

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.139 of 2017
In
CRIMINAL APPEAL (SJ) No.805 of 2016

Arising Out of PS. Case No.-329 Year-2009 Thana- BIHTA District- Patna
=====

Kamal Naiyan Singh S/o Late Ram Naresh Singh R/o village- Babahan Lai,
Police Station- Bihta, District Patna

... .. Appellant

Versus

- 1. The State of Bihar
- 2. Chandan Singh S/o Raj Deo Singh R/o village – Katari, Police Station – Rani Talab, District – Patna.
- 3. Munmun Devi W/o Amrendra Singh R/o village- Babahan Lai, Police Station- Bihta, District Patna

... .. Respondents

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with

CRIMINAL APPEAL (SJ) No. 746 of 2016

Arising Out of PS. Case No.-329 Year-2009 Thana- BIHTA District- Patna
=====

- 1. Jaimangal Singh @ Mangal Singh Son of Rajdeo Singh resident of village - Katari, P.S. Rani Talab, District Patna
- 2. Amrendra Singh Son of Kamlesh Singh
- 3. Kamlesh Singh Son of Late Ram Naresh Singh
Both 2 and 3 resident of village - Babhan Lai, P.S. Bihta, District - Patna

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 139 of 2017)
For the Appellant/s : Mr. Pramod Kumar, Advocate
For the State : Mr. Bipin Kumar, APP
(In CRIMINAL APPEAL (SJ) No. 746 of 2016)
For the Appellant/s : Mr. Lakshmi Kant Sharma, Advocate
For the State : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-04-2024



Both the appeals arise out of the same trial bearing Sessions Trial No. 1517 of 2011. Hence, they are taken up together for disposal.

2. Both the appeals have been preferred against the judgment and order, both dated 05.09.2016, passed by Ld. Additional District and Sessions Judge VIIth Danapur, Patna arising out of Bihta P.S. Case No. 329 of 2009, whereby two accused, namely, Munmun Devi and Chandan Singh have been acquitted of all the charges, whereas Amrendra Singh and Jaimangal Singh have been convicted under Sections 341 and 325 of the Indian Penal Code, whereas Kamlesh Singh has been found guilty of the offence punishable under Sections 341 and 323 of the Indian Penal Code. By the order of sentence dated 05.09.2016, Appellant Amrendra Singh and Jaimangal Singh have been sentenced to rigorous imprisonment of seven years and a fine of Rs. 10,000/- under Section 325 of the Indian Penal Code each and in case of default to pay the fine, additional rigorous imprisonment of six months, and under Section 341 of the Indian Penal Code simple imprisonment of one month and fine of Rs. 500/- and in case of default to pay the fine, additional simple imprisonment of fifteen days. All the sentences have been directed to run concurrently. Appellant Kamlesh Singh has



been sentenced to simple imprisonment of one year and fine of Rs. 1,000/- under Section 323 of the Indian Penal Code and in case of default to pay the fine, additional simple imprisonment of one month and under Section 341 of the Indian Penal Code simple imprisonment of one month and a fine of Rs. 500/- and in case of default to pay the fine, additional simple imprisonment of fifteen days. All the sentences have been directed to run concurrently.

3. The First Information Report bearing Bihta P.S. Case No. 329 of 2009 dated 26.12.2009 registered for the offence punishable under Sections 147, 341, 323, 325 and 307 of the Indian Penal Code against all the five accused persons, namely, Amrendra Singh, Munmun Devi, Kamlesh Singh, Mangal Singh and Chandan Singh was registered on fardbeyan of one Kamal Naiyan Singh as recorded by S.I. S.K. Sharma of Bihta Police Station on 26.12.2009 at 14-15:00 hours at P.H.C, Bihta.

4. The prosecution case as emerging from the fardbeyan is that on 26.12.2009 at 12:00 noon, the informant, Kamal Naiyan Singh was sitting in front of his house for taking sun-rays. But, all of a sudden, accused Amrendra Singh, Munmun Devi, Kamlesh Singh, Mangal Singh and Chandan



Singh came to him wielding Lathi and Gadasa and started assaulting him repeatedly with intent to kill him. In the meantime, when his wife Dharamsila Devi came in the midst of the assault to save him, she was also injured by them grievously breaking her right leg and left hand. On hulla, when the villagers reached there, the Accused persons fled away. The reason of the occurrence is previous dispute in regard to house and land.

