

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No.139 of 2002

From the judgment and order dated 30.05.2002 passed by the learned Addl. Sessions Judge, Boudh in CRA No.6 of 2001 confirming the judgment and order dated 11.09.2001 passed by the learned C.J.M.-cum-Asst. Sessions Judge, Boudh in S.T.No.2 of 2001/S.T. No.15 of 2001 (D.C.)

1.Brajamohan Bhukta

2.Rajendra Bhukta

3.Gajendra Bhukta

.... **Petitioners**

-versus-

State of Odisha

.... **Opp. Party**

Advocates appeared in this case through Hybrid Mode :

For Petitioners

: *Mr.Ansuman Ray, Advocate*
on behalf of Mr.D.P.Dhal, Sr. Advocate

For Opp. Party

: *Mr.K.K.Nayak, ASC*

CORAM:

JUSTICE SAVITRI RATHO

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Date of Judgment :11.08.2022
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Savitri Ratho, J.

In this Criminal Revision, the petitioners have challenged the judgment and order dated 30.05.2002 passed by the learned Addl. Sessions Judge, Boudh in CRA No.6 of 2001

confirming the judgment and order dated 11.09.2001 passed by the learned C.J.M.-cum-Asst. Sessions Judge, Boudh in S.T. No.2 of 2001/S.T. No.15 of 2001 (D.C.) for commission of offence punishable under Sections 307/34 of I.P.C. The learned trial court convicted each of the petitioners to suffer R.I. for three years and to pay a fine of Rs.500/-, in default of payment, to undergo R.I. for a further period of three months. It was further directed that out of fine amount, a sum of Rs.1,000/- shall be paid to the injured-Tirtha Mahakuda @ Bhukta by way of compensation.

2. The brief facts of the case is that the injured Tirtha Mahakuda @ Bhukta and the accused persons (petitioners) belong to village Pipalpalli within Kantamal Police Station. There was long standing land dispute between them. In the morning of 24.6.1996, while Tirtha Mahakuda was going to village, Turideulo, on the way, near village Padiabahal the accused persons obstructed him and assaulted him on his head, finger and leg by means of lathis causing multiple injuries and fracture of the finger. Due to assault, Tirtha fell down on the ground and became unconscious. One Sridhar Danga of village, Kulliapali informed the matter to the son of Tirtha at his village who came to the spot and found that his father was

lying unconscious on the road with bleeding injuries on his person. He thereafter shifted his father to Kantamal P.S. and lodged F.I.R. at Kantamal P.S. Police registered the case and after investigation submitted charge sheet against the accused persons as prima facie case was made out against them.

3. The petitioners took the plea of complete denial.

4. In order to prove its case, the prosecution examined ten witnesses. P.W.1 - Gyanendra Bhukta son of the injured is the informant. P.W.2 - Tirtha Bhukta is the injured. P.W.3- Hadibandhu Karmi is the seizure witness. P.W.4 - Lalmohan Bhoi is a post occurrence witnesses. P.W.5 - Ranjit Bhoi is a post occurrence witness. P.W.6 - Jalandhar Danta and P.W.7 - Panchanan Pradhan are eye witnesses. P.W.8 - Benudhar Bhoi is the Officer-in-Charge, Kantamal Police Station who took over investigation from P.W.9 - K.C. Das and submitted charge sheet. P.W.9 - Krushna Chandra Das is the ASI of Police who registered the FIR and took up investigation. P.W.10 - Dr. Sudhir Chandra Mallik is the medical officer of Kantamal Govt. Hospital who examined the injured on 24th June 1996 on police requisition.

The defence examined three witnesses. D.W.1 - Daya Jani., D.W.2 - Balaji Jani and D.W.3 - Daulat Bhoi are all co-villagers who had gone with the accused persons to Sonepur to sell firewood.

5. The prosecution exhibited three documents. Ext.1 is the F.I.R., Ext.2 is the seizure list and Ext.3 is the injury report of P.W.10.

