



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 547/1996

1. Babu Lal S/o Rampratap, R/o Ranisar Bas, Bikaner
2. Rajendra S/o Anna Ram, R/o Savodaya Basti Near Narsingh Sagar Talab, Bikaner

----Appellants

Versus

The State of Rajasthan

----Respondent

Connected With

S.B. Criminal Appeal No. 516/1996

1. Hari Shanker S/o Shri Gopi Ram Sunar R/o Vaidya Manga Ram Colony, Bikaner.
2. Raj Kumar S/o Shri Ram Chandra Acharya R/o Vaidya Manga Ram Colony, Bikaner.
3. Jetha Ram @ Jethmal S/o Shri Bhera Ram Bhargava R/o Near Choudhary Ramkanta, Vaidya Manga Ram Colony, Bikaner.

----Appellants

Versus

The State of Rajasthan

----Respondent

For Appellant(s)	:	Mr. S.K. Verma Ms. Anjali Kaushik Mr. Kapil Purohit Mr. Vikram Kanada
For Respondent(s)	:	Mr. Sharwan Singh Rathore, PP

HON'BLE MR. JUSTICE ARUN MONGA

Judgment

Judgement Reserved on :- 17/12/2025

Pronounced on :- 13/01/2026

REPORTABLE

1. These two appeals arise out of the same judgment/order dated 23.10.1996 passed by the learned Additional Sessions Judge No. 1, Bikaner and are being decided by the instant common order. Vide impugned judgment, the learned trial Judge

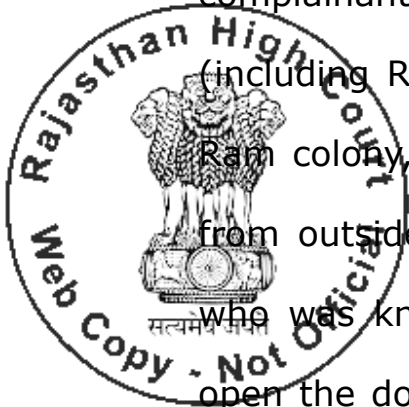
convicted and sentenced the appellants for offences under Sections 324, 149, 147 and 452 of IPC. Section 307 of IPC was also initially invoked, but was dropped later on.

2. Relevant facts are as under:

2.1 On the night between 19.03.1992 and 20.03.1992, complainant Jamila, her husband Jamaldin and their three sons (including Rafiq) were sleeping at their house in Mohalla Madha Ram colony, Bikaner. At about 3-00 AM, their door was knocked from outside. Jamaldin switched on the room light and enquired who was knocking at the door. Upon this, he was asked to first open the door and would then know who they were. As Jamaldin did not open the door, it was forced open from outside. Five men, namely Babu Lal, with a razor, Jeth Mal holding a chain in their respective in his hands, Hari Shankar, Rajoo (Rajinder) son of Anna Ram and Raj Kumar son of Ram Chander (the appellants herein) barged into the room and started manhandling and beating Jamila wife of Jamaldin. When the latter intervened to save his wife, he was also attacked and inflicted injuries. Their son Rafiq also woke up and tried to save them. He too was attacked and inflicted injuries by the appellants.

2.2 Report of the occurrence was lodged with the police, which led to the registration of FIR under Sections 458, 307, 323, 324, 147, 148, 149 IPC, Police Station, Naya Shahr. Upon completion of investigation, challan was presented on Court.

2.3 The trial of the appellants led to their conviction and sentence for offences under Sections 324, 324/149, 147, 452 IPC vide judgment dated 23.10.1996 passed by the learned Sessions Court. They are in appeal.



3. I have heard the learned counsel for appellants, the learned Public Prosecutor and gone through the record.

4. The findings of conviction recorded by the learned Sessions Court and the consequential sentences awarded to the appellants have been assailed by the learned counsel for appellants saying that no motive has been ascribed to the appellants for the

commission of offence; there was considerable delay in lodging of the FIR and there was time and opportunity for improvements, exaggerations and introduction of falsehoods in the actual story;

PW-6 Rafiq injured deposed that on the day of occurrence he was not in the house and was sleeping in the shop; neither of the two

independent witnesses named in the complaint namely PWs Hanuman and Shanker Bishnoi, who were examined by the prosecution, supported it's story, they were declared hostile but even thereafter, nothing could be elicited by the prosecution in support of it's case; PWs Jamila complainant, her husband Jamaldin and their son Rafiq are members of the same family and highly interested witnesses and that there are discrepancies in their statements making the same unreliable to support the conviction. Learned counsel for appellants thus urged for acceptance of the appeals and acquittal of the appellants. Lastly and alternatively, learned counsel for appellants prayed that in the event of conviction being upheld, they be shown leniency in the matter of punishment.

