi who poured some more acid in the mug and Karunakar took the mug with acid and threw to Sarangadhar which fell on his right



hand and left shoulder and some part of the acid also fell on Saroj, Hemanta, Sana, and Ramesh who were standing behind Sarangadhar and that - Karunakar gave the mug to the lady accused, who poured some acid in the same mug again and Hadudev brought the mug with acid. This contradiction also eliminates some portions of the allegations against the lady accused, about her role played in abetting the offence. According to prosecution case, she had supplied acid to Niranjana, Karunakar and Hadudev who took the acid and threw it to the injured persons. Now, let me come to the evidence of p.w.3. He did not support p.w.2 that Hadudev asked his mother to give him acid. This witness had simply implicated accused Karuna who asked his mother to fetch acid and thereafter the lady accused brought the acid and poured it in a mug which Niranjana took and threw to the face of Sarangadhar and gave the mug to his mother (Bhargabi) who again poured some acid in the same mug and gave the mug to Karunakar. According to p.w.2, Karunakar took the mug from his mother with acid, but according to p.w.3, the lady accused poured some acid in the same mug and gave the mug to Karunakar. Hence, there is contradiction whether the lady accused gave the acid mug to Karunakar or the accused Karunakar took the mug from his mother. The defence confronted the previous statement of p.w.3 and brought the contradiction at paragraph 2 that p.w.3. did not state to I.O. that the lady accused poured acid in a mug which Niranjana took and after throwing the same to Sarangadhar, he gave the mug to his mother (lady accused) who again poured some



acid in the same and gave the same to Karunakar and lastly after return of the mug by Karunakar to her, she poured more acid in the mug. Rather p.w.3 stated to I.O. that when p.w.3 was explaining to Karunakar, Niranjana handed over the mug to Karunakar and he stated to I.O. that Niranjana snatched away the acid mug from Karunakar and threw the same as a result Sarangadhar, p.w.1, p.w.2, Saroj Kumar, Ramesh Hota and others sustained injuries. This is also ascertained from the evidence of I.O. (p.w.10) at paragraph 14. P.W.3 did not state to I.O. that the lady accused poured acid in a mug which Niranjana took and threw it to Sarangadhar and gave the mug to his mother Bhargabi and that the Lady accused poured some acid in the mug and gave the same to Karunakar who threw the acid for the 2nd time and after return of the mug by Karunakar to her, she poured some more acid in the mug for the 3rd time.

Now, let me come to the evidence of p.w.8 about the role played by the lady accused. He corroborated p.w.2 that Karunakar and Hadudev called their mother to bring acid to kill Sarangadhar and in the consequence, Bhargabi brought the acid, but this witness added that Niranjana also demanded acid from his mother who brought the acid from his mother and threw it to the face of Sarangadhar and handed over the mug to Karunakar. He contradicted p.w.3 by saying that he handed over the mug to Karunakar because p.w.3 deposed that Niranjana handed over the mug to his mother. According to p.w.2 also Niranjana gave the mug to Bhargabi who poured



some more acid in the mug and Karunakar took that mug with acid and threw it to Sarangadhar. Now, let me go to the second face of acid throwing by Karunakar. According to p.w.8 Karunakar went to his mother who poured acid in the same mug after which Karunakar threw the acid to Sarangadhar which fell on Sarangadhar and other persons. He differs with p.w.3. P.W.3 deposed that Niranjana gave the mug to his mother who poured acid in the same and gave the mug to Karunakar. Let me go the 3rd throw of acid by Hadudev. P.W.8 deposed that Karuna gave the mug to Hadudev, who took the mug and brought the acid from his mother (Bhargabi) and then Hadudev threw the acid. But according to P.w.3 Karunakar gave the mug to the lady accused who poured some more acid in the mug and Hadudev threw the acid. Again, this witness had not stated to the police that Karunakar and Hadudev called their mother to bring acid to kill Sarangadhar and that Bhargabi supplied and Niranjana brought the same from his mother. This witness did not state to I.O. that Karunakar took the mug and went to his mother who poured acid in the same mug who threw the acid to Sarangadhar for second time. This witness had also not stated to I.O. that Karunakar gave the mug to Hadudev who took the mug and brought the acid from his mother- Bhargabi. This contradiction is also apparent from the cross-examination of the I.O. at paragraph 15. Now, let me go to the evidence of p.w.9. He deposed that Hadudev and Karunakar called their mother and she came with two bottles of acid and one plastic mug. This witness did not say like others that Hadudev and Karunakar



