



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.149 of 2003
CNR No.ODHC010022022003

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

1. Arjun Dalai
2. Keshab Dalai
3. Dhadu Dalai

.....

Appellants

-Versus-

State of Orissa

.....

Respondent

For the Appellants : Ms. Anima Kumari Dei, *Amicus Curiae*

For the Respondent : Mr. A.K. Apat, AGA

CORAM:
THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 06.08.2026 :: Date of Judgment: 25.08.2026

S.S. Mishra, J. This appeal is directed against the Judgment of Conviction and the Order of Sentence dated 07.05.2003 passed by the learned Adhoc Additional District & Sessions Judge, Fast Track Court No. II, Puri in S.T. Case No. 78/197 of 2002/1998, whereby the



appellant Keshaba was convicted for the offence punishable under Section 307 of the Indian Penal Code and the appellants Arjuna and Dhadu were convicted for the offence punishable under Section 323 of the Indian Penal Code. By the impugned order of sentence, the appellant Keshaba was sentenced to undergo rigorous imprisonment for three years for the offence under Section 307 of the Indian Penal Code, whereas the appellants Arjuna and Dhadu were sentenced to undergo rigorous imprisonment for three months for the offence under Section 323 of the Indian Penal Code.

2. The appeal is pending since 2003. When the matter was called repeatedly, none appeared for the appellant. Therefore, this Court appointed Ms. Anima Kumari Dei, as *Amicus Curiae* vide order dated 28.07.2026 to assist the Court in the matter.

3. Heard Ms. Anima Kumari Dei, learned *Amicus Curiae* for the appellants and Mr. A.K. Apat, learned Additional Government Advocate for the State.

4. That, bereft of unnecessary details, the prosecution case, in brief, is that on the morning of 27.01.1997, the appellants damaged the fence



of the informant and attempted to encroach upon a portion of his land. When the informant protested against such act, the appellants abused and rebuked him. In the meantime, the informant's brother, namely, Sudhir Palei, arrived at the spot and also objected to the conduct of the appellants. Appellant Keshaba, who was armed with a *Katuri*, assaulted Sudhir with the said weapon, aiming at his neck. Sudhir warded off the blow and, in the process, sustained bleeding injuries on his hand. Thereafter, when the informant and his brother attempted to leave the spot, the appellants assaulted the informant with *lathis*.

On the basis of the written report submitted by the victims of the assault, Brahmagiri Police Station, Puri District, registered P.S. Case No.14 of 1997, which subsequently gave rise to G.R. Case No.138 of 1997 in the Court of the learned S.D.J.M., Puri. Upon completion of investigation, the Investigating Officer, having found prima facie materials against the appellants, submitted charge-sheet. The learned S.D.J.M., Puri took cognizance of the offences and, after complying with the requisite formalities, committed the case to the Court of Sessions.



The case was thereafter transferred to the learned Additional Sessions Judge, Puri for disposal in accordance with law.

During investigation, the appellants were arrested by the police and, upon being produced before the Court, were remanded to custody. Subsequently, they were released on bail to face the trial.

5. That, during the course of trial, in order to substantiate its case, the prosecution examined six witnesses. P.W.1 is the informant, P.W.2 is his brother and the injured, P.Ws.3, 4 and 5 were independent witnesses to the occurrence, whereas P.W.6 was the Medical Officer. The Investigating Officer, however, could not be examined as he had expired by the time the trial commenced. The prosecution also proved four documents, which were marked as Exhibits 1 and 2.

That the plea of the defence was one of complete denial. However, in support of such plea, the defence neither examined any witness nor adduced any documentary evidence.

