

S.S. Mishra, J. The present Criminal Appeal is directed against the judgment and order dated 18.11.2010 passed by the learned Additional Sessions Judge-cum-Special Judge, Jeypore in Criminal Trial Case No.01 of 2010, whereby the appellants have been convicted for the



offences punishable under Sections 294/506/34 of I.P.C. read with Section 3(1)(x) of the SC & ST (PoA) Act. On that count, they have been sentenced to undergo S.I. for three months each for the offences under Sections 294/506 of I.P.C. and S.I. for six months and to pay a fine of Rs.1,000/- (rupees one thousand) each, in default to undergo S.I. for one month for the offence under Section 3(1)(x) of the SC & ST (PoA) Act.

2. The present appeal has been pending since 2010. When the matter was called for hearing continuously, none appeared for the appellants. Therefore, on 16.12.2025, this Court requested Ms. Rakhi Mishra, learned counsel, who was present in Court to assist the Court as Amicus Curiae. She has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Ms. Mishra.

3. Heard Ms. Rakhi Mishra, learned Amicus Curiae for the appellants and Mr. Raj Bhusan Dash, learned Additional Standing Counsel for the State.



4. The prosecution case, in brief, is that on 15.06.2008 at about 10.00 a.m., in village Jumunda, the accused persons abused and threatened the complainant, Manohar Harijan, in front of his house near a place locally known as 'Uali Gada' (heap of garbage), by uttering words such as "Damba Sala Magiha", "Eigaonre Rakhai Debuni" and "Jeevanare Maridebu". The said utterances were allegedly heard by the co-villagers, namely, Ghasi Harijan and Dhobuli Harijan. The complainant belongs to the 'Damba' caste, which is a Scheduled Caste, whereas the accused persons belong to the general caste. The dispute allegedly arose on account of dumping of waste materials and garbage by the accused persons over a piece of land situated near the dwelling house of the complainant.

It is further alleged that, being threatened with death by the accused persons, the complainant was frightened and, on being addressed by derogatory words such as "Damba Magiha" in the presence of others, felt humiliated. He accordingly submitted a written report before the I.I.C., Borigumma Police Station, on the following day. As no action was taken thereon, the complainant, on 25.06.2008, filed a



complaint petition before the learned S.D.J.M., Jeypore, which was registered as I.C.C. No.71 of 2008. The learned S.D.J.M., Jeypore, after recording the initial statement of the complainant and conducting an enquiry under Section 202 of the Cr.P.C., took cognizance of the offences punishable under Sections 294, 506 and 34 of the I.P.C., read with Section 3(1)(x) of the SC & ST (PoA) Act. The order taking cognizance was challenged by the accused persons before this Court in Criminal Revision No.957 of 2009. The said revision was dismissed and the order taking cognizance was upheld. Consequently, the present case came to be registered before the learned Special Court and the trial proceeded accordingly.

The defence plea is one of complete denial. The accused persons have pleaded that the allegations are false and frivolous and that they are innocent. It is their further case that, owing to previous enmity between the parties over the disputed piece of land, which the complainant allegedly intended to grab by dispossessing the accused persons, the present false case has been foisted against them.



5. In order to substantiate its case, the prosecution examined five witnesses in all. P.W.1 is the complainant himself. P.Ws.2, 4 and 5 were stated to be eyewitnesses to the occurrence, whereas P.W.3 was the Advocate, who drafted the complaint petition. In support of its defence, the accused persons examined one witness, who deposed regarding the strained relationship and previous enmity between the parties.

6. The learned trial Court after perspicacious analysis of evidence, recorded the conviction and sentence as has been mentioned above against the appellants. Being aggrieved by the said judgment of conviction and order of sentence, the present appeal has been preferred.

