IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.218 of 1995

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

Mir Chuna @ Mir Safik	***…….***	***Appellant***
	-Versus-	
State of Orissa	***…….***	***Respondent***

For the Appellant : Mr. Bijay Kumar Ragada,
along with Ms. Chetana Prakash,
Amicus Curiae

For the Respondent : Mr. Auroninda Mohanty,
Additional Standing Counsel

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.02.2026 : Date of Judgment: 16.04.2026

S.S. Mishra, J. The sole appellant has assailed the judgment of conviction and order of sentence dated 01.08.1995 passed by the learned Assistant Sessions Judge, Kendrapara in S.T. No.15/276 of 1994, whereby the appellant has been convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced him to undergo R.I. for ten years and to pay a fine of Rs.1,000/- (Rupees one thousand), in default, to undergo further R.I. for six months more.

2. The present appeal has been pending since 1995. Continuously none appeared for the appellant, when the matter was taken up for hearing. Therefore, initially vide order dated 26.09.2023, Mr. Satya Narayan Mishra, Advocate was appointed as Amicus Curiae to assist the Court. However, he did not appear to argue the matter. Therefore, vide order dated 18.12.2024, in place of Mr. S.N. Mishra, Mr. S.C.D. Dash, Advocate was appointed as Amicus Curiae to assist the Court in the matter. Mr. Dash also remained absent. Therefore, vide order dated 10.02.2026, Mr. B.K. Ragada, Advocate was appointed as Amicus Curiae along with Ms. Chetana Prakash, Advocate to assist the Court in place of Mr. S.C.D. Dash. Ms. Chetana Prakash assisted Mr. Ragada in the matter when the matter was heard and subsequently on 19.02.2026 she filed a detailed written note of submission along with relied upon judgments.

3. Heard Mr. B.K. Ragada, learned Amicus Curiae along with Ms. Chetana Prakash, learned Amicus Curiae appearing for the appellant and Mr. Aurobinda Mohanty, learned Additional Standing Counsel appearing for the Respondent-State.

4. The prosecution case in terse and brief is that on 09.02.1992, at about 8 p.m., when the informant was returning home, he found the

accused lifting his daughter to a nearby place. On his protest, the accused gave him a push and after proceeding to a short distance, dealt a knife blow on the belly of his daughter Rosi Bibi making her intestine surge forward. When the informant shouted for help, the people of the locality arrived at the spot and the accused fled away from the spot. The injured was shifted to the Kendrapara Hospital for treatment, but as her condition was serious, she was referred to the S.C.B. Medical College & Hospital, Cuttack for treatment. Hence, the F.I.R.

5. The plea of the accused is one of complete denial. He claimed trial, therefore, after framing of charges under Section 307 of the IPC, he was put to trial.

6. The prosecution has examined nine witnesses in support of its case. P.W.1 is the informant. P.W.2 was a witness to the seizure of M.O.I. P.W.3 is the daughter of the informant (P.W.1), who is a post-occurrence witness. P.W.4 was Rosi Bibi, who was injured. P.W.5 is the daughter of the informant (P.W.1), who was a post-occurrence witness. P.W.6 was the Investigating Officer, who submitted the charge-sheet in the present case. P.W.7 was the doctor, who treated

P.W.4 at S.C.B. Medical College & Hospital, Cuttack. P.W.8 and P.W.9 were the witnesses to the seizure.

7. The sole appellant stood charged for commission of the offence under Section 307 of the IPC. The learned trial Court, after analysing the evidence, arrived at a conclusion that the occurrence took place in the evening of 09.02.1992. Rosi Bibi-P.W.4 a young woman of 22 years was brutally attacked by the accused-appellant as a result of which she had to be hospitalised for a considerable long period of time. The learned trial Court was of the view that the present case is borne out of a love story, anger and revenge which led to the bloody consequences. However, the prosecution has failed to bring on record any such evidence which would give a hint regarding the intention of the appellant to attack P.W.4 least the case of love, anger and revenge.

8. P.W.1 is the father of the victim, who is the informant in the present case. He has deposed that on the date of occurrence, when he was returning home from the market, he found that the accused grabbing his daughter. On his protest, the accused gave a push to him as a result of which he fell down. The accused lifted his daughter to a nearby place with an intention to kill and dump her in the well. When

he chased the accused, he found that he has been repeatedly stabbing his daughter with a knife on her belly, neck and back. He further deposed that the accused was trying to slit the throat of his daughter.

9. P.W.4, the victim has deposed in her evidence that she has been working as a maid servant and while returning home after the work at the night time, the accused confronted her. The incident has taken place while she was trying to cross the road in the basti. The accused dragged her to a lonely vicinity of the basti. In the lonely place, she went on stabbing with a knife like a man cutting a goat. The accused went on stabbing at her neck, back and belly. She further deposed that the accused wanted to part with by morals and on her refusal, the accused went on stabbing her. The accused endeavoured to throw her in the well. Hence, he lifted her, but could not succeed. She further deposed that she returned to home by pressing her belly as the intestines were coming out. She came home and narrated the incident to the family members. In her cross-examination, she has further stated that about 200 to 250 persons gathered at the spot after they heard her shout, but none of them intervened in the matter. She lost her senses after she fell down and only regained her senses after some time and managed to run her house.

