THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 100 of 1994

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

1. Multu @ Tarachand Mohanta (Dead)
2. Gurucharan Mohanta
3. Sambhu @ Sadhu Charan Mohanta
4. Hulku @ Madhucharan Mohanta ……. Appellants

-Versus-

State of Orissa ……. Respondent

For the Appellants : Mr. H.K. Mohanta, Advocate
For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 10.02.2026 : Date of Judgment: 19.02.2026

S.S. Mishra, J. Four convicts have jointly preferred the present appeal assailing the judgment and order dated 22.01.1994 passed by the learned Sessions Judge, Mayurbhanj, Baripada in S.T. No. 12 of 1992. By the impugned judgment, the learned Trial Court found the

appellants guilty of offences punishable under Sections 148, 323 read with Section 149 and 304 Part-II read with Section 149 of the Indian Penal Code. Consequently, each of the appellants was sentenced to undergo rigorous imprisonment for a period of three months for the offence under Section 323 read with Section 149 IPC and further sentenced to undergo rigorous imprisonment for five years for the offence under Section 304 Part-II read with Section 149 IPC. However, no separate sentence was imposed U/s.148 of IPC.

2. While the appeal was pending, this Court was apprised that appellant no.1- Multu @ Tarachand Mohanta has expired. Therefore, vide order dated 31.07.2025, the appeal against the said deceased appellant stood abated, in the absence of any motion on behalf of the legal heirs or next friend of the deceased appellant U/s.394 of Cr.P.C. Therefore, the present appeal is confined to appellant Nos.2 to 4.

3. Heard Mr. Niranjan Lenka, learned Counsel for the appellants and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

4. The prosecution case, in substance, is that on 07.06.1991 the accused persons, along with one Kalicharan Mohanta, formed an unlawful assembly and proceeded to the disputed land situated at village Jagannathpur with the common object of forcibly taking possession of the said land and of causing the death of Chaitan Mohanta and his family members in the event of any resistance.

It is alleged that at the relevant time Chaitan Mohanta, his sons, nephew and uncle were ploughing and sowing at the disputed land, when the accused persons arrived there and launched an attack. Accused Hulku @ Madhucharan Mohanta allegedly dealt a lathi blow on the head of Krutibas Mohanta, who was sitting on the land, as a result of which Krutibas fell down unconscious. When Hemanta Mohanta rushed to the rescue of Krutibas, accused Sambhu @ Sadhucharan Mohanta is stated to have dealt a lathi blow on his head, causing a bleeding injury.

It is further alleged that accused Gurucharan Mohanta raised a *tangi* with the intention of killing Hemanta Mohanta; however, Basanta intervened, caught hold of the *tangi* and, after a scuffle,

snatched it away from him. Similarly, Chaitan Mohanta is said to have snatched away the bow and arrows from Kalicharan Mohanta.

After the incident, the accused persons allegedly left the spot. Thereafter, Chaitan Mohanta, Basanta Mohanta and Srinibas Mohanta took the injured Krutibas and Hemanta to a local doctor, who referred them to the District Headquarters Hospital, Baripada. Krutibas Mohanta succumbed to his injuries at the District Headquarters Hospital, Baripada.

Chaitan Mohanta thereafter lodged a report before the police authorities. Upon completion of investigation, the police submitted charge-sheet against the accused persons. The case of Kalicharan Mohanta was split up as he was a juvenile at the relevant time. The present impugned judgment concerns the remaining four accused persons, namely Tarachand Mohanta, Gurucharan Mohanta, Sadhucharan Mohanta and Madhucharan Mohanta.

5. The plea of the accused persons is one of complete denial. According to them, they are the lawful owners and possessors of the disputed land and were cultivating the same on the date of occurrence.

It is their specific case that the prosecution party, being the aggressors, came to the spot and assaulted them, resulting in injuries to several of the accused persons.

