

State of Karnataka Vs. Bhimappa and ors.

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Court : Karnataka

Decided On : Jul-26-1984

Reported in : ILR1984KAR1023

Judge : Patil and ;Ramakrishna, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360; Indian Penal Code (IPC) - Sections 147, 148, 149, 302, 323 and 326; [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : Crl. Appeal No. 448 of 1980

Appellant : State of Karnataka

Respondent : Bhimappa and ors.

Advocate for Pet/Ap. : K.H.N. Kuranga, HCGP, ;Ashok S. Patil, Adv. for A 1 to A 2 through Legal Aid ;H. Puttaswamy, Adv. for A-13

Disposition : Appeal dismissed

Judgement :

Ramakrishna, J.

1. This Criminal Appeal is filed by the State under Section 378(1) and (3) of the Code of Criminal Procedure challenging the Judgment and Order dated 11-1-1980

passed by the Additional Sessions Judge, Bijapur, in Sessions Case No. 62 of 1979. By the said order, the Learned Additional Sessions Judge acquitted all the respondents-accused of the charge of the offence of murder punishable under Section 302 I.P.C., read with Section 149 I.P.C. However, he convicted A-2 and A-13, having found them guilty, for the offence punishable under Section 325 I.P.C, and, giving benefit of Section 360 Cr. P.C., released them on admonition on executing a bond, without sureties, to appear and receive sentence when called upon during three years and to keep the peace and be of good behaviour.

2. The facts of the case, as disclosed by the Order under appeal are as follows :-

All the respondents-accused 1 to 13 are the residents of Petlur village, Mudhol Taluk, Bijapur District, while A-13, having been employed in the Military service, was on leave and was present in the village as on the date of the incident which took place on 19-4-1979 at 6 P. M.

According to the prosecution, P.W- 9 Venkappa who is the son of the deceased Mallappa Belli and brother of the injured persons, was found running a petty shop dealing in Kirani items (grocery). A-2 was found due to P. W. 9 in a sum of Rs. 3/- in regard to purchase of certain commodities (groceries) and, in this connection, there was quarrel two months earlier to the incident. It is further alleged that about 15 days prior to the date of incident, A-2 had picked up quarrel once again with P W.9 in the said connection.

On the date of the incident i.e., on 19.4.1979 at about 6 P.M., all the accused persons formed themselves into an unlawful assembly, in front of the house of one Setteppa s/o Bhimappa Huchhi of Petlur village, with the common object of causing the murder of the deceased Mallappa Belli and, in furtherance of that common object, A-2 and A-13 went to the stop of P. W. 9 where he was present. A-13 started abusing P.W. 9 by standing out-side the shop and challenged him to come out P. W. 9, having scared, closed his shop and went away. Hearing this row of quarrel between P. W. 9 and A-2 and A-13, the deceased Mallappa, father of P.W. 9, came and attempted to pacify the accused not to indulge in quarrelling. Due to his intervention, A-2 and A-13 became enraged and threw stones at him with the result the deceased sustained injuries on his left temporal bone and head

and fell down un-conscious. This incident attracted P.W. 6 Basappa, P.W. 7 Bhimappa, P.W. 8, Annappa, P.W. 14 Ramappa and CW. 12 Kareppa, who are all close relatives being members of the same family. Seeing this, all the accused persons joined together and started pelting stones on all these persons with the result they sustained injuries. In addition to this, P W. 6 also received a stick injury by A-1. Thereafter, all the accused persons ran away from that place.

