



2026:AHC-LKO:19192

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1696 of 2004

Kripa Shanker Agarwal @ Guddu

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Pankaj Verma
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 28

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. List of cases has been revised and the case is being taken up in the revised call.
2. Heard learned counsel for the appellant and learned A.G.A for the State.
3. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, has been preferred against the judgment and order dated 28.07.2004 passed by the Court of Additional Sessions Judge/Fast Track Court No. 5, Gonda in Sessions Trial No. 450/1996, arising out of Crime No. 200/1994 of Police Station Kotwali Nagar, District Gonda (current District- Balrampur), convicting the appellant under Section 324 I.P.C. and sentencing him to undergo two years of rigorous imprisonment along with a fine of Rs. 3,000/-, and in default of payment of fine, to further undergo three months of simple imprisonment. The learned trial court further directed that the period already undergone in jail be adjusted against the awarded sentence and all sentences were ordered to run concurrently.
4. Brief facts of the case are that, according to the prosecution, on 05.08.1994 at approximately 8:30 PM, the victim, Chandraprakash, went to the medical store of the appellant-accused, Kripa Shanker Agarwal (alias Guddu), to purchase medicine. A dispute arose between them regarding the price of the medicine, specifically 'Dequadin' tablets. During the course of this altercation, the appellant-accused suddenly attacked Chandraprakash with a sharp-edged weapon, alleged to be a knife or scissors, causing injuries to his back. The victim's father, Mataprasad, and another witness, Balram, who were present at the scene, intervened to rescue the victim, after which the accused fled. The victim was subsequently taken to the hospital for medical examination, where two lacerated wounds were found on his back. The information regarding the incident was reported to the Police Station Kotwali Balrampur, District Gonda, and on its basis, an F.I.R. was registered on 06.08.1994 at 10:30 AM against Kripa Shanker Agarwal under Sections 307 and 506 of the I.P.C.
5. The Investigating Officer, during the investigation, visited the place of occurrence

and prepared the site plan. He also recorded the statements of witnesses and, after completing the investigation, submitted a charge sheet against Kripa Shanker Agarwal alias Guddu under Sections 307, 504, and 506 I.P.C.

6. After the case was committed to the Court of Sessions, charges were framed against the accused, Kripa Shanker Agarwal alias Guddu, under Sections 307, 504, and 506 I.P.C. The accused denied the charges leveled against him and claimed to be tried.

7. In order to prove its case, the prosecution examined eight witnesses, namely: PW-1 Mataprasad (Informant), PW-2 Chandraprakash (Injured), PW-3 Balram, PW-4 Kanhaiya Lal (Pharmacist), PW-5 HCP 20 Puttulal, PW-6 Dr. S.N. Yadav, PW-7 Dr. Ram Vilas, and PW-8 Investigator Gorakhprasad. As documentary evidence, the prosecution filed the Tehrir (Exhibit Ka-1), Chik F.I.R. (Exhibit Ka-2), Nakal G.D. (Exhibit Ka-3), Injury Report (Exhibit Ka-4), Supplementary Medical Report (Exhibit Ka-5), Site Plan (Exhibit Ka-6), and Charge-sheet (Exhibit Ka-7).

8. After the prosecution completed its evidence, the statement of the accused-appellant under Section 313 Cr.P.C. was recorded by the trial court. The court explained the incriminating circumstances, whereby the accused-appellant denied the prosecution story and evidence. He specifically stated that he had been falsely implicated in the case due to local enmity.

9. Thereafter, the learned trial court, after hearing the learned counsel for both parties and appreciating the oral and documentary evidence, found the accused-appellant guilty. However, the court found that the offense did not fall under Section 307 I.P.C. and instead convicted the appellant under Section 324 I.P.C. The appellant was sentenced to two years of rigorous imprisonment along with a fine of Rs. 3,000/-, and in default of payment of the fine, to undergo an additional three months of imprisonment. The court further directed that Rs. 2,000/- of the fine be paid to the injured party as compensation.

10. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the accused-appellant has preferred the present appeal before this Court.

11. Learned counsel for the appellant submitted that although he has preferred the appeal against the judgment of conviction and order of punishment, but at this stage, he only intends to press the appeal in respect of sentence only and do not want to press the appeal on merit.

12. Learned counsel for the appellant submitted that the State of Uttar Pradesh has its own local law of probation i.e. Uttar Pradesh First Offenders Probation Act, 1938. He further submitted that the Probation of Offenders Act, 1958 (Central Act) (herein after referred as the Act of 1958) is also applicable in the State of Uttar Pradesh as held by Hon'ble the Supreme Court in the case of Mohd. Hashim Vs. State of U.P.; (2017) 2 SCC 198. Thus, learned counsel for the appellant submitted that it is upon the

discretion of the Court to grant benefits in either of the Acts.

13. Learned counsel for the appellant submitted that the incident took place about 32 years ago (from the current date) and about 10 years prior to the trial court's judgment, noting that there are no further criminal antecedents against the appellant. It is submitted that the delay in the conclusion of the trial and subsequent appeal process has deprived the appellant of his right to a speedy trial. Counsel further submitted that the appellant is a first-time offender with no previous convictions, and therefore, he should be extended the benefit of the Probation of Offenders Act, 1958. It is prayed that the Court may graciously consider granting the benefit of Section 4 of the said Act to the accused-appellant, allowing for his release on probation of good conduct in lieu of serving the directed sentence..

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

15. 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.

16. Before dealing with the contention of learned counsel for the appellant, it is useful to quote Sections 3 and 4 of the Probation of Offenders Act, 1958:

"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."

17. 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.

18. 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.

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 appellate 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 The 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/s 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 Hon'ble Apex Court in case of **Jagat Pal Singh & others vs. State of Haryana AIR 2000 SC 3622** has given the benefit of probation while upholding the conviction of accused persons under Sections 323, 452, 506 I.P.C. and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

26. It is noteworthy that the incident took place in the year 1994. The accused-appellant has been embroiled in this legal matter for nearly 32 years, and there is no evidence of any prior criminal antecedents against him.

27. Considering the specific facts and circumstances of the case, I am of the view that the benefit of the provisions of the Probation of Offenders Act, 1958, should be extended to the accused-appellant.

28. In light of the above discussion, the conviction of the appellant, Kripa Shanker Agarwal (alias Guddu), is maintained; however, the sentence is hereby modified looking to the age of the appellant, who is now aged about 70 years. Instead of undergoing the term of imprisonment, he is granted the benefit of Section 4 of the Probation of Offenders Act, 1958. He is directed to execute a personal bond and furnish two sureties in the sum of Rs.20,000 each to the satisfaction of the District Probation Officer concerned. He shall also provide an undertaking to maintain peace and good behavior for a period of two years from today. The said bonds are to be filed by the appellant within two months from the date of this judgment.

29. It is further directed that the appellant shall deposit a sum of Rs.5,000 before the trial court within two months from today. The trial court shall subsequently release the said amount in favor of the injured party, Chandraprakash, as compensation. In the event that the injured is no longer alive, the said amount shall be released to his legal heirs.

30. In case of a breach of any of the aforementioned conditions, the appellant, Kripa Shanker Agarwal, shall be taken into custody to undergo the original sentence awarded to him by the trial court.

31. With the above modifications, the instant criminal appeal is **partly allowed**.

32. A certified copy of this order shall be sent to the court concerned for immediate compliance.

33. The Office is directed to communicate this order to the trial court for necessary action.

34. The trial court record, if any, shall be returned to the district court concerned.

March 17, 2026
Haseen U.

(Pramod Kumar Srivastava,J.)