

**Court No. - 31**

**Case :-** CRIMINAL APPEAL No. - 157 of 2005

**Appellant :-** Mahesh Kumar Shukla

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Rishad Murtaza, Rama Pati Shukla

**Counsel for Respondent :-** Govt. Advocate

and

**Case :-** CRIMINAL APPEAL No. - 153 of 2005

**Appellant :-** Kamlesh Kumar Shukla

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Rishad Murtaza, Alok Singh, Md  
Altaf, Rama Pati Shukla

**Counsel for Respondent :-** Govt. Advocate

**Hon'ble Virendra Kumar Srivastava, J.**

1. Since both the appeals have been filed against the judgment and order dated 14.1.2005 passed by Additional Sessions Judge/Fast Track Court No. 3, Pratapgarh in S.T. No. 77 of 2004, arising out of Case Crime No. 63/2003, P.S. Fatehpur, District Pratapgarh whereby the appellant Mahesh Kumar Shukla has been convicted for offence U/s 307 read with 34 I.P.C. and appellant Kamlesh Kumar Shukla has been convicted U/s 307 I.P.C. and both are sentenced for three years rigorous imprisonment and fine of Rs. 1,000/- each for the aforesaid offence both the appeals are being decided by a common judgment.

2. Heard Sri Rishad Murtaza, learned counsel for the appellants and Sri Maharaj Bux Singh, learned A.G.A. for the State and peruse the record.

3. Learned counsel for the appellants submits that though the appellants are innocent and has been falsely implicated but he is not arguing this appeal on the facts of this case. Learned counsel further

submits that as per prosecution story, the said occurrence was happened in the mid night of 3/4.8.2003 at about 12:30 a.m, wherein, it has been alleged that both the appellants Kamlesh and Mahesh hurled abuses and appellant Kamlesh fired by katta (country-made pistol) on injured Ashish Kumar (PW-2) which caused fire arm injury at the back of his right thigh. Learned counsel further submits that initially the case was registered under Section 324, 504, 506 I.P.C. but the charge sheet was filed under Section 307, 504 and 506 I.P.C. Learned counsel further submits that according to medical evidence, the alleged injury was neither grievous nor fatal but the trial Court convicted the appellants under Section 307 I.P.C. by acquitting them for offence of Section 504 and 506 I.P.C. Learned counsel further submits that if the fact alleged by the prosecution is supposed to be proved beyond reasonable doubt, only the offence under Section 324 I.P.C. could be made out. Learned counsel further submits that both the appellants are real brothers, were aged about 19 and 22 years at the time of judgment and there is no criminal antecedents. They may be provided the benefit of probation of offenders Act. Learned counsel for the appellants, in support of his submission, has placed reliance upon **Kundan Singh vs. State of Punjab (1982) 3 SCC 213** wherein in view of the facts and circumstances of that case, the conviction of the appellants was altered from Section 307 I.P.C. to Section 324 I.P.C.

4. Learned A.G.A. has vehemently opposes but did not dispute the factual submission made by learned counsel for the appellants. Learned A.G.A. further submits that in view of the nature of injury, the appellants are not entitled for any benefit of Probation of Offenders Act.

5. The prosecution case, in brief, is that PW-2 Ashish Kumar Shukla was sleeping with his father and his grandfather Ram Lakhan

Shukla (PW-1) at his Madaha in the night 3/4.08.2003. Meanwhile, appellants Kamlesh and Mahesh appeared there, at about 12:30 a.m; they hurled abuses and as the Ashish Kumar Shukla (PW-2) switched on his torch, appellant Kamlesh fired by katta (country-made pistol) on the exhortation of appellant Mahesh which hit the thigh of Ashish Kumar Shukla (PW-2), who was lying on his right side. The incident was witnessed by Ram Lakhan Shukla (PW-1), Laxmi Kant Shukla (father of PW-2) and Anand, Rakesh, Mukesh, Ramesh and Vivek (co-villagers).

6. The injured was taken for medico legal examination and Dr. R.K. Mishra (PW-3) examined the injuries of Ashish Kumar Shukla (PW-2) on 4.8.2003 at about 6:30 a.m and noted the following injuries:-

*Multiple lacerated wound each measuring 1/4 cm x 1/4 cm x depth not probed in the area of 10 cm x 5 cm x fresh bleeding present situated on the posterior surface of right thigh, 12 cm above right knee. The bleeding around the injury observe.*

7. The injury was fresh, caused by fire arms and x-ray was advised. In x-ray report, multiple radio opaque shadow of metallic density over right soft tissues of thigh in varying shape and size were found but bones were normal.

8. According to this witness (PW-3), he has prepared injury report (Ex.Ka.2) and also prepared supplementary report (Ex.Ka.3) and the said injuries were on non-vital part as well as non fatal to his life.

