

Uttarakhand High Court

Resham Singh vs State Of Uttarakhand on 27 August, 2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL  
Criminal Appeal No.357 of 2004

1. Resham Singh
2. Beero Bai

.....Appellants

Versus

State of Uttarakhand

.....

Respondent

Mr. Pushpa Joshi, learned Senior Counsel assisted by Mr. G.C. Lakhchaura, learned Counsel for the appellants.

Ms. Meena Bisht, learned B.H. for the State.

Hon'ble R.C. Khulbe, J.

This criminal appeal is preferred by the appellant against the judgment and order dated 04.12.2004 passed by learned Addl. Sessions Judge/III, FTC, Nainital in S.T. No.318/1998, State Vs. Resham Singh and others, whereby the learned Addl. Sessions Judge convicted the appellant-Resham Singh under Section 224 IPC and sentenced him to undergo two years' R.I. with fine of Rs.5,000/-. Appellant Beero Bai was convicted u/s 147, 332/149 and 225/149 IPC and she was sentenced to undergo one year's R.I. in each of these three offences, with fine of Rs.1,000/- under each offence. All the sentences were directed to run concurrently.

2. Since appellant Resham Singh has died during pendency of appeal, accordingly, the present appeal is abated qua appellant Resham Singh. Now, only the appellant Beero Devi is left.

3. Facts, to the limited necessary, are that written information was given by S.I. M.C. Srivastava on 01.12.1997 at P.S. Ramnagar. Accordingly, Chick FIR Ex.Ka-9 was lodged at 06:50 A.M. After investigation, Charge-sheet Ex.Ka-15 was submitted against the accused, and accordingly, the cognizance was taken.

After complying with the provisions of 207 Cr.P.C., the case was committed to the Court of Sessions, and charges were framed against the appellants on 09.08.2000, who pleaded not guilty and claimed to be tried.

4. The prosecution produced PW1 Constalbe Narender Singh, PW2 S.I. Nand Lal, PW3 Dr. J.S. Tripathi and PW4 Bhagat Singh Rawat.

5. After completion of prosecution evidence, facts of the prosecution evidence were put to the accused under Section 313 Cr.P.C., in reply to which, the accused denied all the allegations. No evidence was adduced in defence.

6. After hearing both the parties, the Trial Court convicted and sentenced the appellant -Beero Bai as per the details given in paragraph no.1 of the judgment. Aggrieved by the same, the present appeal is preferred.

7. I have also gone through the statements of witnesses, namely, PW1 Constalbe Narender Singh, PW2 S.I. Nand Lal, PW3 Dr. J.S. Tripathi and PW4 Bhagat Singh Rawat. The testimony of the above witnesses is not only natural but also trustworthy. They have been subjected to lengthy cross-examination but nothing has come out in their evidence which may create any reasonable doubt in their testimony. In the above circumstances the Trial Court has rightly held that the prosecution has successfully proved the charges against the appellant-Beero Bai beyond reasonable doubt. There is no illegality in the impugned judgment, since material and substantial evidence is available on record against the appellant-Beero Bai.

8. It is argued by the learned Senior Counsel for the appellant that the main accused is the appellant- Resham Singh, who is now no more. The present appellant-Beero Devi is an old and infirm lady. There is no criminal history against her. Only one year's imprisonment was given by the trial court and, therefore, benefit of first offenders' act may be given to her in the light of the above-facts.

9. Learned State Counsel fairly submitted that it is true that the offence relates to the year 1997 and 22 years have elapsed and she did not receive any information regarding the criminal history of the appellant-Beero Devi and, accordingly, looking to the nature of offence, the present appellant-Beero Bai can be extended the benefit of First Offenders Act.

10. In this regard, the Hon'ble Apex Court in the case of "Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola" reported in 2001 SCC (Cri.) 2, 897, in paragraph no.7, has held as under:

"7. Probation of Offenders Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant members of society without subjecting them to deleterious effect of jail life. The Act empowers the Court to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life or for the description mentioned in Sections 3 and 4 of the said Act."

11. Section 4 of the Probation of Offenders Act, 1958 read as under:

"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.

2. Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

3. When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

4. The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender. 5. The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

12. Section 4 of the Act would demonstrate that if a person is found guilty of having committed an offence not punishable with death or imprisonment for life, in that event, considering the nature of the offence and the character of the offender, the Court, instead of sentencing him at once to any punishment, may release such person on probation of good conduct, on his entering into a bond, with or without sureties, for a period not exceeding three years. Before releasing the offender, on probation, the Court must satisfy itself that 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. The Court before passing the order of release on probation may also call report of the Probation Officer. The Court while releasing on probation may also direct that accused shall remain under the supervision of Probation Officer for a period not less than one year.

13. A careful reading of Section 4 of the Act would reveal that if the offence is punishable for a period more than 2 years, but not punishable with death or imprisonment for life, admonition of sentence shall not be required and if person, released on probation, is found involved in any offence during the period of probation or otherwise, is found behaving in violation of condition of bond, he shall be directed to serve out the sentence awarded by the court. In other words, while on probation, such person should not involve himself in subsequent offence or must honour the condition of his bond / surety bond and if he breaches the same, he has to serve out the sentence awarded by the Court.

14. In this regard, the Hon'ble Apex Court in the case of "Paul George vs. State of NCT of Delhi" reported in 2008 SCC (Cri.) 2, 768, in paragraph no.12, has held as under:

12. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms.

15. In the present case the appellant is the first- time offender. The incident seems to have taken place 23 years ago.

16. Therefore, considering the provisions of the Probation of Offenders Act, 1958, no useful purpose would be served to send the appellant to jail to serve out the remaining sentence. Rather, in the opinion of the Court, she should be released on probation in order to reform herself.

17. The impugned judgment and order passed by the trial Court below is hereby affirmed and the present appeal, thus, stands partly allowed. The conviction part of the appellant - Beero Devi, under Section 147, 332/149 and 225/149 IPC, is left intact. However, as far the sentence part is concerned, it is directed that the appellant-Beero Bai shall be released on probation for a period of one year on furnishing a personal bond to the satisfaction of the concerned Trial Court. The fine, as imposed by the Trial Court, shall be deposited by the appellant within a period of one month, if not already deposited, from the date of receipt of this order, to the court concerned. The concerned Judge shall be at liberty to impose such conditions while executing the bond which he feels fit in accordance with the law. It goes without saying that if accused/appellant fails to observe good conduct and behaviour during probation or is found violating any condition, to be imposed, the Court concerned shall be at liberty to cancel the bonds calling the accused-appellant to serve out the remaining sentence. The appellant shall appear before the Trial Court on or before 30.09.2020 for compliance.

18. The appellant is stated to be in jail pursuant to the non-bailable warrants directed to be issued passed by this Court. Since the appellant has been released on probation and she is now directed to appear before the ACJM, Ramnagar on or before 30.09.2020, accordingly, Jail Superintendent, Haldwani is directed to release the appellant forthwith, if not required in connection with any other case.

19. Registry is directed to send information, along with a copy of this order, to the concerned jail by fax/email for compliance.

20. Let a copy of this judgment be sent forthwith to the learned Trial Court for information/compliance.

(R.C. Khulbe, J.) 27.08.2020 Balwant/Sukhbant