



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.319 of 1995

&

CRA No.328 of 1995

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

CRA No.319 of 1995

Trinath Pradhan and others ***Appellants***

-Versus-

State of Orissa ***Respondent***

For the Appellants : Ms. Varsha Pattnayak, Amicus Curiae

For the Respondent : Mr. Sobhan Panigrahi, ASC

CRA No.328 of 1995

Gandu Pradhan ***Appellant***

-Versus-

State of Orissa ***Respondent***

For the Appellant : Ms. Anwesha Mishra, 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. Since both the appeals arise out of a common impugned judgment and involve the same cause of action, they were analogously heard and are being disposed of by this common judgment.

The present appeals have been preferred by as many as twenty-six appellants who stand convicted by the learned 1st Additional Sessions Judge, Puri, vide judgment and order dated 25.03.1995 passed in S.T. Case No.18/72 of 1993, for the alleged commission of offences punishable under Sections 324/149 of the Indian Penal Code and Section 9-B(b) of the Explosive Substances Act, 1908 read with Section 149 of the Indian Penal Code. On that count, each of the appellants has been sentenced to undergo rigorous imprisonment for a period of one year and six months. It is also apt to note that one of the co-accused, namely, Ramesh Jena, has been acquitted of all the charges by the learned trial Court.



2. The present appeals are pending since 1995. When the matter was taken up for hearing, none had appeared on behalf of the appellants. Therefore, this Court requested Ms. Varsha Pattnayak and Ms. Anwesha Mishra, learned counsels, who are present in Court to assist the Court as Amicus Curiae. They have readily accepted the same and after obtaining entire record assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Ms. Pattnayak and Ms. Mishra, learned counsels.

3. Heard Ms. Varsha Pattnayak and Ms. Anwesha Mishra, learned Amicus Curiae appearing 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 nine appellants have expired in CRA No.319 of 1995, namely, the appellant No.1-Trinath Pradhan, appellant No.2-Prafulla Pradhan, appellant No.3-Baidyanath Pradhan, appellant No.8-Pabitra Pradhan, appellant No.9-Gadabari Pradhan, appellant No.13-Bhima Pradhan, appellant No.18-Udayanath Pradhan, appellant No.21-Brundaban Jena and appellant No.23-Arjun Pradhan. Therefore, CRA



No.319 of 1995 qua the appellant Nos.1, 2, 3, 8, 9, 13, 18, 21 and 23 stood abated vide order dated 31.07.2025 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 surviving appellants.

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

- a) On 31.07.1991 at about 9.00 A.M., one Trinath Parida, son of Charan Parida of village Sanasireipur, was proceeding towards Banpur Bazar. While he was on his way, he was allegedly restrained on the village road by the accused persons, who had assembled in a body and were armed with lathis, guns, valli, kunta and hand bombs.
- b) It is alleged that the accused persons accosted Trinath Parida on the village street and abused him in filthy language. When Trinath Parida protested against such behaviour, accused Pabitra Pradhan allegedly exhorted and instigated the other accused persons to kill him then and there. Acting upon such instigation, accused Trinath Pradhan is stated to have dealt a forceful blow with a lathi on the head of Trinath Parida, as a result of which he fell down on the ground crying aloud.



c) Hearing the commotion, the informant, namely Gandhi Parida (P.W.1), along with several co-villagers, namely Dolapani Parida, Bidyadhar Sundara, Abhimanyu Pradhan, Narayan Khuntia, Basanta Patra, Bibhuti Bhusan Sundara, Debaraj Sundara, Champati Baral, Kongress Parida, Madhusudan Patra, Pradip Baral, Kambhu Pradhan and Sudhakar Parida, rushed to the spot in order to rescue the injured Trinath Parida. However, it is alleged that in order to prevent them from approaching the spot, accused Pabitra, Gandua, Naba Pradhan, Ramesh Jena and Bauribandhu Pradhan fired gunshots from the firearms in their possession. As a result of such firing, the informant Gandhi Parida and several others, including Dolapani, Debaraj, Abhaya, Narayan, Basanta, Bibhuti, Champati, Kongress, Kabiraj and Sudhakar sustained bleeding injuries. It is further alleged that the other accused persons indulged in brick-batting and also hurled hand bombs, causing injuries to several persons present there. The prosecution further alleges that the accused persons threatened the witnesses with dire consequences if they dared to approach the spot. However, upon the arrival of the Havildar of Banpur Police Station at the scene, the accused persons fled away.



