



**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL APPEAL No. - 2286 of 1988**

Antu

.....Appellant(s)

Versus

State

.....Respondent(s)

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|---------------------------|------------------------------|
| Counsel for Appellant(s)  | : Ramjee Saxena, S.a. Sharma |
| Counsel for Respondent(s) | : A.G.A.                     |

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**Court No. - 79**

**HON'BLE TEJ PRATAP TIWARI, J.**

1. Heard Sri Raghuvansh Chandra, learned counsel for the appellant, learned A.G.A. for the State and perused the record.
2. The present criminal appeal has been preferred by the appellant against the judgment and order dated 29.09.1988 passed by learned III Additional Sessions Judge, Meerut in S.T. No.103 of 1981 and S.T. No. 104 of 1981 whereby the appellant was convicted and sentenced under Section 307 I.P.C. for five years rigorous imprisonment in S.T. No. 103 of 1981 and further he was convicted and sentenced under Section 25/28 Arms Act for two years rigorous imprisonment in S.T. No. 104 of 1981.
3. In short the prosecution story, is that, on 04.01.1981, when the police party headed by Sri A.K. Chaudhary, Station Officer of Police Station Partapur, District Meerut was on patrolling duty at 6:30 p.m. by a motorcycle. When they reached the police outpost of Shastrinagar, Constable Ompal Singh was sent to the said S.O.

to police outpost Pilokhri and the remaining police officers i.e. the Station Officer as well as the Sub-Inspector, namely, Y.D. Sharma left the motorcycle at the police outpost Shastrinagar and proceeded further on foot. They started their patrolling on the road of Avas Vikas which leads to Zaidi Farm. At the movement, when they reached Neel Ki Kothi at around 7:15 p.m., they found that four miscreants were coming from out from the side of Zaidi Farm. The said S.O. and S.I. flashed their torches on the said miscreants. In reply the miscreants also flashed their torches on the policemen. When the miscreants saw in the light of their torches that they had come across with the policemen, one of the miscreants started shouting, '*police police*' and then fired at the police personnel with intention to kill them. The policemen i.e. the said S.O. and S.I. challenged the miscreants and caused fire from their service revolvers in their defence. Exchange of fires took place between the policemen and the miscreants and in this incident the accused-appellant fired a shot on Sub-Inspector Y.D. Sharma, who was injured and had lost his grip over the said miscreants due to this the miscreants succeeded in getting themselves escaped. The accused appellant was arrested on the spot having in possession the country made pistol and five live cartridges. The recovery memo of empty cartridges was prepared and recovered articles were duly sealed by the policemen on the spot. Thereafter, injured and the accused-appellant were taken to the police station concerned along with recovered articles where the F.I.R. (Ex.Ka-3) was lodged by the S.O. Sri A.K. Chaudhary. The investigation of the case was assigned to Sub Inspector Puran Giri (P.W.-3) and then the Sub-Inspector Y.D. Sharma. After, the investigation was completed the necessary sanction from the District Magistrate was obtained and subsequently the charge sheet was submitted.

4. To prove its case, the prosecution has examined altogether four witnesses. Details of the witnesses are given below.

| Prosecution Witness | Name of witnesses    | Paper proved                    | Role                  |
|---------------------|----------------------|---------------------------------|-----------------------|
| P.W.-1              | A.K. Chaudhary       | Supported the F.I.R. version    | Informant             |
| P.W.-2              | Yogendra Dutt Sharma | Supported the prosecution story | Injured               |
| P.W.-3              | S.I. Puran Giri      | Supported the prosecution story | Investigating Officer |
| P.W.-4              | Dr. Chandra Gupta    | Prepared medical report         | Doctor                |

5. That after closing of the evidence, statement of accused/ appellant under Section 313 Cr.P.C. was recorded by the trial court explaining the entire evidence and other circumstances, in which the appellant denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

6. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence oral as well as documentary, found the accused / appellant guilty and sentenced the appellant as mentioned above.

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

8. At the first place, learned counsel for the accused-appellant has argued that though in the instant case, the recovery has not been made as per the law and there is an enmity which is stated by the prosecution witness P.W.-1 A.K. Chaudhary, S.O. In his deposition the blood stained soil was also not taken and sent to FSL for examination. The investigation made by the Sub-ordinate of the complainant is highly doubtful as it is against the natural justice that no body should be judge in his own cause. The

investigation conducted by the police person based on the complaint made by the police himself creates the doubt.

9. Apart from this, learned counsel for the accused-applicant also emphasised that the incident is said to have been taken place at around 6:30 to 7:15 p.m. which is not very odd time when public witnesses are not available but no any attempt has been made by the police in producing any public witness. Apart from this, learned counsel for the appellant also raised doubt regarding the place of occurrence at one point of time, it has been said that the place where the incident took place was having cemented floor but at the other place, it has been said to be a place of mud and soil which also creates doubt.

10. 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) 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.