6. In order to substantiate its case, the prosecution examined ten witnesses, while the defence examined one witness.

P.W.1 is the informant, Chaitan Mohanta. P.W.6 is his son, Hemanta Mohanta, and P.W.7 is his nephew, Basanta Mohanta. P.W.4 was the doctor, who examined Hemanta Mohanta on police requisition, and P.W.5 was the doctor, who conducted the post-mortem examination over the dead body of Krutibas Mohanta. P.W.2 was a witness to the seizure of the stick produced by accused Hulku @ Madhucharan Mohanta. P.W.3 was a witness to the seizure of the *tangi* and the iron portions of arrows from Chaitan Mohanta. P.W.9 was the Amin attached to the Tahasil Office, Baripada, who demarcated the disputed land. P.Ws.8 and 10 were the Investigating Officers of the case.

On behalf of the defence, one Mr. K.K. Bhanj Deo, learned Advocate for the accused persons, was examined as D.W.1.

7. The learned Trial Court on analyzing the evidence on record, has returned its finding and relevant will be to reproduce paras 11,12 and 13 of the impugned Judgement wherein the learned Trial Court has reasoned the conviction of the accused persons:-

> *"11. The parties are fighting for the possession of a piece of land at village Jagannathpur. According to the prosecution party, this land belongs to them and they are in possession of the same, but accused Tarachand tried to grab a portion of this land and put a ridge for which there was a Panchayati, but the accused persons did not attend that Panchayati and because of this land, the accused persons attacked them on the date of occurrence. The defence case is that the accused persons are in possession of the disputed land and were cultivating the same on the date of occurrence, when the prosecution party came and attacked them with the intention to drive them from the disputed land. Thus, in order to find out whether P.Ws. 1, 6 and 7 are speaking the truth or whether the accused persons have a plea of bonafide right, the evidence regarding the possession of the disputed land should be examined. In this connection, the prosecution party produced the record of right of the disputed land. The document shows that the disputed land has been recorded in the name of informant Chaitan Mohanta by the settlement authorities. The amin P.W.9 says that on the direction of the Tahasildar, Baripda he demarcated the disputed land in consultation with the Khatian, village map etc, and found that the disputed land stands on plot no. 25 of khata no. 12 of village Jagannathpur and it stands recorded in the name of Chaitan Mohanta. He says that a piece of Govt. land*

adjoins this disputed land and this Govt land bears plot no. 11 of khata no. 68. The report end the trace map prepared by P.W.9 have been marked as Ext.8 and 8/2 respectively. The records of right of both khata 12 and 68 are in the name of Chaitan Mohanta.

P.W.1 says that accused Tarachand wanted to create disturbance in the disputed land and put a ridge on the disputed land for which there was a Panchayati, but accused Tarachand did not attend that panchayati, P.W.s. 6 and 7 also give similar statements. The I. O, P.W.10 says that on his request the amin went and demarcated the disputed land and it was found that Chaitan Mohanta is the owner and possessor of that land. As against this evidence, the accused persons have examined their Advocate, who says that once on the request of accused Tarachand be drafted a petition to SDO, Baripada for police help as there was apprehension of trouble on the lands of Khata no. 69. The said petition Ext.A has been filed. The Advocate (D.W.1) admits in cross-examination that the land in question is a Govt. land and has not been settled with the accused persons and the accused persons also did not produce any document along with the petition Ext. A. He also admits that the accused persons did not file any prayer before the settlement Authorities for recording this land in their favour. Thus, virtually there is no evidence from the side of the defence to show that the accused persons had any right or possession over the disputed land. Rather, the evidence on record shows that Chaitan Mohanta was the owner and possessor of the disputed land.

Therefore, I am inclined to hold that the accused persons are the aggressors and they inflicted the injuries to Krutibas and Hemanta and that Krutibas died because of the head injury.

