



2026:AHC:172980

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4085 of 2024

Abdul Rafik @ Raseed And 4 Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Anupama Parashar, Ram Ji Singh, Satendra Kumar Upadhyay
Counsel for Respondent(s)	: G.A.

Court No. - 92

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri B.D. Mishra, learned counsel holding brief of Sri Satendra Kumar Upadhyay, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State respondent.

2. The present criminal Appeal has been preferred against the judgment and order dated 30.03.2024 passed by learned Additional Session Judge, Court No.4 Ballia, in Sessions Trial No.39 of 2012 (State Vs. Abdul Rafik @ Raseed and others) arising out of Case Crime No.68A of 2008, under Sections 147, 323/149, 325/149, 504 and 506 I.P.C., Police Station Khejuri, District- Ballia whereby convicting and sentencing the appellants for six months Rigorous Imprisonment under Section 147 I.P.C; six months Rigorous Imprisonment under Section 323/149 I.P.C; for three years rigorous imprisonment along with fine of Rs.500/- under Section 325/149 I.P.C; for one year Rigorous Imprisonment under Section 504 I.P.C. and for two years Rigorous Imprisonment under Section 506 I.P.C., in case of default in payment of fine five days additional imprisonment under Section 325/149 I.P.C. All sentences shall run concurrently.

3. The prosecution case as set up in the application moved by complainant Abdul Rafeeq under Section 156(3) Cr.P.C. is that the complaint and Abdul Rased @ Rashid were closely related and that their ancestral property has already been partitioned. However, the mango orchard situated in village Mahatapaar Maujame had not been partitioned.

4. It is alleged that on 8.5.2008 at about 12 noon, upon receiving information that Abdul Rafeeq @ Rashid S/o Saleem, Phool Mohd. S/o Abdul, Gul Mohd. S/o Saleem, Jamshed S/o Mohammad, all residents of Balupur, P.S. Khejuri, District Ballia and Yaseen S/o Raheem R/o village Kureji, P.S.

Garhwar, District Ballia have plucked mangoes from the aforesaid orchard, the complainant proceeded towards the orchard along with his brother Sadiq, his nephew Asgar and Shameem and his son Firoz. When they reached near the house of Mehdi Hasan in the village, the accused persons armed with *lathi* and sticks carrying the mangoes plucked from orchard, came there. On being questioned by the complainant as to how they have plucked the mangoes without obtaining permission, all the accused persons abused the complainant and his companions in filthy language and assaulted them with *lathis* and sticks. As a result of the assault, the complainant Rafeeq, Sadiq, Asgar and Shameem sustained the injuries.

5. The occurrence was witnessed by Bhagirathi Chaudhary, Swaroop Chaudhary and Mukhtar Ahmed, who intervened and rescued the injured with help of the villagers and the injured were taken to the Government Hospital, Sikanderpur, where they were medically examined and provided treatment. Their x-rays were conducted at District Hospital, Ballia.

6. Despite repeated approaches to the police station, the first information report was not registered. Consequently, the complainant approached the Court by moving an application under Section 156 (3) Cr.P.C.. Pursuant to the order passed by the learned trial Court on the said application, the case was registered. After completion of investigation, charge sheet was submitted against the accused persons under Sections 147, 323/149, 323/149, 504, 506 I.P.C . Charges were accordingly framed by the learned trial Court. The accused persons denied the charges and claimed trial.

7. In support of it's case the prosecution examined P.W.-1 Rafeeq, the complainant, P.W.-2 Firoz, P.W.-3, Asgar, P.W.-4, Dr. Dhananjaya Kumar, P.W.-5 Arun Kr. Singh, P.W.-6 Constable Jagannath Prasad, P.W.-7 Inspector Neeraj kumar Singh.

8. Prosecution also brought on record documentary evidence including the copy of the letter sent by the complainant to the Superintendent of Police concerned. The original application submitted before the Superintendent of Police, marked as Ext. ka-2, the application moved before the Court under Section 156(3) Ext. Ka-3, injury report Ka-4-Ka-8, x-ray report Ext.ka-9 to ka-13, F.I.R. Ext.Ka-14, copy of G.D. entry Ka-15, site plan Ext.ka-16 and charge-sheet Ext.ka-17 were duly proved by the prosecution witnesses.

9. The learned trial Court after hearing both sides and carefully examining the oral and documentary evidence available on record, found the accused persons guilty for the offences punishable under Sections 147, 323, 325/149, 504, 506 I.P.C, the accused persons were sentenced to six months Rigorous

Imprisonment under Section 147 I.P.C; six months Rigorous Imprisonment under Section 323/149; three years Rigorous Imprisonment along with fine of Rs.500/- under Sections 325/149 I.P.C.; one year Rigorous Imprisonment under Section 504 I.P.C and two years Rigorous Imprisonment under Section 506 I.P.C. In default of payment of fine imposed under Sections 325/149 I.P.C, they were directed to undergo five days additional imprisonment.

10. Aggrieved by the judgement of conviction and order of sentence, the present appeal has been preferred.

11. It has been contended on behalf of the appellants that the learned trial Court has failed to properly appreciate the evidence available on record and that the conviction recorded by it are contrary to the evidence. It has accordingly being argued that the appellants are innocent and deserves to be acquitted.

12. Learned A.G.A has supported the judgement of conviction and order of sentence and submitted that the prosecution has established the charges against the accused persons beyond reasonable doubt by reliable and cogent evidence. Accordingly, dismissal of the appeal has been prayed for.