It is the case of the prosecution that all the injured persons removed the deceased Mallappa, who was lying unconscious, in a bullock-cart to the Primary Health Centre, Lokapur, where he was admitted and treated for the injuries. Simultaneously, P.W. 6 Basappa gave a complaint as per Ex. P. 22 before P.W. 16 Gururaj, H.C.B. No. 966, who was, at that time, S.H.O. of Lokapur Police Station. P.W. 16, on receipt of Ex. P-22, visited the hospital at Lokapur and conducted injury panchanamas of all the injured persons as per Exs. P-12 to P-18 and seized thereunder M. Os 3 to 8 (Mundichati, dhoti, mundichati, dhoti, mundichati and dhoti respectively). Then he returned to the Police Station and registered a case in Crime No. 22 of 1979 for the offences punishable under Sections 143, 147, 148, 337 338, 504 I P.C. read with Section 149 I.P.C He sent up the F.I.R , Ex. P. 25 along with the complaint, Ex.P. 22 to the Judicial Magistrate First Class, Mudhol. Since the Learned Magistrate was on leave, the same was submitted before the Chief Judicial Magistrate, Bijapur, who was in charge of the Court of the J.M.F.C., Mudhol. P.W 16 sent copies of the F.I.R. and the complaint along with the injury panchanamas to P.W. 20 Chandrashekhar, Sub-Inspector of Police of Lokapur Police Station, who was camping at Muddapur investigating certain other cases.

P. W. 1 Dr. V. K. Kakareddy of Primary Health Centre, Lokapur, gave treatment to all the injured persons including the deceased Mallappa who continued to be unconscious. However, he attended the deceased through out the night and ultimately the injured Mallappa succumbed to the injuries at 10-30 A.M. on 20-4-1979. This fact was intimated by P.W. 1 to the Police as per Ex. P-7. On receipt of the information from PW1, Dr Kakareddy, regarding the death of the deceased, P W 20 P.S.I., sent up the requisition as per Ex P-31 to the Court to incorporate Section 302 I.P.C, in the F.I.R. already issued. He sent up express reports to his

superiors.

P. W. 20, P.S.I., having taken charge of this case from P. W. 16 went to Petlur Village on 20-4-1979 in the early hours, searched for the accused, but they could not be found as they were absconding, secured panchas, drew up a mahazar of the scene of offence as per Ex P-21 and seized thereunder 11 handful of blood-stained stones (M.O.1), handful of unstained stones (M.O. 2), a stick (M.O. 12), a broken stick (M.O. 13)sash(M.O.14) and a small towel(M.O.15). He, thereafter, went to the hospital, held inquest proceedings over the dead body of the deceased as per Ex, P-19 and made over the dead body for P.M. examination. On receipt of the dead body with Ex.P-10, P.W. 1 conducted P.M. examination and issued P.M. report as per Ex. P. 11. P.W. 20 then seized under a panchanama, Ex. P. 20, blood-stained shirt (M.O.9), dhoti (M.O. 10) and waist thread (M.O. 11) and recorded the statements of P.W. 6 Basappa, P.W. 7 Bhimappa, P.W. 8 Annappa, P.W. 14 Ramappa, C.W. 12 Kareppa, P.W, 9 Venkappa, P.W. 12 Shetteppa, P.W. 11 Lakkappa and others.

On 20-4-1979 at about 8 A.M., P.W. 19 Irappa, Head Constable, produced A-8 to A-10 before P.W. 20 who arrested them. The remaining accused persons were absconding. P.W. 20 went to Naganapur on 21-4-79 where he recorded the statements of P. W. 15 Hanamappa and P.W. 29 Balappa. The same day he went to Peilur and recorded the statements of some more witnesses. On the same day, he went to Ningapur, on reliable information and arrested A-11 and A-12. On 26-4-1979 at about 7 A.M. he arrested A-1 to A-5 at Chinchakahandi bridge and, as they were found to have sustained injuries, he sent them to the Medical Officer, Lokapur, for treatment. Later on P,W. 20 arrested A-6 and A-7 at Mallapur. He sent the seized articles to the Chemical Examiner for examination. By the time P W. 20 completed the investigation of this case after following all the formalities, A-13 was still at large. Therefore, P.W. 20, having informed the Military Authorities at Belgaum through some of his subordinates for the search of A-13, filed a charge sheet against A-1 to A-12 in C.C No. 482 of 1979. On 6-9-1979, A-13 was also arrested ; therefore a separate charge sheet against him was filed in C.C. No. 523 of 1979. The two charge sheets were filed in common Crime No. 22 of 1979. Therefore, the Learned Sessions Judge clubbed these two charge sheets

together, held a common trial and passed a common order under appeal.