7. Ms. Mishra, learned Amicus Curiae appearing for the appellants, has extensively taken this Court through the evidence adduced by the prosecution and, from the materials on record, highlighted the existence of previous enmity between the two groups. It is submitted that as many as seven proceedings are pending between the parties in relation to the title and possession of a piece of land, which has been the subject matter of litigation between them. The materials on record reveal that the following litigations are pending between the parties:-



(1) P.W.1, P.W.2 and others filed Civil Suit No.02 of 2008 before the learned Civil Judge (Junior Division), Jeypore, seeking a decree and declaration of possessory title, confirmation of possession and permanent injunction restraining appellant No.1 and others from entering upon or trespassing into the suit land.

(2) Prior to filing of the aforesaid civil suit, P.W.2 and others had initiated a proceeding under Sections 144/145 of the Cr.P.C., registered as M.C. No.93 of 2006. The said proceeding was instituted on 20.12.2006 against the accused persons, wherein certain interim orders were passed to prevent breach of peace and the appellants were restrained from forcibly entering upon the disputed land. The said interim protection, however, came to an end on 24.03.2007 by efflux of time.

(3) On 20.06.2007, appellant No.1 initiated a proceeding under Sections 144/145 of the Cr.P.C., registered as M.C. No.52 of 2007. In the said proceeding, the disputed land was attached



under Section 145 of the Cr.P.C. by the Tahasildar-cum-Executive Magistrate, Borigumma.

(4) Alleging violation of the interim order by the complainant party, appellant No.1 also filed a petition under Section 188 of the I.P.C. in M.C. No.52 of 2007, contending that the complainant party had violated the order of restraint by forcibly entering upon the disputed land for the purpose of planting vegetables.

(5) Ghasi Harijan, the father of the complainant and P.W.2, had earlier instituted two complaint cases, namely, I.C.C. No.164 of 2006 and I.C.C. No.127 of 2007, against all the accused persons.

(6) On 17.12.2006, I.C.C. Case No.104 of 2007 was instituted by the complainant against appellant No.1 in respect of certain allegations. Upon investigation, the police ultimately submitted charge-sheet only for the offence punishable under Sections 294/34 of the I.P.C.



(7) P.W.1, Manohar Harijan, also instituted I.C.C. Case No.71 of 2008 against the accused persons alleging theft of coconuts from trees standing on the disputed land. Upon investigation, the police submitted a closure report in the said case.

Apart from the aforementioned proceedings, the cross-examination of the prosecution witnesses also indicates the existence of certain other cases between the parties, though the particulars thereof have not been brought on record.

8. The aforesaid litigations between the parties clearly demonstrate that there has been persistent hostility and enmity between the two groups, resulting in institution of several proceedings and cases, including cross-cases, against each other. In the backdrop of such admitted and continuing dispute, the evidence adduced in the present case requires to be examined with due caution. More particularly, the allegation of charges under Section 3(1)(x) of the SC & ST (PoA) Act, which requires independent and careful scrutiny. Accordingly, the evidence relating to the allegation of offence under the SC & ST (PoA) Act is being considered first.



9. Upon analysing and appreciating the evidence on record, the learned trial Court found that the complainant belonged to the Damba caste, a Scheduled Caste, as evidenced by Ext.1. It further found that the accused persons had addressed the complainant by uttering the caste-based expression “Sala Damba Magiha” in public view, which was intended to insult and humiliate him on account of his caste. The learned trial Court further found the evidence of the prosecution witnesses in this regard to be cogent, convincing and reliable, and observed that the defence had failed to discredit their testimony in cross-examination. Accordingly, it held that the essential ingredients of the offence under Section 3(1)(x) of the SC & ST (PoA) Act stood established and that the prosecution had proved the charge against the accused persons beyond reasonable doubt. The findings returned by the learned trial Court reads thus:-

