

Reserved On:- 11.12.2019

Delivered On:- 06.01.2020

Case :- CRIMINAL APPEAL – 2012 of 2003

Appellant :- Ramdas Harijan And Others

Respondent :- State Of U.P.

Counsel for Appellant :- Satyendra Narain Singh, P.N. Kushwaha,
Santosh Kumar Singh

Counsel for Respondent :- Govt.Advocate, Gopal Ji Rai

Hon'ble Siddharth, J.

1. Heard Sri Santosh Kumar Singh, learned counsel for the appellants, Sri Gopal Ji Rai, learned counsel for the informant and Sri Gyan Narayan Kanojia, learned A.G.A. for the State and perused the record.
2. This criminal appeal has been preferred by Ramdas Harijan son of Jagnoo, Sonarase son of Jagnoo, Ramjanam son of Ramdas, Ram Jeet son of Sonarase, Ramesh son of Shyam Lal and Suryabhan son of Banarsi against the judgment and order dated 03.05.2003 passed by Additional Sessions Judge (Fast Tract Court No. 3), Ghazipur in Sessions Trial No. 43 of 1994 (State vs. Ramdas Harijan and others) convicting and sentencing the appellants for offence under Section 323/149 IPC for a period of one year rigorous imprisonment, under Section 147 IPC for a period of one year rigorous imprisonment and under Section 325/149 IPC for a period of five years rigorous imprisonment and a fine of Rs. 5,000/-, in default of payment of fine to undergo four months additional imprisonment and under Section 308/149 IPC for a period of five years

rigorous imprisonment and a fine of Rs. 5,000/-, in default of payment of fine to undergo four months additional imprisonment. All the sentences have been directed to run concurrently.

3. During the pendency of this appeal appellant nos. 1 and 2, Ramdas Harijan and Sonarase both sons of Jagnoo, have died and the appeal has been dismissed as abated against them by the order dated 30.05.2019 passed by this court. Now the appeal survives only regarding appellant nos. 3, 4, 5 and 6.

4. The prosecution case is that informant, Ram Adhar, son of Pardesi and the accuseds are the residents of village, Kudila, Police Station-Bhudkuda, District- Ghazipur. On 26.09.1991 when the informant was making his hut on his *abadi* land the accuseds, Ramdas, Sonarase, Shyam Lal, Ram Janam, Ramjeet and Ramesh, came armed with *lathi-danda* with common intention and stated that the *abadi* belongs to them. Suryabhan son of Banarasi came running on the spot and exhorted the accused to beat the informant. On this they started beating the informant with *lathi*. On his alarm members of his family, namely, Pardesi, Doma Ram, Km. Rita, Km. Sita, Smt. Geeta, Smt. Shyamdei, Smt. Kalawati, Smt. Vidya Devi, Km, Sumitra, daughter of Doma Ram, ran towards the informant and they were also caused injuries by the accuseds. On account of injuries inflicted by the accuseds, mother of informant, Vidya Devi and his grand-mother suffered fractures in hand. Both became unconscious and fell down. Bhuri

Ram son of Chauthi, Kashi son of Ramnath, etc., and many persons of the village saw the incident. Informant took his mother in a cot along with other injured to police station. The accuseds set the hut of the informant on fire. The information of the incident was given at the police station Bhudkuda on 26.06.1991 and on its basis FIR was registered at 17:30 hours as Case Crime No. 150 of 1991, under Sections 147, 323, 325, 504, 308 IPC against the accuseds.

5. The investigation was entrusted to the S.H.O., Sri J.P. Bharti. The injureds were examined by the doctor and number of injuries were found on the body of the injureds. The Investigating Officer submitted charge sheet against the accuseds. Before framing of charge accused, Shyam Lal, died and charges were framed against the remaining accuseds under Sections 147, 308/149, 325/149, 323/149 and 504 IPC. The accuseds denied the charges and sought trial.