6. The learned trial Court, upon consideration of the evidence available on record and the rival submissions advanced on behalf of the



parties, proceeded to examine the question on implication of non-examination of the Investigating Officer and the alleged prejudice caused to the defence on that account. The learned trial Court also considered the evidence of P.Ws.1 and 2 with regard to the manner of occurrence and the assault attributed to the respective appellants. On such appreciation of the evidence, the learned trial Court recorded its findings, inter alia, with regard to the absence of any material contradiction in the testimony of the prosecution witnesses, the effect of non-examination of the Investigating Officer, and the nature of the assault attributed to appellant Keshaba and appellants Arjuna and Dhadu. The relevant findings of the learned trial Court, being germane to the adjudication of the present appeal, are extracted hereinbelow:

“11. A point has been raised by the defence that the I.O. of this case has not been examined and prejudice has been caused to the accd. It has been submitted that the contradiction in the testimony of the witnesses could not be confronted to the I.O. On verification of the record it, is seen that the defence has tried to bring contradiction in the testimony of prosecution witnesses. Several suggestions have been given to different witnesses to the fact that they have not stated some facts to the I.O. at the time of investigation. But there is no important contradiction. Even if the suggestion of the defence regarding contradiction with earlier statements are accepted, the same cannot falsify the testimony of witnesses. P.ws. 1 and 2 have stated the occurrence in clear and convincing manner. The contradiction attempted to be brought out



in their testimony is of no significance. The I.O. could not be examined as he is dead. Prosecution has not deliberately withheld him. Had he been examined and had the attempted contradiction established, it would have not falsified the prosecution case. So, non-examination of the I.O. has not caused prejudice in the present case to the defence.

12. As already observed above, accused Keshaba gave a blow on the neck of P.W.2. Had P.W.2 not warded up the blow the Katari would have caused hurt on his neck. So, the circumstances on which the blow was given was likely to cause death of P.W.2 and a prudent and cautious man is bound to know that the blow by Katari on the neck of a human being is likely to cause death.

It is a clear case of attempt to murder and accused, Keshaba is bound to be convicted U/s.307 I.P.C.. Accused, Arjuna and Dhadu have given blows with the help of lathis on P.W.1. Simple injuries have been inflicted on the person of P.W.1. So, these two accd. persona are guilty of voluntarily causing hurt to P.W.1 and both of them are liable to be punished U/s.323 I.P.C. They have been charged U/s.307 I.P.C. and they can safely be convicted under a lessor offence. There is no material on record to believe the allegation of offences U/ss.341/506 IPC and all the Accd. persons are bound to be acquitted from these two charges.

13. For the aforesaid reasons it is found that the prosecution has been able to prove its case in part. Accd. Bhima and Sudarsan are found not guilty of the charge U/ss.341/307/506 I.P.C and they are acquitted Accd. Keshaba is found guilty U/s.307 I.P.C. and is convicted thereunder. Accd. Arjuna and Dhadu are found guilty U/s.323 I.P.C. and are convicted thereunder."

7. From a reading of the impugned judgment, it is evident that the learned trial Court, upon appreciation of the evidence on record, held that the prosecution had been able to prove the occurrence and the role attributed to the respective accused persons. The learned trial Court specifically held that appellant Keshaba had assaulted P.W.2 with a



Katari, aiming at his neck, and that the blow, if not warded off by P.W.2, was likely to cause his death. On such finding, the learned trial Court concluded that the ingredients of the offence under Section 307 of the Indian Penal Code were established against appellant Keshaba. So far as appellants Arjuna and Dhadu are concerned, the learned trial Court held that they had assaulted P.W.1 with *lathis*, causing simple injuries to him, and accordingly found them guilty of the offence punishable under Section 323 of the Indian Penal Code. The learned trial Court further considered the defence contention regarding non-examination of the Investigating Officer and held that, since the Investigating Officer had died and had not been deliberately withheld by the prosecution, no prejudice had been caused to the defence. It was also held that the contradictions sought to be brought out in the testimony of the prosecution witnesses were not material and did not affect the credibility of P.Ws.1 and 2. The learned trial Court, however, found that there was no material on record to substantiate the allegations under Sections 341 and 506 of the Indian Penal Code and accordingly acquitted the accused persons of those charges. On such findings, appellant Keshaba was



convicted for the offence punishable under Section 307 of the Indian Penal Code, whereas appellants Arjuna and Dhadu were convicted for the offence punishable under Section 323 of the Indian Penal Code and sentenced accordingly.

8. Being aggrieved by the aforesaid Judgment of Conviction and Order of Sentence dated 07.05.2003 passed by the learned Adhoc Additional District & Sessions Judge, Fast Track Court No. II, Puri in S.T. Case No.78/197 of 2002/1998, the appellants have preferred the present appeal, challenging the legality and correctness of the findings recorded by the learned trial Court as well as the conviction and sentence imposed upon them.

