

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CRA 515 OF 2007

AHOK CHAKRABORTY @ KHOKAN & ANR

VS

STATE OF WEST BENGAL

For the Appellants : Mr. Dipanjan Chatterjee, Adv.

For the State : Mr. Kalyan Kumar Bhattacharjee, Adv.
Mr. Kakan Das, Adv.
Ms: Rimpa Adhikari, Adv

For the State : Mr. Z.N. Khan, Adv.
Mr. Asif Dewan, Adv.

Last Heard on : 24.04.2025

Judgement on : 18.06.2025

CHAITALI CHATTERJEE DAS, J.:-

1. The instant criminal appeal has been filed against the judgement and order dated 21st August, 2007 passed by the Additional District and Session Judge, Fast Track, 3rd court, Diamond Harbour, 24 Paragana's South in Session Trial number 6(5) 04 where present appellants were convicted under Section 325 of the Indian Penal Code and suffered an order of sentence of imprisonment for three years.

The brief resume of the case

- 2.** A complaint was lodged by Rajkumar Haldar before the officer in charge, Raidighi Police Station, Companirtheek ,24 Parganas South, against the present appellants , alleging an attack with deadly weapons on his wife and son , Sujala and son Sabyasachi respectively and they sustained head injury ,fractured hand injury and was hospitalised for considerable days for the purpose of surgery and treatment . The neighbours recovered them with bleeding injuries and admitted at Raidighi Hospital. Later they were shifted because of the serious nature of injury, to Diamond Harbour Sub-Divisional Hospital. It was further alleged that there was political animosity as Shujala was a worker of S. U.C.I party and contested as a candidate during last Gram Panchayet election and she was often harassed by the appellant .She lodged a diary before the police station prior to the date of incident over an issue of cutting of a tree in their dwelling house and out of grudge she was attacked brutally by the present appellants with a motive to kill her and her son.
- 3.** On the basis of this complaint, Raidighi P. S case number. 76 dated 31.7. 03 under Section 325/326/307 I.P.C started and after completion of the investigation, the charge sheet was submitted against the present appellants under Section 325/326/308 I.P.C. After commitment, the case was transferred before the court of Additional District and Session Judge, Fast Track , 3rd Court, Diamond Harbour and the charge was framed against the present Appellants under Section 325/326 /307 of the Indian penal code

and the same was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced and after taking evidence of 14 prosecution witnesses and the exhibited materials, the learned Session Judge passed the order of convictions against the present appellant. Being aggrieved, thereby the instant appeal has been filed.

- 4.** The Learned advocate appearing on behalf of the Appellants argued that the prosecution has miserably failed to establish the charges under section 326 and 307 I.P.C and therefore the Learned Court had to pass the order of conviction only under section 325 I.P.C . It is the case of the defence that the victims sustained injuries as they fell down from a Sanko situated near the house of the Appellants when they were running out after assaulting the Appellant No1 ,as a result he had to be treated by the same doctor who also referred the Appellant No.1 and said fact has been admitted by him while adducing evidence as P.W. 5 The Learned Court failed to consider that prior to the date of incident as alleged there was a dispute regarding cutting of tree between Sujala Halder and the Appellant over which the Appellant No1 sustained bleeding injuries in his wrist and over that incident a complaint was pending as lodged by the Appellant No.1. The learned advocate, appearing on behalf of the appellant further argued that the prosecution has failed miserably to establish the charges under Section 326 and 307 of the Indian Penal Code and therefore the learned Court passed the order of conviction only under Section 325 IPC. It is further argued that the victims sustained injuries while they were running away after assaulting the accused Ashok Chakraborty. The learned trial court failed to consider

that prior to the alleged date of incident, one complaint was lodged by the wife of the de-facto complainant against the appellant No.1 regarding cutting of tree within their premises .No offending weapon was recovered, no sketch map was prepared to ascertain the exact place of occurrence .No witness were cited from the locality, no blood stained earth or weapon or wearing apparel was recovered or sent before the forensic expert, no seizure list was filed. The injured did not lodge the complaint and the husband of the injured who lodged the complaint was informed about the incident over telephone by Tapan Shikari who heard the incident from Sujala Halder, and then went to the Police Station along with this Tapan Shikari who is the scribe of the complaint.

