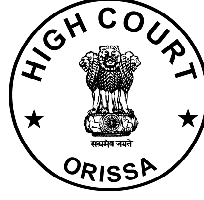

THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.44 of 2010
AND
CRLA No.47 of 2010

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

CRLA No.44 of 2010

Panchanan Sahoo & others ……. ***Appellants***

-Versus-

State of Odisha ……. ***Respondent***

For the Appellants : Mr. Pritam Kumar Mallick, Advocate

For the Respondent : Mr. A.K. Apat,
Additional Government Advocate

AND

CRLA No.47 of 2010

Narendranath Das & others ……. ***Appellants***

-Versus-

State of Odisha ……. ***Respondent***

For the Appellants : Mr. M. Routray, Advocate

For the Respondent : Mr. A.K. Apat,
Additional Government Advocate

CORAM:
THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.03.2026 :: Date of Judgment: 26.03.2026

S.S. Mishra, J. Both the aforementioned Criminal Appeals arise out of the common judgment of conviction and order of sentence dated 11.01.2010 passed by the learned Addl. Sessions Judge, Kendrapara in S.T. Case No.26/2005, whereby the accused persons were acquitted of the charges under Section 148 IPC and Section 3 of the SC & ST (P.A.) Act, but found guilty under Sections 147, 323 and 337 read with Section 149 IPC. The learned trial Court sentenced each of the convicted persons to undergo rigorous imprisonment for six months on each count, with the sentences directed to run concurrently, along with the benefit of set-off under Section 428 Cr.P.C. Since the impugned judgment is common, both appeals were heard together and are disposed of by this common judgment.

2. In CRLA No.44 of 2010, as per the report dated 16.03.2026 received from the IIC, Kudanagari Police Station after verification that appellant nos.1, 2 and 11 have already expired. Hence, the present appeal qua appellant nos.1, 2 and 11 stands abated in absence of any application under Section 394 of the Cr. P.C. either by the legal heirs of appellant nos.1, 2 and 11 or by their next friend. So far as appellant nos.3 to 10 are concerned, they are alive and maintaining their livelihood by doing business. Therefore, the present appeal survives qua appellant nos.3 to 10.

Similarly, in CRLA No.47 of 2010, appellant nos.2, and 5 have already expired. Hence, the present appeal qua appellant nos.2 and 5 stands abated in absence of any application under Section 394 of the Cr. P.C. either by the legal heirs of appellant nos.2 and 5 or by their next friend. As per the report dated 16.03.2026, the whereabouts of appellant No.7- Buna Das could not be ascertained. So far as appellant nos.1, 3, 4 and 6, 8 and 9 are concerned, they are alive and maintaining their livelihood by doing business. Therefore, the present appeal survives qua

appellant nos.1, 3, 4 and 6, 8 and 9. The said report has already been taken on record.

3. Heard Mr. Pritam Kumar Mallick and Mr. M. Routray, learned counsels appearing for the appellants and Mr. A.K. Apat, learned Additional Government Advocate for the State.

4. The prosecution of the accused persons arises out of an occurrence dated 10.11.1999 at about 9:30 A.M. at village Kalabuda under Patkura Police Station in the district of Kendrapara. The informant, Padmacharan Das, while proceeding to his office in the Irrigation Department, was allegedly intercepted by the accused persons, who had assembled in a group and were armed with weapons like crowbars and bhujalis. It is alleged that they abused him in filthy language, referring to his caste in public view, and attempted to assault him. On hearing his alarm, his wife, nephew, brother and other family members rushed to the spot, whereupon the accused persons allegedly pelted stones and brickbats towards the house of the informant and his family members in a rash and negligent manner, resulting in injuries to some of them, particularly

Pravakar Mallik and Tapan Mallik. The prosecution further alleged that taking advantage of the situation, especially in the aftermath of the super cyclone when household articles were lying outside, the accused persons committed acts of mischief and removed certain household articles and wooden logs. On the same day in the evening, the informant lodged the written report at Patkura Police Station, whereupon the case was registered and investigation was taken up.

5. Upon completion of investigation, charge-sheet was submitted against 20 accused persons for offences under Sections 147, 148, 336, 337, 149 of the Indian Penal Code and Section 3 of the SC & ST (Prevention of Atrocities) Act.

6. In order to bring home the charges, the prosecution examined eleven witnesses. P.W.1 is the informant himself, who narrated the manner of the occurrence and the alleged assault and stone pelting. P.W.2 is the wife of the informant and an eye-witness to the occurrence. P.Ws.3 to 5 were examined as witnesses to the occurrence and the alleged injuries sustained by the victims. P.W.7 was the Medical Officer,

who examined the injured persons and proved the injury report showing simple injuries caused by hard and blunt objects. P.Ws.6 and 8 were the Investigating Officers. P.Ws.9 and 10 were seizure witnesses, and P.W.11 is the brother of the informant. The prosecution also relied upon documentary evidence including the F.I.R., seizure list, injury reports and the spot map in support of its case.

