



**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1471 of 1983**

Phool Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Somya Chaturvedi, Ajai Kumar, Dharnidhar Pandey, Kamal Kumar Singh, Phool Singh Yadav, Poonam Srivastava
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

**Reserved On 7.7.2026
Delivered On 14.8.2026**

HON'BLE SANTOSH RAI, J.

1. Heard Sri Kamal Kumar Singh, Advocate, Ms. Mayuri Mehrotra, learned Amicus Curiae for appellant no.2; Sri Purushottam Maurya, learned AGA for the State and perused the material on record.

2. Two accused appellants have filed the instant appeal in the year 1983 but during the pendency of this appeal one of them namely, Phool Singh has already died, hence, the appeal has already been abated accordingly. The appeal survives only against the appellant no.2 Ajai Pal Singh.

3. This appeal under Section 374(2) Cr.P.C. has been preferred against the judgment and order dated 3.6.1983 passed by IInd Additional Sessions Judge, Fatehpur in Sessions Trial No.265 of 1981 (State vs. Phool Singh & Anr.), arising out of Case Crime No.57 of 1979, under Section 307/34 IPC, Police Station Khaga, District Fatehpur, whereby the accused-appellant has been convicted and sentenced to seven years' rigorous imprisonment under Section 307/34 IPC.

4. Briefly stated, the prosecution case is that on 08.03.1979, at about 6.30 p.m., the informant Laxmikant Bajpayee was returning to his house from village Pauli Bazar and, on reaching near his chak within the limits of village Ajai, P.S. Khaga, District Fatehpur, the accused Phool Singh and Ajaipal Singh emerged from the bushes of moonj standing in the field. Phool Singh is alleged to have belaboured the informant with a lathi, and at his instigation, the appellant Ajaipal Singh fired a pistol shot at the informant with intent to kill him, causing him fire-arm injury on the left side of the abdomen. On hearing his cries, PW-2 Krishna Pal Singh and one Suresh Singh, who were returning from Pauli Bazar, reached the spot and attempted to apprehend the accused, but on being threatened by the appellant, they could not do so, whereupon the accused fled the scene. The injured was thereafter taken to the police station in a bullock-cart by his elder brother Kamlesh Babu and grand-uncle Ram Babu, where the F.I.R. (Ext. Ka.2) came to be lodged at about 8.00-8.30 p.m. He was medically examined by Dr. D.C. Rai (PW-1), who found, inter alia, a fire-arm injury on

the left side of the upper abdomen and other simple injuries attributable to a blunt weapon.

5. On completion of investigation, charge-sheet was submitted against both accused, and they were committed to the Court of Sessions to stand trial under Section 307/34 IPC. Charges were framed on 03.03.1983, to which the accused pleaded not guilty. In their statements under Section 313 Cr.P.C., recorded when the appellant Ajaipal Singh was about 24 years of age, both accused took the plea of false implication on account of pre-existing enmity and litigation between their family and that of the informant's grand-father, Ram Babu.

6. The prosecution examined five witnesses, including Dr. D.C. Rai (PW-1), the injured informant Laxmikant (PW-2), and the eye-witness Krishna Pal (PW-3), besides formal witnesses. Upon appraisal of the ocular, medical and documentary evidence, the learned trial court found the prosecution case fully established and convicted both accused under Section 307/34 IPC, sentencing each to seven years' rigorous imprisonment vide judgment dated 3.6.1983, which is under challenge in the present appeal.