11. During the course of argument, learned counsel for the appellant submitted that he does not want to press the appeal on merits. He has submitted that the incident took place 45 years ago and there is no further criminal antecedent against the appellant. The appellant is approximately 73 years of age and is suffering from old age related diseases. The delay in trial deprives the right of the appellant of speedy trial and he may be given benefit of first offender and appellant may be extended the benefit of Probation of Offenders Act, 1958 (herein after referred as the Act of 1958). He further submitted that appellant is first time offender and he is not previously convicted in any case. He further submitted that

this is the Court which may consider the benefit of Section 4 of the Act of 1958 to the accused-appellant.

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

13. 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.

14. After considering the arguments advanced by the parties and after perusal of the material available on record, this court finds that there are some discrepancies in the prosecution case and prosecution also failed to established the intention of the accused which is one of the main ingredient of the section 307 of I.P.C. it may be seen that the injured has sustained injury. The injury sustained by the injured was not on vital part and the facts and circumstances of the case do not indicate that the appellants had intention to kill the injured. Here, the question arises for consideration is whether the act of the accused-appellants would fall within the ambit of Section 307 of IPC.

15. The provisions of Section 307 of IPC reads as under:

***"307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.***

*Attempts by life convicts.--When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."*

16. The first part of Section 307 refers to "an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder". The second part of Section 307, which carries a heavier punishment, refers to 'hurt' caused in pursuance of such an 'act'. It may be stated that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of IPC. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

17. For the conviction under this section more importance has been given to mens rea or the intention than the actus reus or the actual act itself. The attempt should arise out of a specific intention or desire to murder the victim. The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted is all taken into consideration to determine the intention.

18. In **AIR 1982 SC 2013, Kundan Singh Vs. State of Punjab**, the Hon'ble Apex Court has observed as under:-

*"We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple*

*injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith."*

19. The Apex Court in **AIR 1996 SC 3236, Merambhai Punjabhai Khachar and others vs. State of Gujarat**, wherein in an attempt to commit murder by fire-arm, victim has suffered a pallet injury, the Apex Court held that Section 307 I.P.C. cannot be held to have been satisfied and the conviction was altered to Section 324 of IPC.

20. In **Ramesh vs. State of U.P., AIR 1992 SC 664 : (1992) 1 SCC 318**, wherein the injury was found on the back of the injured. Accused was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted. The Apex Court altered from section 307 of IPC into Section 324 of I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation. The relevant portion of the report on reproduction reads as under:-

*"2. The incident took place at 10 p.m. on December 4, 1973. Enmity between appellant and complainant is found established. Prosecution relied on evidence of the injured, his father and a family friend Budh Singh examined as PW 4. The trial Judge did not attach much weight to the evidence of Bharat Singh, PW 3, father of the injured. The conviction was, mainly, based on testimony of Budh Singh, PW 4. The High Court while appreciating the evidence of Budh Singh observed that in cross-examination he admitted that the complainant did not disclose any name, immediately. He even could not disclose whether they were known persons or outsiders. But later on he gave out the name of the accused.*

*3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.*

21. After considering above mentioned pronouncements, in the facts and evidence of the present case, it appears that the ingredients of sections 307 of IPC are not satisfied. For the reason(s) that this Court, after taking note of main cause of incident (Patrolling), is of the view that: (i) the miscreants shouted police-police and then fired at the police personnel (ii) element of planning has not been proved by the prosecution, which also indicates the possibility that the offence could have been committed on impulse by the accused-appellants and (iii) circumstances of the case do not indicate that the appellants had intention to kill the injured(s). Thus, conviction of the accused-appellants under Sections 307 of IPC cannot sustain and the accused-appellants are liable to be convicted for the offence punishable under Section 324 of IPC.

22. The benefit of probation can be taken in the case related with section 324 of IPC. At the first instance, it is necessary to discuss

the provisions of Section 3 and Section 4 of the Probation of Offenders Act, 1958 are extracted hereunder:-

**"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."*

23. Reliance be place on the judgment of the case **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."*

24. 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 Act" and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfill the humanising mission of sentencing implicit in such enactments as the Probation of offenders Act."*

25. 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."*

26. 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."*

27. That coming to the point of desirability of extending the benefit of Probation Act to the accused/ appellant in **Sitaram Paswan and another 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."*

28. That 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.

29. That it is noteworthy that the incident took place way back in the year 1981. The accused-appellant has suffered in matter for past 45 years.

30. Considering the fact and circumstances of the case, I am of the view that the benefit of provision of the Act of 1958 should be provided to the accused/appellant.

31. In the light of the above discussion, as far as it relates with the conviction of the appellant in aforesaid case is maintained but the sentence is modified. Instead of sending the appellant to jail he is given benefit of Section 4 of The Probation of Offenders Act, 1958 and he is directed to file two sureties each of Rs 20,000/- along with his personal bond before District Probation Officer concerned as also an undertaking to the effect that he shall maintain peace and good behaviour during the period of two

years from today. The said bonds are to be filed by the appellant within a period of two months from the date of this judgment.

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

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

34. A certified copy of the order be also sent to the court concerned for compliance.

35. Office is directed to communicate this order to the court concerned for necessary compliance.

36. Lower court record, if any, shall also be sent back to the district court concerned.

**(Tej Pratap Tiwari,J.)**

**March 18, 2026**  
Manoj