

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 1688 of 2015

GULAB SINGH AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

SHRI NILESH DAVE, LEARNED COUNSEL FOR THE PETITIONERS.

*SHRI SURENDRA GUPTA, LEARNED GOVT. ADVOCATE FOR
RESPONDENT/STATE.*

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Reserved on: 24.07.2024

Delivered on: 31.07.2024

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*This appeal having been heard and reserved for orders, coming on for
pronouncement this day, the court passed the following:*

JUDGMENT

सत्यमेव जयते

Per: PREM NARAYAN SINGH

This criminal appeal is preferred under section 374 of Cr.P.C. by the appellants being aggrieved by the judgment of conviction and sentence dated 03.11.2015, passed by learned Second Additional Sessions Judge, Sendhwa, District-Barwani, in ST No.134/2014, whereby the appellants have been convicted for the offence punishable under Sections 324/34, 325/34, 323/34, 427 of IPC 1860, sentenced to

undergo 1 year, 2 years, 3 months and nil R.I with fine of Rs.2,000/-, Rs.2,000/- Rs.1,000/- Rs.1,000/- each with usual default stipulations.

2. As per the prosecution story, on 11.07.2014 at about 4.00 pm when complainant/Sakaram was sitting in his house the appellants/accused persons, who were going through the street by hurling abuses and on being enquired by the complainant appellant Gulab assaulted with sharp edged weapon (*faliya*) and caused injury on his head. When Raju came in rescue, appellant Narsingh assaulted him with blunt edge of the axe due to which he sustained injury. Further all the accused persons pelted stones over complainant and Raju due to which they sustained injury. Further allegation is that the accused persons also threatened to kill the complainant and pelted stones upon the complainant's house due to which the roof of the house got broken. Complainant Sakaram and Raju went to police Station and filed a report.

On the basis of which FIR bearing crime No.128/2014 was filed at Police Station against the accused persons for offence under Section 324, 323, 324, 294, 427, 506/34 of IPC. Both the injured persons were hospitalized for treatment. Thereafter Police started investigating the matter.

3. During investigation, spot map was prepared, statement of the witnesses were recorded. Accused persons were arrested, stones and weapons were recovered from the accused persons and their statements

were recorded. After completion of investigation, charge-sheet was filed before Judicial Magistrate First Class, Sendhwa, District Barwani. On due consideration offence under Section 326 was added against the appellants. Thereafter, the matter was committed to Court of Sessions Judge.

4. The learned trial Court framed the charges under Sections 326/34, 325/34, 323/34 and 427 of IPC, 1860 against the appellants. After due consideration, the learned trial Court has convicted the appellants for offence as mentioned in para 1 of this order. The appellants abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

5. The appellants have preferred this criminal appeal on several grounds but during the course of arguments, learned counsel for the appellants did not press this appeal on merits and has not assailed the finding part of judgment. He confined his argument on the point of sentence only. It is further submitted that the petitioners deserve some leniency as they have already suffered the ordeal of the trial since 2014 i.e. for a period of almost 10 years. It is further submitted that this petition be partly allowed and the sentence awarded to the petitioner be reduced by enhancing the fine amount.

6. In the course of arguments learned counsel for the appellants has also entreated that appellant no.1 is a government servant, hence in view

of the offence, he should be given the benefit of Section 4, 5 & 12 of the Probation of Offenders Act, 1958 so that his career of government service would not be affected. Counsel placed reliance upon the judgment passed by Hon'ble Apex Court in the case of *Rajbir vs. State of Haryana (AIR 1985 SC 1278)* so also the order passed by this Court in the case of *Narottam vs. State of M.P.* reported as 1995(1) MPWN 238 .

7. Learned Govt. Advocate has opposed the prayer. He supported the judgment and order by submitting that there is clear evidence against the appellants, therefore, he prays for dismissal of the appeals.

8. I have considered rival contentions of the parties and have perused the record.

9. Nevertheless, the appellant has not impugned the merits of conviction and confined their arguments as to sentencing of the appellant, but still this appellate Court is of the view to examine the sanctity of conviction. So for as the contentions on merits of the case raised in their appeal memo by learned counsel for the appellants is concerned, the learned trial Court has not committed any error in appreciation of evidence available on record. The procedure was well followed by the prosecution and the witnesses of prosecution have profoundly supported the prosecution case. The Court below has well considered the material available on record, hence, no infirmity is found in the impugned order of conviction passed by the Court below, and

accordingly, the same is upheld.

10. So far as the sentence part of appellant No.2-Kunwar Singh, appellant no.3-Narsingh, appellant no.4-Subash and appellant no.5-Chandabai are concerned, after the lapse of almost 10 years, the submissions made by the counsel for the appellants regarding enhancement of fine amount appear to be proper, considering the fact that the appellants are facing the trial for more than 10 years the judgment of learned trial Court is modified to the extent that the sentence of the appellants No.2 to 5 be reduced to the period of "**Till rising of the Court**" by increasing the fine amount from Rs.2000/- to Rs.5,000/- for offence under Section 324/34 from Rs.2,000/- to Rs.5,000/- and from Rs.2,000/- to Rs.10,000/- for Section 325/34 of IPC and the fine amount imposed under Sections 323/34, and 427 of IPC is hereby affirmed, which shall be paid by appellants within two months. Out of the total fine amount, Rs.10,000/- shall be paid to the injured persons namely **Sakaram and Raju** each under Section 357(3) of Cr.P.C. by the trial Court. In case of failure of payment of enhanced fine amount before the Court below as stipulated above, the appellants shall further undergo 2 months S.I. under each sections and thereafter complying of the same, they shall be released from the jail, if not required in any other case after competition of aforesaid period as directed above.

