



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 149 of 2005

(From the judgment and order dated 05.02.2005 passed by learned Sessions Judge, Kalahandi at Bhawanipatna in S.C. No. 17 of 2001)

AFR Jugeswar Majhi @ Buti & Ors. Appellants

-Versus-

State of Orissa Respondent

Advocate(s) appeared in this case through hybrid mode:

For Appellant(s) : Mr. Chiranjeevi Vidyabhusan,
Advocate

For Respondent(s) : Mr. Partha Sarathi Nayak,
Addl. Government Advocate

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :30.06.2026 :: Date of Judgment:23.07.2026

SASHIKANTA MISHRA, J.

The appellants faced trial in Sessions Case No. 17 of 2001 in the Court of the learned Sessions Judge, Kalahandi, for offences under Sections 147, 148, 447, 325,



302 and 302 read with Section 149 of the Indian Penal Code. By judgment dated 05.02.2005, the Sessions Court convicted appellant Pustam @ Purusottam Majhi under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment (RI) for one year. The remaining appellants were acquitted of the charge under Section 302 read with Section 149 IPC, but were convicted under Sections 147, 148 and 447 IPC as well as under Section 325 read with Section 149 IPC. They were sentenced to undergo RI for one year each for the offence under Section 147 IPC, RI for two years each for the offence under Section 148 IPC, RI for three months each for the offence under Section 447 IPC and RI for three years each for the offence under Section 325 read with Section 149 IPC. All substantive sentences were directed to run concurrently. Be it noted that the appeal, in respect of appellant No.1- Pustam @ Purusottam Majhi and appellant No.3-Jaladhar Majhi has abated due to their death during the pendency of the appeal.



2. Prosecution case, briefly stated, is as follows:

On 05.04.2000 at about 6.00 a.m., the informant, the deceased Sahadev Patel and other members of the deceased family had gone to the case land measuring Ac.6.51 decimals for collecting mahua flowers. While they were collecting the mahua flowers, the accused persons forming an unlawful assembly and being armed with lathis, tangias and arrows, reached the spot, abused the members of the deceased family and questioned their possession over the case land. When the deceased claimed that the land belonged to them based on a decree passed by the Court, appellant No.1, Pustam @ Purusottam Majhi, dealt two to three lathi blows on his head, causing him to fall down with bleeding injuries. The remaining accused persons assaulted the deceased and the other members of the deceased family with the weapons in their hands, causing grievous and simple injuries to several of them. The injured persons were shifted to Junagarh Hospital for treatment. On being informed by one Nilachal Patel orally, which was reduced into writing later, the police reached the hospital and registered the FIR under Sections 147,



148, 447, 294, 325, 323, 324 and 149 of IPC. During treatment, Sahadev Patel succumbed to the injuries on 07.04.2000.

According to prosecution, there existed a long-standing dispute between the prosecution and the accused persons with regard to possession of the case land, on which several mahua trees were standing. It is stated that the land had been purchased by the grandfather of the deceased about thirty years prior to the occurrence and he had been in continuous possession thereof. When the accused persons attempted to interfere with such possession, a proceeding under Section 145 of the Code of Criminal Procedure was initiated, wherein possession of the prosecution party over the disputed land was declared. On the previous day of the occurrence, i.e., on 04.04.2000, while the deceased and other members of his family had gone to the case land to collect mahua flowers, some of the accused persons questioned their right over the land, which resulted in a quarrel between them.



After completion of investigation, charge-sheet was submitted against the accused persons under Sections 147, 148, 447, 294, 325, 324, 323 of IPC, and 302/149 IPC.

3. Accused took the plea of denial and false implication.

4. To prove its case, prosecution examined nineteen witnesses and exhibited twenty-five documents. Besides, prosecution proved seven material objects. The defence, on the other hand, did not examine any witness but exhibited two documents.