5. Learned Public Prosecutor has contested these submissions saying that the findings of conviction recorded by the learned Sessions Court are well founded, in consonance with the record and the applicable law.



6. I am inclined to agree with the learned Public Prosecutor. Let us see how.

6.1 The occurrence took place at about 3-00 AM on 19.03.1992. DDR Ex P-6 shows that the place of occurrence was about 2 Kilometers from Police Station, Nayashahr. The said DDR incorporating the complaint was recorded at the Police Station on 19.03.1992 at 4-40 AM, which was later converted into the formal FIR. To my mind, the incident was promptly reported to the police. I reject the contention that there was considerable delay in lodging the report with the police or that there was time and opportunity for improvements, exaggerations and introduction of falsehoods in the actual story.

6.2 PW Rafiq categorically stated that at the relevant time, he was sleeping in the room adjacent to the one in which his parents were sleeping. To the same effect is the testimony of his father Jamaldin and mother Jameela. They also stated that in fact their shop was being also run from the room where the incident happened. Medico-legal report Ex P-2 of PW Rafiq shows presence of five injuries including an incised wound 7 cmx9.4 cm x skin deep on right hand dorsally, oblique caused by sharp weapon, besides four other injuries caused by blunt weapon. Record, thus, negatives the contention of the learned counsel for appellants that at the relevant time, PW Rafiq was not at his house.

6.3 Medico-legal report Ex P-1 of PW Jamaldin shows presence of five injuries including incised wounds (i) 8 cmx0.5 cm x skin deep on abdomen, (ii) 3 cm x 0.3 cm x scalp deep on left frontal region of scalp, (iii) 4 cm x 1 cm muscle/bone deep on nose, slice of skin and sub-cutaneous tissue from nose missing, (iv) 2 cm x 0.2 cm x



skin deep on web and proximal phalanx of left ring finger and middle finger of left palm.

6.4. PWs Jameela, Jamaldin and Rafiq have fully supported the prosecution story on all material particulars. The medico-legal reports of PWs Jamaldin and Rafiq show that each of them had been inflicted numerous injuries. It is not even claimed that those

injuries were or could have been self-inflicted or self-suffered.

Memory fades with passage of time. Occurrence took place on

19.03.1992. PWs Jameela, Jamaldin and Rafiq were examined in

the Court after about four years in February, 1996. Merely

because due to natural lapse of memory, certain minor

discrepancies cropped in their cross-examination about the exact

number of blows given by each of the appellants to their victims

and their respective sequence does not falsify the prosecution

story.

6.5. No motive, whatsoever, has been attributed to the

prosecution witnesses for falsely implicating the appellants or for

shielding the real perpetrators of the crime. In the absence of any

material suggesting animus, enmity, or ulterior interest on the

part of these witnesses, their testimony cannot be discarded on

the basis of mere conjecture. The defence has failed to

demonstrate any plausible reason why the prosecution witnesses

would depose falsely and subject the appellants to criminal liability

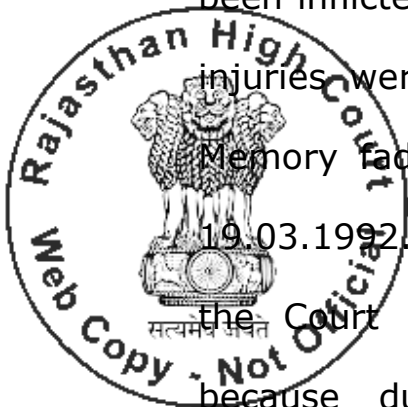
while allowing the actual offenders to go scot-free.

