



2026:000:107590

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3011 of 1985

Dina Nath And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Brijesh Ojha, Sanjeev Kumar Rai, R.B. Sahai, Shyam Kumar Verma
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed against the judgment and order dated 31.10.1985 passed by Additional Sessions Judge, Allahabad in S.T. No.439 of 1983, convicting the appellants under Section 308/34 I.P.C. and sentencing them to 3 years rigorous imprisonment and to pay a fine of Rs.2000/- each and further convicting the appellants under Section 325/34 I.P.C. and sentencing them one year rigorous imprisonment and to pay a fine of Rs. 1000/- each and sentences to run concurrently.
2. Heard Sri Sanjeev Kumar Rai, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.
3. Vide order dated 11.08.2022, the appeal has been abated qua appellant No.3- Avadhraj. Now, the present appeal survives on behalf of appellant No.1- Dina Nath, appellant No.2- Tribhuwan, appellant No.4, Vijai Shankar.
4. According to the prosecution case on 21.1.1981 at about 12.00 noon, the informant along with village Pandit and Lekhpal Radhoprasad had gone to get measurement of his chak-out land conducted. After measurement, they started fixing boundary marks by inserting bricks about two lathas inside his field. During the course of measurement, it appeared that one Mango tree and one Jamun tree, which had been planted since the time of partition were falling within the disputed portion of land. The informant objected and asked that the proper boundary of his field be determined. In the meantime, accused Deena Nath, Tribhuwan, Awadhraj and Vijay Shankar all armed with lathis, reached the spot and started assaulting the informant and his brother Bhandari with lathis. Upon their alarm being raised, Ram Murat, nephew of the informant, along with Ram Khelawan and Ram Garib @ Ballu arrived at the place of occurrence. They witnessed the incident and

intervened to rescue him.

5. As a result of the assault, the informant sustained a fracture injury on his hand while the brother Bhandari became unconscious after falling down due to the injuries sustained by him. Thereafter, the accused persons, while hurling abuses, fled away from the spot. Bhandari was taken back to the home and when he regained consciousness in the evening, a written report was lodged at the police station.

6. On the basis of written report submitted by the informant, the case was registered and the FIR as well as the relevant General Diary Entry were prepared. Investigation of the case commenced. The injured persons were medically examined. The Investigating Officer prepared the site plan of the place of occurrence, statement of the witnesses were recorded and upon collecting sufficient evidence during investigation, charge-sheet was submitted against all the accused persons.

7. The charges were framed against the accused persons for the offence under Section 308/34 and 325/34 I.P.C. The accused pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution examined P.W.-1 Bhandari, the informant, P.W. -2 Gaya Prasad, P.W.-3 Ram Murat, P.W.-4 Jay Shankar Dubey, P.W. -5 Dr. Iqbal, P.W.-6 Narpat Singh and P.W.-7 Divyamber Dwivedi.

9. The accused persons in their statements recorded under Section 313 Cr.P.C. denied the allegations, described the statements of the witnesses as false, denied the occurrence itself and also denied their involvement in the alleged offence.

10. In defence, the accused persons examined D.W.-1 Dr. Dharendra Singh and D.W. -2 Dr. Govind Prasad.

11. P.W.-1 Bhandari, the informant, supported the prosecution case in his testimony and stated that when he objected to the accused persons for including his trees within their field during demarcation proceedings, the accused persons assaulted to him and caused injuries. He further stated that both he and his brother sustained serious injuries in the occurrence. P.W.-2 Gaya Prasad has also supported the prosecution case.

12. P.W.-3 Ram Murat is an eye-witness of the incident who also supported the prosecution story and stated that upon hearing the cries, he reached the spot and saw the accused persons assaulting the injured.

13. P.W-4 Jay Shankar Dubey stated that on the basis of written report submitted by informant, he registered the FIR and made the relevant General Diary entry. He proved the chik FIR and the carbon copy of G.D. Entry. P.W.-4, the Investigating Officer conducted the investigation of the case. He

stated that he inspected the place of occurrence and after completion of investigation submitted a charge-sheet against the accused persons.

14. P.W.-5 Dr. Iqbal Hussain medically examined the injured persons. Thereafter he conducted the X-ray examination of the injured Gaya Prasad and after examining the X-ray plate confirm the report and stated that fractures of radius and alna bone were found.

