



**THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLA No.393 of 2005**

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

***Murali Chhatrapal and another*** ..... ***Appellants***

***-Versus-***

***State of Odisha*** ..... ***Respondent***

For the Appellants : Mrs. Shuvra Mohapatra,  
Amicus Curiae

For the Respondent : Mr. Sobhan Panigrahi, ASC

**CORAM:**

**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

Date of Hearing: 24.03.2026 :: Date of Judgment: 26.03.2026

***S.S. Mishra, J.*** The present Criminal Appeal is directed against the judgment of conviction and order of sentence dated 20.08.2005 passed by the learned Additional Sessions Judge, Fast Track Court, Bhawanipatna in Sessions Case No. 20/13 of 2005, arising out of G.R.



Case No.472/2004, whereby the accused persons were acquitted of the charges under Sections 452/34, 394/398 IPC and Section 27 of the Arms Act, but were convicted under Sections 385/34 and 427/34 IPC and sentenced to undergo rigorous imprisonment for one year with fine of Rs.200/- (Rupees two hundred) only in default, to undergo R.I. for further period of one month on each count.

2. As the written instruction received from the I.I.C., Town P.S., Bhawanipatna, dated 25.07.2025 indicates that the appellant No.1-Murali Chhatrapal has expired on 29.07.2011, the present appeal qua the appellant No.1 stands abated in the absence of any application under Section 394 of Cr. P.C. In so far as the appellant No.2 is concerned, he is alive. Accordingly, consideration of the present appeal is confined to the appellant No.2-Susant Mahanand only.

3. The present appeal has been pending since 2005. When the matter was called for hearing consistently, none appeared for the appellants. Therefore, on 24.03.2026, this Court requested Mrs. Shuvra Mohapatra, learned counsel, who was present in Court to assist in the matter as



Amicus Curiae. She has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mrs. Mohapatra.

4. Heard Mrs. Shuvra Mohapatra, learned Amicus Curiae for the appellants and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

5. The prosecution case, in brief, is that on 27.10.2004 at about 6.00 P.M., the accused persons allegedly demanded a sum of Rs.2000/- from the son of the informant and, upon his refusal, assaulted him and thereafter entered the house of the informant, damaged the roof tiles and caused injuries to the informant. On the basis of the written report, investigation was taken up and charge-sheet was submitted under Sections 452/427/394/398/34 of the IPC read with Section 27 of the Arms Act. The accused took a stance of denial of charges and claim trial.

6. To substantiate the charges, the prosecution examined eight witnesses including the informant (P.W.1), his family members (P.Ws.2, 3 and 4), an independent witness (P.W.6), the doctor (P.W.7) and the



Investigating Officer (P.W.8). The defence examined two witnesses and took the plea that the incident arose out of a dispute relating to collection of festival subscription (chanda).

7. The learned trial court, upon appreciation of evidence, disbelieved the prosecution case in so far as the allegations relating to house trespass, robbery and use of deadly weapon are concerned, mainly due to inconsistencies between ocular and medical evidence and lack of reliable corroboration. However, it held that the prosecution succeeded in establishing that the accused persons had put the informant and his son in fear of injury for the purpose of extortion and had caused damage to the house, thereby committed the offences under Sections 385/34 and 427/34 IPC. The relevant portion of the aforesaid judgment is extracted herein below for ready reference:-

*“12. The plea of the accused persons is that they had been to the house of P.W.3 to collect the balance amount of Dasara Puja chanda and P.W.3 alongwith his family members picked up quarrel with them and have foisted a case. To substantiate their plea, they have examined two witnesses; D.W.1 and D.W.2. P.W.3 has admitted in his evidence that D.Ws.1 and 2 are his friends. D.W.1 has stated in*



*his examination-in-chief that in the previous year one day, the accused persons went to the house of the informant to request his son, Bhuja Sunani to refund the collected money, which was collected on the occasion of Lakhmara puja. The informant and his family members picked up quarrel with the accused persons. In his cross examination D.W.1 has admitted that Lakhmara puja is arranged by the King family of Kalahandi and they meet the required expenditure. He has further admitted that personally he had not accompanied the accused persons while they went to the house of the informant.*