6.6. The mere fact that prosecution witnesses Hanuman and

Shankar Bishnoi did not support the case of the prosecution does

not, by itself, render the entire prosecution version unreliable. It is

well settled that the evidence of hostile or partially hostile

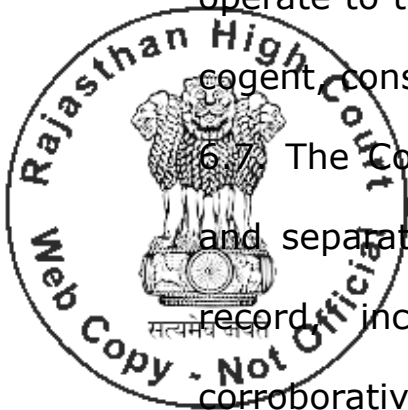


witnesses does not efface the prosecution case in its entirety. Their conduct is clearly indicative of having been influenced or won over by the appellants, a circumstance not uncommon in criminal trials, particularly where witnesses are vulnerable or susceptible to pressure. Such hostility cannot be permitted to operate to the advantage of the accused so as to nullify otherwise cogent, consistent, and trustworthy evidence available on record.

6.7 The Court is required to assess the totality of the evidence and separate the grain from the chaff. Where other material on record, including the testimony of reliable witnesses and corroborative circumstances, clearly establishes the commission of the offence by the appellants, the prosecution case cannot be rejected merely because a few witnesses have resiled from their earlier statements.

6.8. As regards argument of the learned counsel for the appellant that no motive has been ascribed to the appellants, it is trite law that motive is a matter which lies primarily within the knowledge of the offender. The absence of proof of motive, or the inability of the victims or witnesses to articulate the same, does not ipso facto discredit the prosecution case when there is otherwise clear and convincing evidence establishing the guilt of the accused. Motive, though relevant, is not a sine qua non for conviction, particularly where direct or circumstantial evidence unerringly points towards the involvement of the appellants in the commission of the offence.

6.9. Therefore, the lack of an articulated motive and the hostility of certain witnesses do not undermine the substantive and reliable



material on record, which demonstrates that the appellants were, in fact, the perpetrators of the offences in question.

7. The learned Sessions Court held that the injuries caused to PWs Jamaldin and Rafiq were simple in nature. It, therefore, acquitted the appellants of the charge under Sections 460/148/307 IPC but recorded their conviction for offences under Sections 324/149/147/452 IPC.

8. In my considered opinion, the impugned judgment recording the findings of conviction is consonance with the record of the case and the applicable law. It does not seem to suffer from any perversity in the findings of fact or material irregularity of procedure. I am, therefore, inclined to affirm the aforesaid findings of conviction for various offences recorded by the learned Sessions Court. Ordered accordingly.

9. Speaking of sentences awarded by the learned Sessions Court, the same are as under:

S.No	Name	Punishment
1.	Babu Lal	Under Section 324 of IPC: 2 years R.I. and Fine of Rs. 1000/- Under Section 452 of IPC: 1 year R.I. and Fine of Rs. 1000/- Under Section 147 of IPC: 1 year R.I. and Fine of Rs. 500/-
2.	Rajendra	Under Section 324/149 of IPC: 2 years R.I. and Fine of Rs. 1000/- Under Section 452 of IPC: 1 year R.I. and Fine of Rs. 1000/- Under Section 147 of IPC: 1 year R.I. and Fine of Rs. 500/-
3.	Hari Shanker	Under Section 324/149 of IPC: 2 years R.I. and Fine of Rs. 1000/- Under section 452 of IPC: 1 year R.I. and Fine of Rs. 1000/- Under Section 147 of IPC: 1 year R.I. and Fine of Rs. 500/-
4.	Raj Kumar	Under Section 324/149 of IPC: 2 years R.I. and Fine of Rs. 1000/- Under Section 452 of IPC: 1 year R.I. and

		Fine of Rs. 1000/- Under Section 147 of IPC: 1 year R.I. and Fine of Rs. 500/-
5.	Jetha Ram	Under Section 324/149 of IPC: 2 years R.I. and Fine of Rs. 1000/- Under Section 452 of IPC: 1 year R.I. and Fine of Rs. 1000/- Under Section 147 of IPC: 1 year R.I. and Fine of Rs. 500/-

10. Learned counsel for the appellants submitted that during investigation/trial, appellants have remained under detention as below:

