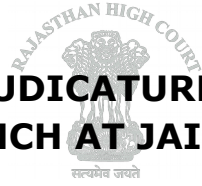




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Appeal No. 483/1993



-----Accused-Appellants

Versus

State of Rajasthan

-----Respondent

For Appellant(s) : Mr. V.R. Bajwa, Sr. Advocate assisted
by Mr. Amar Kumar and
Ms. Savita Nathawat
For Respondent(s) : Mr. Babulal Nasuna, learned P.P.

HON'BLE MR. JUSTICE GANESH RAM MEENA

Judgment

19/02/2024

1. The present criminal appeal has been preferred by the accused-appellants against the judgment of conviction and sentence dated 26.11.1993 passed by the Court of learned Special Judge, Prevention of Scheduled Castes/ Scheduled Tribes, Prevention of Atrocities, Jaipur (for short 'the trial Court') in Sessions Case No.88/1990, whereby, they have been convicted and sentenced as under:-

U/s. 307 IPC (Accused appellant No.1- Nawal Kishore):

Five years Rigorous Imprisonment and fine of Rs.2,000/- and in default of payment of fine, to undergo 2 months imprisonment.



U/s. 34 read with Section 307 IPC (Accused appellant No.2-Rajesh):

Five years Rigorous Imprisonment and fine of Rs.2,000/- and in default of payment of fine, to undergo 2 months imprisonment.

U/s. 323 read with Section 34 IPC (Both accused appellants):

Fine of Rs.100/- each and in default of payment of fine each of the accused appellant has to undergo 15 days imprisonment.

2. On filing of appeal, the sentence awarded to the accused-appellants was suspended vide order dated 13.12.1993 and they were released on bail.

3. Mr. V.R. Bajwa, Senior Counsel assisted by Mr. Amar Kumar and Ms. Savita Nathawat, appearing for the accused appellants instead of arguing the appeal on its merits with regard to challenge to the conviction and sentence, confines his arguments for grant of benefit of probation to the appellants under the provisions of Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act of 1958'). Counsel further submits that except the present case, no case has been registered against the accused-appellants. Counsel further submits that the accused-appellants are living peacefully in the society without there being any criminal antecedents to their discredit.

4. Senior Counsel further submits that the accused-appellants have faced trial for about three years and against the impugned judgment, they preferred the appeal in the year, 1993. Thus, from the last 33 years, the accused-appellants are facing mental agony



and harassment because of pendency of criminal case registered against them. Counsel further submits that the maximum sentence under Section 307 of IPC is 07 years but in the present case, the accused appellant No.1 Nawal Kishore has been convicted for offence under Section 307 of IPC and accused appellant No.2-Rajesh has been convicted for the offence under section 34 read with section 307 IPC and they been sentenced to undergo five years Rigorous Imprisonment and for the offence under section 323 read with section 34 IPC a fine of Rs.100/- has been imposed upon each of them. Senior Counsel further submits that the accused appellant No.1 is 59 years of age and the accused appellant No.2 is 56 years of age. Thus, taking into consideration the aforesaid facts, the accused-appellants may be given the benefit of probation under the provisions of the Act of 1958.

5. Senior Counsel for the appellants has also relied upon the judgment of this Court passed at Principal Seat, Jodhpur in case of **Smt. Sumati vs. State of Rajasthan, S.B. Criminal Appeal No.533/2003** decided on 23.11.2022 and also the judgment of High Court of Judicature at Allahabad, Lucknow Bench in case of **Smt. Budana And Anr. vs. State of U.P., Criminal Appeal No.108/2005** decided on 29.08.2023.

6. On the other hand, learned Public Prosecutor appearing for the State opposed the prayer made by the counsel appearing for the appellants and submits that looking to the allegations and the manner in which the incident took place, the appellants are not entitled for any kind of leniency in awarding sentence as well as the benefit of probation under Section 4 of the Act of 1958.



7. Considered the submissions made by the Senior Counsel appearing for the appellants as well as the learned Public Prosecutor.

8. Learned trial Court while considering the issue of granting leniency to the accused appellants, has rejected their prayer in regard to the leniency.

9. Section 4 of the Act of 1958 nowhere says that the benefit of probation cannot be allowed to an accused who is above 21 years of age. The Act of 1958 deals with the powers of the Court to release certain offenders for good conduct. Section 4 of the Act of 1958 reads 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."

10. In a case of conviction under section 307 IPC, the High Court of Orissa at Cuttack vide judgment dated **14.07.2022 passed in CRREV No.393 of 2000 (Chinta Marandi @ Chintamani Marandi Vs. State of Orissa)**, allowing the benefit of probation under section 4 of the Act of 1958 has observed as under:-

"9. As regards the submission for releasing the Petitioner as per the provisions of the P.O. Act, it is seen that the occurrence undoubtedly took place more than 30 years back. The Petitioner was a young man at that point of time, but is now aged nearly 60 years. No criminal antecedents are reported against him. Therefore, in the considered view of this Court, ends of justice would be best served if the Petitioner is released as per the provision of Section 4 of the





P.O. Act instead of serving the remaining part of the sentence in jail.