called their mother to bring acid to kill Sarangadhar. He deposed that Niranjana threw semel stick and went to his mother and asked for acid and the lady accused poured some acid in a mug and gave it to Niranjana which Niranjana threw to his face. He deposed at paragraph 4 that again Karunakar threw acid to him saying Salake Jeevanre Khatamkaridebi. Here the witness did not say how Karunakar brought the acid and from whom, nor the witness stated about the third throw of the acid by Hadudev. Perhaps, the witness became very serious and did not know what happened thereafter i.e. about 3rd throw of acid. This witness also contradicted his previous statement made before the I.O. He did not state to I.O. that Hadudev and Karunakar asked their mother to bring acid and Niranjana went to her and asked for acid and the lady accused poured some acid in a mug and gave it to Niranjana which Niranjana threw to the face of p.w.9. This is also apparent from the cross-examination of the I.O. at paragraph 16. From all these aforesaid evidences, I find that there are lots of contradictions and embellishments about the role played by the lady accused in supplying acid to her sons (co-accused persons). The evidence implicating her was only developed at the trial stage. Hence, I entertain a strong suspicion about her implication and hold that prosecution has failed to prove the charges against her beyond all reasonable doubt.

6. Let me come to the other accused Adikanda and Jayadev. Excepting p.w.1, none had deposed about the overt acts played by these accused



persons. P.W.1 deposed that after the intervention of bhadraloks, they went to a distance, but at the same time Jayadev and Adikanda again instigated the other accused persons to kill Saranga. P.W.2 made a general statement that the accused persons were abusing his uncle Saranga in slang language, but there is no charge for abusing in slang language. Similarly, p.w.3 made a general statement that all the accused persons threatened to kill Saranga, but there is no charge for criminal intimidation. This witness did not say that these two accused persons had played any role neither in the commission nor any abetment of the same. P.W.8 and P.W.9 deposed in the same manner like that of p.w.3. They have played no role to show their common intention in the commission. Hence, there is insufficient evidence as against the accused Adikanda and Jayadev to prove the charges of the prosecution beyond all reasonable doubt. Hence, I don't find them guilty of the offence u/ss.323/326/307/34 I.P.C.”

In so far as acquittal of the appellants, namely, Jayadev Joshi, Adikanda Joshi and Bhargabi Joshi for the offences under Sections 323/326/307/34 of the I.P.C. is concerned, no appeal has been preferred by the State challenging the said findings of the learned trial Court. In view of the absence of any appeal against the order of acquittal on those counts, this Court does not consider it necessary to examine or reopen



the said issues at this belated stage after lapse of more than three decades.

6. In the present case, P.W.8 is the informant. He in his testimony has deposed that the occurrence took place on 28.03.1993 at about 5.00 P.M., a Sunday. He deposed that Sarangadhar Hota (P.W.9) had purchased a bari land from Bhikari Joshi, and accused Adikanda had also purchased a separate plot of land with three houses from the same vendor. There existed a passage connecting the land of Adikanda to the bari land of Sarangadhar. At the instance of Sarangadhar, his son and his field servant were constructing a wall to close the said passage. At that time, all the accused persons, including the female accused, arrived at the spot and the male accused persons demolished the newly constructed wall. He further deposed that when Sarangadhar protested and asserted his ownership over the land, the accused persons restrained him, abused him in filthy language by saying “MADARCHOD SALAKU MARI DEBU”, and threatened him with dire consequences. He further deposed that when a hot exchange was going on in presence of the ‘Bhadraloks’, the accused Niranjana Joshi (appellant No.2) dealt a blow with a semel



