



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 222 of 1999

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

1. Dhrubadutta Patel (expired)

2. Sanjay Patel

.....

Appellants

-Versus-

State of Orissa

.....

Respondent

For the Appellants : Mr. Purna Chandra Das,
Amicus Curiae

For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 19.03.2026 : Date of Judgment: 26.03.2026

S.S. Mishra, J. Two appellants have jointly filed the present appeal assailing the judgment of conviction and order of sentence dated 10.08.1999/28.08.1999 passed by the learned Judge, Special Court, Sambalpur in T.R. Case No. 52 of 1997, whereby the learned



trial court convicted the appellants under Sections 332/34 of IPC and sentenced them to undergo R.I. for six months each.

During pendency of the appeal, the appellant no.1 (Dhrubadutta Patel) has expired. Therefore, the present appeal qua him stood abated vide order dated 10.10.2025 in the absence of any motion under Section 394 Cr.P.C. either on behalf of the legal heirs or the next friend of the deceased appellant to press this appeal. Therefore, the appeal for consideration is confined to appellant no.2 only.

2. This appeal is pending since 1999 and none appeared for the appellants on several dates of hearing. Therefore, vide order dated 17.03.2026, this Court requested Mr. Purna Chandra Das, who was present in Court to assist the Court in the capacity of *Amicus Curiae* and he has readily accepted the same and after obtaining the entire record, assisted the Court very effectively.

3. Heard Mr. Purna Chandra Das, learned *Amicus Curiae* for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

4. The prosecution case, in brief, is that one Gobinda Ram Patel (P.W.6) had filed a suit bearing Title Suit No. 22 of 1996 against the



accused Dhrubadutta Patel. He prayed for injunction in that suit, which was granted, The Process Server (P. W. 4) was ordered to serve the injunction order on the case land and accordingly on 31.10.97 the Process Server (P.W.4) went to the case land to serve the injunction order passed in Misc. Case No. 14 of 1997 arising out of Title Suit No. 22 of 1996. He took the assistance of the plaintiff (P. W.6) to identify the case land. When he reached near the case land, the accused Sanjay was found sitting on the ridge. Some villagers had also accompanied with him. While the Process Server was going to serve the notice by placing flags, the accused Dhrubadutta came behind him and gave a slap on the back side of his head catching hold of his hair and he also threatened the Process Server. The other accused Sanjaya, who was sitting on the ridge also came there and caught hold of his right hand and the other accused caught hold of his left hand and dealt kicks blows on his back. Both the accused persons dragged the Process Server to their house where he was forced to write a document on a plain paper. He refused but when he was threatened, he gave a writing on a separate paper putting his signature thereon. In spite of his request, none came forward to save him from



the clutches of the accused persons. The accused persons also matched away the red banners numbering five which were taken with him to fix in the case land as token of service of injunction order.

5. On the basis of the aforementioned, a report was made on 24.10.1997, as the Process Server (P.W.4) had to serve notices in other villages; hence there was delay in lodging the F.I.R. On receipt of the written report, which was forwarded by the Judge-in-charge, Nizarat, Civil Courts, Kuchinda, police registered the case and investigation was conducted and charge sheet was filed against the accused persons for the alleged commission of offence u/s.341/332/426/379/34 of IPC read with Section 3(1)(x) of the S.C. & S.T. (PoA) Act. The appellants took a stance of complete denial and claimed trial. Accordingly, they were put to trial on the charges, as mentioned above.

6. The prosecution in order to bring home the charges examined as many as seven witnesses and exhibited nine documents. Out of seven witnesses, P.Ws.1, 2 and 3 were the eye witnesses to the occurrence; P.W.4 was the Process Server, who had been to the case land for service of injunction Order; P.W.5 was a witness to the



seizure; P.W.6 is the plaintiff, who filed the suit and in whose favour the order of injunction was granted; and P.W.7 was the I.O. of the present case.

7. The learned trial court eventually after analyzing the prosecution evidence found that the appellants are guilty of offence under Sections 332/34 of IPC and acquitted them of the charges under sections 341/426/379/34 of IPC as well as the offence under Section 3(x) of S.C. & S.T. (PoA) Act and accordingly sentenced them to undergo R.I. for six months each for the offence under Sections 332/34 of IPC.

8. Aggrieved by the aforementioned judgment of conviction and order of sentence, both the appellants have filed conjoint appeal. The present appeal is set for consideration vis-à-vis appellant no.2-Sanjay Patel, as against the appellant no.1 the appeal has already been abated.

