

Ramesh vs The State Of Rajasthan on 9 January, 2025

Author: Surya Kant

Bench: Surya Kant

2025 INSC 46

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO. 15651 OF 2024)

RAMESH

... APPELLANT

VERSUS

STATE OF RAJASTHAN

... RESPONDENT(S)

JUDGMENT

NONGMEIKAPAM KOTISWAR SINGH, J.

Leave granted.

2. The present appeal has been preferred against the impugned judgment and order dated 09.11.2023 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Criminal Appeal and other accused against the order of conviction dated 31.10.1995 passed by the Additional District and Sessions Judge, Gangapur City, Rajasthan in Session Case No.31/93.

3. The Additional District and Sessions Judge, Gangapur City in the aforesaid Session Case No. 31/93 had convicted the appellant under Sections 148, 307/149, 326, 323/149, 452 IPC vide judgment dated 31.10.1995. Five other accused were also convicted under various sections of the Indian Penal Code, 1860 (for short "IPC") viz, Sections 148, 452, 323, 307, 326 and 325 with which we are not presently concerned in this appeal as we are concerned with the conviction and punishment given to the appellant-Ramesh.

4. The present appellant Ramesh and other accused preferred a common appeal before the High Court of Judicature for Rajasthan at Jaipur Bench in S.B. Criminal Appeal No.562 of 1993 against the judgment and order dated 31.10.1995 of Additional District and Sessions Judge, Gangapur City in Session Case No.31/93.

The High Court in respect of four appellants namely, Smt. Rupī, Smt. Janaki, Shalla @ Suresh and Shambhu allowed the appeal and set aside the order of their conviction and sentence passed by the Additional District and Sessions Judge. As regards appeal preferred by another appellant-Khilari, the same was partially allowed by setting aside his conviction under Sections 148 and 149 IPC and acquitted him of those charges but dismissed the appeal against conviction under Sections 307, 326, 325 and 452 IPC.

As regards the present appellant-Ramesh, the appeal was partly allowed and his conviction and sentence under Sections 307, 148 and 149 IPC was set aside and he was acquitted of these charges. However, the High Court affirmed his conviction under Sections 326, 325, 452 and 323 IPC and sentences imposed by the Additional Sessions Court were modified. The relevant portion of the order of the High Court relating to the appeal preferred by the appellant Ramesh is produced hereinbelow:-

“3. Appeal preferred by Ramesh is partially allowed and his conviction and sentence under Sections 307, 148, 149 IPC is set aside and acquitted from these charges, but his conviction under sections 326, 325, 452 and 323 IPC is affirmed. Further, sentence is modified and appellant Ramesh is sentenced as under: -

(i) Section 326- Rigorous imprisonment of six months along with a fine of Rs.5000/-, in case of default of payment of fine will undergo further sentence of 1 month.

(ii) Section 325- Simple imprisonment of two months along with a fine of Rs.1000/-, in case of default of payment of fine will undergo further sentence of 7 days.

(iii) Section 452- Simple imprisonment of one month along with a fine of Rs.1000/-, in case of default of payment of fine will undergo further sentence of seven days.

(iv) Section 323- Simple imprisonment of seven days.

Appellants Ramesh and Khilari are also entitled for set off under Section 428 Cr.P.C. and substantive sentence shall run concurrently.”

5. According to the appellant there is a cross case, being Criminal Case No.584/1998 (33/1993) with similar charges which was decided by the Magistrate, District Karauli on 01.08.2019. In the said case, the Magistrate took into consideration a settlement arrived between the disputing parties and directed the release of the accused in the said criminal case on probation. The appellant has pleaded that the same benefit may be extended to the present appellant inasmuch as these two criminal proceedings i.e., Session Case No. 31/93 and Criminal Case No. 584/1998 arose out of two

complaints relating to certain incident of clash between two groups of the same family occurring on the same day, and the said dispute was amicably settled during the pendency of the aforesaid Criminal Case No.584/1998 (33/1993).

6. In view of the aforesaid plea of the appellant, it would be necessary to briefly refer to the background facts of the present case as well as the other Criminal Case No.584/1998, which the appellant claims to be a cross case arising out of related transactions.

7. It is the case of the appellant that the case (Session Case No.31/93) in which the present appellant and others were charged/tried arose out of a complaint filed by the complainant, Chhotu who was one of the accused in the other trial in Criminal Case No.584 of 1998.

According to the appellant, there was a running feud between two groups of the family which resulted in armed clash between these groups on the same day culminating in filing of separate complaints by the respective groups because of which two FIRs came to be filed, namely FIR No. 1 of 1993 and FIR No.9 of 1993 before the same police station of Gadhmora.

