

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.132 OF 2016

Vitthal s/o Kachru Tupe,
Age 32 years, Occu. Agri.,
R/o Panvi – Khandala, Taluka
Vaijapur, Dist. Aurangabad

.. Appellant
(Orig.Accused)

Versus

1. The State of Maharashtra,
through Investigation Officer,
Vaijapur Police Station,
Taluka Vaijapur,
District Aurangabad

2. Karbhari s/o Muktaji Bhalerao,
Age 40 years, Occu. Agri.,
R/o Panvi – Khandala, Taluka
Vaijapur, Dist. Aurangabad

.. Respondents

Mr R.V. Gore, Advocate for appellant
Mr D.V. Tele, A.P.P. for respondent No.1

**CORAM : N.W. SAMBRE, J.
DATE : 16th March 2016**

PER COURT

Heard finally with the consent of learned Counsel for the appellant and learned A.P.P.

2. This appeal is against the conviction of the appellant – accused ordered in Sessions Case No.32 of 2012 convicting and sentencing the appellant – accused for a period of two years, for an offence punishable under Section 325 of Indian Penal Code and also for an offence punishable under Section 506 (II) of Indian Penal Code for the same period. It is directed that the appellant shall pay fine of Rs.2,000/- for each conviction, i.e. total fine of Rs.4,000/-, in default to undergo simple imprisonment for four months and three months, respectively.

3. Having heard the learned Counsel for the appellant for some time, he has invited my attention to the observations made by learned Sessions Judge in relation to the claim of the appellant that he be released on probation pursuant to the provisions of Sections 3 and 4 of the Probation of Offenders Act. According to him, the fact remains that there are no criminal antecedents or criminal history against the present appellant and the liberty granted through the bail by the trial Court was not misused by the appellant. He would then submit that age of the present appellant on the date of conviction was thirty-two years and he is married. He would submit that benefit of provisions of Probation of Offenders Act be extended to the appellant.

4. Learned A.P.P. opposed the application on the ground that there was enough material to implicate the accused in the crime in question, as such judgment of conviction was delivered against him. He would submit that the prima facie involvement of the appellant in serious crime disentitles him for the relief claimed under the provisions of Probation of Offenders Act and sought dismissal of the appeal.

5. Having bestowed my anxious thoughts to the submissions made in the background of provisions of Probation of Offenders Act, it is required to be noted that the sentence imposed on the appellant, particularly in the background of the crime committed by him under the provisions of Section 325 of Indian Penal Code has prompted the learned Sessions Court to impose maximum punishment of two years.

The sentence in respect of both the crimes was to run concurrently. The accused has already deposited the amount of fine, as was imposed.

6. It is to be noted that the Apex Court in the matter of **State through C.B.I. Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla & Anr., reported in 2014 (8) Scale 377**. In paragraph 12 (2) of the said judgment, it is observed thus :

12 (2). Every accused person need not be detained, arrested and imprisoned – liberty is precious and must not be curtailed unless there are good reasons to do so. Similarly, everybody convicted of a heinous offence need not be hanged however shrill the cry “off with his head” – and this cry is now being heard quite frequently. Life is more precious than liberty and must not be taken unless all other options are foreclosed. Just sentencing is as much an aspect of justice as a fair trial and every sentencing judge would do well to ask: Is the sentence being awarded fair and just ?

In paragraphs 27 (17), 28 (18) of the said judgment it is observed thus :

27 (17). These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift = from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what

is imperative for the judge is to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.

28 (18) These are other legislative requirements that need to be kept in mind. The Probation of Offenders Act provides, in Section 5 thereof for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. How often have the Courts used these provisions ?

Then finally, while summoning up in paragraph 31 (21) of the judgment, the Apex Court observed thus :

31 (21) To sum up :

(a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code;

(b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(c) The grant of compensation to the victim of a crime is equally a part of just sentencing;

(d) When it is not possible to grant compensation to the

victim of crime, the Trial Judge must record his or her reasons: and

(e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

7. If the case of the present appellant is considered in the light of above referred observations of the Apex Court, it is required to be noted that the reason for not extending the benefit of provisions of Probation of Offenders Act, as are furnished by the learned Trial Judge for not releasing the appellant on probation, appears to be contrary to the above observations and also scheme of the Statute.

8. In my opinion, it will be appropriate to extend the benefit to the present appellant, particularly having regard to his age, his marital status and the fact that he has already convicted by the Court. The absence of any prosecution or criminal antecedents during the trial, in my opinion is one of the factor which is also required to be taken into account. As such, I propose to pass the following order:

(a) The appellant be released under the provisions of Probation of Offenders Act;

(b) The appellant be execute a bond of good behaviour within a period of four weeks from today before the concerned Probation Officer. He shall also report the concerned Probation Officer once in three months;

(c) In case the Probation Officer finds that the appellant has violated the above conditions, he shall be free to report the same to this Court.

9. Criminal Appeal, as such stands partly allowed and disposed of in above terms.

(N.W. SAMBRE, J.)

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