



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 27 of 2002

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

1. ***Mangul Chatar***
2. ***Sujan Chatar***
3. ***Subnath Chatar*** ***Appellants***

-Versus-

State of Orissa ***Respondent***

For the Appellants : Ms. Ananya Mishra, *Amicus Curiae*

For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 05.05.2026 : Date of Judgment: 22.05.2026

S.S. Mishra, J. The present appeal has been preferred by the appellants assailing the judgment of conviction and order of sentence dated 29.01.2002 passed by the learned Additional Sessions Judge, Bolangir in Sessions Case No. 86/15(B) of 2000 (Arising out of G.R. Case No.39 of 2000 of the Court of S.D.J.M., Patnagarh), whereby



the learned Trial Court, while acquitting the accused persons of the charges under Sections 294/307/34 of the Indian Penal Code, convicted the accused-appellants for the offence punishable under Section 325/34 IPC and sentenced them to undergo rigorous imprisonment for a period of two years, with the benefit of set-off for the period already undergone as under trial prisoners.

2. The appeal has been pending since 2002. When the matter was called for hearing, none have been appearing for appellants continuously. Therefore on 16.12.2025, when the matter was taken up for hearing, Ms. Ananya Mishra, learned counsel, who was present in Court, was requested to assist the Court as *Amicus Curiae*, who has readily accepted the same and obtained the record of the case and assisted the Court very effectively in the capacity of *Amicus Curiae*.

3. Heard Ms. Ananya Mishra, learned *Amicus Curiae* for the appellant and Mr. Jateswar Nayak, learned Additional Standing Counsel for the State.

4. The prosecution case, in brief, is that the informant, Gomati Chhatar (P.W.3), the wife of the injured, Daitari Chhatar (P.W.8).



Accused Mangulu Chhatar is the younger brother of P.W.8 and the remaining accused persons are the sons of accused Mangulu Chhatar.

It is alleged that on 25.03.2000 at about 10.00 A.M., while P.W.8 was cutting trees standing on his own land, the accused persons arrived at the spot and questioned him as to why he was cutting the trees. When P.W.8 replied that he intended to sell the trees, the accused persons allegedly became enraged, abused him in obscene language and assaulted him by means of 'merhas' (lathis), causing multiple injuries on his person. Due to the assault, P.W.8 allegedly sustained fracture injuries on his right arm and left thigh.

During the course of the occurrence, when P.W.3 protested, accused Sujana allegedly assaulted her, causing injuries to her hand. Immediately thereafter, P.W.3 went to the village and narrated the occurrence before P.Ws.1, 4 and 5 and other villagers, who, on her request, removed the injured P.W.8 back to the village. The villagers noticed the injuries on the person of P.W.8. Subsequently, with the assistance of others, P.W.3 shifted the injured to Lathore P.H.C. and lodged a written report vide Ext.6 at Lathore Outpost.



On receipt of the said report, the A.S.I. attached to the Outpost made an entry in the station diary, forwarded the report to Khaprakhol Police Station for registration of the case and took up investigation. On 26.03.2000, the O.I.C., Khaprakhol P.S., registered the case and directed the A.S.I. of Lathore Outpost to continue with the investigation.

During investigation, the Investigating Officer visited the spot, examined the witnesses and got P.Ws.3 and 8 medically examined at Lathore P.H.C. Since the condition of P.W.8 required further treatment, he was referred to and medically examined at the Sub-Divisional Hospital, Patnagarh.

It is further alleged that on 28.04.2000 at about 10.30 A.M., the A.S.I. of Lathore Outpost seized three lathis produced by accused Mangulu Chhatar at village Patrapali in presence of witnesses and sent the same to the Medical Officer, Lathore P.H.C., for opinion as to whether the injuries sustained by P.W.8 could have been caused by the said weapons. The Medical Officer reportedly opined in the affirmative. Upon completion of investigation, charge-sheet was



submitted against the accused persons through the O.I.C., Khaprakhol P.S.

