



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.246 of 2005

(In the matter of an application under Section 374 (2) of the Criminal Procedure Code, 1973)

***Babu @ Sanjoya Behera @
Sanjoy Kumar Behera*** ***Appellant***
-Versus-
State of Orissa ***Respondent***

For the Appellant : Md. Faradish, Advocate
For the Respondent : Mr. Sobhan Panigrahi,
Additional Standing Counsel

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 16.04.2026 : Date of Judgment: 30.04.2026

S.S. Mishra, J. The sole appellant has assailed the judgment of conviction and order of sentence dated 28.02.2005 passed by the learned Addl. Sessions Judge (Fast Track Court), Baripada in S.T. Case No.14/154 of 2004 arising out of G.R. No.1132/03, whereby the appellant has been convicted for the offences punishable under Sections 341, 506 and 307 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, in default, to undergo further R.I. for one year under Section 307 I.P.C., R.I. for one year under Section 506 I.P.C., and S.I. for one month under Section 341 I.P.C., with a



direction that the substantive sentences shall run concurrently and the period of U.T.P. shall be set off against the substantive sentence.

3. Heard Md. Faradish, learned Counsel appearing for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel appearing for the Respondent-State.

4. The prosecution case, in brief, is that on 29.11.2003, the informant, Kisun Murmu, lodged a written report before the O.I.C., Baisinga P.S., stating that he was the 'God-father' of the injured, victim, daughter of Bansidhar Behera of village Chanchipada under Baisinga P.S. It was alleged that on 27.11.2003, Jaladhar Behera, the elder father of the injured, met the informant near Betnoti Block and requested him to visit their house, as the accused, Babu @ Sanjoy Behera of their village, had been passing objectionable comments against the victim. It was further alleged that the said accused had earlier executed an undertaking at the Police Station on 01.11.2003 not to create any disturbance. Acting on such request, the informant visited the house of the injured on 28.11.2003.

On the next day, i.e., 29.11.2003 at about 10.00 A.M., while returning home and standing in front of the house of one Sethi of village Magusuria, the informant heard the alarm raised by Baikuntha



Behera, the cousin brother of the injured, shouting “HANI DELA: MARI DELA GO: DAUDI ASA”. On hearing such cries, the informant immediately rushed to the spot and found the accused Sanjoy coming from the direction of the occurrence after assaulting Victim by means of a ‘Bhujali’ on the road in front of Magusuria Panchayat High School. When the informant attempted to intercept him, the accused threw his cycle at some distance and fled towards the nearby jungle carrying the weapon. Upon reaching the spot, the informant found the injured with multiple cut injuries, including injuries at the back of her neck and on her right cheek, and while in a distressed condition, she disclosed that while proceeding to attend her examination at Anla College, she had been assaulted by the accused with a Bhujali. In the meantime, the peon of the said school and other villagers reached the spot, followed by the parents of the injured. As her condition became critical, she was immediately shifted to Balasore Hospital by arranging a vehicle. It was further stated in the F.I.R. that the mother of the injured disclosed that during the occasion of ‘Prathamastami’, the co-accused Puchuka @ Bhagaban Behera, father of accused Sanjoy, had threatened that unless victim was given in marriage to his son, the family would face dire consequences. As



the parents had accompanied the injured to the hospital, the informant lodged the report.

5. The plea of the accused is one of complete denial and false implication.

6. In order to substantiate the charges, the prosecution examined fourteen witnesses in total. P.W.1, Kisun Murmu, is the informant and a post-occurrence witness. P.W.2, Pradeep Kumar Mallik, was a seizure witness in respect of the wearing apparels of the victim and a cut tuft of hair (Beni). P.Ws.3, 4, 5, 7, 8 (Bansidhar Behera, father of the injured), and 9 (Sakuntala Behera, mother of the injured) were all post-occurrence witnesses. P.W.6, Baikuntha Behera, the cousin brother of the injured, was an eye-witness, who accompanied her at the time of the incident. P.Ws.10 and 11 were the doctors attached to D.H.H., Balasore, who first treated the injured, while P.W.12 was the injured herself. P.W.13 was the Investigating Officer and P.W.14 was the Assistant Professor of S.C.B. Medical College, Cuttack, who examined the injured upon her referral. The prosecution also proved documents marked as Exts. 1 to 11 and material objects marked as M.Os. I to IV.