- 5.** It is further submitted that on the date of incident at morning hour, the victim and her son were damaging the fencing situated on the Eastern Side of the house of the accused and on protest by the appellant No1 she assaulted him and she had to obtain an order of bail in connection with the said case. Therefore, only to save themselves from the complaint lodged by the wife of the appellant No.1, this complaint was lodged falsely implicating the present appellants.
- 6.** The Prosecution on the other hand raised an objection and submits that the contention of the appellant is not correct and the prosecution has been able to prove the charges beyond all reasonable doubt and the order of conviction as passed by the learned session court requires no interference. It is further submitted that the complaint was lodged by the husband of the victim/ wife before the Officer-in-charge Raidighi P.S against the present appellant alleging an attack on his wife Sujata Halder and their son aged

about 12 years with Chopper and sharp weapons with a motive to kill them as a result the wife and son sustained fractured injuries and also an injury on head. They had to admit at Raidighi Hospital and from there referred to Diamond Harbour Sub divisional Hospital and it was specifically stated they were fighting for their life at Diamond Harbour Hospital when the complaint was lodged. The motive for such attack was political rivalry as his wife was a worker of S.U.C.I Party and she contested as a candidate from her village in the last election of Gram Panchayat. Furthermore a complaint was lodged by his wife against the appellant over the issue of cutting tree in their dwelling house on the last day that is on 30th July 2003 and out of grudge on the next morning they attacked on them. Accordingly prayer for dismissal of this Appeal.

Heard the submission of the Learned Advocates

7. The prosecution case is launched on the basis of a written complaint filed by Rajkumar Halder, the husband of the victim/injured, alleging an incident of an assault on her and her son on July 31, 03 at about 7 A.M. when they attacked the house of the de-facto, complainant with chopper and other sharp weapon. The defence has tried to make out a case of animosity on account of different political ideology between the victim, wife and the Appellant No. 1. Furthermore on 30th July, 2003, a dispute cropped up between them when the appellants cut a tree in the dwelling house of the de-facto complainant and she lodged a diary at the police station against them and out of grudge on the next morning, they attacked brutally on the victims.

8. On the basis of the complaint the Raidighi P.S, case no 76 dated 31st July, 2003 started under Section 325, 326 and 308 IPC and after completion of investigation the charge-sheet was submitted. The matter was committed before the Sessions Court being exclusively triable by the Learned Session Judge where the prosecution adduced 11 witnesses and in order prove the charges framed under Section 325/326 and 307 IPC by the learned Court against the accused persons. In this case wife of the de-facto complainant being injured adduced evidence as P.W.6 and specifically stated how she was assaulted by means of Lathi on her head, by accused Khokan Chakraborty as a result she sustained bleeding injury on her head. She also deposed that her son Sabhyasachi came rushed to her to rescue and was also was also assaulted on the head by a Kaste thrown by Reena Chakraborty and Khokan Chakraborty assaulted with Lathi on his head for which Sabyasachi fell down on the ground. They had to remain admitted in the hospital till 3rd of August 2003 and was referred to SSKM Hospital for better treatment. Moreover said son was admitted at PG Hospital and subsequently on 6th August, 2003 she was admitted to Heart Clinic, Saltlake where she was treated till 16th of August, 2003 after that she was admitted to Raidighi Hospital for surgery .She also deposed that her son had to remain admitted for about 15 days as the injury was very severe . Considering The Learned Court passed the order of conviction punishable under Section 325 IPC against the present appellants .Out of three accused instead of Section 326/307 IPC.

