



**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1327 of 1988**

Panna Lal and Anothers

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Brij Kishore Pandey, Kaushal Kishor, V. Singh
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri Kaushal Kishor, learned counsel for the appellants; Sri Purushottam Maurya, learned AGA for State and perused the material on record.

2. Eight accused appellants have filed the instant appeal in the year 1988 but when the matter is taken up for hearing today we are informed that six of them namely, Panna Lal, Bhai Ram, Mewa, Bipat, Babua and Roop Chand have already died, hence, the appeal has already been abated accordingly. The appeal survives only against the appellant nos.3,7 Shyam Kartik and Durga. The appellants are aggrieved by the judgment and order dated 23.5.1988, passed by IInd Additional District & Sessions Judge, Varanasi in Sessions Trial No.106 of 1983 (State Vs. Bhai

Ram & Ors.), arising out of Case Crime No.46 of 1982, under Sections 147, 323, 324, 149, 436 IPC, Police Station Rohania, District Varanasi; whereby the appellants have been convicted and sentenced to six months rigorous imprisonment under Sections 147, 323/149 IPC.

3. Tersely, the prosecution case is that the complainant, Vishram, is a resident of village Harinagarapur. A kachcha pathway situated to the south of his house leads towards the Rohania road. In front of his house lies his sehan land, where he had installed cattle troughs and a charni. The accused, who are residents of the same village, allegedly intended to remove the cattle troughs and charni, forcibly take possession of the complainant's sehan land, and raise a thatched structure thereon. On 18.2.1982 at about 9:00 a.m., the accused persons, forming an unlawful assembly and armed with lathis and dandas, reached the complainant's land and started dismantling the cattle troughs and charni. When the complainant, his father Sukhhu and Smt. Munri objected, the accused allegedly abused and assaulted them. On the alarm being raised, several villagers reached the spot, whereupon the accused fled. While leaving, some of the accused allegedly set fire to the complainant's thatched shed in which cattle and household articles were kept. Thereafter, the injured proceeded to Police Station Rohania and lodged a written report, on the basis of which the FIR was registered under Sections 147, 323, 149 and 436 IPC, and investigation commenced.

4. The investigation started, and statements of witnesses were recorded. After investigation, a charge sheet was filed under Sections 147, 323, 324, 149, 436

IPC. The Magistrate took cognizance of the case and committed it to the Court of Sessions, where it was registered as Sessions Trial No.106 of 1983 (State of U.P. vs. Bhai Ram & others), under Sections 147, 323, 324, 149, 436 IPC. Charges were framed against the accused persons. They denied the charges and demanded trial.

5. The prosecution has produced Visram PW-1, Sheo Ram PW-2, Ramlal PW-3, Dr. S.K. Upadhya PW-4, S.I. Doodhnath Singh PW-5 and proved material exhibits Ex.Ka.1 Written Report, Ex.Ka.2 Injury Report, Ex.Ka.3 Injury Report, Ex.Ka.4 Injury Report, Ex.Ka.5 Injury Report, Ex.Ka.8 Site Plan, Ex.Ka.9 Charge-sheet as documentary evidence in support of its case.

6. In brief the grounds of appeal are that the judgment and order passed by the trial court is illegal and against the evidence on record, the conviction and sentence passed against the appellant is against the weight of evidence on record, the case against the appellant has not been found beyond reasonable doubt, the sentence is too severe and only interested witnesses have been produced and independent witness have been withheld which makes the judgment bad in law. The judgment suffers from factual and legal infirmities.

7. Learned counsel for the appellants without going into the merits of the case, argued only on the point of sentence. Submission is that the appellant is not a previous convict, has not misused his liberty during the pendency of the appeal, the appeal itself has remained pending before this Court for over four decades, and that the age of the appellant is more than 60 years, a lenient view on the question of sentence is called for and accused

should be released on probation, if he found guilty by this court also.

8. Per contra, learned AGA submits that the trial court has rightly held the accused appellant guilty and awarded sentence of six months rigorous imprisonment in the present case on the basis of reliable evidence available on record.

9. Sections 4 and 5 of the Probation of Offenders Act, 1958 are reproduced below for ready reference:-

"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.

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."

10. In Sitaram Paswan and Another vs. State of Bihar, (2005) 13 SCC 110, the Apex Court has held as under:-

"For exercising the power which is discretionary, the court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the courts while finding the person guilty and if the court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the

offender, benefit should be extended to the accused, the power can be exercised by the court even at the appellate or revisional stage and also by this Court while hearing the appeal under Article 136 of the Constitution."

11. In Lakhanlal alias Lakhan Singh vs. State of Madhya Pradesh, (2021) 6 SCC 100, the Apex Court held as under:-

"10. A three-Judge Bench of this Court in Rattan Lal v. State of Punjab, AIR 1965 SC 444, while examining the provisions of the 1958 Act held that in case the offenders are below 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, it is not desirable to deal with them under Sections 3 and 4 of the 1958 Act but in respect of offenders who were above age of 21 years, the Court has absolute discretion to release such offenders either after admonition or on probation of good conduct. The Court held as under:

"4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act."

