



2026:AHC:92050

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2514 of 1984

Kamta Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	G.S.Chaturvedi, Virendra Singh Parmar
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed by the appellant against the judgment and order dated 03.09.1984 passed Additional Sessions Judge, Kanpur Dehat, in Sessions Trial No.395 of 1981, under Section 308 I.P.C., police station- Sajaiti, District- Kanpur Dehat, whereby the appellant has been convicted and sentenced for four years rigorous imprisonment.
2. Heard Sri Surendra Kumar Chaubey, Advocate holding brief of Sri Virendra Singh Parmar, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.
3. The prosecution case, in brief, is that on 05.02.1981 at about 12.00 p.m. in village Kohra, police station- Sajaiti, District Kanpur Dehat, the accused Kamta Singh assaulted Sukhdev Singh, the father of the complainant, with lathi causing multiple injuries under such circumstances that had death ensued, the act could have amounted to culpable homicide not amounting to murder.
4. FIR has been registered on the basis of written report of complainant and G.D. entries were made. The injured Sukhdev Singh was medically examined at the primary health center, Ghatampur by Dr. Gopal Singh Dhanik. Four injuries were found on the body of the injured which are in the nature of lacerated wound. One injury was found on the head and three injuries was caused on legs.
5. During course of investigation, the Investigating Officer prepared site plan of place of occurrence, recorded the statements of witnesses and after completion of investigation, submitted charge-sheet for offence under Section 308 I.P.C.
6. Charges were framed and read over to the accused. He pleaded not guilty and claimed the trial.
7. In order to prove its case, the prosecution has examined P.W.-1 Dr. Gopal

Singh Dhanik, P.W.-2 Rajendra Singh, P.W.-3 Chheda Singh, P.W.-4 Sub Inspector Rama Shanker Shukla. Documentary evidences, written report, FIR, carbon copy of G.D., site plan and charge-sheet, Ext. Ka-1 to Ext. Ka-6 are available on record which are duly proved by the prosecution witness.

8. In his statement recorded under Section 313 Cr.P.C., the accused denied the allegations and claimed false implication on account of enmity, contending that he had not assaulted the injured. The injured was beaten by some unknown person due to prior enmity, he was falsely implicated. The learned trial court after considering oral and documentary evidence on record returned the finding of guilt and convicted the accused Kamta Singh for offence under Section 308 I.P.C. and sentenced him to undergo rigorous imprisonment for four years.

9. Aggrieved with the judgment of conviction and sentence, the appeal has been preferred.

10. It is contended that the conviction and sentence of the appellant are against the weight of evidence on record and bad in law. The sentence imposed on him is too severe. Therefore, it is prayed that the appeal be allowed and the impugned judgment of conviction and sentence be set aside and the accused be acquitted of all charges.

11. Learned A.G.A. for the State supported the judgment of conviction and sentence.

12. At the time of argument, learned counsel for the appellant has not challenged the conviction on merit and has confined his submissions only to the question of sentence.

13. Even otherwise, upon independent scrutiny of the record, this Court finds :-

(i) The injured Sukhdev Singh could not be examined as he subsequently died after about 19 months of the incident and it is not the prosecution case that his death was the result of the injury sustained in the incident.

(ii) The testimony of eye-witnesses P.W.-2 Rajendra Singh and P.W.-3 Chheda Singh is consistent and reliable.

(iii) The medical evidence and the statement of P.W.-1 Dr. Gopal Singh Dhanik corroborated the ocular version of eye-witnesses.

14. The nature of injury and the manner of assault also justifies the finding that the act was committed with such knowledge and under such circumstances as would attract Section 308 I.P.C.

15. Accordingly, the conviction recorded by the learned trial court under Section 308 I.P.C. cause for no interference and is hereby affirmed.

16. The only issue that survives for consideration is whether the sentence imposed by the trial court requires modification. The following mitigating

circumstances emerged:-

- (i) The incident is of the year 1981. The appeal has remained pending for more than 40 years.
- (ii) The appellant has undergone the ordeal of protracted criminal proceedings for decades.
- (iii) There is no material indicating criminal antecedent of the appellant.
- (iv) The maximum punishment provided for offence under Section 308 I.P.C. is 7 years.

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. A similar provision finds place in Section 360 of Cr.P.C. reads as under :-

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).

19. Section 4 of Probation of Offenders Act, 1958 empowers the Court to release an offender on probation of good conduct, instead of sentencing him to imprisonment. Having regard to the nature of offence, the character of the offender and the circumstances of the case.

20. The Hon'ble Apex Court has repeatedly emphasized that benefit of offender should be reliably extended in appropriate cases particularly where the offence is old, sentencing must be proper and reformatory in appropriate cases. The object of probation is to reform the offender and prevent repetition of the crime.

21. Considering the totality of the circumstances, sending the appellant again in jail would serve no useful purpose. This Court is of the opinion that ends of justice would be adequately met by upholding the conviction and modifying the sentence by extending the benefit of Section 4 of Probation of Offenders Act, 1948.

22. Accordingly, instant criminal appeal is partly allowed. The conviction

recorded by the learned trial court under Section 308 I.P.C. is hereby affirmed, but the order of substantive sentence of imprisonment is set aside.

23. The appellant Kamta Singh is directed to be released on probation on good conduct for a period of one year on his furnishing personal bond of Rs. 10000/- and one surety in the like some before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behaviour during the period of one year from today.

24. The said bonds are to be filed by the appellant within a period of two months from the date of receipt of certified copy of this judgment.

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

26. 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.

April 24, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)