stick on the left shoulder of Saranga (P.W.9). When the appellant No.2 trying to give a second blow, Kanhu Charan Joshi protected the same by raising his hands but received injury on his chest to some extent due to that blow. The appellant No.1 (Karunakar Joshi) and the appellant No.3 (Hadudev Joshi) called their mother to bring acid to kill Sarangdhar. Bhargabi (since acquitted) brought the acid. The appellant No.2 also demanded acid from his mother Bhargabi. Thereafter, the appellant No.2 brought the acid from his mother and threw to the face of Sarang (P.W.9). Saranga cried aloud 'MARI GALI MARI GALI'. Thereafter, Niranjan handed over the mug to Karunakar (appellant No.1). Karunakar took the mug and went to his mother, who poured acid in the same mug, thereafter, he threw acid on P.W.9 and the acid fell on the left shoulder and right thigh of P.W.9. Some part of the acid also fell on his chest. P.W.8 further deposed that he along with one Sana Majhi, Hemanta Kumar Joshi and Ramesh Chandra Hota wanted to carry away P.W.9 from the spot. At that time, some part of the acid fell on them as well. At that stage, the appellant No.1 (Karunakar Joshi) gave the mug to appellant No.3 (Hadudev Joshi), who took the mug and brought the acid



from his mother (Bhargabi). The appellant No.3 abused P.W.1 stating that “TU RANDI TUTE BHI JEEVANRE MARI DEBU”. The appellant No.3 then threw the acid from the said mug on P.Ws.1 and 2, which fell on their face. The narration of the incident made by the informant (P.W.9) stood directly corroborated with the evidence of P.Ws.1, 2 and 3 and 8.

P.Ws.4 and 5 were the doctors those who have examined the injured witnesses. They have also in their deposition confirmed the acid injury sustained by P.Ws.1, 2, 8 and 9. P.W.4, who examined P.W.1, answered to a court question that P.W.1 had injuries on her upper lid and right side of the face with secondary infection. The age of the injuries was within 3 to 4 days. The injury was grievous in nature. Similarly, while examining Sarangadhar Hota (P.W.9), P.W.4 also stated that the said injured had received injuries in the eye-lids and forearm, as a result of which, it developed contracture and permanent deformity.

P.W.5 was the Assistant Surgeon attached to the District Headquarters Hospital deposed that P.Ws.1, 2, 8 and 9 has sustained the following injuries:-



“On 28.3.93 I was attached to the Dist. Head quarters Hospital as Asst. Surgeon. On that day I examined Sarangadhar Hota (P.W.9), S/o Basudev Hota on police requisition and found the following injuries:

- (1) corrosive burn on intermittent areas of entire face and neck;*
- (2) corrosive burn on the anterior superior aspect of entire chest with intermittent healthy areas;*
- (3) corrosive burn on intermittent areas over left upper limb left shoulder and left scapular area.*
- (4) corrosive burn on the anterior medial aspect of entire right arm and right-fore-arm*
- (5) corrosive burn inside both eyes causing conjunctival congestion watering and corneal haziness*

I reserved my opinion about injury No.1 and 5. The other injuries were simple in nature. All the injuries might have been caused within 6 hours of my examination. I examined the injured at 7.45 p.m. As the surface of the burns were brownish black so I presumed that the corrosive substance might be sulphuric acid. Ext.3 is the report and Ext.3/1 is my signature.

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3. On the same day at 7.55 p.m. I examined Tarangini Hota (P.W.1) D/o. Krupasindhu Hota and found the following injuries:

- (1) corrosive burn on entire face with small areas of healthy skin in between;*
- (2) corrosive burn on entire posterior medial aspect of right fore-arm with small patches of healthy skin in between;*
- (3) corrosive burn on intermittent areas over right arm on posterior lateral aspect;*
- (4) corrosive burn on entire left side fore-arm on the posterior aspect with intermittent healthy areas;*



(5) corrosive burns on the right eye causing congestion of conjunctiva and corneal opacity;

Opinion regarding injuries 1 and 5 is received. Other injuries were simple and might have been caused by corrosive substance within 6 hours of my examination. Because of brownish black colour of the surface of the burns I opine that the burns might have been caused by sulphuric acid. Ext.4 is my report and Ext.4/1 is my signature.

4. On the same day at 8.05 p.m. I examined Saroj Kumar Joshi (P.W.8) S/o Kanhu Ch. Joshi and found the following injuries:

(1) corrosive burn on intermittent portions of anterior aspect of both thighs punctiform in nature; (with dots)

(2) corrosive burn on intermittent portions of anterior aspect of right side trunk punctiform in nature;

(2) corrosive burn on 5 places over lateral aspect on right upper limb. The sizes of 3rd injury were of 1/4" x 1/4", "1/2 x" 1/2", 1/4 x 1/4", 1/2" x 1/6"; and "1/2 x 1/2" respectively.