9. In the instant case, P.Ws.4 and 6 are the vital witnesses. The appellant no.1 is the son of P.W.6 from the first wife, whereas appellant no.2 is the grandson of P.W.6. There was certain land dispute, hence P.W.6 filed Title Suit No.22 of 1996. The learned Civil



Judge, Senior Division, Kuchinda passed an injunction order in Misc. Case No. 14 of 1997 in Title Suit No.22 of 1996 in favour of P.W.6. P.W.4 is the Court Peon/Process Server, who went to the spot for serving the injunction order at the spot, where the occurrence has taken place.

P.W.6 in his testimony has stated that the land has been under his occupation, whereas his son appellant no.1 wanted to construct a pond over the land. Therefore, P.W.6 filed a suit before the learned Civil Judge, Senior Division, Kuchinda and obtained an injunction order. On 31.10.1997, P.W.4 went to the spot to serve the notice of injunction and there were many other villagers accompanied the court peon and he himself was also present in the spot. Both the appellants prevented P.W.4 to perform his official duty. The appellant no.1 caught hold of the head hair of P.W.4 and appellant no.2 also caught hold of the hair and right hand of P.W.4. Both of them challenged P.W.4 and assaulted him and also took away the flags from P.W.4. P.W.4 was also dragged by both the appellants from the spot and manhandled. This witness was extensively cross-examined by the defence, but his testimony could not be dented in any manner



whatsoever. This part of the evidence of P.W.6 directly stood corroborated with the evidence of the informant P.W.4, who deposed before the court that he had gone to serve the injunction notice, at that time, appellant no.2 was sitting on the ridge of the land, fifteen to twenty persons accompanied with him whose names he does not know were also there at the spot. Appellant no.1 came behind and gave a slap on the back side of his head after catching hold of his hair. Appellant no.1 also threatened him saying that his officer also cannot do anything. Appellant no.2 then came and caught hold of his right hand and kicked him from the back. He narrated as to how both the appellants have manhandled him.

P.Ws.1, 2 and 3 were the eye witnesses. All three of them although turned hostile, but from their evidence it could be elucidated that the incident indeed had taken place on the date and time as has been deposed by P.Ws.4 and 6. At the spot, both the appellants, P.Ws.4 and 6 were also present.

10. The learned trial court by taking into account the evidence of P.Ws.1, 2, 3, 4 and 6 have arrived at the following conclusion:-



“9. Coming to the offence u/s. 332/34 I.P.C, it has been contended on behalf of the accused persons that the evidence of P.Ws. 1 and 6 should not be relied upon when part of their evidence has been disbelieved particularly when their evidence does not receive independent corroboration from the other independent witnesses i.e. P.Ws. 1, 2 and 3. On the other hand it has been contended on behalf of the prosecution that the evidence of P.W.4 who in a public servant should not be disbelieved because it does not receive independent corroboration when his evidence stands unchallenged in the cross examination. I am not inclined to accept the submission made on behalf of the defence that the evidence of a witness cannot be acted upon when his evidence has not been accepted in respect of some other offence. Part of the evidence of a witness can be relied upon if it is found acceptable and dependable even if the other part has been discarded. Similarly the evidence of P.W.4 cannot be thrown out of consideration because it does not receive independent corroboration. P.W.4 is a public servant who was working as a Process Server in the Civil Court at Kuchinda. He had no prior enmity with the accused persons. So, there would be presumption that he acts honestly. So in that case his evidence, even if does not get corroboration, can be relied upon if it is found to be trustworthy, convincing and free from infirmities. In this case, no doubt, P. Ws. 1, 2 and 3 have not come forward to support the prosecution allegation and they have been cross-examined by the prosecution with the leave of the Court. The evidence of the witnesses who are cross-examined by the prosecution being declared hostile should not be disbelieved in toto. The Court after careful consideration if finds that any part of the evidence is trustworthy, the Court can act upon. All the P.Ws, 1, 2 and 3 have deposed that the Court peon had gone to the village to serve injunction order on the case land and they had accompanied with him and when they reached at the spot both the accused persons forbade then not to enter upon the land. Their evidence to this effect stands unchallenged and can be acted upon, P.W.4 has categorically stated that both the accused persons caught hold of his both hands, assaulted him and dragged him to their house and forced him to put his signature on a plain



