



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 258 of 1996
CNR No. ODHC010002691996

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

Sarat Kumar Nayak

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Kamalakanta Sethy,
Advocate

For the Respondent : Mr. A.K. Apat, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 11.08.2026 : Date of Judgment: 25 .08.2026

S.S. Mishra, J. The present Criminal Appeal is preferred by the appellant challenging the judgment and order dated 13.09.1996 passed by the learned Sessions Judge, Balasore-Bhadrak, Balasore in S.T. No. 78 of 1995 convicting him for offence under Section 354 of IPC and sentenced him to undergo R.I. for a period of two years.



2. The prosecution case, in terse and brief, is that on 14.10.1993 at about 4.00 p.m., P.W.5 along with P.Ws. 3, 4 and others had gone to cut grass from the fields. While they were cutting grass from different places close to each other, the accused along with D.W.2 came to them and challenged P.W.5 as to why she was cutting grass from the fields on thursday and so saying he snatched away the sickle from her and threw it away uttering against her as "SALI SANTALUNI, SATI BOLAUCHHI" intending to humiliate her as she belongs to schedule tribe community and the accused belongs to non-schedule tribe and schedule caste community. It is also alleged that the accused embraced her, dragged her saree which was the only wearing apparel put on by her, made her naked, laid her down on the ground against her wish and despite her resistance committed sexual intercourse with her. When she raised hullah, P.Ws. 3, 4 and others reached there; hence the accused fled away. Thereafter, P.W.3 helped the victim (P.W.5) to put on the saree in a haphazard manner. Having heard hullah P.W.2, the mother of P.W.5 reached there and ascertained everything from P.W.3 and took P.Ws. 3, 4 and 5 to her home. At home P.W.5 narrated the occurrence to her. At that time P.W.1, the father of P.W.5 was absent and on his return the mother of the victim (P.W.2) reported the matter to him. Thereafter



P.W.1 along with some persons of the village went to the house of the accused and alleged that the accused had committed rape on P.W.5 to which the accused refused. Thereafter, a meeting was held in the village, but the meeting was dissolved and nothing could be decided in the meeting. Hence, FIR was lodged by the informant, P.W.1.

3. On the basis of the aforementioned allegations, police registered the case and investigation was conducted. Charge sheet was filed against the appellant and on his stance of complete denial and claim for trial, he was put to trial after the charges were framed.

4. To establish the charges, the prosecution examined eleven witnesses, whereas defence examined two witnesses. P.W.1 is the informant and P.W.2 is his wife. P.W.3 was the eye witness, P.W.5 was the victim, whereas P.W.6 was the medical officer, P.W.7 was the circumstantial witness, P.W.8 was the Headmaster of Radha Kishorepur Primary School, P.W.9 was the witness to the seizure. P.Ws.10 and 11 were the I.Os. of the present case.

5. After thorough analysis of the evidence on record, the learned trial court acquitted the appellant on the charges of 376 of IPC and Section 3(x) of SC & ST Act, however convicted him for the offence



under section 354 of IPC and sentenced him to undergo R.I. for two years. Aggrieved by the same, the appellant has filed the present appeal.

6. The learned trial court by taking into consideration the evidence of P.Ws.1, 3, 4 and 5 arrived at a finding that the prosecution has failed to prove the offence under section 3 (x) of SC & ST Act. Paragraph-18 of the trial court judgment reads as under:-

“18. Now coming to the offence under section 3(x) of the Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act, it has been merely deposed by P.W.1 that the accused abused P.W.5 as "SALI SANTALUNI, SATI BOLOUCHHU". But this is not the evidence of any other witnesses, namely P.Ws. 3, 4 and even of P.W.5. The evidence of P.W.1 is only hearsay which stands uncorroborated by P.Ws. 2, 3, 4 and 5. Accordingly, it cannot be said that the accused humiliated P.W.5 on the ground that she belongs to schedule tribe community and that he (accused) belongs to non-schedule caste or schedule tribe community. Thus, this offence has not been proved.”

