



**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLREV No.305 of 2026**

In the matter of an application under Section 401 of Cr.P.C., 1973.

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Ramesh Chandra Behera .... **Petitioner**

*-versus-*

State of Orissa .... **Opposite Party**

**For Petitioner** : Mr. A.K. Sahoo, Advocate

**For Opposite Party** : Mr. C.R. Swain, AGA

**CORAM:  
JUSTICE V. NARASINGH**

**DATE OF HEARING & JUDGMENT : 30.06.2026**

**V. Narasingh, J.** Heard Mr. Sahoo, learned counsel for the Petitioner and Mr. Swain, learned AGA for the State.

1. This Criminal Revision has been filed assailing the judgment dated 20.03.2026 passed by the learned District & Sessions Judge, Kandhamal, Phulbani in Criminal Appeal No. 02 of 2026, whereby the appeal was partly allowed and the



judgment of conviction and order of sentence dated 17.01.2026 passed by the learned C.J.S.D. (Women's Court) - cum- J.M.F.C., Phulbani, Kandhamal in C.T. Case No. 171 of 2023 (T.R. No. 5 of 2024) was modified.

By its judgment, the learned Trial Court convicted the Petitioner under Sections 451 and 323 of the Indian Penal Code (hereinafter referred to "IPC") and sentenced him to undergo simple imprisonment for one year for commission of offence under Section 451 IPC and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month for the offence punishable under Section 451 IPC, and to undergo simple imprisonment for six months for the offence punishable under Section 323 IPC, with a direction that the substantive sentences would **run consecutively**.

The learned Appellate Court, while affirming the conviction, modified the sentence by reducing the sentence under Section 451 IPC to simple imprisonment for six months with a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month, while not interfering



with the sentence of six months under Section 323 and the direction that the sentences will run consecutively.

2. The case of the prosecution is that on 17.03.2023, at around 3.30 P.M., while the victim, P.W.1 was alone in her house, the appellant-Petitioner allegedly entered her house and attempted to commit rape on her. When she raised a 'hulla', her son, P.W.2, arrived there and resisted the Petitioner. Thereafter, the Petitioner allegedly inflicted injuries on the head of P.W.1-the victim as well as on the hand of P.W.2 with a crowbar. It is further alleged that, prior to the incident, the Petitioner had threatened to murder P.W.1. Alleging such act F.I.R., i.e., Phulbani Town P.S. Case No. 76 of 2023, was registered and, on conclusion of investigation, charge-sheet was filed under Sections 451/341/323/354/506 IPC citing the Petitioner as an accused.

3. To drive home the charge, the prosecution examined eight witnesses, P.W.1 is the informant/victim, P.W.3 and P.W.4 are independent witnesses, P.W.5 cited as an eye-witness, P.W.6 is the Medical Officer, and P.W.8 is the I.O.. Several



documents were also marked as Exhibits of which the injury report is of significance.

Neither oral nor documentary evidence was adduced by the defence.

4. The Petitioner faced trial for commission of offences under Sections 451/341/323/354/506 of the IPC. By judgment dated 17.01.2026 passed in C.T. Case No. 171 of 2023/T.R. No. 5 of 2024, the learned Trial Court, after taking into account the testimony of P.W.1 (informant/victim), along with that of the independent witnesses, P.Ws.3 and 4, the eye-witness, P.W.5, the Medical Officer, P.W.6, and the I.O. (P.W.8), convicted the Petitioner for commission of offences under Sections 451 and 323 of the IPC and, disregarding the prayer for release under the Probation of Offenders Act, 1958 (hereinafter referred to as the 'P.O. Act'), sentenced him to undergo S.I. for one year for commission of offence under Section 451 IPC and to pay a fine of Rs.1,000/-, to the injured victim, and, in default of payment of fine, to undergo S.I. for one month for the offence under Section 451 IPC, and further sentenced him to undergo S.I. for six months for the offence under Section 323 IPC, with a direction



that the substantive sentences **shall run consecutively.**

5. While adjudicating the appeal, the learned Appellate Court, by its judgment dated 20.03.2026, while maintaining the conviction under Sections 451 and 323 IPC and not interfering with the sentence of six months' simple imprisonment under Section 323 IPC and the direction that the substantive sentences shall run consecutively, modified the sentence in respect of the offence under Section 451 IPC by reducing the sentence of simple imprisonment to six months and directing the Petitioner to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. The learned Appellate Court also did not consider it appropriate to release the Petitioner on probation under the provisions of the Probation of Offenders Act, 1958(hereinafter referred to as 'P.O. Act').

