



2026:AHC:20998

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2562 of 1988

Ram Lakhan And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	J.N.Verma, Jaysingh Yadav
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This Criminal Appeal has been preferred against the judgment and order dated 31.10.1988 passed by learned IV Additional Sessions Judge, Kanpur Dehat in Sessions Trial No.157 of 1987 (State vs. Ram Lakhan and Others) whereby the appellants have been convicted and sentenced as under :-

(i). Under Section 308/34 I.P.C. - Rigorous Imprisonment for a period five years to appellants Ram Lakhan, Ram Singh and Kailash.

(ii). Under Section 323 I.P.C. - Rigorous Imprisonment for a period of one year to the appellant.

2. Vide order dated 22.4.2019 passed by coordinate Bench of this Court, this appeal stands already abated qua the appellant nos.2 namely Ram Singh. Further Vide order dated 13.11.2025, a living status report with regard to the appellant no.1 is called for. The report from CJM is still awaited with regard to the living status of the appellant, however, learned A.G.A. on instruction submits that appellant no.1, Ram Lakhan has also died. He has also produced a certificate issued by the Ward Member, Ajay Pal Singh on Ward No.8, Jaswant Nagar, Nagar, Panchayat, Akbarpur, District- Kanpur Nagar, dated 06.11.2025, according to which the appellant no.1, Ram Lakhan had died on 26.10.2025. In this view of the matter, this appeal also stands abated qua the appellant no.1 Ram Lakhan. **Now this appeal is surviving only qua the appellant no.3 namely Kailash.**

3. Heard Sri Jay Singh Yadav, learned counsel for appellants and Sri Rahul Asthana, learned A.G.A. of the State.

4. The prosecution story in brief is that on 22.5.1986 at about 8:00 P.M., complainant Banshi Singh, resident of Muridpur, Police Station Akbarpur,

District Kanpur Dehat, was having dinner in front of his shop when the above mentioned accused persons came and started abusing and beating him. Accused Kailash had a claw with which he tore the testicles of complainant Banshi Singh. When complainant's grandson Rajesh came running on hearing the noise, Ram Lakhan hit him with a pestle. Thereafter, on hearing the noise, people of the village like Bade Singh, Radhe Shyam etc. came and intervened. The complainant filed a written report of the incident at 11:00 P.M. on the same night. The complaint was filed at the Akbarpur police station, where the medical officer Incharge of Akbarpur conducted a medical examination of the complainant, Banshi Singh and Rajesh, at 1:45 P.M. Banshi Singh was subsequently admitted to the hospital, where he remained for a month receiving treatment. The case was investigated, and a charge sheet was filed against the accused.

5. The charge sheet was submitted under Section 308 read with Section 34 of the Indian Penal Code against all the accused, and an additional charge under Section 323 of the Indian Penal Code was imposed against accused Ram Lakhan. The accused denied the charge and claimed trial.

6. To prove the charges against the accused, the prosecution presented a total of 4 witnesses P.W.-1 Bade Singh, P.W.-2 Radhey Shyam, P.W.-3 Rajesh and P.W.-4 Banshi Singh complainant, all of whom are said to be eyewitnesses of the incident. Under Section 294 Cr.P.C., the accused have accepted the formalities of the chick report, diary report, case registration, map inspection, medical examination report of Banshi Singh and Rajesh, G.D. report no.12 dated 26.5.1986 and charge sheet.

7. In the statement under Section 313 Cr.P.C., the accused denied the allegations levelled by the prosecution. Accused Ram Lakhan said that he was not present at the spot. Kailash said that he had arranged the marriage of the complainant's nephew Dhaniram's daughter with his nephew, which Banshi Singh opposed whereas the entire family was desirous for the said marriage, hence he was implicated in this matter. Accused Ram Singh says that Banshi Singh was getting his niece married somewhere else. Therefore he implicated him. Lakhan Singh says that he had gone out in his car that day. The accused did not provide any evidence in their defence.

8. After hearing learned counsel for both the parties, learned trial court after appreciating the evidences both oral as well as documentary, found the appellants guilty of offence as described in paragraph no.1 of this judgement.

9. Feeling aggrieved with the impugned judgment and order of conviction,

appellants have preferred the present appeal.

10. 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.

11. 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.

12. 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."

13. 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)."

14. Upon considering the record of the case, the evidences available on record, findings of the trial 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.

15. However, on the issue of sentence, it is evident that the appellant No.3 Kailash is first time offender. The occurrence is of the year 1986. The appellant has faced ordeal of trial and an appeal for a long period. The appellant is old person aged about 70 years, 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.

16. In the light of the above, as far as it relates with the conviction of the **appellant No.3 namely Kailash** 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 therefore is released on probation and is directed to file two sureties each to the tune of Rs.10,000/- each along

with personal bonds before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behavior during the period of two years from today. The said bonds are to be filed by the appellant within a period of three months from the date of receipt of certified copy of this judgment.

17. 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.

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

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

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

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

January 30, 2026

Dev

(Mrs. Vani Ranjan Agrawal,J.)