6. The learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Boudh after analyzing the evidence of the witnesses, acquitted the petitioners from the charge under Sections 341/34 of I.P.C., but convicted them for commission of offences under Section - 307/34 of I.P.C. for attempting to commit murder of P.W.2-Tirtha Mahakuda @ Bhukta and sentenced them thereunder, as mentioned above.

7. In Criminal Appeal No. 6 of 2001, the learned Addl. Sessions Judge, Boudh did not find any reason to differ from the findings of the learned trial Court and dismissed the appeal by judgment dated 30.05.2002.

8. Mr. Anshuman Ray, learned counsel submitted that the conviction of the petitioners cannot be maintained :

- a) There is long standing civil dispute between the parties registered as P.S. Case No.53 of 1994 and injured has stated that there exists land dispute for the last five years. Enmity being a double edged P.W.2 should have been disbelieved.
- b) The scribe of the F.I.R. has not been examined in the case and no reason has been given for not doing so, which creates doubt about the veracity of the prosecution case.
- c) P.W.6 has stated that he has seen 4 medhas being used in the incident but one blood stained lathi has been recovered from the spot, but it was not sent for chemical examination. P.W.7 has stated that the three medhas were held by the petitioners and one was lying on the ground broken, which indicates that there was a fight between the petitioners and the injured. The material being inconclusive, the trial court judgment calls for interference.
- d) Non examination of other persons is suspicious.
- e) The evidence of P.W.2 is full of omissions. He has not stated before the I.O. that the accused persons were hiding themselves.
- f) The place of occurrence is a rocky place and P.W.10 the Medical Officer has stated that the injuries are simple in nature and possible

by fall. So it cannot be ruled out that they were caused during the fight between the petitioners and the injured.

g) The injuries except one on the finger are simple in nature and possible by fall. There is absence of corroboration as regards the authors of each injury.

h) P.W.2 could have been under the influence of ganja as he has admitted that he smokes ganja often.

i) The evidence of the defence witnesses could not have been mechanically rejected. They have stated that the accused persons had gone to Sonapur to purchase firewood on the date of occurrence.

j) Assuming for a moment that the injured has been assaulted by the petitioners, all the injuries on the head were simple injuries which do not make out an offence under 307 IPC against the petitioners.

At best an offence under Section 323 IPC may be made out against the petitioners.

k) The petitioners having remained in custody from 2.7.1996 till 3.8.1996 and 09.6.2002 to 26.6.2002, i.e., about one month and seven days and more than 25 years have elapsed since the date of

occurrence, the conviction and sentence may be modified to the period undergone.

9. On the other hand, Mr. K.K. Nayak, learned Addl. Standing Counsel has submitted that the learned courts below after considering all the materials available on record, have rightly convicted the accused-petitioners vide the aforesaid impugned judgments and taking into consideration the gravity of offence, have passed the impugned sentence which do not call for interference.

10. I have perused the injury report, opinion of the doctor and gone through the evidence of the witnesses and the statement of the accused persons recorded under Section 313 CrI.P.C.

11. In order to be satisfied that a case under Section – 307 is made out against the petitioners, it is necessary to first examine the requirements of the provision of Section – 307 of the I.P.C., the evidence of the eyewitnesses and the doctor and the injury report.

12. *Section – 307 of the IPC provides as follows :*

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall

be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—*When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.*

13. P.W.1 - Gyanendra Bhukta the son Tirtha Mahakuda - the injured, is the informant in this case and a post occurrence witness. He has stated that the accused persons had assaulted his father. Soon thereafter, he rushed to the spot and saw that his father was lying there being seriously wounded with bleeding injury on his head. There was also assault on the leg of his father and he had fracture on the finger of his left hand. A medha being broken into two pieces was also lying at the spot. He along with the assistance of P.W.4- Lalmohan Bhoi and P.W.5-Ranjit Bhoi took his father to Kantamal Hospital in a bullock cart. One Hadibandu Karmee also accompanied us to the hospital and he also carried the two pieces of medha and handed over the same to the police. He lodged F.I.R. with police at Kantamal Police Station.

