

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3055 of 2018

Arising Out of PS. Case No. -50 Year- 2008 Thana -Kasimbazar District- Munger

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Pankaj Kumar Mandal @ Pankaj Mandal, son of Late Ram Chandra Mandal,
resident of Village/Muhalla- Puraniganj, near Love Kush School, Police Station-
Kasim Bazar, District- Munger.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Singh, Advocate

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2018

Heard learned counsel for the appellant and learned
counsel for the State.

2. This appeal is directed against the judgment of
conviction and order of sentence dated 05.07.2018 passed by learned
Session Judge, Munger in Session Trial No. 902 of 2008 by which the
appellant has been convicted under Sections 323, 324 and 448 of the
Indian Penal Code (for short 'I.P.C.') and sentenced to undergo
simple imprisonment for six months each for the offences punishable
under Sections 448 and 323 of the I.P.C. and rigorous imprisonment
for two years for the offence punishable under Section 324 of the
I.P.C with a fine of Rs.5,000/- and in default of payment of fine to
undergo custody for further six months. All the sentences have been
directed to run concurrently.



3. The prosecution case is based on the fardbeyan of P.W. 4 Gauri Shankar Sharma. In his oral statement, he has stated that he was having some dispute with his wife from before. His wife had ousted him from his house on 30.09.2007. On 05.04.2018, when he visited his house to see his son, he noticed that his wife was not present. He slept in the Varamdah. When he woke up, he found that one person was there in the room of his wife. When he entered the room, he found that it was the appellant, who was sleeping with his wife. When he protested, he was assaulted with the blunt portion of spade. When he became injured, his wife and the appellant dragged him out, whereafter he came to the house of his sister Urmila Devi, who took him to Sadar Hospital, Munger where he was undergoing treatment.

4. On the basis of the said fardbeyan, Kasim Bazar P.S. Case No. 50 of 2008, was registered under Sections 448, 323, 307 and 354 of the I.P.C. against the appellant. After completion of investigation, Kasim Bazar police submitted charge sheet against him whereafter the learned Chief Judicial Magistrate took cognizance of the offence and committed the case to the court of Session for trial. After framing of charges under Sections 307, 354 and 448 of the I.P.C. against the appellant, altogether six witnesses were examined by the prosecution, out of whom P.W. 1 Mukta Devi, wife of the



informant did not support the case of the informant, P.W. 2 Mahendra Prasad Sah was declared hostile by the court at the instance of the prosecution, P.W. 3 Dheeraj Kumar was tendered, P.W. 4 Gauri Shankar Sharma is the informant himself, who had sustained injuries, P.W. 5 Urmila Devi is the sister of the informant and P.W. 6 is the doctor Ram Preet Singh, who had examined the informant and issued the injury report and found all the injuries caused to the informant to be simple in nature.

5. After holding the trial, the trial court did not find the appellant guilty under Section 354 of the I.P.C. and thus, he was acquitted of the charge. The charge under Section 307 of the I.P.C was also not proved. However, the trial court convicted him for lesser offences under Sections 323 and 324 of the I.P.C. The trial court has also found the charge under Section 448 of the I.P.C as proved.

6. Learned counsel for the appellant submitted that he would not press the appeal on merits. He contended that a plea was advanced before the trial court that the appellant is aged about 30 years. He has to meet the liabilities of the family and thus, a lenient view may be taken against him. He should be extended benefit under the Probation of Offenders Act (for short 'the Act'). However, without giving any consideration to such plea of the appellant, the trial court sentenced him for the offences under Sections 323, 324 and



448 of the I.P.C. in the manner stated above. He submitted that the Act is a beneficial legislation and the benefit of the same ought to have been granted to the appellant considering his character, antecedent, age and other liabilities.

7. Per contra, learned counsel for the State submitted that the manner in which the offence had been committed, the appellant was rightly not extended the benefit of the Act.

8. I have heard learned counsel for the parties and perused the record.

9. Section 562 of the Code of Criminal Procedure (for short 'Cr.P.C.') 1898 was the earliest provision, which dealt with Probation. After amendment in 1974, it stood as Section 360 of the Cr.P.C. 1974. Section 361 of the Cr.P.C. makes it mandatory for the judge to declare the reasons for not awarding the benefit of Probation. The object of Probation is intended to be used to prevent persons from being committed to jail and provide an opportunity to reform themselves.

10. In 1958, the legislature enacted the Act. The statement of objects and reasons of the Act read as under:-

“Statement of Objects and Reasons.- The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been



under consideration for some time. In 1931, the Government of India prepared a draft Probation of Offenders Bill and circulated it to the then Local Government for their views. However, owing to pre-occupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the Government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Provinces accordingly enacted their own probation law.