7. The learned trial Court, after analyzing the evidence held that the prosecution had successfully established that the accused persons had formed an unlawful assembly and acted in furtherance of their common object to use criminal force against the informant and his family members, relying on the consistent testimonies of the injured witnesses despite minor discrepancies. However, with regard to the charge under Section 148 IPC, the court found significant deficiencies as no weapons like bhujalis or crowbars were seized and there was no cogent evidence attributing specific weapons to individual accused, and thus acquitted them of the said charge. The charge under Section 3 of the SC & ST (PA) Act failed due to non-compliance with mandatory statutory

requirements under Rule 7 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, particularly as the investigation was not conducted by a competent officer of the rank of DSP. Nevertheless, the court found sufficient evidence to prove that the accused persons had indulged in rioting and caused simple injuries by pelting stones and brickbats, which was corroborated by medical evidence indicating injuries caused by hard and blunt objects leading the court to hold the accused guilty under Sections 147, 323 and 337 read with Section 149 IPC. The relevant portion of the aforesaid judgment is extracted herein below for ready reference:-

> *"14. P.W.7 has stated that on 10.11.99 on police requisition he examined Pravakar Mallik (P.W.4) on police requisition and found one abrasion on his right chest and another swelling injury on his left side of back. Both the injuries are simple in nature and might have been caused by hard and blunt weapon. He does not speak if he examined other two other injured persons. On the other hand, P.W.8 has stated that during the course of investigation, he issued injury requisition for medical examination of Tapan Mallik and Pravakar Mallik vide Exts. 3/2 and 4/2, respectively. As per Ext.3/2 Tapan Mallik was sent for medical examination, who has identified*

his signature in the injury report, but due to non-examination of the Medical Officer, the injury report was not proved. The Medical Officer has proved the injury report of Pravakar Mallik. In view of the evidence on record, the injured Tapan and Pravakar were sent for their medical examination, evidently Medical Officer found injuries on the person of Pravakar and also of Tapan, but the injury report of the latter has not been proved, but is supported by Tapan himself. P.W.1 has explained that he did not receive injuries due to assault by crowbar. Thus, the expert evidence fully corroborates the material evidence. From the evidence on record, it can safely be concluded that on the date of occurrence the accused persons came in group, assaulted P.W.1 and threw brick bats towards their house causing injuries on the person of P.W.3 and P.W.4. Existence of prior enmity clearly establishes that the accused persons with prior consult to use criminal force against the informant and his family members came to the spot and in furtherance of their such object they used criminal force against P.Ws. 1, 3 and 4. They also pelted brick bats at their houses in a negligent manner and caused injuries to the persons of P.Ws. 3 and 4. Though there is evidence that they were armed with deadly weapons like crowbars and bhujalis no weapon of offence has been seized from them. Whatsoever the I.O. has seized is the copy of caste certificate of the informant is further evidence of the I.O., P.Ws. 9 and 10. There is also discrepant evidence is to who amongst them

was holding which weapon. They caused simple injuries on the person of P.Ws. 3 and 4 by negligent act punishable U/ss. 337 IPC, and such offence U/s. 336 IPC mingles with it. Though there is no charge U/s. 323 IPC this being a lesser grievous offence than other charges and there having evidence to that effect, charge U/s. 323 IPC is sustainable. So the overt act of the accused persons amount an offence of rioting punishable U/s. 147/323/337 IPC and each of them is liable for the offence U/s. 149 IPC.

15. Thus having considered the facts and circumstances of the case and the evidence as discussed above, I find the prosecution has failed to establish a case U/s. 148 IPC and 3 of the SC & ST (P.A.) Act but successfully in establishing a case U/s. 147, 323/337/149 IPC against the accused persons beyond all reasonable doubts. Hence, I hold the accused persons not guilty of the offence U/ss. 148 IPC and U/s. 3 of the SC & ST (P.A) Act, and acquit them thereof U/s. 235(1) Cr.P.C. and found them guilty U/ss. 147, 323/337/149 IPC and convicted them thereunder…….”

8. Upon careful reappraisal of the entire evidence on record, this Court finds that the existence of prior enmity between the parties is not only admitted but also well-established through the cross-examination of prosecution witnesses, which reveals long-standing land disputes and

previous litigations between the parties. Such background necessitates a cautious and careful approach in evaluating the evidence, as prior animosity is a double-edged weapon capable of both providing motive for the offence and for false implication. The prosecution case primarily rests upon the testimonies of related and interested witnesses, namely the informant and his family members. However, their presence at the scene of occurrence cannot be doubted as natural, and their evidence cannot be discarded solely on the ground of relationship, particularly when the occurrence is stated to have taken place in front of their dwelling house. At the same time, this Court notes that no independent witnesses, though admittedly available, have been examined by the prosecution, and no satisfactory explanation has been offered for such omission, which casts a shadow on the completeness of the prosecution case.

