Court No. - 15

Case :- CRIMINAL APPEAL No. - 1430 of 2004

Appellant :- Ram Khelawan
Respondent :- State Of U.P
Counsel for Appellant :- Amitabh Tripathi
Counsel for Respondent :- Govt.Advocate

Hon'ble Shamim Ahmed,J.

1. List of cases has been revised and the case is being taken up in the revised call for hearing.

2. Heard learned counsel for the parties.

3. The instant Criminal Appeal under Section 374 Cr.P.C. has been moved on behalf of the appellant, against the order dated 27.04.2004 passed by learned Additional Sessions Judge-II, Raebareli in Sessions Trial No.390/1999, under Sections 323, 324, 504, 506 I.P.C., Police Station Shivgarh, District Raebareli, convicting and sentencing the appellant under Section 323 I.P.C. with simple imprisonment for three months, under Section 324/34 I.P.C. with simple imprisonment for six months alongwith fine of Rs.500/- and under Section 504 I.P.C. with simple imprisonment for six months alongwith fine of Rs.500/-.

4. The prosecution case in brief is that the accused person had suddenly attacked on the complainant with farsa and lathi while he had gone to engage a labour for irrigating the crops.

5. On the basis of written report, submitted by the first informant, the first information report was lodged under Sections 323, 324, 504, 506 I.P.C. at Police Station Shivgarh, District Raebareli.

6. The Investigating Officer during investigation visited the place of occurrence and prepared the site plan and even recorded the statement of witnesses and after completing the investigation submitted the charge sheet against the appellant under Sections 323, 324, 504, 506 I.P.C.

7. That further after submission of charge sheet before Court of learned Magistrate the said case was committed to the Court of Session wherein it was registered as S. T. No. 390 of 1999. After committal, the trial court framed charges against the accused / appellant under section 323, 324, 504, 506 I.P.C., wherein the accused / appellant denied the charges levelled against him and claimed to be tried.

8. In order to substantiate its case, prosecution examined Umakant Dwivedi as P.W.-1 and Pawan Kumar as P.W.-2.

9. That after closing of the evidence, statement of accused/ appellant under section 313 Cr.P.C. was recorded by the trial court explaining the entire evidence and other circumstances, in which the appellant denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

10. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

11. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence oral as well as documentary, found the accused / appellant guilty and convicted and sentenced the appellant under Section 323 I.P.C. with simple imprisonment for three months, under Section 324/34 I.P.C. with simple imprisonment for six months alongwith fine of Rs.500/- and under Section 504 I.P.C. with simple imprisonment for six months alongwith fine of Rs.500/-.

12. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the accused-appellant has preferred the present appeal.

13. Learned counsel for the appellant submitted that the State of Uttar Pradesh has its own local law of probation i.e. Uttar Pradesh First Offenders Probation Act, 1938. He further submitted that the Probation of Offenders Act, 1958 (Central Act) is also applicable in the State of Uttar Pradesh as held by Hon'ble the Supreme Court in the case of **Mohd. Hashim Vs. State of U.P.; (2017) 2 SCC 198**. Thus, learned counsel for the appellant submitted that it is upon the discretion of the Court to grant benefits in either of the Acts.

14. Learned counsel for the appellant further submitted that he does not want to press the appeal on merits. He has submitted that the incident took place 29 years ago and there is no further criminal antecedent against the appellant. The delay in trial deprives the right of the appellant of speedy trial and he may be given benefit of first offender and appellant may be extended the benefit of Probation of Offenders Act, 1958 (herein after referred as the Act of 1958). He further submitted that appellant is first time offender and is not previously convicted in any case. He further submitted that it is the Court which may consider the benefit of Section 4 of the Act of 1958 to the accused-appellant.

15. Learned A.G.A. on the other hand opposed the appeal and has submitted that there is no material irregularity or illegality committed by the court below and keeping in view the evidence on record, accused-appellant has been rightly convicted.

16. Learned A.G.A. further states that the benefit of Section 4 of the Act of 1958 could be extended to the accused-appellant on certain stipulations as specified in Section 4 of the Act of 1958.

17. After considering the arguments advanced by the parties and after perusal of the material available on record, this court finds that except apart the merits of the case, so far as the prayer of learned counsel for the appellant for providing

benefits of Section 4 of the Act of 1958 is concerned, it is essential to discuss the legal position and law propounded by the Apex Court.

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.*
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> ***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."*

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. Thebenefit 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.

29. That it is noteworthy that the incident took place way back in the year 1994. The accused-appellant has suffered in matter for past 29 years and there is no any criminal antecedent between the parties during these years.

30. Considering the fact and circumstances of the case, I am of the view that the benefit of provision of the Act of 1958 should be provided to the accused / appellant.

31. In the light of the above discussion, as far as it relates with the conviction of the appellant Ram Khelawan is maintained but the sentence is modified. Instead of sending the appellant Ram Khelawan to jail, he is given benefit of Section 4 of The Probation of Offenders Act, 1958 and he is directed to file two sureties each to the tune of Rs 20,000/- along with his personal bonds before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behaviour during the period of two years from today. The said bonds are to be filed by the appellant Ram Khelawan within a period of three months from the date of this judgment .

32. In case of breach of any of the above conditions, the appellant Ram Khelawan shall be taken into custody and shall have to undergo sentence awarded to him.

33. With the above modification, the instant criminal appeal is **partly allowed**.

34. A certified copy of the order be also sent to the court concerned for compliance.

35. Office is directed to communicate this order to the court concerned for necessary compliance.

36. Lower court record, if any, shall also be sent back to the district court concerned.

Order Date :- 17.10.2023
Saurabh

Digitally signed by :-
SAURABH VERMA
High Court of Judicature at Allahabad,
Lucknow Bench