5. After investigation, charge-sheet bearing no. 98 of 2010 dated 26.04.2010 was filed against all the five FIR named accused persons for the offence punishable under Section 147, 341, 325, 326 and 307 of the Indian Penal Code. Subsequently, cognizance of the offence was taken by Ld. Judicial Magistrate and case was committed to the Court of Sessions. The charge was framed against all the chargesheeted accused, namely, Amrendra Singh, Munmun Devi, Kamlesh Singh, Mangal Singh and Chandan Singh under Section 147, 341, 325, 326, 307 read with Section 34 of the Indian Penal Code.

6. During trial, the following six witnesses have been examined:-

(i) PW-1 – Dharmendar Sharma.

(ii) PW-2 – Dharamsila Devi – who is wife of
Informant



(iii) PW-3 – Kamal Naiyan Singh – who is informant.

(iv) PW-4 – Dr. Ramesh Prasad Singh.

(v) PW-5 – Surendra Kumar Sharma who is
Investigating Officer

(vi) PW-6 – Dr. Pramod Kumar Singh.

7. The prosecution has also brought on record the
following documentary evidences:-

(i) Ext. 1 – Injury report of Kamal Naiyan Singh.

(ii) Ext. 1/1 – Supplementary injury report of Kamal
Naiyan Singh.

(iii) Ext. 2 – Injury report of Dharamsila Devi.

(iv) Ext. 2/1 – Supplementary injury report of
Dharamsila Devi.

(v) Ext. 3 – Fardebayan.

(vi) Ext. 4 – Letter regarding injury of Kamal Naiyan
Singh.

(vii) Ext. 4/1 – Letter regarding injury of Dharamsila
Devi.

(viii) Ext. 5 – Formal FIR.

(ix) Ext. 6 – Charge-sheet.

(x) Ext. 7 – Signature of doctor on discharge slip.

(xi) Ext. 8 – Medicine slip.



(xii) Ext. 9 to 9/B – X-ray report of Kamal Naiyan Singh.

(xiii) Ext. 10 to 10/A – X-ray report of Dharamsila Devi.

8. The prosecution has also brought following documents on record for identification.

(i) Ext. X to X/30 – Medicine Slips of Dharamshila Devi.

(ii) Ext. Y to Y/29 – Medicine slips of Kamal Naiyan Singh.

9. The prosecution has also brought on record the following material exhibits :-

(i) Ext. I to I/V – X-ray plate of Dharamshila Devi.

(ii) Ext. II to II/XXI – X-ray plate of Kamal Naiyan Singh.

10. After closure of the prosecution evidence, the Accused Appellants were examined under Section 313 Cr. PC confronting all the incriminating circumstances so that they could explain them.

11. No evidence has been adduced on behalf of the defence.

12. Ld. Trial Court after appreciating the evidence on



record and considering the submissions of the parties, passed the impugned judgment and sentencing order. Ld. Trial Court found that as per the evidence on record, offence under Section 307 of the Indian Penal Code is not made out against any of the accused persons in view of the nature of the injuries and want of requisite intention on the part of the Accused persons. Ld. Trial Court also found that charge under Section 326 of the Indian Penal Code is not proved in view of the nature of the means used for causing injury on person of the victims, holding that for the offence punishable under Section 326, dangerous weapon is required to have been used by the Accused, but the same being not the case as per the evidence on record. Ld. Trial Court further found that there is no evidence on record to prove charge framed under Section 147 of the Indian Penal Code against the Accused Persons. Hence, Ld. Trial Court has acquitted all the Accused Persons of the charges framed under Sections 307, 326 and 147 of the Indian Penal Code.

13. Ld. Trial Court further found that there is no sufficient evidence on record in support of the charge framed against two Accused persons, namely, Munmun Devi and Chandan Singh. Hence, for want of sufficient evidence against these two Accused, Ld. Trial Court acquitted them of all the



charges giving benefit of doubt to them.

14. However, Ld. Trial Court found sufficient material against Amrendra Singh and Jaimangal Singh to convict them under Sections 325 and 341 of the Indian Penal Code. Ld. Trial Court also convicted Kamlesh Singh under Sections 323 and 341 of the Indian Penal Code. The prayer of the convicts for extending benefits of the Probation of Offenders Act, 1958 was rejected and they were accordingly sentenced.

