THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.304 of 2006

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

1. Maguni Rout
2. Dillip Rout @ Dillip Kumar Rout
3. Pradeep Kumar Rout ……. ***Appellants***

-Versus-

State of Odisha ……. ***Respondent***

For the Appellants : Mr. Jeevan Pradhan, Advocate

For the Respondent : Ms. Suvalaxmi Devi, ASC

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 has been filed assailing the judgment of conviction and order of sentence dated 12.07.2006 passed by the learned Additional Sessions Judge-cum-Special Judge, Baripada,

in G.R. Case No.759 of 1999 (T.C. No.32 of 2002), whereby the appellants, while being acquitted of the charges under Sections 341/294 read with Section 34 of the Indian Penal Code (hereinafter referred to as the "I.P.C.") and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, were held guilty and convicted under Sections 323/325 read with Section 34 of the I.P.C. and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each, in default whereof to undergo rigorous imprisonment for one month, for the offence punishable under Section 325 of the I.P.C., without imposing any separate sentence for the offence under Section 323 of the I.P.C.

2. Heard Mr. Jeevan Pradhan, learned counsel appearing for the appellants, and Ms. Suvalaxmi Devi, learned Additional Standing Counsel (ASC) appearing for the respondent-State.

3. Although the appeal was jointly preferred by three appellants, during its pendency, it was brought to the notice of this Court that appellant No.1, Maguni Rout, has expired. Accordingly, vide order dated

05.08.2025, the appeal stood abated qua appellant No.1, there being no application under Section 394 of the Code of Criminal Procedure, 1973 either by the legal representatives of the deceased appellant or his next friend. Consequently, the present appeal is confined to consideration of the case of appellant Nos. 2 and 3.

4. The prosecution case, in brief, is that on 25.07.1999 at about 5:00 p.m., while the son of the informant had gone to raise a ridge on the land of the accused persons to facilitate the flow of water to his own land, accused Maguni came to the spot and assaulted him by giving a slap. Subsequently, upon receiving information about the incident, when the informant questioned the accused persons, they abused him in filthy language, threatened to take away his life and assaulted him, as a result of which he sustained injuries on different parts of his body. It was further alleged that accused Pradeep pressed the informant's testicles and left him only after the intervention of his son. On 27.07.1999, the informant lodged a written report before the Officer-in-Charge of Baisinga Police Station, on the basis of which Baisinga P.S. Case No. 89 of 1999 was registered and investigation was taken up. During

investigation, the witnesses were examined, the injured was sent for medical examination and his caste certificate was seized. Upon completion of the investigation, the police submitted a charge sheet against the accused persons for standing trial. The accused persons were charged under Sections 341/294/323/325 read with Section 34 of the I.P.C. and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The plea of the accused persons was one of complete denial, with the further defence that, owing to prior enmity, they had been falsely implicated in the case. It was also their case that the informant and his son had assaulted the wife of accused Maguni and the present case had been foisted upon them to avoid criminal liability.

5. To substantiate the charges, the prosecution examined seven witnesses, including the doctor (P.W.6) and the Investigating Officer (P.W.7). P.W.1 is the informant, while P.W.2 is his son. P.Ws.3 and 4 were independent witnesses to the occurrence, and P.W.5 was a seizure witness. The doctor examined the injuries sustained by the informant,

while the Investigating Officer conducted the investigation. No evidence was adduced by the accused persons in their defence.

6. Upon appreciation of the oral and medical evidence on record, the learned trial Court found that the prosecution had failed to establish the charges under Sections 341/294 read with Section 34 of the I.P.C. and Section 3(x) of the S.C. & S.T. (Prevention of Atrocities) Act. However, placing reliance on the evidence of the informant and the other prosecution witnesses, as well as the medical evidence, the learned trial Court held the accused persons guilty of the offences punishable under Sections 323/325 read with Section 34 of the I.P.C. and convicted them thereunder. The relevant findings recorded by the learned trial Court in paragraphs 11 to 13 of the impugned judgment are extracted hereinbelow:-

> *"11. No doubt, the informant has sustained injuries on his person and the doctor (P.W.6) opined injury No. 1 as grievous in nature, and the other injuries as simple in nature. As regards the cause of injuries, the evidence of P.W.1 is clearly reveals that due to assault by both the accused persons, he has sustained injuries on his person. Independent witnesses (P.Ws. 3 and 4) have admitted in their evidence regarding quarrel between both the parties. Simply because of enmity between the parties and delay in lodging the F.I.R., the entire*

evidence of P.Ws. 1 and 2 should not be thrown out when their evidence remains unshaken throughout.

12. On scrutinising the evidence on record, as discussed above, I find there is no sufficient evidence to implicate the accused persons for the charges U/S. 341/294/34 I.P.C. and U/S. 3(x) of the S.C. & S.T. (P.A.) Act, for which they are entitled to be acquitted from the said charges. But on the other hand, prosecution has well established its case U/S. 323/325 I.P.C. against all the accused persons beyond all reasonable doubts.

13. In the result, as discussed above, the accused persons are held not guilty, U/S. 341/294/34 I.P.C. read with Sec. 3(x) of the S.C. & S.T. (P.A.) Act and are acquitted from the said charges as per Section 235(1) Cr.P.C. But the accused persons are held guilty U/S. 325/323/34 I.P.C. and are convicted thereunder."

