



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.179 of 2000
CNR No. ODHC010253222000

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

Asharam Sandha @ Asham Sandha and another Appellants

-Versus-

State of Orissa

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Respondent

For the Appellants : Mr. Abhas Mohanty, Advocate

For the Respondent : Mr. Raj Bhusan Dash, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

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

S.S. Mishra, J. The present appeal is directed against the judgment of conviction and order of sentence dated 14.07.2000 passed by the learned Sessions Judge, Sundargarh in Sessions Trial No.122 of 1997 arising out of G.R. Case No.82 of 1997, whereby the appellants have been convicted for the offences punishable under Sections 325/307/34 of I.P.C. and on



that count, they were sentenced to undergo R.I. for three years each for the offence under Section 307/34 of I.P.C. and R.I. for one year for the offence under Section 325/34 of I.P.C.

2. Heard Mr. Abhas Mohanty, learned counsel for the appellants and Mr. Raj Bhusan Dash, learned Additional Standing Counsel for the State.

3. The prosecution case, in brief, is that the injured, Bhima Naik (P.W.3), and his wife, Labanya Naik (P.W.2), were residing in a hut situated away from their village, where they were engaged in the business of collecting *tari* (country liquor) from date palm trees. On 02.03.1997, a quarrel took place between the injured and the accused persons over the taking of *tari*. On such account, accused Binod @ Ashram Sandha (appellant No.1) left the place without taking liquor and, while leaving, threatened the injured that they would teach him a lesson. On the following night, i.e., 03.03.1997, at about 11.00 p.m., while Bhima Naik (P.W.3) and his wife Labanya Naik (P.W.2) were asleep in their hut, both the accused persons allegedly came there, armed with lathi and knife, and assaulted the injured severely. Thereafter, they left



the spot. On receiving information about the occurrence, the son of the injured, namely, Udhaba Naik (P.W.1) came from the village and found his father in a seriously injured condition. In the early hours of the following morning, he removed his father to the District Headquarters Hospital, Sundargarh. On 05.03.1997, he presented a written report before the Officer-in-Charge, Sadar Police Station.

Upon receipt of the said report, the then Inspector-in-Charge, Sri B.M. Mishra, registered the case and directed the A.S.I., P.N. Pati (P.W.8) to take up the investigation. During investigation, the said A.S.I. issued necessary medical requisition for examination of the injured and proceeded to the spot. He seized one lathi lying near a date palm tree situated close to the hut where the injured was residing. He also seized the caste certificate of the injured from the informant. On 25.04.1997, pursuant to the direction of the Deputy Superintendent of Police, Sundargarh, the case was made over to the Inspector-in-Charge. After taking over the investigation, the I.I.C. examined the witnesses already examined by the A.S.I. and, on completion of the investigation, submitted charge-sheet against the accused persons. Hence, the case.



Upon the charges being read over and explained to the accused persons, they pleaded not guilty and claimed to be tried. In their respective statements recorded under Section 313 of the Cr.P.C., accused Ashram Sandha (appellant No.1), who stated himself to be a Peon in the R.W.S.S. Department, took the plea of alibi and stated that on the night of occurrence, he was not present in the village and was at Sundargarh. He further alleged that the police had unnecessarily arrested him in a false case. The other accused, Ramesh Sahu, stated that he had been falsely implicated in the case.

4. On behalf of the prosecution, as many as eight witnesses have been examined, whereas the defence examined one witness. P.W.3 is the injured witness; P.Ws.1 and 2 are his son and wife, respectively. P.W.4 was an independent witness who had allegedly witnessed the occurrence, but he was declared hostile. P.W.5 was the Medical Officer who examined the injured. P.W.6 was the Gramrakhi, while P.W.7 was the Havildar in whose presence the lathi was seized. P.W.8 was the A.S.I. who conducted part of the investigation. The sole defence witness,



Bhikari Kisan, has deposed only with regard to the character of accused Kunda @ Asharam Sandha alias Binod Raxa.