15. However, Ld. Trial Court has failed to give finding regarding victim of the crime committed by the convicts. It also failed to pass any order regarding compensation to the victims of the crime either under Section 357 or Section 357A of the Cr. PC.

16. We heard Ld. Counsel for the Appellants and Ld. APP for the State.

17. Criminal Appeal (DB) No. 139 of 2017 has been preferred by the Informant, Kamal Naiyan Singh, against acquittal of Munmun Devi and Chandan Singh, whereas Criminal Appeal (SJ) No. 746 of 2016 has been filed against conviction of the Appellants.

18. Ld. Counsel for the Appellants in Cr. Appeal (DB) No. 139 of 2017 submits that Ld. Trial Court has failed to



properly appreciate the prosecution evidence on record and erroneously acquitted Munmun Devi and Chandan Singh. There is sufficient evidence on record to convict the Accused Munmun Devi and Chandan Singh also. He further submits that Ld. Trial Court should have also passed order providing compensation to the victims.

19. Ld. Counsel for the Appellants in Cr. Appeal (SJ) No. 746 of 2016 submits that Ld. Trial Court has erroneously convicted the Appellants. There is no evidence on record to prove any charge framed against the Appellants beyond reasonable doubts. He further submits that there is material contradictions in evidence of prosecution evidence. He also submits that Ld. Trial Court failed to appreciate that on account of previous enmity between the Appellants and the Informant due to land dispute, the Appellants have been falsely implicated by the Informant. He further submits that with the same set of evidence, two accused were acquitted by giving benefit of doubt, but the same benefit has not been extended to the Appellants. Hence, the Appellants should have been acquitted of all the charges or at least extended the benefit of the Probation of Offenders Act, 1958. He further submits that there is no question of paying compensation by the Appellants to the



injured, because they have not committed the offence against them.

20. We carefully perused all the relevant materials on record and sincerely considered the submissions advanced by both the parties. Following questions arise for consideration by this Court:

(i) Whether acquittal of Munmun Devi and Chandan Singh of all the charges is sustainable in the eye of law.

(ii) Whether the conviction of the Appellants of Cr. Appeal (SJ) No. 746 of 2016 is sustainable in the eye of law.

(iii) Whether the convicts are appropriately sentenced as per law.

(iv) Whether the Appellant convict of Cr. Appeal (SJ) No. 746 of 2016 are entitled to get the benefit of the Probation of Offenders Act, 1958.

(v) Who are victims of the crime and whether they are entitled to any compensation, if yes, what amount and from whom.

21. Coming to the prosecution evidence on record, we find that **P.W.-3**, who is informant and **P.W.-2**, Dharamsila



Devi, who is the wife of the informant, are eye witnesses to the alleged occurrence.

22. P.W.-4, 5 and 6 are official witnesses. P.W- 4, Dr. Ramesh Prasad Singh is a doctor who had examined the injury on the person of the informant and his wife, Dharamsila Devi. P.W. 5 is the investigating officer of the case and P.W. 6 is also a doctor, working at Appolo Trauma Centre, Kankarbagh where the informant and his wife got treatment. PW 1 is also not an eye witness.

23. We find that, as per the fardbeyan, the Accused persons had come to the place of occurrence with lathi and gadasa. But there is no mention of any rod being carried by any of the accused. There is also no specific allegation against any of the Accused, the allegation being omnibus in nature. As per the fardbeyan, the Accused persons armed with Danda and Garasa came to the Informant and started assaulting him and when his wife, who is P.W. 2, Dharamsila Devi, came to the place of the occurrence to save him, she was also injured grievously breaking her right leg and left hand and when the villagers came on hulla, the Accused persons fled away.

24. The **informant** has been examined as **P.W.-3**. In his examination-in-chief, he has somewhat developed the



prosecution case by deposing that the Accused Amrendra Singh was carrying rod in his hand and he had assaulted him on his head resulting into fracture. Amrendra Singh had also assaulted him on his teeth and consequently, his three teeth got broken. He has further deposed that Jaimangal Singh was carrying gadasa and he assaulted him on his legs and hands, but not from the sharp side of the gadasa but by its rear side, as a result of which his legs and hands got broken. Kamlesh Singh was carrying danda and he broke his left hand. Munmun Devi and Chandan Singh also assaulted him with danda. When his wife, Dharamsila Devi came, she was also assaulted by Amrendra Singh, Munmun Devi, Kamlesh Singh, Chandan Singh and Mangal Singh. Her right hand and left leg were broken and when the villagers came all the Accused persons fled away. After the occurrence, this witness along with his wife went to Referral Hospital, Bihta for treatment and his statement was also recorded by the police at Bihta. Thereafter, they went to military hospital, Danapur for better treatment. Again, they went to Appolo Hospital, Kankarbagh for better treatment. Even after discharge from this hospital, their treatment continued as an outdoor patient for six months. In his cross examination, he has deposed that all the Accused persons are family members and