9. Learned *Amicus Curiae* for the appellants, Ms. Anima Kumari Dei, assailing the impugned judgment of conviction, submitted that the prosecution evidence suffers from material contradictions and infirmities, which create a reasonable doubt regarding the occurrence as alleged and, more particularly, the requisite intention or knowledge on the part of appellant Keshaba to attract the mischief of Section 307 of the



Indian Penal Code. Drawing attention to the evidence of P.W.1, learned counsel submitted that P.W.1 has deposed that:

“The accused persons saying to kill Sudhir Palei, accused Keshab gave a blow with the help of Katuri on the left side neck of Sudhir. Sudhir raised his hand to protect the blow and received injury on his left palm and sustained bleeding injuries on his fingers.”

It is submitted that, however, the aforesaid assertion of P.W.1 regarding the accused persons allegedly saying to kill Sudhir Palei is conspicuously absent from the deposition of P.W.2, who is himself the injured witness. P.W.2 has deposed that:

“Accd Keshab gave me a blow with the help of a Katuri aiming my neck. I raised my left hand to protect the blow and received injury on my left palm.”

According to learned counsel, the omission assumes significance, as P.W.2, being the person upon whom the alleged blow was landed, would have been the most natural witness to state that appellant Keshaba had uttered anything indicating an intention to kill his brother. The material variation between the testimony of P.W.1 and P.W.2, according to learned counsel, casts doubt upon the prosecution's allegation regarding the intention with which the alleged blow was delivered.



10. *Amicus Curiae* further submitted that the medical evidence does not lend adequate corroboration to the prosecution version. Referring to the evidence of P.W.6, the Doctor, it is submitted that P.W.2 was found to have sustained an incised wound on the dorsum of his left hand, a bruise on the left elbow and dislocation of the left inter-phalangeal joint. The Doctor has opined that injury No.1 might have been caused by a sharp cutting weapon, whereas injuries Nos.2 and 3 might have been caused by a hard surface. More importantly, in cross-examination, the Doctor has stated:

“Injuries under Ext.2 were on the accessible part of the body. It is not a fact that in injury No.1 of Ext.2 can be self-inflicted. It was skin depth. Injury No.1 of Ext.2 was on the middle of the dorsum of the left hand. I did not find any injury on the palmar aspect of left hand of Sudhir Ku.Palei. Injury No.3 of ext.2 can be caused by fall.”

Learned *Amicus Curiae* submitted that the nature and location of the injury do not support the prosecution allegation in its entirety that appellant Keshaba delivered a blow with a *Katuri* on the neck of P.W.2 with the intention of causing his death. Had the blow actually landed on the neck, the nature of injury would reasonably have been more serious.



Instead, the injury was found on the dorsum of the hand, which P.W.2 claims to have raised in an attempt to ward off the blow.

Learned *Amicus Curiae* has further drawn attention to the deposition of P.W.1 regarding the injuries allegedly sustained by him at the hands of appellants Arjuna and Dhadu. P.W.1 has deposed that:

“Accused Arjuna and Dhadu gave me blows with the help of lathis. I sustained swelling injuries on my back and left leg.”

However, the Doctor, while examining P.W.1, found only simple injuries, namely, bruises on the left back, left leg and dorsum of the left foot. In cross-examination, the Doctor has deposed that:

“Injury No.1 of Ext.3 can be caused by fall. Injury No.2 of Ext.3 is possible on fall. Injury No.3 is not possible by fall, but it can be caused if a heavy substance falls on the foot.”

11. According to learned *Amicus Curiae*, the aforesaid medical opinion further demonstrates that the medical evidence does not completely rule out alternative possibilities as to the manner in which the injuries were sustained.

12. Therefore, according to her, the evidence of P.Ws.1 and 2 cannot be accepted as conclusively establishing the requisite intention or



knowledge to cause death. While P.W.1 alleges that the accused persons were saying to kill Sudhir Palei, P.W.2, despite being the injured person and the alleged target of the assault, makes no such statement. Further, the medical evidence establishes an injury on the hand and not on the neck and also indicates that one of the injuries could have been caused by a fall. The cumulative effect of these circumstances, according to learned counsel, creates a reasonable doubt as to whether appellant Keshaba had the intention or knowledge requisite for an offence under Section 307 of the Indian Penal Code.

