IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.228 of 2010
CNR- ODHC010237592010

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

Bhubanananda Panda @ Bhubana ……. Appellant

-Versus-

State of Orissa ……. Respondent

For the Appellant : Mr. Sandeep Parida, Advocate

For the Respondent : Mr. R.B. Dash, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 13.08.2026 : Date of Judgment: 25.08.2026

S.S. Mishra, J. The present Criminal Appeal is arising out of the judgment and the order of sentence dated 19.04.2010 passed by the learned Adhoc Additional Sessions Judge, Fast Track Court No.II, Bhubaneswar in Crl. Tr. No.66/47/42 of 2007-2006, arising out of G.R. Case No.3458 of 1997 corresponding to Badagada P.S. Case No.156 of 1997, whereby the learned trial Court, while acquitting the appellant of the offences punishable under Sections 452, 307 and 376/511 of the Indian Penal Code, convicted him for the offences punishable under Sections 354 and 451 of the Indian Penal Code and

sentenced him to undergo rigorous imprisonment for one and a half years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 354 IPC, and further to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for three months for the offence under Section 451 IPC. Both the substantive sentences were directed to run concurrently.

2. Heard Mr. Sandeep Parida, learned counsel appearing for the appellant and Mr. R.B. Dash, learned Additional Standing Counsel for the State-respondent.

3. The prosecution case, in brief, is that the informant (P.W.5), an actress who had come to Odisha in connection with shooting of an Oriya film, was staying in Room No.208 of Panthanivas, Bhubaneswar. On the night intervening 30.11.1997 and 01.12.1997, after returning from shooting at about 11.00 p.m., she asked the hotel staff to send dinner to her room. She thereafter went to her room, changed into a bathrobe and was removing her make-up when the doorbell rang. Believing that the waiter had arrived with her dinner, she opened the door and found the appellant standing there.

According to her, the appellant appeared to be intoxicated and asked her for an autograph. When she declined and requested him to come on the following day, he did not leave. When she attempted to close the door, the appellant forcibly entered the room.

4. It was further alleged that after entering the room, the appellant attempted to grab the bathrobe of the informant and tried to disrobe her. A physical struggle ensued, during which the informant raised an alarm and shouted for help. The prosecution alleged that the appellant also pressed her throat and that, on account of her resistance, the appellant ultimately left the room when some persons came near the room. The informant thereafter went to the hotel lobby and raised an alarm and subsequently lodged the written report with the police. The prosecution case was that the appellant had assaulted the informant with the intention of outraging her modesty and had also attempted to commit rape and murder, leading to registration of the case and commencement of investigation.

5. In order to substantiate the charges, the prosecution examined ten witnesses, including the informant as P.W.5, the medical officers

who examined the informant and the Investigating Officer. The defence examined one witness, namely, Dibakar Jena as D.W.1.

6. The learned trial Court, upon appreciation of the oral, documentary and medical evidence on record, partly accepted the prosecution case and held that the evidence of P.W.5, the victim, was cogent, reliable and trustworthy and stood corroborated in material particulars by the evidence of P.W.6, the evidence regarding the presence and identification of the accused, and the medical evidence of P.Ws.7, 8 and 9. The Court found that the accused had forcibly entered Room No.208 of Panthanivas, Bhubaneswar, occupied by the victim, and had used criminal force upon her with the intention or knowledge that such act was likely to outrage her modesty, thereby attracting the ingredients of Section 354 IPC. However, the Court found that the prosecution had failed to establish the requisite prior preparation for causing hurt, assault or wrongful restraint so as to attract Section 452 IPC and, accordingly, held the accused liable only under Section 451 IPC. Similarly, the Court found that the evidence was insufficient to establish an intention to commit murder under Section 307 IPC and that the alleged acts had not crossed the stage of

preparation so as to constitute an attempt to commit rape under Section 376/511 IPC. Consequently, the accused was acquitted of the offences under Sections 452, 307 and 376/511 IPC, but was convicted under Sections 451 and 354 IPC. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"31. I have carefully gone through the record and the fact that on the date of occurrence at the relevant time, the accused committed house trespass by entering into room No. 208 of Parthanivas, Bhubaneswar which was occupied by the victim cannot be denied. But there is no specific evidence that the accused did so after making preparation for causing hurt or assaulting or wrongfully restraining any person or putting any person in such fear. But the fact that there is specific evidence to show that the accused committed house trespass in order to commit the offence for outraging the modesty of the victim which is punishable with imprisonment cannot be denied. So, in that circumstance, I must say that the accused is not liable under Sec.452 I.P.C., but he must be liable under Sec.451 I.P.C. So, in any view of the matter, I must hold that the accused is liable only under Sec.451 I.P.C. and under Sec.354 I.P.C. and he is not liable under Sec.452, 307 or under Sec.376/511 I.P.C.*
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> *32. In the result, I therefore, hold that the prosecution has partly succeeded to prove its case against the accused and accordingly, the accused is found not guilty under Sec.452/307 I.P.C. and under Sec.376/511 I.P.C. and as such he is*

acquitted for the said offences. But the accused is found guilty under Sec.451/354 I.P.C. and as such he is convicted thereunder."

7. I have considered the submissions advanced by learned counsel for the appellant and learned Additional Standing Counsel for the State and have carefully examined the judgment of the learned trial Court and the materials available on record.

8. On an overall assessment of the evidence, I find no sufficient ground to interfere with the finding of guilt recorded against the appellant under Sections 354 and 451 IPC. The conviction recorded by the learned trial Court under the said provisions is accordingly affirmed. The acquittal recorded in favour of the appellant under Sections 452, 307 and 376/511 IPC has not been shown to suffer from any illegality or perversity and also remains undisturbed.

9. The principal question that now arises is as to the appropriate sentence. The occurrence is of the year 1997 and the appellant has been facing the consequences of the criminal prosecution for a considerably long period. The learned trial Court itself found that the prosecution had failed to establish the graver allegations of attempt to murder and attempt to commit rape. The appellant is consequently

required to be dealt with only for the offences under Sections 354 and 451 IPC.

10. 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 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

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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.

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."

11. Regard being had to the aforementioned proposition of Law, the facts of the present case, particularly considering the nature of the occurrence, the prolonged pendency of the criminal proceeding and the overall circumstances emerging from the record, this Court is of the considered view that the case of the appellant deserves consideration under the beneficial provisions of the Probation of

Offenders Act. In view of the aforesaid legal position and the peculiar facts and circumstances of the case, this Court is inclined to extend to the appellant the benefit contemplated under Section 4 of the Probation of Offenders Act. The fact that the appellant is being extended the benefit of probation in lieu of the substantive sentence of imprisonment, it would be appropriate to impose a meaningful monetary condition. A sum of Rs.50,000/- towards the costs of the proceedings under Section 5(1)(b) of the Probation of Offenders Act would, in my considered view, be reasonable and proportionate. The said amount shall be deposited by the appellant with the District Legal Services Authority within four weeks from today.

12. In light of these factors, while maintaining the conviction, it is appropriate to grant the appellant the benefit of probation under the P.O. Act. This Court directs the appellant 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 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.

13. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 25th Day of August 2026/ Subhashis Mohanty

Signature Not Verified
Digitally Signed
Signed by: SUBHASIS MOHANTY
Designation: Personal Assistant
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 25-Aug-2026 16:29:23