6. The prosecution produced P.W-1, Ram Adhar, who was also an injured witness and he supported the prosecution case. P.W-2, was father of the informant and injured witness who also proved the prosecution case. P.W-3, Dr. R.P. Sharma, proved the injury reports of Smt. Vidya Devi, Smt. Shyamdei, Smt. Geeta and Doma Ram regarding their treatment at District Hospital, Ghazipur. P.W-4, Smt. Vidya Devi, was injured witness and wife of informant. P.W-5, was Dr. Devendra Kumar Singh, who examined Km. Rita, Km. Sumitra, Smt. Kalawati, Sita, Ram Adhar and

Pardesi at the Primary Health Centre. P.W-6, Dr. Ji Lal, Radiologist, proved the x-ray reports of injureds, Shyamadei, Geeta and Vidya. Finally, P.W-7, Sub-Inspector, J.P. Bharti, the Investigating Officer, deposed as P.W-7 before the trial court and proved the investigation record and the charge sheet submitted before the court.

7. The statements of the accuseds under Section 313 Cr.P.C were recorded wherein they denied charges and alleged false implication in this case. The injureds produced Sri Diwakar Dhar Dwivedi, Pharmacist, District Jail, Ghazipur, Dr. A.K. Singh, the then Medical Officer, District Jail, Ghazipur and record keeper of the office of Superintendent of Police, Jai Narayan, in defense.

8. The trial court after considering the oral and documentary evidence of the parties found that it is proved beyond doubt that on 26.06.1991 at 04:00 p.m the accuseds came over the land of the informant and to prevent him from making his hut over the same caused simple and grievous injuries to the injureds and made attempt to commit culpable homicide. The accuseds were found guilty of offence under Sections 147, 323/149, 325/149 and 308/149 IPC and they were accordingly convicted and sentenced.

9. The counsel for the appellants has submitted that the parties belong to the same village and are neighbours. The incident took place on 26.06.1991. About 28 years have passed since the date of incident. Three

accuseds have died, one before the commencement of trial and two during the pendency of this appeal. Sending of the remaining appellants to jail at this stage would be very harsh. The age of appellant no. 3 is about 51 years, age of appellant no. 4 is about 44 years, age of appellant no. 5 is about 54 years and age of appellant no. 6 is about 58 years. He has submitted that the relationship of the appellants with the informant and his family members is now cordial and if the appellant nos. 3 to 6 are sent to jail again then the enmity would be revived and the new generation of both the parties will again open a new chapter of enmity.

10. Counsel for the informant, Sri Gopal Ji Rai, Advocate, has filed an application praying for compounding the offences against the appellants. The application is supported by an affidavit of Ram Adhar, the informant/injured, wherein he has stated that the enmity between the appellants and the informant has come to an end on account of intervention of the members of the village. They have entered into compromise and are living happily and do not want that the enmity should be revived and prolonged. He has forgotten the enmity after lapse of 28 years and has prayed that on the basis of compromise between the parties the appeal may be decided.

11. Learned A.G.A has submitted that in case appropriate punishment is not given to the surviving appellants, the faith of the common man in the courts would be shaken. He has submitted that the informant is only one of

the injured of the incident in dispute and he cannot compound all the offences already found proved by the trial court against the appellants. Keeping in view Section 320 Cr.P.C all the injureds were required to file their affidavits before this court to absolve the appellants of the offences. He has finally submitted that offence under Section 308 IPC is not compoundable.

12. After hearing the counsels for the parties this court finds that the offence under Sections 323 and 325 IPC can be compounded by the person to whom the hurt is caused. The offence under Section 308 IPC is not compoundable. In the present case only one of the injured, the informant, has filed his affidavit while the other injureds, namely, Smt. Vidya, Smt. Shyamdei, Smt. Geeta, Doma Ram, Km. Reeta, Km. Sumitra, Km. Sita, Smt. Kalawati and Pardesi, have not filed any affidavit praying that the offences caused against them by the appellants may be compounded. The affidavit of the informant shows that it has been filed only on his behalf and not on behalf of any of the injureds as their *paikar*. In view of the above position of the record the compounding of the offences under which the appellants have been convicted cannot be allowed.

13. However keeping in view the fact that the incident took place about 28 years ago, the parties are neighbours residing in the same village, informant has filed affidavit before this court that their relations have become normal and they are residing peacefully in the village, he does not

wants the enmity to be revived, this court feels that the appellants should be given benefit of Section 4 of the Probation of Offenders Act, 1958 in this appeal while upholding the judgment and order of the trial court.