7. Learned counsel for the appellant does not seriously press the appeal on the question of conviction, the finding of guilt being based on the concurrent testimony of the injured PW-2 Laxmikant and the eye-witness PW-3 Krishna Pal, corroborated by the medical evidence of PW-1 Dr. D.C. Rai and the promptly lodged F.I.R. It is, however, submitted that the role attributed to the two accused was distinct: the deceased appellant Phool Singh was armed with, and used, only a lathi, whereas the act of firing the pistol shot, the injury said to be dangerous to life, is

attributed specifically and solely to the appellant Ajaipal Singh. It is further submitted that the appellant was about 24 years of age at the time of the incident and the recording of his statement under Section 313 Cr.P.C.; he is presently about 67 years of age. More than forty-five years have elapsed since the date of occurrence, and the appeal itself has remained pending in this Court for over four decades. It is submitted that the appellant has no other criminal antecedent, a fact which learned AGA does not dispute or controvert. On these cumulative considerations, it is urged that the appellant be extended the benefit of release on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, in lieu of substantive sentence.

8. Learned AGA, upon instructions, fairly states that no criminal history or antecedent involvement of the appellant, either prior or subsequent to the present occurrence, has been pointed out or placed on record. He, however, supports the finding of guilt recorded by the trial court, submitting that the appellant was the author of the fire-arm injury which was potentially fatal and was inflicted on a vital part of the body.

9. Having examined the record, this Court finds no infirmity in the finding of guilt recorded by the trial court. The presence of the injured at the place and time of occurrence is not disputed. The testimony of PW-2 Laxmikant, the injured, is natural, consistent and finds corroboration from the independent eye-witness PW-3 Krishna Pal, who, though declared hostile in part, admitted in his statement recorded under Section 161 Cr.P.C. as well as before the Investigating Officer that the appellant

Ajaipal Singh, armed with a pistol, fired a shot at the informant. The F.I.R. was lodged with promptitude, within about two hours of the occurrence, at a police station three miles away, leaving no scope for embellishment or deliberation. The medical evidence of PW-1 Dr. D.C. Rai corroborates the ocular version, confirming a fire-arm injury on the left upper abdomen alongwith other injuries attributable to a blunt weapon such as a lathi. The motive, namely, the pre-existing litigation and ill-will between the families, stands duly established and remains uncontroverted. This Court accordingly finds no reason to interfere with the conviction recorded against the appellant under Section 307/34 IPC.

10. On the question of individual role, however, the evidence discloses a clear demarcation. It is the specific and consistent case of both eye-witnesses that it was the appellant Ajaipal Singh, and Ajaipal Singh alone, who fired the pistol shot at the informant; the role of the deceased co-accused Phool Singh was confined to belabouring the informant with a lathi. The distinct and singular attribution of the fire-arm injury to the appellant is thus a relevant circumstance for consideration, particularly at the stage of sentence, now that the appeal survives only qua him.

11. A perusal of the injury report (Ext. Ka.1) and the deposition of PW-1 Dr. D.C. Rai shows that the informant sustained only one fire-arm injury, described as a 'multiple gun-shot wound' within an area of about 14 cm x 4 cm on the left side of the upper abdomen, comprising numerous individual pellet marks, each about 1/4 cm in diameter, without bleeding, without tattooing/blackening, and without any wound of exit. The remaining injuries (Nos. 2

to 4) were opined to be simple, caused by a blunt weapon such as a lathi and by friction. The absence of blackening or tattooing around the wound, taken with the pattern of scattered pellet perforations, is indicative of a shot fired from a distance of about five to six paces, and not from close or point-blank range. While the injury was undoubtedly grievous and situated on a vital part of the body, the doctor having opined that, without timely treatment, it could have proved fatal, the fact that it was a single discharge of pellets from a country-made weapon fired from a short but non-contact distance, resulting in one composite wound rather than multiple distinct gunshot wounds, is a circumstance that has a bearing on the assessment of culpability for the purpose of sentence, without in any manner detracting from the correctness of the conviction under Section 307/34 IPC.