12. The next point which requires examination is whether all the accused persons would be liable or whether only accused Hulku alias Madhucharan Mohanta and

Sambhu alias Sadhucharan Mohanta, would be responsible. It is stated by P.Ws. 1,6 and 7 that the accused persons came in a body to the land armed with deadly weapons and one of them namely accused Hulku alias Madhucharan Mohanta suddenly dealt a lathi blow on Krutibas and then accused Sambhu alias Sadhuctaran Mohanta dealt a lathi blow on Hemanta Mohanta. The very fact that the accused persons came together to the land armed with weapons shows that they had formed an unlawful assembly with an object to cause violence and when two members of the said assembly inflicted injuries on Krutibas and Hemanta, their action will amount to an action of the assembly and each member of the unlawful assembly will be bound by the act.

Therefore, all the accused persons would be equally liable for the act of accused Hulku alias Madhucharan Mohanta and Sambhu alias Sadhucharan Mohanta. Krutibas died as a result of the attack. But it is seen that Hulku alias Madhucharan dealt only one blow with a stick on the head. Similar blow was given on Hemanta, who survived. The main object of the assembly was therefore to use force and take over possession of the land, but not to cause death to the members of the prosecution party. So, the provisions of Section 302/149 of the Indian Penal Code is not attracted, For the death of Krutibas Mohanta, the accused persons would be liable Under Section 304 Part II/ 149 of the Indian Penal Code regarding the injury on the head of Hemanta, the doctor is of the opinion that the injury was simple in nature. So the accused persons are liable Under Section 323/149 of the Indian Penal Code.

13. In the result, I, therefore, hold the accused persons guilty under Sections 148/323/149 and 304 Part II /149 of the Indian Penal Code and convict them thereunder."

8. Mr. Lenka, learned Counsel for the appellants, has submitted that the case *prima facie* arose out of a land dispute and that there was

previous tussle and enmity between the parties regarding the said piece of land. On the fateful day, both the parties were present there to plough their respective pieces of land, subsequent to which the fight took place.

He submitted that it is noteworthy to take into consideration that the accused persons lacked any *mens rea* for committing the crime. Neither was the weapons attributed to them specialized weapons for killing individuals, but rather common farm equipment which farmers ordinarily carry to the field. Though blows by such implements may prove fatal, the accused appellants used the same only in exercise of their right of private defence against the individuals concerned.

Additionally, it is contended that there are no independent witnesses on record to prove that the accused appellants were the aggressors or that they were present at the incident spot with the intention to assault the opposite party. The witnesses examined are only interested witnesses.

It is further submitted that accused-appellant Nos. 2 and 3 have been implicated as part of an unlawful assembly under Sections 148 and 149 of the IPC and have also been implicated along with accused-appellant No. 4 under Section 304 Part-II IPC, though no specific overt act has been attributed to them by the witnesses. According to the learned Counsel, the assembly was not unlawful but a natural one.

In this light, he has prayed for acquittal of the accused appellants and submitted that the act was done in exercise of their right of private defence as contemplated under Sections 96 to 106 of the IPC.

9. Per contra, Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State, has supported the impugned judgment in *toto* and submitted that the prosecution has been able to establish the case beyond all reasonable doubt. He contended that the evidence of the injured witnesses, namely P.Ws.1, 6 and 7 are consistent, cogent and trustworthy, and stands duly corroborated by the medical evidence of P.Ws.4 and 5. It is further submitted that the appellants had formed an unlawful assembly with the common object of forcibly taking

possession of the disputed land and, in prosecution of the said common object, assaulted the deceased and other injured witnesses. The fatal head injury sustained by the deceased clearly attracts the ingredients of Section 304 Part-II read with Section 149 of the IPC. Accordingly, it is prayed that the conviction and sentence recorded by the learned Trial Court warrant no interference.

10. At this juncture, it would be apposite to advert to the scope and ambit of Sections 148 and 149 of the Indian Penal Code. For ready reference, the provisions are extracted herein below:

> ***"S. 148.*** *Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*
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> ***S. 149.*** *Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."*

Upon a careful scrutiny of the evidence on record and the surrounding circumstances, this Court proceeds to examine whether the essential ingredients of the aforesaid provisions stand satisfied.

