

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

CRIMINAL APPEAL NO.281 OF 2001

1. Ashok s/o Patalu @ Yeshwant Shere,
Age 26 years, Occu. Agri.,
2. Vishnu s/o Patalu @ Yeshwant Shere,
Age 30 years, Occu. Agri.,
3. Kalyan s/o Patalu @ Yeshwant Shere,
Age 35 years, Occu. Agri.,

All residents of Undengaon,
Taluka Paranda, Dist. Osmanabad

..Appellants

Versus

. The State of Maharashtra

..Respondent

Mr Satej S. Jadhav, Advocate for appellants
Ms R.P. Gaur, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th March 2016

ORAL JUDGMENT

Heard.

2. The appellants-accused are convicted and sentenced by the learned 2nd Additional Sessions Judge, Osmanabad under Section 235 (2) of Code of Criminal Procedure for an offence punishable under Section 225 of the Indian Penal Code to undergo rigorous imprisonment for a period of two years each and in default of payment of fine Rs.500/- to undergo simple imprisonment for two months; and under Section 235 (2), for an offence punishable under Section 323 read with Sec.34 of Indian Penal Code and to undergo rigorous imprisonment for a period of six months each and in default of payment of fine of Rs.200/- to undergo simple imprisonment for one

month, vide judgment and order dated 20th June 2001, as such present appeal.

3. On 17th September 1997, complainant Navnath claimed to have attempted to lure the wife of appellant No.1 Ashok resulting into dispute between them. In the above referred background, it is the prosecution story that the complainant Navnath was injured after the present appellants assaulted him resulting into registration of crime in question.

4. After the investigation in the matter complete and charge-sheet was filed, charge was framed on 17th October 2000 vide Exh.15 and thereafter the trial was conducted.

5. In the above background, learned Counsel for the appellants would submit that looking to the nature of conviction and the background in which the alleged offence claimed to have been committed, the appellants be granted benefit of the provisions of Probation of Offenders Act. He would then submit that there is no past criminal antecedents and the offence is not having colour of an economic offence.

6. Learned A.P.P. submits that the Court may also consider the award of compensation to the victim, while releasing the appellants on probation.

7. In this background, I have gone through the judgment of learned Sessions Judge convicting the accused as observed herein above.

8. This Court is aware about the approach of 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**, observing that the Courts are required to grant benefit of Probation of Offenders Act to the convicts-accused, if they qualify the requirements under the said Act.

9. 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 as 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), and 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.”

10. In the above referred background, if the case of the present appellants is analysed, it is required to be noted that the accused persons were admitted to bail by this Court. So also they were on bail before the learned Sessions Court.

11. Apart from above, it is required to be noted that the condition of bail or the liberty enjoyed by them during trial was not misused.

12. The fact remains that there are no criminal antecedents. As such, the appellants in my opinion are entitled for the benefit of provisions of Probation of Offenders Act. Hence, I propose to pass the following order :

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

(b) Each of the appellants be execute a bond of good behaviour within a period of thirty (30) days from today before the concerned Probation Officer. They shall also report the concerned Probation Officer once in three months;

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

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

(N.W. SAMBRE, J.)

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