THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.156 of 2006

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

Laxman Soren ……. ***Appellant***

-Versus-

State of Orissa ……. ***Respondent***

For the Appellant : Mr. Tushar Kanti Mishra, Amicus Curiae

For the Respondent : Mr. Ashok Kumar Apat, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.04.2026 :: Date of Judgment: 30.04.2026

S.S. Mishra, J. The present Criminal Appeal is directed against the judgment and order dated 28.03.2006 passed by the learned Adhoc

Additional District & Sessions Judge (F.T.C.), Baripada in S.T. Case No.11/147 of 2004, arising out of G.R. Case No.702 of 2003, whereby the appellant was convicted under Section 354 of the IPC and sentenced to undergo rigorous imprisonment for one year along with fine of Rs.500/- (Rupees Five Hundred), in default to undergo R.I. for 3 months.

2. The present appeal has been pending since 2006. When the matter was called for hearing continuously, none appeared for the appellant. Therefore, on 17.04.2026, this Court requested Mr. Tushar Kumar Mishra, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining the entire record assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Mishra.

3. Heard Mr. Tushar Kumar Mishra, learned Amicus Curiae for the appellant and Mr. A.K. Apat, learned Additional Government Advocate for the State.

4. The prosecution case, in brief, is that on 23.07.2003 at about 6:00 P.M., the prosecutrix, an unmarried village girl, had gone to river Kandulia to take bath after field work. It is alleged that the appellant, who belongs to the same village, caught hold of her, dragged her to the other side of the river, laid her on the ground, lifted her garment and attempted to commit rape. The prosecutrix allegedly escaped and later narrated the occurrence to her mother and brother. The FIR, however, came to be lodged on 31.07.2003, after about 7 days of occurrence.

5. Upon completion of investigation, charge-sheet was submitted against the appellant under Sections 376/511 IPC. The case was committed to the Court of Sessions. On the denial stance of the appellant and his claim to defend, he was put to trial.

6. The prosecution examined seven witnesses including the prosecutrix (P.W.1), her family members, the doctor (P.W.4) and the Investigating Officer (P.W.7). The defence plea was one of complete denial coupled with false implication arising out of a boundary dispute.

7. The learned trial court, upon appreciation of evidence, came to the conclusion that although the prosecution failed to establish the charge of attempt to rape under Section 376/511 IPC beyond reasonable doubt, the evidence on record sufficiently proved that the accused had used criminal force against the prosecutrix with the intent to outrage her modesty. The court relied primarily on the testimony of the prosecutrix, which it found to be consistent, cogent, and trustworthy, and further noted that her version corroborated in material particulars by the evidence of her mother and brother as well as by the medical evidence indicating an abrasion on her back suggestive of forceful dragging. The trial court also rejected the defence plea of false implication arising out of alleged boundary dispute, holding that no substantial material was brought on record to probabilize such enmity. Consequently, while acquitting the accused-appellant of the charge under Sections 376/511 IPC, the Court convicted him under Section 354 IPC and sentenced him to undergo rigorous imprisonment for one year along with a fine. The

relevant portion of the aforesaid judgment is extracted herein below for ready reference:-

> *"21. Keeping in view the above, it is found from the evidence of the victim that the accused caught hold of her, dragged her near a bush and laid her on the ground, raised her Saya and when the victim protested, told her for sexual inter course and the victim managed to escape from his clutch the accused threatened not to disclose the matter before anybody. There is no material to show that when the victim get rid of the clutch of the accused, he made any effort to grab her again. So in such circumstances, it cannot be said that the accused not only desired to gratify his passions upon her person, but that he intended to do so at all events and notwithstanding any resistance on her Part. In the aforesaid back ground, the offence cannot be said to be an attempt to commit rape to attract culpability Under Section-376/511 I.P.C. but the case is certainly one of indecent assault on the victim. Essential ingredients of the offence punishable U/S.354 I.P.C. are that the person assaulted must be a woman and the accused must have used criminal force on her intending thereby to outrage her modesty. As the offence U/S.354 I.P.C. is lesser to offence U/S.376/511 I.P.C. in punishment no alteration of charge is required for the conviction of the accused.*
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> *22. In the result, it is found that the prosecution has successfully established its case against the accused beyond all reasonable doubt and in view of the above discussions, I find the accused guilty of the offence, U/S.354 I.P.C. instead of the charge U/S.376/511 I.P.C. Accordingly, the accused is convicted for the offence U/S.354 I.P.C."*

