



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 351 of 2005

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

Nanda Harijan and another ***Appellant(s)***

-Versus-

State of Orissa ***Respondent(s)***

For the Appellants : Mr. Arijeet Mishra,
Advocate

For the Respondent : Mr. S.J. Mohanty, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 15.07.2025 : Date of Judgment: 31.07.2025

S.S. Mishra, J. The present appeal is directed against the judgment of conviction and order of sentence dated 30.07.2005 passed by the learned Adhoc Additional Sessions Judge, Jeypore in Criminal Trial No.1 of 2005, whereby the learned trial Court has convicted the accused-appellants for the offences punishable under Section 334 of IPC and sentenced them to undergo R.I. for one month each.



2. Heard Mr. Arijeet Mishra, learned counsel for the appellants and Mr. S.J. Mohanty, learned counsel for the State.

3. The prosecution case in nutshell is that on 29.07.2003 at about 4.30 P.M. while the informant was returning to his house from the field, on the way near village tube-well, the appellants were present and abused him in filthy languages. Thereafter, the appellant no.1 assaulted him with chapal and appellant no.2 pushed him and he fell down. As some villagers came there to rescue him, the accused persons left the place. Immediately, thereafter one accused, namely, Budu came by holding a knife and threatened to kill him but when the villagers raised alarm, he too left the place. Subsequently, the father of the two appellants had gave a blow on his head by means of a 'thenga', for which the informant sustained bleeding injury. It is alleged that the present appellants along with their father, i.e., late Sambaru Harijan and one Budu Harijan threatened the informant to kill him.

4. On the basis of the aforementioned allegations, investigation of the case was conducted. Though at the initial stage, the case was registered against Sambaru Harijan, the father of the appellants, but since



he died the case against him was dropped. Hence, charge sheet was submitted against three appellants for the alleged commission of offence punishable under Sections 294/341/323/355/506/34 IPC and accordingly charges were framed and the appellants were put to trial. Out of the three accused persons, one Budu Harijan was acquitted by the learned trial court. Hence, the present appellants no.1 and 2 are before this Court by filing the present appeal.

5. The prosecution examined as many as seven witnesses to substantiate its case. P.W.1 was the informant-injured, P.W.2, was the another injured, P.W.3, was the independent witness, whereas P.W.4, is the uncle of P.W.1 and an independent witness, P.W.5 was also an independent witness, P.W.6 was the Medical Officer, whereas P.W.7 was the I.O. of the present case.

6. The appellants took a stand of complete denial of the charges and claimed trial. Accordingly, they are put to trial.

7. The learned trial court taking into consideration the evidence of all the witnesses arrived at the following conclusion:-



“.....Since P.Ws.1 and 2, the two injured admitted that there was some fighting near the house of deceased Sambaru before the alleged assault to them, the question of sustaining injury by P.W.1 due to assault by the deceased Sambaru at a different place as deposed by P.W.4 and 5 is not at all believable. But as found in the counter case, the informant P.W.1 along with others came near the house of deceased Sambaru being armed with ‘thenga’ to retaliate after the quarrel between two ladies regarding taking of some water and there they formed an unlawful assembly and due to assault by one of the accused of that case, the deceased Sambaru sustained bleeding injuries on his head and subsequently while undergoing treatment, he succumbed to the injuries. It was also found that after such assault two sons of the deceased namely Nanda and Chandra, the present accused persons retaliated and there was some free fighting and subsequently, the informant sustained the injuries. The Medical Officer (P.W.6) also proved the injury report of P.W.1 marked Ext.2 in this case which corroborates to his claim. The injuries found on P.W.1 is simple in nature. So also the Medical Officer (P.W.6) proved the injury report of Damburudhar Gadaba (P.W.2) who sustained some injuries which are simple in nature. So far sustaining injuries by them there cannot be any doubt but such injuries were the result of free fighting between the parties. P.W.1 and others caused some provocation to the accused persons and one of the member of unlawful assembly assaulted first to the deceased causing severe head injury on Sambaru Harijan. Thereafter both the accused persons namely Chandra and Nanda, with common intention, retaliated and ultimately P.W.1 sustained some hurt on his person. The act of accused Nanda and Chandra cannot be said voluntarily and it was the result of provocation. Accordingly, they cannot be held guilty for the offence under Sec.334 IPC. So far accusation against Budu Harijan, the other accused, is not proved in this case and there is nothing on record to alleged threatening by him and other two accused persons, it caused some alarm to the informant. Further, there is also no evidence about the accusation of wrongful restraint and using criminal force



intended to dishonour the informant. Further there is also no evidence about using of any particular obscene words at public place. Accordingly, the charges levelled against Budu Harijan is not proved and hence he cannot be held guilty for the offence. The other two accused persons Nanda and Chandra except for the offence under Section 334 IPC cannot be held guilty for other offences they are facing trial.”

The appellants are aggrieved by the judgment of conviction and order of sentence, as mentioned above, have filed this present appeal.

8. Mr. A. Mishra, learned counsel for the appellants submitted that the appellants are convicted for offence under Section 334 IPC, which prescribes a maximum sentence of one month R.I. or maximum fine of Rs.500/- or both. In the instant case, the appellants were taken into custody on 27.12.2003, however were released on bail on 29.12.2003. Therefore, he fairly submits that he would not insist the appeal in so far as the conviction is concerned, rather would pray before this Court to grant the benefit of the Probation of Offenders Act and spare the appellants from undergoing the remaining sentence.

9. Taking into consideration the fact that the appellants were in their early thirties at the time of incident in the year 2003 and the fact that they have clean antecedent, I am of the considered view that the



submission made by Mr. Mishra deserves merit. The appellants were convicted vide judgment and order dated 30.07.2005 and the appeal is pending since 2005. Much has changed in the life of the appellants in between and they are already settled in their life. The appellants have undergone the ordeal of prolong trial and pendency of appeal for about two decades.

10. In the prevailing scenario, regard being had to the age of the appellants and their clean antecedents and the fact that the incident had taken place in the year 2003, I am of the considered view that appellants are entitled to the benefit of the Probation of Offenders Act read with Section 360 of Cr.P.C. The case of the appellants is also covered by the ratio of the judgment of this Court in the case of *Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra*¹ and *Dhani @ Dhaneswar Sahu vs. State of Orissa*².

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

¹ 2012 (Supp-II) OLR 469

² 2007 (Supp.II) OLR 250



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. The appellants are directed to appear before the learned trial court to furnish the bail bond, as mentioned above.

12. The CRLA is accordingly partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 31st July, 2025/Ashok