THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 143 of 1997

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

Gandaram Behera ……. ***Appellant***

-Versus-

State of Orissa ……. ***Respondent***

For the Appellant : Mr. H.S. Mishra,
Advocate

For the Respondent : Mr. Jateswar Naik, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 15.01.2026 : Date of Judgment: 19.02.2026

S.S. Mishra, J. The present criminal appeal filed by the appellant under Section 374 (2) of Cr.P.C. is directed against the judgment of conviction and order of sentence dated 30.06.1997 passed by the learned Additional Sessions Judge, Titilagarh in Sessions Case No. 24/11 of 1995, whereby the learned trial Court has convicted the accused-

appellant for the offence punishable under Section 307 of the I.P.C. and, accordingly, sentenced him to undergo R.I. for two years and to pay a fine of Rs.1,000/-, in default to undergo R.I. for three months.

2. Heard Mr. H.S. Mishra, learned counsel for the appellant and Mr. Jateswar Naik, learned Addl. Government Advocate for the State.

3. The prosecution story as per the FIR is that on 12.09.1994 at about 8.30 A.M. at Sahupada of village Bangomunda the present accused appellant assaulted the elder brother and mother of the informant with tabli causing bleeding injuries on their person.

4. On the basis of the written report of the informant, Bangomuda P.S. Case No.37 dated 12.09.1994 was registered and investigation was conducted and charge sheet was filed. Since the accused took a stance of denial, hence he was put to trial after the charges were framed under Section 307 IPC.

5. The prosecution in order to bring home charges examined as many as ten witnesses. Out of which, P.W.1 was the informant, P.Ws.2 and 3

were the injured victim, P.Ws.4 and 5 were the co-villagers and eye witnesses to the occurrence. P.W.6 was a witness to the leading to discovery. P.Ws.7 and 8 were the witness to the seizure of blood stained clothes. P.W.9 was the doctor, who examined the injured persons and P.W.10 was the Investigating Officer, who investigated the present case.

6. The learned trial Court analysed the evidence on record in detail and found the sole appellant guilty of offence under section 307 IPC and accordingly sentenced him to undergo R.I. for two years and to pay a fine of Rs.1000/-, in default to undergo R.I. for three months.

7. Aggrieved by the aforementioned judgment and order of conviction, the appellant has filed the present appeal.

8. Mr. Mishra, learned counsel for the appellant has taken me to the evidence of the injured witnesses, i.e. P.Ws.2 and 3 and juxtaposed with the evidence of the eye witnesses, particularly the informant (P.W.1) and the evidence of the doctor (P.W.9), who examined both the injured P.Ws.2 and 3. He has pointed out the inherent contradictions and discrepancies in the evidence. He has also taken me to the impugned

judgment, whereby the defence plea raised by the accused through the defence witness has not been appreciated well by the learned trial court.

9. I have carefully gone through the impugned judgment, where the trial court has given right attention to defence plea, which is reflecting in paragraphs-11, 12 and 13 of the judgment, which reads thus:-

> *11) Learned defence counsel opened his armoury releasing the first arrow at the prosecution submitting that the discrepancy in the evidence as to who was assaulted after whom is enough to cloud down the prosecution case. On the assault the evidence of P.Ws..1, 2, 3 and 5 is consistent. Only evidence of P.W.4-in self contradictory on the point when in his further cross-examination after about one year and four months of his previous cross-examination he has breathed that P.W.3 was first assaulted and thereafter P.W.2, May be the time gap has resulted in such self contradictory evidence and for that it is taken not that serious to wash away the entire credibility of P.W.4. The second arrow was on non-cutting of the saree of P.W.3 due to assault. Injury on P.W.3 was over her back between the scapular region. It is the evidence of P.W.3 that her saree had covered her shoulder. At the same time it is the evidence of P.W.4 that the edge of tabli did not touch the saree of P.W.3. There is no specific evidence that saree of P.W.3 was cut due to tabli blow and evidence of P.W.3 that her saree had covered her shoulders positively does not lead to the conclusion that it must have been cut due to assault on her as because there was possibility of displacement of the saree when she leaned over P.W.2 to lift him coming to his rescue, The third arrow is on seizure of M.O.I,, the weapon of offence from open places. It is in the evidence of P.W.6 that the cow-shed from where the M.0.I was recovered was adjacent to public road and open on all sides. But at the same time it is also his*

evidence that M.O.I was inside the broken wall about 6" under the earth. Since it was not possible to locate M.O.I concealed inside the wall even if wall was of open cow-shed and adjacent to public road no adverse inference is to be drawn. Learned defence counsel released his fourth arrow submitting that non-sending of the seized blood stained clothes and weapon of offence for chemical examination is detrimental to the case of the prosecution. It would have been better to get the seized articles examined through chemical examiner but non-examination of the same has not diluted the prosecution case when sustaining injuries by the injured persons has not been dispute and non-examination of the seized blood stained weapon of offence by the chemical examiner maximum can be taken as carelessness of the I.O. and little irregularity in the investigation not sufficient enough to throw out the prosecution case.

