

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

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Reserved on: 05.05.2017

Delivered on: 17.05.2017

+ CRL.A.539/2016

STATE

..... Appellant

versus

LUCKY

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr.Arun Kr.Sharma, APP

For the Respondent : Mr.Neeraj Bhardwaj.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The State has called in question the correctness of the order of sentence passed by the Additional Sessions Judge-04 (Central), Tis Hazari Courts, Delhi in Sessions Case No.7/2014 whereby the accused person/respondent, though has been convicted under Section 394/411 read with section 34 of the IPC, but has been let off on probation of good conduct, subject to his furnishing bond in the sum of Rs.25,000/- with one surety of like amount before the Probation Officer to appear and receive sentence when called upon during the period of probation and in the meantime to keep peace and good behavior for a period of one year from the date of furnishing of the bond. The respondent has also been

directed to pay compensation of Rs.3000/- each to both the victims of the case.

2. The factual aspects of the case need not be gone into in detail as conviction has not been challenged but only the order on sentence, which has to be tested on the principles of law.

3. On 04.04.2012 Diksha, who was accompanying Vikram, both being students of St.Stephens College, was made to deliver her mobile telephone on point of a sharp object by the respondent and one Raju Tiwari @ Raju. In the process, Vikram was hurt. This led to registration of a case under Sections 392/394/411 and 34 of the IPC. Since co-accused Raju Tiwari @ Raju was a juvenile, his case was sent to the Juvenile Justice Board for appropriate orders. Only the respondent was tried and convicted.

4. The mobile phone was recovered from the possession of the respondent.

5. The Trial Court on examining 18 witnesses on behalf of the prosecution, gave benefit of doubt to the respondent with respect to the offence under Section 397 IPC but convicted him under Section 394/411 read with Section 34 of the IPC vide judgment dated 05.11.2015. On 19.11.2015, taking into account the fact that the respondent was a young person aged about 22 years, had two brothers, one being handicapped and one sister along with parents, the mother being paralyzed and also taking into account the financial stringency, granted the benefit of probation to the respondent. While doing so, the Court below has taken into account the report of the Probation Officer and the fact that the respondent did not

have any previous involvement and had shown good and disciplined behavior.

6. Learned counsel appearing for the appellant/State has challenged the aforesaid grant of the benefit of probation to the respondent on the ground that Sections 4 & 6 of the Probation of Offenders Act, 1958 specifically provide that the beneficent provisions could be invoked only under the conditions enumerated in Section 4, viz. that the conviction is for such offence which is not punishable with death or imprisonment for life. It is submitted that Section 394 of the IPC entails punishment of imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years and the accused shall also be liable to fine.

7. Section 394 of the IPC reads as hereunder:-

“394. Voluntarily causing hurt in committing robbery.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

8. Section 4 and Section 6 of the Probation of Offenders Act, 1958 read as follows:-

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.

6. Restrictions on imprisonment of offenders under twenty-one years of age.—

(1) 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.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.”

9. In **Arvind Kumar Sinha vs. Amulya Kumar Biswas: (1974) 4 SCC 222**, the Supreme Court has held as:-

“The broad principle that punishment must be proportioned to the offence is or ought to be of universal application save where the statute bars the exercise of judicial discretion either in awarding punishment or in releasing an offender on probation in lieu of sentencing him forthwith.”

10. In ***Rattan Lal vs. State of Punjab: AIR 1965 SC 444***, the Supreme Court handed down the philosophy behind the grant of probation:-

“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.”

11. It has been argued on behalf of the State that for application of Sections 4 & 6 of the Probation of Offenders Act, 1958, the accused should not have been held guilty of an offence punishable with death or imprisonment for life. It matters not that the section gives the discretion to the Court to impose a lesser punishment, in the event of no minimum sentence being prescribed. The Probation of Offenders Act, 1961, it has been argued, takes out of its ambit a specific class of offences, namely, the offences which are punishable for death or imprisonment for life.

12. The respondent on the other hand contends that when no minimum sentence has been prescribed under Section 394 IPC meaning thereby that lesser punishment could be awarded, the beneficent provision of Probation of Offenders Act, 1961 would be applicable.

13. What would control and affect the applicability of the Probation of Offenders Act, 1961 would not be the maximum sentence prescribed for the offence, but whether the Court has a discretion to award a lesser sentence than the maximum, without there being any caveat with respect to the minimum sentence which has to be awarded for the offence. Since the Penal Code does not bar the exercise of judicial discretion in the matter of award of sentence for the offence under Section 394 IPC, Probation of Offenders Act, 1961 would be applicable.

14. Any Court while exercising jurisdiction under Sections 4 & 6 of the Probation of Offenders Act, 1958 has to keep in view the nature of the offence and the conditions incorporated under the Act. It is only if the Court forms an opinion that it is expedient to release the convict on probation for good conduct, regard being had to the circumstances of the case, then only the benefit could be extended. The nature of offence is definitely one of the circumstances. The Court has the discretion to decide when and how it should form such an opinion. The word “expedient” also has been explained by the Supreme Court in ***State of Gujarat vs. Jamnadas G.Pabri: AIR 1974 SC 2233***. In the aforesaid judgment, it has been observed as hereunder:-

9. The word "expedient" had been thoughtfully employed by Parliament in the Section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word expedient is defined as "suitable and

appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus:

“Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary).

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.”

15. Thus, merely because the maximum sentence of life could have been awarded under Section 394 of the Indian Penal Code, it would be no ground for not granting the benefit of Probation of Offenders Act to the respondent. The Court has a discretion in matters of sentencing and the

sentencing process would hinge on the nature and circumstances of the case.

16. In *State of Himachal Pradesh vs. Dharam Pal: (2004) 9 SCC 681*, the accused was convicted under Section 376 read with Section 511 of the IPC and was sentenced to undergo RI for three years and was directed to pay a fine. In appeal, the High Court upheld the conviction but considering the relationship and the age of the accused, applied Section 4 of the Probation of Offenders Act and directed for his release on probation of good conduct. The Supreme Court in the aforesaid case, though took into account that the offence charged was one under Section 376 but held that the Probation of Offenders Act is intended to reform the person who can be reformed and would cease to be a nuisance in the society. The Supreme Court was of the view that the discretion to exercise the jurisdiction under the Act is hedged with a condition about the nature of offence and the character of the offender. The order of the High Court was, therefore, affirmed and upheld by the Supreme Court.

17. In *Mohd.Monir Alam vs. State of Bihar: (2010) 12 SCC 26*, the Supreme Court, taking into account the professional qualification of the petitioner which displayed his expertise in his specialty and portrayed his association with prestigious organizations worldwide in the field of strategic studies, conduct and attainments after his involvement in the matter, held that his release on probation was justified. The petitioner in that case was convicted under Section 304(II)/149 IPC and Section 323 of the IPC.

18. Though the respondent has been convicted under Sections 394 and 411 of the IPC but considering the nature of the offence, the character of

the offender, the report of the Probationary Officer and the respondent leading a disciplined life on the reformed path, this Court has not been persuaded to differ with the order of sentence by the Trial Court.

19. As such, the appeal is dismissed but without costs.

ASHUTOSH KUMAR, J

MAY 17, 2017

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