



2026:AHC:51462

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2683 of 2024

Yogendra @ Jogendra Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Shravan Kumar Pandey, Shyam Narain Pandey
Counsel for Respondent(s)	: Aditya Vardhan Singh, G.A., Nikil Pathak, Sunil Kumar Mishra

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State.
2. This Criminal Appeal has been preferred against the judgment and order dated 23.02.2024 passed by the learned Additional Sessions Judge, Court No. 15, Bulandshahr in S.T. No. 567 of 2018 (State vs. Yogendra and others), arising out of Case Crime No. 141 of 2017, under Sections 323/34, 325/34, 452, 504, 506 & 307/34 I.P.C., Police Station Salempur, District Bulandshahr, whereby the appellant has been convicted and sentenced to undergo imprisonment and fine as recorded therein.
3. Vide order dated 14.10.2025, the appellant is on interim bail.
4. The prosecution case in brief is that the complainant, a retired Army personnel, lodged a written report stating that on 14.05.2017 at about 7:00 PM, the accused persons obstructed the passage by dumping construction material in front of his house and abused his son when objected to. It is further alleged that at about 9:30 PM, the accused persons, armed with weapons, entered the house of the complainant and assaulted his son Sumit Tomar. When the complainant's family members namely Vaidika @ Julie and Sushila Devi intervened, they were also assaulted, misbehaved with and threatened.
5. In order to substantiate its case, the prosecution examined seven witnesses namely PW1 Sardar Singh Tomar, PW2 Dr. Rajiv Verma, PW3 Smt. Sushila Devi, PW4 Vaidika @ Julie, PW5 Constable Omkar Singh, PW6 SI Krishnapal Singh and PW7 Sumit Tomar. Documentary evidence includes FIR, written report, GD entry, site plan, charge sheet and medical reports.

6. PW4 Vaidika @ Julie and PW7 Sumit Tomar have not fully supported the prosecution version and have made contradictory statements regarding the occurrence. PW2 Dr. Rajiv Verma has also stated that injuries may be caused by blunt object or fall, which creates some doubt regarding the exact manner of assault.

7. However, from the overall evidence on record, it is established that an altercation did take place between the parties and injuries were sustained by the complainant side in the incident. The learned trial court has rightly appreciated the evidence and recorded conviction of the appellant under Sections 323/34, 325/34, 452, 504 and 506 I.P.C., which does not call for interference.

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

9. At the time of hearing the argument of learned counsel for appellant 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.

10. 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.

11. 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."

12. 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).

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

14. However, on the issue of sentence, it is evident that the appellant is first time offender. The occurrence is of the year 1984. The appellant has 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.

15. While upholding the conviction, the sentence imposed by the trial court is set aside. The appellant **Yogendra @ Jogendra Singh** is directed to be released on probation of good conduct for a period of one year and are directed to file two sureties, each to the tune of Rs.20,000/- along with personal bonds before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behaviour during the period of one year from today. He will not commit any offence during this period and will not involve in any criminal activities. In case of breach of any of the conditions, the benefit of probation shall stand cancelled and the appellant will be required to undergo the original sentence as awarded by the trial court.

16. The said bonds are to be filed by the appellant within a period of three months from the date of this judgment.

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

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

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

March 13, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)