5. The learned trial Court, upon appreciation of the evidence on record and finding the defence pleas to be inconsistent with the medical evidence and unsubstantiated, held that the prosecution had established the complicity of both the accused persons in the occurrence and, accordingly, convicted them under Sections 325 and 307 read with Section 34 of the I.P.C. For convenience of ready reference, relevant part of the said judgment is reproduced hereunder:-

“13. It be further noted here that during trial the accused persons took several pleas that the injured had sustained injuries after a fall from a date-palm tree situated near his house but during their examinations under section 313 Cr.p.C. no such plea was taken by any of the accused persons. On the other hand, the doctor has categorically stated during cross-examination that the injuries found on the body of the injured cannot be possible by a fall from a tree. In these premises, the plea of the accused persons as taken during trial appears to be quite false. The said plea also not being consistent with their stand taken u/s. 313 Cr.P.C. that itself forms an additional link in the chain of circumstance to bring home the charges against the accused persons as held by the Apex Court in the case of Chandra Sekhar Rao etc. vrs. Ponna Satyanarayan etc. reported in 2000(II) Crime 328 Supreme Court. In the said case when the accused instead of explaining the various



circumstances against him had simply denied the same in his examination u/s.313 Cr.P.C. it was held that the same would form an additional link in the chain of circumstance against the accused. Furthermore though in his statement accused Ashram Sandha took a plea of alibi he is found to have not discharged his onus of proving the same. Even though one defence witness was examined in support of the said plea the said witness instead of telling about the plea of alibi has simply deposed that accused Ashram Sandha was a person of good character, which is of no consequence. Therefore, in any view of the matter the complicity of the accused persons with the crime cannot be ruled out.

14. Thus, while concluding my findings on charges u/s. 325/307 I.P.C., I hold that the prosecution has been able to establish the above charges against both the accused persons. Therefore, in the result, I hold each of them guilty under sections 325/307 read with S.34 I.P.C. and convict them thereunder.”

6. Similarly, the learned trial Court, upon appreciation of the evidence, found that the essential ingredients of the offence under Section 3(1)(x) of the SC & ST (PoA) Act, particularly the element of intentional humiliation on the ground of caste, had not been established by the prosecution and, accordingly, acquitted the accused persons of the said charge. Relevant part of the said judgment is reproduced thus:-

“15. As regards the charge u/s.3(1)(x) of the S.C.& S.T. (prevention of Attrocities)Act. It is the well settled law that to establish a charge under the aforesaid section the prosecution should come up with sufficient materials to establish that the offence under the I.P.C. was committed



intentionally by taking advantage of the caste of a person belonging to Scheduled caste or scheduled tribe and it is also to be shown that the accused persons would not have committed the crime had the victim not being a member of scheduled caste or scheduled tribe. To establish the case, a caste certificate has no doubt been produced but when the incident is found to have taken place in the dead of night at a solitary place away from the main basti area, it cannot be said that the said offence was committed with a view to humiliate the injured. So much so neither the injured nor his wife (P.W.2) have uttered a single word that the offence under the I.P.C. was committed with a view to humiliate the injured and therefore, I hold that the prosecution has not been able to establish the said charge under section 3(1)(x) of the S.C.& S.T. (prevention of Atrocities) Act beyond that and accordingly both the accused persons are acquitted from the said charge u/s.235 (1) Cr.P.C.”

Since the aforementioned order of acquittal has not been challenged by the State, this Court, at this belated stage, is not inclined to examine the merits of the said findings or to re-appreciate the evidences in that regard. Accordingly, the present appeal is confined to the challenge to the conviction of the appellants for the offences punishable under Sections 325/307/34 of the I.P.C.

7. P.W.3 is the injured in the present case. He did not support the prosecution case and was, accordingly, declared hostile. However, he has stated that he was assaulted on the night of the occurrence and, after



sustaining an injury on his head, was removed to the hospital. He has stated that he could not identify the assailants, but his wife had witnessed the occurrence.

P.W.2, the wife of the injured (P.W.3), has deposed that appellant No.2, Ramesh Sahu, assaulted her husband with a knife, while appellant No.1, Ashram Sandha, assaulted him with a lathi. She thereafter went to the village to call the villagers and, on her return, found that the accused persons had already left the place of occurrence. Finding her husband seriously injured, she took him to Sundargarh Hospital for treatment. In her cross-examination, however, she admitted that she had not stated before the police that appellant No.2 had assaulted her husband with a knife.

P.W.5, the doctor who examined the injured (P.W.3), found the following injuries:-

- “1) Lacerated wound of size. 2" x ½" x ½" on the left side forehead just above the left eyebrow.
- 2) Lacerated wound of size 1½ x ½ x ½" on the left side forehead just above the injury No.1.
- 3)Lacerated wound of size 2"x 1/3" x ½" on the left part chest anterior axillary fold.
- 4) Lacerated wound with contusion of size 3" x ½" x ½" on the left back part of the elbow joint.



- 5) Simple fracture of both radius and ulna of left side at one third point.
- 6) Simple fracture of ribs on left side 7th, 8th and 9th.
- 7) Abrasion with contusion of size 4" x 1/3" on the back part of the chest adjacent to right scapula.
- 8) Abrasion with contusion of size 3 x 1/3" below the left scapula.
- 9) Abrasion with contusion 3"x 1/3" below the left scapula which corresponds to the fracture of ribs."

