IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.Appeal (S.J.) No. 1838 of 2004

1.Bhunaneshwar Mahto
2. Baija Mahto @ Bijnath Mahto
3. Kinu Mahto @ Chintu Mahto

All sons of Mochi Ram Mahto, R/o village Kherabera, PS Hariharpur, District Dhanbad. … ... **Appellants**

Versus

The State of Jharkhand … … **Respondent**

Cr.Appeal (S.J.) No. 1937 of 2004

1. Lalchand Mahato, son of late Rewat Lal Mahato
2. Srikant Mahato, son of late Tanu Ram Mahato
3. Kisun Mahato, son of late Tanu Ram Mahato
4. Bholka Mahato, son of late Tanu Ram Mahato
5. Dukhan Mahatao, son of late Rati Mahato

All residents of Khera Bera, PS Hariharpur, District Dhanbad.
… ... **Appellants**

Versus

The State of Jharkhand … … **Respondent**

Cr.Appeal (S.J.) No. 1939 of 2004

1. Khulu Mahato @ Rahul Kumar, son of late Rewat Lal Mahato, R/o Kherabera, PS Hariharpur, District Dhanbad … ... **Appellant**

Versus

The State of Jharkhand … … **Respondent**

For the Appellants : Mr. Anand Kumar Sinha, Advocate;
Mr. Abhishek Sharan, Advocate
[In. Cr. A. (SJ) 1937 of 2004 & Cr. A. (S.J.) No.1939 of 2004]
For the State : Mrs. Nehala Sharmin, Spl.PP (Through V.C.)
Mr. Manoj Kumar Mishra, A.P.P.
For the Informant : Mr. Girish Mohan Singh, Advocate

P R E S E N T
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

Dated: 2nd September, 2026

By Court:- Heard the learned counsel for the parties.

2. The above Criminal Appeals are directed against the judgment of conviction and order of sentence, both dated 18.10.2004, passed by the learned Additional Sessions Judge-12th, Dhanbad in Sessions Trial Case No.334 of 1999, whereby and whereunder, the appellants have been held guilty for the offence under sections 147, 323 and 326 of the Indian

Penal Code and sentenced to undergo simple imprisonment for a period of six months and one year respectively for the offence under sections 147 & 323 IPC. The appellants, namely, Bhuneshwar Mahato, Baija Mahato, Kinu Mahato and Khulu Mahato were sentenced to undergo R.I. for four years and fine of Rs. 1000/- each and rest all the appellants were sentenced to undergo SI for two years and fine of Rs. 500/- each for the offence under section 326 IPC with default stipulation. All the sentences were directed to run concurrently.

FACTUAL MATRIX:

3. The factual matrix giving rise to these appeals is the initiation of the prosecution case on the basis of fardbeyan of the informant Perki Devi stating therein that on 22.3.1999 at about 03:00 O'Clock in the day time while she was returning from her wheat field she was surrounded by Bhuneshwar Mahto, Baija Mahato, Kinu Mahato, Lal Chand Mahato, Khulu Mahato, Dukhan Mahato, Karma Mahato, Pusan Mahato, Kisun Mahato, Srikant Mahato, Bhalka Mahato, Dilu Mahato and Mochi Ram Mahato in the field just behind her house and she was called *Witch.* Bhuneshwar Mahato and Baija Mahato flung her on the ground and Bhuneshwar Mahato and Karu Mahto opened her mouth by inserting a rod and Baija Mahato and Khulu Mahto poured a bottle full of human excreta in her mouth. Lal Chand Mahto hurled a stone over her back. Pusan, Karma, Dukhan, Srikant, Bholka, Dilu assaulted her with lathi all over her boy. Kinu, Baija and Bhuneshwar Mahato assaulter her by means of kick. In the meantime, seeing Dalu Mahato coming from other side, the accused persons ran away. When she tried to approach the local police that day she was prevented by the accused persons.

4. The said incident was reported to the police on the basis of which Topchanchi (Hariharpur) PS Case No. 38 of 1999 dated 23.3.1999 was registered against the appellants for the offence under sections 147/148/149/341/323/324/447/506 of the Indian Penal Code. Thereafter, Sections 326/308/325/354 of the Indian Penal Code was added. After completion of investigation, charge sheet was submitted against the accused appellants under the same sections. After taking cognizance of the offence, the learned Magistrate committed the case to the Court of Sessions; where Sessions Case No. 334 of 1999 was

registered. Thereafter, charges were framed under sections 307/354/323 of the Indian Penal Code which were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution has examined altogether 8 witnesses namely:

PW-1 Dalu Mahato,

PW-2 Parshuram Mahto

PW-3 Kandini Kumari

PW-4 Kesla Devi

PW-5 Purni Devi

PW-6 Jodhi Ram Mahto

PW-7 Perki Devi (Informant)

PW-8 Dr.Pravesh Kumar

6. The defence has also examined two witnesses namely:

DW-1 Nemiya Devi

DW-2 Tilia Devi

Documentary evidences have been adduced on behalf of the prosecution.