All the injuries were simple in nature which might have been caused by corrosive substance like sulphuric acid because the surface of the burns were brownish black. The age of the injuries were within 6 hours. Ext.5 is my report and Ext.5/1 is my signature.

5. On the same day at 8.05 pm. I examined Jyotish Ch. Hota (P.W.2), S/o Krupasindhu Hota and found the following injuries:

(1) corrosive burn on intermittent areas of posterior aspect of left forearm;

(2) corrosive burn on intermittent areas of posterior lateral aspect of left leg; on superior aspect,

(3) corrosive burn on intermittent portions of posterior medial aspect of right leg on inferior part towards ankle,



(4) corrosive burn on intermittent portions of lateral aspect of left thigh and anterior aspect of right thigh. The injuries were simple in nature and might have been caused by corrosive substance like sulphuric acid because the surface of the burns were brownish black. The age of the injury was within 6 hours. Ext. 6 is my report and Ext.6/1 is my signature.”

7. P.Ws.6 and 7 were examined by the prosecution to prove the seizure of the wearing apparels of the injured witnesses. The prosecution version emanating from the evidence of the injured witnesses, eye witnesses and the doctor is largely reflected in the F.I.R. too. The learned trial Court while appreciating the entire evidence as has come on record doubted the version of P.W.8 and the version of other eye witnesses in so far as the overt act attributed to the accused Bhargabi, who is the mother of the appellants. The learned trial Court arrived at the conclusion that the version of the injured witnesses and the informant in so far as the role attributed to Bhargabi regarding bringing the acid and handing over the same to the present appellants one after another in a mug, those who in turn have thrown the acid on P.Ws.1 and 9 directly which also sprinkled over P.Ws.2 and 8 is strained with contradictions and discrepancies. Hence, could not be believed. Therefore, the learned trial



Court has recorded an acquittal in favour of Bhargabi by extending the benefit of doubt.

8. Mr. Dhal, learned Senior Counsel appearing for the appellants has submitted that if the learned trial Court has disbelieved the part of the story narrated by all the witnesses in unison regarding Bhargabi getting acid from inside the house and handing over the same in a mug, in turn, to all the appellants who have used that acid mug to throw P.Ws.1 and 9, then the chain and sequence of event unfolded at the time of occurrence as has been narrated by the prosecution breaks. Hence, the same benefit of doubt ought to have been extended to the present appellants. The entire prosecution story is dented due to non-believing of the evidence vis-à-vis Bhargabi. Mr. Dhal, learned Senior Counsel further pointed out that P.W.3, the eye witness in his cross-examination has stated that there is a case pending against him and seven other persons instituted by Adikanda (since acquitted by the trial Court) regarding the throwing of acid allegation on the same day. It is also stated by P.W.3 that a complaint is pending wherein it is alleged that the prosecution witnesses armed with lathies have thrown the acid on the present appellant No.2



and ransacked his properties including gold ornaments, cash and also assaulted the appellant No.2 by breaking his head. This part of the version of P.W.3 stood corroborated from the evidence of the I.O. (P.W.10). The I.O. in paragraph-18 of his cross-examination has stated as under:-

“xxxx xxxx xxxx I sent Niranjana to Bandhpada P.H.C. for medical examination, but I did not send medical requisition. I did not send Karunakar for medical examination. The medical report of Niranjana is not available in the record. It is not a fact that I sent Karunakar to bandhapada P.H.C. for his medical examination. It is not a fact that C/307-Joshiram Hota accompanied Karunakar to Bandhapada P.H.C. for his examination and the Medical Officer of Bandhapada P.H.C. sent the medical reports of Niranjana and Karunakar. It is not a fact that the medical officer of Bandhapada P.H.C. sent the medical reports of Karunakar and Niranjana to our O.P. through memo No.59 dated 25.03.94. It is not a fact that I am suppressing those medical reports.”

The aforesaid version of the Investigating Officer (P.W.10) also finds corroboration from the evidence of D.W.1, who was the Medical Officer of Bandhapada P.H.C. In his testimony, he has categorically stated that he received a medical requisition from the police to examine



Karunakar Joshi (appellant No.1) and Niranjana Joshi (appellant No.2).

