



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. _____ OF 2026
(Arising out of SLP (Crl) Nos.6984-6985 of 2026)

Umesh Chand

...Appellant(s)

Versus

State of U.P & Ors.

...Respondent(s)

ORDER

Leave granted.

2. We have before us a case, doomed from its inception insofar as justice delivery to the victim is concerned, consequent to a brutal attack with very grievous injuries, the aftermath of which is even now suffered by the injured victim. The diversion from the essential tenets of criminal law began with the framing of a charge under Section 308 of the Indian Penal Code, 1860¹. The Additional Sessions Judge, Bahraich, who carried out the trial, was gracious to the accused in having punished them with a sentence of five years rigorous imprisonment and a fine of Rs.20,000/- with a default

¹ In short 'IPC'

sentence of one year of simple imprisonment. The High Court was very indulgent insofar as releasing the accused under Section 4 of the Probation of Offenders Act, 1958². The present appeal is filed by the informant, the brother of the victim against the order of the High Court.

3. We heard Sri L.B. Rai, learned Counsel for the appellant, Sri Namit Saxena, learned AoR for the State and Sri Aishvary Vikram, learned AoR for the 2nd and 3rd respondents, who were the accused before the Trial Court.

4. The allegation, as can be noticed from the narration of PW1, the first informant, was that the 1st accused was running a shop, near which PW1 also opened a similar shop, which angered the accused. On the fateful day, the victim, the brother of PW1 was engaged in chores and PW1, along with his wife was proceeding to the shop when they saw the victim reach in front of A1's shop. Then A1 and A2 together, suddenly attacked him mercilessly. A1 was holding a cutting weapon and A2 had a gun, both of which were used mercilessly on the victim who fainted due to the injuries. The

² Hereinafter referred to as 'the PoO Act'

victim was taken to the Bahraich Hospital immediately and then PW1 reached the police station to give the complaint.

5. The injuries are grievous and have been specifically noticed by the High Court in the impugned judgment in paragraph 9; those in the Injury Report, and in paragraph 10; those in the Discharge Summary. There are cut injuries and gunshot wounds which, on a plain look, would fall within the definition of 'grievous hurt' under Section 320 and not 'hurt' under Section 319 of the IPC. Section 308 hence ought not to have been charged, and the offence would clearly fall under Section 307 of the IPC, especially since on facts, none of the exceptions under Section 300 applies to the crime proper. It is not a case of grave and sudden provocation or one of private defence or a sudden fight and neither are the perpetrators public servants nor is the defence of consent raised. Be that as it may, the charge was under Section 308 of the IPC, and the trial was proceeded with and there is little we can do at this stage.

6. We are, in this case, especially concerned with the application of Section 4 of the PoO Act. The High Court having noticed the grievous injuries observed that the evidence of

an injured witness should be given due weightage and should be relied upon; since his presence cannot be doubted, unless there are major contradictions and discrepancies and noticed a host of decisions to buttress this position. Then, it was recorded that the learned Counsel for the appellants, at the outset, conceded that the conviction is not challenged and he only seeks application of the PoO Act, since the appellants have not been convicted previously for any offence. The learned Judge then went; according to us, went overboard on an exposition of the law with respect to the PoO Act and its application, as also Sections 360 and 361 of the Code of Criminal Procedure, 1973. The impugned order quotes copiously from the cited decisions and abruptly finds application of Section 4 of the PoO Act on the finding that the incident occurred in 2003 and the appellants have suffered in the matter for the last 22 years, as also the absence of criminal antecedents during these years, as informed. While the conviction was affirmed, the sentence was modified applying Section 4 of the PoO Act directing personal bond of Rs.20,000/- each and an undertaking to

maintain peace and good behaviour during a period of one year.

7. Learned Counsel for the appellants pointed out that the accused are habitual offenders, involved in many criminal cases during the trial and the appeal. Even if the offence charged in the instant crime was the first offence, there is no application of Section 4 of the PoO Act. Learned AoR for the State also alertly points out that the High Court had not taken the report of the Probation Officer, and in any event, the State had filed a counter-affidavit in the appeal, specifically, bringing out the criminal antecedents as also pointing out that the accused were recommended to be detained as a preventive measure.

8. Learned Counsel for the accused, the 2nd and 3rd respondents, would however point out that the accused have always been on bail and they are now aged above 60 years and have a family to look after. Learned Counsel submits that in any event if the impugned judgment is set aside, the appeal must be considered afresh. Learned Counsel submits that a remand may be made and the accused allowed to be continued on bail. It is also pointed out that the victim is still

alive and the appeal filed by the first informant is not maintainable.

9. We are informed that the accused had not undergone any sentence and was not in custody even for a single day. We had called for the report of the Probation Officer, which is placed before us. The criminal antecedents of the accused are listed by the Probation Officer as below: -

‘Criminal Antecedents of Accused Onkar Nath:

- i. Case Crime No. 0382/2022, under Sections 147, 148, 323, 452, 504, 506 IPC & Section 7 of CLA; Charge Sheet No. A-34 dated 23.01.2021; Status: Pending trial before the Court.*
- ii. Case Crime No. 0383/2022, under Sections 147, 323, 352, 504, 506 IPC; Charge Sheet No. A-319 dated 18.12.2022; Status: Pending trial before the Court.*
- iii. Case Crime No. 6028/2007, under Sections 147, 352, 379, 407, 452, 504, 506 IPC and Section 3(1)(x) of the SC/ST ACT.*
- iv. Case Crime No.58/2003, under Section 308 IPC; Charge Sheet No.25/2003*
- v. Case Crime No.651/2010, under Sections 323, 427, 504, 506 IPC; Charge Sheet No.21 dated 26.07.2010.*

Criminal Antecedents of Accused Shiv Kumar:

- i. Case Crime No. 112/2021, under Sections 147, 504 IPC; Charge Sheet No. 106 dated 18.07.2021; Status: Pending trial before the Court.*
- ii. Case Crime No. 0382/2022, under Sections 147, 148, 323, 452, 504, 506 IPC & Section 7 of CLA;*

Charge Sheet No. A-34 dated 23.01.2021; Status: Pending trial before the Court.

