



2026:AHJ:78514

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 575 of 2001

Kharapattu Yadav

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Akhilesh Singh, U.S. Tiwari
Counsel for Respondent(s)	:	Abhishek Kumar Saroj, Govt. Advocate

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Akhilesh Singh, learned Senior Counsel assisted by Sri Ajay, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.

2. This Criminal Appeal has been preferred against the judgment and order dated 19.2.2001 passed by learned 15th Additional Sessions Judge, Varanasi in Sessions Trial No.473 of 1995 (State vs. Kharpattu Yadav and Ors.) whereby convicting the appellants under Sections 147, 148, 307, 149, 323, 149, 325, 149, 504 I.P.C., Police Station Jansa, District Varanasi, whereby the appellants were convicted and sentenced as follows:-

Appellants Sewa Lal Yadav and Satya Narayan :- Under Section 148 I.P.C. - to undergo six months rigorous imprisonment.

Appellants Sewa Lal Yadav and Satya Narayan :- Under Sections 323/149 I.P.C. - to undergo six months rigorous imprisonment.

Appellants Sewa Lal Yadav and Satya Narayan :- Under Sections 325/149 I.P.C. - to undergo two years rigorous imprisonment along with fine of Rs.500/- in case of default in payment of fine the appellants shall undergo two months rigorous imprisonment.

Appellants Kharpattu Yadav, Doodhnath Yadav, Pancham Yadav, Dayashankar Yadav, Sirpattu Yadav, Mhekhuri Yadav, Raj Bahadur Yadav and Babna Devi :-

Under Section 147 I.P.C. - to undergo six months rigorous imprisonment.

Under Sections 323/149 I.P.C. - to undergo six months rigorous imprisonment.

Under Sections 325/149 I.P.C. - to undergo two years rigorous imprisonment along

with fine of Rs.500/- in case of default in payment of fine the appellants shall undergo two months rigorous imprisonment.

All sentences awarded to all the appellants shall run concurrently.

All the appellants were acquitted by the learned trial Court under Sections 307/149 and 504 I.P.C.

3. On 7.8.1996, at about 7.30 A.M., the complainant of this case, Chaukhari and Bhagwati, Kallu, Pyarelal etc., along with Advocate Kapildev and Advocate Nisar, went to Kharanje to inspect the spot and were standing on the Kharanja in front of the door of the accused Kharpattu and inspecting the spot. On this, the accused Kharpattu, Satya Narayan, Dudha Nath Yadav, Sewalal Yadav, Ramashankar alias Rama Yadav, Rajbahadur Yadav, Mhekhuri Yadav, Sirpattu Yadav, Pancham Yadav, Dayashankar Yadav and Babna Devi, armed with sticks, rods, axes, etc., formed an unlawful assembly and in fulfillment of the common purpose of the said unlawful assembly, inflicted minor and serious injuries on the complainant Chekhuri, Shitala Prasad Yadav, Kallu, Anil Kumar, Ramchandra etc. and attempted to murder the injured Shitala Prasad Yadav and abused. This incident was witnessed by Bhagauti, Mannu, Shobhnath, Pyarelal etc.

The complainant, Chakhuri Yadav, reported this incident at Police Station Jansa on 7.8.1993 at 11:05 A.M.. On that day, a case was registered under Crime No. 119 of 1993 for offences under Sections 147, 148, 323, 504, and 308 of the Indian Penal Code. The injured were medically examined. The case was investigated. After the investigation, a chargesheet was filed against the accused.

The accused were charged on 7.10.1997 by the then Presiding Officer for offences under sections 147, 148, 307/149, 323/149, 325/149 and 504 of the Indian Penal Code. The accused did not plead guilty and claimed trial.

4. In the present case, the prosecution has produced oral and documentary evidence to prove the charges levelled against the accused. P.W.-1 Chekhuri, P.W.-2 Shitala Prasad, P.W.-3 Mannu have been examined as eyewitnesses to the facts. These witnesses have deposed in support of the prosecution story. P.W.-1 Chekhuri has proved the First Information Report Exhibit ka-1.

5. In the formal evidence, Sub-Inspector Radhe Ram Parikshit has been examined. He

has stated that he was posted as Sub-Inspector at Jansa Police Station on 7.8.1993 and the investigation of this case was entrusted to him. He recorded the statements of witnesses and inspected the site of the incident on the pointing out of the plaintiff Chekuri Yadav and prepared a site map. He has proved the site map, Exhibit Ka-2. He has also stated that he has taken blood stain soil from the spot and prepared the sample of the same, Exhibit Ka-3. On the basis of the X-ray report, the offences under Section 308 of the I.P.C. were added in the case. Upon the charges being proved against the accused, Exhibit Ka-4 and the charge sheet, Exhibit Ka-5, against the accused Babna Devi.

6. P.W.-5 Dr. Kailash Singh has stated that on 7.8.1993 he was working at Kabir Chaura Hospital, Varanasi and at 2:45 P.M. in the afternoon he examined the injuries of Ramchandar aged about 22 years son of Chekhuri Yadav, resident of Hirapur, Police Station Jansa, who was brought by Police Constable Taqib Ahmed and found the following injuries on his person:-

(i). Blue mark 6 cm x 2 cm on the back of the left wrist. X-ray was advised.

(ii). Blue mark 5 cm x 2 cm below the elbow on the back of the right arm.

(iii). Blue mark 15 cm x 2 cm on the right hand below the shoulder.

All the injuries were red in colour. An X-ray was recommended for injury number 1. All other injuries were minor and appeared to have been caused by a blunt object.

7. After closing the prosecution evidence, the statement of the accused appellant was recorded under Section 313 Cr.P.C. wherein the accused persons denied the prosecution story and claimed trial.

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.2 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 appellants are first time offender. The occurrence is of the year 1993. The appellants have 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.

16. In the light of the above, as far as it relates with the conviction of the appellants is maintained but the sentence is modified. Instead of sending the appellants to jail, they are given benefit of Section 4 of The Probation of Offenders Act, 1958 and therefore are released on probation and are 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 they shall maintain peace and

good behavior during the period of one year from today. The said bonds are to be filed by the appellants within a period of two months from the date of receipt of certified copy of this judgment.

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

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 learned trial court concerned.

April 10, 2026
Dev

(Mrs. Vani Ranjan Agrawal,J.)