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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 948/2015

% *Judgment dated 18th March, 2016*

STATE (NCT OF DELHI) Appellant
Through : Ms.Aashaa Tiwari, APP for the State.

versus

MANOJ @ MUNNA Respondent
Through : Mr.Ravindra Narayan, Adv. along with
respondent.
Mr.Manish, complainant, in present.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present appeal, which has been filed by the appellant/State under Section 377 of the Code of Criminal Procedure, arises out of the judgment dated 29.1.2015 and order on sentence dated 11.12.2015 passed by Additional Sessions Judge-02, South District, Saket Court, Delhi, whereby the respondent was convicted for an offence punishable under Section 307 of the Indian Penal Code. However, taking into consideration the socio-economic and educational background of the respondent, the respondent was released on probation for two years on a bond of good conduct in the sum of RS.25,000/- with one surety in the like amount with the condition that he shall come and receive the punishment as and when the circumstances so warrant and was further sentenced to pay a sum of Rs.5,000/- as costs of proceedings.
2. We may note that no appeal was preferred by the respondent and it is in fact the State, which has filed the present appeal primarily on the ground

that the learned trial court has failed to take into consideration Section 4 of the Probation of Offenders Act, 1958, which provides that if a person is found to be guilty of having committed an offence not punishable with death or imprisonment for life, in which case the person found guilty can be released on probation.

3. As per the case of the prosecution, on 8.3.2012 DD No.79A was lodged at Police Station Ambedkar Nagar. SI Ashik Ali Kirmani was assigned the said DD number. He along with Ct.Aslam reached the spot between G and K Block, Madangir, Delhi, and learnt that the injured had already been removed to AIIMS Trauma Centre in a private vehicle. At the Trauma Centre, SI Ashik Ali Kirmani obtained the MLC of the injured and also recorded the statement of one, Vikas, who claimed himself to be an eye-witness. Based on the statement made by Vikas, FIR No.64/2012, which pertains to an incident, which happened on account of throwing a water balloon, was lodged. Further, as per the prosecution, initially the parties were pacified but later on the respondent went to his home and returned with a knife like object and stabbed the complainant, Manoj, on his stomach and neck. Since the public gathered there, the Manoj escaped from the scene. As the persons involved in the incident belong to the same vicinity and were known to each other, the respondent was named in the FIR and other formalities of the investigation such as arrest of the respondent, preparation of the site plan, recovery of knife, etc. were carried out without any loss of time. During the investigation, the Police collected the evidence, recorded the statement of witnesses, arrested the respondent and after completion of investigation a charge sheet was filed.
4. In support of its case, the prosecution has examined as many as ten witnesses. Statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure wherein *inter alia* he denied his

involvement. The respondent did not lead any evidence in his defence.

5. Ms.Tiwari, learned APP for the petitioner/State, submits that in the present case the victim has suffered grievous injuries and the punishment under Section 307 of the IPC awarded by the trial court is grossly inadequate to the offence, which has been committed by the respondent. Ms.Tiwari further submits that the order on sentence passed by the trial court cannot stand the scrutiny of law and is, thus, liable to be set aside because the law provides imprisonment of either description for a term, which may extend to ten years and the accused shall also be liable to pay fine and in case hurt is caused to any person by such act of attempting to murder, Section 307 IPC provides either imprisonment for life. Ms.Tiwari has relied upon a decision rendered in the case of **Jugal Kishore Prasad v. State of Bihar**, reported at (1973) SCC (Cri) 48, more particularly paras 6 and 7, which read as under:

“6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that good many crimes are the product of socioeconomic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even

though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of section 6 of the Act. Sub-section (1) of that section reads as under

"When any person under twenty-one years of age. is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him 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 offender, it would not be desirable to deal with him under section 3 or section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

7. *Mr. Misra on behalf of the appellant has urged that as the offence under section 326 read with section 149 Indian Penal Code is punishable not only with imprisonment for life but also with imprisonment which may extend up to ten years, the benefit of section 6 of the Act can be invoked by the appellant. This contention, in our opinion, is not well founded. Plain reading of section 6 makes it manifest that it deals with persons under twenty-one years of age who are found guilty of having committed an offence punishable with imprisonment but not with imprisonment for life. As imprisonment for life can also be awarded for the offence under section 326 read with section 149 Indian Penal Code, a person found guilty of such an offence would not be entitled to claim the benefit of section 6. To hold otherwise. would have the effect of ignoring the words "but not with imprisonment for life" and treating them to be otiose. Such a construction is plainly not permissible. We also cannot subscribe to the view that the offences excluded from the purview of the section are only those offences wherein punishment prescribed is imprisonment for life and not for a lesser term, for the language used in the section does not warrant such a view. On the contrary, the ,Plain meaning of the section is that the section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life. The policy underlying the Act appears to be that it is only in cases of not very serious nature,*

