



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.371 of 2006
CNR-ODHC010010402006

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

Santosh Kumar Rout

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Pradeep Kumar Rout, *Amicus Curiae*

For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 21.07.2026 : Date of Judgment: 30.07.2026

S.S. Mishra, J. The present appeal has been preferred by the appellant assailing the judgment of conviction and the order of sentence passed by the learned Ad hoc Additional Sessions Judge (F.T.C. No. IV), Bhubaneswar in S.T. Case No. 592/81 of 2004, arising out of G.R. Case



No. 1596 of 2003, corresponding to Baliana P.S. Case No. 68 of 2003, whereby the appellant was convicted for the offence punishable under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹500/-, in default, to undergo further rigorous imprisonment for one month.

2. The appeal is pending since 2006. When the matter was called repeatedly, none appeared for the appellant. Therefore, this Court appointed Mr. Pradeep Kumar Rout, as *Amicus Curiae* vide order dated 24.07.2025 to assist the Court in the matter.

3. Heard Mr. Pradeep Kumar Rout, learned *Amicus Curiae* for the appellant and Mr. Jateswar Nayak, learned Additional Government Advocate for the State.

4. The prosecution case, as revealed from the First Information Report (Ext.1), in brief, is that the informant, Laxman Pradhan (P.W.1), is the son of the injured, Jugal Pradhan (P.W.7). On 10.05.2003 at about 8:00 A.M., while P.W.7 was sitting in his tea stall situated by the side of the Balakati–Balipatna Main Road near the Telephone Office, the



accused allegedly came to the shop, called P.W.7 a short distance away, and embraced him. It is alleged that the accused thereafter took out a knife from his pocket and stabbed P.W.7 on his left chest and abdomen. When P.W.7 attempted to resist and catch hold of the knife, he also sustained an injury on his right index finger, resulting in profuse bleeding. Hearing his cries, the informant (P.W.1), along with Krupasindhu Mohanty (P.W.3), Sukanta Rout (P.W.2), and another witness, Pradipta Muduli (not examined), rushed to the spot, whereupon the accused fled away carrying the knife. The injured was immediately shifted to Balakati Hospital and, on the advice of the attending doctor, was referred first to Capital Hospital, Bhubaneswar, and thereafter to S.C.B. Medical College and Hospital, Cuttack, for better treatment.

On the basis of the written report lodged by P.W.1 at Balakati Outpost, A.S.I. Rabindranath Swain (P.W.9) made the necessary Station Diary Entry and, finding the allegations to disclose a cognizable offence under Section 307 of the Indian Penal Code, forwarded the F.I.R. to the Officer-in-Charge, Baliana Police Station, for registration of a formal



case. Accordingly, Baliana P.S. Case No.68 of 2003 was registered under Section 307 IPC, and P.W.9 was entrusted with the investigation.

During the course of investigation, P.W.9 visited the place of occurrence and prepared the spot map (Ext.7). He seized the bicycle allegedly left behind by the accused at the spot under seizure list (Ext.5/1). Subsequently, on 13.05.2003, he seized the blood-stained lungi of the injured, produced by P.W.1, under seizure list (Ext.8). On 12.12.2003, he seized the bed-head ticket of the injured from S.C.B. Medical College and Hospital under seizure list (Ext.9), left the original in the custody of the hospital staff under a zimanama (Ext.10), and retained a photocopy thereof (Ext.6). Despite making efforts, he could not apprehend the accused as he had absconded. On 01.01.2004, upon receiving information that the accused had surrendered before the Court, P.W.9 obtained police remand of the accused. While in police custody, the accused is stated to have made a disclosure statement (Ext.3) regarding the concealment of the weapon of offence in a *kia* bush. Pursuant to the said disclosure, the accused led the police and witnesses to the place of concealment, wherefrom a knife was recovered and seized



under seizure list (Ext.4). The accused was thereafter medically examined and produced before the Court upon expiry of the police remand.

Subsequently, upon transfer of P.W.9, the investigation was taken over by the Officer-in-Charge of Baliana Police Station. On completion of the investigation, charge-sheet was submitted against the accused for the offence punishable under Section 307 of the Indian Penal Code, whereupon the case was committed to the Court of Session and the accused stood trial.

5. The prosecution, in order to establish the charge against the appellant, examined nine witnesses. Of them, P.W.1 is the informant and the son of the injured, Jugal Pradhan (P.W.7); P.Ws.2 and 3 were the eyewitnesses to the occurrence; P.W.4 was the doctor who examined and treated the injured; P.Ws.5 and 6 were the witnesses to the seizure of the weapon of offence (knife); P.W.8 was another doctor; and P.W.9 was the Investigating Officer. The prosecution also relied upon documentary evidence, which was marked as Exts.1 to 11.



In defence, two witnesses were examined. The plea of the appellant was one of complete denial of the prosecution allegations.

6. Upon a careful appreciation of the oral and documentary evidence adduced by the prosecution, the learned trial Court came to the conclusion that the prosecution had successfully established that the injured, P.W.7, had sustained injuries on his chest and right index finger and that the said injuries were caused by the appellant by means of a knife. However, the learned trial Court held that the prosecution had failed to prove the essential ingredients of the offence punishable under Section 307 of the Indian Penal Code, particularly the intention or knowledge on the part of the appellant to cause the death of the injured. Taking note of the medical evidence that the stab injury was simple in nature and the surrounding circumstances of the occurrence, the learned trial Court held that the offence under Section 307 IPC was not made out beyond reasonable doubt. Nevertheless, it found that the prosecution had proved beyond reasonable doubt that the appellant had voluntarily caused hurt to P.W.7 by means of a dangerous weapon, thereby attracting the offence punishable under Section 324 IPC. Accordingly,



while acquitting the appellant of the charge under Section 307 IPC, the learned trial Court convicted him under Section 324 IPC and recorded the following findings:

“11. In the light of above evidence it is clearly established that P.W.7 sustained injury on his person i.e. on chest and right index finger. It is also established that the accused caused such injury by means of knife.

It is not necessary that in a case under Section 307 I.P.C. the injury actually caused to victim of assault should be sufficient under ordinary circumstances to cause his death. But the Court has to see whether the act, irrespective of its result, was done with the intention or knowledge to cause the death of victim. An attempt in order need to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof the circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application under Section 307 I.P.C.. The determinative question is intention or knowledge, and not nature of the injury. In the instant case no such attempt has been made by the prosecution to establish through Doctor whether the injury was sufficient to cause death under ordinary circumstances. Apart from this the P.W.8 has stated in his evidence that the injury No.1 i.e. stab wound is simple in nature. It is also in the evidence that after the first stroke on the chest when the accused was attempting to make further stroke the P.W.7 checked the same as a result of which the same stroke hit on his right hand and thereafter the accused fled away from the spot. Under the above facts and circumstances, it cannot be said beyond all reasonable doubt that the accused intended or has knowledge to cause death of the victim. However, prosecution has well proved that the accused assaulted the injured P.W.7 by means of a dangerous weapon like knife for which the accused is liable



for the offence under Section 324 I.P.C. In the above facts and circumstances, the prosecution failed to prove the charge under Section 307 I.P.C. against the accused beyond all reasonable doubt but at the same time the prosecution well proved the charge under Section 324 I.P.C.

12. In the result the accused is found not guilty under Section 307 of the Indian Penal Code and acquitted from the said charge under Section 235 (1) Cr.P.C. However, the accused is found guilty under Section 324 I.P.C. and convicted thereunder."

7. Accordingly, while acquitting the appellant of the charge under Section 307 of the Indian Penal Code, the learned trial Court found him guilty of the offence punishable under Section 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹500/-, in default, to undergo further rigorous imprisonment for one month. Aggrieved by the said Judgment of conviction and Order of sentence passed in S.T. Case No. 592/81 of 2004 arising out of G.R. Case No. 1596 of 2003, corresponding to Baliana P.S. Case No. 68 of 2003, the present appeal has been preferred by the appellant.

8. At the outset, Mr. Rout, learned Amicus Curiae appearing for the appellant, fairly submitted that he would confine his arguments to the question of sentence. Learned counsel submitted that the occurrence had



taken place in the year 2003 and the present appeal, preferred in the year 2006, has remained pending for nearly two decades. It was contended that the appellant, who was about 28 years of age at the time of the occurrence, is now about 48 years old. It was further submitted that the appellant has already undergone about 42 days in custody.