“With regard to the previous enmity between the parties, learned counsel for the State submitted that enmity is a double edged weapon. As because there was enmity between the parties over that piece of land, the case in hand cannot be thrown to dustbin. What is required to be seen is about the probability of such happenings from the giving evidence and



given circumstances. It is human psychology to protest for dumping of waste materials and garbage over a land on which the person is interested. Since both the parties are interested for that particular piece of land, obviously the complainant tried to safeguard the land and protect the land being misused by the accused persons till the Civil Court decides the right title and interest of the parties. Therefore, honestly, he raised voice not to dump waste materials making the atmosphere / area obnoxious which would cause health hazards. There is nothing, as to why the accused persons should react with annoyance using the language as Sala Damba Magiha. It is not accepted on the part of educated person, in civilised society when there is constitutional mandate that every citizen of India has right to live with dignity and honour like a human being. By dumping garbage and waste materials in front of the house of the complainant, the complainant and his family members would be relegated to animal existence. Uttering Sala Damba Magiha certainly humiliates the members of the Damba caste. The complainant himself has certainly felt humiliated as such uttering which were made within the public view. For better appreciation section 3(1)(x) of the Atrocities Act is quoted below which reads thus :-

"Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

Therefore, it certainly comes within the ambit of section 3(1)(x) of the Atrocities Act. Therefore,



Hon'ble High Court of Orissa have upheld the order of cognizance under that section including section 294/506 of I.P.C. vide order dated 5.12.2009 in Criminal Revision No. 957/2009. When the question of enmity between the parties over that piece of land is there, court is to be very cautious and careful in appreciating/ evaluating the evidence. When there is clear, cogent and convincing evidence and defence could not shake or demolish in cross examination so as to discard, court is bound to accept the evidence on hand and act upon accordingly. In the instant case I do not find anything to disbelieve the evidence of the prosecution witnesses as there is no exaggeration, concoction or embellishment. Therefore, enmity between the parties has nothing to play in the present circumstances. Might be they are litigating over that piece of land before the Tahasildar, Borigumma and Civil Court at Jeypore. That does not falsify the present occurrence in toto. Had the complainant wanted to put the accused persons into trouble and behind the bars he could have brought much more serious allegations like making an attempt to commit murder or even for that matter rape etc. Instead of doing that he only confined himself to the offences of using of obscene language, criminal intimidation and insulting him humiliating his caste. Admittedly, the complainant belongs to Damba caste as is evident from Ext.1, the caste certificate issued by the Tahasildar, Borigumma. Though suggestion has been given by defence that he has embraced Christianity, no proof to that effect has been laid by defence. Hence, it is held that the complainant is a Damba by caste which comes under the constitution (Scheduled Caste) Order, 1950. There is no exaggeration or window



dressings. Therefore the concept of enmity does not come to fair play.

8. In view of the discussions made supra I find cogent, convincing, reliable and clinching evidence against the accused persons. The evidence of the prosecution witnesses do inspire confidence in the mind of court. Hence, it is held that prosecution has well proved the charges against the accused persons beyond reasonable doubts. In the result, all the three accused persons are held guilty of the offences punishable under Section 294/506/34 I.P.C. read with section 3(1)(x) of Scheduled, Castes and Scheduled Tribes (Prevention of Atrocities) Act and they are convicted thereunder. I find no convincing reason to extend the benefit of Probation of Offenders Act to the convicts as they are in litigating terms. Therefore, there is need to hear them on a question of sentence.”

10. P.W.1, the complainant, in his deposition has stated that, about two years prior to the date of his examination, at around 10.00 a.m., a boy aged about 10 to 12 years came to answer the call of nature near a heap of garbage situated in front of his house. When he protested against the same, the accused persons allegedly abused him by referring to his caste and uttered, “Are Damba Maghia, Jeevanare maridebu, Tote a Gaonre Rakhidebi Nahi.” He stated that he felt humiliated and insulted on account of the said utterances. He further deposed that, on the



following morning, he lodged an F.I.R. before the police. As no action was taken by the police, he, through P.W.3, an Advocate, instituted the complaint case before the learned Court.

