THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.82 of 2009
CNR No.ODHC010035842009

(In the matter of an application under Section 374 (2) of the Criminal Procedure Code, 1973)

Daya Rout ……. ***Appellant***

-Versus-

State of Orissa ……. ***Respondent***

For the Appellant : Mr. Prasanna Panda, Advocate
Mr. B. Rout, Advocate

For the Respondent : Mr. R.B. Dash, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 22.09.2026 : 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 26.12.2008 passed by the learned Additional Sessions Judge (F.T.C.), Balangir at Patnagarh in Sessions Case No.86/16 of 2007-08, arising out of G.R. Case No.356 of 2006,

whereby the appellant while acquitted under Section 324/307/34, was convicted for the offence punishable under Section 323 of the Indian Penal Code and was sentenced for the period already undergone i.e. 53 days during investigation and trial and also directed to pay a compensation of Rs.1000/- within two months to P.W.1 Dhruba Majhi.

2. Heard Mr. Prasanna Panda and Mr. B. Rout, learned counsel appearing for the appellant and Mr. R.B. Dash, learned Additional Standing Counsel appearing for the State.

3. The prosecution case, in brief, is that on 18.10.2006 at about 6.00 P.M., the informant Dhruba Majhi was tending his cattle near the gochar land of the village. At that time, the appellant Daya Rout and his father co-accused Dirju Rout came there and questioned the informant as to why his cattle had damaged their paddy. It was alleged that the appellant and the co-accused snatched the goad stick from the hand of the informant and assaulted him. The appellant was specifically alleged to have dealt blows to the head of the informant, resulting in bleeding injuries. On hearing the shouts of the injured, P.Ws.2 and 3 came to the spot and thereafter the injured was taken towards the police station and

hospital. The police investigated the matter, examined the witnesses, seized the blood-stained dhoti of the injured and a stick and, after completion of investigation, submitted charge-sheet.

4. In support of its case, the prosecution examined six witnesses. P.W.1 is the injured-informant; P.Ws.2 and 3 were post-occurrence witnesses; P.W.4 was the doctor; P.W.5 was a seizure witness and P.W.6 was the Investigating Officer. The defence also examined two witnesses.

5. The learned trial Court, upon appreciation of the evidence, did not find sufficient material to sustain the allegation against co-accused Dirju Rout and acquitted him. So far as the present appellant is concerned, the learned trial Court found that the evidence of the injured, corroborated by the medical evidence and other surrounding circumstances, established that the appellant had caused simple injuries to P.W.1 by means of a stick. The learned trial Court, however, did not accept the allegation relating to an attempt to commit murder and accordingly held that the act of the appellant constituted an offence punishable under Section 323 of the IPC. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

"8- Now the next question comes for consideration as to nature of offence committed by the accused Daya Rout. It is in the evidence of the prosecution witnesses that the accused Daya Rout when arrived at the spot and challenged the victim-injured, he was not armed with any weapon and on the spur of moment being enraged with damage of their crop, he snatched the goad stick from the hand of the informant and dealt one blow and the injury on the head does not cause any deep injury. P.Ws. 2 and 3 have stated that seeing them the accused persons fled away. Accused Daya Rout had enough opportunity to assault the injured by means of that stick severely on his head, but he did not do so and there was no other person to prevent him from that assault. The weapon of offence-stick is a small one and ordinarily used for tending of buffaloes. As such that is not a dangerous or sharp cutting weapon. From the entire scenario it is crystal clear that the accused Daya Rout never intended or attempted to cause the murder of the victim P.W.1 although it is amply proved that he caused simple injuries on the head of P.W.1. As such the offence comes under section 323 of the India Penal Code, even if the charge is in aid of section 34 of the IPC. However, for his individual act he is liable to be convicted for the offence U/s. 323 of the IPC and I convict the accused Daya Rout for the offence U/s. 323 IPC as the prosecution has fully established beyond reasonable doubt that he caused voluntary hurt to the victim P.W.1.

9- In the result the accused persons are acquitted from the charge U/s. 324/307/34 IPC and accused Daya Rout is convicted for the offence U/s. 323 IPC."

6. Having heard learned counsel for the parties and having carefully examined the evidence and the findings recorded by the learned trial Court, this Court finds that the conviction of the appellant under Section 323 of the IPC does not call for interference. The incident appears to have arisen out of a sudden dispute between persons who were previously on talking terms. P.W.1 is the injured witness and his presence at the place of occurrence has been established. His version regarding the assault finds material corroboration from the medical evidence. The doctor found lacerations on the head and bruises on the forearm and leg, all of which were simple in nature and caused by a hard and blunt object. The medical evidence was thus found consistent with the occurrence as narrated by the injured.

The evidence of P.Ws.2 and 3 also establishes the immediate post-occurrence circumstances. Both witnesses reached the spot upon hearing the cries of the injured and found him lying with bleeding injuries on his head. The learned trial Court, while appreciating their evidence, noticed that they had not actually witnessed the assault, but their evidence was relevant to the immediate aftermath of the

occurrence. The seizure evidence also formed part of the circumstances considered by the learned trial Court.

7. In the aforesaid factual background, the conviction of the appellant under Section 323 of the IPC is found to be sustainable. The appeal, insofar as the finding of guilt is concerned, therefore, does not warrant interference. The question that remains for consideration is whether the appellant is entitled to the benefit of the Probation of Offenders Act, 1958, having regard to the nature of the offence, the circumstances in which it was committed, and the antecedents of the appellant.

8. 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 the 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."

In the present case, the conviction is confined to the offence of voluntarily causing simple hurt under Section 323 of the IPC. There is no finding of premeditation or use of a deadly weapon, and the occurrence arose out of a sudden quarrel. The absence of criminal antecedents, the nature of the injuries, and the relationship between the parties prior to the occurrence are relevant mitigating circumstances.

This Court is also mindful that the appellant has already undergone 53 days of imprisonment during investigation and trial and has, therefore, experienced the consequences of the criminal proceedings. Having regard to the considerable lapse of time since the occurrence, the nature of the offence, the mitigating circumstances recorded by the learned trial Court, and the period of imprisonment already undergone, 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.

9. Hence, the present Criminal Appeal in so far as the conviction is concerned is turned down. But instead of sentencing the appellant, 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 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 three months.

10. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

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

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Signed by: SUBHASIS MOHANTY
Reason: Authentication
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