



2026:AHC:107652

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2260 of 2020

Kadir Ali And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ashutosh Kumar Mishra, Pankaj Kumar Yadav, Ravi Shanker Pathak, Smriti Shukla
Counsel for Respondent(s)	: G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Pankaj Kumar Yadav, 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 31.1.2020 passed by learned Additional District & Sessions Judge/F.T.C.-II, Kushinagar in Sessions Trial No.350 of 2018 (State of U.P. vs. Khusubuddin and others) arising out of Case Crime No.873 2017, under Sections 304, 504, 506 I.P.C., Police Station Kasya, District Kushinagar, whereby the appellants were convicted and sentenced as follows:-

Under Section 504 I.P.C. - to undergo six months rigorous imprisonment alongwith fine of Rs.5,000/- and in case of default in payment of fine the appellants shall undergo additional imprisonment of one month.

3. In brief, the prosecution story is as follows:

On 24.10.2017, the complainant Khairun Nisha given a written complaint to the effect that the complainant's name is Khairun Nisha, wife of Afzal, and she is resident of village Pataya, Police Station Kasya, District Kushinagar. The incident occurred on 23.10.2017 at 8.00 A.M. The complainant's husband and father-in-law, Khushbudin, were talking to my husband's brothers, Qadir Ali and Mustafa, regarding the partition of family property,

when my father-in-law attacked my husband with a stick, causing life-threatening injuries. My husband fainted on the spot due to the serious injury. Qadir Ali and Mustafa abused the complainant's husband and threatened to kill him, and on their instigation, my husband was attacked with a stick. A fatal attack was made by my father-in-law. After reporting the incident on dial 100, my husband was brought to the Government Hospital, Kasya for treatment. Considering the severity of the injury, he was referred to the District Hospital and after being referred by the District Hospital, he was brought to the Medical College, Gorakhpur for treatment. Where my husband died during treatment on the night of 23/24.10.2017 at 2.00 A.M., whose post-mortem was conducted at the Medical College, Gorakhpur. After that, I am giving written information to the Police Station, Kasya, District Kushinagar.

4. In support of the prosecution case, eight witnesses were examined, which are as under :-

P.W.-1 Khairun Nisha:- the complainant and wife of the deceased, stated that the incident occurred during a property partition dispute and that accused Khushbuddin struck her husband with a lathi on the head causing him to fall unconscious. She further stated that Kadir Ali and Mustafa threatened the deceased and instigated the assault. She proved the written complaint marked as **Exhibit Ka-1** and explained the delay in lodging the FIR by stating that she remained occupied in arranging treatment for her husband from Kasaya to Gorakhpur.

P.W.-2 Javed :- an independent witness, deposed that while passing through the village he saw the quarrel and witnessed accused Khushbuddin hitting Afzal on the head with a lathi, causing him to fall unconscious. He clarified in cross-examination that he had no enmity or relationship with either party.

P.W.-3 Anil Kumar Bharti :- also supported the prosecution version and stated that upon hearing commotion he reached the place of occurrence and

saw the accused Khushbuddin strike Afzal on the head with a lathi during the quarrel over land partition. He too denied any enmity with the accused persons.

P.W.-4 Isarman :- partially supported the prosecution case by stating that he saw a quarrel taking place at the door of Khushbuddin but left before the actual assault; later he came to know that Khushbuddin's son had sustained injuries.

P.W.-5 Noor Mohammad, brother of the deceased :- deposed that during the quarrel over land partition accused Khushbuddin struck Afzal on the head with a lathi and thereafter accompanied the injured to various hospitals till his death. He also proved his participation in the Panchayatnama proceedings.

P.W.-6 S.I. Ramlakshman Singh, the Investigating Officer :- proved the documentary evidence including the site plan, chik FIR, general diary entries and charge sheet marked as Exhibits Ka-2 to Ka-7. He stated that during investigation no sufficient evidence was found against Kadir Ali and Mustafa for the offence under Section 304 IPC and therefore charges under Sections 504 and 506 IPC alone were submitted against them.

P.W.-7 Dr. R.D. Kushwaha :- who conducted the post-mortem examination on 24.10.2017, found stitched injuries on the left parietal region of the head and blood clot beneath the stitches. On internal examination, subdural haemorrhage was detected. He opined that death was caused due to coma resulting from ante-mortem head injuries caused by a hard and blunt object. The post-mortem report was proved as **Exhibit Ka-8**.

P.W.-8 S.I. Sunil Kumar Singh :- proved the Panchayatnama marked as **Exhibit Ka-9** and stated that the body was sent for post-mortem after the inquest proceedings.

5. The documentary evidence adduced by the prosecution included the

written complaint (Exhibit Ka-1), site plan (Exhibit Ka-2), FIR and GD entries (Exhibits Ka-3 to Ka-6), charge sheet (Exhibit Ka-7), post-mortem report (Exhibit Ka-8) and Panchayatnama (Exhibit Ka-9).

6. In the statements recorded under Section 313 Cr.P.C., the accused persons denied the allegations and claimed false implication due to village faction and land disputes. Appellant Khushbuddin stated that the actual quarrel had taken place between Afzal and Noor Mohammad and that injuries were caused by associates of Ismail s/o Sadir. Kadir Ali and Mustafa denied their presence at the spot and pleaded false implication.

7. In defence, **D.W.-1 Shabbo Khatoon**, daughter of accused Khushbuddin and sister of Kadir Ali and Mustafa, stated that the quarrel had actually taken place between Noor Mohammad and Afzal regarding construction over land and that Noor Mohammad caused injuries to Afzal by the blunt side of a kudal. She further stated that the complainant Khairun Nisha was inside the house at the relevant time and did not witness the occurrence.

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 is first time offender having no criminal history. No adverse material have been produced regarding their 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 appellants 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 namely Kadir Ali and Mustafa** 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 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 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 district court concerned.

April 30, 2026
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(Mrs. Vani Ranjan Agrawal,J.)