P.W.2, while narrating the occurrence, deposed that on the date of occurrence at about 10.00 a.m., the incident took place near the heap of garbage situated in front of the house of P.W.1. According to him, the accused persons used to dump cow dung and other waste materials in front of the house of the complainant. On the date of occurrence, a boy from the family of the accused came to the said place to answer the call of nature, which was objected to by P.W.1. Thereafter, the accused persons allegedly abused P.W.1 by uttering, “Are Damba Maghia, to Bapara Jaga Nahi, Maripitikari Gaon Re Khadidebu.”

P.W.4, while deposing about the same occurrence, stated that the accused persons abused the complainant by uttering, “Damba Giapa, Tora Maku Nebi, Tora Maipa Ku Nebi, Jeevanare maridebi.” Thus, the utterances attributed to the accused persons by P.W.4 are materially different from those stated by P.Ws.1 and 2.



The version of P.W.5, however, is entirely different from the testimony of the aforesaid witnesses. In his deposition, he has stated as under:-

“About two years age in the month of Car festival, at about 8 A.M. in the village Danda on the public road the occurrence took place. The Accused persons were dumping garbage in front of the house of the Manohar Harijan. Manohar protested to that and asked them not to do so. The accused persons did not listen to him. On the other hand they scolded him as a “Domba Maghiya” and threatened to kill him. Out of fear Manohar entered into his house.”

11. It is evident from the testimony of the prosecution witnesses that the abusive expressions allegedly used by the appellants, referring to the caste of the complainant (P.W.1), are not consistent and materially differ from one witness to the another. In view of such material discrepancies in the evidence, coupled with the fact that several litigations are pending between the parties before different forums, the applicability of the principles laid down by the Hon’ble Supreme Court in a case arising in a similar factual context assumes significance. In *Hitesh Verma v. State of*



Uttarakhand and another, reported in ***Criminal Appeal No.707 of 2020***,

the Hon'ble Supreme Court, in paragraph-18, has held as under:-

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.”

The aforesaid observation was made by the Hon'ble Supreme Court having regard to the principles enunciated in its earlier decisions in ***Swaran Singh & Ors. vrs. State through Standing Counsel & Ors.***¹, ***Khuman Singh v. State of Madhya Pradesh***². Applying the said principles to the facts of the present case and upon a careful assessment of the evidence on record, this Court is of the considered view that the prosecution has failed to establish the essential ingredients of the offence

¹ (2008) 8 SCC 435

² 2019 SCC Online SC 1104



punishable under Section 3(1)(x) of the SC & ST (PoA) Act. The evidence, particularly in the backdrop of the longstanding dispute between the parties in respect of the subject land, does not inspire sufficient confidence to sustain the conviction under the said provision. Accordingly, the conviction recorded by the learned trial Court against the appellants of the charges under Section 3(1)(x) of the SC & ST (PoA) Act cannot be sustained and is hereby set aside. The appellants are acquitted for the charge of the offence under Section 3(1)(x) of the SC and ST (PoA) Act.

12. In so far as the other offences are concerned, on a conjoint reading of the evidence of the prosecution witnesses and upon consideration of the findings recorded by the learned trial Court, this Court finds no infirmity in the appreciation of evidence or the conclusions arrived at by the learned trial Court. The findings of guilt recorded against the appellants for the offences punishable under Sections 294 and 506 of the I.P.C. are, therefore, found to be well-founded. Accordingly, the conviction of the appellants for the offences under Sections 294 and 506 of the I.P.C. is hereby affirmed.