Next the learned defence counsel urged not to accept the prosecution case submitting that no reason to assault P.Ws.2 and 3 has been floated by the prosecution. I am afraid the learned defence counsel is not correct in his contention when it is in the evidence of P.Ws.1, 2 and 3 that minutes before the alleged assault there was quarrel between P.W.3 and the accused, his wife and his sister and that is the reason that might have tempted the accused to commit the alleged overt act.

Lastly the learned counsel for the accused highlighting the discrepancies in the evidence of P.Ws on duration of P.W.2 and 3 remaining unconscious on their shifting to hospital on their treatment at Khariar Mission Hospital and contradiction with their statements recorded U/S 161 Cr.P.C. urged to disbelieve the case of the prosecution. The discrepancies on the point points mentioned as above pointed out are considered very minor not powerful enough to shatter the credibility of P.Ws 1 to 5. P. W.2 when claimed to have stated before the I.O. that when the accused was trying to deal another blow his mother covered him of leaning over him and this accused dealt one tabli blow on her back. Such claim has been denied by the I.O. P.W.10. But on going through the statement of the P.W.2

recorded U/S.161 Cr.P.C. only omission of the accused trying to give second blow on P.W.2 is noticed and for that in true sense there is no contradiction in the evidence of P.W.2 and his statement recorded by the I.O. When P.W.3 has claimed to have stated before the I.O. that accused dragged out the tabli from her back putting his leg on her waist the I.O. P.W.10 has denied such claim. But this contradiction does not shake her credibility it being very negligible not touching very core of her evidence. Se none of the contentions is of the learned defence counsel is tenable.

12. Before drawing to conclusion we are left with the evidence of the sole defence witness. D.W.1 is Bagha Sahu @ Sa to whom name P.W.3 has claimed to have gone at the time of alleged offence. It is his evidence that on the fateful day also the day before the accused was absent from his house going to Barla about 50 Kms. away to whose house he had been to collect cost of molasses. Can it be believed that the accused was absent sold molasses. Can it be believed that the accused was absent from his house on the previous day of the occurrence which was Nuakhai day, a festive of the western Orissa on which day all the family members get united to celebrate and when it is the evidence of D.W.1 that when he met the accused thereafter he did not ask for money not paid till (not clear). It is further in his evidence that at the fateful hour P.W.3 was quarrelling with the wife of the accused, there was tussle between the two and P.W.3 fell on the road sustaining bleeding injury coming in contact against a sharp stone and P.W.2 also sustained injury likewise. Inconsistency has been crept into his evidence when it is also his evidence that by the time he came the occurrence was already over and that day from his para people he came to know that accused had assaulted P.W.2 and 3 for which a case was started against him. Interestingly he has admitted to have deposed as tutored by the accused. So it is considered very much unsafe to accept the evidence of this defence witness of gospel truth. And that being so the defence plea falls to the ground.

13. In the circumstances, from the trustworthy evidence of all the P.Ws it is concluded that the prosecution has well succeeded beyond all reasonable doubts in establishing that on 12.9.94 at about 8.30 A.M. at village Bangomunda accused attempted to commit murder of P.Ws.2 and 3 assaulting them by means of tabli, a sharp cutting weapon causing bleeding injuries on their persons, injury on P.W.3 of alarm size and grievous in nature, and sufficient to cause death if not immediately medically attended to, the assault being on the head of P.W.2 and back of P.W.3."

10. The State Counsel, on the other hand, has put forth his case to defend the impugned judgment and relied upon the evidence of the injured persons, i.e. P.Ws.2 and 3 and the doctor, P.W.9.

11. I have meticulously gone through the materials on record and also considered the submissions made by both the counsels. In the light of the submissions made by learned counsels for the parties, I have analyzed the evidence of the crucial witnesses examined by the prosecution to bring home its case.

