



2026:AHC:71158

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1733 of 1992

Rajendra Singh And Other

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Shyam Jeevan Tripathi, Surendra Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This criminal appeal has been filed against the judgment and order dated 28.08.1992, passed by Special Judge (D.A.A.) Jalaun at Orai in S.T. No.137 of 1990, convicting the appellants under Sections 323/34 and 324/34 of I.P.C. and sentencing them to undergo six months and one year rigorous imprisonment respectively.
2. Heard Sri Surendra Singh, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.
3. During pendency of appeal, it has been brought on record that appellant No.1 Rajendra Singh has died. Considering the report dated 27.11.2019 submitted by the Chief Judicial Magistrate, Jalaun at Orai, the appeal in respect of appellant No.1 had abated vide order dated 28.07.2021. The present appeal survives now with regard to the appellant Nos. 2, 3 and 4 namely, Lalji Singh, Kushal Pal Singh and Karan Singh.
4. The prosecution case, in brief, is that about one month prior to the incident, a dispute took place between the complainant and accused persons over a Kabaddi game, giving rise to enmity. On 07.03.1990 at about 2.20 p.m., the informant, Vir Pal Singh, was returning home through his threshing field, the accused person were allegedly waiting on the road. It is alleged that accused Rajendra Singh was armed with a fire-arm and the other accused persons namely, Karan Singh, Lalji Singh and Kushal Pal Singh were armed with lathis and sticks. They abused the complainant and assaulted him. Upon his alarm, his brother Chandra Pal Singh arrived who was also beaten by the accused during the incident. Accused Rajendra Singh fired a shot which caused injury on the left elbow of Chandra Pal Singh. On the alarm being raised, the witnesses Lakhan Singh, Ram Anugrah Singh, Raja Bhaiya and others came on spot and the accused fled away.

5. First Information Report was lodged. The injured were medically examined. After investigation of the case, charge-sheet was submitted under Section 307, 323 read with Section 34 I.P.C.

6. The charges were framed and read over to the accused persons. They denied the charges levelled against them and claimed to be tried.

7. Both injured, Vir Pal Singh and his brother Chandra Pal Singh were sent for District Hospital Orai for medical examination, where they were medically examined and following injuries were found on their bodies :-

Injuries of Vir Pal Singh :-

- i. Red contusion scalp right side above right ear 3 cm x 2 cm with traumatic swellings.
- ii. Multiple soft scabbed abrasions and red contusions over whole of back from shoulder blade to low scapula region size varying 3 cm x 1 cm to 15 cm x 2.5 cm.
- iii. Three abrasion and abraded contusions one back of right elbow and adjoining upper third forearm with traumatic swelling 3 cm x 1.5 cm to 6 cm x 2 cm.
- iv. Abrasions $\frac{1}{2}$ cm x $\frac{1}{2}$ cm and 1 cm x $\frac{1}{2}$ cm over middle joint of right index finger soft scabbed.
- v. Multiple abrasions and red contusions over lower third left forearm (back) and hand upper fingers $\frac{1}{2}$ cm x $\frac{1}{2}$ cm to 3 cm x 1.5 cm with swelling.
- vi. Red contusion on right knee cap 3 cm x 2 cm.
- vii. Multiple abrasions over left knee cap $\frac{1}{2}$ cm x $\frac{1}{2}$ to 2 cm x 1 cm soft scab.

Injuries of Chandra Pal Singh :-

- i. Lacerated wound over scalp right side just behind hair line 2.5 cm x 0.5 cm x skin deep in which soft clotted blood was found.
- ii. Abrasion outer end left collar bone 3 cm x 2 cm soft scab.
- iii. Red contusion left shoulder 6 cm x 2 cm.
- iv. Red contusion right shoulder 7 cm x 2 cm.
- v. Abrasion soft scabbed right forearm lower third 9 cm x 1 cm.
- vi. Lacerated wound circular 0.5 cm in dia over back of left elbow x muscle deep plus diffused swelling.
- vii. Red contusion left forearm upper third 6 cm x 3 cm with diffused traumatic swelling.
- viii. Abrasion left shin 6 cm x 1.25 cm soft scabbed.
- ix. Red contusion right knee cap 3 cm x 2 cm.
- x. Multiple soft scabbed abrasions over right shin $\frac{1}{2}$ cm x 1.5 cm x $\frac{1}{2}$ cm.

8. Some of the injuries were kept under observation and referred for X-ray. X-rays were done in supervision of X-ray technician Dr. V.C. Chandel P.W.-

3. No bony injury was found in X-ray report.

9. The prosecution has examined as many as five witnesses. P.W.-1 Veer Pal Singh, P.W. -2 Chandra Pal Singh, P.W.-3 Dr. V.C. Chandel, P.W.-4 Dr. S.K. Upadhyay, P.W.-5 Sub Inspector S.N. Singh, Constable Ram Prakash Singh was also summoned by the Court and he deposed as a Court witness.

10. Documentary evidences, written report Ext. Ka-1, FIR Ext. Ka-2, Carbon copy of G.D. Ext. Ka-3, injury reports of Veer Pal and Chandra Pal Ext. Ka-4 and Ext. Ka-5 respectively, site plan Ext. Ka-6 and charge-sheet Ext. Ka-7, X-ray plates material Ext. 1 to 4 are available on record.

11. The trial court found that the prosecution failed to establish the ingredients of Section 307 I.P.C. particularly, the intention and attempt to cause death. However, it held that the injuries caused by the accused persons were proved and accordingly, accused person were convicted for offences under Section 323 and 324 read with Section 34 I.P.C.

12. Learned counsel for the appellant does not dispute the finding of guilt recorded by the trial court and confined his arguments to the question of sentence only. It is submitted that the incident pertaining to the year 1990, more than three decades have elapsed. The accused person have no criminal antecedents and no previous conviction has been proved. The appellants deserve the benefit of provisions of the Probation of Offenders Act 1952.

13. Learned A.G.A. for the State supported the judgment and conviction.

14. The issues that arise for consideration are whether the conviction under Section 323 and 324 read with Section 34 I.P.C. is sustainable and whether the appellants are entitled to the benefit of Probation of Offenders Act, 1958.

15. The testimony of injured witnesses, P.W.-1 and P.W.-2 is reliable and duly corroborated by medical evidence. The conviction under Sections 323 and 324 is well founded and does not call for interference. However, so far as the question of sentence is concerned, the incident occurred in the year 1990 and more than three decades have elapsed. The appellants have no criminal history. There is no material to show any previous conviction.

16. 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).

17. 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. "

18. The Probation of Offenders Act is a reformatory statute intended to give an opportunity to first time offenders to reform themselves. Considering the nature of offence, the circumstances of the case and the long passage of time, this Court is of the view that the appellants deserve to be released on probation of good conduct.

19. The appellant No.2, Lalji Singh, appellant No.3 Kushal Pal Singh and

appellant No.3- Karan Singh are directed to be released on probation on good conduct for a period of one year on their furnishing personal bond of Rs. 10000/- each and one surety of the like sum 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.

20. 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.

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

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

23. A certified copy of the order be also sent to the concerned Court for compliance. Trial Court record shall also be sent back to the District Court concerned.

March 31, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)