9. After hearing the argument as advanced by the learned counsels of both the parties, on perusal of the exhibited documents and after assessing the

evidences of the prosecution witnesses the moot question now falls for consideration is as to whether the learned court was right in passing the order of conviction against the Appellants and or Whether the prosecution was able to prove the charges beyond all reasonable doubts.

10. P.W. 4 deposed that the incident occurred on 1st Sraban at morning hours when she was inside the house. She saw her bhasur Sailen Baidya and Malati Baidya rushed to the road side where the incident occurred after that she went to the place and found Sujala Halder and her son Sabyasachi Halder lying with bleeding injuries on their head and broken hand. She admitted that she did not state to the I.O that her sister-in-law and vasur narrated her that Ashoke Chakraborty and his wife assaulted Sujala Halder and her son.

11. P.W. 5 is Dr. Pratap Guhathakurata who was attached to Raidighi Rural Hospital on 31.07.2003 when he examined Smt. Sujala Halder at the emergency with a history of assault by Ashok Chakraborty and Rina Chakraborty wife of Ashok Chakraborty. On examination of the patient he found injuries as follows:

- i) On the upper part of the right parietal area, lacerated injury of size $\frac{1}{4}$ inch $\frac{1}{2}$ inch into $\frac{1}{4}$ inches.
- ii) On the upper aspect of left side of occipital bone of size $\frac{1}{2}$ inch into $\frac{1}{4}$ inch into $\frac{1}{4}$ lacerated injury.
- iii) She also got injured on the lower part of the left forearm with pain, tenderness and swelling of size $\frac{1}{4}$ inch into $\frac{1}{4}$ inch.
- iv) Inflicted on right forearm also. Pain and tenderness present at the side of injury.

12. He further deposed that patient was at the Rural Hospital and was referred to S.D. Hospital Diamond Harbour for further treatment. He also examined Sabyasachi Halder and Rajkumar Halder that is the de-facto complainant aged about 10 years on the same day along with Sujala Halder. The patient also complained that she was assaulted by Ashok Chakraborty son of Anukul Chakraborty and Rina Chakraborty wife of Ashok Chakraborty. On examination of the patient he found following injuries.

- i) Got injured on the vertex with hard blunt instrument (lathi) as per statement of the patient.
- ii) Size of injury is $\frac{1}{4}$ inch into $\frac{1}{4}$ inch, superficial lacerated injury.
- iii) He also inflicted on left elbow with hard blunt instrument (lathi) as per statement of the patient. Pain ,tenderness and swelling were present at the sides of injury. No abrasion seen at elbow. This patient was also referred to Diamond Harbour S.D. Hospital for further advice.

13. In his cross-examination he deposed that there is no note in the injury reports that injured made complaint regarding the name of the assailants to him at the time of their medical treatment. There is no reflection on both the report that who actually assaulted the injured with the nature of weapon or who assaulted the injured on which parts of the body. He also admitted that there is no note in both injury report that the patient complained about the assault with lathi. He did not inform the police prior to giving medical treatment .In his cross-examination also he said that “This type of injury may not be happened in respect of both injured if two persons at the same time assault with the help of blunt weapons/Lahti. Such type of injury

might be caused if a person fell down from a broken the Sanko. From his cross-examination it can be seen that on 31st July, 2003 he also referred Ashok Chakraborty to Diamond Harbour Hospital for better treatment with the injury of left wrist.