paper. His evidence stands unchallenged in the cross-examination. Nothing has been brought out from his mouth to discredit his testimony. His evidence finds corroboration from the evidence of PW.6 who had filed the suit and got the injunction order and had been to the case land with P.W.4 to identify the case land for causing service of the injunction order. There is no material before the Court to suggest that the process Server (P.W.4) had any way inimical to the accused persons to bring false allegation against them. There is a ring of truth in the evidence of P. W. 4. So, I am of the opinion that both the accused persons assaulted the P.W.4 causing hurt to him while he was discharging public duty as a public servant. Mr. Behera has contended that when there is no evidence that any hurt was caused to the process server in absence of any medical evidence an offence u/s 332 I.P.C. is not made out. I am not prepared to accept the above submission. Hurt means bodily pain as defined u/s. 319 I.P.C. In this case though there is no medical evidence but the P.W.4 has categorically stated that he was assaulted by slaps and kicks and was dragged from the case land to the house of the accused persons and in my opinion it is sufficient to come to the conclusion that bodily pain was caused to the Process Server. The Process Server (P.W.4) was not a party to the suit. He is a public servant. He had been to the case land to serve the notice of injunction on the strength of an order passed by the Civil Court. But both the accused persons voluntarily caused hurt to him while he was discharging his duty as a public servant. So, they would be liable u/s. 332/34 I.P.C. In my opinion, the prosecution has succeeded in proving it's case beyond all reasonable doubt that both the accused persons had committed an offence u/s. 332/34 I.P.C. The case law i. e. Thakur Tanty Vs. State, reported in A.I.R. 1964 Patna 493 which has been pressed in to service by the defence is not applicable in this case as the facts of the said case are quite different from the facts of the present case. In the Patna case the search warrant which was issued was illegal. So, the accused objected for execution of the warrant, So, it was held that when the search warrant which was issued was illegal, the accused had a right of private defence of his person. But in this case, the order of the Court was not



illegal. P.W.6, had filed the suit and the Court after consideration of the facts had ordered for the injunction. So, it cannot be said that the P.W.4 had armed with an illegal order for which the accused persons had right to obstruct him.”

11. The reasonings recorded by the learned trial court on the analysis of the evidence on record sounds plausible and cannot be found fault with. Since I have already analyzed the evidence of all the witnesses on the preceeding paragraphs, on the basis of which this Court has no hesitation to affirm the findings recorded by the learned trial court convicting the appellants for the offence under Sections 332/34 of IPC.

12. At this stage, Mr. Das, learned *Amicus Curiae* for the appellants submitted that keeping in view the procrastinated judicial process undergone by the appellant no.2 in this case and the ordeal of trial faced by him; he would rather confine his argument to the quantum of sentence. He submitted that the incident pertains to the year 1997. The appellant no.2 has undergone the rigors of trial for more than two years. Thereafter, the appeal was preferred in the year 1999. The appeal has been prolonging to be heard for more than 26 years. The appellant no.2, who was in his early twenties then, is now



aged about forty-eight years and therefore, sending him to custody for fulfilling his remaining sentence at this belated stage would serve no purpose. The learned Counsel further submitted that the appellant no.2 has no criminal antecedents, and no other case of a similar nature or otherwise is stated to be pending against him. Over the years, he has led a dignified life, integrated well into society, and is presently leading a settled family life. Incarcerating him after such a long delay, it is argued, would serve little penological purpose and may in fact be counter-productive, casting a needless stigma not only upon him but also upon his 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 appellant no.2 may be extended the benefit of Probation of Offenders Act read with Section 360 Cr.P.C. I am inclined to accede to the prayer made by Mr. Das, learned *Amicus Curiae* for the appellant on the facts scenario of the case.

13. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*¹ has elaborately

¹ 2025 INSC 540



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 appellant no.2 and the overall circumstances emerging from the record, this Court is of the considered view that the case of the appellant no.2 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 no.2 the benefit contemplated under Section 4 of the Probation of Offenders Act.

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



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 appellant no.2 to suffer imprisonment, this Court directs the appellant no.2 to be released under Section 4 of the Probation of Offenders Act for a period of six months on his executing bond of Rs.5,000/- (Rupees Five Thousand) within one month with one surety for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the appellant no.2 shall keep peace and good behavior and he shall remain under the supervision of the concerned Probation Officer during the aforementioned period of six months.

Although the appellant no.2 has been extended the benefit of Section 4 of the Probation of Offenders Act for the reason stated in the penultimate paragraph of this judgment, but still the appellant no.2 is liable to pay Rs.5000/- (rupees five thousand) as compensation to the victim under Section 5 of the P.O. Act within one month hence.

15. Accordingly, the Criminal Appeal is partly allowed.

16. This Court records the appreciation for the effective and meaningful assistance rendered by Mr. Purna Chandra Das, learned



Amicus Curiae. He 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 26th of March, 2026/Ashok