

Neutral Citation No. - 2023:AHC-LKO:45244

Reserved on 23.5.2023

Delivered on 12.7.2023

Case :- CRIMINAL APPEAL No. - 696 of 2003

Appellant :- Ram Prakash

Respondent :- The State Of U.P.

Counsel for Appellant :- Avadhesh Kumar, Ajay Kumar, Rajendra Kumar Pandey, Siddhesh Dubey

Counsel for Respondent :- Govt. Advocate

Hon'ble Manjive Shukla, J.

1. Heard learned counsel for the appellant and learned Additional Government Advocate appearing for the State.

1. Appellant has filed the present appeal challenging therein judgment and order dated 8.4.2003 passed by the learned Additional Sessions Judge, Court No.1, Lakhimpur Kheri in Sessions Trial No.628 of 1996 arising out of Case Crime No.111 of 1995, P.S. Kotwali Lakhimpur, District Kheri registered under Sections 307, 307/34 IPC, whereby the appellant has been convicted for offence punishable under Section 324 IPC and has been sentenced for rigorous imprisonment of three years.

2. Prosecution case, in brief, is that there was a land dispute in between complainant Umakant and Ram Prakash (appellant) and in respect of the said dispute one civil case was pending in the Civil Court. On 6.3.1995 at about 8.30 a.m. Ram Prakash and Kamlesh, sons of Radhey Shyam and Rakesh son of Parmeshwar Deen reached on the aforesaid land and started throwing '*Ghoor*' lying on the land. When the complainant asked them not to do so, accused started abusing him and ran towards the complainant having *Addhi* gun in his hand. Ram Prakash son of Radhey Shyam fired from his Addhi gun, which resulted in injury on the face of the complainant

and from his second fire his son Madan Mohan also suffered injuries near his eyes. For the aforesaid incident the complainant lodged the First Information Report on 6.3.1995 which was registered as Case Crime No. 111 of 1995, under Sections 307, 307/34 IPC at P.S. Kotwali Lakhimpur, District Kheri.

3. The prosecution after completing investigation submitted charge sheet against the accused and thereafter the trial of the case proceeded. During course of trial, the trial court recorded the testimony of prosecution witnesses including PW-4 Dr. Ashok Kumar, Senior Radiologist and PW-5 Dr. Vijay Sareen.

4. PW-4 Dr. Ashok Kumar, Senior Radiologist in his statement has said that all the injuries suffered by the complainant Umakant are simple in nature and even from the x-ray of the injuries it cannot be definitely said that any of the injuries is of firearm.

5. PW-5 Dr. Vijay Sareen in his testimony has said that injuries suffered by Madan Mohan are simple in nature and no definite opinion can be given that the said injuries have been caused by the firearm.

6. On the basis of the aforesaid testimony of the doctors and the testimony of other prosecution witnesses recorded during trial, the trial court has concluded the trial and vide order dated 8.4.2003 has convicted only Ram Prakash (appellant) for offence punishable under Section 324 IPC and has sentenced him for rigorous imprisonment of three years.

7. Though learned counsel for the appellant initially tried to argue that the impugned order of conviction and sentence passed by the learned trial court is unsustainable in the eyes of law but lastly has submitted that appellant does not want to challenge the same on merits and he only confines his prayer that he may be

granted protection as provided under Section 4 of The Probation of Offenders Act, 1958 as the appellant prior to the aforesaid conviction has never been convicted for any offence.

8. In view of the aforesaid prayer made by the learned counsel for the appellant, the order of conviction and sentence dated 8.4.2003 passed by Additional Sessions Judge, Court No.1, Lakhimpur Kheri in Sessions Trial No.628 of 1998, is upheld.

9. Now, this Court proceeds to consider the case of the appellant in respect of his entitlement for protection of Section 4 of The Probation of Offenders Act, 1958.

10. I find that the appellant before the trial court pleaded that since he has not been convicted for any offence prior to the aforesaid conviction order passed by the trial court, as such he is entitled for protection of Section 4 of The Probation of Offenders Act, 1958 but the trial court in a very cursory manner has rejected his request.

11. I find that the trial court has convicted the appellant under Section 324 IPC and has sentenced him with rigorous imprisonment of three years. I also find that prior to the aforesaid conviction order dated 8.4.2003, the accused/appellant was not convicted for any offence by any competent court of law. Besides the aforesaid fact, there is one vital fact which weighs in the mind of the Court that the incident in question took place on 6.3.1995 and since then about 28 years have elapsed and the appellant has now become too old. Therefore, after considering the facts and circumstances of the case in totality, this Court comes to the conclusion that the accused/appellant is entitled for protection of Section 4 of The Probation of Offenders Act, 1958.

12. In view of the aforesaid, instead of sentencing the appellant under Section 324 IPC for three years rigorous imprisonment, it is provided that he shall file two bonds to the tune of Rs.10,000/- coupled with the personal bond to the effect that he shall not commit any offence, shall be of good behaviour and shall maintain peace during the period of one year. If there is breach of any of the aforesaid conditions, he will subject himself to undergo sentence before the concerned Magistrate as per rules. The bonds aforesaid be filed by the accused/appellant within two months from the date of judgment.

13. Accordingly, this appeal is **partly allowed** regarding sentence of the appellant.

14. Let a certified copy of this order be sent to the court concerned for compliance.

Order Date :- 12.7.2023

Salim