- 14.** P.W. 9 DR. Rajat Kanti Saha who was posted at Diamond Harbour S.D. Hospital on 31st July, 2003 as Medical Officer, examined Sujala Halder on that day referred from Raidighi Rural Hospital with a history of assault as stated by the E.M.O of S.D. Hospital at Diamond Harbour. On examination he found that patient was conscious and there was deformity on her left four-arm and her right four-arm. He advised x-ray examination and also C.T. scan of brain and found fractured injury of both bones of left forearm. Further found there was fracture at the base of proximal phalanx of right index finger. He also produce the bed head tickets along with the treatment sheet prepared by him, and prove the x-ray report prepared by DR. P. Maity Radiologist of S.D. Hospital and the referral card to show that Sujala Halder was transferred from Raidighi Hospital on 31.07.2003. He further deposed that on 3rd August, 2003 he referred one patient named Sabyasachi Halder aged about 10 years who was also referred from Raidighi Rural Hospital to Diamond Harbour Hospital on 31st July, 2003. The patient was referred to Emergency/ Neurosurgery O.P.D of Calcutta National Medical College & Hospital for active management. The said patient had a history of physical assault and had headache and persistent vomiting. The said C.T. scan showed extra dural and intra cerebral hematoma over right parietal area of brain and fracture of right parietal bone.

15. In his cross-examination he said that there is no note in the referral card that patient Sujala Halder was treated at S.D. Hospital, Diamond Harbour as outdoor patient or indoor patient. There is no note in the referral card that patient Sujala Halder was treated at S.D Hospital Diamond Harbour as outdoor patient or indoor patient. Another DR. deposed as P.W. 10 DR. Apurba Kumar Roy who was attached to Das's Nursing Home, Newtown, Diamond Harbour. On 3rd August, 2003 he also attached as consultant Radiologist. He deposed that C.T scan of brain of Sabyasachi Halder as referred by DR. R.K. Saha. The patient had clinical history of head injury, headache and vomiting. The impression was suggestive of acute epidural haematoma over parietal lobe convexity, intra cerebral haematoma at parietal lobe and fracture at parietal bone on right side. According to him such type of injury might be caused if hit on the head of a person by a sharp cutting weapons.

16. He also did C.T. Scan of Sabyasachi Halder on 3rd August, 2008 with a clinical history and found evidence of mile scalp haematoma over parietal bone superiorly and posteriorly in midline. According to him such type of injury also might be caused if hit on the head of person by a piece of wood. In his cross-examination he said that in his note nothing was mentioned that such type of injury might be caused if a person is hit by a sharp cutting weapon and wooden piece on their head.

17. In this case the de-facto complainant was not present at the time of incident and whatever he stated in his F.I.R or in the statement before the Court was hearsay firstly from Tapan Sikari his friend then from his wife. Tapan Sikari was not ocular witness and he also heard from Sailen Baidya

about a scuffling between Ashok Chakraborty and the family members of P.W. 1. He heard that wife of de-facto complainant and her son were brought to Raidighi Hospital and accordingly found the injured and collected telephone and informed the de-facto complainant.

18. Sailen Baidya deposed as P.W. 11 according to his testimony he was not present when the incident occurred and on hearing shouting he rushed to the pathway and found P.W. 6 and P.W. 7 lying on the path way in injured condition. He shifted them to the hospital by a van rickshaw. He never received any information as to how or why they sustained injuries on their person. In his cross-examination he denied to have been interrogated by the I.O. but this witness was not declared as hostile witness.

19. The son of the de- facto complainant Sabyasachi who was also injured adduced evidence as P.W.7. According to his evidence on 31st July, 2003 at about 7 A.M. he was reading at home and his mother was doing domestic work when accused Khokan Chakraborty, Rina Chakraborty, Anukul Chakraborty, and Arun Chakraborty came to their house and charged his mother as to why she lodged G.D. Entry against them. He said that Khokan Chakraborty assaulted his mother with a Lathi on her hands and head, when he chase him this P.W. 7 was assaulted by Khokan Chakraborty with Lathi on his waist as a result he fell down on the ground and then Rina Chakraborty assaulted him with Kastei on his head. He lost sense at the spot. Prasenjit Gharami ,Biswajit Sardar and Sailen Baidya rushed to the spot according to these witnesses Prasenjit took away lathi from Ashok Chakraborty alias Khokon Chakraborty . Biswajit Sardar brought them to Raidighi Hospital for treatment and he regained sense at Raidighi Hospital.