7. The appellant stood charged for commission of the offences under Sections 341, 506 and 307 of the Indian Penal Code along with his father, who was arrayed as a co-accused. The learned trial Court, upon a careful analysis of the evidence on record, came to hold that the occurrence took place on 29.11.2003 in front of Magusuria Panchayat High School, wherein the victim, sustained grievous cut injuries allegedly at the hands of the present appellant. The prosecution case suggests that the incident had its genesis in the persistent harassment of the victim by the appellant and the refusal of her family to accede to a proposed matrimonial alliance, which allegedly led to the occurrence. However, the learned trial Court, while extending the benefit of doubt to the co-accused father and acquitting him of all the charges, found the evidence on record sufficient to bring home the charge against the present appellant. At the same time, it is to be examined whether the prosecution has been able to establish, by cogent and reliable evidence, the requisite intention or knowledge on the part of the appellant so as to attract the offence under Section 307 of the Indian Penal Code.

8. The genesis of the occurrence can be traced to events that transpired about eighteen days prior to the date of the incident, when



the victim, was allegedly subjected to indecent comments by the accused-appellant, Sanjoy Behera. The matter was reported to the Police Station, pursuant to which the accused is stated to have furnished a written undertaking assuring that he would not repeat such conduct. However, the prosecution case further reveals that thereafter the accused, along with his father (since acquitted), extended threats to the family of the victim, particularly her father, to give victim in marriage to the accused, failing which they would face dire consequences. It is in this backdrop that the present occurrence is stated to have taken place.

This aspect of the prosecution case primarily unfolds from the evidence of P.Ws.8 and 9, being the father and mother of the victim respectively. P.W.8 in his evidence states thus:

"..... My daughter (victim) was prosecuting + 2 second year in Anla College. She was regularly attending her College. Accused Sanjoy Behera, while she was going to attend the College, had passed comment at her for which I had reported the matter at Baisinga P.S. Accused Sanjoy summoned and on 1.11.03 he had executed an undertaking at the P.S. "not to repeat the same"

2. 10 to 12 days after the said undertaking at P.S by accused Sanjoy, his father, accd. Bhagaban Behera threatened me, if I will not to get my daughter (victim) in marriage with accd. Sanjoy, his son, I will face dire consequences."

(The name of the Victim has been retracted and mentioned as (Victim))



P.W.9 in her evidence states thus:

“.....Injured (victim) is my daughter. Incident took place one year and one month back. When my daughter was going to Anla College, accused Sanjoy used to pass comment by obscene language. My daughter had told us. So we had reported the fact at the police-station. Accused Sanjoy had given an undertaking" not to pass comment on my daughter”.

2. After the said undertaking, accused Bhagaban had threaten us that if (victim) would not be given in marriage with Accd. Sanjoy, then we will face dire consequences. Also accused Bhagaban threatened to my own brother of Badampur.”

It is pertinent to note that both these witnesses are post-occurrence witnesses; however, their testimonies with regard to the prior incidents of eve-teasing, the undertaking given before the Police Station, and the subsequent threats, remain consistent and inspire confidence. Similar version of such prior conduct of the accused has also been spoken to by P.W.4, the uncle of the victim, thereby lending corroboration to the prosecution case.

Insofar as the occurrence is concerned, the post-occurrence witnesses have consistently stated that they had seen the accused Sanjoy coming away from the spot with a cycle and carrying a Bhujali, and upon being confronted, he fled towards the nearby jungle. Their evidence remains cogent and is in consonance with each other on material particulars.



Apart from the above, P.W.6, the brother/cousin of the victim, who was an eye-witness to the occurrence, and P.W.5, an independent witness, have also supported the prosecution case. P.W.5 in his evidence states thus:

“..... On 29.11.03 Saturday at about 10 A.M. while my father and Sarpanch Kisun were talking on the road in front of our house, at that time we heard shout coming from High School side as “Daudi Asa Maridele and Hani delay”. So myself, my father and said Kisun rushed towards the place of incident and while going, on the way we found accused Babu alias Sanjoy Behera coming in a cycle holding a knife and on seeing us, he went towards the jungle. On reaching the spot, we found bleeding injuries on 4 to 5 places on the person of (victim). On my asking, (victim) and Baikuntha told that Sanjoy asked her where she had gone on the last Wednesday and asking such, all of a sudden, dealt blows by means of knife. Thereafter Baikuntha requested me to inform the matter to intimate in their house. Thereafter the injured was taken to the verandah of Magasuria High school and thereafter, she was shifted to Balasore by a car.”

