

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.206 of 2026

(In the matter of an application under Section 401 of read with Section 397 of Cr.P.C.)

Padmalochan Swain

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

For Petitioner : Mr. SK. Zafarulla, Advocate

For Opposite Party : Mr. M.R. Mohanty, AGA

CORAM: JUSTICE V. NARASINGH

DATE OF FINAL HEARING : 19.03.2026

DATE OF JUDGMENT : 20.03.2026

V. Narasingh,J. Heard learned counsel for the Petitioner and learned counsel for the State.

1. This Criminal Revision has been filed assailing the judgment dated 11.02.2026 passed by the learned Addl. Sessions Judge, Chandikhol in Criminal Appeal No.01 of 201/ 20 of 2025,



affirming the order of conviction qua the Petitioner dated 09.12.2011 passed by the learned C.J.M-cum-Asst. Sessions Judge, Jajpur in C.T. (Sessions) No.199 of 2010 (T.C. No.72 of 2010) under Section 324¹ of IPC and imposing a sentence of rigorous imprisonment for a period of one year and to pay a fine of Rs. 20,000/- (Rupees Twenty Thousand only). In default, to undergo rigorous imprisonment for a further period of two months.

2. The prosecution case, as borne out from the F.I.R. instituted by the informant-wife of the injured is that, on 09.12.2006 at about 8 P.M., while her husband was returning from their thrashing-floor (Dhana Khala), the accused Petitioner Padmalochan Swain came from behind and assaulted him with an axe (Tangia) on his head, hand and back. On hearing hullah, the informant-wife, one Pravakar Swain and some others reached the spot and, seeing them, the accused fled away. It is stated that on account of such axe blows, the husband of the informant

¹ **324. Voluntarily causing hurt by dangerous weapons or means.**—Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.



suffered injuries to his hand and head. With the help of neighbours, the informant took her husband to Dharmasala Medical for treatment.

3. In the present case, the F.I.R was instituted on the next date of occurrence on 10.12.2026 citing the Petitioner as accused. After investigation charge sheet was filed under Section-341²/307³ IPC.

4. The accused pleaded not guilty to the charges under Section 341²/307³ of IPC and his plea was one of complete denial and false implication.

5. To drive home the charge, the prosecution examined 9 witnesses of whom P.W.6, the Informant, P.W.8, the injured and P.W.7, the Medical Officer are of significance. Several documents were exhibited and marked as Ext.1 to 2/3 of which the injury report is at Exhibit-2. P.W

² **341. Punishment for wrongful restraint.**—Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

³ **307. Attempt to murder.**—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.



s. 1 to 5 are other charge sheeted witnesses and P.W.9 is the I.O.

Neither oral nor documentary evidence was adduced on behalf of the defence.

6. Considering the evidence of P.W.6, the informant-wife, and the evidence of P.W.8, the injured and the injury report at Ext.2, the learned Trial Court, negating the claim of the prosecution that the petitioner-accused had intention to cause the offence, while acquitting him of the offence under Section 307³ of IPC and taking into account that the injury has been categorized as simple, found him guilty of the commission of offence under Section 324¹ of IPC and convicted him thereunder and, further rejecting the prayer to extend the benefit under the Probation of Offenders Act, 1958⁴ (hereinafter referred to as P.O. Act), sentenced him to undergo R.I. for a period of one year and to pay a fine of Rs.2,000/- (Rupees two thousand only), in default to further undergo Rigorous Imprisonment for two months under Section 324¹ of the IPC.

7. The learned Appellate Court, vide judgment dated 11.02.2026 in Criminal Appeal No.01 of 2012, on scrutiny of the evidence on record and

⁴ The Probation of Offenders Act, 1958 (Act 20 of 1958)



more particularly that of P.W.6, the wife and P.W.8, the injured did not interfere with the finding of the learned Trial Court relating to conviction under Section 324¹ of IPC and, taking into account that the State had not preferred any appeal, confined the sentence to one year and payment of fine of Rs.1000/- and affirmed the sentence. But curiously enough, the learned Appellate Court did not cite any reason as to why the Petitioner ought not to have been extended the benefit of the P.O. Act⁴.