He said that he stated before the I.O. that on the said fateful day his mother was working in the Courtyard and the accused persons came to their house, charged her regarding lodging of G.D entry which continued half an hour.

20. The prosecution has adduced evidence of some of the neighbours who also were present and helped the injured to be admitted at the hospital and one of such witness is Prasenjit Gharami who deposed as P.W. 12 being a co-villager who knew both the family members. According to him incident occurred at about 7.30 to 8.00 A.M and on hearing hue and cry he rushed near the house of accused Ashok Chakraborty and found him assaulting P.W.6 that is Sujata Halder with a Lathi and he took the Lathi from Ashok Chakraborty. He also found Sabyasachi Halder lying injured condition and he sustained bleeding injury on his person. The testimony of this witness fully corroborates the testimony of the injured Sabyasachi who took his name and that he took the lathi from the assailant Ashoke alias Khokon Chakraborty.

21. Biswajit Sardar deposed as P.W. 13 who said that after hearing a sound of gondogol (hue and cry) he rushed to the spot and found the injured on bleeding injuries on their person. He shifted both the injured to Raidighi Hospital for medical treatment. He said that police could not interrogated P.W.s 6 and 7 as they were unconscious and regained their sense at about 4 P.M. at S.D. Hospital. In this case the I.O adduced evidence as P.W. 14. On 31st July, 2003, he was attached to Raidighi police station, as S.I. and he visited the place of occurrence prepared a rough sketch map along with index of the P.O. examined different witnesses, collected injury report and

bed head ticket of the patient and arrested accused Ashoke Chakraborty. He submitted the charge-sheet under Section 325/326/308/109 IPC.

22. Admittedly, he never met the injured from 31st July, 2003 to 28th August, 2003 but recorded the statement of other witnesses. He failed to give explanation as to why he recorded the statement of injured person after a gap of 28 days. In this case the defence has tried to make out a case of sustaining injuries by P.W.6 while she was cutting trees in front of the house of Ashoke Chakraborty with the help of Kaste standing on the Sanko. The said fact has been denied by the injured P.W. 6 and P.W. 7., P.W. 12 denied of existence of any Sanko at the side of the house of Ashoke Chakraborty but admitted about a fence in that position .The I.O. said in his evidence that witness Subhadra Mudi that is P.W. 3 in her statement before the I.O stated that on the relevant date and time Smt. Sujala Halder was cutting tree in front of the house of Ashoke Chakraborty with the help of Kaste standing on the sanko and she fell down from the sanko.

23. Therefore from the above it can be gathered that the defence tried to make out a case that both the injured sustained injuries as they fell from the Sanko while Sujala Halder the mother was cutting trees but in order to substantiate their case excepting the suggestions given to the injured no other cogent materials can be found to be relied upon specially when those suggestions were denied by the witnesses. P.W 3 Subhadra Mudi in her examination in chief specifically stated that she while proceeding to collect water from the Tube well situated near the house of Ashoke Chakraborty saw the accused persons assaulting the victims /injured. So this revelation completely washed away the defence of the Accused person as discussed

above. The wife of De-facto complainant, Sujala Halder P.W. 6 specifically said that Ashok Chakraborty attempted to assault her with garden lathi on her head as she tried to save herself with hands and sustained injury on both her hands; as a result both of her hands were broken. Going through the evidence of DR. Rajat Kanti Saha as P.W. 9 it can be seen that on 31st July, 2003 the patient Sujala Halder was referred from Raidighi Rural Hospital with a history of assault. He suspected fractured could be there as found deformity on her left forearm and from the x-ray report found the fracture of bones of left forearm and also fractured at the base of Phalanx of right index finger. Similarly Sabyasachi Halder was also referred from Raidighi Rural Hospital to Diamond Harbour Hospital on the same day when he referred the patient to Calcutta National Medical College and Hospital to emergency a Neuro Surgery, OPD Department.

