



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.323 of 1995

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

Ramakrushna Barad and others ***Appellants***

-Versus-

State of Orissa ***Respondent***

For the Appellants : Mr. Sachi Ranjan Behera, Amicus Curiae

For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 10.03.2026 :: Date of Judgment: 17.03.2026

S.S. Mishra, J. The present Criminal Appeal, filed by the appellants are directed against the judgment and order dated 25.03.1995 passed by the learned First Additional Sessions Judge, Puri in S.T. Case No.17/73 of 1993, whereby the learned trial Court while acquitting the co-accused, namely, Bula Pradhan, Sribachha Baral, Jogi Baral and Abhimanyu



Baral, convicted the present appellants for the offences under Section 148 of I.P.C. and on that count, they have been sentenced to undergo R.I. for one year each. It is noteworthy to mention that some of the accused persons who are the appellants before this Court have also been charged with offence under Sections 302/307/149 of the I.P.C. however, they have been subsequently acquitted of the said charges.

2. The present appeal has been pending since 1995. When the matter was called for hearing, none appeared for the appellants. Therefore, this Court requested Mr. Sachi Ranjan Behera, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Sachi Ranjan Behera, learned counsel.

3. Heard Mr. Sachi Ranjan Behera, learned Amicus Curiae for the appellants and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

4. It is relevant to mention that during pendency of the present appeal, as many as fourteen appellants have expired, namely, the



appellant No.4-Khetri Parida, appellant No.9-Narasingh Parida, appellant No.10-Gandhi Parida, appellant No.11-Gobardhan Sundara, appellant No.15-Baja Pradhan, appellant No.22-Damodar Patra, appellant No.25-Trinath Parida, appellant No.26-Parsuram Sundara, appellant No.29-Jatri Parida, appellant No.30-Arjuna Baral, appellant No.37-Megha Sundara, appellant No.39- Dasa Parida, appellant No.40-Bidesi Patra and the appellant No.44-Narayan Parida. Therefore, the appeal qua the appellant Nos.4, 9, 10, 11, 15, 22, 25, 26, 29, 30, 37, 39, 40 and 44 stood abated vide order dated 19.08.2025 in the absence of any application under Section 394 Cr.P.C. by the legal heirs or next friend of the deceased-appellants. Hence, the appeal is considered only in respect of other appellants.

5. The prosecution case, in brief, is as follows:-

a) On 31.07.1991 at about 9.00 A.M., all the accused persons, forming an unlawful assembly and being armed with lathis, kanta, country-made guns and hand bombs, came to the house of the informant, Trinath Pradhan, who is the brother of the deceased Rankanath Pradhan. It is alleged that at the instigation and exhortation of accused Makadam



Baral, who assured the other accused persons that he would bear the expenses of litigation if the deceased was eliminated, accused Bharat Sundara (appellant No.3), Khetri Parida (appellant No.4), Akhila Parida (appellant No.5) and others surrounded the deceased.

b) It is further alleged that accused Nityananda Patra, Madhu Patra, Bhuja Baral and Bula Pradhan forcibly made the deceased lie on the village street (Gaon Danda) with his face upward, whereafter accused Bachha Baral, Jatri Baral, Bharat Sundara, Khetri Parida and Akhila Parida assaulted him with lathis. In the meantime, accused Ramakrushna Barad (appellant No.1) allegedly brought a piece of stone and crushed it on the chest of the deceased, as a result of which the deceased succumbed to the injuries on the spot. Soon thereafter, accused Deba Sundara, Naran Parida, Gandhi Parida and Kangress Parida allegedly exploded hand bombs, while accused Kabi Sundara and Parsu Sundara fired from their guns aiming at the informant. The informant, however, managed to save himself by concealing inside his house. It is also alleged that the other accused persons abused the informant and indulged in brick-batting.



c) On the basis of the aforesaid allegations, the informant, Trinath Pradhan, lodged a written report at Banapur Police Station on 31.07.1991 at about 10.30 A.M. The said written report (Ext.1), disclosing commission of cognizable offences, was treated as the First Information Report. Accordingly, in the absence of the Officer-in-Charge of Banapur Police Station, the Sub-Inspector of Police (P.W.12) registered Banapur P.S. Case No.115 of 1991 and took up investigation. In course of investigation, P.W.12 visited the spot, examined the witnesses, held inquest over the dead body of the deceased and prepared the inquest report (Ext.2). The dead body was thereafter sent for post-mortem examination (Ext.5). He also seized a piece of stone (M.O.I), brick-bats and remnants of the exploded bombs and prepared seizure lists (Exts.3 and 4).

d) Subsequently, on 20.08.1991, P.W.12 made over charge of investigation to Dibakar Raipitam (P.W.11), the Circle Inspector of Police, Balugaon. Upon taking over investigation, P.W.11 verified the investigation already conducted by P.W.12 by re-examining the witnesses examined earlier and also examined some additional



witnesses. Upon completion of investigation, he submitted charge-sheet on 29.10.1991 against the aforesaid accused persons, who, upon commitment of the case to the Court of Session, stood trial as stated above.