*D.W.2 has stated in his examination in-chief that in the previous year in the month of Dasara, he alongwith D.W.1, P.W.3 and one Lebi had been to T.V. Centre-pada, Bhawanipatna to collect Chanda for the occasion of Lakhmare puja. The accused persons came to their club, where he alongwith Bhuja (P.w.3) were present and told them to give the collected amount (chanda) to them to utilise the same for the Lakhmara Puja which was with P.w.3, who thereafter run away to his house and when they went to his house to request him to return the collected amount, his family members picked up quarrel. In his cross examination, he has admitted that for the Lakhmare puja under the Presidentship of Collector, Kalahandi always a committee constitutes in consultation of Maharaja of Kalahandi, but he has denied that the committee which functions under the Presidentship of Collector, Kalahandi oragnises the Lakhmara puja.*



*According to the Prosecution case, the occurrence taken place on 27.10.04. From the Calendar of the year 2004 it reveals that 22.10.2004 was Nabami Puja of that year which is also the day of Lakhmara Puja and 23.10.04 was Dasara. Therefore, the occurrence has taken place after Dasara of the year 2004. The plea of the accused persons is inconsistent with the evidence of D.W.2 and so far as the evidence of D.W.1 is concerned that is hear-say. Thus their plea is not established.*

*13. From the evidence of P.Ws.1 and 3 it is not established that the accused persons have assaulted P.w.3 in order to facilitate the attempt to commit robbery. Therefore, the accused persons are not liable Under Section 394 I.P.C., but from their evidence it is established that the accused persons have put PW 3 and P.W. 1 in fear of injury in order to commit extortion and accordingly they are liable Under section 385/34 I.P.C. From the evidence of P.Ws. 2, 3 and 4 it is further established that the accused persons have committed mischief causing damage to the amount of Rs.50/- by destroying the tiles of the roof of the house of P.W.1. Therefore, they are also liable U/s.427/34 I.P.C. However, from the entire evidence of the P.Ws., the charges under section 452/34, 394/398 I.P.C. read with section 27 of the Arms Act have not been established against the accused persons and they are acquitted from those charges Under Section 235 (1) Cr.P.C.*

*I found the accused persons guilty of the charges under sections 385/34,427/34 I.P.C and convict them thereunder.”*



8. I have carefully considered the submissions advanced by the learned Amicus Curiae for the appellants 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 exhibited and other materials available on record.

9. On perusal of the evidence on record, this Court finds that the trial court has already discarded the major part of the prosecution case relating to serious offences such as robbery and house trespass. The remaining conviction is based primarily on the consistent version that there was a quarrel and demand for money accompanied by some degree of intimidation and damage to property. The independent witness (P.W.6) has also supported the occurrence of quarrel on the road.

10. Although there are some inconsistencies and exaggerations in the statements of the prosecution witnesses, it is well accepted that the entire evidence cannot be rejected merely because certain parts are not fully reliable. The Court must carefully examine the evidence and accept those



portions which appear to be truthful and supported by the record. In the present case, the core allegation that the accused demanded money, threatened the victims, and caused damage to the property appears to be credible and has been rightly relied upon by the trial court. Accordingly, this Court is not inclined to interfere with the finding of guilt of appellant No.2 under Sections 385/34 and 427/34 IPC.

11. 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. Recently, the Hon'ble Supreme Court in *Chellammal and Another v. State represented by the Inspector of Police*<sup>1</sup> 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 reformatory in nature, aiming to

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<sup>1</sup> 2025 INSC 540



provide an opportunity to first-time or less serious offenders to reform themselves rather than subjecting them to incarceration. 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 subsection (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.”*

**12.** The occurrence took place in the year 2004, and more than two decades have elapsed. The offences for which the appellant stands convicted are not of a grave or heinous nature. The circumstances indicate that the incident arose out of a local dispute relating to the collection of festival subscriptions. It is further brought to the notice of



this Court that the appellant No.2 has already undergone custody for a period of 285 days during the investigation and trial out of sentenced period of one year. There is no material to indicate that he is a habitual offender or that his release on probation would be detrimental to society.

**13.** In such circumstances, this Court is of the considered view that the appellant No.2 is entitled to the benefit of the Probation of Offenders Act, 1958, particularly under Section 4 thereof, instead of being subjected to further incarceration.

**14.** Accordingly, while maintaining the conviction of appellant No.2 under Sections 385/34 and 427/34 IPC, the sentence imposed by the trial court is set aside. This Court directs the appellant No.2 to be released under Section 4 of the Probation of Offenders Act 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 No.2 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. With the above modification in the sentence, the Criminal Appeal stands partly allowed.

16. This Court acknowledges the effective and meaningful assistance rendered by Mrs. Shuvra Mohapatra, 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***

The High Court of Orissa, Cuttack.  
Dated the 26<sup>th</sup> Day of March, 2026/ Subhasis Mohanty