6. Learned counsel for the Petitioner, while faintly submitting that the appreciation of evidence by the learned Courts is ex facie perverse, seeks release of the Petitioner under the P.O. Act.

7. So far as the appreciation of evidence is concerned, the learned Public Prosecutor opposes such submission but fairly states that the question



of releasing the Petitioner by application of the P.O. Act can be considered in the factual matrix of the case at hand.

8. Taking into account the manner in which the offences have been committed and admittedly being part of the same transaction, it is indeed baffling that the learned Trial Court as well as the learned Appellate Court directed the sentences to run consecutively.

Be that as it may, on considering the rival submissions and going through the evidence on record, this Court is not persuaded to hold that there is any infirmity in the appreciation of evidence so as to warrant interference with the order of conviction.

### **SENTENCING**

9. In the instant case, it is seen that during the course of the same transaction, the Petitioner was found guilty of commission of offences under Sections 323 and 451 of the IPC and separate sentences were awarded by both the learned Trial Court and the learned Appellate Court.

The learned Trial Court awarded simple imprisonment for one year for the offence under Section 451 IPC with a fine of Rs.1,000/-, in default



to undergo simple imprisonment for one month and simple imprisonment for six months for the offence under Section 323 IPC, which was subsequently reduced by the learned Appellate Court by reducing the sentence under Section 451 IPC to simple imprisonment for six months while maintaining the fine of Rs.1,000/- and the default sentence, and affirming the sentence of simple imprisonment for six months under Section 323 IPC.

Both the Courts directed that the substantive sentences shall run consecutively, as noted above.

10. Chapter III of the Code of Criminal Procedure, 1973 deals with the powers of Courts. Section 31 thereof, which corresponds to Section 25 of the BNSS, deals with sentences in cases of conviction of several offences at one trial. The same reads as under:

**“31. Sentence in cases of conviction of several offences at one trial.—(1)** When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct,



unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Corresponding Law: S.25 of Act 46 of 2023”

11. Whether the sentences have to be directed to run concurrently or consecutively engaged the attention of the Larger Bench of the Apex Court in the case of ***O.M. Cherian alias Thankachan vs. State of Kerala & Ors.***<sup>1</sup>

11-A. Answering the reference as to whether substantive sentences can be directed to run concurrently or consecutively in the light of Section

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<sup>1</sup>*O.M. Cherian alias Thankachan vs. State of Kerala & Ors.*, (2015) 2 SCC 501.



31 of the Cr.P.C., the Apex Court laid down the law that when the prosecution is based on a single transaction which constitutes two or more offences, the sentences are to run concurrently. It reiterated the decision of the Apex Court in the case of **Mohd. Akhtar Hussain v. Collector of Customs**<sup>2</sup>, more particularly paragraph 10 thereof, which is culled out hereunder:

"10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

*(Emphasized)*

While doing so the Apex Court has held as under:-

"21. Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and

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<sup>2</sup> *Mohd. Akhtar Hussain v. Collector of Customs*, (1988) 4 SCC 183



exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in *Mohd. Akhtar Hussain*<sup>2</sup> and Section 31 CrPC.”

(Emphasized)

11-B. In the case of ***Nagaraja Rao v. CBI***<sup>3</sup>, the Apex Court held that the mitigating factors have to be considered while deciding whether the sentences should run concurrently or consecutively.

11-C. The ethos of Indian criminal jurisprudence is reformatory and is firmly rooted in the oft-quoted prophetic words of Oscar Wilde that "Every saint has a past, and every sinner a future."

