
(2025) 12 OHC CK 1887
In the Orissa High Court
Case No : Criminal Appeal No. 127 Of 2009

Lakshyapati Kumar @ Lakshapati Kumar	APPELLANT
Vs	
State Of Odisha	RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 307, 323, 332, 341, 355, 356, 506
Code Of Criminal Procedure, 1973 — Section 360
Probation Of Offenders Act, 1958 — Section 4

Citation : (2025) 12 OHC CK 1887

Hon'ble Judges : Sibho Sankar Mishra, J

Bench : Single Bench

Advocate : Gopal Chandra Das, Dhanjaya Mund, Subhalaxmi Devi

Final Decision : Partly Allowed

Judgement

S.S. Mishra, J

1. The present Criminal Appeal is directed against the judgment and order dated 28th February 2009 passed by the learned Additional Sessions Judge, Fast Track Court, Bhawanipatna, Kalahandi in Sessions Case No.78/64 of 2008 arising out of G.R. Case No.750 of 2007. By the said judgment, the learned trial Court found the appellant guilty of the offences punishable under Sections 323/506 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for three months for offence under Section 323 of IPC, further R.I. of six months for offence under Section 506 of I.P.C. All the substantive sentences were directed to run concurrently with the benefit of set-off.
2. Heard Mr. Gopal Chandra Das, learned counsel appearing on behalf of Mr. Dhanjaya Mund, learned counsel for the appellant and Ms. Subhalaxmi Devi, learned Additional Standing Counsel for the State.
3. The case of the prosecution, as narrated in the First Information Report, is that on 28.12.2007 the complainant was serving as an A.S.I. of Police at Borda

Outpost under Kegaon Police Station. On that day at about 2:45 P.M., while returning from village Matia along with Constable No. 646, Seshibhusan Mangraj, after conducting investigation in P.S. Case No. 89 of 2007, the complainant received credible information near Sapsilet Chhak that accused persons Lakhapati Kumar, Ranga Jued and their associates were making preparation to unlawfully dispose of foreign liquor. Acting upon such information, they kept a watch at Sapsilet Chhak.

While they were so guarding, accused Lakhapati Kumar, Taranisen Jani and Ranga Jued allegedly emerged from Pankaj Hotel and abused the complainant and the accompanying constable in obscene language and further threatened them with dire consequences. It is alleged that accused Lakhapati Kumar forcibly snatched the police badge from the complainant's uniform and thereafter pressed his neck with the intention of causing his death, resulting in nail marks on his neck. The public present at the spot are stated to have intervened and rescued the complainant from the assault.

Thereafter, the complainant returned to Borda Outpost and subsequently proceeded to Kegaon Police Station, where at about 8:00 P.M., on the same day, he lodged a written report. The said report was registered as Kegaon P.S. Case No. 90 of 2007. The complainant was medically examined at Chapria C.H.C. In the course of investigation, on 30.12.2007 the accused persons, namely Lakhapati Kumar, Taranisen Jani and Harihara Naik, were arrested and forwarded to court, while accused Ranga Jued surrendered before the court. Upon receipt of the injury report from the Medical Officer, C.H.C. Chapria, the Investigating Officer submitted charge-sheet against the accused persons under Sections 341/323/294/332/356/307/34 of the Indian Penal Code.

4. Consequent upon committal, the case was made over to the learned trial Court, where the accused persons stood their trial on denial of charges. The plea of the defence is one of complete denial and false implication. The accused persons were charged for the offence under Sections 341/332/294/355/506/307/34 of the Indian Penal Code.

5. In order to establish its case, the prosecution examined seven witnesses. P.W.5 is the informant of the case, P.W.1 was the police constable, who had accompanied the complainant to the place of occurrence. P.Ws. 2, 3 and 4 were the independent witnesses to the incident, P.W.7 was the Medical Officer who examined the injured complainant, and P.W.6 was the Investigating Officer. No witness was examined on behalf of the defence.

6. The learned trial court after meticulously examining the evidence on record and dealing with each offence, convicted the present appellant for the offence under Section 323/506 of I.P.C. The relevant portion of the judgement which deals with the conviction of the appellant is extracted hereunder for the convenience of ready reference:

"In the net result, the accused persons namely Taranisen Jani, Harihara Naik and

Ranga Juad are found not guilty for any of the offences under sections 341/294/332/355/307/506/34 of I.P.C. charged against them and they are acquitted from all the above charges. Accused Lakhapati Kumar is not found guilty for the offence Under sections 294/332/341/355/307/34 of I.P.C. However, he is found guilty for the offence under sections 323/506 of I.P.C and he is convicted thereunder. The accused persons namely Taranisen Jani, Harihara Naik and Ranga Juad be discharged from their bail bonds.”

Aggrieved by the aforementioned judgement of conviction and order of sentence, the present appeal is preferred by the appellant.

7. At this stage, Mr. Das, learned counsel for the appellant has strenuously argued the case on merit and taken me to the evidence on record. After arguing for some time, he submitted that keeping in view the procrastinated judicial process undergone by the appellant in this case and the ordeal of trial faced by the appellant; he would rather confine his argument to the quantum of sentence. He submitted that the incident pertains to the year 2007. The appellant has undergone the rigors of trial for about two years. Thereafter, the appeal was preferred in the year 2009. The appeal has been prolonging to be heard for about 15 years. The appellant who was in his early thirties then, now is aged in his late forties and therefore, sending him to custody for fulfilling his remaining sentence at this belated stage would serve no purpose. The learned counsel further submitted that the appellant has no criminal antecedents and no other case of a similar nature or otherwise is stated to be pending against him. Over the years, he has led a dignified life, integrated well into society, and is presently leading a settled family life. Incarcerating him after such a long delay, it is argued, would serve little penological purpose and may in fact be counter-productive, casting a needless stigma not only upon him but also upon his family members, especially when there is no suggestion of any repeat violation or ongoing non-compliance with regulatory norms. Therefore, in the fitness of situation, the appellant may be extended the benefit of the Probation of Offenders Act read with Section 360 Cr.P.C. I am inclined to accede to the prayer made by Mr. Das, learned counsel for the appellant on the facts scenario of the case.

8. Regard being had to the societal position of the appellant, clean antecedents and the fact that the incident had taken place in the year 2007, I am of the considered view that the appellant is entitled to the benefit of the Probation of Offenders Act and Section 360 of Cr.P.C. Additionally, the case of the appellant is also covered by ratio of the judgments of this Court in the case of Pathani Parida & another VS. Abhaya Kumar Jagdevmohapatra[2012 (Supp-II) OLR 469] and Dhani @ Dhaneswar Sahu vs. State of Orissa[2007 (Supp.II) OLR 250].

9. 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 the appellant to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a period of three 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 three months.

10. Accordingly, the Criminal Appeal is partly allowed.