the occurrence had taken place on account of land dispute and partition and criminal cases are also going on between the informant and the Accused persons.

25. The wife of the informant, Dharamsila Devi, who is injured in the alleged occurrence has been examined as P.W. 2. In her examination-in-chief she has deposed that the Accused Kamlesh was carrying danda and Accused Amrendra was carrying rod, Jaimangal was carrying farsa and Munmun Devi and Chandan Singh were carrying danda in their hands and they broke both hands and legs of the Informant. Accused Amrendra assaulted the informant on his head and mouth resulting into fracture of his head and breaking of his teeth and tearing of his lips. Amrendra Singh also broke her left leg and right hand. Both the informant and this witness went to Referral Hospital, Bihata where they were admitted in night and thereafter they went to Appolo Hospital for treatment and remained admitted there for a month. After discharge from the hospital they also got outdoor treatment for a year. The occurrence had taken place on account of land dispute and Civil Litigation is going on between the Accused and the informant regarding partition and even one criminal case has been lodged by Munmun Devi against the informant in Bihta police station



which is pending in the Court. Amrendra Singh has also lodged false criminal case against her husband which is also going on. Even her husband/informant has lodged one case regarding assault against the Accused persons.

26. P.W. 4 is a **Medical Officer**, who has treated the injured informant and his wife on 26.12.2009 at P.H.C Bihta and he has found the following injuries on the person of the Informant:

“(1) Swelling with lacerated wound 4"x2"x1" on right lower leg, (2) Lacerated wound with swelling 3"x2"x1" on left ankle, (3) Lacerated wound 2"x1/4"x1/4" on front of head, (4) Lacerated wound 1"x1/4"x1/4" on upper left side of upper lip, (5) Swelling on upper jaw, (6) Lacerated wound 3"x1/4"x1/4" on right palm, (7) Swelling 2"x2"x1/2" on right lower hand, (8) Swelling 3"x2"x1" left arm, (9) Lacerated wound 1"x1/4"x1/4" below left lower hand, (10) Swelling 3"x1"x1" left upper hand. All the injuries caused by hard and blunt object. Nature of injuries 1,2,5,7,8 and 9 opinion reserved to P.M.C.H, Patna. Injury no. 3, 4, 6, 9 are simple.”

27. According to the supplementary injury report, following injuries were found on the person of the informant :

“A. According to x-ray report fracture upper 1/3rd. right tibia with fracture shaft of Fibula with ilizaror fixator in the place.

B. According to x-ray report fracture of left fibula of three sides of lower shaft on lower mid shaft, second is on lower shaft and third is upper portion of medial malleolus.

C. For injury no. 5: According to Dentist report dental fracture on left maxillary region with mobile % and fracture bonny segment removal of mobile and bonny segment.



D. For injury no.7: According to x-ray report lower 1/3rd. Of right ulna with plate and screw in place.

E. For injury no.8: Swelling 3"x2"x1" on right palm.

F. For injury no.10: According to x-ray and report fracture 1/3rd. On left ulna with plat and screw in place. Cause Hard blunt substance. Opinion: Injury no. 1,2,5,7and 10 are grievous and injury no. 8 is simple."

28. P.W.4 had also examined, on the same day, the victim Dharmsheela Devi, wife of the informant and the following injuries were found on her person:

" 1. Lacerated wound 1"x1/2"x1/4" in middle of right ring finger. 2 Lacerated wound 1"x1/4"x1/4" on right thumb. 3 Swelling 2"x1/2"x1/2" on the right upper hand. 4 Swelling 3"x1/2"x1/2"on back. 5 4"x1"x1" on left knee. Cause- Hard blunt object. Nature of injuries: Injury no.1, 2 are simple, injury no. 3, 4 and 5 opinion reserved. (Ext.2)."