12. P.W.1 was the informant in the present case. He has deposed before the court that on 12.09.1994 at 8.30 a.m. in front of the house of one Bagha Sahu the incident had happened. The appellant, his wife and

his sister were abusing the mother of this witness in filthy language. Coming to know about the incident from a friend, this witness came to the spot and took his mother to their house. When he was taking his mother to his house, the appellant and his wife chased them to assault. At that time, his brother Dhoba Sahu (P.W.2) was returning from the tank after taking bath. On arrival of his brother (P.W.2) at the spot forbade both parties including the informant and their mother to quarrel. Both the appellant and his wife went to their house. When this witness, his mother and brother were standing and discussing in front of the door of one Gopabandhu Sahu, the accused/appellant came from back side of his brother (P.W.2) and dealt a blow by a Tabli on his head. Receiving the blow, his brother (P.W.2) fell down on the ground and blood started oozing from his head profusely. Seeing his brother injured, mother of this witness went to save rushed him and at that time the accused dealt a tabli blow on the back of his mother (P.W.3). P.W.3 after receiving serious injury on her back fell down and became senseless. At that point of time, the wife of the appellant and the other family members came and took away the accused/appellant from the spot. Immediately

thereafter the villagers had taken his brother (P.W.2) and mother (P.W.3) to Bangomunda hospital. This witness went to Bongamunda Police Station and lodged the FIR. The FIR is Exhibit-1 and this witness has also identified the signature in the FIR as Ext.1/1. This witness was not only the informant but also an eye witness to the occurrence.

P.W.2, Dhoba Sahu, who is the brother of the informant, was one of the injured in the present case. He has narrated the incident in similar fashion as that of P.W.1 and he has specifically deposed that the present appellant came from the back side and dealt a blow on his head on the right side and after receiving the blow, he fell down on the ground sustaining bleeding injury. When the appellant was trying to dealt another blow, his mother (P.W.3) covered him by leaning over him and then the appellant gave a tabli blow on the back side of his mother. This witness regained his sense at Bangomunda hospital. He also deposed that after receiving treatment at Bangomunda hospital, they were taken to Khariar Mission Hospital for treatment and he remained there as an indoor patient for thirteen days and his mother (P.W.3) remained for

twenty three days. In the cross examination, although he has not created any dent in narration of the incident, but has only stated that when the incident took place about 100 people were there. Much could not be elucidated by the defence from the said witness to doubt his version. The suggestion made by the defence that he received the injury because he fell down as his mother (P.W.3) and brother (P.W.1) were quarreling with the accused's wife and his sister has been denied by him.

P.W.3 is another injured, who is the mother of P.Ws.1 and 2. She has also narrated the incident in minute details. She has stated that the appellant came from the back and suddenly dealt a blow on the head of his son (P.W.2) by means of a Tabli and sustaining bleeding injury he fell down on the ground. When she leaned to cover his injured son, the appellant dealt a tabli blow on her back and dragged the tabli putting his leg on her waist and she lost her senses and she only regained the senses in the hospital.

The version of the injured witnesses and eye witnesses stood corroborated with the evidence of the doctor (P.W.9), who deposed that

on 12.09.1994 he examined P.Ws.2 and 3 and found the following injuries:-

> *P.W.3 - "(1) Incised wound with severe bleeding over the back between scapular region. Size of the injury 7" x 2 ½" x 2 ½".*
>
> *The injury was grievous in nature, inflicted by sharp cutting weapon. Age of injury was 1 to 2 hours at the time of my examination. Time of examination- 12.9.94- 9 A.M.*
>
> *P.W.2- "Incised wound with bleeding over the centre of the head. Size of the wound 3" x ½" x 1/3"*
>
> *The injury was simple in nature inflicted by sharp cutting weapon. Age of injury with 1 to 2 hours."*

In paragraph-3 of his examination in chief, P.W.9 has stated that "*I had referred injured Laxmi Sahu to Sub-Divisional Hospital, Titlagarh for her further treatment. But the relatives of the injured Laxmi Sahu took her to Khariar Mission Hospital for treatment*."

The defence cross examined the said witness at length to create a dent to the prosecution version to the extent that the injured were not treated in Khariar Mission Hospital. A specific query was put to the said witness regarding his referral of the injured to Sub-Divisional Hospital, Titilagarh. The defence tried to encash this lacuna to say that in fact the

injured were not treated in Khariar Mission Hospital. However, in paragraph-3 of the evidence in chief, this witness amply made clear that though he referred the injured to be treated in Sub-Divisional Hospital, Titilagarh, but the relatives of the injured had taken the injured to Khariar Mission Hospital.