13. It is accordingly submitted that where two views are reasonably possible and the evidence admits of a doubt regarding the intention attributed to the accused, the view favourable to the accused ought to be adopted. Learned *Amicus Curiae*, therefore, prayed that appellant Keshaba be extended the benefit of doubt and his conviction under Section 307 of the Indian Penal Code be set aside. In the alternative, it is submitted that, even accepting the occurrence of the assault, the facts and evidence on record would not justify a conviction under Section 307 of



the Indian Penal Code and the appellant Keshaba may appropriately be convicted, if at all, for a lesser offence.

14. Having considered the rival submissions, the evidence of P.Ws.1 and 2 and the medical evidence of P.W.6, this Court finds that the factum of assault upon P.W.2 by appellant Keshaba with a *Katuri* cannot be discarded altogether. P.W.2 is the injured witness and has specifically stated that appellant Keshaba gave a blow with a *Katuri* aiming at his neck and that, in an attempt to protect himself, he raised his left hand and sustained injury thereon. This part of his testimony finds corroboration from the evidence of P.W.1, who has also stated that appellant Keshaba assaulted P.W.2 with a *Katuri* and that P.W.2 sustained bleeding injuries. The medical evidence of P.W.6 further establishes that P.W.2 had sustained an incised wound on the dorsum of his left hand, which, according to the Doctor, might have been caused by a sharp cutting weapon.

However, the question that requires consideration is whether the prosecution has been able to establish beyond reasonable doubt that the



said assault was committed with the requisite intention or knowledge contemplated under Section 307 of the Indian Penal Code. On a careful scrutiny of the evidence, this Court finds that the prosecution evidence falls short of establishing such intention or knowledge beyond reasonable doubt. Though P.W.1 has stated that the accused persons were saying to kill Sudhir Palei, P.W.2, who was himself the victim of the alleged assault, has not stated anything about any such utterance. More importantly, the blow allegedly aimed at the neck did not land on the neck of P.W.2. Rather, the injury was sustained on the dorsum of his left hand, which he admittedly raised to ward off the blow. The Doctor has also described the injury as being skin-deep and has not opined that the injury was dangerous to life. The other injuries found on P.W.2 were also not shown to be sufficient, individually or collectively, to indicate an attempt to cause death.

15. It is well settled that the mere use of a dangerous or sharp-edged weapon, by itself, is not sufficient to sustain a conviction under Section 307 of the Indian Penal Code. The intention or knowledge with which the act was committed has to be gathered from the attending



circumstances, including the nature of the weapon, the part of the body targeted, the nature and extent of the injury and the manner in which the assault was carried out. In the present case, although the use of a *Katuri* and the fact that the blow was allegedly aimed at the neck may raise a suspicion regarding the intention of appellant Keshaba, the evidence on record does not establish such intention or knowledge to the standard required for sustaining a conviction under Section 307 of the Indian Penal Code.

At the same time, the evidence of P.W.2 regarding the assault upon him with a *Katuri* receives material corroboration from the testimony of P.W.1 as well as the medical evidence. Therefore, the entire prosecution case against appellant Keshaba cannot be rejected merely because the ingredients of Section 307 of the Indian Penal Code have not been established. The proved facts establish that appellant Keshaba voluntarily caused hurt to P.W.2 by means of a *Katuri*, which is a weapon capable of causing injury and falls within the ambit of a dangerous weapon for the purpose of Section 324 of the Indian Penal Code.



16. Accordingly, while extending the benefit of doubt to appellant Keshaba in respect of the specific charge under Section 307 of the Indian Penal Code, this Court finds that the evidence on record sufficiently establishes his guilt for the offence punishable under Section 324 of the Indian Penal Code. Consequently, the conviction of appellant Keshaba under Section 307 of the Indian Penal Code is altered to one under Section 324 of the Indian Penal Code.