P.W.6 in his evidence states thus:

“.....On 29.11.03 on a Saturday at about 10 A.M. when I was in my betel shop, at that time (victim) came in a cycle to go to the College for examination so I accompanied her in another cycle. At that time accd. Sanjay Behera, who was sitting in the betel shop of Purna Chandra Behera, on seeing us, went ahead us by a cycle. While myself and (victim) were proceeding, the accused restrained us and asked to (victim) where she had gone on the last Wednesday. So I protested, saying as who is he to enquires it and told him that as he had given undertaking in the P.S. why he further doing the same. Thereafter when we further proceeding, near the gate of Magasuria Panchayat High School on the road, the accused caught hold of the cycle of (victim) and again repeated asking the same to (victim). We got down from the cycle. I told (victim) to call my father, but (victim) told me that she will call. While (victim) was



trying to proceed, the accused caught hold of her tuft of hair and gave blows by means of Bhujali. When I was trying to rescue (victim), accused threatened showing Bhujali to me, so out of fear I raised shout for help. On hearing my shout, Keshab Sethi, Sribasta Sethi, Kisan (Sarpanch) reached the spot. On seeing them, accused Sanjoy left (victim) and went away. Thereafter I requested Keshab Sethi to call my family members and myself, Sribasta and Kisan Murmu lifted (victim) to the verandah of the school. I tied the wound by means of apron of (victim). When the family members reached at the spot, one person had been to Kuradhika for arranging a vehicle. Thereafter (victim) was shifted to Balasore hospital by means of the Car and after being discharged by the Balasore hospital, she was taken to Cuttack for treatment. Due to such injury, her dresses, stained with blood, so also my dress as I caught hold of her.....”

Further, the victim herself, examined as P.W.12, has categorically narrated the manner of assault and the role played by the accused-appellant.

9. Upon scrutiny of the evidence on record, the learned trial Court has elaborately appreciated the same and assigned reasons as to why the charge under Section 307 of the Indian Penal Code is sustainable against the present appellant, ultimately arriving at the following findings:-

“30. Lastly it is submitted by the learned S.D.C. that prosecution has failed to prove the requisite intention of the accused Sanjoy to cause murder of the injured (victim). As such, the act of accused Sanjoy does not attract Sec. 307, IPC. In this connection, the essential ingredients required to be proved in the case of an offence under Sec. 307 are as follows:

(1) That the death of a human being was attempted:



(2) That such death was attempted to be caused by, or in consequence of the act of the accused.

(3) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury :-

(a) the accused knew to be likely to cause death; or

(b) was sufficient in the ordinary course of nature to cause death; or that the accused attempted to cause such death by doing an act known to him to be 'so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

In order to attract application of Sec. 307, it is necessary to establish that if the victim would have met his death, the offence would have been come under Sec. 302. An attempt to commit a crime is an act done with intent to commit that crime, and would constitute its actual commission, if not interrupted. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted, though the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even in some cases, be ascertained without any reference to all to the actual injury sustained.

31. In the present case, the evidence of doctor (P.W.10), shows that there were 7 incised injuries on the person of P.W.12. It is also evident from the record that soon after the incident, the injured was shifted to Balasore hospital in a car, where without missing of time, P.W.11 finding P.W.12 serious, sent her to O.T. to be treated by Surgery Specialist and accordingly P.W.10, after giving treatment, immediately referred the injured to S.C.B. Medical College, Cuttack and it is also found from his evidence that the patient was shocked & B.P. & Pulse were feeble. Accordingly P.W.14 stated that treatment given to the injured was usually given when the injuries & patient were found serious. Further, it is found that the weapon of offence i.e. Bhujali is undoubtedly a deadly weapon and part of the body where injuries were inflicted is no doubt are vital part of the body. Besides, while the accused Sanjoy was giving blows, P.W.6 raised shouts and on seeing the arrival of P.Ws.1,5 & one Sribatsa Sethi, the accused left the injured & fled away with the weapon of



offence, So these attending circumstances clearly speak itself the intention of the accused Sanjoy. Hence, the intention of the accused Sanjoy was to commit murder of P.W.12, but due to timely medical treatment of the injured, she could survive. Therefore, the act of accused Sanjoy Behera, in the facts & circumstances of the case, comes within the purview of Sec.300, but as the injured fortunately survived, the accused is criminally - liable U/S. 307, I.P.C. As such, the submission of the learned State Defence Counsel has got no force.