P.Ws.4 and 5 were the two independent eye witnesses. P.W.4 in his testimony has stated that on 12.09.1994 at about 8.00 a.m. in front of the house of one Gopa Sahu (not examined) he found P.Ws.1, 2 and 3 were engaged in a heated argument with the appellant and his wife. At that time, the appellant came from his house armed with a tabli and dealt a blow in the head of P.W.2. Receiving the blow on the head, P.W.2 fell down on the ground with profusely bleeding. When his mother tried to save him, the appellant gave a blow in the same tabli to P.W.3, the mother of P.W.2. In paragraph-3 of the examination in chief, he has very specifically stated as under:-

> *"3. The quarrel between wife of this accused and mother of Dhoba Sahu took place in front of the house of Gopabandhu. Just in front of the house of Gopabandhu when Dhoba Sahu, Kishore and laxmi Sahu were about to*

got their house this accused came and dealt tabli blow on the head of Dhoba Sahu. Many persons of out village were present and have seen the occurrence. Talsi Sahu, Jugal Sahu, Tapi Sa and may others were present."

Similarly, P.W.5 also narrated the incident in a great detail drawing corroboration with the evidence of all other witnesses. These two witnesses are the independent witnesses, those who are the villagers and direct witnessed to the occurrence. The defence has cross examined these witnesses in extenso, but could not derive any advantage from their cross examination.

P.Ws.6 and 7 were the seizure witnesses. P.W.6 deposed that after the appellant was arrested, he disclosed that he had kept the tabli in the broken wall of his cowshed and told that he would show the same. The statement given by the appellant was reduced down in writing by the police officers and thereafter the appellant led the police along with the said witness and one Tapi Sahu to the place, where he kept the tabli and the tabli was recovered from there. On the basis of the evidence of P.W.6 the prosecution has employed Section 27 of the Evidence Act, as the disclosure of the accused led to the recovery of weapon of offence.

P.W.7 was another seizure witness, who has witnessed to the seizure of the wearing apparels of the injured, accused and other seized items.

P.W.10 was the I.O. of the case who has also supported the version of other eye witnesses. He deposed that M.O.I, the tabli was recovered in presence of P.W.6 on the basis of the disclosure made by the accused appellant. The defence cross examined this witness extensively. The following part of the evidence of the I.O. is relevant to be reproduced below:-

> *"I had kept the tabli wrapped in paper till its dispatch to the court. When I seized the tabli M.O.1 it was stained with blood. Since I did not receive the X-ray plates of the injured, to get opinion of the doctor regarding injury and their nature. I did not send the tabli to the doctor for his examination and opinion. It is not a fact that the tabli was not at all recovered and for that I did not send it to the doctor. It is not a fact that this M.O.1 was not send to the doctor for his examination and opinion. Since the tabli was sent at a late stage to the doctor for his opinion and examination, I did not send it for chemical examination as the slight blood stain that was there might have deteriorated by then. It is not a fact that these M.Os including the blood stained cloth were not at all in existence. I had not send them for chemical examination. The wearing saree of Laxmi Sahu was not blood stained. In the seizure list I have mentioned that the weapon of offence i.e. the tabli was concealed in the cow shed wall and in the C.D. I have*

mentioned the wall of the cow shed which was a broken one. In the seizure list I have mentioned on the wall The handle of the tabli was attached to the tabli and was kept on the wall in a concealed condition. It is not a fact that seizure witness Tapi sahu had not signed in the seizure list. It is not a fact that I have not read over the contents of the seizure list to the witness Jugal Sa. The doctor of Sindhekala PHC was attached to Bangomunda PHC on that day. On 12.9.94 the doctor of Bangomunda PHC was absent. I have not exam any doctor or staff of Mission hospital, Khariar in connection with this case."

13. On the basis of the aforementioned depositions made by the I.O., the defence attempted to argue that non-examination of the doctor of Khariar Mission Hospital where the injured were treated is fatal to the prosecution and the chain of sequence of events has broken there. It is also contended by the defence that since the weapon of offence was not sent for chemical examination though there was blood stain and it was not even shown to the doctor. The x-ray plates of the injured and bed head tickets were not seized and the opinion of the doctor regarding the injuries and their nature was not ascertained. Therefore, the prosecution case overshadowed by grave suspicion.