6. In order to substantiate the charges, the prosecution examined 12 witnesses including the Medical Officer (P.W.9) who conducted P.M. Examination, one police constable (P.W.10) who brought the wearing apparel of the deceased and produced before the I.O. and two I.Os. (P.W.11 and 12). Apart from them P.W.1 (Trinath Pradhan) is the informant of this case while P.W.2 (Prafulla Pradhan) P.W.3 (Baidyanath Pradhan) P.W.4 (Bauribandhu Pradhan) P.W.5 (Bhima Baral) and P.N.6 (Bidu Dei) are stated to be the occurrence witnesses. It is pertinent to note that P.W.6 is the widow of late Rankanath Pradhan, the deceased. P.W.7 (Manguli Fatra) was a seizure witness in respect of M.O.I (a stone bolder), P.W.8 (Krushna Pradhan) was also another seizure witness to articles like brick bats, stone pieces and some jute rags smelling of gun powder.



Besides the above oral evidence prosecution relied upon documentary evidence, namely, the written F.I.R. (Ext.1), the inquest report (Ext. 2) two seizure lists (Exts. 3 and 4), the P.M. Examination report (Ext. 5) the specific opinion of P.W.9 given in response to the query made by P.W.11 (Ext.6/1) and the report of the Chemical Examiner, S.F.S.L. Rasulgarh (Ext. 25) to prove its case against the accused persons.

As against the above evidence, accused persons have examined two witnesses namely Dr. Dibyasingh Mishra (D.W.1) and Pharmacist (D.W.2). These two witnesses are examined to prove that accused Nityananda Patra was an indoor patient of Balugon P.H.C. from 31.7.91 to 6.8.91 for acute epigastric.

7. The learned trial Court has extensively dealt with the evidence on record and other allied circumstances and reasons made substantial findings that the accused-appellants cannot be held liable for the offence under Sections 302/307/149 of the I.P.C. Relevant would be to reproduce paragraphs-11 and 13 in which the learned trial Court held thus:-



“11. Now coming to the ocular testimony of the witnesses, it may be stated that all of them (P.Ws. 1 to 6) have deposed that the instigation or exhortation of accused Makadam Baral accused Ramakrushna Baral brought a piece of stone bolder and crushed it on the chest of the deceased while he was lying on the village street with face upward in the midst of some other accused persons. P. W12 has seized a piece of stone bolder from the spot under Ext. 3 which weights 10.2 k.gs. This piece of stone bolder is marked as M.O.I. Therefore, it is evident that the deceased was crushed to death with M.O.I., which is more than 10 K.Gs. in weight P.W. 3 has stated that accused Ramakrushna accomplished his job when he crushed M.O.I on the chest of the deceased applying all force behind it. P.W.I the informant of this case, has also stated in a similar fashion when he deposed in para-16 that accused Ramakrushna threw the stone with force on the Chest of the deceased.

As against the above testimonies, the evidence of P.W.9 is totally contradictory. Exactly it is not contradictory because of the evidence of P.W.9 is accepted, the ocular testimonies of P.Ws.1 to 6 have to be completely ruled out. P.W.9 during autopsy found one abrasion over the left side chest across the 4th and 5th ribs, brushing of the skin under injury no.1, abrasions over the base of the left side index finger, over middle of the shin of the left lower leg and over the right elbow joint and over the right pinna. According to P.W.9 death was due to asphyxia coupled with pressure on chest by a substance like stone, combined with smothering i.e. closer of the mouth and nostrils. It has been elicited from him in cross examination that if a stone weighing about 10 K. Gs. is thrown from a height of 5 feet, the same must cause fracture of the ribs. He further admitted that if a stone like M.O. I is released from a height over ones chest the same cannot cause asphyxial death as in that case there would be fracture of the ribs and bleeding inside the pural cavities. He further admitted that if M.O.I is kept pressed over chest for 5 to 10 minutes, it would result bleeding from nose and mouth. He has further admitted that in this case there was no bleeding either, from the mouth or from the nose of the deceased.

On a close scrutiny of the evidence of P.W. 9 it appears that it unerringly rules out or excludes the possibilities of the



deceased having received fatal blow in the manner deposed to by the prosecution witnesses. In other words, the medico-legal evidence goes so far that it completely rules out all the possibilities whatsoever of the injuries taking plea in the manner asserted by the eye witnesses.