29. According to her supplementary injury report, the following injuries were found on her person :

"(a) On injury no.3 - fracture shaft of ulna plate and screw in place. (b). -For injury no.4 - swelling 3"x1/2"x1/2" on back. (c) - For injury no.5 - According to x-ray and report fracture petella and tension bond wiring caused by hard substance. Nature: Injury no.3 and 5 are grievous. Injury no.4 is simple."

30. The above injuries have been further supported by various documents which are proved by **P.W.6 Dr. Promod Kumar**, Ex-Orthopedic Surgeon of Apollo Trauma Center, Kankarbagh, Patna Documents were marked as Ext.7 to 10/A



and material Exts. I to II/XXI the X-ray reports.

31. P.W.-5 is Sri Surendra Kumar Sharma, **Investigating Officer** of the case. In his cross-examination, he had deposed that he has not recorded the statement of Dharmendra Sharma, who is P.W.-1 herein. He has also deposed that Dharamsila Devi, who is P.W.-2, had not stated in her statement under Section 161 that she was sitting with Dharmendra Sharma at her door, instead she had stated to him that she was sitting on the door. He has further deposed that Dharmasila Devi had not stated to him that Amrendra Singh was carrying rod in his hand and Jaimangal Singh was carrying farsa and Chandan Singh and Munmun Devi were carrying danda, instead she had stated that all the accused were carrying danda and gadasa. He has also deposed that Dharamsila Devi had not stated to him that Amrendra Singh had attacked the informant with rod on his head. He has further deposed that the informant Kamal Naiyan Singh has not given statement before him that Amrendra Singh was carrying rod in his hand. He has also not stated him that Munmun Devi had assaulted him by danda.

32. P.W.-6 is **Dr. Pramod Kumar Singh**, who was a doctor at Apollo Trauma Centre and he has proved that the informant and his wife Dharamsila Devi has got treated at his



hospital.

33. P.W.-1 is Dharmendra Sharma. But he is not an eye witness, because P.W.-2, Dharamsila Devi has not stated to the police that she was sitting with Dharmendra Sharma on her door and after hearing the hulla, she went to the place of occurrence along with him where the informant/husband was assaulted. Even police had not examined him under Section 161. He has deposed only in court.

34. As such, we find that there is no cogent evidence to prove that the accused were carrying any iron rod. The accused as per the evidence on record, were carrying Danda and Garasa. Even Garasa was used not by its sharp edge side. Clearly, the nature and the manner of assault shows that there was no intention on the part of Accused persons to kill the informant or his wife. Had there been such intention on the part of the Accused, they could not have attacked the informant and his wife by the rear side of the gadasa and even the assault was mainly on non vital part of the body, except some assault on head of the informant. As such, for want of intention to cause death of the informant and his wife, Section 307 IPC is not attracted in the given facts and circumstances.

35. We further find that for application of Section 326



of the Indian Penal Code, use of dangerous weapon is required by the Accused, but there is no such use of dangerous weapons. The Accused have used danda and rear side of gadasa to cause injury to the informant and his wife. As such, even Section 326 IPC is not attracted in the given facts and circumstances.

36. Ld. Trial Court has rightly acquitted all the Accused persons of charge framed under Section 307 and 226 of the Indian Penal Code.

37. We also find no error to have been committed on the part of the Ld. Trial Court when it acquitted the Accused Munmun Devi and Chandan Singh giving them benefit of doubt. We find no sufficient evidence on record to prove any charge against them beyond reasonable doubt. As per evidence on record, Munmun Devi and Chandan Singh were carrying Danda. But PW 2 Dharmshila Devi has not deposed about any overt act on their part, though Informant PW 3 has alleged some minor role in the assault on him, it would be not safe to convict these Accused on such evidence, particularly in view of intense previous enmity between the informant and the accused side.

38. In view of the acquittal of the aforesaid two accused persons, out of the five, even Section 147 of the Indian Penal Code will not apply against the rest accused persons.



39. However, as per the evidence on record regarding the overt acts of the rest three accused and the nature of the injuries received by the victims, Appellants Amrendra Singh and Jaimangal Singh have been rightly convicted under Section 325, and 341 of the IPC. Appellant Kamlesh Singh has been also rightly convicted under Sections 323 and 341 of IPC.