- iii. Case Crime No. 0383/2022, under Sections 147, 323, 352, 504, 506 IPC; Charge Sheet No. A-319 dated 18.12.2022; Status: Pending trial before the Court.*
- iv. Case Crime No. 6028/2007, under Sections 147, 352, 379, 407, 452, 504, 506 IPC and Section 3(1)(x) of the SC/ST ACT*
- v. Case Crime No. 58/2003, under Section 308 IPC; Charge Sheet No. 25/2003*
- vi. Case Crime No. 651/2010, under Sections 323, 427, 504, 506 IPC; Charge Sheet No. 21 dated 26.07.2010.'*

10. More disturbing is the current status of the injured victim, which has also been reported by the Probation Officer in the following manner: -

- i. The thumb of his right hand was found almost completely severed from the palm, hanging merely attached by a flap of skin. Deep, traumatic injury scars were observed on the back of his right palm.*
- ii. Prominent deep injury scars were observed on the back of the left palm as well as the left wrist.*
- iii. Deep, lengthwise injury scars were present on the lower part of the abdomen. In the central lower abdomen, a large protrusion/outgrowth of flesh and hanging lump was found, along with another large lump on the right side of the abdomen. The victim experiences acute pain during movement, sitting, and standing, and is compelled to continuously wear a broad lumbar support belt.*
- iv. Deep, grave injury marks were observed on the left side of the back of his neck.*
- v. Distinct injury marks were present on the right shoulder, alongside sharp cut marks near the*

outer edge of the right eye and on the right ear.'

11. Obviously, the incident has left not only its scars on the victim but has left him, in the words of the Probation Officer, '*visibly weak, slow, sluggish and drowsy*'. The victim also '*walks with great difficulty, suffers continuous pain, and has lost substantial functionality of both upper limbs, right hand being disabled*'. The victim's family consists of six daughters of which four are married and two unmarried. The victim's medical treatment is continuing at Max Hospital, Lucknow. These aspects more than explain why the victim is not before us, and the first informant, his brother is before us seeking justice to the victim.

12. We cannot but, with an amount of consternation, notice the casual manner in which both the Trial Court and the High Court considered the issue from the stage of taking cognizance till the release of the accused on application of the PoO Act.

13. The accused have gone scot-free without suffering a single day of imprisonment, especially by reason of the misplaced sympathy based on grandiose expositions of law;

totally inapplicable to the facts of the case. Section 4 of the PoO Act does not permit its invocation, when it is found that the accused is a first offender. We also are unable to comprehend as to why the High Court observed that the accused were suffering for twenty-two years. True, protracted trial is agonizing but here, the accused were on bail and merrily indulging in criminal activities. The victim, on the other hand, in the ensuing years was, day-in and day-out suffering the debilitating effects of the attack. The circumstances of the case including the nature of the offence and the character of the offender should be the reigning factor in deciding as to whether it is expedient to release the accused on the premise of good conduct; which in the facts of this case is lacking. The brutality of the crime and the grievous nature of the injuries sustained by the victim, ought to have persuaded the Court to draw an adverse inference on the aspect of 'nature of offence'.

14. Sub-section (2) of the PoO Act also requires that the Court shall take into consideration the report of the Probation Officer, if any, before making an order under sub-section (1). Even if the report of the Probation Officer was not before it, it

is pointed out in the counter-affidavit filed on behalf of the 1st respondent, through the C.O, Bahraich, Uttar Pradesh, that the prosecuting agency had filed a counter-affidavit on 14.07.2017, specifically bringing to the notice of the Court the criminal antecedents of the accused. An application made by the Superintendent of Police dated 20.12.2023 to the District Magistrate to take action against the accused, was also placed on record; a preventive detention measure. There was a proposal to take action under the Uttar Pradesh Control of Goondas Act, 1970, against the accused. The High Court, despite the overwhelming adverse report on the 'character of the offenders' and giving short shrift to the 'nature of the offence', released the accused on good conduct. There was nothing commending the Court to so release the accused, since the conduct, over the years, of the accused was anything other than 'good'.

15. In the facts and circumstances of the case, we set aside the impugned order of the High Court. We direct that the accused, the 2nd and 3rd respondents herein, shall surrender within a period of two weeks of this order, failing which, the Additional Sessions Court, Bahraich, which conducted the

trial and convicted and sentenced the accused shall take immediate proceedings to apprehend the accused.

16. The Criminal Appeals shall stand restored before the High Court of Judicature at Allahabad, Lucknow. We request the High Court to take up the appeal only after ensuring that the accused are taken into custody and then only the appeal be heard.

17. The appeals stand allowed with the directions hereinabove.

18. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
OCTOBER 07, 2026.**