



2026:AHC:165846

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1276 of 1983

Rupai And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	O.P.Misra, Pradeep Kumar, Pradeep Kumar Vi
Counsel for Respondent(s)	:	A.G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the appellants and Sri Vishwa Deepak Mishra, learned AGA on behalf of the State and perused the record.

2. The instant criminal appeal has been preferred against the judgment and order dated 12.04.1983 passed by Sri D.K.Trivedi, IVth Additional Sessions Judge, Gorakhpur in Session Trial No.435 of 1982 convicting the appellants nos.1 to 3 under sections 304(Part II) read with Section 34 I.P.C. and 323 read with Section 34 I.P.C. and sentencing each of them to undergo rigorous imprisonment for five years and six months respectively and appellant no.4 is directed to be released on probation of good conduct and it is directed that he shall be released on his entering into a bond in the sum of Rs.2,000/- with two sureties in the like sum on under taking to appear and receive the sentence then called upon during a period of three years from the date of execution of the bonds.

3. Prosecution story is that on 14.05.1982 at about 5.00 p.m. informant lodged complaint against the accused persons in regard to quarrel between Sitaram and the accused persons. Injured Mishri succumbs to death. The accused persons assaulted deceased Mishri, brother of Sitaram and Awadhraj s/o Sitaram with lathi, kicks and fists. Deceased Mishri fell down and became unconscious on account of lathi fists injuries. He was admitted in hospital but died. Injured Mishri was taken to Primary Health Centre, Maharajganj, next day he was medically examined. A written complaint was lodged against accused-persons in regard to incident.

4. Injured was medically examined by Dr.A.P.Singh. Injured/deceased Mishri was unconscious when he was medically examined. He was referred to District Hospital, Gorakhpur, where he died at 2.45 p.m. the same day. The Investigating Officer submitted charge-sheet under sections 304 & 323 I.P.C. Prosecution produced eight witnesses, Shyam Baran, P.W.-1, Radhey Shayam P.W.-2, Awadhraj, P.W.-3, Sri Dharam Deo Singh, S.I., P.W.-4, Head constable Raj Ji Singh, P.W.-5, Dr.A.P.Singh, P.W.-6, S.I. Ramanand Thakur, P.W.-7 and Dr. Ghanshayam Srivastava as P.W.-8.

Mishri and Awadhraj received injury. Dr. A.P.Singh, examined Mishri and he found following injuries on the person of Mishri, deceased.

- i) Contusion with swelling size 1"x 1" on left side head 3 1/2" above the left ear.
- ii) Contusion with swelling 2" x 1 1/2 on right side forehead just above the eye brow.
- iii) Contusion with swelling 2"x 1 1/2 on right side neck just below the right ear.

Informant written report dated 21/22.06.1999 lodged at 3.45 a.m. marked as Exhibit Ka-1, Chik First Information Report Exhibit Ka-3, was entered in the G.D. Exhibit Ka-4, by constable clerk Suresh Chand. Injured Kalicharan was medically examined on 22.06.1999 by Dr.Ashu Kumar Agarwal and injury report was marked as Exhibit Ka-2.

Dr.A.P.Singh examined Awadhraj on 15.05.1982 at 7.30 p.m. and found following simple injures on his person:-

- i) Lacerated wound 1"x1/4" x bone deep on left side head 3 1/2" above the left ear.
- ii) Abraded contusion 1"x 3/4" on outer aspect of right upper arm middle third. Colour is bluish.
- iii) Abrasion 1/2" x 1/2" on the top of left shoulder joint. Injuries no.1 and 2 could have been caused by *lathi* and injury no.3 could have been caused by friction.

5. Learned counsel for the appellants submits that trial court has convicted appellants after considering all the evidence available on record. During pendency of the present appeal, Appellant no.1 (Rupai), appellant no.2 (Ram Sewak) and appellant no.4 (Ram Kishun) died and appeal on their behalf have been abated. Learned counsel for the appellants next submits that only appellant no.3 (Ram Agya) is alive. He next submitted that more than 40 years have been passed, appellant no.3 (Ram Agya) is reaching age of about 70 years. On perusal of judgment and order, there is no specific allegation against the appellants in regard to assault made by him. General role assigned to all the accused persons for assaulting the deceased. He next submitted that injured Awadhraj has not disclosed any evidence in regard to assault made by the appellants. Learned counsel for the appellants has made plea that since appellant no.3 has no previous criminal history and after present case, he is not involved in any other case, he should be given the benefit of First Offenders' Probation Act, 1938.

