



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.803 of 2007
CNR No.ODHC010017492007

In the matter of an application under Section 401 of
Cr.P.C.

1. Mahendra Singh ***Petitioners***
2. Prasant Singh
3. Balmiki Singh

-versus-

State of Orissa ***Opposite Party***

For Petitioners : Ms. G. Das, Amicus Curiae

For Opposite Party : Mr. S. Panigrahi, ASC

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING : 06.05.2026
DATE OF JUDGMENT : 05.08.2026

V. Narasingh, J. Heard learned Amicus Curiae for
the Petitioners and learned counsel for the State.

1. This Criminal Revision has been filed assailing
the Judgment dated 28.06.2007 passed by the learned
Addl. Sessions Judge (Fast Track Court), Baripada,



Mayurbhanj, in Criminal Appeal No. 35/100 of 2006/2005, thereby affirming the judgment of conviction and sentence dated 10.11.2005 passed by the learned Asst. Sessions Judge-Cum—C.J.M., Mayurbhanj, Baripada in S.T. Case No.13/3 of 2003 arising out of G.R. Case No.636 of 2002 qua the Petitioners under Sections 114 and 363 of IPC, directing them to undergo R.I. for a period of 3 years and to pay a fine of Rs.2000/- (Rupees Two Thousand only) each, in default, to undergo R.I. for a period of six months.

2. The case of the prosecution, in brief, is that on 08.07.2002, at about 10 p.m., the Petitioners and one co-accused-Kashinath Mohakud kidnapped the victim from her Bari at village Darkhali, situated within the jurisdiction of Kuliana P.S. and then one of the Petitioners Mahendra took the victim with him in a car to village Mukteswar in West Bengal, where he not only kept her in the house of one Hemanta Naik but also forcibly had sexual intercourse with her. It was



alleged that, since the father of the victim did not find her as well as the Petitioners in the village, he lodged an FIR at Kuliana P.S. and after the completion of the investigation, a charge-sheet was filed under Sections 109, 114, 363, 366-A and 376 of IPC.

3. During the course of hearing, it is submitted by the learned counsel that Petitioner No.2 has passed away and since there is no motion on his behalf to continue the revision, the same stands abated so far as Petitioner No.2 is concerned under Section 435 of the BNSS and the same remains confined to Petitioner Nos.1 and 3.

4. None appeared on behalf of the Petitioners when the matter was called upon. Ms. G. Das, learned counsel present in Court, having six years of experience at the Bar, was requested to assist the Court as Amicus Curiae, to which she graciously agreed.

5. To drive home the charge, the prosecution examined 18 witnesses, of whom P.W.1, the victim, is



of significance. Several documents were also exhibited and marked as Exts.1 to 17 on behalf of the prosecution and one Saree, Saya, and Blouse were adduced as M.O.I to M.O.III, respectively.

Oral evidence was adduced on behalf of the defence by D.W.1. The plea of the defence was one of complete denial.

6. Considering the evidence on record, the Trial Court while acquitting Accused No.4 (Kashinath Mohakud), directed the Petitioners to be convicted under Sections 114 and 363 of IPC, sentencing each of them to undergo R.I. for a period of 3 years with fine of Rs.2000/- (Rupees Two Thousand only) each, in default, to undergo R.I. for a period of six months.

On appeal being preferred, the Appellate Court affirmed the conviction and sentence, as imposed. Assailing the same, the present revision has been filed.

7. Referring to the evidence on record, it is submitted by the learned Amicus Curiae that the



appreciation of evidence by the learned Courts below is ex facie perverse so as to warrant interference by this Court in exercise of its revisional jurisdiction.

8. For such limited purpose being conscious of the contours of exercising revisional jurisdiction, this Court perused the evidence on record and ongoing through the same, this Court is not persuaded to hold that there is any patent perversity in the appreciation of evidence by the Trial Court as well as the Appellate Court so as to warrant interference, as rightly pointed out by the learned counsel for the State.

9. At this stage, it is submitted by the learned Amicus Curiae that, so far as sentence prescribed is concerned, taking into account that the same does not fall under the embargo under Section 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as 'P.O. Act'), the benefit of the said Act may be extended to the Petitioner, since the occurrence is of the year 2002 and, over these years, there is no allegation against the Petitioners that they have



indulged themselves in any other offence. It is also stated that at present Petitioner Nos. 1 and 3 are aged around 52 and 57 years, respectively and it is submitted that after such lapse of time, directing them to undergo the punishment as prescribed would not serve any purpose.

10. The P.O. Act was enacted in the year 1958 with the avowed object to empower the Courts to release an offender after admonition in respect of certain specified offences. It also proposes to empower the Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made imposing restrictions on their imprisonment.

10-A. Section 4 of the P.O. Act deals with the 'power of the Court to release certain offenders on probation of good conduct'. The said Section reads as under:

"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 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."

11. On a plain reading of the provisions as contained under Section 4 of the P.O. Act, this Court is of the considered view that there is no embargo for application of the P.O. Act taking into account the sentence prescribed relating to the offence under Sections 114 and 363 of the IPC. This aspect is no longer res integra in as much as in the case of ***Chellammal and anr. v. State represented by the Inspector of Police, 2025 SCC OnLine SC 870***, the Apex Court has laid down detailed guidelines for



application of the provisions as contained in the P.O. Act.

12. Considering the nature of the offence and conviction in the light of the judgment of the Apex Court in the case of ***Chellammal (supra)***, this Court is of the considered view that instead of directing the Petitioner Nos.2 and 3 to serve the sentence, extending the benefit of the P.O. Act would sub-serve the ends of justice.

13. Hence, in the given factual matrix of the case at hand and in view of the evidence on record, while maintaining the conviction recorded against the Petitioner Nos.2 and 3 and having regard to the facts and circumstances of the case, this Court is inclined to direct the release of the Petitioner Nos.2 and 3 on probation under Section 4 of the P.O. Act, on conditions to be settled by the Trial Court. In the peculiar facts and circumstances of the case at hand, the imposition of the fine is set aside.



14. The Criminal Revision is accordingly disposed of.

15. The fees of the learned Amicus Curiae shall be fixed as per the schedule adopted by the Legal Services Authority, High Court of Orissa, for conducting criminal cases in this Court. Such fees shall be disbursed on being moved.

**(V. Narasingh)
Judge**

*Orissa High Court, Cuttack,
Dated the 5th August, 2026/Jina
06.08.2026/uploaded*

Signature Not Verified

Digitally Signed
Signed by: JINA DIGAL
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa
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