17. So far as appellants Arjuna and Dhadu are concerned, their conviction under Section 323 of the Indian Penal Code is based upon the consistent evidence of P.W.1 regarding the assault committed upon him with *lathis*, which is substantially corroborated by the medical evidence of P.W.6 showing simple injuries on his person. No sufficient ground has been made out warranting interference with their conviction. Their conviction under Section 323 of the Indian Penal Code is, therefore, affirmed.

18. At the outset, learned counsel appearing for the appellants, on quantum of sentence submitted that the occurrence took place on 27.01.1997 and the present appeal, preferred in the year 2003, has



remained pending for more than two decades. It was contended that, having regard to the long passage of time since the occurrence, directing the appellants to undergo the substantive sentence at this distant point of time would serve no meaningful purpose. Learned counsel further submitted that the appellants have, in the interregnum, remained integrated with society and have been leading settled lives. It was also urged that there is nothing on record to indicate any criminal antecedent or involvement of the appellants in any other criminal case. In such circumstances, learned counsel submitted that the object of sentencing would be adequately met by extending to the appellants the benefit of the provisions of the Probation of Offenders Act, 1958, rather than directing them to undergo the substantive sentences imposed upon them. Accordingly, it was prayed that, keeping in view the nature of the offences for which the conviction ultimately stands, the age of the occurrence, the prolonged pendency of the appeal and the overall facts and circumstances of the case, the appellants may be extended the benefit of probation.



19. The record reveals that the occurrence relates back to 27.01.1997 and the appellants came to be convicted by the learned trial Court vide judgment dated 07.05.2003. The present appeal, preferred in the year 2003, has remained pending for more than twenty-three years. Thus, nearly three decades have elapsed since the occurrence. During this considerable period, the appellants have had the opportunity to lead their respective lives and remain integrated with society. There is also no material brought to the notice of this Court indicating that, after the occurrence, the appellants have been involved in any other criminal activity or that any other criminal case is presently pending against them. It is also relevant to note that appellant Keshaba, who was originally convicted under Section 307 of the Indian Penal Code, has been found liable only for the offence punishable under Section 324 of the Indian Penal Code, whereas the conviction of appellants Arjuna and Dhadu under Section 323 of the Indian Penal Code has been maintained. The nature of the offences for which the conviction ultimately survives, therefore, also assumes significance while considering the question of sentence. In view of the long lapse of time, the nature of the offences, the



absence of any material indicating subsequent criminal antecedents and the fact that the appellants have remained at liberty for a prolonged period, this Court is of the considered view that sending them back to custody at this distant point of time would not serve any meaningful purpose. The circumstances of the case, therefore, warrant consideration of the appellants for extending the benefit contemplated under the Probation of Offenders Act, 1958. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*¹, 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 *Amicus Curiae* for the appellants seeking extension of the benefit under the Probation of Offenders Act merits consideration.

¹ 2025 INSC 540



20. 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, 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 under Section 324 of IPC with regards to accused-appellant No.2 and Section 323 of IPC with regard to the other appellants, the long lapse of more than twenty 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 judgments of this Court in the case of ***Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra***² and ***Dhani @ Dhaneswar Sahu***

² 2012 (Supp-II) OLR 469



*vs. State of Orissa*³. 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.

21. Hence, the present Criminal Appeal is partly allowed. The conviction of appellant No.2 is modified from Section 307 of the Indian Penal Code to that of Section 324 of the Indian Penal Code, while the conviction of appellants appellant No.1 and appellant No.3 under Section 323 of the Indian Penal Code is maintained. However, instead of directing the appellants to undergo the substantive sentences, this Court extends to them the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, for a period of one year on 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

³ 2007 (Supp.II) OLR 250



under the supervision of the concerned Probation Officer during the aforementioned period of one year. However, while extending the benefit of Section 4 of the P.O. Act, keeping in view the nature of injuries sustained by P.W. 1 and 2, this court is of the view that the appellants are liable to pay compensation U/s.5 of P.O. Act to the injured. Accordingly each of the appellant shall pay ₹5,000(Rupees five thousand) compensation to P.W.1 and P.W.2 within a period of 4 weeks.

22. Accordingly, the Criminal Appeal is partly allowed.

23. This Court acknowledges the effective and meaningful assistance rendered by Ms. Anima Kumari Dei, 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