12. One aspect requires notice. It has been pointed out that the trial court, while sentencing the appellant, did not impose any sentence of fine. Section 307 IPC renders an offender "liable to fine" in addition to imprisonment; the imposition of fine under this provision is a mandatory concomitant of the sentence of imprisonment. Where the IPC provision prescribes punishment in the form: *"...shall be punished with imprisonment ... and shall also be liable to fine"*, or *"...with imprisonment and fine"*, the trial court is expected to impose fine also. Failure to impose fine amounts to an error in sentencing. The absence of fine, under section 307 IPC therefore, by itself constitute an infirmity in the sentence as recorded. It may further be noted that neither the State nor the complainant has preferred any appeal or revision under Section 377 Cr.P.C.

seeking enhancement of the sentence by imposition of a fine. In an appeal preferred solely by the convict under Section 374 Cr.P.C., this Court, exercising jurisdiction under Section 386 Cr.P.C., cannot enhance the sentence to the appellant's prejudice in the absence of a cross- appeal or notice for enhancement. No order is, therefore, called for on this count, and the sentence as awarded by the trial court is maintained in its entirety.

13. This Court has considered the question of sentence in light of the totality of circumstances. The occurrence is of the year 1979; the trial concluded in 1983; and the present appeal has remained pending before this Court for over four decades, entirely for no fault attributable to the appellant. The appellant, who was about 24 years of age at the time of the incident and the recording of his statement under Section 313 Cr.P.C., is presently about 67 years of age. Learned AGA has, upon instructions, fairly conceded that no criminal antecedent of the appellant, either before or after the present occurrence, has been placed before the Court. The distinct and singular role of firing the pistol is undoubtedly attributable to the appellant; however, the nature of the injury, a single composite gunshot wound caused by pellets discharged from a distance of about five to six paces, without blackening or tattooing, and successfully treated with the informant discharged after 20-21 days, is not one of the gravest species of the offence falling under Section 307 IPC.

14. 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."

15. 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."

16. 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."

17. 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."

18. 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 ord the reasons therefore."

19. Having regard to (i) the appellant's advanced age of about 67 years, (ii) the singularly protracted pendency of the matter for over forty-five years since the date of occurrence, (iii) the absence of any criminal antecedent, as fairly conceded by learned AGA, and (iv) the fact that sending the appellant to prison at this stage of his life, decades after the occurrence, would serve no meaningful purpose of punishment or deterrence, this Court is of the view that it is a fit case for extending to the appellant the beneficial provisions of the Probation of Offenders Act, 1958. Nothing on record persuades this Court that the appellant is likely to indulge in any such conduct again, and his reformation, rather than incarceration at this belated stage, would sub-serve the interest of justice.

20. At the same time, having regard to the grievous nature of the injury inflicted upon the informant Laxmikanth, who was hospitalised for about three weeks and whose life was placed in danger, it is considered appropriate that the appellant be directed to pay compensation to the injured, so that the ends of justice are not reduced to a mere formality.

21. The appeal is **partly allowed**.

22. The conviction of the appellant Ajai Pal Singh under Section 307/34 IPC, as recorded by IInd Additional Sessions Judge, Fatehpur in Sessions Trial No.265 of 1981 (State vs. Phool Singh & Anr.), arising out of Case Crime No.57 of 1979, under Section 307/34 IPC, Police Station Khaga, District Fatehpur, is hereby upheld and affirmed. However, the sentence of imprisonment awarded to him is set aside.

23. Let the accused-appellant Ajay Pal Singh be released on probation under Section 4 of the Probation of Offenders Act, 1958, subject to the following conditions:-

(i) The accused-appellant 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 one year with an undertaking that he 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 appellant shall pay compensation of Rs.40,000/- (Rupees Forty Thousand) to the injured Laxmikant, within a period of one month from today. In case of death of injured/victim, the appellant shall pay the same to his legal representatives.

(iii) The appellant 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 to the victim/his legal heirs through bank accounts.

(iv) In the event of breach of any of the aforesaid conditions, the accused-appellant shall be liable to undergo

the sentence as awarded by the trial court to serve the original sentence.

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

25. The appellant is 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.

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

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

28. Let Ms. Mayuri Mehrotra, learned Amicus Curiae, be paid her remuneration as fixed by this Court vide order dated 12.5.2026, within a period of two weeks from today.

(Santosh Rai,J.)

August 14, 2026
RA