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13. In the above premises of the evidence and the facts and circumstances of the case, I am of the opinion that neither accused Ramakrushna Baral intentionally caused the death of the deceased, as has been alleged nor for that matter any other accused persons in aid of vicarious liability u/s. 149 I.P.C. consequently, they can not also be held liable for the alleged attempt on the life of the deceased directly or in aid of section 149 I.P.C. Hence the charges u/s. 302, 302/149 and 307/149 I.P.C. must necessarily fail against all the accused persons who are charged thereunder. As such, they are accordingly, acquitted therefrom."

However, the learned trial Court, taking into account the injuries inflicted by the appellants on the injured persons and their use of explosives, lathis and guns held thus:-

"14. In so far as charge u/s. 148 I.P.C. is concerned it may be stated that P.ws. 1, 2, 3, 4 and 5 have all stated in unison that the accused persons from an unlawful assembly on the date, time and place alleged. P.W.1 gave out that all the accused persons came in a body being armed with lathis, gun, hand bombs and kanta etc. and surrounded his deceased brother Rankanath. He has further stated that he knew all the accused persons in the dock as because they are his co-villagers. Thereafter he has went on to describe that part was placed by some of the accused persons. Similarly P.W.2 gave out that all the accused persons who are his co-villagers came towards the house of P.W.I raising hue and cry when they were armed with lathis guns, valis and brick bats. Similarly he has also described the part played by some of



the accused persons in the incident. P.W.3 stated that while he was going to the market from his house, he noticed the accused persons on the village road who were armed with deadly weapons like lathis, bombs, guns, kanta etc. near the house of P.W.1 He further asserted that the accused persons surrounded the deceased Rankanath. Like P.ws.1 and 2 he also described what role some of the accused persons played in the incident which took place on the date of time. The evidence of P.ws.4 and 5 are some of less skin to P.ws.1, 2 and 3. Suffice it to say they supported the prosecution case, by and large, regarding formation of an unlawful assembly by the accused person armed with deadly weapons with the common object of committing rioting.

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19. In the result, charges u/s. 302, 302/149, 307/149 I.P.C. and 9-B(b) of the Indian Explosive Act against all the accused persons are found to have not been established by the prosecution and accordingly they are acquitted thereof.

As has been discussed above, the prosecution has been able to establish the charge under section 148 I.P.C. against all the accused persons except accused Bula Pradhan, Sribachha Baral, Jogi Baral and Abhimanyu Baral and accordingly they are convicted thereunder."

Being aggrieved by the judgment of conviction and order of sentence passed by the learned trial Court, the present appeal has been preferred.

8. In so far as the acquittal of the appellants for the offences under Sections 302/307 read with Section 149 of the Indian Penal Code and Section 9-B(b) of the Indian Explosive Act is concerned, no appeal has been preferred by the State challenging the said findings of the learned



trial Court. In view of the absence of any appeal against the order of acquittal on those counts, this Court does not consider it necessary to examine or reopen the said issues at this belated stage.

9. At the outset, the learned Amicus Curiae appearing for the appellants, without entering into the merits of the conviction recorded by the learned trial Court, confined his submissions to the question of sentence. It is submitted that the occurrence in question took place in the year 1991 and the present appeals have remained pending since the year 1995. Thus, more than three decades have elapsed since the date of occurrence. It is further submitted that during this long interregnum, the appellants have continued to remain law-abiding citizens and there is nothing on record to indicate that any of them had any criminal antecedents either prior to or subsequent to the present occurrence. Peace and tranquility has been maintained in the village and brotherhood has been restored.

10. Learned Amicus Curiae further submitted that directing the appellants to undergo the custodial sentence at this distant point of time



would not subserve the ends of justice. Rather, such a course would cause undue hardship not only to the appellants but also to their family members who are dependent upon them for their livelihood. This may also create disharmony in the prevailing peace in the village. It is contended that the object of criminal jurisprudence, particularly in cases involving offences of a relatively less serious nature, is not merely punitive but also reformatory. Therefore, while considering the question of sentence, the Court is required to take into account the surrounding circumstances, the nature of the offence, the character of the offenders and the long lapse of time since the occurrence.

In such circumstances, it is prayed that this Court may consider extending to the appellants the benefit of probation under Section 4 of the Probation of Offenders Act, 1958.

11. 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

¹ 2025 INSC 540



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. ”

12. 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 appellants 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

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



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

13. 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.

14. 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 three months on their executing bond of Rs.5,000/- (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.

15. Accordingly, the Criminal Appeal is partly allowed.



16. This Court acknowledges the effective and meaningful assistance rendered by Mr. Sachi Ranjan Benera, 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

The High Court of Orissa, Cuttack.
Dated the 17th March, 2026/ Swarna

Signature Not Verified

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