In this context, the version of P.W.9 assumes importance. P.W.9 in his testimony has stated that the injury sustained by P.W.3 was

grievous in nature, whereas the injury sustained by P.W.2 is simple in nature. Therefore, the extensive cross examination made by the defence to I.O. may not be much advantage to the defence. The I.O. was twice recalled for further cross examination. When he was cross-examined on 05.05.1997 he deposed as under:-

> *"25. I cannot say if the injured persons were also treated at Kantabanjhi C.H.C. The admission of Khariar Mission hospital and the bed-head ticket of the injured persons I have not seized. I have not sent the X-ray plates to any radiologist for his opinion."*

14. The conjoint and unison reading of the entire evidence as discussed would lead to the inevitable conclusion that on 12.09.1994 at 8.00 a.m. the appellant, his wife and his sister picked up quarrel and abused P.W.3 in filthy language. When P.W.2 came to know regarding the same, he tried to pacify. The appellant and his wife thereafter went back to their house. Thereafter, again the appellant came armed with a tabli and started attacking both P.Ws.2 and 3, causing them seriously injured. Both the injured were treated initially in Bangomunda hospital and thereafter although the referral doctor asked them to take the injured

to Sub-Divisional Hospital, Titilagarh, the relatives of the injured choosed to take them to Khariar Mission Hospital.

15. Mr. Mishra, learned counsel for the appellant by reading the evidence of the doctor and the I.O. submitted that there is a serious doubt as to whether P.Ws.2 and 3 were in fact treated in Khariar Mission Hospital or not. That was the emphasis supplied by the defence at the stage of final argument before the learned trial court and to establish that the defence has also examined one witness. However, the learned trial court has rightly dealt with the defence evidence and drawn a conclusion that after receiving the injury, the injured were primarily treated at Bangomunda hospital and thereafter they were taken to Khariar Mission Hospital, where P.W.2 remained as indoor patient for 13 days and P.W.3 remained 23 days. No doubt the bed head tickets and the x-ray plates from the hospital have not been seized, but that itself does not create any doubt regarding the treatment being given to the injured witnesses. Merely because there are certain discrepancies as to whether the injured were taken to Sub-Divisional Hospital, Titilagarh or Khariar Mission

Hospital, that will not create a dent in so far as the evidence of P.W.9 is concerned.

16. Reading of the evidence of all the witnesses and on its due analysis, the impugned judgment found to be justified on facts and law. Hence, no interference is called for in so far as the conviction of the appellant is concerned.

17. Mr. Mishra, learned counsel appearing for the appellant has submitted that at the time of incident, i.e. in the year 1994, the appellant was 42 years of age and at present he is more than 73 years of age and he is also terminally ill. Therefore, he prays for taking a lenient view on the sentence and accordingly prays for reduction of sentence.

18. When the matter was initially heard, this Court, vide order dated 01.07.2025 and 17.07.2025, directed the Superintendent of Police, Bolangir to produce a report regarding the status, well-being and whereabouts of the appellant. Pursuant to the said order, the IIC, Bangomunda P.S. has placed on record the report dated 21.07.2025, inter alia, stating as under:-

"With reference to the subject and reference cited above, I am to intimate that the petitioner Gandaram Behera (71) S/o- Lt. Bhagirathi Behera of village Bangomunda PS- Bangomunda Dist-Bolangir (Mob- 9668376953) is now alive but suffering from multiple diseases and bed ridden condition at his residence at Bangomunda".

He has also annexed the medical report in support of the report.

The appellant has been sentenced to undergo R.I. for two years. It is brought to the notice of the Court that the appellant has already undergone custody for a period of about fifty four days. This Court is also alive to the fact that the appellant is bed ridden and at this belated stage sending him back to the custody to serve out remaining sentence would not serve any fruitful purpose, rather would be harsh. This Court deems it fit to extend the benefit of probation to the appellant under Section 4 of the Probation of Offenders Act. The case of the appellant is also covered by the judgment of this Court in ***Soundarjya Bhoi and others vrs. State of Orissa***[1]***,*** wherein this Court in a similar case of

[1] CRA No. 197 of 1997 disposed of on 12.02.2026

conviction under section 307 of IPC extended the benefit of the Probation of Offenders Act, keeping in view peculiarity of that case.

19. In view of the aforementioned, the present Criminal Appeal in so far as the conviction is concerned, is turned down. But instead of sentencing the appellant to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a period of six months on his executing bond of Rs.5,000/- (Rupees Five Thousand) within one month with one surety for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the appellant shall keep peace and good behavior and he shall remain under the supervision of the concerned Probation Officer during the aforementioned period of six months.

20. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 19th February, 2026/Ashok

Signature Not Verified

Digitally Signed
Signed by: ASHOK KUMAR JAGADEB MOHAPATRA
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa
Date: 19-Feb-2026 20:20:28