7. After conclusion of trial, the learned trial court, after considering the oral as well as documentary evidence available on record, has convicted and sentenced the appellants, as stated above, which is assailed in these appeals.

8. Learned counsel for the appellants without touching the merits of the case, has confined himself on the point of non-extension of benefit of Section 4 of the Probation of Offenders Act, 1958 to the appellants. It is submitted that it was first offence of the appellants and they have never been convicted in another case. Hence, appellants deserve the benefit of Section 4 of the Probation of Offenders Act, 1958.

9. On the other hand, learned A.P.P. appearing for the State has opposed the contentions raised on behalf of the appellants and defended the impugned judgment and order on merits. So far extension of benefit of Section 4 of Probation of Offenders Act, 1958 is concerned, it is fairly submitted that it was first offence of the appellants and there is no previous conviction against the appellants.

10. I have gone through the record of the case along with the impugned judgment of conviction and order of sentence in the light of

contentions raised on behalf of both the parties.

11. It appears from the impugned judgment and evidence available on record that the informant was called *Witch* by the appellants who flung her on the ground and forcibly opened her mouth by inserting a rod and poured a bottle full of human excreta in her mouth. They also assaulted the informant by means of lathi, fists and stones. It also appears from the injury report Ext.1 that all injuries sustained by the informant were simple in nature except injury no. xvi which shows that her right teeth were broken. The weapons used in the incident are lathi and stones, both are hard and blunt substances. The informant who has been examined as PW-7, has remained intact in his deposition during examination in chief and cross examination. PW-1, PW-3 and PW-5 are the persons, who came at the place of occurrence after hearing the alarm raised by the informant, have fully corroborated the statement of the injured informant. As per injury report, the injuries sustained by the informant are simple in nature except her right teeth which were partially broken as per injury report (Ext.-1). The doctor (PW-8) who examined the informant has also proved the injuries sustained by the informant.

12. In view of the above, it appears that the learned trial court has rightly held the appellants guilty for the offence punishable under sections 147, 323 and 326 of the India Penal Code. There is no error in the impugned judgment. Hence, the conviction of the appellants is upheld.

13. This Court has called for a report regarding social status and criminal antecedent report of the appellants from the concerned Probation Officer of the district. The learned counsel for the State has filed a report through an affidavit dated 31.8.2026 stating that there is no criminal antecedent against the appellants. As per injury report, the injuries sustained by the informant are simple in nature except only one injury sustained by her. There is no previous conviction or criminal antecedent against the appellants and this is the first offence, for which the convicts found guilty, which has not been denied by the prosecution. The occurrence is of the year 1999 and more than two decades have passed and the appellants have suffered the agony of trial for such a long period.

14. Considering the facts and circumstances of the case, the nature of offence committed by the appellants, the genesis and manner of occurrence, age, antecedents and character of the appellants, it is expedient in the ends of justice to extend the benefit of Section 4 of the Probation of Offenders Act, 1958 to the appellants, for which they appear to be entitled, instead of awarding substantive sentence of imprisonment

15. In view of the above, these appeals are **dismissed on merits with modification in sentence** to the extent that instead of undergoing substantive sentence of imprisonment awarded to the appellants by learned Trial Court, the appellants are hereby directed to be released on furnishing bond of Rs.5,000/- (Rupees Five Thousand) with one surety of like amount to the satisfaction of learned trial court under Section 4 of the Probation of Offenders Act, 1958 within two months from the date of this order for maintaining peace and be of good behavior for one year from the date of furnishing the bond.

16. If the bond is not furnished within above stipulated time, the learned Trial Court shall issue notice upon the appellants to secure their attendance for furnishing the bond.

17. In case of violation of terms and conditions of the bond, the appellants shall be called upon to serve the sentences already awarded to them.

18. Pending I.A.(s), if any, stands disposed of.

19. Let a copy of this judgment along with trial court record be sent back to the court concerned immediately for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated: 2nd September, 2026
KNR/NAFR
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