2. In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the



subject which should be uniformly applicable to all the State.

3. It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of the society. The Bill seeks to achieve these objects.

11. From a reading of the object and reasons for enactment of the Act, it would be manifest that it is a social legislation, which is meant to reform the offender from becoming hardened criminal. It focuses more on the reformation and rehabilitation of the offender as a useful and self reliant member of the society than sending him to jail in suitable cases.

12. In **Ratanlal vs. State of Punjab, [A.I.R. 1965 SC 444]** the Supreme Court observed:



“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 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.”



13. In Jugal Kishore Prasad vs. State of Bihar [AIR 1972 SC 2522], the Hon'ble Supreme Court observed:

“ 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 socio-economic milieu.”

14. In Ram Parkash vs The State of Himachal Pradesh [AIR 1973 SC 780], the Supreme Court observed:

“...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, 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 Section 3 and 4 of the Act (Rattan Lal v. State of



Punjab AIR 1965 444) and Ramji Missir and Anr. v. The State of Bihar 1962 (Supp. 2) SCR 745....”

15. Thus, from reading of the aforestated decisions it would be manifest that while exercising the jurisdiction under the provisions of Sections 3 and 4 of the Act court, is required to keep in mind the nature of the offence and the conditions incorporated under the Act. If the Court forms an opinion that it is ‘expedient’ to release the convict on probation of good conduct, regard being had to the facts and circumstances, then the benefit under the Act should be extended.

16. The word ‘expedient’ has been explained by the Supreme Court in **Dalbir Singh vs. State of Haryana [AIR 2000 SC 1677]** as under:

“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 provision, 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."



17. Recently, the Hon'ble Supreme Court in **Mohd. Hashim vs. State of Uttar Pradesh & Ors. [(2017) 2 SCC 198]** has elaborately dealt with the term 'expedient' used in Section 4 of the Act as under :

“We have referred to the aforesaid authority to stress the point that the Court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act....”

18. In **Ved Prakash vs. State of Rajasthan & Anr. [AIR 1981 SC 643]**, though a firearm was used by the accused, but still he was released on probation under Section 4(1) of the Act by observing as under:-

“...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. Even if Section 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 report indicates



that he is an agriculturist, pursuing a peaceful vocation. His parents are alive and he has a wife and children to maintain. These are stabilizing factors in life. A long period of litigation and the little period of imprisonment suffered, will surely serve as a deterrent. ”

19. Having regard to the nature of the offences under which conviction was recorded by the trial court, in my opinion, when a plea was raised, the trial court ought to have applied its mind to the requirement of the provision of the Act. It ought to have called for a report from the Probation Officer under Section 6 of the Act before passing the sentence. Unfortunately, the said exercise was not done. Since the case was registered against the appellant in April 2008, at this belated stage, I don't think it necessary to call for a report from the Probation Officer for extending the benefit under the Act to the appellant.

20. A plea was taken before the trial court that the accused has no past antecedent and for the first time he has been implicated in any criminal case. It was also urged that he has a family and liabilities are upon him to maintain them. There is no adverse material on record against the appellant.

21. Thus, I am of the opinion that in the given facts and



circumstances of the case, the appellant was entitled to be extended the benefit under the Act.

22. Section 3 of the Act, which confers power on the court to release certain offenders after admonition reads as under:

“3.Power of court to release certain offenders after admonition.—When 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.”

23. Section 4 of the Act, which confers power on the court to release certain offenders on probation of good conduct reads as under:-

“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.”

24. Thus, the Act provides two different modes for dealing with offender in lieu of sentence. They are (i) Release after admonition; and (ii) Release on entering a bond on probation of good conduct with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered.

25. In view of what has been discussed above, I am of the opinion that to sentence the appellant to imprisonment would itself achieve no purpose rather the same would bring him in association with hardened criminals. I am also of the opinion that if released on probation of good conduct there is possibility of his being



reformed and live a normal life of law abiding citizen.

26. In that view of the matter, while upholding the conviction, the sentence is set aside with a direction that the appellant be released under Section 4 of the Act on his entering into a bond with a close relative as a surety in the sum of rupees five thousand to appear and receive sentence by the trial court whenever called upon to do so within a period of one year and during that time to keep the peace and be of good behaviour. The trial court is directed to take a bond from the appellant and a surety bond from the appellant's close relative as aforesaid. His bail bond will enure till then and will be deemed to be cancelled after the directions are carried out.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

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