



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.400 of 2009
CNR No. ODHC010019032009

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

Rajesh Bag

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Arun Kumar Budhia, Advocate

For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:
THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 09.07.2026 :: Date of Judgment: 30.07.2026

S.S. Mishra, J. The present appeal has been preferred by the appellant assailing the Judgment of Conviction and Order of Sentence dated 14.09.2009 passed by the learned Additional Sessions Judge (Fast Track Court), Bhawanipatna, Kandhamal in Sessions Case No.128/7 of



2008. By the said judgment, although the appellant and the other two co-accused persons were acquitted of the charges under Sections 294, 506, 307 read with Section 34 of the Indian Penal Code, the appellant alone was found guilty of the offence punishable under Section 324 of the Indian Penal Code and was consequently convicted and sentenced to undergo rigorous imprisonment for a period of six months with the benefit of set-off.

2. Heard Mr. Arun Kumar Budhia, learned Counsel for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

3. The prosecution case, as unfolded in the First Information Report, is that on 13.06.2006 at about 6.00 p.m., while the injured, Pratap Chandra Pradhan, was standing in front of a tea stall near the Income Tax Office at Naktiguda Chhak, Bhawanipatna, accused Rajkapur Bag allegedly abused him in obscene language. When the injured objected to such conduct and requested him not to use obscene words in a public place, Rajkapur Bag is stated to have caught hold of his collar and



threatened to kill him. At that juncture, one Murali Chatrapal intervened and separated Rajkapur Bag from the injured. It is further alleged that immediately thereafter, Rajesh Bag (the present appellant) and Dilip Bag, who were selling vegetables nearby, reached the spot and assaulted the injured. The appellant is specifically alleged to have dealt a blow on the head of the injured with a one-kilogram metal weight, as a result of which the injured sustained a bleeding injury, fell to the ground and became unconscious. The injured was thereafter shifted to the District Headquarters Hospital, Bhawanipatna by his brother, Susil Kumar Pradhan, who was present at the spot.

On the following day, Susil Kumar Pradhan lodged a written report before the Inspector-in-Charge, Town Police Station, Bhawanipatna, on the basis of which Town P.S. Case No.111 of 2006 was registered against Rajkapur Bag, Rajesh Bag and Dilip Bag for the offences punishable under Sections 294, 325, 307 and 34 of the Indian Penal Code.



During the course of investigation, the Investigating Officer issued the injury requisition in respect of the injured and collected the medical records from the District Headquarters Hospital, Bhawanipatna. On 16.06.2006, accused Rajkapur Bag and Dilip Bag were arrested, and a one-kilogram metal weight, alleged to have been used in the commission of the offence, was seized. The appellant, Rajesh Bag, was arrested subsequently on 16.10.2006. Upon completion of investigation and receipt of the injury report, the Investigating Officer submitted charge-sheet against all the three accused persons for the offences punishable under Sections 294, 323, 307 read with Section 34 of the Indian Penal Code. On denial of the charges and claim for trial the accused persons faced trial.

4. In order to substantiate its case, the prosecution examined five witnesses. P.W.2 is the injured witness, P.W.4 is the informant and brother of the injured, P.W.3 was an eyewitness to the occurrence, P.W.1 was the Medical Officer who examined the injured and proved the injury report, and P.W.5 was the Investigating Officer. Besides the oral



evidence, the prosecution also relied upon the documents exhibited during trial. The defence did not examine any witness in support of its case.

5. Upon a careful appraisal of the evidence adduced by the prosecution, particularly the testimonies of the injured witness, the eyewitnesses and the medical evidence, the learned trial Court came to the conclusion that the occurrence had taken place in the course of a sudden quarrel without any prior meeting of minds amongst the accused persons. The learned trial Court held that the prosecution had failed to establish the existence of a common intention so as to attract the provisions of Section 34 of the Indian Penal Code. It was further observed that, although the appellant had assaulted the injured with a metal weight causing a simple injury on his head, the nature of the injury, the weapon used and the attendant circumstances did not disclose the requisite intention or knowledge to constitute an offence punishable under Section 307 of the Indian Penal Code. The learned trial Court also found that the prosecution had failed to establish the offences under



Sections 294 and 506 of the Indian Penal Code beyond reasonable doubt. Consequently, while acquitting the co-accused of all the charges and acquitting the appellant of the charges under Sections 294, 506 and 307 read with Section 34 of the Indian Penal Code, the learned trial Court held the appellant alone liable for the offence punishable under Section 324 of the Indian Penal Code. The relevant findings recorded by the learned trial Court are extracted below:

“9. As per the evidence of P.W.2,3 & 4, the incident occurred in a sudden quarrel without any pre-arranged plan in a spur of moment. In their evidences they have admitted that hearing hullah, accused Rajesh reached at the spot suspecting his father to have been assaulted by injured, he challenged Pratap and assaulted him to his head with a metal weight (Batkura). They have also admitted in their evidence that accused Dilip and Rajkapur have not assaulted the injured Pratap Chandra Pradhan. As the incident occurred in a spur of moment without any pre-arranged plan, the accused Dilip and Rajkapur cannot be held liable with accused Rajesh Bag, who assaulted the injured, with the aid of section 34 of the I.P.C as they had no prior meeting of mind and as such they cannot be attributed to have a common intention to assault the a injured Pratap chandra Pradhan. Accused Rajesh Bag who had only assaulted the injured would be individually liable for his own act. In the instant case as the incident occurred in a spur of moment, the accused Rajesh Bag cannot be attributed to have an intention to cause death of the injured Pratap Chandra Pradhan. It is also found from the injury report of the injured that he had sustained one lacerated injury on his head which is simple in nature. In the instant case, the weapon of offence is a metal weight of one K.G. Had he intended to cause the death of the injured, he could have caused serious injuries on his head.”