14. Section 4 of the Probation of Offenders Act reads as follows:

"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.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a

probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

15. A similar provision finds place in the Code of Criminal Procedure.

There, Section 360 provides:

360. Order to release on probation of good conduct or after admonition.

(1) 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).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release

him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this subsection inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

16. These statutory provisions very emphatically lay down the reformatory and correctional object of sentencing and obligates the trial court as well as appellate courts to give benefit of probation in fit cases as provided under law. Unfortunately, this branch of law has not been much utilized by the courts. It becomes more relevant and important in our system of administration of justice where trial is often concluded after a long time and by the time decision assumes finality, the very purpose of sentencing loses its efficacy as with the passage of time the penological and social priorities change and there remains no need to inflict punishment of imprisonment, particularly when the offence involved is not serious and there is no criminal antecedent of the accused persons. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

17. In the case of *Subhash Chand and others vs. State of U.P., 2015*

Lawsuit (Alld) 1343, this court has emphatically laid down the need to apply the law of probation and give benefit of the beneficial legislation to accused persons in appropriate cases. This court issued following directions to all trial courts and appellate courts:

"It appears that the aforesaid beneficial legislation has been lost sight of and even the Judges have practically forgotten this provision of law. Thus, before parting with the case, this Court feels that I will be failing in discharge of my duties, if a word of caution is not written for the trial courts and the appellate courts. The Registrar General of this Court is directed to circulate copy of this Judgment to all the District Judges of U.P., who shall in turn ensure circulation of the copy of this order amongst all the judicial officers working under him and shall ensure strict compliance of this Judgment. The District Judges in the State are also directed to call for reports every months from all the courts, i.e. trial courts and appellate courts dealing with such matters and to state as to in how many cases the benefit of the aforesaid provisions have been granted to the accused. The District Judges are also directed to monitor such cases personally in each monthly meeting. The District Judges concerned shall send monthly statement to the Registrar General as to in how many cases the trial court/appellate court has granted the benefit of the aforesaid beneficial legislation to the accused. A copy of this order be placed before the Registrar General for immediate compliance."

18. In addition to the above judgment of this Court, this court finds that the Hon'ble the Apex Court in the case of **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand & others (2004) 7 SCC 659**, giving the benefit of Probation of Offenders Act, 1958 to the accuseds has observed as below:

"The learned counsel appearing for the accused submitted that the accident is of the year 1990. The parties are educated and neighbors. The learned counsel, therefore, prayed that benefit of the Probation of Offenders Act, 1958 may be granted to the accused. The prayer made on behalf of the accused seems to be reasonable. The accident is more than ten years old. The dispute was between the neighbors over a trivial issue of claiming of drainage. The accident took place in a fit of anger. All the parties educated and also distantly related. The accident is not such as to direct the accused to undergo sentence of imprisonment. In our opinion, it is a fit case in which the accused should be released on probation by directing them to execute a bond of one year for good behaviour."

19. Similarly, in ***Jagat Pal Singh & others Vs. State of Haryana, AIR 2000 SC 3622***, the Hon'ble Apex Court has given the benefit of probation while upholding the conviction of accused persons under Sections 323, 452, 506 IPC and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

20. In the light of above discussion, I find no illegality, irregularity or impropriety nor any jurisdictional error in the impugned judgment and order of the court below. The conviction recorded by the court below under Sections 147, 323/149, 325/149, 308/149 IPC is upheld and is not required to be disturbed.

21. However, instead of sending the appellants to jail, they shall get the benefit of Section 4 of the Probation of Offenders Act. Consequently, the

appellants shall file two sureties to the tune of Rs. 25,000/- coupled with personal bonds to the effect that they shall not commit any offence and shall observe good behaviour and shall maintain peace during the period of one year. If there is breach of any of the conditions, they will subject themselves to undergo sentence before the court below. The bonds and sureties aforesaid be filed by the accused persons within two months from the date of the judgment as per law and Rules.

22. Accordingly, this appeal is partly allowed regarding sentences of the appellants.

23. Let a certified copy of this order along with record be sent to the court concerned for compliance.

Order Date: 06.01.2020

Rohit