7.1 FIR No.1 of 1993 PS Gadhmora was filed against the present appellant-Ramesh and five other persons, namely, Khiladi s/o Hariya, Shambhu s/o Hariya, Shalla alias Suresh s/o Hariya, Janki w/o Hariya and Rupri w/o Ramesh who belong to one family alleging assault on the members of the other group of the family on 01.01.1993 at around 7.00 am.

7.2 Simultaneously, a counter complaint was filed by the other group including the present appellant in which five persons were accused, namely, Chhotu s/o Kajodaya Jogi, Kamal s/o Chhotu Jogi, Smt. Hanso w/o Chhotu Jogi, Smt. Safedi w/o Prakash Jogi and Ramhari s/o Kamal Jogi, who belong to the same family, of assaulting with deadly weapons on the same day on 01.01.1993 at around 6-7 am resulting in the FIR No.9 of 1993 PS Gadhmora.

7.3 These two FIRs were investigated separately leading to two separate criminal trials. The trials proceeded separately though the two incidents were interconnected. Ordinarily, these two trials ought to have been tried by the same Judge or Court for better appreciation of the evidence and consistency in the decisions in the trials as observed by this Court in Sudhir and other vs. State of M.P. (2001) 2 SCC 688, Nathi Lal and Others vs. State of U.P and Another 1990 Supp. SCC 145. However, the trial proceeded separately resulting in two different outcomes in which one group of accused were convicted and in the other case, the other group of accused were released on probation under the Probation of Offenders Act, 1958 (for short "Probation Act").

7.4 In respect of FIR No.1 of 1993 PS Gadhmora, the Judicial Magistrate, Gangapur City transferred the criminal case before the Additional District and Sessions Judge City, Gangapur City, Rajasthan which was tried as Session Case No.31 of 1993 against the accused, namely, Khiladi, Shambhu, Shalla alias Suresh, Janki, Rupri and the present appellant (Ramesh) under Sections 147, 148, 307/149, 323, 452 IPC and the Additional District and Sessions Judge vide order dated 31.10.1995 convicted all the accused on different charges. 7.5 FIR No.9/1993 P.S. Gadhmora, culminated in the Criminal Case No.584 of 1998 (33/93) in which five accused, namely, Chhotu, Kamal, Smt. Hanso,

Smt. Safedi, and Ramhari were charged for committing offences under Sections 148, 341, 323, 324, 149 of IPC before the Court of the Judicial Magistrate, Karauli, and the Magistrate after trial, acquitted the aforesaid five persons of the offences under Sections 341, 323, 324 IPC but convicted them under Sections 148/149 IPC. However, they were given the benefit of the provisions under the Probation Act vide order dated 01.08.2019.

7.6 In Criminal Case No.584 of 1998 arising out of FIR No.1/1993 P.S. Gadhmora subsequently decided on 01.08.2019, it was recorded that an agreement was filed between the complainant-Jankidevi and the accused in the said case. The accused were acquitted of the offences under Sections 341, 323 and 324 IPC. In respect of the offences under Sections 148/149 IPC, they were convicted. However, on consideration of the fact that the accused had been facing investigation for about 25 years and since it was the first crime of the accused and as there was no previous conviction against them, and considering the fact that the accused are old people, the Judicial Magistrate, District Karauli granted the benefit of the provisions of the Probation Act and accordingly released them, vide order dated 01.08.2019.

7.7 As mentioned above, being aggrieved by the order dated 31.10.1995 passed by the Additional District and Session Judge in Sessions Case No.31/1993, the appellant and others preferred an appeal before the High Court of Judicature for Rajasthan, Jaipur Bench in S.B. Criminal Appeal No.562 of 1995. Before the High Court, it was submitted on behalf of the appellant and others that in respect of the cross case filed by the appellants against the other group of family which was registered as FIR No.9 of 1993 resulting in Criminal Case No. 584 of 1998 (33/93) which was decided by the Judicial Magistrate District Karauli, during the pendency of the trial, both the groups had submitted before the trial court that they had settled the disputes and in view of the compromise arrived at between the parties the accused in the said case were acquitted from the charges under Sections 341, 323 and 324 IPC. It was also submitted that though the accused were convicted under Sections 148 and 149 IPC, in view of the agreement arrived at between the disputing parties, and considering the prolonged criminal process and because of their advanced age, the accused were given the benefit under the Probation Act and were released.

7.8 It was accordingly submitted by the appellant before the High Court that since the dispute which was between the two groups of the same family had been settled, the High Court may take this into consideration and appropriate order be passed in favour of the appellant which, however, was declined by the High Court on the ground that no such settlement had been filed before the Court in the present case and accordingly, the High Court proceeded to examine the matter on merit.