P.W.2 - Tirtha Bhukta is the injured and he has stated that on the way near the place of occurrence the accused persons were hiding themselves. After his arrival there, they came out and

assaulted him on his head, on the forefinger of his left hand and on my right leg by means of medhas. Soon after the assault, he fell down on the ground and became unconscious. There was bleeding from his head. There was fracture of his left hand fore finger and his right leg was not working. He was shifted to Kantamal in a bullock cart by his son and others. He remained in the hospital for about 10 to 12 days. He remained unconscious for 2 to 3 days.

P.W.3 - Hadibandhu Karmi is the seizure witness and stated that police seized a blood-stained Dhoti and two pieces of Madhas on production by P.W.1 at the police station in his present.

P.W.4 - Lalmohan Bhoi has stated that at the time of occurrence, he was going to village Kulliahpalli by riding a bi-cycle to purchase husk and he found a gathering at village Padiabahali crossing on the road. He also found that P.W.2 was lying unconscious on the ground with bleeding injuries on his head and ear. One Panchanan Pradhan of village Kulliahapalli told him that accused Brajamohan and his two sons assaulted P.W.2. Thereafter P.W.1 carried P.W.2 to Kantamal in a bullock cart.

P.W.5 - Ranjit Bhoi has stated that one Jalandhar Danta of village Padiabahali went to his house and told to him that P.W.2 was

lying by the side of the road in village Padiabahal being assaulted by the accused persons. So, he along with his wife went to the spot and found that P.W.2 was lying being unconscious with bleeding injuries on his head.

P.W.6 - Jalandhar Danta stated that at that time he was spreading manure in his field near the road running through Padiabahal, he saw the three accused persons assaulted P.W.2 by means of medha. When he rushed to the spot the accused persons left the spot. P.W.2 fell down being assaulted and he was having injuries on his head and finger and became unconscious.

P.W.7 - Panchanan Pradhan stated that he was tending goats near the road running near village Padiabaha and saw P.W.2 was going towards village Turideulo. On the road all the three accused persons assaulted P.W.2 by means of medha. Each accused was holding a medha. Another medha was lying on the spot broken. They assaulted on the head, hand and other parts of the body of P.W.2.

P.W.8 - Benudhar Bhoi is the Officer-in-Charge, Kantamal Police Station and stated that he took charge of investigation of Kantamal P.S. Case No.44 of 1996 from ASI, K.C.

Das. On 6.8.1996, he examined witnesses. On 15.9.1996 after completion of investigation, he submitted charge sheet against the present three accused persons showing accused Brajamohan as absconder.

P.W.9 - Krushna Chandra Das in his evidence stated that he was the ASI of Police attached to Kantamal P.S. on 24th June, 1996 and on that date, one Gyanendra Mahakuda, son of Tirtha Mahakuda of Pipalpalli presented a written report at Kantamal P.S. In absence of the OIC, he registered the case and took up investigation. In course of investigation, he visited the spot, examined the witnesses, sent injured Tirtha Mahakuda to Kantamal Govt. Hospital under requisition for examination. He seized lathi broken into pieces, on production by the informant at P.S. and prepared the seizure.

P.W.10 - Dr. Sudhir Chandra Mallik was working as the medical officer of Kantamal Govt. Hospital on 24th June 1996. On that day, on police requisition, he examined one Tirtha Mahakuda, son of late Damodar Mahakud of village Pipalpalli and found the following injuries on his person.

“(i) Lacerated injury on the scalp in the midline, anterior posterior direction 4” above nasim of size 2 ¼” x 1/8”.

