



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 211 of 2001

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

(1) Jayakrushna Jena

(2) Kalindi Jena @ Kalu

(3) Nitu Jena @ Natu

(4) Mungudi @ Ekadasi Jena

(5) Sanatana Jena

(6) Shyama Sundar Jena

.....

Appellants

-Versus-

State of Orissa

.....

Respondent

For the Appellants : Ms. Biswarupa Pati, Advocate

For the Respondent : Mr. Ashok Kumar Apart, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 24.02.2026 :: Date of Judgment: 26.02.2026

S.S. Mishra, J. The present Criminal Appeal is preferred by the appellants assailing the judgment and order dated 21.09.2001 passed by the learned Special Judge, Puri in S.T. Case No.62 of 2001, whereby the



learned trial Court while acquitting all the appellants of the charges under Section 3(1)(xi) of the SC & ST (PoA) Act, convicted them for the offences under Sections 323 of I.P.C. (herein after “I.P.C” for brevity) and in addition to that, the accused-appellant No.1, Jayakrushna Jena has been convicted for the offence under Section 294 of I.P.C. On that count, all the appellants were sentenced to pay a fine of Rs.500/- each, in default to undergo S.I. for fifteen days for the offence under Section 323 of I.P.C. and the appellant No.1 further sentenced to pay a fine of Rs.500/-, in default to undergo S.I. for fifteen days for the offence under Section 294 of I.P.C.

2. Heard Ms. Biswarupa Pati, learned Counsel for the appellants and Mr. Ashok Kumar Apat, learned Additional Government Advocate for the State.

3. The prosecution case, in brief, is that on 11.10.1998 at about 9.00 to 10.00 a.m. in village Pakhimund, the accused persons, namely, Jayakrushna (appellant No.1), Kalandi (appellant No.2) and Nitu (appellant No.3), allegedly uprooted the boundary fence separating their *bari* from that of the informant. When the informant protested, accused



Jayakrushna is stated to have abused her in filthy language and pushed her into water. At that time, on the protest of Ramesh, the younger brother of the informant's husband, the three accused persons allegedly assaulted him and caused injuries to his person.

It is further alleged that on the following morning, at the same spot, the accused persons, being armed with *thenga*, *katari*, *farsa* and other weapons, charged at Bihari, the husband of the informant, abused him in filthy language and assaulted him by giving fist blows and kicks. Accused Jayakrushna is also alleged to have struck his leg with a lathi. It is further the case of the prosecution that Basudeb, Ramesh and Manguli, the brothers of the informant's husband, were also assaulted by the accused persons. Madhu, the father-in-law of the informant, on raising protest, was allegedly thrown against a *kia* fence. The informant herself was abused in filthy language and pushed by the accused persons.

On 12.10.1998 at about 11.15 a.m., on receipt of a written report from the informant, Satyabadi P.S. Case No.120 of 1998 was registered. The matter was taken up for investigation; the injured persons were sent for medical examination; and search was conducted for the alleged



weapons of offence, though nothing could be recovered. Upon completion of investigation, charge-sheet was submitted against the accused persons under Sections 323 and 294/34 of the I.P.C. and Section 3 of the S.C. and S.T. (P.A.) Act.

4. Out of nine charge-sheeted witnesses cited to establish the case, the prosecution has examined as many as six witnesses, declining to examine the rest. P.W.1 is the victim and informant. P.Ws.2 and 4 are the brothers of the husband of the informant. P.W.3, the father-in-law of the informant, is also a victim. P.W.5 was the doctor, who examined the injured persons, and P.W.6, the then S.I. of Police, Satyabadi P.S., was the I.O. The prosecution has also exhibited certain documents. The defence, while adducing no oral evidence, has exhibited three injury reports.