- 24.** The record in patient to Diamond Harbour Hospital which is marked as Exhibit 4 reflects the above fractured injury and history of assault however no name of the accused found mentioned from the evidence of P.W.10 Dr. Apurba Kumar Roy who did the C.T. Scan of Sabyasachi Halder and Sujala Halder on 3rd August, 2003, which was prepared under his supervision and marked with Exhibit 8. The C.T. scan report shows the clinical history of head injury assault with evidence of mild scalp haematoma over parietal bones, superiorly and posteriorly in midline. DR. Pradip Guhathakurata who adduced evidence as P.W.5 and examined the injured on 31st July, 2003 as Medical Officer of Raidighi Rural Hospital deposed that the patient was admitted with a complaint that she was assaulted by Ashoke Chakraborty, Rina Chakraborty. However in his cross-examination he said that the injury

contains no note regarding the name of the assailant at the time of their medical treatment.

25. On perusal of the injury report of Raidighi Medical Hospital exhibit 2, name of Ashoke Chakraborty and Rina Chakraborty as assailant are found mentioned there in. The nature of injuries and the medical report combined with the incident on the previous day between Ashoke Chakraborty and the wife of de-facto complainant, the existing inimical relationship, there is no room to doubt that the Sujala Halder sustained injuries on the relevant day and time due to the assault inflicted on her. So far the son of the de-facto is concerned the specific testimony of P.W 3 has fully corroborated the version of the injured as to how he was assaulted by the accused persons/ appellants. Sufficient corroborations can be found from the testimony of P.W.12 who can be said to be another ocular witness who on hearing hue and cry rushed near the house of Ashoke Chakraborty and found him assaulting P.W. 6 that is wife of the de-facto complainant with the lathi and he took the lathi from Ashoke Chakraborty. However he did not see the assault inflicted on Sabyasachi Halder as he was lying there on injured condition. The version of P.W. 13 also helps the chain to complete as he deposed when he found both lying with bleeding injuries and he shifted them to Raidighi Hospital. Both the witnesses are neighbour to the de-facto complainant as well as the accused persons. The version of Sabyasachi Halder P.W. 7 that the presence of Prasenjit Gharami, Biwajit Sarkar and Sailen Baidya are corroborated as this witness also said that Prasenjit took away Lathi from Ashok Chakraborty. It is a fact both the injured said that because of such assault they fell down on the ground and

the possibility cannot be ruled out that may be the bleeding injuries sustained on their heads were because of that, however the cause of such falling down was due to the assault made by the accused Ashok Chakraborty and Rina Chakraborty which has been sufficiently established. It is argued that since an inimical relationship was existing between the parties prior to the date of the alleged incident there was another incident as on account of which Sujala Halder had to lodge a complaint against the present appellant No.1 they have been falsely implicated in this case but the said defence cannot find any legs to stand upon on the basis of the injury report dated 28th August, 2003. Enmity is a double edged weapon and because of enmity false cases are made on the other hand enmity makes relation bitter which may even go up to any serious offences like murder. The germane of this case lies in that.

- 26.** In the cross-examination under Section 313 of Cr.Pc the appellant No. 2 specifically stated that Sujala Halder came with weapon and strike her husband at left hand for that he sustained injury and treated himself at Raidighi Hospital and on the day Sujala got injured after falling from Sanko (Bamboo made narrow bridge) . Appellant no.1 also stated specifically that he is innocent and the F.I.R was lodged falsely in his name. On the date of occurrence Sujala came with weapon and attacked on his left hand and due to that he got injured and was treated at Raidighi Hospital but Sabyasachi got injured after falling from Sanko. In order to visualise the exact location of Sanko if the evidence of P.W. 1 can be seen, the existence of a Sanko at a distance of two hands to the eastern side which runs to South to North can be seen. He also said about a broken fencing at the eastern side of the house

of the accused. P.W.5 Doctor said that the nature of injury may not happen in respect of both the injured if two persons hit at a time with the help of blunt weapons/ lathi. Such type of injury might be caused if a person falls down from broken Sanko.

