
(1981) 11 AHC CK 0089
In the Allahabad High Court
Case No : Criminal Revision No. 599 of 1981

State of U.P.

APPELLANT

Vs

D.N. Shukla and Others

RESPONDENT

Date of Decision : 27-11-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324

Uttar Pradesh First Offenders Probation Act, 1938 — Section 4

Citation : (1982) 6 ACR 15

Hon'ble Judges : V.N. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Misra, J.—This is a reference by the Sessions Judge, Farrukhabad, in Sessions Trial No. 239 of 1980, which has been disposed of by Sri D.N. Shukla, I Additional Sessions Judge, Farrukhabad, and after convicting Banwari and Barjor Singh in this case under Sections 307 and 324 of the Indian Penal Code, he has given them benefit u/s 4 of the U. P. First Offenders Probation Act and has ordered that they may be released on furnishing bonds.

2. The learned Sessions Judge of Farrukhabad on coming to know of this decision felt that it was wholly illegal because in a case u/s 307 of the Indian Penal Code, when the accused were found guilty, they could not be given benefit u/s 4 of the U. P. First Offenders Probation Act, he, therefore, made this reference to this Court to take up this matter in the revisional court jurisdiction of this Court, and to remove the injustice caused. This matter was, therefore, taken on the judicial side and has been listed as a revision.

3. In this case injuries were caused to two persons, Vinod Kumar and Moharram Khan. In respect of the injuries caused to Moharram Khan offence u/s 324 of the Indian Penal Code was found to be proved and in respect of the injuries caused to Vinod Kumar with a gun, the offence u/s 307 of the Indian Penal Code was proved. The learned Additional Sessions Judge heard the counsel for the parties

on the sentence, which should be awarded and after hearing them, he gave the convict accused Banwari and Barjor Singh benefit u/s 4 of the U. P. First Offenders Probation Act. This, according to the learned Sessions Judge, was illegal and benefit u/s 4 of the U. P. First Offenders Probation Act could not be given to these accused because they were convicted u/s 307 of the Indian Penal Code also and because in this case injuries were caused to Vinod Kumar, which constitutes an offence u/s 307 of the Indian Penal Code.

4. It is not denied by the learned Counsel for the opposite parties representing the accused that in this case benefit u/s 4 of the U. P. First Offenders Probation Act could not be given because an offence u/s 307 of the Indian Penal Code was found proved, in which injuries had been caused to the person assaulted. The question would, however, be whether the order passed by the learned Additional Sessions Judge be set aside and suitable sentence be imposed on both Banwari and Barjor Singh here or whether the case should be remanded back to the court concerned, who may hear the parties and then give suitable sentence to the accused.

5. To my mind it is a proper case in which the case should be sent back to the learned Additional Sessions Judge, who may award suitable sentence to the accused because then the accused would have a right to appeal, if necessary after obtaining a condonation of the delay in filing the appeal and that right of the accused must not be denied to them.

6. The order of the I Additional Sessions Judge Sri D.N. Shukla in this case is, therefore, set aside and the case is remanded back to the Additional Sessions Judge concerned, who will hear the parties on the sentence to be awarded under Sections 307 and 324 of the Indian Penal Code to the accused and dispose of the case.

7. The revision is allowed accordingly.