The Investigating Officer (P.W.8) could recover only the lathi allegedly used in the commission of the offence. However, the knife allegedly used by appellant No.2 to assault P.W.1 could not be recovered. In his cross-examination, the I.O., at paragraph-9, has stated as under:-

"9. It is a fact that P.W.1 Udhaba Naik did not state before me that on 3.3.97 night the accused persons quarrelled with the injured before assaulting him. It is also a fact that he did not state before me that the injured was assaulted with by means of bhujali (he stated about the use of a knife). It is a fact that witness Labanya Naik did not state to me specifically that the accused Ramesh assaulted with a knife(she stated that accused Ramesh was holding a knife). It is also a fact that the witness has not stated before me that she had rushed to the village to call the villagers and by the time she reached the accused persons had left the scene of occurrence. (She stated that on hearing the hullah Silas Barla, the villagers had reached near her house). It is a fact that the witness Labanya Naik has not taken the name of accused Ashram Sandh in her statement before me (She simply mentioned that one unknown boy was present with accused Ramesh)".



8. From the evidence of all these witnesses and the medical evidence, one thing could be safely inferred that the incident although had happened and P.W.3 has sustained injuries in the incident but what were the weapon of offence used in the commission of crime did not come to the fore. Only a lathi was recovered, whereas the allegation regarding use of a knife by appellant No.2 is not worthy of reliance, particularly in view of the omission of P.W.2 to state such fact before the police under Section 161 Cr.P.C. None of the witnesses have spoken about the use of any bhujali. In the absence of cogent evidence regarding the weapon and manner of assault, the requisite intention or knowledge necessary to constitute an offence under Section 307 I.P.C. cannot be said to have been established beyond reasonable doubt. Accordingly, the appellants are entitled to the benefit of doubt in respect of the charge under Section 307 I.P.C.

However, the medical evidence establishes that P.W.3 sustained nine injuries, out of which injury Nos.5 and 6, were grievous in nature. The conviction of the appellants under Section 325 read with Section 34 I.P.C. is, therefore, sustainable. Accordingly, while acquitting the



appellants of the offence under Section 307 I.P.C., their conviction under Section 325 read with Section 34 I.P.C. is upheld.

9. At the outset, Mr. Mohanty, learned counsel for the appellants submitted that he would confine his challenge to the quantum of sentence. He further submitted that the present appeal, preferred in the year 2000, has remained pending for more than twenty-five years. It was argued that the occurrence dates back to the year 1997, when the appellant No.1 was about 29 years of age and the appellant No.2 was 24 years of age. They are now in their mid-fifties and it is submitted that, with the passage of time, they have settled in life and have been leading a stable and law-abiding life. According to the learned counsel, directing the appellants to undergo the remaining part of the sentence after such an inordinate lapse of time would serve no meaningful purpose.

Learned counsel further submitted that the appellants have no criminal antecedents and that no other criminal case is stated to be pending against them. It was urged that the appellants have, over the years, remained integrated with society and is leading a settled family life. 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.

10. It is relevant to note that the prayer made by the appellants before the learned trial Court for extending the benefit of the Probation of Offenders Act, 1958, read with Section 360 of the Cr.P.C., was declined, having regard to the brutality of the offence and the nature of the injuries sustained by P.W.3. However, while considering the prayer made before this Court, certain subsequent and mitigating circumstances cannot be lost sight of. The occurrence dates back to the year 1997, when the appellants were in their late twenties. They 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 2000. The appellants are now in their mid-fifties. Thus, 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*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 counsel for the appellants seeking extension of the benefit under the Probation of Offenders Act merits consideration.

11. The Hon'ble Supreme Court in *Chellammal* (supra) has elaborately explained the scope, object and significance of the Probation

¹ 2025 INSC 540



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 325 of the Indian Penal Code, the long lapse of more than twenty-five years since the occurrence, the absence of any criminal antecedent 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 are also covered by ratio of the judgment of this Court in the case of ***Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra***² and ***Dhani @ Dhaneswar Sahu vs. State of Orissa***³. In view of the aforesaid legal position and the peculiar facts and circumstances of the case, this Court

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



is inclined to extend to the appellants the benefit contemplated under Section 4 of the Probation of Offenders Act.

12. 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 directs the appellants to be released under Section 4 of the Probation of Offenders Act 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 under the supervision of the concerned Probation Officer during the aforementioned period of one year.

13. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge