

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 137/1997

Shamboo Singh S/o Khuman Singh Rajput, R/o Jorawar Singh Ka
Kheda, Post Rajiyawas, Via Kankroli, District Rajsamand

----Appellant

Versus

State of Rajasthan

----Respondent

For Appellant(s)	:	Mr. Manish Sisodia, Senior Advocate, assisted by Mr Harshvardhan Singh Rathore
For Respondent(s)	:	Mr. Rajesh Bhati, AGA Mr. Ravindra Singh, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

Judgment reserved on : 05/12/2025

Judgment pronounced on : 08/12/2025

1. By way of filing the instant Criminal Appeal under Section 374 of the CrPC, challenge has been made to the judgment dated 06.03.1997 passed by the learned Sessions Judge, Rajsamand in Sessions Case No.125/1993, whereby the learned trial court convicted and sentenced the appellant as under :-

Offence for which convicted	Sentence awarded
Section 326 IPC	4 years' R.I. alongwith a fine of Rs.2000/- and default of payment of fine, further to undergo 6 months' R.I.
Section 323 IPC	3 months' S.I

2. Briefly stated, the facts of the case are that the appellant alongwith co-accused Rama S/o Dewa Gujar were tried for offences under Sections 307, 326, 323 IPC on basis of FIR 117/1993 lodged by complainant Gorawardhan singh at Police

Station Nathdwara being EX.P/2. It was alleged in the FIR that the accused gave beating to Doongarsingh, the father of the complainant, on account of enmity between co-accused Rama and one Tejaram. The injury is said to have resulted in cutting off of fingers of Doongarsingh. A cross case was also registered as the accused received 11 Injuries including incised greivous injury on hand and simple injuries on head and shoulders.

3. The appellant was tried as aforesaid alongwith Rama and after trial co-accused Rama was acquitted and the appellant was convicted and sentenced as aforesaid. Being aggrieved of the same, the appellant has preferred the instant appeal.

4. After arguing on merits to some extent, learned counsel for the appellant does not wish to press the present appeal in respect of the judgment of conviction passed by the learned trial court and preferred to make submissions on the point of sentence only. He submits that the dispute erupted on a very trivial issue and in the heat of the moment, the appellant inflicted injury to the victim. The accused party also received injuries in the incident. The incident is of the year 1993. The petitioner is 68 years old person. There is no criminal antecedent of the present appellant. It was the first criminal case registered against him. No adverse remark has been passed over his conduct in the impugned judgment. He faced trial for 4 years and the present appeal is pending for last 28 years. The appellant has languished for some time in jail.

Hence, it is prayed that taking into account the aforesaid facts, a lenient view may be taken on the point of sentence awarded to the appellant.

5. Learned public prosecutor though opposed the submissions made on behalf of the appellant but does not refute the fact that it was the first criminal case registered against him and he had no criminal antecedents as well as the fact that he has remained behind the bars for some time.

6. Heard learned counsel for the appellant and the learned Public prosecutor and perused the record and other material available on the record.

7. Since the appeal against conviction is not pressed and after perusing the record, nothing is noticed which requires interference in the finding of guilt reached by learned trial court, this court does not wish to interfere in the judgment of conviction. Accordingly, the judgment of conviction is maintained.

8. As far as the question of quantum of sentence is concerned, this Court finds substance in the submissions advanced on behalf of the appellant. The incident in question occurred in the year 1993, more than 32 years ago. The material on record shows that the dispute flared up suddenly on a trivial issue and there was no premeditation on the part of the appellant. It is also not in dispute that the accused side too sustained multiple injuries in the course

of the same occurrence, thus, indicating that the incident was a free fight arising out of a sudden quarrel rather than a deliberate assault.

9. The appellant is now a 68-year-old individual with no prior criminal antecedents. The present case was the first and only criminal prosecution against him. There is no adverse finding regarding his conduct either during trial or thereafter. He has undergone incarceration for some period following conviction and has faced the agony of criminal proceedings for more than three decades. Keeping in view the nature of the incident, the age of the appellant, his clean antecedents, the long passage of time, and the fact that no useful purpose would now be served by requiring him to undergo the remaining part of the substantive sentence, this Court is of the considered opinion that the ends of justice would be adequately met by extending to him the benefit of admonition under Section 3 of the Probation of Offenders Act, 1958.

10. Section 3 of the Act reads as under:-

"3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under Sections 379, 380, 381, 404 or 420 of the Indian Penal Code, or any offence punishable with imprisonment for not more than two years, or with fine, or with both, and no previous conviction is proved against him, the court before which he is convicted may, instead of

sentencing him to any punishment, release him after due admonition."

11. Though Section 326 IPC ordinarily carries a higher punishment, the beneficent provision of the Probation of Offenders Act can be invoked in appropriate cases, as consistently recognised by judicial precedents, particularly when the circumstances reveal absence of criminal intent, long passage of time, rehabilitation of the offender, and no societal interest in further imprisonment. Considering the facts of this case, the appellant squarely deserves such benefit.

12. This Court is consciously refraining from directing the appellant to furnish a bond under Section 4 of the Probation of Offenders Act. Ordinarily, probation with bond is appropriate where rehabilitation and future behavioural monitoring are necessary. However, in the present case, the appellant has already advanced in age, has lived a law-abiding life for decades after the incident, and there is nothing on record suggesting the need for supervision or conditional release. Moreover, after an inordinate lapse of over 30 years, imposing the requirement of a probation bond would be an unnecessary formality serving no corrective purpose. Admonition, as contemplated by Section 3 of the Act, is therefore, the most suitable option in the peculiar facts of this case.

13. Accordingly, while maintaining the conviction of the appellant for offences under Sections 326 and 323 IPC, the substantive

sentences awarded to him are modified to one of admonition under Section 3 of the Probation of Offenders Act, 1958.

14. In addition, the appellant is directed to deposit a fine of ₹5,000/- before the trial court within a period of four weeks from today. In case of default in payment of the fine within the stipulated period, the benefit of this order shall stand withdrawn and the original sentence shall revive.

15. Since the appellant is already on bail pursuant to suspension of sentence granted by this Court during pendency of the appeal, his bail bonds shall stand discharged upon deposit of the fine. Any fine already deposited pursuant to the trial court's judgment shall not be refunded. Upon such deposit, nothing further survives against the appellant, and the order of admonition shall operate as the final sentence.

16. The appeal is, accordingly, partly allowed to the extent indicated above.

17. Pending applications, if any, are disposed of.

18. Record be sent back to the trial court.

(FARJAND ALI),J