(ii) Lacerated injury on the scalp 1” left to the injury No. (i) of size 3” x ½” x 1”

(iii) Lacerated injury on the scalp on the right side of head 5” above right ear interior posterior direction of size 3” x ½” x 1/8”

(iv) Lacerated injury on the scalp on it. Side 4 ½” above left year of size 1 1/2 “ x ¾” x 1/2 .

All the above injuries might have been caused by hard and blunt object within 12 hours at the time of his examination. They were simple in nature.

(v) Lacerated injury encircling left index finger at its middle with fracture of the second phalanx. It was grievous in nature and the age of the injury was within 12 hours. The injury might have been caused by hard and blunt object.

vi) Bruise at the lateral aspect of right arm at the junction of upper two third and lower one third of size 4” x ½”.

(vii) Bruise at interior aspect of right thigh 4” above right knee of size 3” x ½”.

(viii) Haematoma at anterior aspect of it, thigh 4” above left knee of size 3” x 2 ½”.

Injury numbers (vi), (vii) and (viii) are simple in nature might have been caused by hard and blunt object and the age of the injuries was within 12 hours.”

In order to prove its case, the defence has examined three witnesses.

D.W.1 - Daya Jani has stated that he knew all the three accused persons in the dock. He also knew the injured Tirtha Mahakuda who was not staying in village, Pipalpali for the last 15 to 20 years and was roaming here and there and had become mad. On 24.6.1996, he alongwith the three accused persons and one Siromoni had been to Sonapur to sell fire wood. Gyana Mahakuda the informant has been staying in village Hathipalli from his childhood. He stated that it was false that on 24.6.1996 at about 9.00 a.m., all the accused persons assaulted Tirtha Mahakuda near village Padhiabahali. There was land dispute between Tirtha Mahakuda and the accused persons, prior to the alleged incident.

D.W.2 - Balaji Jani has stated that he knew all the accused persons as well as Tirtha Mahakuda. About 15 to 20 years back, Tirtha Mahakuda of his village was staying in village Hatipalli as he had gone mad. The informant - Gyana Mahakuda was also staying in village Hatipalli in his father's/sister's house from his childhood. On 24.06.1996, he along with D.W.1 and the accused persons had been to Sonapur to sell fire wood. They left the village in the later part of the night and came back home after selling fire wood at about 4.00 p.m. It was false to say that on 24.6.1996 at about 9.00

a.m. the accused persons assaulted Tirtha Mahakuda by means of medha, causing injuries on his head, finger and leg and that he was hospitalized.

D.W.3 - Daulat Bhoi stated that he knew the parties who are his co-villagers. On 24.6.1996, all the three accused persons were not in the village as they had been to Sonepur to sell fire wood. He had been to Sonepur with the accused persons to sell fire wood. Tirtha Mahakuda was not staying in his village for the last 15 years as he has gone mad. Gyanendra, the son of Tirtha was staying in village Hatipalli from his childhood. It was false to say that on 24.6.1996 the accused persons assaulted Tirtha Mahakuda on the way near village Padiabahali causing bleeding injury.

14. After careful perusal of the evidence of the prosecution witnesses, I find no reason to disbelieve their evidence. When two Courts have believed the evidence of the P.Ws regarding assault on P.W 2 with medhas, I find no good reason to disagree with the findings of the two Courts or disbelieve the witnesses. No suggestions have been put to the witnesses by the defence that the petitioners were not present in the village and had gone to Sonepur on the day of occurrence to buy firewood. That apart, in their

statements recorded under Section – 313 Cr.P.C., the petitioners have merely denied the allegations made against them stating them to be false but nowhere have they stated that they had gone to Sonepur to buy fire wood . So the version of the defence witnesses is an obviously an afterthought and not convincing. Similarly, the plea of the petitioners that the injuries may be caused by fall is also not acceptable as there are a number of injuries which are not possible by one fall and no evidence on record that P.W.2 fell against and again. Similarly the plea of the petitioners that P.W.2 was in the habit of taking ganja, is also of no help to them as consumption of ganja by P.W.2 does not wipe out his evidence.