13. At the outset, Ms. Mishra, learned Amicus Curiae appearing for the appellants, after advancing her submissions for some time, fairly submitted that she would confine her challenge to the quantum of sentence. It was submitted that the present appeal, preferred in the year 2010, has remained pending for more than fifteen years. Learned Amicus Curiae further submitted that the occurrence took place in the year 2008, when appellant No.1 was about 45 years of age, appellant No.2 was 57 years and appellant No.3 was 39 years. At present, appellant No.1 is aged about 63 years, appellant No.2 is 75 years and appellant No.3 is 57 years. It was contended that, during the intervening period, the appellants have settled in life and have been leading a stable and law-abiding life. In such circumstances, it was submitted that requiring the appellants to undergo the remaining period of sentence after such a long lapse of time would serve no meaningful purpose.

Learned counsel further submitted that the appellants have already undergone incarceration for a period of thirty-nine days and have no criminal antecedents. It was also submitted that no other criminal case is stated to be pending against them. According to learned counsel, the



appellants have, over the years, remained integrated with society and have been leading settled family lives. In such circumstances, their incarceration at this distant point of time would neither advance the ends of justice nor serve any meaningful penological objective. Accordingly, it was prayed that, having regard to the long passage of time, the nature of the offence, the antecedents of the appellants, and the overall facts and circumstances of the case, this Court may extend to the appellants the benefit of the provisions of the Probation of Offenders Act, 1958.

14. The record reveals that the occurrence relates back to the year 2008. The appellants were convicted by the impugned judgment and order of sentence passed by the learned trial Court and the present appeal has remained pending since the year 2010. Considerable time has elapsed since the occurrence and much water has flown under the bridge. It is further not in dispute that they have no criminal antecedents and no other criminal case is stated to be pending against them. In the interregnum, they have led a settled family life and remained integrated with society. In such circumstances, this Court is of the considered view that this is a fit case where the benefit contemplated under the Probation



of Offenders Act, 1958 deserves to be extended to the appellants. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*³, has held that it is the statutory obligation of the sentencing Court to consider the applicability of the provisions of the Probation of Offenders Act and that any refusal to extend such benefit must be supported by reasons. In the facts and circumstances of the present case, the submission advanced by the learned counsel for the appellants seeking extension of the benefit under the Probation of Offenders Act merits consideration.

15. The Hon'ble Supreme Court in *Chellammal* (supra) has elaborately explained the scope, object and significance of the Probation of Offenders Act, 1958 while considering the question of extending the benefit of probation to a convict. The Hon'ble Supreme Court has observed as follows:

“26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia,

³ 2025 INSC 540



while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”

Having regard to the aforesaid legal position and considering the facts of the present case, particularly the nature of the offence, the long



lapse of more than sixteen years since the occurrence, the absence of any criminal antecedents and the settled life presently being led by them, this Court is of the considered opinion that the appellants deserve to be extended the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, instead of directing them to undergo the remaining part of the sentence. Additionally, the case of the appellants is also covered by ratio of the judgment of this Court in the case of *Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra*⁴ and *Dhani @ Dhaneswar Sahu vs. State of Orissa*⁵. In view of the aforesaid legal position and the peculiar facts and circumstances of the case, this Court is inclined to extend to the appellants the benefit contemplated under Section 4 of the Probation of Offenders Act.

16. Hence, the present Criminal Appeal in so far as the conviction is concerned is turned down. But instead of sentencing the appellants to suffer imprisonment, this Court direct the appellants to be released under Section 4 of the Probation of Offenders Act for a period of one year on

⁴ 2012 (Supp-II) OLR 469

⁵ 2007 (Supp.II) OLR 250



their executing bond of Rs.5,000/- (Rupees Five Thousand) each within one month with one surety each for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the appellants shall keep peace and good behavior and they shall remain under the supervision of the concerned Probation Officer during the aforementioned period of one year.

17. With the above observations and directions, the Criminal Appeal is partly allowed.

18. This Court acknowledges the effective and meaningful assistance rendered by Ms. Rakhi Mishra, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

Signature Not Verified

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Designation: Senior Stenographer
Reason: Authentication
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Date: 25-Aug-2026 16:05:42

High Court of Orissa, Cuttack.
Dated the 25 August, 2026/ Swarna

