



2026:AHC:170070

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5083 of 2024

Lalji Patel And 2 Others

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Hari Shankar, Shiv Vilas Mishra
Counsel for Respondent(s)	:	G.A.

Court No. - 92

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Shiv Vilas Mishra, 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 05.04.2024 passed by learned Special Judge, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Chitrakoot, in Special Session Trial No.106 of 2016 (State Vs. Lalji and others) arising out of Case Crime No.971 of 2015, under Sections 452, 323, 325, 504 I.P.C. and under Section 3(1)10 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, acquitting the appellants under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and convicting the appellants under the following Sections :-

i. Already undergone imprisonment under Section 323/34 I.P.C. alongwith fine of Rs.1,000/- to the appellants. In case of default in payment of fine, additional Rigorous Imprisonment of one month.

ii. Three years Rigorous Imprisonment under Section 325/34 I.P.C. alongwith fine of Rs.3,000/- to the appellants, in case of default in payment of fine to undergo additional rigorous imprisonment of six months.

iii. Three years Rigorous Imprisonment under Section 452 I.P.C. along with fine of Rs.3,000/- and in case of default in payment of fine further additional six months rigorous imprisonment.

3. The prosecution case in brief is that complaint Surendra submitted a written report at Police Station Kotwali Karwi on 16.11.2015 alleging that on account of his having not casting vote to Raj Babu, Dharendra and Manoj

in the District Panchayat Election, the accused persons had earlier assaulted him and his mother. Information regarding the said incident had also been given to the Superintendent of Police, Chitrakoot. It is further alleged on 11.11.2015 at about 10 P.M., when the complainant was seated at his shop, the accused persons came there armed with *lathis*, hurled caste related abuses, they ran out of the shop and assaulted him mercilessly with *lathis* and sticks, causing injuries to his right hand and further injuries on his back and legs.

4. On the basis of the written report, a case was registered. The complainant was medically examined and after completion of investigation, charge sheet was submitted against the accused. Charges were framed under Section 452, 323, 325/34, 504 and 506 and Section 3(1)(10) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The accused pleaded not guilty and claimed trial.

6. In support of it's case the prosecution examined P.W.-1 Surendra, P.W.-2 Sukariya, P.W.-3 Suhagiya, P.W.-4 Kali Deen, P.W.-5 Rajesh Kumar Tiwari, P.W.-6 Pramod Kumar and P.W.-7 Mani Ram.

7. The prosecution also produced written report, chik FIR, GD entry, site plan, charge sheet, medical report, x-ray report etc.. The said documentary evidence was duly proved by the Prosecution Witnesses and marked as exhibits.

8. P.W.-1 Surendra (Complainant) has fully supported the prosecution case before the trial Court. He has stated that the accused persons came to his shop and dragged him outside and assaulted him with *lathis* and sticks and caused injuries to him. His testimony is substantially corroborated with the testimonies of P.W.-2 and P.W.-3.

9. The medical evidence also supports the incident. The medical report of the complainant disclosed three injuries on his body, in respect of some of which, x-ray examination was advised. P.W.-6 Dr. Pramod Kumar duly proved the medical evidence and the corresponding injury report.

10. Learned counsel for the appellants has assailed the judgement of conviction and order of sentence on the ground that the evidence available on record was not properly appreciated by the learned trial Court and that the judgement was rendered mechanically without the application of judicial mind. It has been further submitted that the finding recorded by the trial Court is perverse and contrary to the evidence and that the sentence imposed

upon the appellants is excessive.

11. Learned AGA has supported the judgement of conviction and stated that the prosecution has established the charges levelled against the appellants and he had accordingly prayed for dismissal of the appeal.

12. During the proceedings, the learned counsel for the appellants however, submitted that the occurrence relates to year 2015 and that considerable time has elapsed since the incident. It was further submitted that the appellants have no criminal antecedent and there is no evidence of any previous conviction against them. The learned counsel stated that he did not wish to press the appeal on merits of conviction and confined his submission to the question of sentence. Considering the fact that the appellants are the first time offenders, a prayer was made for extending them the benefit of probation.

13. Learned AGA submits that the judgement of conviction was justified, but fairly conceded that the appellants have no criminal history and stated that he has no objection to the appellants being extended the benefit of probation.

14. This court has carefully re-appreciated the oral and documentary evidence available on record for the purpose of examining the correctness and legality of the judgement of conviction and order of sentence.

15. P.W.-1 Surendra (complainant) his deposition clearly establish that on the date and time of occurrence the appellants came to his shop armed with *lathis* and sticks abused and dragged him outside the shop, and assaulted him. He has specifically attributed the participation of the appellants and has described the manner in which he has been assaulted.

16. The testimony of P.W.-1 finds corroboration from other prosecution witnesses namely P.W.-2 and P.W.-3, more importantly the medical evidence provides independent corroboration to the factum of assault. Three injuries were found on the body of the complainant. The injury report proved by P.W.-6 Dr. Pramod Kumar lend support to the prosecution case. The injuries found on the person of the complaint found consistent with the prosecution version that he was assaulted with sticks and *lathis*. In x-ray examination, which was conducted under supervision of P.W.-7 Dr. Mani Ram shows that radius bone of right hand of the complaint was found fractured. X-ray and testimony of P.W.-7 also lend support to the prosecution case regarding the allegation of grievous hurt.

17. On a cumulative assessment of the entire evidence, this court finds that prosecution has succeeded in establishing its case beyond reasonable doubt that appellants participated in the occurrence and assaulted the complainant. The evidence on record for which the appellants have been convicted including the offence falling within the ambit of Section 325 I.P.C. The findings recorded by the learned trial Court are supported by the evidence and cannot be said to be perverse or based upon non application of mind. The finding recorded by the learned trial Court are based upon proper appreciation of the oral, documentary and medical evidence and do not suffer from any perversity or material illegality.

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

19. 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 in the year 2015 and more than ten 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.

20. 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."

21. 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)."

22. After considering the fact that the appellant has no criminal antecedents, the occurrence is of the year 2015. 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.

23. The appellants namely **Lalji Patel, Manoj Kumar and Dheerendra Kumar** 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.

24. 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.

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

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

27. 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 learned trial Court concerned forthwith.

August 13, 2026
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(Mrs. Vani Ranjan Agrawal,J.)