6. Learned counsel for the appellants has submitted that he does not want to press the appeal on merit. He has submitted that the incident took place more than 40 years back and there is no criminal antecedent against the appellants. Delay in trial deprived the right of speedy trial and he may be given benefit of First Offenders' Probation Act.

7. Learned counsel for the appellants has placed reliance upon paras-14 to 26 of the

following judgment of this Court. in **Criminal Appeal No.433 of 2001 (Ram Narain vs. State of U.P.)**. The same is being quoted below:-

"14. Learned counsel for the appellant further submitted that he does not want to press the appeal on merits. He has submitted that the incident took place 33 years ago and there is no further criminal antecedent against the appellant. The delay in trial deprives the right of the appellant of speedy trial and he may be given benefit of first offender and appellant may be extended the benefit of Probation of Offenders Act, 1958 (herein after referred as the Act of 1958). He further submitted that appellant is first time offender and is not previously convicted in any case. He further submitted that it is the Court which may consider the benefit of Section 4 of the Act of 1958 to the accused-appellant.

15. Learned A.G.A. on the other hand opposed the appeal and has submitted that there is no material irregularity or illegality committed by the court below and keeping in view the evidence on record, accused-appellant has been rightly convicted.

16. Learned A.G.A. further states that the benefit of Section 4 of the Act of 1958 could be extended to the accused-appellant on certain stipulations as specified in Section 4 of the Act of 1958.

17. After considering the arguments advanced by the parties and after perusal of the material available on record, this court finds that except apart the merits of the case, so far as the prayer of learned counsel for the appellant for providing benefits of Section 4 of the Act of 1958 is concerned, it is essential to discuss the legal position and law propounded by the Apex Court.

18. Sections 3 and 4 of the Probation of Offenders Act, 1958 are extracted hereunder:

"3. Power of court to release certain offenders after admonition.- "Where any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation.-For the purposes of this Section, previous conviction against a person shall include any previous order made against him under this Section or Section 4.

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."

19. That Hon'ble Supreme Court in **Ratan Lal vs State of Punjab, AIR 1965 SC 444**, while discussing the purpose and object of Probation of Offenders Act, 1958, has observed in para no. 4, as follows:

"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 condition laid down in the appropriate provision 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 Ss. 3 and 4 of the Act."

20. Further the Hon'ble Supreme Court in the case of **Ved Prakash vs State of Haryana, (1981) 1 SCC 447 : AIR 1981 SC 643** while discussing on the duty of Bench and Bar regarding compliance of Section 360 Code of Criminal Procedure read with Section 4 of Probation of Offenders Act, 1958 was pleased to observe as under:

"The offence, for which conviction has been rendered, is one which will be attracted by S. 360 or at any rate the Probation of offenders Act, 1958. The materials before us are imperfect because the Trial Court has been perfunctory in discharging its sentencing functions. We must emphasise that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just

punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if S. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislation which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of offenders Act."

21. That it is also noteworthy that this Hon'ble Court in the case of **Subhash Chand vs State of U.P; [2015 Law Suit (All) 1343**, has emphatically laid down the need to apply the law of probation and give benefit of the beneficial legislation to accused persons in appropriate cases. This court issued following directions to all trial courts and appellate courts:

"It appears that the aforesaid beneficial legislation has been lost sight of and even the Judges have practically forgotten this provision of law. Thus, before parting with the case, this Court feels that I will be failing in discharge of my duties, if a word of caution is not written for the trial courts and the appellante courts. The Registrar General of this Court is directed to circulate copy of this Judgment to all the District Judges of U.P., who shall in turn ensure circulation of the copy of this order amongst all the judicial officers working under him and shall ensure strict compliance of this Judgment. The District Judges in the State are also directed to call for reports every months from all the courts, i.e. trial courts and appellate courts dealing with such matters and to state as to in how many cases the benefit of the aforesaid provisions have been granted to the accused. The District Judges are also directed to monitor such cases personally in each monthly meeting. The District Judges concerned shall send monthly statement to the Registrar General as to in how many cases the trial court/appellate court has granted the benefit of the aforesaid beneficial legislation to the accused. A copy of this order be placed before the Registrar General for immediate compliance."