- d) On the basis of the aforesaid allegations, the informant Gandhi Parida lodged a written report at Banpur Police Station at about 10.30 A.M. on 31.07.1991. The said report was treated as the First Information Report and Banpur P.S. Case No.116 of 1991 was registered for the alleged offences punishable under Sections 147, 148, 307, 323, 336 and 294 read with Section 149 of the Indian Penal Code, along with Section 27 of the Arms Act and Section 9-B(b) of the Indian Explosives Act.
- e) Upon registration of the case, the Sub-Inspector of Police of Banpur Police Station (P.W.12) took up investigation in the absence of the Officer-in-Charge. In course of investigation, he visited the place of occurrence, which was located near the Asthaprahari house situated on the southern row of the village. During the spot visit, he seized certain brickbats and remnants of exploded bombs lying between the tube-well and the Asthaprahari house under seizure list Ext.17. He also seized blood-stained wearing apparels of Pabitra Baral, Basanta Patra, Abhaya Pradhan, Debaraj Sundara and Bidyadhar Sundara on 02.08.1991 under seizure list Ext.2. He examined several witnesses during the course of investigation.



f) Subsequently, on 20.09.1991, upon his transfer, P.W.12 handed over the investigation of the case to the Circle Inspector of Police, Balugaon (P.W.11). After taking over the charge of investigation, P.W.11 verified the statements of the witnesses already examined by P.W.12 and sought clarification from the Medical Officer, Banpur, regarding the injuries sustained by the injured persons, particularly as to whether any pellets were detected on their bodies. The Medical Officer clarified that no pellets had been recovered from the bodies of the injured persons.

g) Upon completion of the investigation, P.W.11 submitted charge-sheet against the accused persons. On receipt of the charge-sheet, the learned J.M.F.C., Banpur committed the case to the Court of Session, whereafter the accused persons stood trial before the learned Sessions Court.

6. In order to substantiate the charges, the prosecution examined as many as twelve witnesses. Among them, P.W.11 and P.W.12 were the Investigating Officers, who conducted the investigation at different stages, and P.W.10 was the Medical Officer, who examined as many as



eleven injured persons and issued the corresponding injury certificates. P.W.1, Gandhi Parida, is the informant of the case. P.W.2 (Trinath Parida), P.W.3 (Banka Baral), P.W.4 (Debaraj Sundara), P.W.5 (Damodar Pati), P.W.6 (Narayan Khuntia) and P.W.7 (Bidyadhar Sundara) have been examined as witnesses to the occurrence, some of whom were also stated to have sustained injuries in the incident. P.W.8 (Rankanath Naik) and P.W.9 (Purna Chandra Parida) were the seizure witnesses in respect of one dhoti, one shirt, two gamuchhas and one Turkish towel seized under seizure list Ext.2.

Besides the aforesaid oral evidence, the prosecution has relied upon several documentary exhibits, namely, the First Information Report (Ext.1), the seizure lists (Exts.2 and 17), the injury certificates (Exts.3 to 16) and the report of the D.F.S.L., Rasulgarh (Ext.18).

On behalf of the defence, no oral evidence has been adduced. However, the defence has relied upon the certified copy of the post-mortem report of Rankanath Pradhan, which was marked as Ext.5 in S.T. Case No.17/73 of 1992 and has been exhibited in the present case as Ext.A, as well as the certified copy of the F.I.R. of the said case, which



has been marked as Ext.B. These documents have been relied upon in support of the defence version of the case.