27. The essential ingredients to attract the offence under section 325 I.P.C are accused caused voluntary hurt and the hurt was grievous within the meaning of section 320 I.P.C. Section 320 I.P.C will be attracted in cases of hurt as follows;

320. Grievous hurt.- The following kinds of hurt only are designated as “grievous”:

First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

28. In the instant case from the nature of injury inflicted upon both the injured was fractured injury and also the son of P.W. 1 sustained severe head injury which could have been fatal. The learned court observed that it was proved clearly that both the Appellant caused the grievous injury to the victim but no sufficient materials to show that they used any dangerous weapon to cause injury to the victims and therefore passed the order of

conviction under section 325 I.P.C instead of section 326 I.P.C and this order has not been challenged by the prosecution .This Court further concurs with the observation of the Learned Session Court . Therefore this court finds no reason to interfere with the judgement and order of conviction.

29. Now this court finds that the incident occurred in the year 2003 that is long before 12 years and the appellant number 1 was behind the bar some time . Furthermore there is no history of any previous complaint against the appellant therefore this court is of the view so far the sentence part is concerned that requires modification and the probationer of offenders Act if can be applied to be looked into.

30. Section 3 & 4 of the Probation of Offenders 1958 are extracted hereunder; power of court to release certain offenders after admonition ;-'where any person is found guilty of having committed an offence punishable under Section 379/380 or Section 381 or Section 404 or Section 420 of the IPC or any offence punishable with imprisonment for not more than two years or with fine or with both ,under the Indian Penal Court or any other ,or any other law, and no previous conviction is proved against him 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 so to do ,then notwithstanding anything contained in any other law for the time being in force ,the court may instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

31. In a decision reported in¹ (State of Maharashtra vs Jagmohan Singh Kuldip Singh Anand) The Hon'ble Apex Court extended the benefit of the Probation of Offenders Act ,1958 and observed:-

“The learned counsel appearing for the accused submitted that the incident is of the year 1990 .The parties are educated and neighbours. The learned counsel ,therefore prayed that the benefit of the Probation of Offender Act,1958 may be granted to the accused .The prayer made on behalf of the accused seems to be reasonable .The accident is more than 10 years old ,The dispute was between the neighbours over a trivial issue of claiming of drainage .The accident occurred in a fit of anger .All the parties educated and also distantly related .The accident is not such as to direct the accused to undergo sentence of imprisonment .In our opinion it is a fit case in which the accused should be released on probation by directing them to execute a bond of one year for good behaviour”.

In section 4 of the said Act do not distinguish the category of offender and can be applied where the offence is not punishable with death or life imprisonment.

32. Therefore considering the facts and circumstances of the case, the nature of offence for which the order of conviction passed, absence of any criminal antecedent and that the incident occurred on a spur of moment on account of the inimical relationship and most importantly the passage of time of

¹ (2004) 7 SCC 659

more than 12 years, this court is of the view benefit of the Act of 1958 should be extended to the Appellant.

Hence though the order of conviction is sustained the sentence is firstly reduced to two years instead of 3 years and instead of sending the Appellants to the Jail they are directed to file two sureties each to the tune of Rs. 5000/- along with their personal bonds before the District Probationer Officer concerned with an undertaking to the effect that he shall maintain peace and good behaviour during the period of two years from this date and such bonds is to be filed within a period of 2 months from the date of this judgement .

It is made clear in case of breach of any of the above conditions, the appellants shall be taken into custody and shall have to undergo sentence awarded to them.

- 33.** With the aforesaid modification this criminal Appeal is disposed of being allowed in part.
- 34.** Let a copy of this order along with the Trial court records be sent to the concerned court for necessary compliance.
- 35.** Let a copy of this judgement along with the Trial court record be forthwith sent before the Trial Court.

(CHAITALI CHATTERJEE DAS, J.)