10. P.Ws.3 and 5 were examined by the prosecution being post-occurrence witnesses. Both of them have supported the prosecution, and deposed that with the help of a knife, the accused tore opened the belly of P.W.4. P.W.2 is the seizure witness, who did not support the prosecution and deposed that nothing was seized by the police in his presence. However, he has admitted his signature in the seizure list having denied the seizure.

11. Interestingly, in this case, the prosecution failed to bring on record the injury report. The doctor, P.W.7 in his deposition has stated that all the injuries were covered by medicaments and niko plast. Therefore, he could not give the details of the injury sustained by P.W.4. But he deposed that P.W.4 was referred to the S.C.B. from the Sub-Divisional Hospital, Kendrapara and for abdominal injury, P.W.4 was also operated upon.

12. Mr. B.K. Ragada, learned Amicus Curiae along with Ms. Chetana Prakash appearing for the appellant emphatically highlighted regarding non-production of the injury report by the prosecution and submitted that non-production and non-proving of the injuries sustained by P.W.4 through adequate oral or documentary evidence

goes to the route of the matter. Therefore, the conviction recorded under Section 307 of the IPC is not safe to be sustained.

13. The learned trial Court in paragraphs-9, 10 and 11 of the impugned judgment has appreciated this aspect of the matter and returned the following findings:

> *"9. Pity for the prosecution is that there is no injury report. A doctor examined as P.W.7 testifies the fact that when he attended Rosy Bibi in the medical the injuries were covered with medicaments and Niko Plast. The doctor found the following:-*
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> > *"All the injuries were covered by medicaments and Niko plast. The patient was referred to SCB from sub-divisional Hospital Kendrapara. For the abdomal injuries she was operated at 12.30 A.M. on 10.2.92."*
>
> *Ext.4 is the report of the Doctor and he has said about confinement or Rosy Bibi on bed for about a fortnight.*
>
> *10.All the injuries done to Rosy Bibi are the effects of Spring knife (M.O.I) that was recovered by the I.O. (P.W.6) from the accused. Evidence of the Investigating Officer discloses that the condition of the victim became serious, for which she was transferred from Kendrapara Hospital to Cuttack Medical, and did seizure of the relevant the list of which are marked as Ext.1 and Ext.3.*
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> *11. P.W.8 and P.W.9 are attendants of Cuttack medical and police seized a bed-head ticket in their presence as per Ext.3. P.W.2 is an independent witness and he does not implicate the accused in any way. Independent corroboration is nil and the case is built by Rosy Bibi and her relatives.*
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> *Even taking for granted that there is no independent corroboration, I hold the prosecution case as reasonably proved with what there is in record. The Doctor, the knife, the victim, her father, her relatives have all said about the brutality of the accused and the serious effect of his action on the life of a person. On my part I wonder how a woman*

survived with multiple injuries and with the opening of her belly by a knife which forced out the intestine to come out ?"

14. Mr. Ragada, learned Amicus Curiae further pointed out the contradictions in the evidence of P.W.4 vis-à-vis P.W.1, the informant and other witnesses. It is pointed out that P.W.1 in the cross-examination has stated that P.W.4 gained the consciousness after about 15 days. However, P.W.4 herself deposed that she gained consciousness only after two months whereas P.W.7, the doctor has stated that P.W.4 was admitted to the hospital on 09.02.1992 and was discharged on 22.02.1992. The evidence of all the three witnesses, if read together, a serious doubt is being created as to whether P.W.4 was remained in the hospital for about 15 days or for two months. Similarly, it was pointed out that P.W.4 in her deposition has stated that she was not examined by the police whereas P.W.6, the Investigating Officer in paragraph-7 of his deposition has stated that he had recorded the statement of the victim and other witnesses. Further P.W.4 in paragraph-6 of her deposition has stated that the accused grabbed her for about five minutes at the road crossing. At the same time, she has stated that the accused has held her for about half an hour at the same spot. Even the deposition regarding she lost her consciousness immediately after sustaining injury is creating a

serious doubt. Further Mr. Ragada, learned Amicus Curiae has pointed out that P.W.1 has stated that he has witnessed the accused forcibly dragging his daughter and also witnessed stabbing by the accused. However, in the deposition of P.W.4, the presence of her father at the spot has not been mentioned. Therefore, as per Mr. Ragada, P.W.1 was not the eye witness.