8. I have carefully considered the submissions advanced by the learned Amicus Curiae for the appellant and the learned counsel for the

State and have gone through the records of the case, including the depositions of the witnesses, the medical evidence and the documents produced.

9. Upon careful scrutiny of the evidence, this Court finds that the testimony of the prosecutrix indicates that the appellant dragged her, made her lie on the ground, lifted her garment and asked for sexual intercourse. However, the medical evidence assumes considerable significance. The doctor (P.W.4), who examined the prosecutrix, stated that there were no signs of recent sexual intercourse, no injuries to the private parts, and only a minor abrasion on the back, likely caused by contact with a rough surface.

10. The absence of any injury on the genital region or surrounding areas, coupled with absence of signs of struggle typically associated with forcible sexual assault, creates a serious doubt regarding the prosecution version of an attempt to commit rape. The evidence of P.Ws.2, 3 and 5 (mother, brother and sister-in-law) is essentially hearsay, based on what was told to them by the prosecutrix. Therefore, this Court concurs with

the finding of the trial court that the offence under Section 376/511 of IPC is not attracted.

11. Further, there is an unexplained delay of about 7 days in lodging the FIR. Though delay in sexual offence cases is not always fatal, in the present case, no convincing explanation has been offered for such delay.

12. Insofar as the offence under Section 354 IPC is concerned, it is evident that the essential ingredients of the provision require proof of assault or use of criminal force against a woman, coupled with the intention to outrage her modesty or knowledge that such an act is likely to do so. In the present case, the testimony of the prosecutrix indicates that the accused caught hold of her, dragged her, and lifted her garment. Though the evidence does not support an attempt to commit rape, this part of her testimony finds partial corroboration from the medical evidence, which reveals an abrasion on her back consistent with forceful contact, as well as from her immediate disclosure of the incident to her family members. When these circumstances are cumulatively assessed, they sufficiently establish that the accused used criminal force with the

requisite intent to outrage the modesty of the prosecutrix. Accordingly, the ingredients of Section 354 IPC stand satisfied, and the conviction under the said provision is legally sustainable.

13. Turning to the question of sentence, it reveals from the record that the appellant had remained in custody for a period of 73 days. The offence, though serious, does not involve actual sexual assault. The medical evidence does not support aggravated conduct. The incident is of the year 2003, and there is no material indicating subsequent criminal conduct. The trial court, while considering the question of sentence to be imposed on the accused person, refused to grant the benefit of the P.O. Act. Apt would be to place reliance upon the Judgement of the Hon'ble Supreme Court in ***Chellammal and Another v. State represented by the Inspector of Police***[1] wherein the Apex Court has elaborately explained the scope, object and significance of the Probation of Offenders Act, 1958, while considering the question of extending the benefit of

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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 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.*
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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 these factors, and keeping in view the reformative object of criminal jurisprudence, this Court is of the considered opinion that this is a fit case where the benefit of the Probation of Offenders Act, 1958 ought to be extended to the appellant instead of being subjected to further incarceration.

14. In view of the analysis, this Court affirms the finding of the learned trial court that the offence under Sections 376/511 IPC is not made out on the evidence available on record. The conviction of the appellant under Section 354 IPC is upheld, as the ingredients of the said offence stand duly established. This Court directs that the appellant be released on probation of good conduct under Section 4 of the Probation

of Offenders Act, 1958 for a period of six 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 six months.

15. Accordingly, the Criminal Appeal is partly allowed.

16. This Court acknowledges the effective and meaningful assistance rendered by Mr. Tushar Kumar Mishra, 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