



2026:000:107594

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL APPEAL No. - 581 of 1997

Ram Kishan

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|---|-----------------------------|
| Counsel for Appellant(s)  | : | Mukti Nath Dwivedi, S.Singh |
| Counsel for Respondent(s) | : | Govt. Advocate              |

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#### Court No. - 93

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

1. This criminal appeal has been filed against the judgment and order dated 16.02.1997 passed by the III Additional District and Sessions Judge, Shahjahanpur, in Sessions Trial No. 351 of 1990 under Section 308 I.P.C., whereby the appellant was convicted and sentenced to three years' rigorous imprisonment along with a fine of Rs. 2,000/-.
2. Heard Sri Mukti Nath Dwivedi, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.
3. According to the prosecution case, the informant Mahendra Singh was informed by his uncle Tej Singh that his cousin, Vinod Singh, was lying injured in an orchard situated in village Meervanshpur. Upon receiving information, the informant, Mahendra Singh, along with Naresh Pal Singh, Braj Singh and other relatives went to the orchard and brought Vinod Singh back. Thereafter, the informant lodged a written report of the incident at Police Station Cantt. at about 8.30 p.m. On the basis of the written report, a case under Section 324 and 308 I.P.C. was registered against unknown persons and investigation commenced.
4. The injured, Vinod Singh, was medically examined on 26.04.1990 at about 10.00 a.m., at the District Hospital, where he was admitted for treatment. During investigation, the Investigating Officer inspected the place of occurrence, prepared the site plan and recorded the statement of witnesses.
5. The injured, Vinod Singh, stated that a few days prior to the incident, accused Ram Kishan had uprooted gram plants from his agricultural field, regarding which his mother has complained to Ram Kishan, he felt offended by the complaint and started bearing enmity towards them. Vinod Singh further stated that on 25.04.1990, after attending a feast at the house of Naurang Singh in his village, he returned home at about 09.00 p.m. On

reaching home, he saw accused Ram Kishan abusing his mother in filthy language due to which his mother started crying. Enraged by this conduct, he assaulted Ram Kishan with two stick blows and drove him away from his house.

6. Thereafter, he went to the engine of Natthu and after some time returned home. He informed his mother that he was going to the agricultural field to guard the wheat crop. Although his mother advised him not to go during the night, he nevertheless proceeded towards the field. When he reached, the southern corner of the orchard at about 11.15 p.m., accused Ram Kishan suddenly emerged from behind a ground tree and started abusing him in filthy language and assaulted him with a sharp edged weapon causing him to fall down. Co-accused Angreja Devi, mother of Ram Kishan was also present on spot and assaulted him. The accused persons exhorted that he should be killed. Thereafter, Rajendra assaulted him with a stick and thrust it into his mouth, causing a tear injury to his left cheek. Ram Kishan also struck him on the face with the handle of a lathi. Thereafter, he became unconscious and the accused persons continued assaulting him. He regained consciousness only at the hospital.

7. On the basis of the statement of injured, the names of the accused persons came to light. After completion of investigation and collection of other evidences and materials charge-sheet was submitted against accused Ram Kishan and Angreja Devi for offence under Section 324 and 308 read with Section 34 I.P.C.

8. Charges were framed. Accused persons pleaded not guilty and claimed trial.

9. The prosecution has examined P.W.-1 the complainant Mahesh Singh, P.W.-2 Tej Singh, P.W.-3 Vinod Singh, P.W.-4 Dr. K.K. Saxena, P.W.-5 Dr. Anil Sood, P.W.-6 Sub-Inspector Surajbhan, and P.W.-7 Constable Revti Prasad Sharma.

10. The accused persons in their statements recorded under Section 313 Cr.P.C., denied the prosecution allegations and stated that the witnesses has falsely deposed against them. It was specifically pleaded that Vinod Singh had falsely implicated them due to previous enmity. The defence version was that the orchard belonging to Vinod Singh was jointly recorded in the revenue records along with the accused persons and that Vinod Singh had got a Shisham Tree cut without seeking permission from them. When objected to, he became annoyed and on account of such enmity, lodged the false case against the accused persons.

11. After hearing the arguments advanced by both the parties and upon appraisal of the oral and documentary evidence available on record, the trial

court came to the conclusion that the prosecution had successfully proved its case against the accused persons under Section 308 of the Indian Penal Code. Consequently, accused Ram Kishan was convicted and sentenced to three years rigorous imprisonment along with a fine of Rs.2000/- out of the amount of the fine imposed a sum of Rs.1000/- was directed to be paid to the injured Vinod Singh as compensation.

12. Aggrieved by the judgment and order of conviction, the accused appellant preferred the present criminal appeal on the ground that the conviction of the appellant is against the weight of evidence on record and bad in the eyes on law, the sentence imposed is too severe and excessive.

13. At the time of hearing of arguments, learned counsel for the appellant submitted that the appellant did not wish to challenge the finding of conviction recorded by the learned trial court on merits. It was, however, contended that the criminal case had remain pending for nearly 30 years and during the said period, the appellant had suffered the agony of prolonged criminal proceedings.

14. It was further submitted that the appellant had no criminal antecedents. He is poor person earning his livelihood through agriculture and labour work and there was no evidence of any previous conviction against him. He is having no other criminal history. On the aforesaid grounds, prayer was made that the appellant be extended the benefit of probation.

15. Having considered the submissions advanced by learned counsel for the appellant and upon perusal of the entire evidence available on record, this Court finds that the injured witness himself has specifically attributed the role of assault to the appellant. His testimony stands fully corroborated by the medical evidence, documentary evidence and the statements of doctor. In such circumstances, there is no reason to believe that some other persons caused injuries to the injured and the appellant has been falsely implicated.

16. The finding of the conviction recorded by the trial court, therefore, does not warrant any interference and is liable to be affirmed.

17. 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. "*

18. 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).*

19. However, considering the facts and circumstances of the case, particularly, the long lapse of time, the absence of any criminal history, the socio-economic condition of the appellant and the fact that he has faced

criminal proceedings for about three decades, this Court is of the view that the appellant deserves to be extended the benefit of Section 4 of Probation of Offenders Act.

20. Accordingly, while affirming the conviction of the appellant under Section 308 I.P.C., the sentence awarded by the trial court is set aside. The appellant is 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 during the said period.

21. The appeal is partly allowed with above modification.

22. The said bonds are to be filed by the appellant within a period of one months from the date of receipt of certified copy of this judgment.

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

24. 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.)**