32. Again before giving blows to P.W.12, accused Sanjoy voluntarily restrained both the injured & P.W.6-Baikuntha on their way to College and thereby prevented both of them in proceeding on their way. Further while the accused was executing blows on the injured, P.W.6 tried to rescue, to which he was threatened by the accused by showing Bhujeli, so out of fear, P.W.6 raised shouts for help. In the aforesaid premises, the offence U/Secs.341 & 506 I.P.C. are also found proved.”

10. I have carefully considered the evidence discussed hereinabove, the reasons assigned by the learned trial Court in appreciating such evidence, as well as the submissions advanced by the learned counsel for the appellant and the learned counsel for the State.

11. P.W.10, the doctor who examined the injured, has categorically deposed that the victim had sustained as many as seven injuries, out of which two were bone-deep and one had cut the occipital bone. The doctor, in his evidence, recorded the following injuries:

- “i) Incised injury on occipital area just below the Occiput obliquely placed of size 6" x 1" x bone deep.*
- ii) Incised injury, which is 2 inches "below of injury No.1, transversely placed of size 3" x 1/2" X bone deep.*
- iii) Incised wound 1 inche below the injury No.11 of size 6" x 1" x: bone deep the occipital bone is cut.*



iv) Incised injury on left cheek vertically placed of size 2" x 1" x 1/2"

(v) Incised injury on the right shoulder area of size 4" in length, x 1 inch x 1 inch which is longitudinally placed

vi) Incised injury on right cheek vertically placed of size 2 & 1/2" x 1/2" x 1".

vii) Incised injury on right index finger on proximal phelengial area lateral aspect of size 1" x 1/4" x 1/4".

The aforesaid medical evidence finds due consideration in the reasoning recorded by the learned trial Court in paragraph-31 of the impugned judgment (as reproduced above), with which this Court completely agrees.

12. In view of the aforesaid discussion, I find no infirmity in the findings recorded by the learned trial Court. The evidence of the prosecution witnesses is cogent, consistent and inspires confidence. Accordingly, the impugned judgment of conviction warrants affirmation.

13. At this stage, learned counsel for the appellant has prayed for taking a lenient view in the matter of sentence. The learned trial Court has sentenced the appellant to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, and in default of payment of fine, to undergo further Rigorous Imprisonment for one year for the offence under Section 307 of the Indian Penal Code, along with sentences of Rigorous Imprisonment for one year under



Section 506 I.P.C. and S.I. for one month under Section 341 I.P.C., with a direction that all the substantive sentences shall run concurrently. It is submitted that the appellant has already undergone custody for a substantial period of 2 years and 3 months during trial. The occurrence in question dates back to the year 2003, and at the relevant time, the appellant was a young man. It is further submitted that in the intervening period, the appellant has settled in life and is maintaining his family, and there is nothing on record to indicate any subsequent criminal antecedent. It is contended that sending the appellant back to custody at this distant point of time would cause undue hardship not only to him but also to his dependent family members. Accordingly, it is urged that this Court may take a lenient view while considering the question of sentence.

14. In view of the aforesaid mitigating facts and circumstances, the submission advanced by the learned counsel for the appellant merits consideration. Accordingly, while upholding the conviction of the appellant under Section 307 of the Indian Penal Code, the sentence imposed by the learned trial Court is modified to the period already undergone by the appellant. However, in order to balance the scale of justice, the fine amount of Rs.5,000/- imposed by the learned trial



Court is enhanced to Rs.30,000/-. In default of payment of the enhanced fine amount, the appellant shall undergo Rigorous Imprisonment for a further period of six months. The appellant is directed to deposit the aforesaid fine amount within a period of four weeks from today. Upon such deposit, the same shall be disbursed in favour of P.W.12 (the injured-victim) as compensation in terms of Section 357 of the Code of Criminal Procedure.

15. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of April 2026/ Swarna