13. At the stage of hearing of the appeal, learned counsel for the appellant submits that the occurrence is dated 8.5.2008 and more than eighteen years have elapsed since the incident. It was further submitted that the appellants have no criminal history and there is no material suing any previous conviction against them. Learned counsel stated that in view of the aforesaid circumstances, he did not wish to press the appeal on the merits and confined his submissions to the question of sentence. It was accordingly, prayed that considering the appellants to be first time offenders and the long lapse of time, they may be extended the benefit of probation.

14. Learned AGA justified the conviction recorded by the learned trial Court. However, considering the fact that the appellants have no criminal antecedent and that the present case appears to be their first conviction, he fairly stated that he had no objection to the appellants being released on probation, subject to such terms and conditions as may be considered appropriate by this Court.

15. This Court has carefully examined the entire evidence available on record.

16. P.W.-1 Rafeeq, the complaint has substantially supported the prosecution

version as contained in the F.I.R. He has consistently stated that on the date, time and place of occurrence, when he questioned the accused persons regarding plucking mangoes from the jointly owned orchard, the accused persons assaulted him and his companions, resulting in serious injuries.

His testimony received material corroboration from the testimonies of P.W.-3, and P.W.-4, both of whom are injured witnesses. Both these witnesses have supported the prosecution case regarding the occurrence and the offence committed by the accused persons.

17. P.W.-4 Dr. Dhananjay Kumar, who was posted as Medical Officer at the Community Health Center on 8.5.2008 has deposed that he had medically examined the injured persons on the same date, and he had described the injuries found on their bodies and has duly proved the injury report by identifying his handwriting and signatures thereon. At the time of the medical examination, three injuries were found on the body of Firoz; six injuries were found on the body Rafeeq, five were noted in the medical examination report of injured Sheru; two injuries were found on the body of Shameem and four injuries on the body of Mohd. Saddiq; some of the injuries were kept under observation and x-ray was advised.

18. P.W.-5 Arun kumar Singh, x-ray Technician has deposed that on 9.5.2008, he conducted the x-ray examination of the injured persons was conducted at the Community Health Center. The injured had been referred for x-ray examination by Dr. R.N. Upadhaya, Surgeon, District Hospital Ballia. The x-ray examination were conducted under the supervision of the then Radiologist, and the x-ray report available on record have duly been proved in accordance with law. The medical and x-ray evidence further establishes that during course of the incident, the complainant's uncle sustained fracture on the right side of his chest. The nature of the injury and corresponding medical evidence lend further ocular account furnished by the injured witnesses.

19. P.W.-6 Jagannath Prasad has proved the chick F.I.R. and relevant G.D. entry by proving his signature.

20. P.W.-7 Inspector Neeraj kumar Singh has deposed regarding various steps taken by him during investigation. He has proved the site plan and other papers prepared during investigation.

21. The testimony of the injured witnesses stands materially corroborated by contemporaneous evidence, and there are no convincing reasons on record to discard their testimony. The mere fact that the witnesses are related to the

complainant cannot, by itself, be a ground for rejecting their otherwise reliable evidence, particularly when two of the material witnesses are themselves injured.

22. On a cumulative appreciation of the entire oral and documentary evidence, it is established that the accused persons numbering more than five formed an unlawful assembly with the common object and in furtherance of such common object, assaulted the complainant and other injured persons with *lathis* and sticks, thereby causing injuries to them.

23. On a careful consideration of the entire material available on record, this Court finds that the prosecution has succeeded in establishing the evidence and the participation of the appellants beyond reasonable doubt. The finding recorded by the learned trial Court are based upon proper appreciation of the oral and documentary evidence and do not suffer from any perversity or material illegality.

24. The conviction of the appellants, therefore, calls for no interference and is hereby affirmed.

25. The next question which arises for consideration is whether in the facts and circumstances of the case, appellants deserves the benefit of probation. The occurrence took place on 8.5.2008 and more than eighteen years have elapsed and since then, the appellants have no criminal history and there is no conviction against the them. It has also been stated that the appellants have not been involved in any other criminal activity.

26. So far as the question of extending benefit of Section 4 of Probation of Offenders Act to the appellant is concerned, it is essential to discuss the legal position and law pronounced. In this regard, Section 4 of the Probation of the Offenders Act, 1958 is extracted hereinunder :-

"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. "

27. A similar provision finds place in the Code of Criminal Procedure, there, Section 360 provides :-

"Section 360- Order to release on probation of good conduct or after admonition :-

When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years, or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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 where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by Sub-Section (2)."

28. After considering the fact that the appellant has no criminal antecedents, the occurrence is of the year 2008. The appellants have faced the ordeal of trial and appeal for a long period. No adverse material has been produced regarding misconduct during the pendency of trial and appeal. In these circumstances, this Court finds appropriate to invoke the provisions of Section 4 of Probation of Offenders Act, 1958 instead of sending the appellants to imprisonment.

29. The appellants namely **Abdul Rafik @ Raseed, Phool Mohammad, Gul Mohammad, Jamshed and Yasin** are directed to be released on probation on good conduct for a period of one year and are directed to file two sureties, each to the tune of Rs.20,000/- along with personal bonds before District Probation Officer concerned and also an undertaking to the effect that they shall maintain peace and good behaviour during the period of one year from today. They will not commit any offence during this period and will not involve in any criminal activities. In case of breach of any of the conditions, the benefit of probation shall stand cancelled and the appellants

will be required to undergo the original sentence as awarded by the trial court.

30. The said bonds are to be filed by the appellants within a period of three months from the date of receipt of certified copy of this judgment.

31. In case of breach of any of the conditions, the appellants shall be taken into custody and shall have undergo sentence awarded to them.

32. With the above modification, the instant criminal appeal is partly allowed.

33. A certified copy of the order be also sent to the learned trial Court concerned for compliance. Trial Court record shall also be sent back to the District Court concerned.

August 11, 2026
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(Mrs. Vani Ranjan Agrawal,J.)