40. Now question is whether the convicts have been properly sentenced. Ld. Trial Court has rejected the prayer of the convicts/Appellants for extending benefit of the Probation of Offenders Act, 1958 holding that convicts have already been given benefit of doubts regarding charge under Sections 307 and 326 IPC and the way they have caused the injuries to the victims is brutal and cruel.

41. However, before we consider the submission of the Convicts / Appellants regarding extending benefits under the Probation of offenders Act, 1958 to them, it would be pertinent to examine the provisions of the Probation of offenders Act, 1958.

42. The Probation of Offenders Act, 1958 provides for the release of offenders of certain categories on probation or after due admonition. The Act was enacted in view of the increasing emphasis on the reformation and rehabilitation of the



Offenders as a useful and self-reliant members of society without subjecting them to deleterious effects of jail life. In **Ratan Lal Vs. States of Punjab** as reported in **AIR 1965 SC 444**, **Hon'ble Supreme Court** has held that 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.

43. In Arvind Mohan Sinha Vs Amulya Kumar Biswas as reported in **(AIR 1974 SC 1818)**, **Hon'ble Supreme Court** has pointed out that the Probation of Offenders Act is a reformative measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the



novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders act recognizes the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud.

44. In Arvind Mohan Sinha case (Supra) , Hon'ble Supreme Court also held that there is no foundation for the fear that offenders released on probation may hold the society to ransom and the society may therefore look upon the release of offenders on probation as the triumph of criminals over the weaknesses of law. An offender released on probation is convicted but not forthwith sentenced in the sense of penal laws. Under the disposition made by the court, the sentence is suspended during the period of probation. Section 4(1) of the Act provides that instead of sentencing the offender "at once",



the court may direct his release on his entering into a bond to "receive sentence when called upon" during the probationary period and in the meantime to keep the peace and be of good behaviour. Thus it is. only in a limited, though a socially significant, sense that the Act constitutes as exception to the broad and general principle of criminal law.

45. The object of the Act has been also pointed out by **Hon'ble Supreme Court** in **Ramnaresh Pandey Vs State of Madhya Pradesh (AIR 1974 SC 35)** and **Jugal Kishore Prasad v. State of Bihar (AIR 1972 SC 2522)** stating that the object of the Act is to prevent the conversion of youthful offenders into obdurate criminal 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 efforts should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic 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 is statutory recognition to the above objective. It is therefore provided that youthful offenders should not be sent to jail , except in certain circumstances.

46. As for the scheme and provisions of the Act, we find that Sections 1 of the Act deals with short, title, extent and commencement of the Act whereas section 2 deals with definitions. Sections 3 to 12 of the Act deal with Role of Court for the application of provisions of the Act. Section 13 to 16 deal with Role of Probation Officer. Section 17 deals with power of Government to make rules. Section 18 deals with saving of operation of certain enactments, and Section 19 provides for application of this Act to certain States.

47. Section 3 of the Probation of Offenders Act provides as follows:

"Sec. 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 Sec. 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 Sec. 4 "

48. As such, as per **Section 3** of the Act, the Court has power to release convicts after admonition on fulfillment of the following conditions:

- “1. The offender is found guilty of the offences punishable under section 379, or 380 or 381 or 404 or 420 of Indian Penal Code, 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,
2. Offender should not have been previously convicted,
3. The Court considers it expedient to release the offender to release him after admonition considering the nature of the offence and the character of the offender. The word character is not defined in the Act. Hence it must be given the ordinary meaning,
4. The Court may release the offender after due admonition, instead of sentencing him or releasing him on probation of good conduct applying section 4 of the Act.”

49. Sec. 4 of the Probation of Offenders Act, 1958 reads as follows:

“Sec. 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“**Sec. 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 offenders.

(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.

50. As such, as per **Section 4**, if 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 behavior. The word character is not defined in the Act. Hence it must be given the ordinary meaning.

51. The court may also require the offender to remain



under the supervision of a probation officer during certain period, if it thinks that it is in the interests of the offender and of the public. It can also impose appropriate conditions which might be required for such supervision. In case the court does specify such conditional release, it must require the offender to enter into a bond, with or without sureties, enumerating the conditions. The conditions may relate to place of residence, abstention from intoxicants, or any other matter as the court thinks appropriate to ensure that the crime is not repeated.

52. An order of release on probation can be passed only after the accused is found guilty. The order of release on probation of the offender is merely in substitution of the sentence to be imposed upon him by the court.