5. The accused-appellants denied the allegations levelled against them *in toto* and pleaded complete innocence. The defence case, in substance, is that on the date of the alleged occurrence, P.W.8 assaulted accused Mangulu Chhatar on his head by means of an axe, causing bleeding injury. It is contended that accused Mangulu Chhatar immediately reported the matter at Lathore Outpost and, pursuant to police requisition, he was medically examined by the Medical Officer of Lathore P.H.C. It is further stated that the police also seized his blood-stained clothes during investigation. According to the defence, since accused Mangulu Chhatar had lodged the report against P.W.8, the present case has been falsely foisted against the accused persons with fabricated allegations.

6. In order to substantiate the charges against the accused persons, the prosecution examined altogether eight witnesses, while the defence did not adduce any oral evidence. P.Ws.1, 4 and 5 were post-occurrence witnesses. P.W.2 was also a post-occurrence witness and the scribe of the F.I.R. marked as Ext.6. P.W.3 was the informant,



whereas P.W.8 was the injured witness. P.W.6, the Medical Officer of Lathore P.H.C., had medically examined P.Ws.3 and 8 on police requisition on 25.03.2000. P.W.7, the doctor attached to the Sub-Divisional Hospital, Patnagarh, had also medically examined P.W.8 on police requisition on 26.03.2000. The Investigating Officer, however, could not be examined by the prosecution as he had expired during the pendency of the case.

7. The learned trial court after analyzing the evidence on record and by taking into consideration the relevant provisions of law came to the conclusion that the essential ingredients to attract the offence under Sections 294/307/34 of IPC in the present case is lacking, however, convicted the accused appellants U/s.325/34 of IPC. Relevant parts of the impugned judgment read thus:-

“10. As regards the offence u/s.294 I.P.C. there is no evidence on record showing that the accused persons had uttered obscene words to the annoyance of p.w.8 in or near a public place. Thus, the charge u/s.294/34 I.P.C. against the accused persons fails.

11. In the decision reported in (1995) OCR-44 (Meghanath alias Meghanad Pradhan-vrs-State) it has been held by the Hon'ble Court as follows:-

“The language employed in Sec. 307 I.P.C. makes it clear that intention or knowledge of the assailant is the primary requirement to constitute



the offence. It depends upon the facts and circumstances of each case to find out whether the accused had the intention to cause death or knew in the circumstances, that his act was going to cause death. Though no direct evidence can be led as to what was the intention of the accused, however, same can be ascertained from the nature of the weapon used, the intention expressed by him at the time of the act, the motive for the crime, the nature and size of the injuries, the seat of assault and the severity of the blow or blows. It is, however, not necessary that the injury actually caused to the victim should be sufficient in the ordinary circumstances to cause death. What the court is to see is whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.”

In the instant case the evidence brought on record clearly shows that the accused persons in furtherance of their common intention voluntarily caused grievous hurt to p.w.8 on the alleged, date time, and place. The grievous injuries had not been caused on any vital part of the body of p.w.8. There is no evidence on record showing that the accused, persons had expressed their intention to kill p.w.8 at the time of the occurrence. On the other hand, it is in the evidence of p.w.8 that the accused persons stopped assaulting him when p.w.3 requested them not to assault him any further. Taking into consideration the above facts, it can safely be held that the prosecution has failed to prove the charges u/s.307/34 I.P.C. against the accused persons.

11. In view of my foregoing discussions, I find that the prosecution has failed to prove the charges u/ss.294/307/34 I.P.C. but has successfully proved the charge u/s.325/34 I.P.C. against the accused persons beyond all reasonable doubts. Hence, while acquitting the accused persons of the charges u/ss.294/307/34 I.P.C. I find them guilty of the charge u/s.325/34 I.P.C. and convict them thereunder.”