Accordingly from the evidence discussed above I do not held all the accused persons guilty for offence U/s 307/34 of I.P.C. However, I hold only accused Rajesh Bag guilty for the offence U/s 324 of I.P.C.

10. As regards the offence U/s 294/34 of I.P.C. Though in his evidence P.W.2 deposed that accused Rajkapur Bag abused him saying "MAGIHA SALA MADARCHOD" but the same fact has not been corroborated by the evidence of P.Ws. 3 & 4. Accordingly in my opinion, there is a reasonable doubt regarding use of any obscene words by accused Rajikapur Bag while abusing the injured at the public place.

Accordingly I do not hold all the accused persons guilty for the offence U/s 294/34 of I.P.C.

11. As regards the offence U/s 506/34 of I.P.C. It is also found from the evidence of P.W.2 that he had not stated in his evidence regarding any threat to his life given by any of the accused persons which caused alarm to him.

Accordingly I do not hold the accused persons guilty for the offence U/s 506/34 of I.P.C."

6. Consequently, the learned trial Court acquitted all the accused persons of the charges under Sections 294, 506 and 307 read with Section 34 of the Indian Penal Code. The co-accused, namely, Rajkapur Bag and Dilip Bag, were acquitted of all the charges, whereas the present appellant, Rajesh Bag, was found guilty of the offence punishable under Section 324 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of six months with the benefit of set-



off. Aggrieved by the said judgment of conviction and order of sentence, the appellant has preferred the present appeal.

7. At the outset, Mr. Budhia, learned Counsel for the appellant, took this Court through the evidence on record and assailed the impugned judgment on merits. However, after advancing his submissions for some time, he fairly submitted that he would confine his challenge to the quantum of sentence only. It was contended that the appellant has already undergone incarceration for about twenty-four days and has endured the rigours of a protracted criminal prosecution. Learned counsel further submitted that the occurrence is of the year 2006 and the present appeal, preferred in the year 2009, has remained pending for more than sixteen years. It was argued that the appellant, who was a young man aged about 22 years at the time of the occurrence, is now about 42 years of age and has since settled in life. According to the learned counsel, directing the appellant to undergo the remaining part of the sentence after such an inordinate lapse of time would serve no meaningful purpose.



Learned Counsel further submitted that the appellant has no criminal antecedents and that no other criminal case is stated to be pending against him. It was urged that the appellant has, over the years, remained integrated with society and is leading a settled family life. In such circumstances, his incarceration at this distant point of time would neither advance the ends of justice nor serve any meaningful penological objective. Accordingly, it was prayed that, having regard to the long passage of time, the nature of the offence, the antecedents of the appellant, and the overall facts and circumstances of the case, this Court may extend to the appellant the benefit of the provisions of the Probation of Offenders Act, 1958.

8. 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 appellant for the offence under Section 324 of the Code.

9. The record reveals that the occurrence relates back to the year 2006. At the time of the incident, the appellant was in his early twenties. He



was convicted by the impugned judgment and order of sentence passed by the learned trial Court and the present appeal has remained pending since the year 2009. As of now, the appellant is in his early-forties. Considerable time has elapsed since the occurrence and much water has flown under the bridge. The appellant is stated to have already undergone incarceration for about twenty-four days. It is further not in dispute that he has no criminal antecedents and no other criminal case is stated to be pending against him. In the interregnum, he has led a settled family life and remained integrated with society. In such circumstances, this Court is of the considered view that this is a fit case where the benefit contemplated under the Probation of Offenders Act, 1958 deserves to be extended to the appellant. The Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*¹, has 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 any refusal to extend such benefit must be

¹ 2025 INSC 540



supported by reasons. In the facts and circumstances of the present case, the submission advanced by the learned counsel for the appellant seeking extension of the benefit under the Probation of Offenders Act merits consideration.

10. 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 observed as follows:

“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.”

Having regard to the aforesaid legal position and considering the facts of the present case, particularly the nature of the offence under Section 324 of the Indian Penal Code, the long lapse of more than twenty years since the occurrence, the period of incarceration already undergone by the appellant, the absence of any criminal antecedent and the settled life presently being led by him, this Court is of the considered opinion that the appellant deserves to be extended the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, instead of directing him to undergo the remaining part of the sentence. Additionally, the case



of the appellant is also covered by ratio of the judgment of this Court in the case of *Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra*² and *Dhani @ Dhaneswar Sahu vs. State of Orissa*³. 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.

11. Hence, the present Criminal Appeal in so far as the conviction is concerned is turned down. But instead of sentencing the appellant to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a period of three months on his executing bond of Rs.5,000/- (Rupees Five Thousand) 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 appellant shall keep peace and good behavior and he shall remain under

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



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

The High Court of Orissa, Cuttack
Dated the 30th July, 2026/Ashok