8. Learned counsel for the Petitioner submits that the appreciation of evidence by the learned Courts is perverse. Hence, the matter merits examination by this Court in exercise of its criminal jurisdiction.

9. Learned counsel for the State opposes such prayer and submits that this Court, while exercising revisional jurisdiction, it is not open to reappraise the evidence unless such appreciation is ex facie perverse. On analysis of the evidence for such limited purpose, this Court finds that the accusation qua the Petitioner has been corroborated in material particulars by the informant as well as the injured, and keeping in view the evidence of the Doctor and the injury report, it cannot be said that the appreciation of



evidence is perverse so as to warrant interference by this Court in exercise of its revisional jurisdiction.

10. It is apt to note that, admittedly, the occurrence took place on 09.12.2006, nearly two decades ago, and there is nothing on record to indicate that the present petitioner has misused the trust reposed in him while on bail.

11. In such background the learned counsel for the Petitioner seeks extension of the provisions of the P.O. Act⁴.

12. So far as the applicability of the P.O. Act⁴ is concerned, this Apex Court, its recent dictum, has set out guidelines for applicability thereof in the case of ***Chellammal v. State***⁵.

For convenience of reference, the relevant portion of the judgment, more particularly paragraph 28, is culled out hereunder:

“**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

⁵ Chellammal v. State, 2025 SCC OnLine SC 870



the circumstances stated in sub-section (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.”

(Emphasized)

13. Taking into account that the conviction under Section 324¹ of IPC and punishment prescribed as such, does not come within the embargo in terms of Sections 4⁶ and, this Court is of the considered

⁶ **4. Power of court to release certain offenders on probation of good conduct.**— (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:
Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction



view that the benefit of the P.O. Act⁴ ought to be extended to the Petitioner and in failing to do so, the learned Appellate Court has abdicated its responsibility enjoined upon it as per the judgment of the Apex Court in the case of **Chellammal (supra)**⁵.

14. Accordingly, this Court is inclined to direct the release of the Petitioner on probation under Sections 4⁶ read with 11⁷ of the P.O. Act of the P.O. Act, on conditions to be settled by the Trial Court.

or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

⁷ **11. Courts competent to make order under this Act, appeal and revision and powers of Courts in appeal and revision.**-(1)

Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.



It is apt to note that Section 11⁷ of the P.O. Act deals with the power of Court in extending the benefit of P.O. Act at the stage of Appeal and Revision.

15. Additionally, It is further directed that the Petitioners shall be liable to deposit compensation of Rs.3000/- before the learned Trial Court within a period of 3 months, failing which, the same shall entail action to be taken in accordance with procedure laid down under Section 5⁸ of the P.O. Act.

In the event of deposit of such compensation, the same shall be released in favour

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the Court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was found guilty.

⁸ **5. Power of court to require released offenders to pay compensation and costs.**— (1) The court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation - under sub-section (1) in awarding damages.



of the injured upon proper identification. The learned DLSA is requested to facilitate the same.

16. In this context, it is apt to note that, so far as Section 5(2)⁸ of the P.O. Act is concerned, in the event of default in payment of the amount ordered under Section 5(1)⁸ of the said Act, the amount shall be recovered as a fine in accordance with the provisions of Sections 386⁹/387¹⁰ of the Code.

17. It is further clarified that the "Code" herein refers to the Code of Criminal Procedure, 1898, which corresponds to Sections 461⁹/462¹⁰ of BNSS

⁹ **461. Warrant for levy of fine.**—(1) When an offender has been sentenced to pay a fine, but no such payment has been made, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 395.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Corresponding Law: S. 421 of Act 2 of 1974: S. 386 of Act V of 1898.

¹⁰ **462. Effect of such warrant.**—A warrant issued under clause (a) of sub-section (1) of Section 461 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

Corresponding Law: S. 422 of Act 2 of 1974: S. 387 of Act V of 1898.



2023 (Sections 421⁹ and 422¹⁰ of the Code of Criminal Procedure, 1973).

18. Accordingly, the Criminal Revision, along with I.As stand disposed of.

19. The bail bond(s) stand cancelled and the sureties are discharged.

(V. NARASINGH)
Judge

Orissa High Court, Cuttack
Dated the 20th March,, 2026/ Soumya