7. Being aggrieved by the aforesaid judgment of conviction and order of sentence dated 12.07.2006 passed by the learned Additional Sessions Judge-cum-Special Judge, Baripada, in G.R. Case No. 759 of 1999 (T.C. No. 32 of 2002), whereby they were convicted for the offences punishable under Sections 323/325 read with Section 34 of the I.P.C. and sentenced as aforesaid, the appellants have preferred the present appeal challenging the legality and sustainability of the impugned judgment. Since the appeal has abated qua appellant No. 1, the challenge in the present appeal is confined to appellant Nos. 2 and 3.

8. At the outset, learned counsel appearing for the appellants submitted that he would confine his submissions to the question of sentence without assailing the findings of conviction on merits. It was contended that the occurrence took place on 25.07.1999 and the learned trial Court passed the judgment of conviction and order of sentence on 12.07.2006. The present appeal has, thus, remained pending for a considerable period of time. Learned counsel further submitted that appellant No. 2 was about 33 years of age and appellant No. 3 was about 42 years of age at the time of passing of the judgment by the learned trial Court and, as on date, they are approximately 53 and 62 years old, respectively. It was further submitted that the appellants have since settled in life and having regard to the long passage of time since the occurrence, directing them to undergo the substantive sentence at this distant point of time would serve no meaningful purpose.

Learned counsel also submitted that the appellants have no criminal antecedents and that no other criminal case is stated to be pending against them. It was contended that they have remained integrated with society over the years and are leading peaceful lives. In

such circumstances, their 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 offences, the antecedents of the appellants and the overall facts and circumstances of the case, this Court may extend them the benefit of the provisions of the Probation of Offenders Act, 1958.

9. Upon a careful appraisal of the evidence on record and the facts and circumstances of the present case, this Court finds no compelling reason to interfere with the findings recorded by the learned trial Court. The evidence of the informant (P.W.1) and his son (P.W.2), who is the material witnesses to the occurrence, finds corroboration from the testimony of the other prosecution witnesses, particularly P.Ws.3 and 4, who have spoken about the quarrel between the parties. Their evidence also receives support from the medical evidence of P.W.6, who examined the informant and opined that one of the injuries sustained by him was grievous in nature, while the remaining injuries were simple. Nothing material has been elicited in their cross-examination to discredit

their testimony insofar as the assault and the injuries sustained by the informant are concerned. The mere existence of prior enmity between the parties and the delay in lodging the F.I.R., in the absence of any material circumstance rendering the prosecution version unreliable, would not, by themselves, be sufficient to discard the otherwise credible evidence on record. This Court, therefore, finds that the prosecution has established the guilt of the appellants, namely appellant Nos. 2 and 3, for the offences punishable under Sections 323 and 325 read with Section 34 of the Indian Penal Code beyond reasonable doubt. Accordingly, the conviction recorded by the learned trial Court does not warrant interference.

10. The record reveals that the occurrence took place on 25.07.1999. Appellant No. 2 was about 33 years of age and appellant No. 3 was about 42 years of age at the time of passing of the judgment of conviction and order of sentence by the learned trial Court on 12.07.2006. The present appeal has remained pending for a considerable period of time. As of now, appellant Nos. 2 and 3 are approximately 53 and 62 years of age, respectively. More than 27 years have elapsed since

the occurrence, and much water has flown under the bridge. It has been submitted on behalf of the appellants that they have no criminal antecedents, that no other criminal case is stated to be pending against them, and that they have remained integrated with society over the years and are leading settled lives. In such circumstances, having regard to the nature of the offences, the age of the appellants, the long passage of time since the occurrence and the overall facts and circumstances of the case, this Court is of the considered view that the question of extending to appellant Nos. 2 and 3 the benefit contemplated under the provisions of the Probation of Offenders Act, 1958 deserves merit. 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. In the facts and circumstances of the present case, the submission advanced by the learned counsel for the

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appellants seeking extension of the benefit under the Probation of Offenders Act merits consideration.

11. 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.*
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> *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.*
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> *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 and circumstances of the present case, particularly the nature of the offences under Sections 323/325 read with Section 34 of the Indian Penal Code, the long lapse of more than 27 years since the occurrence, the age of appellant Nos. 2 and 3, the absence of any criminal antecedents and the settled lives stated to be presently led by them, this Court is of the considered opinion that appellant Nos. 2 and 3 deserve to be extended the benefit contemplated under Section 4 of the Probation of Offenders Act, 1958, instead of directing them to undergo the substantive sentence imposed by the learned trial Court. Additionally, the case of the appellants are also covered by the ratio of the judgments

of this Court in the cases 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 appellants the benefit contemplated under Section 4 of the Probation of Offenders Act.

12. Hence, the present Criminal Appeal, so far as the conviction is concerned, stands unaltered. But instead of sentencing the appellants to suffer imprisonment, this Court direct the appellants to be released under Section 4 of the Probation of Offenders Act for a period of three months on their executing a 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 period and, in the meantime, the appellants shall keep peace and good behaviour and shall remain under the supervision of the concerned Probation Officer during the aforementioned period of three months.

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[2] *2012 (Supp-II) OLR 469*
[3] *2007 (Supp.II) OLR 250*

13. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

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

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