THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.47 of 1997
CNR No. ODHC010004561997
(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

Rajendra Kumar Sahu ……. ***Appellant***

-Versus-

State of Orissa ……. ***Respondent***

For the Appellant : Mr. Bijaya Kumar Ragada, *Amicus Curiae*

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

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 06.10.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of conviction and order of sentence dated 22.02.1997 passed by the learned Additional Sessions Judge, Bhadrak, in Sessions Trial No. 13/128 of 1995, arising out of G.R. Case No. 308 of 1994, whereby the appellant

was convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of three years.

2. The present appeal has been pending since 1997. When the matter was called for hearing, consistently none appeared for the appellant. Therefore, on 15.07.2025, this Court requested Mr. Bijaya Kumar Ragada, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Ragada.

3. Heard Mr. Bijaya Kumar Ragada, learned Amicus Curiae appearing for the appellant and Mr. A.K. Apat, learned Additional Government Advocate appearing for the Respondent-State.

4. The prosecution case, in brief, is that on 16.03.1994 at about 5.00 P.M., while the injured, Ramakanta Sahu, was returning to his house, the appellant confronted him regarding a case instituted against the appellant's father. When the injured denied the allegation and did not agree to withdraw the case, the appellant allegedly threatened to finish

him, took out a knife from his pocket and inflicted three blows on his person. The blows were stated to have landed on the left side of his chest, the head and the back below the shoulder. As a result of the assault, the injured sustained bleeding injuries and fell to the ground. On witnessing the occurrence, his daughter, P.W.2, intervened and struck the hand of the appellant with a broom, whereupon the knife fell from his hand. The appellant thereafter allegedly picked up the knife, threatened the persons present and fled from the spot.

5. P.W.1, Niranjan Dixit, submitted a written report before the Assistant Sub-Inspector of Police at Sabranga Outpost while the injured was being taken to the hospital. On the basis of the report, Bhadrak Rural Police Station Case No. 84 of 1994 was registered. Upon completion of investigation, the police submitted charge-sheet against the appellant for the offence punishable under Section 307 of the Indian Penal Code, and the case was committed to the Court of Session.

6. The prosecution examined seven witnesses. P.W.1 is the informant; P.W.4 is the injured; P.W.2 and P.W.3 are the daughters of the injured, who claimed to have witnessed the occurrence; P.W.5 was

the doctor who initially examined the injured at Bhadrak Hospital; P.W.6 was the surgery specialist who examined the nature of the injuries; and P.W.7 was the investigating officer. The defence examined one witness, D.W.1, who sought to dispute the occurrence.

7. The learned trial Court upon appreciation of the oral and medical evidence, accepted the testimony of the injured and his daughters, holding that their evidence was substantially corroborated by the medical opinion. It found that the appellant had inflicted successive knife blows on vital parts of the body of the injured and that the intervention of P.W.2 had prevented the appellant from proceeding further with the assault. The learned trial Court concluded that the appellant had acted with the intention to commit murder and accordingly convicted him under Section 307 of the Indian Penal Code. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"**14.** From the aforesaid evidences on record it reveals that the intention of the accused was to kill the injured P.W.4 but due to intervention of daughter of the injured P.W.2 the knife fell down from the hand of the accused. It is an established principle in law that a person is criminally responsible for an attempt to commit murder when with the intention or knowledge requisite to its commission he has done*

the last proximate act necessary to constitute the completed offence and when the completion of offence is prevented by some cause independent of his volition. The nature of injury caused may give some assistance in coming to a finding as to the intention of the accused but such intention may also be caused from other circumstances and may be ascertained in some cases without reference to actual wounds. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof. The intention of the assailant may be gathered from the nature of the weapon used and the parts of the body where the injuries inflicted. Keeping in mind the above principle of law it is noticed that in the present case the accused inflicted the stab injuries on the vital part of the body of the injured P.W.4 with an intention to kill him but due to intervention of the daughter of the injured the knife fell down from his hand. So from the facts and circumstances of the case as discussed above it must be held that the prosecution has successfully bring home the charge U/S 307 of the I.P.C. against the accused beyond all shades of reasonable doubt.