viz., offences not punishable with imprisonment for life that the convicted person should have the benefit of provisions of the Act. Where, however, the offence for which a person has been convicted is of a serious nature punishable with imprisonment for life, the benefit of the Act would not be permissible in his case. Likewise, there are certain offences like those under the Prevention of Corruption Act wherein the convicted person cannot claim the protection of the Act. Section 18 of the Act expressly excludes such offences from the purview of the Act.”

6. Ms. Tiwari has further relied upon ***Jagdev Singh v. State of Punjab***, reported at 1973 SCC (Cri) 977, more particularly para 4, which reads as under:

“4. Now, both Sections 4 and 6 of the Act clearly provide that the benefit of these sections is not available to persons found guilty of an offence punishable with imprisonment for life. This Act is intended to carry out the object of keeping away from the unhealthy atmosphere of jail life where normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offences by providing for dealing with them more leniently with a view to their reformation, under Sections 3, 4 or 6 of the Act as the case may be. An offence punishable under Section 326, I.P.C. or under Sections 326/34, I.P.C. is indisputably punishable with imprisonment for life. The benefit of the Act on the plain language of Sections 4 and 6 is thus not available to the present appellants.”

7. Learned counsel for the respondent, however, submits that in the present case while passing the order on sentence, the Court took into consideration the special circumstances including the age of the respondent and the victim. Counsel points out that the parties had entered into an amicable settlement and copy of the settlement deed was filed before the trial court. It is further submitted that the complainant had appeared before the trial court and made a statement that he did not want to pursue the matter any further. Counsel also contends that both the complainant and the respondent are practically of the same age, they are

residing in the same colony and even after the incident they are on friendly terms.

8. The complainant, who is also present in Court, reiterates his stand taken before the trial court that he has arrived at an amicable settlement with the respondent and does not want to pursue any further proceedings against him.
9. We have heard learned counsel for the parties and considered their rival submissions. We have also heard the complainant, who appears in person. It may be noticed that in the case of ***Som Nath Puri v. State of Rajasthan***, reported at 1972 Cri. LJ 897, it has been observed as under:

“The appellant had been convicted for an offence under section 409 Indian Penal Code. Punishment for the offence under section 409 Indian Penal Code is the same as for the offence under section 326, namely, imprisonment for life, or imprisonment of either description for a term which may extend to ten years and the liability to pay fine. It was held by this Court that in such a case the provisions of section 4 of the Probation of Offenders Act cannot be invoked. It may be mentioned that section 4 of the, Probation of Offenders Act also excludes from its operation persons convicted of offences punishable with imprisonment for life. In that connection, the Court observed:

"As the offence of criminal breach of trust under section 409, I.P.C. is punishable with imprisonment for life, the High Court, in our view, was right because the provisions of section 4 are only applicable to a case of a person found guilty of having committed an offence not punishable with death or imprisonment for life."

10. Further in the case of ***Jagdev Singh*** (supra) it has been held by the Apex Court as under:

“7. On the view that we have taken, it is unnecessary to decide whether on the facts and circumstances of this case, the appellant should be permitted to raise the question of the benefit of the Act

for the first time in this Court. No doubt, in special circumstances where the relevant material relating to the circumstances in which an offence is committed is on the record, this Court may justifiably grant such benefit to an appellant while finding him guilty but in the absence of such material, this Court may well disallow such a prayer to be made for the first time on appeal by special leave. More so when the question of the appellants guilt is not open for consideration.”

11. Having regard to the provisions laid down in Section 4 of the Provisions of Offenders Act, 1958, and in view of the settled position of law, the order on sentence dated 11.2.2015 is modified to the extent that the order with regard to releasing of the respondent on probation is set aside, however, taking into consideration the factors, which have been noted hereinabove; the statement made by the complainant before the trial court and also before this Court; and having regard to the fact that both the complainant and the respondent are practically of the same age, they are residing in the same colony and even after the incident they are in friendly terms, we are of the view that at this stage ends of justice would be met if the sentence of the appellant is modified to the period already undergone by him in view of the special circumstances, as detailed hereinabove.
12. Accordingly, appeal stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 18, 2016

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