5. Although initially the appellants stood charged for the offences under Sections 323 and 294/34 of I.P.C. read with Section 3(1)(xi) of the SC & ST (PoA) Act, however, the learned trial Court after analyzing the entire evidences of the prosecution have arrived at a conclusion that the prosecution has failed to prove the charges under Section 3(1)(xi) of the



SC & ST (PoA) Act. For convenience of ready reference, the relevant part of the said judgment is reproduced:-

“9. Learned defence counsel citing the decision reported in A.I.R.1965 S.C. 1557 submitted that offence under S.C. and S.T. (P.A.) Act has not been made out when notification issued under Art. 341 declaring the caste of the informant and other victims has not been brought in evidence. As is found prosecution has not made sincere attempt in that respect save and except bringing in evidence of P.Ws.1 and 3 that when accused persons belong to general caste they belong scheduled caste being siala by caste. In the absence of any documentary proof that the victims were scheduled caste and when there is no consistent and acceptable evidence that accused persons had asperate the victims by their caste, it is to be deduced that charge under the provision of S.C. and S.T.(P.A.). Act has not been established.”

However, upon proper appreciation of the evidence on record and due application of judicial mind, the learned trial Court found all the appellants guilty under Section 323/34 of I.P.C. and additionally the appellant No.1 was also found guilty under Section 294 of I.P.C. Relevant part of the said judgment is reproduced hereunder:-

“10. Learned defence counsel next citing the decision reported in 1994(1) O.L.R. 176 submitted that a case u/s 294 I.P.C. has not been made out



when the spot was neither public place nor near to it and when there is no evidence that any scolding by the accused persons was to the annoyance of others. It is the consistent case of the prosecution in the F.I.R. and evidence of P.W.1. is that on the first occurrence, accused Joyakrushna scolded her saying "Chhodi" by which she lost her prestige, her family members present around there, she having her dwelling house in that it bari. From this, it is to be construed that the use of obscene word against a married lady must have caused annoyance to her children and other family members present there. That the spot was near to public road is apparent from the spot map Ext. 7. However, there is no evidence that all the accused persons had common intention to commit this crime. That being so this contention of the learned defence counsel is not tenable.

11. It may be recorded that in the instant case enmity, between the parties, a double edged weapon has cut the throat of the accused persons.

12. In the premises it is concluded that beyond all reasonable doubts prosecution has succeeded to bring home its case but only u/s 323 I.P.C against all the accused persons and u/s 294 I.P.C. against accused Jayakrushna.

13. In the result, all the accused persons are found guilty U/s. 323 I.P.C. and in addition the accused Jayakrushna Jena is found guilty u/s. 294 I.P.C. and they are convicted thereunder."

6. Aggrieved by such Judgement of conviction and order of sentence, the present appellants have preferred the appeal.



7. While analyzing the evidence on record, this Court finds no reason to disagree with the findings recorded by the learned trial Court. Hence, this Court affirms the conviction recorded against the appellants for the offence under Sections 323 and 294/34 of I.P.C.

8. At this stage, Ms. Pati, learned counsel appearing for the appellants has strenuously argued the case on merit and taken me to the evidence on record. After arguing for some time, she submitted that keeping in view the procrastinated judicial process undergone by the appellants in this case and the ordeal of trial faced by the appellants, the imposition and extraction of fine at this belated stage for petty offence committed long back would serve no purpose but may in fact be counter-productive, casting a needless stigma not only upon them but also upon their family members, especially when there is no suggestion of any repeat violation or ongoing non-compliance with regulatory norms. Therefore, in the fitness of situation, the appellants may be extended the benefit of Probation of the Offenders Act read with Section 360 Cr.P.C. I am inclined to accede to the prayer made by Ms. Pati, learned counsel for the appellants on the facts scenario of the case.



9. Regard being had to the societal position of the appellants, clean antecedents and the fact that the incident had taken place in the year 2001, I am of the considered view that the appellants are entitled to the benefit of the Probation of Offenders Act and Section 360 of Cr.P.C. Additionally, the case of the appellants are also covered by ratio of the judgment of this Court in the case of *Sk. Wahed Ali Vs. State of Orissa*¹, wherein, while dealing with an offence of a similar nature, the Court had extended the benefit of the Probation of Offenders Act, 1958 to the appellant, who had been convicted under Section 323 of the Indian Penal Code.

10. The ratio of the aforesaid decisions, emphasizes the reformatory approach of criminal jurisprudence in cases involving personal disputes and absence of criminal antecedents, is fully applicable to the facts and circumstances of the present case.

11. 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

¹ AIROnline 2025 ORI 280



the appellants to pay the fine amount, this Court directs the appellants to be released under Section 4 of the Probation of Offenders Act for a period of three months on their executing bond of Rs.1,000/- (Rupees one 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 three months.

12. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge