THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 587 of 2010

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

Sarat Ch. Mahanta @ Sarata Mahanta and Others ..... ***Appellants***

-Versus-

State of Orissa ..... ***Respondent***

For the Appellants : Mr. Biswa Kumar Mishra, Advocate

For the Respondent : Mr. S. Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 09.04.2026 : Date of Judgment: 16.04.2026

S.S. Mishra, J. This appeal has been conjointly filed by seven appellants assailing the judgment of conviction and order of sentence dated 26.11.2010 passed by the learned Adhoc Additional Sessions Judge, Fast Track Court, Kamakshyanagar in Criminal Trial (Sessions) No.141 of 2009/ Criminal Trial (Sessions) No.77 of

2009 [arising out of G.R. Case No. 515 of 2008], whereby the learned trial court convicted the appellants under Sections 148/324/149 of IPC and sentenced them to undergo R.I. for one year and to pay a fine of Rs.2,000/- each, in default to undergo R.I. for two months for offence U/s. 148 of I.P.C. and to R.I. for two years and to pay a fine of Rs.2,000/- each, in default to undergo R.I. for two months for offence U/ss.324/149 of I.P.C. Both sentences were directed to run concurrently.

2. Heard Mr. Biswa Kumar Mishra, learned counsel for the appellants and Mr. S. Panigrahi, learned Additional Standing Counsel for the State.

3. During pendency of the present appeal, the appellant no.2- Debaraj Mohanta and appellant no.5 Sridhar Mohanta have expired. Therefore, vide order dated 19.02.2026, the appeal qua the deceased-appellant Nos.2 and 5 stood abated in absence of any application under Section 394 Cr.P.C. moved by their legal heirs or next friend. Accordingly, consideration of the present appeal is confined to the appellant Nos.1, 3, 4, 6 and 7 only.

4. The prosecution case, in brief, is that the informant, namely Ghanashyam Mohanta (P.W.1), lodged a First Information Report alleging that on 16.08.2008 at about 2:00 p.m., while he, along with Prafulla Mohanta, Lochan Mohanta, Pabana Mohanta, Sarat Mohanta, Satyaranjan Mohanta, and the priest Dwarika Dehury, were returning from the temple of Goddess Brahmani Devi, they were allegedly restrained at the end of the village by the accused persons, namely Daitary Mohanta (since deceased), Sridhara Mohanta, Nilakantha Mohanta, Debaraj Mohanta, Niranjan Mohanta, Ramesh Mohanta, Laxmidhar Mohanta, and Sarat Ch. Mohanta, who were stated to be armed with lathis, sticks, bhujalis, and other weapons.

It is alleged that the accused persons abused the informant party and questioned them regarding the priest being prevented from performing worship on their behalf, and for being persuaded to perform worship for the informant party. Thereafter, the accused persons alleged to have assaulted the informant and his companions with the weapons in their possession. Specifically, it is alleged that Laxmidhar Mohanta assaulted the informant on his chin with a bhujali; Niranjan Mohanta caused a cut injury to Prafulla Mohanta;

Ramesh Mohanta inflicted a cut injury on the head of Pabana Mohanta; Debaraj Mohanta caused a cut injury to Lochan Mohanta with an axe; and Sarat Ch. Mohanta assaulted Satyaranjan Mohanta with a lathi on his back, leg, and head. It is further alleged that Daitary Mohanta (since deceased) assaulted Sarat Ch. Mohanta with a lathi, while Sridhara Mohanta and Nilakantha Mohanta were pelting stones.

As a result of the alleged assault, Lochan Mohanta, Pabana Mohanta, Satyaranjan Mohanta, and Prafulla Mohanta were stated to have sustained injuries. Upon the arrival of other villagers, namely Jagadananda Mohanta, Birabar Mohanta, Aparti Mohanta, Narahari Mohanta, and others, the accused persons allegedly fled from the spot after extending threats to the informant party.

On the basis of the aforesaid allegations, the F.I.R. was registered for offences punishable under Sections 147, 148, 341, 323, 294, 324, 336, 506, and 149 of the Indian Penal Code. Upon completion of investigation, charge-sheet was submitted against the present appellants along with the accused Daitary Mohanta. However,

since Daitary Mohanta died during the committal proceeding, the case against him abated, and the present appellants faced trial for the aforesaid offences.

5. In order to substantiate its case, the prosecution examined twelve witnesses in total. Among them, P.W.1 was the informant as well as one of the injured witnesses. P.Ws.2, 3, 5, 6, and 7 were also injured witnesses. P.W.4 was the Medical Officer, who examined the injured persons and opined that the injuries sustained by them were simple in nature. P.Ws.8 and 10 were cited as independent witnesses; however, they did not support the prosecution case and were declared hostile. P.Ws.9 and 11 were independent witnesses, while P.W.12 was the Investigating Officer of the case. The defence examined one witness D.W.1, the wife of appellant No.4 Ramesh Mahanta, who was also the informant in a counter case to this case.