11-D. The sensitive and delicate function of sentencing had, in fact, engaged the attention of the Apex Court in the case of ***Mohammad Giasuddin v. State of Andhra Pradesh***<sup>4</sup>.

11-E. In this context, reference can also be made to ***Neera Yadav v. Central Bureau of Investigation***<sup>5</sup> as well as ***Sunil Kumar v. State of Uttar Pradesh***<sup>6</sup>, regarding the scope of Section

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<sup>3</sup> *Nagaraja Rao v. CBI*, (2015) 4 SCC 302

<sup>4</sup> *Mohammad Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287

<sup>5</sup> *Neera Yadav v. Central Bureau of Investigation*, (2017) 8 SCC 757

<sup>6</sup> *Sunil Kumar v. State of U.P.*, (2021) 5 SCC 560





judgment of Justice V.R. Krishna Iyer in the case of ***Mohammad Giasuddin (supra)***<sup>2</sup>.

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9..... The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an “in terrorem” outlook, should prevail in our Criminal Courts, since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw: “If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries.

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12. On the touchstone of the settled principles of law and in the light of the statutory provisions contained in Section 31 read with Section 235(2) of the CrPC, which correspond to Section 25 and 258(2) of the BNSS respectively, it is seen that, in the case at hand, the offences were committed in the course of the same transaction.

However, being oblivious to the salutary principles of sentencing referred to hereinabove, the



learned Trial Court as well as the Appellate Court directed the sentences to run consecutively. Accordingly, the same is modified, and the substantive sentences shall run **concurrently**.

In the peculiar factual matrix of the case at hand, the fine amount of Rs.1,000/-, as stipulated, is set aside and shall be treated as compensation under Section 5 of the P.O. Act.

13. Recently the Apex Court in the case of ***Chellammal v. State represented by the Inspector of Police***<sup>7</sup>, has laid down the guidelines relating to the application of the P.O. Act. Therein, a duty has been cast upon the Courts to indicate as to why they are not resorting to the provisions contained in the P.O. Act.

14. The P.O. Act was enacted in the year 1958 with the avowed object of empowering 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

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<sup>7</sup> *Chellammal v. State represented by the Inspector of Police*, 2025 SCC OnLine SC 870



21 years of age, special provision has been made imposing restrictions on their imprisonment.

14-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 subsection (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."

15. So far as the substantive sentence is concerned, taking the cue from the judgment of the Apex Court in **Chellammal (supra)**<sup>7</sup>, this Court is persuaded to hold that the benefit of the P.O. Act



can be extended to the Petitioner, since, ex facie, the punishment as imposed, does not suffer from the disqualification envisaged under Section 4(1) of the Act, 1958.

16. Accordingly, the benefit of the P.O. Act is extended and this Court directs that the Petitioner be released on probation under Section 4 of the P.O. Act, on such conditions as may be settled by the learned Trial Court.

17. It is further directed that the Petitioner shall be liable to deposit the compensation of Rs.1000/- within a period of 6 months. On such deposit, the said amount shall be paid to the Informant.

Failing which, the same shall entail action in accordance with procedure laid down under Section 5 of the P.O. Act.

18. In this context, it is apt to note that, so far as Section 5(2) of the P.O. Act is concerned, in the event of default in payment of the amount ordered under Section 5(1) of the said Act, the amount shall be recovered as a fine in accordance with the provisions of Sections 386/387 of the Code.

For ready reference, sub-sections (1) and (2) of Section 5 of the P.O. Act are extracted hereunder;



**"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 subsection (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code."

It is further clarified that the "Code" herein refers to the Code of Criminal Procedure, 1898, which corresponds to Sections 461/462 of BNSS 2023 (Sections 421 and 422 of the Code of Criminal Procedure, 1973).

19. The Criminal Revision is accordingly disposed of.

**(V. Narasingh)  
Judge**

*Orissa High Court, Cuttack,  
Dated the 30<sup>th</sup> June, 2026/Ayesha*