11. The appellants No.2 to 5 shall be discharged after their

depositing the aforesaid fine amount imposed upon them, if not required in any other case. Failing to deposit the fine amount or compensation amount they shall suffer three months S.I. , if already deposited, shall be adjusted.

12. Now coming to the prayer of appellant no.1 Gulab Singh, learned counsel for the appellant submitted that since appellant No.1- Gulab Singh is a government servant, he should be given the benefit of Probation of Offenders Act,1958 (hereinafter referred to as 'The Act, 1958') in this regard. On this aspect it is submitted that since no evidence has been filed to indicate any criminal antecedent against appellant no.1 Gulab Singh, he is entitled to get the benefit of Section 4, 15 of The Act, 1958. It is worth to quote hereunder Section 4, 5 and 12 of The Act, 1958:

Section 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 subsection (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 subsection (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."

Section 5. Power of Court to require released offenders to pay compensation and costs

(1) The Court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay

(a) such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the Court thinks reasonable.

(2) The amount ordered to be paid under sub-

section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A Civil Court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

Section 12 Removal of disqualification attaching to Conviction

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence."

13. On this point, this Court is also inclined to quote the excerpt of the judgment rendered by Hon'ble Apex Court in the case of *Rajbir vs. State (Supra)* which reads as under:-

"4. From the judgment of the High Court it appears that though the sentence imposed for the offence Under Section 323 of the Code was six months, the appellant and the co-accused had already suffered over one year's imprisonment. Ordinarily, in a situation as here, there would be no need to interfere. Learned counsel for the appellant has, however, pressed the appeal as the appellant is in Government service and if the conviction and sentence are maintained, he would lose his service. Both the parties to the assault were close relations. There is no material on the record to indicate that the appellant had any previous conviction. In the absence of such evidence, we treat the appellant as a first offender. He is entitled to be admitted to the benefits of probation Under Section 3 of the Probation of Offenders Act, 1958, taking into consideration the circumstances of the case, the nature of the offence and the character of the appellant. While maintaining his conviction we direct that he shall be released on probation of good conduct Under Section 4 of the Act. The Chief ^{सदर}Judicial Magistrate, Bhiwani, before whom the appellant is directed to appear within four weeks from today shall release him after due admonition. We do not consider it necessary to direct him to enter into a bond in the facts of the case.

5. We are of the view that in the peculiar facts of the case, the conviction should not affect his service. "

14. Similarly, in the case of *Narottam vs. State (Supra)* the co-ordinate Bench of this Court while granting the benefit of Section 4 of Probation of Offenders Act to the applicant has held as under:

"Reliance was placed on the case of *Rajbir vs. State of Haryana* reported in AIR 1985 SC 1278. In that case it was held that on facts when the accused was in Government service, the probation could be granted u/s.4 of the Probation of Offenders Act so that his service is not adversely effected.

The facts of this case are similar. Both the petitioners are in Government service. There is no criminal history against them. Therefore, they are entitled to be released on probation instead of being sentenced to any imprisonment as fine."

15 In view of the aforesaid principles laid down by Hon'ble Apex Court and by this Court since the appellant No.3 is a Government servant, and he has been convicted for offence under Sections 324/34, 325/34, 323/34, 427 of IPC 1860, since other co-accused persons appellant no.1-Gulab Singh is required to be punished with only with compensation amount of Rs.17,000/-, under Section 5 of The Act, 1958. It would be appropriate that this appellant no.1-Gulab Singh should be given the benefit of Section 5 & 12 of The Act, 1958, as he is in government service. Therefore, in view of the law laid down by Hon'ble Apex Court, his sentence is reduced to the period to the extent of imposing only compensation amount under Section 5 of The Act, 1958. Looking to the fact that all other appellants have been imposed with a total amount of Rs.17,000/- it will be apposite that appellant no.1-Gulab Singh should also be liable for paying the compensation amount of

Rs.17,000/- for all the offences i.e. 324/34, 325/34, 323/34, 427 of IPC.

16. In the case at hand, where no evidence has been filed to indicate any criminal antecedent against appellant no.1- Gulab Singh, he is entitled to get the benefit of Probation of Offenders Act, 1958 under the aforesaid provisions.

17. In the upshot of the aforesaid analysis of law and deliberation in entirety, it would be condign to release the appellant No.1-Gulab Singh under the provisions of Section 5 & 12 of 'The Act, 1958' by imposing compensation of Rs.17,000/- in the State Exchequer. In the result thereof, it is directed that conviction of appellant no.1-Gulab Singh will not affect his profession and future career in any manner.

18. The judgment of learned trial Court regarding disposal of the seized property stands affirmed.

19. A copy of this order be sent to the concerned trial Court for necessary compliance.

20. Pending application, if any shall be closed.

21. With the aforesaid, the present appeal stands disposed off.

Certified copy, as per rules.

sumathi