6. It is an admitted position that a counter case was also filed, arising out of the same incident. In the said case, the present appellants denied the allegations and took the plea that they were assaulted by the informant party and had acted in exercise of their

right to private defence. The learned trial court, upon appreciation of the evidence on record, observed that the dispute between the parties was pre-existed and the occurrence was result of a free fight, making it difficult to determine as to who was the aggressor was and who acted in defence, while observing thus:

> *"Admittedly, the present case is a counter case to C.T. (SS) No.142/78 of 2009 and the further case of the accused persons is that the informant party assaulted them when Dukhini asked the priest regarding the refusal to worship for her. On the other hand the case of the informant party is that while they were coming from the temple after performing puja the accused persons restrained them and assaulted them by means of different weapons. From the respective pleas of the parties and available evidence on record, it is deducible that on the date, time and place of occurrence both the parties were present and received injuries on vital parts of their bodies including incised injuries, which are possible only by sharp cutting objects. This part of material evidence is admitted by both the parties. The contention of the learned defence counsel that the informant party are the aggressors becomes a mere academic question now in the light of evidence to the effect that there was free fight between the parties out of a dispute regarding the worship of village deity. In a case of free-fight the question of self-defence as to who attacks and who defends in such a fight is material but it depends upon the tactics adopted as well as the facts and circumstances of each case However, it is very difficult to ascertain in case of free-fight as to who are the aggressors or as to how the fight was started. It is true that everyone has right to defend himself and his property but the right of self-defence must be used as a shield to avert an attack and it should not be vindictive and cannot be used to retaliate. In the present case, it is found that the parties*

have retaliated and in these circumstances, neither side is entitled to claim the benefit of private defence."

The learned trial court acquitted the appellants of all other charges but convicted them for the offences punishable under Sections 148, 324, and 149 of the Indian Penal Code.

7. Aggrieved by the judgment of conviction and order of sentence dated 26.11.2010 passed by the learned trial court, the appellants have filed the present appeal.

8. P.Ws. 1, 2, 3, 5, 6 and 7 are the injured witnesses in the present case. Their testimonies if read in conjunction attributes specific overt acts to the accused-appellants with regard to the alleged assault. The medical evidence adduced through P.W.4, the examining doctor who examined both the injured witnesses as well as the accused persons, indicates that only P.W.2 sustained an incised injury, whereas the remaining injured witnesses sustained lacerated injuries. Significantly, all the injuries have been opined to be simple in nature.

It is further evident from the evidence of the Investigating Officer (P.W.12) that none of the alleged weapons of offence were

recovered during the course of investigation. This aspect assumes relevance while appreciating the nature and gravity of the allegations.

Having regard to the cumulative effect of the evidence on record, and in particular the testimonies of multiple injured witnesses, this Court is of the view that undertaking a meticulous re-appreciation of each individual piece of evidence would not materially alter the conclusion. The overall circumstances clearly suggest that the occurrence was the outcome of a free fight arising out of prior enmity between the two groups.

In such background, and in light of the findings recorded by the learned trial court, this Court finds no perversity or illegality in the appreciation of evidence or the conclusions drawn therefrom. Accordingly, the conviction of the appellants for the offences punishable under Sections 148, 324, and 149 of the Indian Penal Code is affirmed, and the judgment of the learned trial court is upheld.

9. At this stage, learned Counsel appearing for the appellants has submitted that the incident relates back to the year 2009. The appellants have been convicted vide judgment dated

26.11.2010 and the appeal is pending since 2010. He further submitted that over the years, the appellants have led a dignified life, integrated well into society, and are presently leading a settled family life. Incarcerating them after such a long delay, it is argued, would serve little penological purpose and may in fact be counter-productive, casting a needless stigma not only upon them but also upon their family members, especially when there is no suggestion of any repeat violation or ongoing non-compliance with regulatory norms. Therefore, the appellants may be treated under the Probation of Offenders Act.

10. The record reveals that the incident dates back to the year 2009. At the relevant time, most of the appellants were in their 20s and 30s, while one of them was in his 50s. They came to be convicted pursuant to the impugned judgment and order dated 26.11.2010. The present appeal has been pending since 2010, and with the passage of considerable time, it is evident that the appellants have now advanced in age, with some of them presently being in their 40s, 50s, and even 60s. Much water has been flown under the bridge by now. Therefore, the prayer made by Mr. Mishra, learned Counsel

for the appellants for extending the benefit of the P.O. Act deserves merit to be considered.

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 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 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

[1] 2025 INSC 540

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.

12. 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 one year on their executing 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 behavior and they shall remain under the supervision of the concerned Probation Officer during the aforementioned period of one year.

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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 16th of April, 2026/Ashok