15. Enmity is a double edged weapon. But when evidence of P.W.2 has been corroborated by P.Ws. 6 and 7 the eye witnesses and P.Ws.1 and 5 the post occurrence witnesses, there is no reason to disbelieve the prosecution case as there is reason why P.W.2 would allow the guilty persons to escape and implicate the petitioners.

16. After perusing the evidence of P.Ws.1, 2, 5, 6 and 7 (injured, eye witnesses and post occurrence witnesses), which have not been shaken in cross examination, I find no reason to disbelieve

them. Their evidence is supported by the evidence of P.W.10, the doctor.

17. Although the prosecution has been able to prove that the petitioners are responsible for the injuries sustained by P.W.2. But it is not the case of the prosecution that the petitioners were prevented by the witnesses or by any supervening event, from inflicting fatal injuries on P.W.2. On the other hand, prosecution witnesses as well as the injured (P.W.No.2) have stated that the petitioners left the spot after assaulting the injured. The petitioners were three in number and were armed with medhas and P.W.2 was alone at the spot. In my opinion, if the petitioners had any intention to murder the deceased, they could have easily done so before leaving the spot.

P.W.10, the Medical Officer has stated about the size, nature and location of injuries sustained by P.W.2. The four lacerated injuries on the head have been stated to be simple in nature and except injury number (iv) the other three injuries did not have depth. The grievous injury is on the second phalanx of the left index finger which is not a vital part. The other injuries are bruises on the right arm, right thigh and a haematoma on the thigh which P.W.10 has stated are simple in nature. All the injuries have been

opined to have been caused by hard and blunt object. From the nature and location of the injuries sustained by the injured and the conduct of the petitioners, I am satisfied a case under Section 307 I.P.C. is not made out against them.

18. In order to constitute an offence under Section 307 of the I.P.C., it is necessary that there must be an intent coupled with an overt act. The nature of injury helps the Court to decide if the accused had the requisite intention, but it cannot be the sole factor. The surrounding circumstances have also to be examined and an accused cannot be acquitted of the charge under Section 307 of the I.P.C. merely because the injuries sustained by the injured are simple in nature.

The injured has sustained a fracture on the index finger of the left hand which is a grievous injury attracting Section-325 I.P.C. and the lacerated injuries on the scalp, bruises and haematoma on other parts of the body have been opined to be simple in nature attracting Section 323 I.P.C. As the petitioners were waiting for P.W.2 and assaulted him with medhas in a conjoint manner, their common intention to commit the said offences is apparent.

Therefore, failure of the prosecution to state which petitioner assaulted where is not of any consequence. From the evidence on record, the offences committed by the petitioners are under Sections 323/325/34 I.P.C.

19. The conviction of the petitioners for commission of offences under Section 307/34 I.P.C. is therefore set aside and they are convicted for commission of offences punishable under Sections – 323/325/34 of the I.P.C. In view of the fact that more than twenty six years have elapsed since the date of occurrence, instead of sending them back to custody, I feel that the ends of justice will met and P.W.2, the injured compensated, if the fine amount is increased and most of it is directed to be paid to him, in case of realization. As the learned counsel for the petitioners has submitted that the petitioners have remained in custody for one month and seven days for commission of the offences punishable under Section 325/34 I.P.C., the sentence imposed is the period undergone and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) each and in default, to undergo rigorous imprisonment for two more years. No separate sentence is imposed for commission of the offence punishable under Section - 323/34 I.P.C. If the fine amount is

realized, Rs.25,000/- of the said amount shall be paid to the injured -
Tirtha Mahakuda @ Bhukta, P.W.2.

20. The Criminal Revision is accordingly disposed of.

Lower Court Records be sent back.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 11th August, 2022/Bichi

