



2026:AHC:186396

Reserved on 24.08.2026
Delivered on 08.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 271 of 1985

Sheo Poojan and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Ashok Kumar Jaiswal, Keshav Sahai, Siddarth Jaiswal
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri Siddarth Jaiswal, learned counsel for the surviving accused-appellants and learned A.G.A. for the State, and perused the record.
2. This appeal has been preferred against the judgment and order dated 07.02.1985 passed by the IV Additional Sessions Judge, Deoria, in Sessions Trial No. 529 of 1981 (State Vs. Sheo Nandan and others), whereby the learned trial court convicted and sentenced the ten accused persons, namely, (1) Sheo Nandan, (2) Mahadeo, (3) Kali Charan, (4) Rama Nand, (5) Sheo Poojan, (6) Ram Chandra, (7) Ram Pratap, (8) Ram Dutt, (9) Ramakant and (10) Thag, as follows:

Accused-Appellant	Conviction	Sentence
Sheo Poojan (deceased)	Ss. 148 and 307 I.P.C.	2 years' R.I. (S.148) and 3 years' R.I. (S.307)
Sheo Nandan, Mahadeo, Kali Charan, Rama Nand, Ram Chandra, Ram Pratap, Ram Dutt, Ramakant	S. 147 I.P.C.	1 year's R.I. each
Sheo Nandan, Mahadeo, Kali Charan, Rama Nand, Ram Chandra, Ram Pratap, Ram Dutt, Ramakant	S. 307/149 I.P.C.	3 years' R.I. each
Sheo Nandan, Mahadeo, Kali Charan, Rama Nand, Sheo Poojan, Ram Chandra, Ram Pratap, Ram Dutt, Ramakant	Ss. 325/149 and 323/149 I.P.C.	3 years' R.I. and 6 months' R.I. respectively
Ram Chandra	S. 379 I.P.C.	1 year's R.I.
Thag	S. 411 I.P.C. and S. 25 Arms Act	1 year's R.I. and 6 months' R.I.

All sentences were directed to run concurrently. The trial court acquitted none of the accused; all ten stood convicted in some measure.

3. During the pendency of this appeal, accused-appellant nos. 1 (Sheo Poojan), 2 (Mahadeo), 4 (Rama Nand), 5 (Sheo Poojan) and 6 (Ram Chandra) have died, as borne out from the reports placed on record. In view of Section 394 of the Code of Criminal Procedure, the appeal abated qua accused-appellant nos. 1, 2, 4, 5 and 6 vide order dated 19.09.2025. Consequently, this Court is not required to, and does not, examine the correctness of the conviction and sentence recorded against the said deceased appellants any further, and the findings recorded by the trial court qua them shall not be treated as having merged into any finding of this Court.

4. Briefly stated, the prosecution case was that a dispute over agricultural land situate in village Karntikar/Khadesar, Pargana and District Deoria, existed between the complainant Bhagwan Dutt's family and the family of accused Shital (father of accused-appellants nos. 1, 2, 3, 4 and 5). On the evening of 14.05.1980, an altercation took place when the sons of Shital objected to the complainant ploughing the disputed field. The next morning, i.e. 15.05.1980 at about 7:00 a.m., when the complainant Bhagwan Dutt, along with Sheo Nath and Vishwanath, went to the field for levelling ("patela"), the accused persons, armed with lathis, dandas and a country-made pistol/katta, are alleged to have assaulted them. Accused Sheo Poojan is alleged to have fired his pistol, injuring one Harendra, who had rushed to the spot on hearing the alarm; Vishwanath thereafter brought his licensed gun, which was snatched from him by accused Ram Chandra after Ram Chandra assaulted him with a lathi. The gun and cartridges so snatched were later allegedly handed over by Ram Chandra to accused Thag, from whom they were recovered. Cross-versions were also registered, giving rise to a cross-case (Sessions Trial No. 124 of 1982), which was tried separately by the same court.

5. The prosecution examined 8 witnesses- complainant Bhagwan Datt (P.W.1), the injured eye-witnesses Harendra (P.W.2) and Sheo Nath (P.W.3), the medical evidence of Dr. M.B. Singh (P.W.4) and Dr. H.K. Jaiswal (P.W.6), the recovery witness Om Prakash (P.W.5), and the two Investigating Officers (P.W.7 and P.W.8).

6. The statements of accused appellants were recorded under Section 313 Cr.P.C., where they denied the allegations levelled against them by the prosecution and pleaded false implication on account of land dispute.

