



2026:AHC:47906

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 879 of 2006

Radhey Shyam And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: J.P. Mishra, S.N. Singh
Counsel for Respondent(s)	: Rakesh Yadav, Govt. Advocate, Shrawan Kumar Tripathi

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard 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 15.2.2006 passed by Additional District and Sessions Judge/F.T.C. No.1, Basti in Sessions Trial No.152 of 2002 (State vs. Radhey Shyam and Another) whereby convicting the appellants under section 308 read with Section 34 I.P.C. and sentencing them to undergo four years R.I. and to pay a fine of Rs.1000/- each and in default in payment of fine the appellants shall undergo one month Additional R.I.. Further convicting the appellants under Section 323/34 I.P.C. for six months R.I. each.
3. Office report dated 9.2.2026 shows that as per report of learned Chief Judicial Magistrate, Basti appellant No.1 namely Radhey Shyam has surrendered and has been released on bail on furnishing bail bonds. While appellant No.2 namely Agya Ram has died on 1.8.2024.
4. In view of the above office report dated 9.2.2026 **this appeal stands abated qua the appellant No.2 namely Agya Ram.** Now the appeal survives only against appellant No.1 namely Radhey Shyam.
5. In a nutshell, the prosecution story is that the complainant Laatu Yadav R/o village Kadsari Mishra, P.S Lalganj, District- Basti had a land dispute going on between him and Radheshyam, Hridayaram, Aagyaram and Jayram. On December 25, 1999 approximately at 9:00 A.M. the accused were driving stakes (khuta) on disputed land when the complainant along with his son, grandson and daughter-in-law objected then the accused persons started assaulting them with lathis, Danda, farsa and ballam (spear).

On raising alarm, village witnesses namely Karamchand, Amarnath and others came for rescue. Thereafter, the injured were medically treated in the hospital. After treatment the complainant submitted a written report as **Exhibit Ka-1** at P.S Lalganj, based on which F.I.R marked as **Exhibit Ka-6** was registered and a G.D. entry to this effect was also made and marked as **Exhibit Ka-7**. In the said incident injured Ram Chandra, Harivansh and Chandravati sustained injuries on their person and their medical examination was done at District Hospital, Basti, which are Exhibits ka-3, Ka-5 and Ka-4 respectively.

The injured Ram Chandra (Son of complainant) sustained following injuries on his person :

- i. Incised wound 0.3 cm x 1 cm x bone deep left side of the head, 11 cm above right ear.
- ii. Bluish Contusion mark 12 cm x 10 cm behind the right eye on the right side of the head.
- iii. Incised wound 1 cm x 0.2 cm deep till muscle on the right side of the forehead.

As per medical report the injuries sustained by injured Ram Chandra, the pulse rate of said injured was found slow and was in serious condition and admitted in the hospital. The injury nos.1 and 3 were caused by sharp edged weapon and injury no.2 was caused by some blunt object and X-ray was also conducted of the injured which showed that the paraital bone of the skull was found broken as **Exhibit Ka-2**.

The injured Chandrawati (daughter-in-law) sustained the following injuries :-

- i. Abrasion with contusion mark 6 cm x 3 cm on the right side of the forehead.
- ii. Bluish Contusion mark 9 cm x 2 cm on the upper part of the right shoulder.
- iii. Bluish Contusion mark on the lower side of the neck 3 cm x 2 cm.

All the injuries stated were simple in nature and were caused by some blunt object.

The injured Haribansh (grandson of complainant) sustained the following

injuries:

- i. Abrasion mark 3 cm x 1 cm on the neck 8 cm below the left ear.
- ii. Bluish contusion mark 12 cm x 5 cm , 3 cm below the shoulders ; right side of the back.
- iii. Bluish contusion mark 13 cm x 3 cm right side of the back.
- iv. Scratch mark 2 cm x 1 cm behind the left elbow.
- v. Bluish Contusion mark 8 cm x 3 cm below injury no 2 on the right side of the back.
- vi. Lacerated wound 2.5 cm x 1.5 cm; 10 cm above the right elbow.

As per medical report the injury nos.2, 3, 5 and 6 were caused by some blunt object and injuries sustained by this injured were found four days stale.

6. The investigation was conducted by Sub-Inspector, Nityanand Singh, who recorded witnesses statements and prepared the site plan (**Ext. Ka-8**). A chargesheet **Ext Ka-9** was then submitted against the accused.

7. The prosecution has examined a total of seven witnesses namely Laatu Yadav (P.W.1), Ram Chandra (P.W.2), Chandrawati (P.W.3), Dr. Vinod Sachan (P.W.4), Dr. R.D. Khare (P.W.5), Constable Sitaram (P.W 6) and P.W.7- S.I Nityanand Singh.

P.W 1- Has supported the prosecution version stating that the accused persons started abusing on the disputed land and cause injuries to his sons, grandsons and daughter-in-law by affirming his written complaint.

P.W.2-Testified that he was sowing wheat at the time when the incident took place and stated that the accused persons under common intention started beating his wife, son and his father (complainant).

P.W.3- Has also supported the prosecution version and has stated that the accused persons had threatened them for life and assaulted them with weapons.

P.W 4- Stated that he was posted as a Radiologist in the District Hospital Basti and had conducted the X-ray of Ram Chandra; affirming the report.

P.W 5- He was posted as Medical officer in District Hopsital Basti and has affirmed the medical examination reports of the injured witnesses

Chandrawati, Haribansh and Ram Chandra.

P.W. 6- Approved that he had prepared Chik F.I.R on the basis of written complaint and has made G.D entries.

P.W.7- He was the investigating officer of the case and has recorded the statements of the witnesses, prepared site plan and submitted chargesheet against the accused persons.

8. The statements of the accused persons were taken U/s 313 of Cr.P.C. and they stated that they have been falsely implicated due to the dispute over the land. In support of their version, the defence had examined two witnesses as follows:

D.W.1- Sushil Kumar Srivastava (Pharmacist): He was posted at the Primary Health Centre, Bankati and has testified the Medical examination report of the accused Radheyshyam.

D.W.2- Manikant (Record keeper): Stated that during his statement on 25.12.1999 he was there alongwith the G.D in which Rapat No. 19 is mentioned.

9. After hearing learned counsel for both the parties, learned trial court after appreciating the evidences both oral as well as documentary, found the appellants Radhey Shyam and Agya Ram guilty of offence as described in paragraph no.2 of this judgement.

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

11. 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.

12. 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.

13. 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."

14. 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)."

15. 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.

16. However, on the issue of sentence, it is evident that the appellant No.1 Radhey Shyam is first time offender. The occurrence is of the year 1999. 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.

17. While upholding the conviction, the sentence imposed by the trial court is set aside. The appellant **No.1 Radhey Shyam** is directed to be released on probation of good conduct for a period of one year and is 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.

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

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

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

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

February 10, 2026
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(Mrs. Vani Ranjan Agrawal,J.)