



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 415 of 2009

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

(1) Raghu @ Raghunath Mahakud

(2) Kuni Mahakud

.....

Appellants

-Versus-

State of Orissa

.....

Respondent

For the Appellants : Ms. Sartika Das, Advocate

For the Respondent : Mr. Sobhan Panigrahi, ASC

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 11th September, 2009 passed by the learned Addl. Sessions Judge (Fast Track Court-II), Bhadrak in Sessions Trial No. 22/16 of 2009, convicting the appellants



for the offence under Section 324/34 of the Indian Penal Code (herein after “the Code” for brevity) and sentenced them to undergo R.I. for a period of one year each.

2. Heard Ms. Sartika Das, learned Counsel for the appellants and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

3. The accused persons, namely Raghu @ Raghunath Mohakud and Smt. Kuni Mohakud, stood prosecuted for commission of an offence punishable under Section 307 read with Section 34 of the Indian Penal Code before the learned Trial Court.

4. The prosecution case, in brief, is that accused Raghu @ Raghunath Mohakud and the informant (P.W.1) Bhagirathi Mohakud are brothers and residents of village Balinagar under Basudebpur Police Station. Their houses are situated adjacent to each other. Accused Kuni Mohakud is the wife of Raghu @ Raghunath Mohakud. The injured, Kumari Mangalata @ Mamata Mohakud (P.W.2), is the daughter of the informant. P.Ws.3, 4 and 5 are co-villagers of Balinagar. As per the prosecution, the occurrence took place on 15.05.2008 at about 7:30 a.m.



on the village road in front of the house of the informant. It is alleged that the accused persons obstructed the pathway of the informant's house by throwing water. When the informant protested, accused Raghu @ Raghunath Mohakud allegedly brought out a stick and his son, Bhakta Mohakud (a juvenile in conflict with law), brought out an axe, and both of them assaulted the informant on his head, causing bleeding injuries. Subsequently, P.W.2 Mangalata, the daughter of the informant, arrived at the spot and protested. She was also allegedly assaulted severely by the accused persons and their son Bhakta Mohakud, as a result of which she sustained a bleeding injury on her head. During the occurrence, some nearby villagers including P.Ws.3, 4 and 5 reached the spot and intervened. It is further alleged that P.Ws.4 and 5 were also assaulted in the course of the incident. After the occurrence, the injured persons were shifted to Basudebpur Medical, where they were examined and treated by Dr. Debedutta Rana (P.W.6). On the same day at about 4:45 p.m., the informant (P.W.1) lodged an F.I.R. (Ext.1) before the O.I.C., Basudebpur Police Station. On the basis of the said F.I.R., P.W.7



registered Basudebpur P.S. Case No. 90 of 2008 and took up investigation.

During the course of investigation, the Investigating Officer examined the informant and other witnesses, including the injured persons, visited the spot, prepared the spot map, sent requisitions for medical examination of the injured persons, and collected their injury reports. Upon completion of investigation, he submitted charge-sheet against the accused persons under Sections 341/323/307/34 of the Indian Penal Code. A separate charge-sheet was also submitted against Bhakta Mohakud, finding him to be about 17 years of age and thus a juvenile in conflict with law, under the aforesaid sections.

After their appearance before the Court below, both the accused persons were charged under Section 307 read with Section 34 of the Indian Penal Code. They pleaded not guilty and claimed that they had been falsely implicated due to political rivalry. On their plea to be tried, they were put on trial.



5. In order to bring home the charge, the prosecution has examined seven witnesses. P.W.1 is the informant and also an injured witness. P.W.2 is his daughter and likewise an injured witness. P.Ws.3, 4 and 5 were independent witnesses to the occurrence. Out of them, P.Ws.4 and 5 are also injured witnesses, having sustained injuries during the course of the occurrence while intervening in the matter. P.W.6 was the Medical Officer, who examined all the injured persons, and P.W.7 was the Investigating Officer of the case. The prosecution has also tendered Exts.1 to 7 into evidence. On the other hand, the accused persons have not adduced any evidence, either oral or documentary, in support of their defence.

6. The learned trial Court, upon an extensive discussion and analysis of the evidence of the injured witnesses, found their testimonies to be consistent and mutually corroborative, and further supported by the evidence of the independent witness as well as the medical evidence. On such appreciation of evidence, the learned trial Court arrived at the following conclusion:



“21. From the evidence of P.W.1 and P.W.2, the two injured persons being corroborated by the evidence of other two injured persons, P.W.4 and P.W.5 and further being corroborated by the evidence of an eye witness, P.W.3 and again being corroborated by the medical evidence, P.W. 6 it is certain that the accused persons along with their son Bhakta Mohakud assaulted P.W.1 and P.W.2 in furtherance of their common intention being armed with weapons like sticks and axe at the occurrence time and place and as such, they are the authors of the injuries sustained by them.”

7. However, upon proper appreciation of the evidence on record and due application of judicial mind, the learned trial Court did not find the appellants guilty under Section 307 read with Section 34 of the Code, but instead held them guilty under Section 324 read with Section 34 of the Code.

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

9. 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 Section 324/34 of the Code.

10. At this stage, Ms. Das, learned Counsel 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 them; she would rather confine her argument to the quantum of sentence. She submitted that the incident pertains to the year 2008. Thereafter, the appeal was preferred in the year 2009. The appeal has been prolonging to be heard for about 17 years. The appellants, who were in their mid-forties then, are now in their sixties and therefore, sending them to custody for fulfilling their remaining sentence at this belated stage would serve no purpose. The learned counsel further submitted that the appellants have no criminal antecedents, and no other case of a similar nature or otherwise is stated to be pending against them. Over the years, they have led a dignified life, integrated well into society, and are presently leading a settled family life. Incarcerating them 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 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. Das, learned Amicus Curiae for the appellant on the facts scenario of the case.

11. Regard being had to the societal position of the appellants, clean antecedents and the fact that the incident had taken place in the year 2008, 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 *Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra*¹ and *Dhani @ Dhaneswar Sahu vs. State of Orissa*².

Additionally, the present case is also squarely covered by the judgment of this Court in *Sk. Wahed Ali Vs. State of Orissa*³, wherein, while dealing with an offence of a similar nature, the Court had extended

¹ 2012 (Supp-II) OLR 469

² 2007 (Supp.II) OLR 250

³ AIROnline 2025 ORI 280



the benefit of the Probation of Offenders Act, 1958 to the appellant, who had been convicted under Section 323 of the Indian Penal Code.

On similar footings, this Court in *Maheswar Sahoo Vs. State of Orissa*⁴ wherein the accused persons were convicted U/s.326/34 of I.P.C, has extended the benefit of the Probation of the Offenders Act, 1958.

12. 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.

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 three months on their executing bond 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

⁴ CRA No.302 of 1996 disposed of on 11.11.2025



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.

14. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 26th February, 2026/Swarna