7. Since there is no challenge to the said acquittal, this Court is not inclined to enter into the merits of the case in so far as the offence under section 3(x) of the SC and ST Act. The learned trial court while disbelieving the evidence of P.W.5 partly, arrived at the conclusion that the prosecution has failed to prove the charges under section 376 of IPC read with section 3(x) of the SC & ST Act, however as per the trial court, the prosecution could successfully prove its case for the offence



under section 354 of IPC. In para-16 and 17, the learned trial court gives reasoning of the same which reads as under:-

“16. From the aforesaid circumstances, an unequivocal conclusion can be deduced that the accused did not commit rape of the victim girl, but he made preparation to commit rape on her sitting on her thighs. Mere preparation to commit sexual intercourse does not tantamount to attempt to commit rape. A preparation to commit rape would come within the purview of section 345 of the Indian Penal Code and not under section 376 read with section 511 of the Code. In a case where the accused laid the prosecutrix on the bed; broke the string of her pyjama, tore her underwear, but he did not make an attempt to undress, himself and after the prosecutrix pushed him away, he did not make effort to again grab her, it was held in the case of Jai Chand-vrs-State reported in 1996(3) Crimes 160 Delhi that the offence committed by the accused was under section 354 of IPC. The present Case stands almost on the similar footing.

17. On the foregoing analysis it can at best be said that the accused has committed offence punishable under section 354 of the Indian Penal Code. In fact, charge sheet was submitted under this section by the I.O. whereupon 'the learned Magistrate took cognizance, on perusal of the case diary, under section 376 of IPC and committed the case to the Court of Sessions and from the materials on record it only appears that the accused has committed the offence punishable under section 354 of the Indian Penal Code. In case of charge under section 376 of the Code, conviction can be reduced to section 354 as has been held in the case of Lingaraj Pillai (supra).”



8. The learned counsel for the appellant by referring to the evidence of the prosecution as well as the defence has tried to point out the discrepancies. However, the findings recorded by the learned trial court as has been reproduced above, could not be discredited by the learned counsel on the strength of his analysis of the evidence, rather he submitted that he would not further argue the matter in so far as the conviction recorded by the learned trial court is concerned and would only confine his argument to the quantum of sentence awarded. In that regard, learned counsel for the appellant submitted that the incident relates back to the year 1993 and at that point of time, the appellant was 25 years of age and at present he must be around 58 years. He further submitted that keeping in view the procrastinated judicial process undergone by the appellant in this case and the ordeal of trial faced by the appellant, this Court may dispose of the appeal by giving lenient consideration to the sentence. He submitted that the incident pertains to the year 1993. The appellant has undergone the rigors of trial for about three years. Thereafter, the appeal was preferred in the year 1996. The appeal has been prolonging to be heard for about 30 years. The appellant is now in his late fifties or early sixties. The learned counsel further submitted that the appellant 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.

9. The record reveals that the incident relates back to the year 1993 and at that point of time the appellant was in his early twenties. He has been convicted by the impugned judgment and order dated 13.09.1996. The present appeal is pending since 1996 and at present the appellant is in his early sixties. Much water has been flown under the bridge by now. Therefore, this is a fit case to be given the treatment under the Probation of Offenders Act. 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 apply the provisions of Probation of Offenders Act and non-granting of the benefit should be supported by reasoning.

In the facts scenario of the present case, the prayer made by Mr. Sethy, learned counsel for the appellant for extending the benefit of the P.O. Act deserves merit to be considered.

¹ 2025 INSC 540



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 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 and the overall circumstances emerging from the record, this Court is of the considered view that the case of the appellant 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

² 2012 (Supp-II) OLR 469

³ 2007 (Supp.II) OLR 250



case, this Court is inclined to extend to the appellant the benefit contemplated under Section 4 of the Probation of Offenders Act.

11. 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 to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a period of one year on his executing bond of Rs.10,000/- (Rupees ten 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 shall keep peace and good behavior and he shall remain under the supervision of the concerned Probation Officer during the aforementioned period of one year.

12. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 25th August, 2026/Ashok

Signature Not Verified

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Signed by: ASHOK KUMAR JAGADEB
MOHAPATRA
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