5. The trial Court, after analyzing the oral and documentary evidence on record held that the evidence of the injured eyewitnesses was trustworthy and duly corroborated by medical evidence. It also held that the prosecution established that the family of the deceased was in possession of the case land and that the accused persons were the aggressors. The Court found that appellant No.1, Pustam @ Purusottam Majhi, had dealt two to three lathi blows on the head of the deceased, resulting



in his death, and held him guilty under Section 302 IPC. However, it came to the conclusion that the common object of the unlawful assembly was not to commit the murder of the deceased but to prevent the deceased and his family members from enjoying possession of the case land by causing grievous hurt. Therefore, while convicting the remaining appellants for the offences under Sections 147, 148 and 447 IPC and under Section 325 read with Section 149 IPC, the trial Court acquitted them of the charge under Section 302 read with Section 149 IPC.

6. Heard Mr. C. Vidyabhusan, learned counsel for the appellants and Mr. Partha Sarathi Nayak, learned Addl. Government Advocate for the State.

7. Mr. Vidyabhusan assails the impugned judgment of conviction on the following grounds:

- i. The occurrence arose out of a sudden quarrel over a long-standing land dispute and the prosecution failed to establish the existence of an unlawful assembly or a common object so as to attract Section 149 IPC.



- ii. The prosecution evidence is inconsistent regarding the role and participation of the appellants and is not supported by recovery of any weapon of offence.
 - iii. The conviction under Section 325 read with Section 149 IPC is unsustainable as the prosecution failed to prove grievous hurt at the hands of the appellants.
 - iv. The conviction under Section 447 IPC is unsustainable as the prosecution failed to prove exclusive possession over the disputed land, which was admittedly the subject matter of a long-standing land dispute.
8. Mr. Nayak, learned State Counsel, on the other hand, would submit that the prosecution has proved its case beyond all reasonable doubts by leading cogent evidence. According to him, the testimony of the injured eyewitnesses is consistent, trustworthy and stands fully corroborated by medical evidence as well as the evidence of the investigating officers. He also submits that merely



because the appellants were acquitted of the charge under Section 302 read with Section 149 IPC, it cannot be said that the unlawful assembly or its common object stood disproved. The trial Court, upon appreciation of the evidence, came to the conclusion that the common object of the unlawful assembly was to cause grievous hurt to the members of the family of the deceased and it has rightly convicted the appellants under Sections 147, 148 and 447 IPC as well as under Section 325 read with Section 149 IPC. He further argues that the findings recorded by the trial Court are based on appreciation of the oral and documentary evidence and do not warrant interference by this Court.

9. We have given our anxious consideration to the rival submissions and carefully examined the oral and documentary evidence on record as well as the impugned judgment.

10. At the outset, the existence of a long-standing dispute relating to the case land is beyond controversy. The prosecution has consistently claimed that the land



belonged to the father of the deceased and that proceedings under Section 145 Cr.P.C. was initiated against the accused persons. Also, the defence itself has relied upon Ext.-A, which establishes that proceedings under Section 145 Cr.P.C. was pending between the parties in respect of the same property. Thus, the existence of the land dispute stands admitted by both sides. The defence has also not disputed the presence of the appellants at the place of occurrence. On the contrary, their case proceeds on the footing that they had gone to the disputed land to resist the victims from collecting Mahua flowers. This circumstance itself explains the genesis of the occurrence.

11. We have independently examined the evidence of the injured eyewitnesses, namely PW-6, PW-7, PW-8, PW-9, PW-10 and PW-13. Though they are related to the deceased, they are also injured in the same occurrence. Their presence at the place of occurrence is therefore natural and stands corroborated by the injury reports proved through PW-17. Merely because the witnesses are related to the deceased, their evidence cannot be discarded. Rather, greater weight attaches to the testimony



of an injured witness unless compelling reasons exist to reject it. No material has been brought on record by the defence to show that these witnesses had any reason to falsely implicate the appellants while sparing the real offenders.