Learned counsel further submitted that the appellant has since settled in life and that directing him to undergo the remaining part of the sentence after such a prolonged lapse of time would serve no meaningful purpose. It was also submitted that the appellant has no criminal antecedents and that no other criminal case is stated to be pending against him. According to the learned counsel, the appellant has remained integrated with society over the years and is leading a peaceful life. In such circumstances, his 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 appellant and the overall facts and circumstances of the case, this Court



may extend to him the benefit of the provisions of the Probation of Offenders Act, 1958.

9. Upon a careful appraisal of the evidence on record and the attendant facts and circumstances of the case, this Court finds no infirmity in the findings recorded by the learned trial Court insofar as the conviction of the appellant under Section 324 of the Indian Penal Code is concerned. The evidence of the injured, P.W.7, regarding the manner of assault is clear, cogent and trustworthy and finds due corroboration from the testimonies of the eyewitnesses, P.Ws.1 to 3, as well as the medical evidence adduced by P.Ws.4 and 8. The recovery of the weapon of offence pursuant to the disclosure statement of the appellant further lends assurance to the prosecution case. Nothing substantial has been brought out in the cross-examination of the prosecution witnesses to discredit their testimony or to create any reasonable doubt regarding the occurrence. The learned trial Court has rightly held that the prosecution failed to establish the ingredients of the offence under Section 307 IPC but has successfully proved beyond reasonable doubt that the appellant voluntarily caused hurt to P.W.7 by means of a dangerous weapon,



thereby attracting the offence punishable under Section 324 IPC. Consequently, the conviction of the appellant under Section 324 of the Indian Penal Code warrants no interference.

10. The record reveals that the occurrence relates back to the year 2003. The appellant was about 28 years of age at the time of the incident. He was 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 2006. As of now, the appellant is about 48 years of age. Nearly two decades have elapsed since the occurrence, and considerable time has passed thereafter. It is not in dispute that the appellant has no criminal antecedents, no other criminal case is stated to be pending against him, and that he has undergone about 42 days in custody. During the interregnum, he has remained integrated with society and is stated to be leading a settled and peaceful life. In such circumstances, this Court is of the considered view that this is a fit case for extending to the appellant the benefit contemplated under the provisions of the Probation of Offenders Act, 1958. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the*

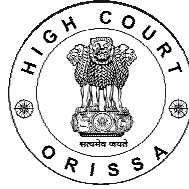


*Inspector of Police*¹, has held that it is the statutory obligation of the sentencing Court to consider the applicability of the provisions of the Probation of Offenders Act and that any refusal to extend such benefit must be supported by reasons. In the facts and circumstances of the present case, the submission advanced by the learned counsel for the appellant 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 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,

¹ 2025 INSC 540



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 the Indian Penal Code, the long lapse of more than twenty years since the occurrence, the custody undergone, the absence of any criminal antecedent and the settled life presently being led by the



appellant, this Court is of the considered opinion that the appellant deserves to be extended the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, instead of directing him to undergo the remaining part of the sentence. Additionally, the case of the appellant is also covered by the ratio of the judgments of this Court in the cases 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 is inclined to extend to the appellant the benefit contemplated under Section 4 of the Probation of Offenders Act.

12. Hence, the present Criminal Appeal, so far as the conviction is concerned, stands unaltered. But instead of sentencing the appellant to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a period of one year on his executing a bond of Rs.5,000/- (Rupees Five Thousand) within one month with one surety for the like amount to appear and receive the

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



sentence when called upon during such period and, in the meantime, the appellant shall keep peace and good behaviour and shall remain under the supervision of the concerned Probation Officer during the aforementioned period of one year. The appellant is also liable to pay a compensation of Rs.10,000/- (Rupees ten thousand) to the injured U/s.5 of the P.O. Act within a period of 2 months from today.

13. Accordingly, the Criminal Appeal is partly allowed.

14. This Court acknowledges the effective and meaningful assistance rendered by Mr. Pradeep Kumar Rout, 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