8. Ms. Mishra, learned *Amicus Curiae* appearing for the appellants, at the outset, submitted that the present case admittedly arises out of a case and counter-case situation, the connected matter being G.R. Case No.38 of 2000. It was contended that although the initiation of the cross case is evident from the materials available on record, neither the outcome thereof nor the nature and effect of the proceedings conducted therein have been brought on record or discussed by the learned Trial Court while adjudicating the present case. Learned *Amicus Curiae* further submitted that the injured witness, namely Daitari Chhatar (P.W.8), and accused-appellant No.1, Manglu Chhatar, are brothers by relationship and that the occurrence in question stemmed from a family feud relating to landed property and cutting of trees standing over the disputed land. It was argued that the entire prosecution case has to be viewed in the backdrop of such strained familial relations and the admitted enmity existing between the parties.

It was further contended that accused-appellant No.1, Manglu Chhatar, was in fact the informant in the aforesaid G.R. Case No.38 of 2000 and had himself sustained injuries in the same occurrence.



Learned Amicus Curiae submitted that the defence version consistently remained that P.W.8 had assaulted accused Manglu Chhatar on the head by means of an axe, causing bleeding injuries, pursuant to which he immediately approached the police and lodged the report. It was argued that the very institution of the counter case probabilises the defence plea that the occurrence was a mutual fight between close agnates arising out of a sudden quarrel and not a unilateral assault as projected by the prosecution. Such suppression of the occurrence which is clearly revealed from the cross examination of the examining doctor, creates serious doubt regarding the fairness and completeness of the prosecution story.

It was thus contended that in absence of proper consideration of the cross case, the learned Trial Court ought to have exercised greater caution while appreciating the testimony of the interested and related witnesses, especially when the independent witnesses examined by the prosecution are merely post-occurrence witnesses.

9. In the light of the aforementioned submissions advanced on behalf of the appellants, this Court has meticulously examined and scrutinized the evidence available on record. Though it appears from



the materials on record that the occurrence had its genesis in a family dispute relating to land and cutting of trees standing thereon, nevertheless, there remains no room for doubt that the injured, namely P.W.8, sustained grievous injuries in the course of the occurrence.

The factum of such injuries stands clearly established from the consistent and cogent medical evidence adduced by the prosecution through P.Ws.6 and 7, who had medically examined the injured at different stages. Their evidence fully corroborates the ocular testimony of the injured witness with regard to the nature and extent of injuries sustained by him. For the sake of ready reference and proper appreciation, the relevant portions of the evidence of the said medical witnesses are reproduced herein below:

Evidence of P.W.6

“I examined Daitarii Chhatar, S/o late Kaintu, Chhatar of vill-Patrapali, on police requisition and found the following injuries on his person:

1) One laceration 2 c.m. x 1/2 C.m.x 1/2c.m. on scalp over right parietel region; The injury was simple in nature and might have been caused by friction on a hard and blunt object. Time of injury was within 24 hour's.

2. I have detected two fractures on his person. (1) Fracture on right humerus and fracture on the left femour. I referred the injured to Patnagarh hospital for X-ray and necessary, treatment. This is my injury report marked Ext.2 and my signature is Ext.2/1.”



Evidence of P.W.7

“I examined Daitari Chhatar, S/o Kaintu Chhatar of Patrapali on police requisition and found the following injuries on his person.

i) Laceration 3" x ½" x scalp deep over the vertex obliqually 2" left to mid-line and above the left pina.

ii) Fracture of right arm at the junction of upper 2/3rd and lower 1/3rd. Huge swelling was there at the site of fracture due to haematoma.

iii) Fracture of left thigh at the junction of upper 2/3rd and lower 1/3rd. There was huge swelling due to large haematoma at the fracture site.

iv) Laceration 1" x 1/2" x skin deep over middle of right leg lying vertically over the shin of tibia.

Injury Nos. 2 and 3 were grievous in nature and injury Nos.1 and 4 were simple in nature. All the injuries can, be caused by hard and blunt object. The general condition of the patient was bad. Patient was in a stage of shock. X-ray plates taken on same day also shows fractures as described in injury Nos.2 and 3.”

Merely because the occurrence arose out of a family dispute or because there existed a counter case between the parties, the same by itself cannot be a ground to discard the otherwise reliable evidence regarding the grievous injuries sustained by the injured witness.

