



2026:AHC-LKO:22615

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 2272 of 2007

Mata Pher And 3 Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Prem Shanker, Pranav Pandey
Counsel for Respondent(s)	:	G.A

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Pranav Pandey learned counsel for the accused-appellants and Learned A.G.A. for respondent-State.

2. The instant Criminal Appeal under Section 374(2) CrPC has been filed against judgment and order dated 19.09.2007 passed by Additional Sessions Judge (Fast Track-1) Ambedkar Nagar in Sessions Trial No/ 61of 2006. State v. Mata Pher and others arising out of Case Crime No. 171 of 2005 under Section 323/504/336/308 and 325 I.P.C., Police Station Malipur, District Ambedkar Nagar convicting and sentencing the appellants as under:-

(i) under Section 308 read with Section 34 I.P.C. to three years rigorous imprisonment

(ii) under Section 323 read with Section 34 I.P.C. to six months simple imprisonment

(iii) under Section 336 read with Section 34 I.P.C. to two months simple imprisonment

(ii) All sentences shall run concurrently.

3. As per prosecution version, incident is said to have taken place on 18.9.2005 when a simple case of altercation took place between the children of informant and the appellants who were their neighbours. Consequently the appellants are said to have barged into the house of informant and attacked him and his family members resulting in grievous injuries. F.I.R. was therefore lodged and registered on the same day as Case Crime number 171 of 2005 under Sections 323, 504,336,308 and 325 IPC on which the charge sheet was also submitted whereafter cognizance was taken and by means of impugned judgment appellants have been convicted while acquitting them under Sections 325, 34 and 504 IPC.

4. Learned Counsel for accused appellants submits that the trial court has erred in convicting the accused appellants since prosecution has failed to prove their case

beyond reasonable doubt and particularly since witnesses were interested ones. It is submitted that there were no independent witnesses to the alleged crime. It is also submitted that despite recording submission of learned counsel for appellant that he was entitled to be granted benefit under The Probation of Offenders Act, 1958 there is no discussion with regard to same.

5. Learned counsel for the accused-appellant submits that appellant has not been convicted previously for any offence and at the very outset submits that he is not arguing this case on merit and also is not challenging the impugned judgment and order of conviction while confining his submission in the appeal only with respect to the order of sentence.

6. It is submitted that a perusal of impugned judgment will reveal that despite plea having been raised for grant of benefit of probation under the provisions of the First Offenders Act, Act 1958 since the appellant did not have any previous criminal history, the same has been declined without indicating any reason.

7. In view of aforesaid submission of learned counsel for accused-appellant, the appeal is dismissed so far as it relates to impugned judgment and order of conviction. The judgment and order of conviction passed by the court below dated 19.09.2007 is hereby upheld.

8. Learned counsel for accused-appellant submits that in view of aforesaid facts and circumstances including the fact that appellant has not been convicted previously for any offence, trial court ought to have invoked the provisions of The Probation of Offenders Act, 1958 (hereinafter referred to as 'Act, 1958'). It is further submitted that the trial court neither invoked provisions of the Act, 1958 nor the provisions of Section 360 Cr.P.C., while sentencing accused-appellant. Impugned judgment also does not indicate any special reason for not giving benefit of provisions of Section 360 Cr.P.C. or the provisions of Act, 1958.

9. Section 361 of the Code is required to be applied with or without beneficial provisions, i.e., Section 360 of the Code or the provisions of the Act, 1958. If the Court chooses not to apply either of these provisions, it is required to give special reasons for not applying beneficial provision in case the accused offender otherwise, is eligible for provisions of Section 360 of the Code or Section 3 or 4 of the Act, 1958.

10. Learned counsel for appellant submits that the accused-appellant has statutory right for claiming benefit of beneficial legislation, i.e., the provisions of the Act, 1958 and the court was under a duty to consider the applicability of Section 360 Cr.P.C. or Sections 3 or 4 of the Act, 1958 as mandated under Section 361 Cr.P.C. If the provisions of Section 360 Cr.P.C. or provisions of the Act, 1958 were not applied, then the court should have recorded reasons for same. It is, thus, submitted to that extent, impugned judgment and order suffers from serious illegality being violative of

provisions of section 361 Cr.P.C. and, therefore, it cannot be sustained.

11. Learned A.G.A. has opposed criminal appeal however he admits that there is nothing adverse to the aspect that appellant does not have previous criminal history. It is also submitted that in terms of provisions under Sections 360/361 CrPC, this Court may consider the grant of benefit. It is however admitted that plea with regard to benefit of Probation of Offenders Act, 1958 has been raised but has not been addressed.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, since only the aspect of probation for good conduct is being adjudicated upon, Sections 360 and 361 CrPC pertain to order to release on probation of good conduct or after admonition and provides that where a person not under the age of 21 years is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when a person under the age of 21 years is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender, the Court recording conviction is required to consider various aspects including age, character or antecedents of the offender and circumstances in which offence was committed and should release the offender on probation on good conduct and instead of sentencing him to any punishment, direct that he may be released on his entering into a bond with or without sureties to appear and receive sentence for said period to keep the peace and good behaviour. Provision has also been made for exercise of such powers by Appellate Court or by the High Court or Court of Session.