14. *In the result, I hold the accused guilty U/S 307 I.P.C. and convict him thereunder. After taking into consideration the nature of the offence and the circumstances under which the accused committed the offence I feel it not to extend the benefit of the provisions of the Probation of Offenders Act to the accused."*

8. I have heard the learned counsel appearing for the appellant and the learned counsel for the State and have carefully examined the

evidence available on record, the findings recorded by the learned trial Court and the grounds urged in appeal. The principal question requiring determination is whether the prosecution has established beyond reasonable doubt that the appellant committed an act with such intention or knowledge and under such circumstances that, if death had been caused by that act, he would have been guilty of murder, thereby attracting Section 307 of the Indian Penal Code. If the evidence does not establish the requisite ingredients of that offence, it would be necessary to determine whether the proved facts nevertheless constitute an offence punishable under Section 325 of the Indian Penal Code.

9. The evidence of the injured witness, P.W.4, regarding the assault finds corroboration from the testimony of his daughters, P.Ws.2 and 3, and the medical evidence adduced through P.Ws.5 and 6. The fact that the witnesses are related to the injured does not, by itself, render their testimony unreliable, particularly when no material contradiction has been elicited to discredit their account of the occurrence.

10. The medical evidence establishes that the injured sustained three injuries, including an injury on the chest, an incised wound on the head

and a punctured wound on the back, caused by a sharp-pointed weapon. However, the alleged knife was not recovered during investigation, and no bed-head ticket relating to the subsequent treatment of the injured at S.C.B. Medical College and Hospital, Cuttack, was seized and proved. Though these omissions do not, by themselves, discredit the prosecution case regarding the assault, they assume relevance while assessing the precise nature of the offence established by the evidence.

11. Section 307 of the Indian Penal Code requires proof that the accused acted with such intention or knowledge and under such circumstances that, had death ensued, the act would have amounted to murder. The nature and location of the injuries, the weapon allegedly used, the number of blows and the surrounding circumstances are relevant in determining such intention or knowledge. In the present case, although the appellant inflicted successive blows on the injured following a dispute concerning litigation against his father, the medical evidence describes two injuries as simple and the remaining injury as dangerous, with the opinion that it could have caused death if left untreated. Upon an overall assessment of the evidence, the conviction

under Section 307 IPC is not sustainable. Nevertheless, the evidence establishes a deliberate assault resulting in serious bodily injury. Accordingly, the conviction is altered to one under Section 325 IPC, subject to the legal requirement that the injury proved falls within the definition of grievous hurt under Section 320 IPC.

12. Coming to the question of sentence, the record indicates that the occurrence is of the year 1994. More than three decades have elapsed since the occurrence. The appellant was approximately twenty-five years of age at the time of the occurrence. The learned trial Court itself recorded that this was his first offence.

13. 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 supported by reasons.

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[1] 2025 INSC 540

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 reformative 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 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."

Considering the altered conviction under Section 325 of the Indian Penal Code, the age of the appellant at the time of the occurrence, the absence of any previous conviction established on record and the overall circumstances of the case, this Court is of the considered view that the appellant deserves to be extended the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, instead of directing

the appellant to undergo the remaining part of the sentence. In view of the aforesaid, this Court is inclined to extend the appellant the benefit contemplated under Section 4 of the Probation of Offenders Act.

14. As regards monetary liability, Section 5 of the Probation of Offenders Act, 1958, empowers the Court, when releasing an offender under Section 3 or Section 4, to direct him to pay such compensation as the Court considers reasonable for the loss or injury caused by the commission of the offence, along with the costs of the proceedings, where appropriate. In view of the injuries sustained by P.W.4, Ramakanta Sahu, and the circumstances of the assault, the appellant is directed to pay compensation of Rs.25,000/- (Rupees twenty-five thousand only) to the injured under Section 5 of the Probation of Offenders Act, 1958 within a period of one month.

15. 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.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 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.

16. Accordingly, the Criminal Appeal is partly allowed.

17. This Court acknowledges the effective and meaningful assistance rendered by Mr. Bijaya Kumar Ragada, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 31st October, 2026/Subhasis Mohanty

Signature Not Verified
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Signed by: SUBHASIS MOHANTY
Reason: Authentication
Location: High Court of Orissa, Cuttack.
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