



2026:AHC:34049

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL APPEAL No. - 3105 of 1986

Suraj Pal And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|---|-------------------------|
| Counsel for Appellant(s)  | : | I.M. Khan, Rahul Pandey |
| Counsel for Respondent(s) | : | A.G.A.                  |

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#### Court No. - 93

**HON'BLE MRS. VANI RANJAN AGRAWAL, J.**

1. Heard Sri Rahul Pandey, learned counsel for appellants and Sri Rahul Asthana, learned A.G.A. of the State.
2. This Criminal Appeal has been preferred against the judgment and order dated 05.12.1986 passed by Additional Sessions Judge, Fatehpur convicting the appellants under section 308 read with Section 34 I.P.C. and sentencing them to undergo 3 years R.I. and to pay a fine of Rs. 2000/- each in S.T. No. 8 of 1985.
3. Vide order dated 17.08.2022, the appeal stands abated qua appellant Nos. 1, 2 and 3, namely Suraj Pal, Krishna Pal and Dharam Pal.
4. Now the appeal survives only against appellant No. 4 namely Rajan.
5. The prosecution story, in brief, is that on 18.04.1984 at about 5:30 PM, the complainant Jagannath Yadav's son Ram Manohar, was going towards his agricultural field. On account of prior enmity, the accused persons, namely Surajpal, Kripal, Dharampal and Rajan, residents of the same village, surrounded him near the tube-well of Ambika Nai and assaulted him with lathis with the intention to cause his death. Upon hearing the alarm, Ramswaroop Yadav, Ambika Nai and Smt. Sampati reached the spot and intervened to rescue him, during which Smt. Sampati also sustained injuries. Due to the intervention of the witnesses and arrival of other villagers, the accused persons fled away towards the western side of the village. The injured Ram Manohar sustained multiple injuries and was unable to speak. He was immediately taken on an Ekka to the Government Hospital, Fatehpur, for medical treatment. He was medically examined by Dr. V.K Tripathi vide medical examination report Ext. Ka-5. Next day Jagannath lodged a written report at the P.S. Husainganj at 5.00 A.M., on the basis of which chik F.I.R. Ext. Ka-2 was prepared and a G.D. entry copy Ext. Ka-3

was made. After investigation charge-sheet Ext Ka.-8 was submitted against the accused persons.

6. In order to substantiate its case, the prosecution examined two witnesses, namely Ram Manohar P.W.-1. and Smt. Sampati Devi (Wife of Mewalal) P.W.-2.

**(i) P.W 1 : Ram Manohar** has stated that the real brother of accused Suraj Pal was murdered few years back in which he was prosecuted, convicted and sentenced alongwith Mewalal who is the husband of Smt. Sampati Devi and an appeal against that judgment and order is still pending before the Honb'le High Court. He also stated that the accused persons who were hiding in the building of Ambika Nai emerged and attacked him and as a result of the injuries he became unconscious and regained consciousness next day in the Hallet hospital, Kanpur.

**(ii) P.W 2- Smt. Sampati Devi (Injured witness)**, she also stated on oath that she saw the accused persons wielding lathis on Ram Manohar and in her cross examination she admitted that her husband was not in good terms with the accused persons. She also sustained injuries and was medically examined by Dr. V.K.Tripathi, vide medical examination report Ext. Ka-5.

7. The following documentary evidences have been produced by the prosecution in support of the case :-

(i) Written Report Ext. Ka-1, (ii) FIR Ext. Ka-2, (iii) G.D. Entries copy Ext. Ka-3 and Ext. Ka-4( iv) Injury Report Ext. Ka-5 and Ext. Ka-6 (v) Site Plan Ext. Ka-7 (vi) Charge-sheet Ext. Ka-8.

8. The defence also examined Dr. G.S. Gaur, the then Medical Officer, District Hospital, Fatehpur as D.W.-1. The defence has also filed the copy of FIR vide Ext. Kha-1, lodged by Smt. Budhni, (mother of Dharampal and Surajpal) against Ram Manohar P.W.-1 and the medical examination report vide Ext. Kha-2 relating to Smt. Budhni.

9. After closing of the evidence, statements of accused/appellants were recorded in terms of Section 313 Cr.P.C. by the trial court, after explaining entire evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and and framed in order to falsely implicate the accused due to enmity.

10. After hearing learned counsel for both the parties, Learned trial court after appreciating the evidences both oral as well as documentary, found the

appellants Surajpal, Krishnapal, Dharampal and Rajan guilty of offence U/s 308 read with section 34 I.P.C. and is sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 2000/- .

11. Feeling aggrieved with the impugned judgment and order of conviction, appellants have preferred the present appeal.

12. At the time of hearing the argument of learned counsel for appellants who has fairly stated that the conviction on merits is not being challenged and the arguments are confined to the question of sentence seeking benefit of Section 4 of Probation of Offenders Act, 1958.

13. Learned A.G.A. for the State supports the judgment of conviction but submits that the present appellant have no criminal antecedents and the incident is quite old.

14. After considering the arguments and after perusal of the material available on record, this Court finds that except the merits of the case, so far as the prayer of learned counsel for the appellants for providing benefits of Section 4 of the Act of 1958 is concerned, it is essential to discuss the legal position and law pronounced in this regard. Section 4 of the Probation of Offenders Act, 1958, is extracted hereunder :-

*"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. "*

15. A similar provision finds place in the Code of Criminal Procedure, there, Section 360 provides :-

**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).*

16. Upon considering the record of the case, the evidences available on record, findings of the Court, I have satisfied that the conviction recorded by trial court is based on cogent and reliable evidences and does not call for interference, therefore, the conviction of the appellant is affirmed.

17. However, on the issue of sentence, it is evident that the appellant is first time offender. The occurrence is of the year 1984. The appellant has faced ordeal of trial and an appeal for a long period. The appellant is old person, having no criminal history. No adverse material have been produced regarding his conduct. In these circumstances, this Court finds appropriate to invoke the provisions of Section 4 of Probation of Offenders Act, 1958, instead of sending the appellant to imprisonment.

18. While upholding the conviction, the sentence imposed by the trial court is set aside. The appellant **Rajan** is directed to be released on probation of good conduct for a period of one year and are directed to file two sureties, each to the tune of Rs.20,000/- along with personal bonds 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. He will not commit any offence during this period and will not involve in any criminal activities. In case of breach of any of the conditions, the benefit of probation shall stand cancelled and the appellant will be required to undergo the original sentence as awarded by the trial court.

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

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

21. Trial Court record shall also be sent back to the district court concerned.

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

**February 16, 2026**

P. Pandey

**(Mrs. Vani Ranjan Agrawal,J.)**