It further appears from the impugned judgment that upon careful appreciation of the evidence on record, the learned Trial Court did not find sufficient material to hold the accused persons guilty of the offences under Sections 294 and 307 IPC and accordingly acquitted them of the said charges. However, having found the prosecution evidence trustworthy insofar as the offence of voluntarily



causing grievous hurt is concerned, the learned Trial Court convicted the appellants under Section 325 read with Section 34 IPC.

This Court finds no infirmity in the said finding recorded by the learned Trial Court. The conclusion arrived at by the court below is well-founded on the evidence. Accordingly, the conviction and sentence of the appellants under Section 325/34 IPC are hereby affirmed.

10. At this stage, learned *Amicus Curiae* appearing for the appellants submitted that the occurrence in question relates back to the year 2000. At the time of the alleged incident, appellant No.1 was about 50 years of age, whereas appellant Nos.2 and 3 were aged about 23 years and 21 years respectively, and by now they have advanced considerably in age. It was further submitted that the appellants were convicted by judgment dated 29.01.2002 and since then the present appeal has remained pending for more than two decades. Additionally it is also submitted that the accused appellants have already undergone about 3 months and 26 days to custody. Learned counsel accordingly contended that considering the long lapse of time, the period undergone, the age of the appellants and the protracted



pendency of the appeal since the year 2002. She further submitted that during the long intervening period, the appellants have been leading a peaceful and dignified life in society and are presently settled in their respective family lives. It was contended that after lapse of more than two decades from the date of occurrence and conviction, sending the appellants back to custody at this stage would serve no meaningful penological purpose and may rather prove counter-productive, particularly when there is nothing on record to indicate their involvement in any subsequent criminal activity.

Learned *Amicus Curiae* further submitted that at the stage of hearing on the question of sentence, the appellants had prayed before the learned Trial Court to extend them the benefit of the provisions of the Probation of Offenders Act. However, the said prayer was declined by the learned Trial Court without assigning adequate reasons. It was, therefore, contended that considering the nature of the offence, the background in which the occurrence took place arising out of a family dispute, the age of the appellants, the prolonged pendency of the appeal since the year 2002 and the absence of any criminal antecedent or subsequent misconduct, this Court may take a



reformatory and lenient view in the matter of sentence and extend to the appellants the benefit of the provisions of the Probation of Offenders Act.

11. The record reveals that the occurrence in question relates back to the year 2000 and over the passage of more than two decades, much water have flown under the bridge. Considering the long lapse of time, the period already undergone, the age of the appellants and the circumstances attending the case, this Court is of the considered view that the matter deserves to be examined in the light of the decision of the Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*¹ wherein it has been 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 denial of such benefit must be supported by cogent and convincing reasons.

In the aforesaid decision, the Hon'ble Supreme Court emphasized that the reformatory object underlying the Probation of

¹ 2025 INSC 540



Offenders Act cannot be overlooked and that the sentencing court is duty-bound to consciously apply its mind to the question as to whether the benefit under the Act ought to be extended to the accused persons, particularly in cases where the circumstances justify a lenient and reformatory approach.

12. 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 underscored that the legislative intent behind the enactment of the Probation of Offenders Act is essentially reformatory in nature, 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. ”

Regard being had to the facts of the present case, particularly the long lapse of time since the occurrence, the absence of criminal antecedents of the appellants and the overall circumstances emerging from the record, this Court is of the considered view that



the case of the appellant deserves consideration under the beneficial provisions of the Probation of Offenders Act. 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 in somewhat similar circumstances 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 appellant the benefit contemplated under Section 4 of the Probation of Offenders Act.

13. In such view of the matter, 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 bonds 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

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



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.

14. Accordingly, the CRA is partly allowed and disposed of.

15. This Court records the appreciation for the effective and meaningful assistance rendered by Ms. Ananya Mishra, learned *Amicus Curiae*. She is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 22nd of May, 2026/Ashok

Signature Not Verified

Digitally Signed
Signed by: ASHOK KUMAR JAGADEB
MOHAPATRA
Reason: Authentication
Location: High Court of Orissa
Date: 25-May-2026 19:03:40