Upon examination, he found the following injuries:-

“I was Medical Officer of Addl. P.H.C. Bandhapada of the Dist. Balangir in the year 1993. On 28.3.93 I received medical requisition from police to examine Karunakar Joshi and Niranjana Joshi. I examined them and found some injuries. I examined Niranjana Joshi on 28.3.93 and 29.3.93 and found the following injuries:

- (i) Lacerated injury of the size 3" x 1/8" x 1/2" placed over the middle of the scalp in a longitudinal manner*
- (ii) Bruise of the size 2 1/2" x 1" placed over posterior side of right arm*
- (iii) Multiple linear abrasions 2" length each placed over posterior part of right shoulder*
- (iv) Bruise of the size 2 1/2" x 3/4" over lateral side of the upper part of the right thigh*
- (v) Burn injury of the size 1/2" x 1/2" over right chest below posterior axillary fold*
- (vi) Multiple burns of the size 1/8" x 1/8" each placed over left chest below left axilla.*

2. All the aforesaid injuries were simple in nature. Injury Nos. (v) and (vi) might have been caused by caustic agent and injury No. (iii) might have been caused due to sliding over hard and rough substance. Other injuries might have been caused by hard and blunt weapon. Injury Nos. 1 and 3 might have been caused within 6 hours of my examination i.e. 9 p.m. of 28.3.93. Other injuries might have been caused within 12 to 24 hours of my examination i.e. 8 a.m. on 29.3.93.

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3. I examined Karunakar Joshi, S/o Adikanda Joshi of Sahajbahal at about 9 p.m. of 29.3.93 and found the following injuries:



(1) abrasion of size 2" length placed over the medial side of left fore-arm

(2) Abrasion of size" 1/2" x 1/2" over left arm on the middle. Both the injuries were simple in nature. Injury No.2 might have been caused by slide over hard and rough substance. Injury No.1 might have been caused by pin pointed light object. The age of injury was within 6 hours at the time of my examination. Ext.B is my report and Ext.B/1 is my signature. I sent the copies of my medical reports to police in compliance. The reports were sent to A.S. I. Bandhapada Out post."

9. The medical reports submitted by D.W.1 were also exhibited and marked as Exts. A and B. Further, D.W.2 was examined on behalf of the defence to establish that a separate complaint case had been filed by the accused persons against the prosecution witnesses in relation to the same incident.

D.W.2, who is the Clerk of the Advocate who filed the said complaint case, deposed that Adikanda Joshi (since acquitted) had instituted the complaint case, which was marked as Ext. C. The signature of the Advocate was identified by D.W.2 as Ext. C/1, and the signature of the complainant was also identified by him as Ext. C/2.

10. I have perused the copy of the complaint (Ext.C), which has already been brought on record. The complaint case filed by the accused



Adikanda Joshi arrayed eight accused persons including P.Ws.3, 8 and 9 besides other family members of P.W.9. Paragraph-5 of the complaint is relevant to be reproduced for convenience of ready reference, which reads thus:-

“5.That on the date and hour of occurrence all the accused persons armed with deadly weapon and means like stick, Barchhi and Tangia forming an unholy alliance with a common object in order to assault, intimidate and to commit theft in order to wrongful gain to them and wrongful loss to the complainant, came from the bari side of the complainant and the accused Ramesh and Umesh assaulted Niranjan by means of stick from his back side who was standing in his bari with the witnesses Ghasi and Sahadev over his head causing bleeding injury they also assaulted him by means of stick on his right arm and right thigh causing swelling injury after the accused Umesh throttled the neck of my son Niranjan in order to kill him but somehow or other Niranjan saved himself from the clutches of the accused persons with the intervention of the witnesses present at the spot and all of them ran towards goldsmith shop of his brother namely Karunakar Joshi and hide themselves inside the shop. Thereafter all the accused persons chased them up to the goldsmith shop and broke upon the entrance door at the Goldsmith shop of the son of the complainant, trespass inside the shop and all the accused persons assaulted Karunakar by means of a stick, on his left hand for which, Karunakar sustained abrasion on his left hand, while assaulting Karunakar, his brother Niranjan, the complainant along with the witnesses cited



above who were all along present at the time of occurrence protested to the right hand of the accused persons but the accused persons became more violent and furious took away 10 tolas of gold and cash of Rs.10,000/- (Rupees ten thousand) from the shop and before leaving the shop the other accused persons instigate the accused Cheru to throw acid on the body of the complainant and his two sons saying "SALA MAGHIA MANANKU ACID DALI DEI AJI JIBANARU MARI DIA and thereafter the accused No..1 Sarangdhar @ Cheru brought the acid bottle and threw it over the right side chest of Niranjana as a result of which Niranjana sustained injury over his right side chest. Thereafter all the accused persons indiscriminately assaulted Niranjana by means of stick, fist and kick blows all over his body as a result of which he sustained abrasions and swelling injury all over his body."