13. Section 361 of the said Code indicates special reasons to be recorded in certain cases to the effect that in case an accused is entitled to benefit of Section 360 or under the provisions of the Probation of Offenders Act, 1958 or the Youthful Offender under the Children Act, 1960 or any other law pertaining to training or rehabilitation of youthful offenders, but has not been granted such benefit, it shall record special reasons in its judgment for not having done so.

14. The Central Legislation on the subject being Probation of Offenders Act, 1958 particularly Sections 3 and 4 thereof indicate power of court to release certain offenders after admonition and power to release certain offenders on probation of good conduct.

15. The State Legislation applicable in the State of U.P. is the Uttar Pradesh First Offenders' Probation Act, 1938 in which also Sections 3 and 4 pertain to powers of Court to release certain offenders after admonition and on probation of good conduct respectively.

16. The aspect of applicability of Sections 360 and 361 CrPC was dealt with by a Division Bench of this Court in **Uttar Pradesh v. Misri Lal** and others reported in

1982 CrLJ 1420. Relevant portion of the judgment is as follows:-

"26. ...The application of Section 360 in Uttar Pradesh was taken away by an Ordinance of the year 1975. The Ordinance was repealed and replaced by the Criminal P.C. (Uttar Pradesh Amendment) Act, No. 16 of 1976. This Act received the assent of the President on 30-4-1975 and published in the Uttar Pradesh Extraordinary Gazette dated 1-5-1976. Section 12 of this Act repealed the Ordinance and laid down that notwithstanding such repeal, anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the provisions of this Act as if this Act had come into force on November, 28, 1975. The learned trial judge decided the case on 2-2-1976. Section 10 of the Amending Act No. 16 of 1976 amended S.484 of the Code and inserted the following clause (e) after clause (d) :-

"(e) ...the United Provinces First Offenders' Probation Act 1938.....shall continue in force in the State of Uttar Pradesh and accordingly the provisions of Section 360 of this Code shall not apply to that State and the provisions of Section 361 shall apply with the substitution or reference to the Central Acts named therein by references to the corresponding Act in force in that State".

Section 361 of the CrPC lays down that where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958, or a youthful offender under the Children Act, 1960 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgement the special reasons for not having done so.

It follows from this provision read with clause (e) of S.484 mentioned above, the Court is required to record special reasons for not extending the benefit of the provisions of the Uttar Pradesh First Offenders' Probation Act, 1938."

17. Thus, provisions of U.P. Probation of First Offenders' Act shall be followed, in the geographical area where that has been made applicable and not Section 360 of the CrPC. In this way enforcement of Probation Act in some particular area, thus excludes the applicability of the provisions of Section 360 of the Code in that particular area, however, it will be the bounden duty of the Court to consider as to why not to proceed to grant the benefit of Probation of Offenders Act, as provided under Section 361 of the CrPC.

18. Coming to the point of desirability of extending the benefit of Probation Act to the accused-appellant, in **Sitaram Paswan and another Vs. State of Bihar**, reported in AIR 2005 SC 3534, Hon'ble the 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."

19. In **Mohd. Hashim Vs. State of U.P and others**, reported in AIR 2017 SC 660, Hon'ble Supreme Court opined 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."

20. Upon applicability of aforesaid provisions and judgments in the present case, it is evident that the incident is said to have taken place in the year 2005 with maximum sentence of three years having been imposed. More than 20 years since have passed.

21. So far as the conviction part is concerned, this Court does not find any illegality, perversity or infirmity in the order passed by the courts below, but keeping in view the discussion made above, the sentence inflicted on the accused-appellant requires modification.

22. The appeal is **partly allowed** with following modifications:-

22.1. The conviction of the accused-appellants by courts below is upheld. The sentence of appellants-accused is modified to the tune that they are provided benefit of Section 4 of the U.P. Probation of Offenders Act and are released on probation on the condition that they will keep peace and good conduct for one year from today and shall file two sureties to the tune of Rs.20,000/- each along with their personal bond before the court below and also an undertaking to the effect that they shall maintain peace and good behavior during the period of one year from today. In case of breach of any of the conditions mentioned above, the appellants will be subjected to undergo the sentence as awarded by the courts below. The bonds aforesaid will be filed by the appellants within one month from today before the District Probation Officer, Ambedkar Nagar under intimation to the concerned court.

23. A certified copy of the order be also sent to the court concerned and District Probation Officer, Ambedkar Nagar for necessary compliance, forthwith.

March 31, 2026
prabhat

(Manish Mathur,J.)