53. Power of the court under Sec.3 and Sec. 4 of the Act is discretionary and it has to be exercised considering the nature of the offence and the character of the offender. **Hon'ble Supreme Court** has observed time and again through decisions that the benefits mentioned in Section 3 and 4 are subject to the limitations laid down in those provisos and that the word 'may' in Section 4 of the Act is not to be understood as 'must'. Reliance is placed on the following authorities:

- (i) Ramji Missar vs. State of Bihar: AIR 1963 SC 1088;
- (ii) Rattan Lal vs. State of Punjab; 1964 (7) SCR 676
- (iii) Isher Das vs. State of Punjab : AIR 1972 SC 1295;



(iv) Ram Parkash vs. State of Himachal Pradesh AIR 1973 SC 780.

54. In Commandant 20 Bn ITB Police Vs Sanjay Binjola as reported in **2001 CrLJ 2349 (SC)** , **Supreme Court** has held that nobody can claim the benefit of Sections 3 and 4 of the Probation of Offenders Act as a matter of right and the court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. **In Sita Ram Paswan & Anr Vs State of Bihar**, as reported in **AIR 2005 SC 3534**, **Hon'ble Supreme Court** has held that for exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall



circumstances of the case.

55. In Nilgiri Bar Association Vs T K Mahalingam & Anr, as reported in **AIR 1998 SC 398** , **Hon'ble Supreme Court** has held that by the words so couched in the Sub-section (1) of Section 4 , Parliament has taken care to emphasize that before the relief (envisaged in the provision) is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section.

56. Hon'ble Supreme Court in In Nilgiri Bar Association Case (Supra) has further held that when considering the nature of the offence, the court must have a realistic view on the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yard-stick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in Section 4 of the Act.



57. Age of offender has to be reckoned on the date of imposition of the sentence of imprisonment as held by **Hon'ble Supreme Court** in **Sudesh Kumar Vs State of Uttarakhand (AIR 2008 SC 1120)** relying upon **Ramji Missar Vs State of Bihar (AIR 1963 SC 1088)** .

58. In regard to the power of Appellate Courts under the Probation of the Offenders Act,1958, the relevant provisions have been provided in Sec. 11 of the Act which reads as follows:

"Sec. 11. Courts competent to make order under the act, appeal, revision and powers of courts in appeal and revision- (1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the Court by which he is found guilty declines to deal with him under section 3 or section 4, and passed against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such



order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

59. In Rattan Lal Case (Supra), Hon'ble Supreme Court has held that it is clear from the language of sub-sec. 1 of Sec 11 that original trial Court is empowered to order under the Act in the first instance and orders under the Act can also be made by the High Court or any other Court when the case comes before it in appeal or in revision.

60. In regard to applicability of Sec. 360 of Cr.P.C. and the Probation of Offenders Act, 1958, there was some confusion prevailing in the state of Bihar before decision of the **Hon'ble Patna High Court in Upendra Nath Chaudhary Vs. High Court of Judicature at Patna(2007 CriLJ 2913)** . Trial courts had developed tendency to mostly proceed under section 360 of the Cr. PC under the mistaken notion that the provisions of that section were substitute and alternate to the provisions of the Probation of Offenders Act, 1958. In the said case, this Court after discussing the relevant provisions of the Act of 1958 and the binding authorities of Hon'ble Supreme Court, it



was held that the provisions of Sec. 360 of the Code have no application to this State and the issue of release of the convict on probation of good conduct must, therefore, be dealt with under the provisions of the Act of 1958 which has been made applicable to the whole of the State, w.e.f. 15-6-1959 vide notification published in the Bihar Gazette of 6-6-1959.

61. As such, the Probation of Offenders Act is operative in the State of Bihar excluding the application of Sec. 360 of the Cr.P.C 1973 and the courts are duty bound to invoke the provisions of the Probation of Offenders Act, 1958 while dealing with the issue of release of offenders on probation. We also find that this appellate court has also similar jurisdiction in appeal like that of trial court of first instance under the provisions of the Act to deal with the issue of probation.

62. Now the question is whether the appellants/convicts are entitled to get relief under the provisions of the Probation of Offenders Act, 1958 in the facts and circumstances of the case and the prevailing law as discussed above.