10. In the result, the Criminal Revision is allowed in part. The order of conviction passed by the trial court and confirmed by the lower appellate court is hereby maintained. The sentence imposed by the trial court is, however, modified to the extent that the Petitioner shall be released as per provisions of Section 4 of the P.O. Act. For the above purpose the Petitioner shall appear before the trial court on 12th August, 2022, failing which the trial court shall pass necessary orders requiring him to serve the remaining part of the sentence as originally imposed."

11. The Coordinate Bench of this Court at Principal Seat, Jodhpur in ***Criminal Appeal No. 368/1991; Bagdawat Ram and Ors. Vs. State of Rajasthan***, decided on 18.05.2022, has observed as under:-

12. In ***Arvind Mohan Sinha Vs. Amulya Kumar Biswas(1974) 4 SCC***, the Hon'ble Apex Court observed as under:-

"The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy



whereby the offender can be reformed and rehabilitated in society.

13. In *Brij Lal Vs. State of Rajasthan RLW 2022 Raj 945*, a Coordinate Bench of this Court observed as under:-

"Under Section 4 of the Probation of Offenders Act nature of offence is one of the major-criteria for determining whether benefit of this provision should be given to the concerned offender or not. His age would be another relevant factor and the circumstance in which the offence was committed may be 3rd important consideration..."

13.1 In ***Mohd. Hashim Vs. State of U.P. & Ors., (2017) 2 SCC 198***, while reiterating the ratio decidendi laid down in ***Dalbir Singh Vs. State of Haryana, (2000) 5 SCC 82***, the Hon'ble Apex Court observed as under:-

"... The Court has further opined that though the discretion as been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient..."

13.2 In ***Lakhvir Singh and Ors. Vs. The State of Punjab and Ors. (2021) 2 SCC 763*** wherein the Hon'ble Apex Court of India, with regard to the application of the Probation of Offenders Act, 1958 vis-a-vis those Acts wherein a minimum sentence of imprisonment has been prescribed by the legislature, observed as under:-

"Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the PC Act') prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In *Ishar Das (supra)*, this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this





aspect was given in *CCE v. Bahubali* (1979) 2 SCC 279. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.⁵ It is in this context, it was observed in *State of Madhya Pradesh v. Vikram Das* (Supra) that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. **We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence Under Section 397 of Indian Penal Code, the offence in the present case.** In fact, the observation made in *Joginder Singh v. State of Punjab* ILR (1981) P & H 1 are in the same context."

12. The Coordinate Bench of this Court at Principal Seat, Jodhpur in case of **Smt. Sumati (supra)**, in a case of conviction under Section 306 of IPC has extended the benefit of probation to the appellant therein.

13. The High Court of Judicature at Allahabad, Lucknow Bench in case of **Smt. Budana and Another (supra)** has observed as under:

"18. Sections 3 and 4 of the Probation of Offenders Act, 1958 are extracted hereunder:

"3. Power of court to release certain offenders after admonition.- "Where any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal code, 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.

Explanation.-For the purposes of this Section, previous conviction against a person shall include any previous order made against him under this Section or Section 4.

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:

19. That Hon'ble Supreme Court in *Ratan Lal vs State of Punjab*, AIR 1965 SC 444, while discussing the purpose and object of Probation of Offenders Act, 1958, has observed in para no. 4, as follows:?

"4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the condition laid down in the appropriate provision of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Ss. 3 and 4 of the Act."





20. Further the Hon'ble Supreme Court in the case of *Ved Prakash vs State of Haryana*, (1981) 1 SCC 447 : AIR 1981 SC 643 while discussing on the duty of Bench and Bar regarding compliance of Section 360 Code of Criminal Procedure read with Section 4 of Probation of Offenders Act, 1958 was pleased to observe as under:?

"The offence, for which conviction has been rendered, is one which will be attracted by S. 360 or at any rate the Probation of offenders Act, 1958. The materials before us are imperfect because the Trial Court has been perfunctory in discharging its sentencing functions. We must emphasise that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if S.360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislation which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of offenders Act."

21. That it is also noteworthy that this Hon'ble Court in the case of *Subhash Chand vs State of U.P.*; [2015 Law Suit (All) 1343, has emphatically laid down the need to apply the law of probation and give benefit of the beneficial legislation to accused persons in appropriate cases. This court issued following directions to all trial courts and appellate courts:?

"It appears that the aforesaid beneficial legislation has been lost sight of and even the Judges have practically forgotten this provision of law. Thus, before parting with the case, this Court feels that I will be failing in discharge of my duties, if a word of caution is not written for the trial courts and the appellante courts. The Registrar General of this Court is directed to circulate copy of this Judgment to all the District Judges of U.P., who shall in turn ensure circulation of the copy of this order amongst all the judicial officers working under him and shall ensure strict compliance





of this Judgment. The District Judges in the State are also directed to call for reports every months from all the courts, i.e. trial courts and appellate courts dealing with such matters and to state as to in how many cases the benefit of the aforesaid provisions have been granted to the accused. The District Judges are also directed to monitor such cases personally in each monthly meeting. The District Judges concerned shall send monthly statement to the Registrar General as to in how many cases the trial court/appellate court has granted the benefit of the aforesaid beneficial legislation to the accused. A copy of this order be placed before the Registrar General for immediate compliance."