9. The medical evidence on record establishes that the injuries sustained by the victims were simple in nature and caused by hard and blunt objects, which lends partial corroboration to the prosecution version regarding stone pelting; however, it does not support the

allegation of assault by deadly weapons like bhujalis and crowbars. Further, there are material discrepancies and inconsistencies in the testimonies of witnesses regarding the specific role played by each accused person and the nature of weapons allegedly used. The failure of the investigating agency to seize any weapon of offence further weakens the prosecution case insofar as the charge under Section 148 IPC is concerned. Additionally, this Court concurs with the finding of the learned trial court that the charge under the SC & ST (Prevention of Atrocities) Act is not sustainable due to non-compliance with mandatory statutory requirements, particularly the failure to conduct investigation by a competent officer of the prescribed rank, which goes to the root of the matter.

10. Nevertheless, despite the aforesaid infirmities and exaggerations, the core substratum of the prosecution case remains intact to the extent that the accused persons, being members of an unlawful assembly, had engaged in stone pelting and caused simple injuries to some of the victims. The evidence, when read as a whole, inspires confidence to that

limited extent and establishes the commission of offences punishable under Sections 147, 323 and 337 read with Section 149 IPC. Accordingly, this Court finds no perversity or illegality in the finding of guilt recorded by the trial court under the said provisions, warranting interference in the appeal.

11. The learned Trial Court while considering the quantum of sentence to be imposed on the accused persons, although recorded that the age group of the accused persons are ranging from 25 years to 73 years and the offences are minor in nature, but refused to grant benefit of the Probation of Offenders Act. Recently the Hon'ble Supreme Court in ***Chellammal and Another v. State represented by the Inspector of Police***[1] 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 underscored that the legislative intent behind the enactment of the Probation of Offenders Act is essentially reformative in nature,

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[1] 2025 INSC 540

aiming to provide an opportunity to first-time or less serious offenders to reform themselves rather than subjecting them to incarceration. It has been emphasized that the provisions of the Act are intended to prevent the deleterious effects of imprisonment on individuals who can otherwise be rehabilitated as responsible members of society. The Court has further highlighted that Section 4 of the Probation of Offenders Act confers a wide discretion upon the courts to release an offender on probation in appropriate cases and that the said provision has a broader and more expansive ambit than Section 360 of the Code of Criminal Procedure, 1973.

While discussing the interplay between the aforesaid provisions, the Hon'ble Supreme Court has also clarified that courts are duty-bound to consider the applicability of the Probation of Offenders Act in cases where the circumstances justify such consideration, and if the court decides not to extend the benefit of probation, it must record special reasons for such refusal. The relevant observations of the Hon'ble Supreme Court are reproduced hereunder:

"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."*

Therefore, on the question of sentence, this Court is of the considered view that the ends of justice would be adequately met by adopting a reformative rather than punitive approach. It is significant to note that the incident in question occurred in the year 1999, and more than two and a half decades have elapsed since then. During this prolonged period, the appellants have undergone the rigors of criminal litigation. Furthermore, the injuries caused in the occurrence have been found to be simple in nature, and the incident appears to have arisen out of a village dispute rooted in prior enmity rather than any premeditated or heinous criminal design. The age of the appellants, some of whom are now advanced in years, is also a relevant mitigating factor. In such circumstances, sentencing the appellants to undergo imprisonment at this distant point in time would not serve any meaningful purpose.

12. Having regard to the totality of circumstances, this Court is of the considered opinion that this is a fit case for extending the benefit of the Probation of Offenders Act, 1958, so as to afford the appellants an opportunity for reformation and rehabilitation. The said view also finds support from the decisions of this Court in ***Pathani Parida & another* vs. *Abhaya Kumar Jagdevmohapatra***[2] and ***Dhani @ Dhaneswar Sahu vs. State of Orissa***[3] wherein the benefit of probation was extended to the convicts. 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.

13. Accordingly, while affirming the conviction of the surviving appellants under Sections 147, 323 and 337 read with Section 149 IPC, the sentence of imprisonment imposed by the learned trial court is hereby set aside. In lieu thereof, the surviving appellants are directed to be released on probation of good conduct under Section 4 of the

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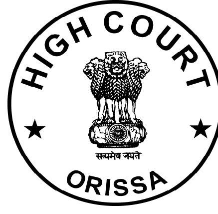
[2] *2012 (Supp-II) OLR 469*
[3] *2007 (Supp.II) OLR 250*



Probation of Offenders Act, 1958, for a period of six months 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 six months.

14. Accordingly, both the Criminal Appeals stand partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 26th Day of March, 2026/Subhasis Mohanty