7. Briefly stated, the grounds urged in the present appeal are that the conviction of the appellants is contrary to the weight of the evidence available on record and is otherwise bad in law. The sentence awarded to the appellants is excessive and disproportionate to the facts and circumstances of the case.

8. Learned counsel for the surviving accused-appellants, namely, Kali Charan, Ram Pratap, Ram Dutt, Ramakant and Thag, does not seriously press the appeal on the question of guilt, and confines his submissions to the question of sentence. It is submitted that: (i) the occurrence is of the year 1980 and the appeal has remained pending in this Court for about 46 years; (ii) the appellants are all presently aged more than 60 years; (iii) the appellants have no other criminal antecedent brought on record either before or after the incident; (iv) the injuries attributed to firearm use are squarely attributable to co-accused Sheo Poojan, who has since died, and not to the surviving appellants; (v) the dispute arose out of a bona fide land controversy between two branches of the same family, and a cross-case arising from the very same transaction was also registered; and (vi) keeping in view the long lapse of time, the advanced age of the appellants, and the protracted mental agony of a pending criminal case hanging over them for over four decades, the ends of justice would be served by releasing the surviving appellants on probation of good conduct under the Probation of Offenders Act, 1958, instead of sending them to prison at this belated stage.

9. Learned A.G.A., per contra, supports the judgment of the trial court and submits that the offence, particularly under Section 307/149 I.P.C., is a grave one, involving use of firearm and multiple injuries, and that the trial court's appreciation of evidence does not suffer from any infirmity warranting interference.

10. Having heard learned counsel for the parties and having examined the record, this Court finds no reason to disturb the concurrent appreciation of evidence made by the trial court on the question of guilt. The testimony of the injured eye-witnesses Harendra (P.W.2) and Sheo Nath (P.W.3), duly corroborated by the medical evidence of P.W.4 and P.W.6 and by the recovery of the firearm, sufficiently establishes the occurrence and the participation of the accused persons in the manner found by the trial court. The conviction of the surviving accused-appellants under Sections 147, 307/149, 325/149, 323/149 I.P.C. (as

applicable to Kali Charan, Ram Pratap, Ram Dutt and Ramakant) and under Sections 411 I.P.C. and 25 of the Arms Act as applicable to Thag is, accordingly, affirmed.

11. Sections 4 and 5 of the Probation of Offenders Act, 1958 are reproduced below for ready reference:

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 Ramexpedient 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.

2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter

into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay compensation and costs.—*(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—*

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”

12. In ***Sitaram Paswan and Another vs. State of Bihar***, (2005) 13 SCC 110, the Apex Court has held as under:

“For exercising the power which is discretionary, the court has to consider the 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 the appeal under Article 136 of the Constitution."

13. In ***Lakhanlal alias Lakhan Singh vs. State of Madhya Pradesh, (2021) 6 SCC 100***, the Apex Court held as under:

"10. A three-Judge Bench of this Court in Rattan Lal v. State of Punjab AIR 1965 SC 444 while examining the provisions of the 1958 Act held that in case the offenders are below 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, it is not desirable to deal with them under Sections 3 and 4 of the 1958 Act but in respect of offenders who were above age of 21 years, the Court has absolute discretion to release such offenders either after admonition or on probation of good conduct. The Court held as under:

"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

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."

11. This Court in Jugal Kishore Prasad v. State of Bihar (1972) 2 SCC 633 explained the rationale of the provision as to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The Court held as under:

"6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act."

14. In *Mohd. Hashim vs. State of Uttar Pradesh and Others*, (2017) 2 SCC 198, the Apex reiterated the exercise of discretionary power of the court under Probation of Offenders Act as under:

"21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In Ram Parkash v. State of H.P.9, while dealing with Section 4 of the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word "may" used in Section 4 of the PO Act does not mean "must". On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguish offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:

"7... 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 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. (Rattan Lal v. State of Punjab and Ramji Missar v. State of Bihar.)"

Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit under Section 4 of the PO Act.

22. We have referred to the aforesaid authority to stress the point that the court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in Dalbir Singh v. State of Haryana it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has

further opined that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:

"9. ... The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabril a two-Judge Bench of this Court has considered the word "expedient". The learned Judges have observed in para 21 thus:

21.... Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient": "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary)'.