9. In order to prove its case, prosecution has produced Ram Lakhan Shukla (PW-1), grandfather of PW-2 and Ashish Kumar Shukla (PW-2/injured) as a witness of fact and Dr. R.K. Mishra (PW-3), S.I. Om Prakash Deep (PW-4), Dr. S.C. Mishra (PW-5), S.I. Bhuvneshwar Pandey (PW-6) are formal witnesses.

10. Ram Lakhan Shukla (PW-1) and Ashish Kumar Shukla (PW-2) have supported the prosecution story and have also stated that there was enmity between his family and the family of accused-appellants. They have also stated that the occurrence was taken at about 12:30 a.m. in the mid night of 3/4.8.2003.

11. It is also pertinent to note at this juncture that Ram Lakhan Shukla (PW-1) has admitted in his cross-examination that the place, from where appellants fired at injured Ashish, was situated 1/2-2 steps away but according to PW-3, no charring tattooing were found on the said injury and the said injury was not fatal to the life of injured.

12. Thus, it is clear that even the relationship of the appellants were inimical to the injured Ashish Kumar Shukla and appellant Kamlesh was carrying a fire arm, neither any fatal injury was caused to Ashish Kumar Shukla (PW-2) nor any further attempt was made to kill him.

13. Thus, in view of the submission advanced by learned counsel for the parties and looking into the facts and circumstances of this case, especially, the nature of injuries in the light of medico legal evidence, it cannot be said that the appellant had any intention to kill the Ashish Shukla (PW-2). Therefore, the appellants are not guilty for offence U/s 307 I.P.C. and they are guilty for only offence U/s 324 read with 34 I.P.C.

14. So far as the sentenced is concerned, admittedly both the appellants are real brother and at the time of judgment i.e. 2005 they were 19 and 22 years old. They have no criminal history.

15. Now the question arises whether the appellants may be given the benefit of Probation of Offenders Act?

16. In this regard, Section 4 of Probation of Offenders Act, 1958 is relevant. This provision deals with the powers of Court to release certain offenders on probation of good conduct which is as follows:-

*Section 4 of the Act deals with the powers of Court to release certain offenders on probation of good conduct which is 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 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."*

*18. Thus the philosophy of the Probation of Offender Act 1958 is reformative. Hon'ble Supreme Court in Ratan Lal v. State of Punjab AIR 1965 S.C. 444, while discussing the purpose and object of the Act, has observed in para no. 4, as follows:-*

*4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the condition laid down in the appropriate provision of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Ss. 3 and 4 of the Act."*

*19. Hon'ble Supreme Court in Ved Prakash Vs. State of Haryana, AIR 1981, SC 643 while discussing on the duty of Bench and Bar regarding compliance of Section 360 Code of Criminal Procedure read with section 4 of Probation of Offenders Act, 1958 has held as under:-*

*"The offence, for which conviction has been rendered, is one which will be attracted by S. 360 or at any rate the*



*Probation of offenders Act, 1958. The materials before us are imperfect because the Trial Court has been perfunctory in discharging its sentencing functions. We must emphasise that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if S. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislation which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of offenders Act."*

*20. It is well settled principle of law that provision of law of Probation of Offenders Act, 1958 is beneficial legislation which has been made by legislative for reformation of accused who is first offender as well as young person at the time of occurrence.*

17. Coming again to the facts and circumstances of this case, the said occurrence was taken place in 2003 i.e. 17 years ago and it is an admitted fact that both the appellants are real brothers and at the time of judgment i.e. in 2005, according to the trial Court they were 19 and 22 years old. Record does not show that the appellants have any criminal antecedents and the learned counsel for the appellants, has also submitted that the appellants have no criminal antecedents.

18. Considering the facts and circumstances of this case, the appellants are convicted for the offence U/s 324 read with 34 I.P.C. for rigorous imprisonment of two years and fine of Rs. 1,000/- each but in view of the peculiar facts and circumstances of this case, I am of the view that they are entitled for the benefit of Section 4 of Probation of Offenders Act, 1958.

19. They are directed to deposit the fine imposed upon them instead of sending the appellants to jail, they are given benefit of Section 4 of Probation of Offenders Act, 1958 and are directed to file two sureties bond of Rs. 20,000/- and a personal bond of same amount to the effect that they shall maintain peace and good behaviour and shall not commit any offence during the period of two years. The bonds aforesaid be filed by them within two months from the date of judgment before District Probation Officer, Pratapgarh.

20. In view of the above, the judgment and order dated 14.1.2005 passed by Additional Sessions Judge/Fast Track Court No. 3, Pratapgarh in S.T. No. 77 of 2004 is modified to the above extent and the appeals i.e. Criminal Appeal No. 157 of 2005 (Mahesh Kumar Shukla vs. State of U.P.) and Criminal Appeal No. 153 of 2005 (Kamlesh Kumar Shukla vs. State of U.P.) are **partly allowed**.

21. A copy of this judgment along with lower court record be sent to the District Judge, Pratapgarh with immediate effect for compliance.

**Order Date :- 2.12.2020**  
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