63. In this context, we find that the appellants have been found guilty of offence punishable under section 341, 323 and 325 of I.P.C. As such the offences committed by the



appellants are not punishable with death or imprisonment for life. We also find that at the time of imposing sentence by the trial court on 05.09.2016, the appellant Amrendra Singh, Jaimangal Singh and Kamlesh Singh were 36 years, 40 years, and 76 years old respectively. At present they have become older by about 8 years and they have also spent their lives in custody during trial and during pendency of the present appeal. They have been also acquitted of charge under sections 307 and 326 IPC giving benefit of doubt. Some injuries caused by them are also grievous in nature. In such circumstances, it would not be desirable to extend the benefits of the Probation of Offenders Act. The interest of justice would be better served if the sentence is modified and compensation is paid by the convicts to the victims Kamal Naiyan Singh and Dharamsila Devi, who have suffered injuries on their persons at the hands of the convicts. Here, it would be very apt to refer to **Maru Ram Vs. Union of India, (1981) 1 SCC 107**, where legendary Justice Krishna Iyer, speaking for **Hon'ble Supreme Court** had said as follows which provides guidance to Courts while passing sentencing orders:

74.If crime claims a victim criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependents or other aggrieved persons must



receive reparation and the social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty.....”

64. Section 357 and 357A of Cr. PC deal with compensation. Section 357 Cr. PC empowers Court to direct the convicts to pay compensation to the victims of their crime. Under sub-section 1 of Section 357, the Court can impose fine and direct the payment of the whole fine or part thereof to the victims by way of compensation. Under sub-section 3 of Section 357 Cr. PC, Court can direct the convict to pay compensation to the victim even when fine is not imposed on the convicts. As per sub-section 4 of the Section 357 Cr. PC, even the Appellate and Revisional Courts are empowered to pass such order of compensation. When payment of compensation under Section 357 Cr.PC is not sufficient, Court is empowered to resort to Section 357A Cr. PC to recommend the Legal Service Authority to make additional compensation to the victims as per the scheme of the government framed under Section 357A Cr. PC. Division Bench of this Court in **Sunil Kumar Jha Vs. State of Bihar (2024 SCC Online Pat 960)** has dealt with the subject of compensation to the victims in great detail advertent to relevant statutory provisions and case laws, holding as follows:



“ 105. It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr. P.C., irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr. P.C., whether victim is entitled to compensation under Section 357 and Section 357 A Cr. P.C. and if yes, how much and from whom.

106. The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

107. Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr. P.C. even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.

108. In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr. P.C. and if the compensation directed to be paid under Section 357 Cr. P.C. is not sufficient to rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr. P.C. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr. P.C. to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr. P.C.”

65. Coming back to the case on hand, both the Appeals are, accordingly, dismissed, upholding the acquittal of



Respondent no. 2, Chandan Singh and Respondent no. 3 Munmun Devi of the Criminal Appeal (DB) No. 139 of 2017 and conviction of the Appellants Jaimangal Singh, Amrendra Singh and Kamlesh Singh of Criminal (SJ) No. 746 of 2016. However, the impugned sentencing order dated 05.09.2016 is modified by reducing the period of imprisonment of all the Appellants to the period already spent by them in jail upholding the fine imposed by Ld. Trial Court under Section 357(1) of Cr. PC. But under Section 357(3) Cr.PC Appellant Amrendra Singh is directed to pay compensation of Rs. 10,000/- to the victim Kamal Naiyan Singh and Rs. 10,000/- to the other victim Dharamsila Devi. Similarly Appellant Jaimangal Singh is also directed to pay compensation of Rs. 10,000/- to the victim Kamal Naiyan Singh and Rs. 10,000/- to the other victim Dharamsila Devi. However, Kamlesh Singh is directed to pay compensation of Rs. 5,000/- to Kamal Naiyan Singh and Rs. 5,000/- to Dharamsila Devi. The aforesaid compensation must be paid by the Appellants within one month of this order to the victims, failing which the appellants would be liable to undergo further simple imprisonment of six months, as **Hon'ble Supreme Court in Hari Kishan Vs Sukhvir Singh, (1988) 4 SCC 551** has held that Court may enforce order of



compensation by imposing sentence in default.

66. Since the Appellants of Criminal Appeal (SJ) No. 746 of 2016 are on bail, they stand discharged of their liability of their bail bonds.

(Ashutosh Kumar, J.)

Ravishankar
chandan/Shoaib-

(Jitendra Kumar, J.)

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