To attract Section 149 of the IPC, the prosecution must establish:

i. the existence of an unlawful assembly as defined under Section 141 IPC;

ii. that the accused were members of such assembly; and

iii. that the offence was committed in prosecution of the common object of that assembly, or such as the members knew to be likely to be committed. The *sine qua non* for its application is the existence of a common object, formed prior to or at the spur of the moment, but clearly established through cogent evidence.

In this context, it is necessary to observe that the unlawful assembly is always poised with intent to commit a crime and is therefore premediated. In absence of any evidence regarding premediated intent to commit a crime mere assembly by accused persons which is otherwise natural one can't be inferred to be an unlawful assembly.

Hence, invocation of section 149 of the code is forbidden on facts of the instant case.

11. In the present case, the evidence discloses that both parties had assembled at the disputed land for the purpose of cultivation. The presence of the accused persons at the spot, therefore, cannot *ipso facto* be construed as participation in an unlawful assembly. The materials on record do not establish any prior meeting of minds or premeditated design to commit an offence. The occurrence appears to have arisen out of a sudden altercation in the backdrop of a land dispute. In such circumstances, the necessary ingredient of a common object to commit a specific offence is conspicuously absent. Consequently, the invocation of Section 149 IPC is unsustainable.

12. Likewise, for the application of Section 148 IPC, it must be shown that the accused were guilty of rioting while being armed with a deadly weapon or with an instrument which, used as a weapon of offence, is likely to cause death. In the case at hand, the weapons attributed to the accused are *lathis*, a *tangi* and bow and arrows, which, in the factual context, have been shown to be common

agricultural implements ordinarily carried by farmers to the field. There is no material to suggest that these were specially procured or carried with the deliberate intention of committing a homicidal assault. Though such implements may, in a given circumstance, cause serious or even fatal injuries, their mere possession in an agricultural setting does not automatically bring the case within the ambit of Section 148 IPC. In absence of clear evidence establishing rioting with deadly weapons in the statutory sense, the conviction under Section 148 IPC cannot be sustained.

13. In view of the above discussion, this Court is of the considered opinion that accused-appellant Nos. 2 and 3 cannot be held liable under Section 304 Part-II read with Section 149 IPC, nor under Section 148 IPC. However, the evidence on record does establish their individual participation in causing simple injuries on the injured victim, which is also established by medical evidence. Accordingly, their conviction under Section 323 IPC is upheld, but not with the aid of Section 149 IPC.

14. So far as accused-appellant No. 4 is concerned, the evidence clearly attributes to him the overt act resulting in the fatal injury to the deceased. His act squarely attracts the ingredients of Section 304 Part-II IPC. However, for the reasons already discussed, he is entitled to acquittal of the charges under Sections 148/149/323 IPC.

15. At this stage, it is brought to the notice of this Court that accused-appellant Nos. 2 and 3 have already undergone custody for a period of one year and three months. It is further submitted that accused-appellant No. 2 is mentally retarded. It is also not in dispute that accused-appellant No. 4 has already undergone the entire period of sentence awarded to him by the learned Trial Court.

It is pertinent to note that accused-appellant Nos. 2 and 3 now stand convicted only under Section 323 IPC, for which the maximum prescribed punishment is imprisonment for one year. Having already undergone imprisonment for more than one year, they have effectively undergone the substantive sentence imposable under the said provision.

So far as accused-appellant No. 4 is concerned, he has already undergone the sentence as awarded by the Court below. Considering that more than three decades have elapsed since the date of occurrence, no further interference with regard to sentence is called for at this belated stage.

16. Hence, while the conviction is modified to the extent indicated hereinabove, no further order on sentence is required, as nothing survives for consideration in that regard.

17. Accordingly, the Criminal Appeal is partly allowed and is disposed of.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 19th February, 2025/ Ashok