S.No	Name	Period	Total
1.	Babu Lal	From 20.03.1992 to 26.03.1992 From 27.09.1996 to 01.10.1996	12 Days
2.	Rajendra	From 20.03.1992 to 26.03.1992 From 27.09.1996 to 01.10.1996	12 Days
3.	Hari Shanker	From 20.03.1992 to 26.03.1992 From 31.10.1995 to 03.11.1995 From 30.09.1996 to 01.10.1996	13 Days
4.	Raj Kumar	From 20.03.1992 to 26.03.1992 From 27.09.1996 to 01.10.1996	12 Days
5.	Jetha Ram	From 20.03.1992 to 26.03.1992 From 27.09.1996 to 01.10.1996	12 Days

11. Appellants have sought leniency in the quantum of punishment awarded to them.

12. The offences were committed in March, 1992. The appellants faced the agony of investigation and trial before the learned Sessions Court till the passing of it's judgment/order dated 23.10.1996 followed by the instant appeal with the sword of punishment hanging on their heads. Arrest memos show birth year of Babu Lal (1973), Jeth Mal (1972), Rajinder son of Anna Ram(1973), Hari Shankar (1970) and RajKumar son of Ram Chander (1974). At the time of occurrence, appellants Jeth Mal and Hari Shankar were in early twenties and remaining three were still in their teens. It is not in dispute that the appellants were first-time offenders.

13. In this context, it would also be pertinent to have a look at Sections 360 and 361 of the Code of Criminal Procedure, as well as Section 4 of the Probation of Offenders Act. For ready reference, relevant of the aforesaid Sections are reproduced here in below :-

“SECTION 360 AND 361 OF CODE OF CRIMINAL PROCEDURE:

360. Order to release on probation of good conduct or after admonition —

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

x-x-x--x-x-x”

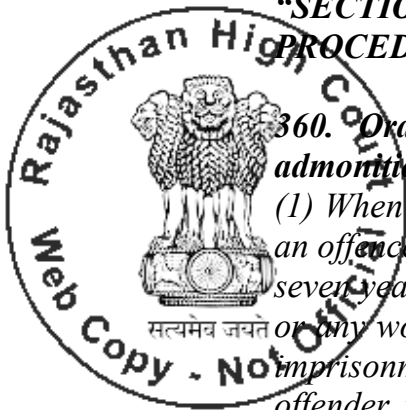
361. Special reasons to be recorded in certain cases— Where in any case the Court could have dealt with—

- (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or
- (b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

SECTION 4 OF THE PROBATION OF OFFENDERS ACT

4. Power of court to release certain offenders on probation of good conduct.—

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life 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 to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three



years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

x-x-x-x-x”

(emphasis supplied)

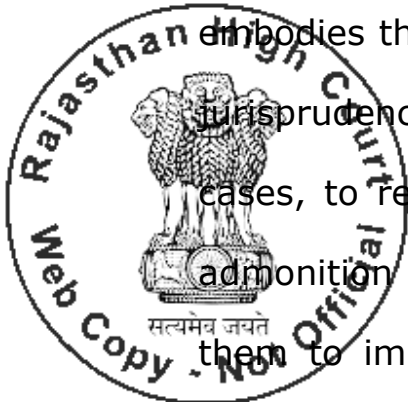
14. Section 360 of the Code of Criminal Procedure, 1973

embodies the reformatory and rehabilitative philosophy of criminal jurisprudence. The provision empowers the Court, in appropriate cases, to release certain categories of offenders either after due admonition or on probation of good conduct instead of sentencing them to imprisonment. The legislative intent underlying Section

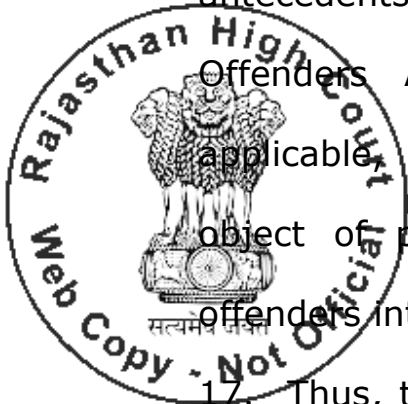
360 is to afford an opportunity for reformation to offenders who, by reason of their age, antecedents, or the nature of the offence, do not warrant incarceration and may instead be reclaimed as responsible members of society.