8. The High Court after considering the materials on record allowed the appeal preferred by Smt. Rup, Smt. Janaki and Shambhu by setting aside their conviction and acquitted them from the charges under Sections 148, 307/149, 325/149, 323/149 and 452 of IPC. As regards another appeal which was preferred by Khilari, the same was partially allowed and he was acquitted of the charges under Sections 148, 149 IPC but was convicted under Sections 307, 326, 325 and 452 IPC. 8.1 As regards the appellant-Ramesh, he was acquitted of the charges under Sections 307, 148, 149 IPC but was convicted under Sections 326, 325, 452 and 323 IPC and he was sentenced to undergo rigorous imprisonment of six months with fine of Rs.5000/-, simple imprisonment of two months with fine

of Rs.1000/- under Section 325 IPC, simple imprisonment of one month with fine of Rs.1000 under Section 452 IPC and simple imprisonment of seven days under Section 323 of the IPC. Thus, the maximum sentence to be undergone by the appellant would be six months of simple imprisonment.

9. According to the present appellant-Ramesh, he has already undergone more than 4 months and only 54 days has remained to complete the six months simple imprisonment imposed by the High Court vide order dated 09.11.2023. The appellant has submitted that in view of the settlement arrived between the disputing groups of the family and as the other accused in the cross case have been given the benefit under the Probation Act, similar benefit may be extended to the present appellant.

Learned Counsel for the State, however, has submitted that the impugned judgment does not suffer from any irregularity or illegality warranting interference from this Court.

10. We have heard learned counsel for the parties and perused the materials on record.

11. We have perused the judgment and order dated 01.08.2019 passed by the Ld. Magistrate, Shri Mahavir Ji, District Karauli in Criminal Case No.584/98 (33/93). The accused in the said case were Chhotu, Kamal, Hanso, Safedi and Ramhari of the same family. The said criminal trial was as a result of the initial complaint lodged by one Ramkhiladi, son of Janaki alleging assault by the aforesaid accused on the basis of which FIR No.9/1993 P.S. Gadhmora was registered. In the said incident, Ramesh, the present appellant who came to rescue the complainant was stated to have been beaten up and due to the injuries received he fainted, and both Janaki and Ramesh had to be taken to hospital for treatment. 11.1 As regards the other Criminal Case No.31/1993 which arose out of FIR No.1/1993, out of which the present appeal has arisen, when we refer to the records, it is noticed that the complainant in the said case was Chhotu who had alleged that his family members namely, Kamal, Hanso, Safedi and Ram Hari were beaten up by the accused in Criminal Case No.584/98. The said complainant Chhotu was an accused in the other Criminal Case No.584/1998.

Both these violent clashes between the two groups of the family incidentally happened on the same day i.e. on 01.01.1993 in the morning at around 6 – 7 a.m.

12. Thus, it is quite clearly evident that these two complaints were cross-complaints filed by the two disputing groups of the family relating to the same transaction on the same day giving their own versions of the incident.

The Session Case No.31/93 before the Additional Session Judge, Gangapur City was concluded earlier on 31.10.1995, whereby the accused therein including the present appellant were convicted. However, in the subsequent trial in Criminal Case No.584/98 before the Magistrate, Sri Mahavirji, the disputing groups appeared to have reached a settlement during the trial as clearly evident from the judgment in Criminal Case No.584/98. It has been mentioned in the judgment that an agreement has been filed between the complainant and the accused. 12.1 Under the circumstances, the Court of Magistrate acquitted all the accused for offences under Sections 341, 323 and 324 IPC. However, in respect of more serious offences under Sections 148/149 IPC, the Magistrate proceeded

to convict the accused. Nevertheless, while determining the quantum of punishment, in view of the submission made on behalf of the accused that they had been facing investigation for about 25 years and it was the first crime of the accused and there was no previous conviction of the accused, and considering their advanced age, the Magistrate was satisfied that it was a fit case to not award prison sentence to the accused but to give the benefit of probation under the Probation Act. 12.2 Accordingly, by invoking Section 4 of the Probation Act, all the accused in the said case were released by the Magistrate with the direction to them to furnish personal bond of Rs.10,000/- and surety of like amount for one year with the undertaking that they will not repeat the crime and will appear at their own expense to face punishment when called by the court. Further, an amount of Rs.100/- towards prosecution expenses was imposed on each of the accused.

13. Having gone through the records, we are satisfied that the two criminal cases were in reality cross cases filed by two groups of the family because of certain family disputes and the genesis of both the criminal cases can be traced to the clash between the two conflicting groups which occurred on the same day on 01.01.1993 in the morning, of which the disputing parties gave their own versions of the conflict/incident resulting in filing of two FIRs before the same police station and culminating into two separate criminal proceedings and trials.

