



2026:AHC:55172

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1633 of 1986

Yogendra Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	D.N. Pandey, Digvijai Nath Pandey
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Amrendu Singh, learned counsel for appellants and Ms. Divya Ojha, learned A.G.A. of the State.

2. This Criminal Appeal has been preferred against the judgment and order dated 12.05.1986 passed by learned V Additional Sessions Judge, Azamgarh convicting the appellants under Sections 325/34 and 323/34 I.P.C. and sentencing them to undergo imprisonment of 3 month rigorous imprisonment and one month rigorous imprisonment respectively in Sessions Trial No.113 of 1985 (State Vs. Yogendra and 2 others) P.S. Kandharapur, District Azamgarh.

3. Vide orders dated 1.12.2025 and 27.1.2026 passed by coordinate Bench of this Court as well as by this Court, this appeal stands already abated qua the appellant nos.1 and 3 namely Yogendra Singh and Gorakh Singh respectively. Now this appeal is surviving qua the **appellant no.2 namely Muni Deo**.

4. In brief the prosecution story is that on 01.08.1983 complainant Yogendranath Singh submitted a written report **Exhibit ka-1** stating that he is a resident of village Hariharpur, P.S. Kandharapur, Azamgarh and on the same day morning he was grazing his buffalo around 500 yards away from his home, then accused persons arrived and started beating the complainant with lathi and when he tried to run away the accused person started firing at him with a country made pistol. On the basis of the said report, police registered a case under Sections 307, 379 I.P.C against the three accused persons.

5. The prosecution in support of its case examined in total of five witnesses namely P.W.-1- Yogendra Nath Singh (Complainant), P.W.-2 - Nandu,

P.W.-3 - Ram Milan Pandey, P.W.-4 - Dr. S.D.P Gupta and P.W.-5- Dr. P.K Sinha.

P.W.-1 - Yogendranath supported the prosecution story stating that while his buffalo was grazing he was attacked by the accused persons with lathi and accused Yogendra Singh possessed a country made pistol too.

P.W.-2 - Nandu was a resident of Hariharpur and when the incident took place he was ploughing and at the north east the complainant was present and he witness saw the accused persons beating the complainant with lathi and mukka, and while running away took away the watch of the complainant.

P.W.3 - Ram Milan Pandey He was the Investigating Officer of the case who prepared the chik report, recorded the statements of the witnesses and prepared the site map and charge sheet.

P.W.4 - Dr. S.D.P. Gupta He was the radiologist who approved the X-ray plate and x-ray report of the injured.

P.W.-5 - Dr. P.K Sinha conducted the medical examination of the complainant Yogendranath Singh and also affirmed the x-ray report.

6. As far as the documentary evidences are concerned, the prosecution presented the written complaint as Exhibit ka-1, chik report as Exhibit ka-2, G.D as Exhibit ka-3, site plan as Exhibit ka-4, Charge sheet as Exhibit ka-5, X-ray report as Exhibit ka-6 and injury report of the complainant as Exhibit ka-7.

7. After closing the prosecution evidence, the statement of the accused appellant was recorded under Section 313 Cr.P.C., wherein the accused persons denied the allegation levelled against them and submitted that they have been falsely implicated in the present case.

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 appellant No.2 Muni Deo is the first time offender. The occurrence is of the year 1983. The appellant has faced ordeal of trial and an appeal for a long period. The appellant is old person aged above 80 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.

16. In the light of the above, as far as it relates with the conviction of the **appellant No.2 namely Muni Deo** is maintained but the sentence is modified. Instead of sending the appellant to jail, he is 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.

17. 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.

18. With the above modification, the instant criminal appeal is partly allowed. The bail bonds and sureties of the appellant are discharged from their liability.

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.

March 18, 2026
Dev

(Mrs. Vani Ranjan Agrawal,J.)