22. Further the Hon'ble Apex Court in State of Maharashtra vs Jagmohan Singh Kuldip Singh Anand; (2004) 7 SCC 659 has extended the benefit of Probation of Offenders Act, 1958 to the appellants, and observed as under:?

"The learned counsel appearing for the accused submitted that the accident is of the year 1990. The parties are educated and neighbors. The learned counsel, therefore, prayed that benefit of the Probation of Offenders 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 ten years old. The dispute was between the neighbors over a trivial issue of claiming of drainage. The accident took place 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."

23. That coming to the point of desirability of extending the benefit of Probation Act to the accused/ appellants in Sitaram Paswan and Anr v. State of Bihar, AIR 2005 SC 3534, Supreme Court held as under:-

"For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest



with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India."

24. That it is also noteworthy that Hon'ble Apex Court in the case of Mohd. Hashim v. State of U.P and Ors., AIR 2017 SC page 660, was pleased to observe as under:

"20-.....In Rattan Lal v. State of Punjab AIR 1965 SC 444. Subba Rao, J., speaking for the majority, opined thus:-

"The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case; including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act."

25. That Section 4 of the Act of 1958 is applicable where a person is found guilty of committing an offence where punishment is neither life sentence nor death. The Court may release such an accused on probation of good conduct on his furnishing a bond as mentioned in the Section. The Court in applying the provisions of this Section is also required to consider the circumstances of the case, character of the offender and nature of the offence before exercising its discretion.

26. A perusal of the aforesaid provisions of the Act of 1958 thus clearly indicate that Section 4 of the Act of 1958 does not create any distinction between the category of offenders and the provision of the said Section can be made applicable in any case where the offender is found guilty for committing an offence which is not punishable with death or



imprisonment for life. Incidentally certain exceptions have been indicated by the Hon'ble Supreme Court as in the case of Smt. Devki Versus State of Harayana; 1979 (3) SCC 760 where the Hon'ble Supreme Court has held that benefit of Section 4 of the Act of 1958 could not be extended to a culprit who was found guilty of abducting a teenaged girl and forcing her to sexual submission with criminal motive. Similarly in the case reported in 1980 (4) SCC 669 in Re: State of Maharashtra Versus Natwar Lal Damodar Das Soni, the Hon'ble Supreme Court declined to extend the benefit of the Act of 1958 to an accused found guilty of gold smuggling. 27. That Hon'ble Apex Court in case of Jagat Pal Singh & others vs. State of Haryana, AIR 2000 SC 3622 has given the benefit of probation while upholding the conviction of accused persons under Sections 323, 452, 506 IPC and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

28. Similarly this Hon'ble Court in case of Virendra Kumar Vs State of U.P.; 2022(120)ACrC 392 has given benefit of probation while upholding the conviction of revisionist under Section 7/16 of Food Adulteration Act and had released the accused persons on executing a bond before Magistrate for maintaining good behaviour and peace for period of six months."

14. The Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.

15. The main object of sentencing a convicted person is to bring in him certain character reformation and to keep him away from the society so as to see that the impact of his criminal character does not put any adverse impact on any other person.

16. In the present case, after conviction of the accused-appellants, their sentence was suspended and they were released





on bail vide order dated 13.12.1993. Since after their release on bail, they are living in the society peacefully without there being any criminal antecedents to their discredit. There is no bar under law to extend the benefit of probation to convict of above 21 years age.

17. After taking into due consideration the legislative intent of the Act and the decision as referred in above paragraphs, this Court deems it appropriate to extend the benefit of probation to the appellants under Section 4 of the Act of 1958.

18. Resultantly, the present appeal is partly allowed. While maintaining the conviction of the present appellant No.1- Nawal Kishore for the offence under Section 307 of IPC and of accused appellant No.2-Rajesh for the offence under section 34 read with section 307 IPC and of both the accused appellants under section 323 read with section 34 IPC, as recorded by the learned Trial Court in the impugned judgment, this Court interferes only with the sentence part of the said judgment and directs that the appellants shall be released on probation under Section 4 of the Act of 1958 upon their furnishing a personal bond in a sum of Rs. 50,000/- each and two sureties in the sum of Rs. 25,000/- each to the satisfaction of the learned Trial Court with a further undertaking that they shall maintain peace and good behaviour for a period of two years and shall not repeat the offence. The appellants are allowed two months' time to furnish the bail bonds, sureties and undertaking as ordered above. The appellants are on bail. They need not to surrender. Their bail bonds stand cancelled accordingly.



19. The Registry is directed to send back record of the case to the trial court forthwith.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar/1