15. P.W.-6 Narpat Singh stated that he prepared the police requisition letter from the police station and sent the injured person for medical examination. He further stated that the investigation of the case was conducted by Inspector Jay Shanker Dubey.

16. P.W.- 7 Divyamber Dwivedi stated that he medically examined the injured persons and found four injuries on the body of Bhandari and three injuries on the body of Gaya Prasad at the time of examination. The injuries of witnesses are reproduced hereinafter :-

Injury report of Bhandari :-

- (i) *Lacerated wound 5 cm x 0.5 cm on scalp. 9.5 cm above external occipital protuberance on left side reaching mid line.*
- (ii) *Contusion with odema distal part of lateral aspect of fore-arm just proxima to wrist.*
- (iii) *Tenderness left side of back in sub scapular region.*
- (iv) *Abrasion on anterior aspect of middle of right leg 1 cm x 1 cm*

Injury report of Gaya Prasad :-

- (i) *Abrasion 1 cm x 0.5 cm, on scalp 1 cm to the left of mid line 18 cm above nasion.*
- (ii) *Abrasion 1.5 cm x 1.5 cm on right shoulder posteriorly.*
- (iii) *Fracture both bones left fore-arm in the middle of shaft.*

17. He further stated that injury Nos.1 and 2 are simple in nature whereas for injury No. 3, X-ray examination was advised. According to him, the injuries could have been caused by hard and blunt object.

18. Documentary evidences, written report, chik FIR, carbon copy of G.D., medical examination report, X-ray report, site plan, charge-sheet, X-ray plate etc. are available on record and were duly proved by the prosecution witness.

19. The learned trial court after hearing the arguments advanced by both the parties and considering the entire oral and documentary evidence on record, returned the finding of guilt and convicted the accused persons for offences under Sections 323, 324, 307 I.P.C. and sentenced them to undergo rigorous imprisonment for seven years along with fine.

20. Aggrieved by the judgment and order passed by the trial court, the accused persons preferred the present appeal on the ground that the

conviction and sentence passed by the learned trial court were against the weight of evidence on record and contrary to law. The sentence imposed upon them are too severe.

21. The present appeal remained pending for consideration for more than 40 years. At the time of hearing, the learned counsel appearing on behalf of the accused appellants submitted that although the accused persons had also sustained injuries in the occurrence and in support thereof, defence witnesses including medical experts had been examined who proved the injuries sustained by the accused side, yet the appellants did not wish to challenge the findings recorded by the trial court on merits and did not intend to press the appeal on that point.

22. However, learned counsel for the appellants submitted that the accused persons are now of advanced age, some of them being more than 80 years old and almost all of them being above 70 years of age. It was further submitted that they have no criminal antecedents and there is no evidence of their previous conviction in any other criminal case. Therefore, considering the fact that this was their first offence, a prayer was made for extending to them the benefit of Section 4 of the Probation of Offenders Act.

23. Learned A.G.A for the State did not raise any objection to the aforesaid prayer made on behalf of the accused appellants.

24. 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. "

25. 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).

26. Upon consideration of the submissions advanced by the learned counsel for the appellants as well as learned A.G.A. for the State and upon perusal of the record, this Court finds that the present case relates to the first offence of

the accused appellants. Apart from the present case, they have no criminal history and there is no material on record to show that they have ever been convicted in any other criminal matter. This Court further takes into consideration, the present advanced age of the accused appellants as well as the fact that they have suffered the ordeal of prolonged criminal proceedings for more than 40 years.

27. Accordingly, while affirming the conviction recorded by the trial court, this Court deems it appropriate to extend to the accused appellant Nos.1, 2 and 4 namely, Dina Nath, Tribhuwan and Vijai Shanker the benefit of Section 4 of Probation of Offenders Act, 1958. The accused appellant Nos.1, 2 and 4 namely, Dina Nath, Tribhuwan and Vijai Shanker are, therefore, directed to be released on probation of good conduct for a period of one year on furnishing personal bonds and sureties to the satisfaction of the court concerned, subject to the condition that he shall maintain peace and good behaviour for the period stipulated by the trial court.

28. With the aforesaid modification in the sentence the appeal stands partly allowed.

29. The said bonds are to be filed by the appellants within a period of one month from the date of receipt of certified copy of this judgment.

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

31. 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.

May 8, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)