15. Section 361 CrPC operates as a mandatory safeguard to ensure that the discretion vested under Section 360 is exercised judiciously. It casts a statutory obligation upon the Court to record “special reasons” where it chooses not to extend the benefit of probation in cases where the accused could have been dealt with either under Section 360 CrPC or under the Probation of Offenders Act, 1958. The use of the expression “shall record special reasons” leaves no manner of doubt that the requirement is mandatory in nature. Non-compliance with Section 361 vitiates the sentencing exercise, as it reflects a failure to apply the reformatory mandate of the law.

16. On an equal parallel, Section 4 of the Probation of Offenders Act, 1958 confers a wide and beneficent discretion upon the Court



to release an offender on probation of good conduct where the offence is not punishable with death or imprisonment for life. The provision obliges the Court to have due regard to the circumstances of the case, including the nature of the offence, the character of the offender, and other attendant factors such as age, antecedents, and the likelihood of reformation. The Probation of Offenders Act is a special welfare legislation and, where applicable, is intended to be liberally construed to advance its object of preventing the conversion of youthful or first-time offenders into hardened criminals.



17. Thus, the consistent position of law is that the provisions of Section 360 CrPC and the Probation of Offenders Act are not merely enabling but impose a corresponding duty upon the Court to actively consider their applicability at the stage of sentencing. Where the case falls within the permissible parameters of probation, denial of such benefit must be supported by cogent, specific, and special reasons.

18. Applying the aforesaid statutory scheme to the facts at hand, it is evident that the appellants were of a young age at the time of commission of the offence, were first-time offenders, and were convicted of offences not punishable with death or imprisonment for life. These factors squarely attracted the consideration of Section 360 CrPC and Section 4 of the Probation of Offenders Act. In such circumstances, the learned trial court was duty-bound to consider the grant of probation and, in the event of denial, to record special reasons as mandated under Section 361 CrPC. The failure of the trial court to advert to these provisions and its omission to record any specific or special reasons for denying the

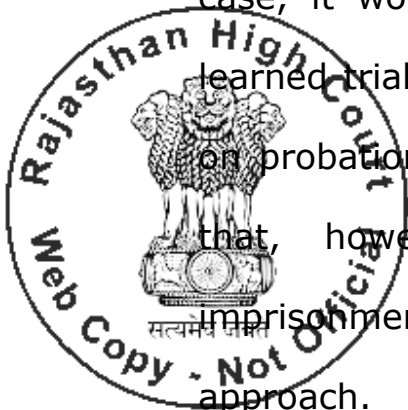
benefit of probation amounts to a clear error of law. Such an omission defeats the very object of the reformatory sentencing framework envisaged by the legislature.

19. Therefore, having duly considered the aforesaid position of law and keeping in view of the facts and circumstances of the case, it would have been appropriate, if at the relevant time, learned trial Court had extended the appellants benefit of release on probation of good conduct for about a year or so. Instead of that, however, it sentenced them to various terms of imprisonment as noted above and rather adopted erroneous approach.

20. Now the appellants are in their fifties. For over 33 years, they have suffered the ignominy, humiliation and pangs of investigation, trial and uncertainty of their fate. They are stated to be poor persons hardly able to support their families. The appellants are not at fault for the delay in trial and for even longer delay in the disposal of their appeals.

21. During investigation and trial for over four years, as also during the pendency of their appeal in this Court for nearly 30 years, except for the aforesaid periods of their detention, the appellants remained on bail. Barring the specific incident of 20.03.1992 (the subject matter of this appeal), nothing adverse about their conduct during this period has come on record. Their conduct during this prolonged interregnum shows that they are not habitual offenders and do not pose a risk of recidivism.

22. I am also of the opinion that the purpose of the appellants' release on probation on execution of usual bond and furnishing of security for good conduct has been substantially served by their



clean conduct for over 33 years. Asking them at this belated stage to furnish bond and/or security for future good conduct would be pushing a lost cause with paper work for all concerned. It would be tilting at windmills with no purpose, and yet, unnecessarily burdening the appellants with expenses and further loss of time.

23. In the peculiar premise, I am of the opinion that the ends of justice would be met if the substantive sentences of appellants are reduced to the extent of imprisonment/sentence already undergone by each of the appellants respectively, while maintaining the sentences in default of payment of fine. Ordered accordingly.

24. With these directions and observations, the appeals are disposed of.

(ARUN MONGA),J