11. From reading of the entire evidence brought on record by the prosecution as well as the defence, it is abundantly clear that on the date of occurrence, there was attack and counter attack by both the groups. The accused persons have also sustained injuries, for which, they were examined by the doctor. Pertaining to the same incident, a complaint case was also filed by the accused persons against the prosecution witnesses and their accomplices and the persons those who have accompanied them. However, nothing has been brought on record to show the final result of the complaint case.



12. With the help of the learned counsel appearing for the parties, I have meticulously gone through the evidence of all the prosecution witnesses and defence witnesses and also perused the exhibits. In the light of the evidence available on record, I have taken into consideration the rival contentions of both the parties. The appellants herein have been convicted for commission of offence under Sections 324/326/307/34 of I.P.C. To sustain the conviction recorded under Section 307 of I.P.C., the *sine qua* condition required to be satisfied is the intention of the accused to kill the victim. The intention of the accused can be ascertained from the actual injury as well as from the surrounding circumstances amongst other things. The nature of weapon used and severity of blow inflicted can also be taken into consideration to infer the intention. It is settled principle of law that to sustain a conviction under Section 307 of I.P.C., it is not necessary that a bodily injury capable of resulting to death should be proved on record. Non-conviction under Section 307 of I.P.C. on the premises only that simple injury was inflicted does not follow as a matter of course. Irrespective of the nature of injuries, the intention and knowledge of the accused persons that the injury was inflicted only to



kill the victim is required to be established by the prosecution. In the instant case, after acquittal of the co-accused Bhargabi by the learned trial Court by right appreciation of evidence, one can easily infer that the act complained of or the overt act attributed to the present appellants is not poised with intention to cause such bodily injury to either P.W.1 or P.W.9 to kill them because it is Bhargabi, who has brought the acid from the house and gave it to the appellants. The appellants have no idea of the lethality of the substance used by them to cause bodily injury. Therefore, if at all, there was an intention, it could only be attributed to Bhargabi. It is also borne on record that at the place of occurrence, a construction work was going on and the construction appurtenances were available around. If there would have been an intention to kill any of the prosecution witnesses or victims, the accused persons could have easily picked up any of the equipment and caused injury but that is not a case of the prosecution rather on the contrary all the witnesses including the injured have stated in a very categorical term that Bhargabi had brought the acid in two bottles and poured in the mug. Thereafter, gave it to the appellants and the appellants have used those acid to attack P.Ws.1 and



9. Besides the point, it is also not the case of the prosecution or defence that Bhargabi received any injury by acid though she had handed the acid by bringing in two bottles and repeatedly pouring in the mug.

It is evident from the record that although the injured witnesses and the eye witnesses have deposed in their evidence that the accused persons had threatened to kill P.W.9, but no charge under Section 506 of I.P.C. was framed. The mere allegation of criminal intimidation by issuing threat to kill, cannot by itself, be construed as indicative of an intention to kill. Such intention could only be inferred or derived from the specific overt act attributed to the accused persons.

13. Taking into account the entirety of the prosecution version, one can safely conclude that the appellants had no intention as such to kill either P.W.1 or P.W.9. Therefore, the conviction recorded by the learned trial Court for causing offence under Section 307 of I.P.C. against the appellants is liable to be set aside particularly because the appellants have also been convicted for the offences under Sections 324/326/34 of I.P.C. The evidence although established that P.Ws.1, 2, 8 and 9 have received acid injuries, some of the injuries are grievous in nature and



some are simple in nature. At this stage, Mr. Dhal, learned Senior Counsel for the appellants has also pointed out that the evidence of P.W.8 regarding the allegation of injury caused by the appellant No.1 to P.W.9 in semel stick has not proved on record because the doctor's evidence is not found corroborating. That beside the point, the fact remains that P.Ws.1 and 9 have sustained grievous injuries which stood proved from the evidence of P.Ws.4 and 5, the doctors, who have examined them. Therefore, the conviction recorded by the learned trial Court under Sections 324/326/34 of I.P.C. is sustainable on the face of the evidence available on record.