15. Regarding recovery of the weapon, it is submitted that recovery is surrounded by serious contradictions and marred by procedural irregularities. The seizure witness, P.W.2 has deposed that nothing was seized in his presence. He further stated that though the search was conducted in the house of P.W.1, but nothing was recovered. However, the Investigating Officer, P.W.6 has given yet another version regarding recovery of the weapon of offence. The Investigating Officer in his cross-examination has stated as under:

> *"The weapon of offence was in the Police Station till the charge sheet was filed. Thereafter the weapon of offence has come to the Court Malkhana through Kendrapara Police Station. I cannot say if the weapon like M.O.-I are made available in the market. It is not a fact that M.O.-I is not a weapon of offence in this case."*

16. Mr. Ragada further has taken me to the evidence of various other witnesses to question the trustworthiness of those evidences, particularly in absence of examination of any independent witnesses,

although P.W.4 in her deposition has stated that about 200 to 250 people had gathered at the spot. Mr. Ragada has relied upon the judgment in the case of ***Raju and another vs. State of Uttarakhand***, reported in ***2024 Livelaw (SC) 622***. It is submitted by Mr. Ragada that the conviction recorded under Section 307 of the IPC can be justified only where the intention is clearly established and coupled with the overt act in execution thereof. In the instant case, the motive behind such attack has not been adduced through adequate evidence by the prosecution. Therefore, the narrative of the prosecution story regarding the incident is not supported with any motive or intention on the part of the appellant to commit such offence. Both P.W.1 and P.W.4 have admitted the absence of prior enmity. Therefore, relying upon paragraphs-9 and 10 of the judgment of ***Raju*** (supra), Mr. Ragada submitted that on the face of the evidence available on record, the conviction recorded by the learned trial Court for the offence under Section 307 of the IPC against the appellant is not sustainable under law.

17. I have carefully taken into consideration the evidence as discussed above as well as the reasonings recorded by the learned trial Court while appreciating the evidence and I have also taken into

consideration the submissions made by both the learned Amicus Curiae as well as the learned counsel for the State. From the evidence brought on record, although there are contradictions apparent on record, but those contradictions are not material to ignore the evidence of P.W.4, the victim and the other circumstantial evidences. The fact remains that P.W.4 has sustained injuries at the hands of the accused. The post-occurrence witnesses have lent support to the evidence of P.W.4 besides the evidence of P.W.1 supporting the narrative of the incident.

18. P.W.7, the doctor has also deposed that P.W.4 was admitted to the hospital and she was operated upon. The injuries sustained by P.W.4 are grievous in nature which is apparent from the evidence of P.W.7. Although the prosecution has failed to bring on record the injury report, but mere non-production of the injury report cannot wash away the evidence of P.W.7. That is the reasoning recorded by the learned trial Court in the impugned judgment in paragraphs-9 and 10 as reproduced above, which I concur.

19. Therefore, I am fully in agreement with the findings recorded by the learned trial Court. Although it is seen that the learned trial Court has not elaborately dealt with the evidence of all the witnesses

but the fact remains that the evidence of P.Ws.1, 3, 4, 6 and 7 are cogent, unimpeachable and worth reliance. Hence, the impugned judgment of conviction merits affirmation.

20. At this stage, Mr. Ragada, learned Amicus Curiae has also argued that the appellant is entitled to a lenient view while imposing the sentence. The learned trial Court has sentenced the appellant to undergo R.I. for 10 years and imposed a fine of Rs.1,000/-. It appears from the record that the appellant has already undergone custody for a period of 1 year, 7 months and 5 days. The incident relates back to the year 1992. At that point of time, the appellant was about 22 years of age. Hence, at present, the appellant would be about 55 years of age. Much water has flown under the bridge by now. The appellant is already settled in his life with his family. Over the years, he has lived peacefully, well integrated into society, and is presently leading stable family life. Incarcerating him at this belated stage would have a serious and cascading effect on the entire family. Therefore, he submitted that a lenient view should be taken while considering the sentencing of the appellant..

21. In view of the aforementioned mitigating facts and circumstances, the prayer made by Mr. Ragada, learned Amicus

Curiae deserves merit. Taking into consideration the aforementioned, while upholding the conviction u/s307 I.P.C the sentence imposed by the learned trial Court to the appellant under Section 307 of the IPC, is modified to that of the period the appellant has already undergone. However, to balance the scale of Justice the fine of Rs.1,000/- imposed on the appellant is enhanced to Rs.20,000/-, in the event of failure to pay the fine amount, the appellant shall undergo R.I. for a period of six months more. The appellant shall deposit the fine amount within a period of four weeks from today. The fine amount to be deposited shall be disbursed to P.W.4 in accordance with Section 357 of the Cr. P.C. as compensation.

22. Accordingly, the Criminal Appeal is partly allowed.

23. This Court records the appreciation for the effective and meaningful assistance rendered by Mr. Bijay Kumar Ragada and Ms. Chetana Prakash, learned *Amicus Curiae(s)*. They are entitled to an honorarium of Rs.5,000/- (Rupees five thousand) each to be paid as token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 16th Day of April 2026/ Subhasis Mohanty