



2026:AHC:51928

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 955 of 1996

Moti And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Janardan Yadav, S.K. Tripathi, Tribhuwan Singh
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Tribhuwan Singh, 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 16.5.1995 passed by learned VII Additional Sessions Judge, Azamgarh in Sessions Trial No.61 of 1990 (State vs. Moti and Others) whereby convicting the appellants under Section 147, 323/149, 325/149, 504/149 and 506/149 I.P.C. and sentencing them under Section 147 I.P.C. to undergo one year simple imprisonment; further sentencing them under Section 323/149 I.P.C. to undergo six months simple imprisonment; further sentencing them under Section 325/149 I.P.C. to undergo three years rigorous imprisonment; further under Section 504/149 I.P.C. to undergo one year simple imprisonment; further under Section 506/149 to undergo one year simple imprisonment.

3. Vide order dated 27.9.2022 passed by coordinate Bench of this Court, this appeal stands already abated qua the appellant nos.1, 3 and 5 namely Moti, Palakdhari, Firtoo respectively. Further vide order dated 24.7.2024 passed by coordinate Bench of this Court, this appeal stands abated qua the appellant no.2 namely Sri Ram. Now this appeal is surviving qua the **appellant no.4 namely Ambar.**

4. In brief, the complainant Shivdas S/o Vipat Sakin, Hathnaurakalan, Police Station Phoolpur, District Azamgarh has filed a complainant dated 18.3.1988 against the accused Moti S/o Varsat, Varsat S/o Manhgoo, Sri Ram S/o Gulzar, Palakdhari S/o Munesar, Sitaram S/o Kalesar, Ambar S/o Ramnath and Firatoo S/o Paragasa Sakin, Village Hathnaurkalan, Police Station Phoolpur, District Azamgarh, under Sections 147, 323, 325, 352, 504, 506 I.P.C.. Learned Magistrate has recorded the statement of complainant under

Section 200 and 202 Cr.P.C., after taking into account the evidence produced by the complainant, has taken cognizance against the accused persons under Sections 147, 323, 325, 504, 506 I.P.C. and summoned the accused persons for trial. Since, it has come to the notice of the learned Magistrate that a cross cases, that is, Session Trial No.322 of 1988 (State vs. Shivdas and Others) is pending before learned II Additional District and Sessions Judge, Azamgarh, therefore, the present cases was also committed for trial before the learned II Additional District and Sessions Judge, Azamgarh on 19.3.1990, where the accused were charged under Sections 147, 323/149, 325/149, 352/149, 504/149, 506/149 I.P.C. During the pendency of trial the accused Sitaram has died.

5. As per prosecution, on 16.3.1987 at about 4:30 P.M. during the festival Holi the accused five in number with a common intention has come to the door of the complainant. The accused Moti, Tilakdhari and Ambar were in a drunken state and started abusing the complainant and due to animosity they threatened the complainant to break his hands and legs and destroy his hut. When the complainant stopped them from abusing then accused persons started beating the complainant with lathi & sticks and caused injuries to the complainant. Accused Moti caused injuries with lathi to the Indrabali on account of which his right leg got fractured. The villagers witnessed the incident and came to settle the dispute, but in the settlement stone pelting was started from the side of the complainant, in which injuries were also sustained from the accused side. In the incident Indrabali sustained serious injuries and he was taken to the sadar hospital where he remain admitted for some days. Informant could not give information regarding the said incident and on 19.3.1987 a letter through registered post regarding the said incident was sent to the Senior Superintendent of Police, Azamgarh, who directed the Station House Office, P.S. Phoolpur, District Azamgarh for taking action in accordance with law, but no action was taken, thus the complainant has filed the complaint before the Court concerned.

6. The medical examination of the injured Indrabali, Shivdas, Nirmal and Jiya Lal was conducted on 16.3.1987 at 8:30 P.M., 9:15 P.M. and 9:30 P.M. respectively. The x-ray of the Indrabali was conducted on 18.3.1987.

7. The prosecution in support of his case has produced P.W.-1 (Eye Witness) Shivdas; P.W.-2 (Injured Witness) Indrabali; P.W.-3 (Injured Eye Witness) Nirmal to prove the facts, injuries and medical report. P.W.-4 Dr. Narendra Kumar has proved the x-ray plate and report Exhibit-Ka-2. P.W.-5 Kedarnath, Record Keeper, Office of the Police, Azamgarh for proving the complaint sent by the complainant through registry. P.W.-6 Dr. Abdul Haleem was presented for proving the injuries sustained by the injured.

8. After closing the prosecution evidence, the statement of the accused appellant was recorded under Section 313 Cr.P.C. on 17.4.1986, wherein the accused persons denied the allegation levelled against them and submitted that a dispute with regard to land was going on between them, apart from this the present complaint was filed against them by the complainant for saving his skin from the cross case registered from the side of the accused persons. One of the appellant namely Sita Ram was also died during the course of trial. Further, the medical report and x-ray report is forged.

9. 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.

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

11. 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.

12. 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.

13. 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."

14. 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)."

15. 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.

16. However, on the issue of sentence, it is evident that the appellant No.4 Ambar is first time offender. The occurrence is of the year 1988. 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.

17. In the light of the above, as far as it relates with the conviction of the **appellant No.4 namely Ambar** is maintained but the sentence is modified. Instead of sending the appellant to jail, they are 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 one year 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.

18. 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.

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

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

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

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

January 28, 2026

Dev

(Mrs. Vani Ranjan Agrawal,J.)