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

15. In ***Chellammal and Another vs. State represented by the Inspector of Police, 2025 LiveLaw (SC) 461***, where the Sessions Judge has acquitted the appellants (mother-in-law and husband) of the charge under Section 304-B IPC but convicted them under Section 498-A, the Apex Court held as under:

“Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfillment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”- Probation rulings.

16. On the question of sentence, however, this Court is persuaded to take a different view. It is well settled that the discretion to grant the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 is available even in respect of an offence under Section 307 I.P.C., since that provision does not mandate a sentence of death or imprisonment for life; the availability of the benefit has to be judged on the facts of each case, having regard to the circumstances of the offence and the character of the offender. In the present case: (a) the occurrence is over four decades old, having taken place on 15.05.1980; (b) the appeal itself has remained pending for approximately 46 years, a delay not attributable to the appellants; (c) all the surviving appellants are now aged more than 60 years; (d) the incident arose out of a family/land dispute in which both sides were shown to have sustained injuries and cross-versions were registered; (e) the specific act of firing, which caused the more serious gunshot injuries, is attributed to co-accused Sheo Poojan, who has since died, and not to the appellants Kali Charan, Ram Pratap, Ram Dutt and Ramakant, whose role is confined to the vicarious/constructive liability flowing from Section 149 I.P.C.; and (f)

no material has been placed on record to show that any of the surviving appellants has been involved in any offence in the more than four decades since the occurrence. In these circumstances, sending the appellants to prison at this stage, after such an extraordinarily long pendency and at their present age, would not sub-serve the ends of justice; the protracted anxiety of the pending prosecution itself may be taken to have served a substantial part of the punitive and deterrent purpose of sentencing.

17. For the reasons aforesaid, while affirming the conviction, this Court deems it appropriate to extend the benefit of probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, to the surviving accused-appellants Kali Charan, Ram Pratap, Ram Dutt, Ramakant and Thag, in lieu of the substantive sentence of imprisonment imposed by the trial court, subject to the conditions recorded below.

18. The appeal is **allowed in part**. The judgment and order dated 07.02.1985 passed by the IV Additional Sessions Judge, Deoria, in Sessions Trial No. 529 of 1981 is modified as follows:

(i) The conviction of accused-appellants Kali Charan, Ram Pratap, Ram Dutt and Ramakant under Sections 147, 307/149, 325/149 and 323/149 I.P.C., and of accused-appellant Thag under Sections 411 I.P.C. and 25 of the Arms Act, 1959, as recorded by the IV Additional Sessions Judge, Deoria, in Sessions Trial No. 529 of 1981 vide judgment dated 07.02.1985, is hereby confirmed

(ii) The substantive sentence of imprisonment imposed on accused-appellants Kali Charan, Ram Pratap, Ram Dutt, Ramakant and Thag is set aside and, in modification thereof, each of them is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, on furnishing a “fresh” personal bond in the sum of Rs. 50,000/- with one surety each of the like amount to the satisfaction of the trial court, undertaking to keep the peace and be of good behaviour for a period of one years.

(iv) Invoking Section 5 of the Probation of Offenders Act, each appellant shall pay Rs.10,000/- [total compensation of Rs.50,000/- (Rupees Fifty Thousand) to the injured/complainant Bhagwan Datt, Harendra, Vishwanath and Sheo Nath equally, within a period of one month from today. In case of death of injured/victim(s), the appellants shall pay the same to their legal heirs.

(v) The appellants shall deposit above compensation amount of Rs.50,000/- before the trial court concerned within stipulated period and the trial court, after notice and verification, shall give the amount to the victim(s)/his legal heirs through bank accounts.

(vi) In the event of breach of any of the aforesaid conditions, the accused-appellants Kali Charan, Ram Pratap, Ram Dutt, Ramakant and Thug shall be liable to undergo the sentence as provided under the impugned judgment and order of the trial court.

19. Trial court shall ensure compliance and seek report from the Probation Officer for supervision.

20. In view of the modification of sentence and release of the appellants on probation, the bail bonds and sureties furnished earlier during trial/appeal shall stand discharged.

21. The appellants are directed to appear before the trial court within two weeks from today to furnish the requisite bonds. In case of default, the trial court shall be at liberty to proceed in accordance with law, including issuance of coercive process.

22. Let a copy of this judgment be transmitted within a week to the trial court concerned along with trial court record for compliance.

23. The Registrar (Compliance) is also directed to serve a copy of this order within **48 hours** by FAX/e-mail to the concerned court through District & Sessions Judge, concerned for compliance.

(Santosh Rai,J.)

September 08, 2026/Asha