22. Further the Hon'ble Apex Court in **State of Maharashtra vs Jagmohan Singh Kuldip Singh Anand; (2004) 7 SCC 659** has extended the benefit of Probation of Offenders Act, 1958 to the appellants, and observed as under:

"The learned counsel appearing for the accused submitted that the accident is of the year 1990. The parties are educated and neighbors. The learned counsel, therefore, prayed that benefit of the Probation of Offenders Act, 1958 may be granted to the

accused. The prayer made on behalf of the accused seems to be reasonable. The accident is more than ten years old. The dispute was between the neighbors over a trivial issue of claiming of drainage. The accident took place in a fit of anger. All the parties educated and also distantly related. The accident is not such as to direct the accused to undergo sentence of imprisonment. In our opinion, it is a fit case in which the accused should be released on probation by directing them to execute a bond of one year for good behaviour."

23. That coming to the point of desirability of extending the benefit of Probation Act to the accused/ appellants in **Sitaram Paswan and Anr v. State of Bihar, AIR 2005 SC 3534**, Supreme Court held as under:-

"For exercising the power which is discretionary, the Court has to consider 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 appeal under Article 136 of the Constitution of India."

24. That it is also noteworthy that Hon'ble Apex Court in the case of **Mohd. Hashim v. State of U.P and Ors., AIR 2017 SC page 660**, was pleased to observe as under:

"20-.....In Rattan Lal v. State of Punjab AIR 1965 SC 444. Subba Rao, J., speaking for the majority, opined thus:-

"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."

25. *That Section 4 of the Act of 1958 is applicable where a person is found guilty of committing an offence where punishment is neither life sentence nor death. The Court may release such an accused on probation of good conduct on his furnishing a bond as mentioned in the Section. The Court in applying the provisions of this Section is also required to consider the circumstances of the case, character of the offender and nature of the offence before exercising its discretion.*

26. *A perusal of the aforesaid provisions of the Act of 1958 thus clearly indicate that Section 4 of the Act of 1958 does not create any distinction between the category of offenders and the provision of the said Section can be made applicable in any case where the offender is found guilty for committing an offence which is not punishable with death or imprisonment for life. Incidentally certain exceptions have been indicated by the Hon'ble Supreme Court as in the case of **Smt. Devki Versus State of Harayana; 1979 (3) SCC 760** where the Hon'ble Supreme Court has held that benefit of Section 4 of the Act of 1958 could not be extended to a culprit who was found guilty of abducting a teenaged girl and forcing her to sexual submission with criminal motive. Similarly in the case reported in **1980 (4) SCC 669 in Re: State of Maharashtra Versus Natwar Lal Damodar Das Soni**, the Hon'ble Supreme Court declined to extend the benefit of the Act of 1958 to an accused found guilty of gold smuggling."*

8. Sri Vishwa Deepak Mishra, learned AGA appearing for the State does not dispute the fact that accused-appellants are the first time offender and was not previously convicted in any other case. He also submits that in view of the expressed provisions of Section 361 Cr.P.C., considering the facts and circumstances, nature of the offence, the character of the accused-appellants and particularly the time period which has lapsed since the date of incident, the benefit of Section 4 of the Act 1958 can be granted in this case.

9. I have considered the submission raised by learned counsel for the appellants and perused the record.

10. In the light of the above discussion, as far as it relates with the conviction of the appellant Ram Agya is maintained but the sentence is modified. Instead of sending the Ram Agya to jail, he is given benefit of Section 4 of The Probation of Offenders Act, 1958 and he is directed to file two sureties each to the tune of Rs 20,000/- along with his personal bonds before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behaviour during the period of two years from today. The said bonds are to be filed by Ram Agya within a

period of two months from the date of this judgment .

11. In case of breach of any of the above conditions, Ram Agya shall be taken into custody and shall have to undergo sentence awarded to him.

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

13. A certified copy of the order be also sent to the court concerned for compliance.

14. Office is directed to communicate this order to the court concerned for necessary compliance.

15. Lower court record, if any, shall also be sent back to the district court concerned.

August 7, 2026
SKD

(Deepak Verma,J.)