11. This Court in Jugal Kishore Prasad v. State of Bihar, (1972) 2 SCC 633 explained the rationale of the provision as to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The Court held as under:

"6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected

therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act."

12. In Mohd. Hashim vs. State of Uttar Pradesh and Others, (2017) 2 SCC 198, the Apex reiterated the exercise of discretionary power of the court under Probation of Offenders Act as under:-

"21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In Ram Parkash v. State of H.P., (1972) 4 SCC 46, while dealing with Section 4 of the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word "may" used in Section 4 of the PO Act does not mean "must". On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguish offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:

"7.... While in the case of offenders who are above the age of 21 years. absolute discretion is given to the court to release them after admonition or on probation of good conduct in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence them to imprisonment

unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act. (Rattan Lal v. State of Punjab, AIR 1965 SC 444 and Ramji Missar v. State of Bihar, AIR 1963 SC 1088.)"

Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit under Section 4 of the PO Act.

22. We have referred to the aforesaid authority to stress the point that the court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in Dalbir Singh v. State of Haryana, (2000) 5 SCC 82, it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:

"9. ... The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabril, (1975) 1 SCC 138, a two-Judge Bench of this Court has considered the word "expedient". The learned Judges have observed in para 21 thus:

21.... Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient": "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary)'.

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in

the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

13. In **Chellammal and Another vs. State represented by the Inspector of Police, 2025 LiveLaw (SC) 461**, where the Sessions Judge has acquitted the appellants (mother-in-law and husband) of the charge under Section 304-B IPC but convicted them under Section 498-A, the Apex Court has held as under:-

"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 therefore."

14. We find considerable force in the submissions advanced on behalf of the appellants. The occurrence is of the year 1982 and the appeal has remained pending in this Court for nearly forty four years for no fault of the appellants. The sentence of six months rigorous imprisonment was awarded way back in 1988, and sending the appellants to jail at this distance of time, when they have already suffered the agony and uncertainty of a

pending criminal appeal for about four decades, would not sub-serve the ends of justice. There is nothing on record to show that the appellants have any criminal antecedents or that they have misused their liberty during the pendency of the trial or the appeal. Six of the four appellants have already died during the pendency of the appeal, which is itself a sombre reminder of the time that has elapsed since the incident.

15. The Probation of Offenders Act, 1958 is a beneficial and reformatory piece of legislation, the object of which is to prevent the conversion of youthful and first-time offenders into hardened criminals by keeping them away from the corrupting influence of jail, and to give them an opportunity of reformation instead of subjecting them to the ordinary consequences of conviction, provided the offence is not one punishable with death or imprisonment for life. Having regard to the age of the offence, the absence of any criminal antecedents on the part of the appellants, and, above all, the extraordinarily long pendency of the appeal for about forty four years, this Court is of the considered view that this is a fit case where the benefit of Section 4 of the Probation of Offenders Act, 1958 deserves to be extended to the surviving appellants, namely, Shyam Kartik and Durga, in place of the substantive sentence of imprisonment, without disturbing the finding of their guilt.

16. Accordingly, the appeal is **partly allowed**. The conviction of the appellants Shyam Kartik and Durga under Sections 147, 323/149 IPC, as recorded by the IInd Additional District & Sessions Judge, Varanasi in Sessions Trial No.106 of 1983, is hereby upheld and affirmed.

However, the sentence of imprisonment awarded to them is set aside,

17. Let the accused-appellants Shyam Kartik and Durga be released on probation under Section 4 of the Probation of Offenders Act, 1958, subject to the following conditions:-

(i) The accused-appellants shall execute a 'fresh' personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety of the like amount to the satisfaction of the court concerned for a period of six months with an undertaking that they shall maintain peace and good behaviour and will not involve in any criminal activity.

(ii) Invoking Section 5 of the Probation of Offenders Act, the appellants shall pay compensation of Rs.10,000/- (Rupees Ten Thousand) (Rs.5,000/- by each appellants) to the victim/informant, within a period of one month from today. In case of death of injured/victim, the appellants shall pay the same to their legal representatives equally.

(iii) The appellants shall deposit the above compensation amount before the trial court concerned within stipulated period and the trial court, after notice and verification, shall distribute the above amount among the victim/his legal heirs equally through bank accounts.

(iv) In the event of breach of any of the aforesaid conditions, the accused-appellants shall be liable to undergo the sentence as awarded by the trial court to serve the original sentence.

18. Trial court shall ensure compliance and seek report from the Probation Officer for supervision.

19. The appellants are directed to appear before the trial court within two weeks from today to furnish the requisite bonds. In case of default, the trial court shall be at liberty to proceed in accordance with law, including issuance of coercive process.

20. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

21. The Registrar (Compliance) is also directed to serve a copy of this order within one week by FAX/e-mail to the concerned trial court through District & Sessions Judge, Varanasi for compliance.

(Santosh Rai,J.)

August 03, 2026
RA