14. We are also satisfied that when the second trial (Criminal Case No.584/98) was going on before the Court of the Magistrate, the disputing parties decided to bury their differences and a compromise was reached between the parties which was placed on record and duly taken into consideration by the Magistrate.

We have also noted that considering the amicable settlement reached between the parties and the prolonged criminal proceeding and the advanced age of the accused, the Court of the Magistrate invoked the provisions of the Probation Act.

15. In the present case, the appellant was convicted of the offences under Sections 326, 325, 452 and 323 IPC but was acquitted by the High Court of the more serious charges under Sections 307, 148 and 149 of the IPC.

15.1 We have also noted that the appellant had apprised the High Court of the aforesaid settlement between the parties which was taken into consideration by the Court of the Magistrate in the said Criminal Case No.584/1998, but the same was not favourably considered by the High Court and the High Court proceeded to consider the matter on merits.

In this regard para 8 and 28 of the impugned Judgement of the High Court may be reproduced as follows:

“8. During pendency of this appeal, an application was filed for taking certain documents on record which was allowed on 02.05.2023. The judgment dated 01.08.2019 in Regular Criminal Case No. 584/1998 (33/1993) arising out of F.I.R. No. 09/1993 P.S. Gadhmore relates to same incident wherein again a chargesheet was filed against five persons of the family of complainant who were examined in this

case as PW-1, PW-2, PW-3, PW-4 and PW-5 by the prosecution. Since, the order dated 01.08.2019 is a judicial record, therefore, we are considering this judgment wherein PW-1 to PW-5 were acquitted from offence under Sections 341, 323, 324 IPC by way of compromise and further sentenced under Sections 148 and 149 IPC. The record clearly indicated that out of present incident, two F.I.Rs were registered but both were tried and disposed of at different time and by different courts. Ordinarily, two cross cases are required to be tried and disposed of by same court but with separate judgments. Since, the matters were disposed of at different intervals and we are considering this appeal after almost 28 years, therefore, considering the aforesaid, we are just deciding this appeal on the basis of entirety of facts and circumstances, but we are keeping in mind about the observation passed by learned Judicial Magistrate on 01.08.2019 in a matter arising out of F.I.R. no. 09/1993 P.S. Gadhmore.

.....

28. By way of compromise between the parties the cross case arising out of FIR No. 9/1993 PS. Gadhmore was settled and same was already considered by this Court. Herein, in this case no compromise was filed either by complainant or by any of the injured but the evidence on record clearly suggested that parties are closely related to each other but having animosity for more than 27 years at the time of deposition.”
15.2 We have also noted that the High Court had considered the period of the trial and the prolonged pendency of the appeal and the fact that no criminal antecedent was reported against any of the accused including the present appellant. However, the High Court observed that looking into the nature of injuries and sentencing provision under Section 326 IPC, the benefit of probation would not send a good message to the society. Thus, the High Court declined to give the benefit of the Probation Act to the appellant.

16. We, however, are of the view that under the facts and circumstances as discussed above, there is no reason why the benefit of the provisions of Probation Act cannot be extended to the present appellant also, which was extended to the other accused in the cross case.

17. The present appellant is about 70 years old. His conviction under the more serious offence under Section 307 IPC has been already set aside by the High Court and he has been convicted only under Sections 326, 325, 452 and 323 IPC and the maximum period of punishment awarded by the High Court is six months imprisonment with a fine of Rs.5000/-

and has already undergone more than 4 months of imprisonment as of now.

18. Under the circumstances, we are inclined to invoke the jurisdiction under Article 142 of the Constitution of India and grant the benefit of the Probation Act to the present appellant also, which

had been granted to the other accused belonging to the other conflicting group in the cross case, considering the fact that a settlement was reached between the parties and neither any criminal antecedents nor any adverse material against the conduct of the appellant, have been brought to the notice of this Court.

19. Accordingly, we allow the appeal by directing the release of the appellant by extending the benefit of Section 4 in exercise of powers conferred under Section 11 of the Probation of Offenders Act, 1958 and Article 142 of the Constitution of India and direct the Appellant to execute a personal bond of Rs.10,000/- with surety of like amount for a period of six months with the undertaking that he will maintain peace and good conduct in the society, and that he will not repeat the crime and will appear at his own expense to face punishment when called by the court. Further, under Section 5 of the Probation Act, an amount of Rs.100/- is imposed on the appellant towards prosecution expense.

20. The appellant has already been released on interim bail vide order dated 02.01.2025 passed by this Court. He is, accordingly, directed to furnish the personal bond and surety as directed above.

21. The appeal is allowed under the aforesaid terms and conditions.

.....J. (B.V. NAGARATHNA)J. (NONGMEIKAPAM
KOTISWAR SINGH) NEW DELHI;

JANUARY 09, 2025.