12. The evidence of all the injured witnesses is fully consistent in material particulars regarding the occurrence. They have deposed that on the morning of 05.04.2000 they had gone to the case land for collecting Mahua flowers when the accused persons arrived there armed with lathis, tangias and arrows, questioned their possession over the land and thereafter assaulted them. They consistently attribute the first assault on the deceased Sahadev Patel to Purusottam Majhi, who dealt lathi blows on his head causing him to fall down with bleeding injuries. They have further stated that thereafter Bhika Majhi and Jaladhar Majhi assaulted the right hand of the deceased. The evidence also consistently establishes that the remaining accused simultaneously assaulted the other members of the prosecution party causing injuries to several of them.



13. Mr. Vidyabhusan has laid emphasis on the discrepancies regarding the specific overt acts attributed to individual accused persons and the weapons used by them. We are unable to accept the submission for the reason that the occurrence involved several assailants armed with different weapons and a number of injured persons. Minor variations with regard to the exact number of blows, the weapon carried by a particular accused or the sequence of assault are but natural. Such discrepancies neither affect the substratum of the prosecution case nor demolish the consistent version regarding the participation of the appellants. It is the duty of the Court to separate the grain from the chaff. In the present case, the discrepancies pointed out by the defence relate only to minor details, whereas the injured eyewitnesses have consistently stated that the appellants came together armed with weapons and jointly assaulted the deceased and the injured persons. Their evidence on the material particulars of the occurrence stands corroborated by medical evidence. Reference in this regard may be had to the judgment of the Supreme Court in **Gangadhar Behera and Others v.**



State of Orissa¹, wherein it has been held that minor discrepancies or embellishments which do not affect the core of the prosecution case are liable to be ignored.

14. As regards absence of recovery of weapons of offence, it is well settled that recovery of the weapon is only a corroborative circumstance. Where the prosecution case rests upon the evidence of injured eyewitnesses that is cogent and trustworthy and stands substantially corroborated by medical evidence, non-recovery of the weapon by itself does not weaken the prosecution case. In the present case, the medical evidence fully supports the ocular version regarding the nature and site of injuries sustained by the deceased and the injured witnesses.

15. As regards the existence of unlawful assembly, we are of the view that the evidence of the injured eyewitnesses consistently establishes that all the accused persons came together to the disputed land armed with lathis, tangias and arrows, questioned the possession of the victims and immediately assaulted them. In view of the

¹ (2002) 8 SCC 381



previous land dispute the accused persons must be deemed to have prior knowledge of the rival claim over the property, yet they assembled together and confronted the victims while they were collecting Mahua flowers. Such conduct clearly establishes that they acted in furtherance of a common object. Merely because the trial Court acquitted the remaining appellants of the charge under Section 302 read with Section 149 IPC, it does not follow that the unlawful assembly or its common object stood disproved. On the evidence on record, we find that the common object of the assembly was to prevent the victims from exercising possession over the disputed land by causing grievous hurt and therefore the trial Court has rightly held them guilty under section 149 IPC. In the case of **Gangadhar Behera (Supra)**, the Supreme Court has held as follow:

“23. “Common object” is different from a “common intention” as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The “common object” of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted



by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident on the spot eo instanti.

24. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be



collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word “knew” used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of “might have been known”. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first, offences committed in prosecution of the common object would be generally, if not always, within the second, namely, offences which the parties knew were likely to be committed in the prosecution of the common object.”

16. We are also unable to accept the submission that Section 149 IPC is inapplicable because no specific overt act has been attributed to every appellant. Once the prosecution establishes that the accused persons constituted an unlawful assembly sharing a common object and actively participated in the occurrence, it is not necessary to prove separate overt act against each member. The evidence of the injured witnesses clearly establishes that all the appellants came together armed with weapons



and participated in the assault. The fact that Purusottam Majhi inflicted the fatal head injury and Bhika Majhi and Jaladhar Majhi caused fracture injuries does not absolve the remaining members of the unlawful assembly from the liability arising out of the common object established by the prosecution.