In view of the aforementioned, the appellants are acquitted of the charges under Section 307 of I.P.C. However, the conviction recorded against them for the offence under Sections 324/326/34 of I.P.C. stands affirmed.

14. Mr. Dhal, learned Senior Counsel for the appellants at this stage submitted that the occurrence in question took place in the year 1993 and the present appeals have remained pending since the year 1995. Thus, more than three decades have elapsed since the date of occurrence. It is



further submitted that during this long interregnum, the appellants have continued to remain law-abiding citizens and there is nothing on record to indicate that any of them had any criminal antecedents either prior to or subsequent to the present occurrence. He further submitted that directing the appellants to undergo the custodial sentence at this distant point of time would not subserve the ends of justice. Rather, such a course would cause undue hardship not only to the appellants but also to their family members who are dependent upon them for their livelihood. It is contended that the object of criminal jurisprudence, particularly in cases involving offences of a relatively less serious nature, is not merely punitive but also reformatory. Therefore, while considering the question of sentence, the Court is required to take into account the surrounding circumstances, the nature of the offence, the character of the offenders and the long lapse of time since the occurrence.

In such circumstances, it is prayed that this Court may consider extending to the appellants the benefit of probation under Section 4 of the Probation of Offenders Act, 1958.



15. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*¹ has elaborately explained the scope, object and significance of the Probation of Offenders Act, 1958 while considering the question of extending the benefit of probation to a convict. The Hon'ble Supreme Court has underscored that the legislative intent behind the enactment of the Probation of Offenders Act is essentially reformatory in nature, aiming to provide an opportunity to first-time or less serious offenders to reform themselves rather than subjecting them to incarceration. It has been emphasized that the provisions of the Act are intended to prevent the deleterious effects of imprisonment on individuals who can otherwise be rehabilitated as responsible members of the society. The Court has further highlighted that Section 4 of the Probation of Offenders Act confers a wide discretion upon the courts to release an offender on probation in appropriate cases and that the said provision has a broader and more

¹ 2025 INSC 540



expansive ambit than Section 360 of the Code of Criminal Procedure, 1973.

While discussing the interplay between the aforesaid provisions, the Hon'ble Supreme Court has also clarified that courts are duty-bound to consider the applicability of the Probation of Offenders Act in cases where the circumstances justify such consideration, and if the court decides not to extend the benefit of probation, it must record special reasons for such refusal. The relevant observations of the Hon'ble Supreme Court are reproduced hereunder:

“26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.



27. What logically follows from a conjoint reading of subsection (1) of Section 4 of the Probation Act and Section 361, Cr. PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”

Regard being had to the facts of the present case, particularly the long lapse of time since the occurrence, the absence of criminal antecedents of the appellants and the overall circumstances emerging from the record, this Court is of the considered view that the case of the appellants deserves consideration under the beneficial provisions of the Probation of Offenders Act. In view of the aforesaid legal position and the peculiar facts and circumstances of the case, this Court is inclined to



extend to the appellants the benefit contemplated under Section 4 of the Probation of Offenders Act.

16. The ratio of the aforesaid decisions, emphasizes the reformatory approach of criminal jurisprudence in cases involving personal disputes and absence of criminal antecedents, is fully applicable to the facts and circumstances of the present case.

17. In such view of the matter, the present Criminal Appeal in so far as the conviction is concerned, is turned down. But instead of sentencing the appellants to suffer imprisonment, this Court directs the appellants 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 One 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 appellants 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.

18. To ensure that the punitive element is not rendered illusory, while invoking the provision of Section 5 of the P.O. Act, the fine amount is



enhanced to Rs.20,000/- (Rupees Twenty Thousand) each, which shall be deposited within two months from the date of judgement. The fine amount to be deposited shall be disbursed to the Victims/LRs in accordance with the provisions under Section 357 of Cr.P.C. Failing to make good the compensation amount within the time frame granted by this Court, the appellants shall be proceeded in accordance with Sub-section (2) of Section 5 of the P.O. Act.

19. With this observation, the CRA is partly allowed.

(S.S. Mishra)
Judge