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 307/149 and 336/149 of the I.P.C. Relevant would be to reproduce paragraphs-13 and 14 in which the learned Court held thus:-

“13. In the last leg of his argument with regard to the charge u/s 307 I.P.C. Mr. Nayak submitted that it will appear from Exts. A and B that one Rankanath Pradhan died at the spot from amongst the accused persons. He further submitted that this fact is also admitted by P.W.1. But no satisfactory explanation as to how his death took place has been offered by the prosecution. In this connection he submitted that it is the bounden duty of the prosecution to explain as to how the accused sustained injuries in this case. It is of outmost importance to explain convincingly as to how Rankanath Pradhan died at the spot. The explanation given by the prosecution about the death of Rankanath is very sketchy and scanty. Rankanath Pradhan undoubtedly belonged to the group of the accused persons. There is also gain saying the fact that Rankanath Pradhan died at the spot during the fracas. Therefore the event of death of Rankanath ought to have been clearly and reasonably explained by the prosecution.

In the light of the above discussion, I am of the opinion that it will be really hazardous and prosecutors to held the accused persons guilty of an offence u/s 307 I.P.C. In that view of the matter I am of the opinion that the prosecution has failed to prove its case against the accused



persons u/s. 307 read with A.C.C. 149 I.P.C. and accordingly they are acquitted thereof.

14. Now coming to the charge u/s.336/149 I.P.C. it must be stated that in order to sustain such a charge it must be proved that the accused persons did some act in a rash and negligent manner so as to endanger the life and personal safety of others.

In the body of the charge the act or acts of the accused which endangered the life or personal safety of the members of the prosecution party has not been specifically indicated. Such an omission is calculated to cause prejudice to the accused persons. That apart there is also no clear evidence as to which act of the accused persons was done in a rash and negligent manner so as to endanger the life or personal safety of others. Thus the above charge loses of its meaning and purpose particularly after the charge u/s.307 read with sec. 149 I.P.C. has fizzled out against the accused persons. Accordingly, it is held that the prosecution has also failed to prove its case against the accused persons u/s. 336 read with sec.149 I.P.C. and the accused persons are acquitted thereof.”

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

“20. It may be mentioned here that I have also come to a finding that all the accused persons (except accused Ramesh Jena) were members of an unlawful assembly on the date and time stated, armed with deadly weapons and they shared the common object of committing rioting.

It appears from the evidence of P.W.10 that many of the injured had gunshot injuries on their persons, though only some of them are examined in this case. Regard being had to Exts. 3 to 16, it cannot be said that the injuries found on the persons of the injured are self inflicted. That apart it further appears that F.I.R. was lodged with all promptitude excluding the possibility of embellishment and exaggeration.



The injured persons were also produced before the Medical Officer for their examination as early as possible. The cumulative effect of all this go to show that the accused persons caused hurt to the injured in prosecution of their common object while they were members of an unlawful assembly. In that view of the matter all the accused persons except Ramesh Jena are found guilty of an offence u/s 324/149 I.P.C.

In the result, while acquitting all the accused persons from the charges u/ss 307/336 read with section 149 I.P.C. they are except accused Ramesh Jena are found guilty of the offence u/ss 324 I.P.C. and 9-B(b) of the Indian Explosive Act read with Sec.149 IPC and they are accordingly, 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 307/336 read with Section 149 of the I.P.C. 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 after lapse of more than three decades.



9. At the outset, the learned Amicus Curiae(s) appearing for the appellants, without entering into the merits of the conviction recorded by the learned trial Court, confined their 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.

10. Learned Amicus Curiae(s) 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. 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 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

¹ 2025 INSC 540



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

Additionally, the present case is also squarely covered by the judgment of this Court in *Sk. Wahed Ali Vs. State of Orissa*⁴, wherein, while dealing with an offence of a similar nature, the Court had extended

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250

⁴ 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.

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 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.

14. Accordingly, the Criminal Appeal is partly allowed.



15. This Court acknowledges the effective and meaningful assistance rendered by Ms. Varsha Pattnayak and Ms. Anwesha Mishra, learned Amicus Curiae in this case. Learned Amicus Curiae(s) are entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) each 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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