17. As regards the challenge to the conviction under Section 325 read with Section 149 IPC, we are of the view that the injury reports and the evidence of PW-17 establish that Sahadev Patel and PW-6 sustained fracture injuries, which were opined to be grievous in nature. The ocular evidence consistently attributes the fracture injury on the right hand of the deceased to the assault made by Bhika Majhi and Jaladhar Majhi after Purusottam Majhi caused the head injuries. Once the existence of fracture stands proved by the medical evidence, the injury squarely falls within the ambit of grievous hurt. Reference in this regard may be had to the judgement of the Supreme Court in the



case of **Hori Lal v. State of U.P.**², wherein it has held as follows:

“7. It is contended by the learned Counsel for the appellant that none of the Injuries 2 to 6 which were inflicted on PW 2 discloses that there is a fracture or dislocation of any bone. These injuries, it is said, at the most show that the particular bones on which the injuries were inflicted were cut which, however, does not amount to a fracture. It is true that fracture has not been defined in the Penal Code. It is sometimes thought as in the case of Po Yi Maung v. Ma E Tin [A (1937) Rang 253] that the meaning of the word fracture would imply that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that the crack must extend from the outer surface of the skull to the inner surface. In Mutukdhar Singh v. Emperor [A (1942) Pat 376] it was observed that if the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether a deep one or a mere scratch on the surface of the bone, it will be difficult to infer that the injury is a grievous hurt within the meaning of Section 320 of the Penal Code. In our view, both these assumptions are misleading. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of clause 7 of Section 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them. The nature of the injuries as spoken to by the doctor in his evidence, discloses the length, breadth and depth of each injury. So far as the depth of the Injuries 3, 4, 5 and 6 is concerned, each one of the injuries shows that it is bone deep and they are described as cutting the underlying bone. In Injury 3 left humerus, in Injury 4 radius, in Injury 5 both the bones of the left forearm and Injury 6 the tibia bone shaft have been cut which would show that they are fractures. Apart from this the doctor as

² (1970) 1 SCC 8



noticed earlier has in his evidence said that these injuries are grievous. It is contended that the doctor has not disclosed the reason why he thinks that the injuries were grievous. But in our view the doctor would not be unaware of what injuries are grievous or what are simple. At any rate, the nature of the injuries considered with the evidence of the doctor would undoubtedly establish that all the aforesaid injuries were grievous. These injuries were inflicted by Kantas which are dangerous weapons and hence the conviction under Section 326 is fully justified."

[Emphasis added]

The conviction under Section 325 read with Section 149 IPC therefore does not warrant interference.

18. The contention of Mr. Vidyabhusan regarding the offence under Section 447 IPC is also liable to be rejected. Merely because there existed a civil dispute regarding the property does not confer any right upon the appellants to enter the land in possession of the victims being armed with deadly weapons and to assault its occupants. The subsequent demarcation conducted by the Revenue Inspector on the requisition of the Investigating Officer also found the land recorded in the name of the predecessor of the victims. The appellants, must therefore, be held to have entered the land not in exercise of any lawful right but with the intention of intimidating, assaulting and dispossessing



the victims. The ingredients of criminal trespass thus stand fully established.

19. For the foregoing reasons therefore, we find none of the grounds urged to challenge the impugned judgment valid enough to persuade us to take a different view than what was taken by the trial Court. On the other hand, we have carefully gone through the impugned judgment and the evidence on record to be independently satisfied that the trial Court has recorded the conviction correctly. We are therefore, not persuaded to interfere with the impugned order of conviction.

20. However, this is a case of the year 2005. All the appellants are aged more than 50 year or thereabouts. All of them were in custody for some time during trial and are rustic villagers. Keeping in view the above facts we are inclined to release them on probation instead of directing them to serve the sentence imposed at this distance of time.

21. In the result, the appeal is allowed in part. While maintaining the order of conviction, we direct the



appellants to be released under section 4 of the Probation of Offenders Act. For such purpose, the appellants shall appear before the Trial Court on 17th August, 2026. It is made clear that if the appellants do not appear on the date fixed, this order shall not operate and necessary orders shall be passed to take them to custody to serve the remaining part of their sentence as imposed originally.

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Sashikanta Mishra, J.

Manash Ranjan Pathak, J. I agree.

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Manash Ranjan Pathak, J.

Orissa High Court, Cuttack
The 23rd July, 2026/ A.K. Rana, P.A.