

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1510 OF 2009
(Arising out of SLP [Cr.] No.4913 of 2008]

Halappa & Ors.

... Appellants

Vs.

State of Karnataka

... Respondent

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted. Heard the learned counsel.

2. The appellants (accused 1 to 4) were convicted by JMFC, Raibag, for offences punishable under section 324 read with section 34 IPC, and under Section 504 read with Section 34 IPC and sentenced to undergo simple imprisonment for three months and one month respectively, to run concurrently. The appeal and subsequent revision by the accused were dismissed by the Sessions Judge, Gokak, and by the High Court.

3. Accused 2 is the son of accused No.1. Accused 3 is the wife of accused No.1 and accused No.4 is the wife of accused No.2. The complainant (PW1) and Accused No.1 are cousins. There was pre-existing enmity between the two families. According to the complainant, on 17.9.2003, when the complainant, his wife (PW2) and his brothers

(PWs.3 and 6) were removing some agricultural implements kept by the accused in their land, the accused came to the spot armed with clubs, and abused and assaulted them, as a result of which the complainant, his wife and his two brothers suffered bleeding injuries. The incident, as narrated, was established by the evidence of injured eye-witnesses, namely, PWs.1, 2, 3 and 6. All the independent eye-witnesses (PWs.4, 7 and 8) however turned hostile. Having appreciated the evidence of the injured eye-witnesses and the documentary evidence, the trial court held that the accused guilty and, consequently, convicted and sentenced them. This has been affirmed in appeal and revision and we find no ground to interfere with the conviction.

4. The only question remaining for consideration is whether the benefit of the Probation of Offenders Act, 1958 (for short 'the Act') and Section 360 of Cr.P.C. ought to have been extended to the appellants.

4.1) Accused 3 and 4 are women. They did not have any criminal record or previous conviction. Having regard to their age, character and antecedents and the circumstances in which the offence was committed, it is expedient that they should be released on probation of good conduct under Section 360 of the Code of Criminal Procedure.

4.2) Accused 1 and 2 are also first offenders. The learned Magistrate considered it unnecessary to extend them the benefit of probation, in view of the enmity between the families of the accused and the complainant. We fail to see how such enmity is relevant for considering probation. We are of the view that having regard to the circumstances of the case, nature of the offence, character of the offenders, the learned Magistrate ought to have secured the report of the Probation Officer and then passed appropriate order, taking note of Section 4 of the Act.

5. We, accordingly, allow this appeal, in part, as follows :

- (i) The conviction is confirmed.
- (ii) In regard to accused 3 and 4, the sentence is set aside, and instead of sentencing them at once to any punishment, we direct that they be released on their entering into personal bonds to appear and receive sentence when called upon during a period of one year, and in the meantime, to maintain peace and be of good behaviour.
- (iii) In regard to accused 1 and 2, the sentence is set aside and the learned JMFC, Raibag, is directed to secure the report of the Probation Officer in relation to the case and then pass appropriate order in accordance with law, keeping in view the requirements of Section 4 of the said Act.

.....J.
(R V Raveendran)

New Delhi;
August 13, 2009.

.....J.
(P Sathasivam)