3. The Learned Sessions Judge framed charges against all the accused persons for the offences punishable under Sections 147, 148, 302 I.P.C. read with Section 149 I.P.C., and Sections 323 and 326 I.P.C., read with Section 149 I.P.C.

4. The prosecution examined as many as 20 witnesses as P.Ws. 1 to 20 and got marked Exs. P-1 to P-40. No witnesses were examined on behalf of the defence, though Exs. D-1 to D-7 were marked. M.Os. 1 to 15 were also marked.

5. The Learned Sessions Judge, appreciating the evidence on record, held that the prosecution failed to prove the case against all the accused persons for the offence punishable under Section 302 I.P.C., read with Section 149 I.P.C., therefore, he acquitted all of them of the said offence. However, he found A-2 and A-13 guilty of the offence of voluntarily causing grievous hurt punishable under Section 325 I.P.C. Therefore, he convicted and released them, as stated above, giving benefit of Section 360 Cr. P.C. It is this order that has been challenged in this appeal by the State.

6. The stand taken by the accused was one of total denial.

7. Shri K.H.N.Kuranga, learned High Court Government Pleader appearing for the State, took us through the evidence on record and the judgment and submitted, firstly, that the approach of the Learned Sessions Judge in acquitting all the accused persons of the offence of murder punishable under Section 302 I.P.C. read with Section 149 I.P.C, was unsustainable, inasmuch as, according to him, P.Ws. 6 to 8, the injured witnesses, had given a clear account consistently of the nature of the incident that took place on 19-4-1979 and their evidence was corroborated by the evidence of P.Ws. 9, 10, 11, 14 and 15. Since the opposite party failed to satisfy the Court that the evidence of these witnesses was not creditworthy, the Learned Sessions Judge was in error in rejecting or discarding the evidence of these witnesses so far as the nature of the incident that took place on that day was concerned. He secondly contended that the learned Sessions Judge was in error in acquitting A-2 and A-13 of the offence of murder punishable under Section 302 I.P.C. inasmuch as, according to him, the prosecution had

produced sufficient satisfactory evidence which could be relied upon for the purpose of recording a finding against A-2 and A-13 on the said offence. He submitted that the learned Sessions Judge ought not to have discarded the evidence of the injured witnesses P.Ws. 6 to 8 for recording a finding against the prosecution and in favour of A-2 and A-13. Sri Kuranga lastly submitted that the learned Sessions Judge committed an error in releasing A-2 and A-13 under the provisions of Section 360 Cr. P.C., as, according to him, this approach of the learned Sessions Judge in extending the benefit of Section 360 Cr.P.C, was uncalled for. Therefore, he submitted that the order under appeal deserved to be modified for want of conviction against A-2 and A-13 if not against all the accused persons, in accordance with law.

8. Sri Ashok S. Patil, learned Counsel appearing for A-1 to A-12 through Legal Aid and Sri Puttaswamy, learned Counsel appearing for A-13, however, submitted that the view taken by the learned Sessions Judge in acquitting all the accused persons of the charge of the offence of murder punishable under Section 302 I. P.C., read with Section 149 I.P.C., was justified, inasmuch as the prosecution had failed to bring home the guilt by producing satisfactory and acceptable evidence. They submitted that the learned Sessions Judge had rightly discarded the evidence of P.Ws. 6 to 8 and 14, inasmuch as they were all interested persons; therefore, their evidence was not trustworthy. They lastly submitted that the approach of the learned Sessions Judge in extending the benefit of Section 260 Cr. P. C. to A-2 to A-13, after convicting them for the offence punishable under Section 325 I.P.C. was justified, Thus, they maintained that the order under appeal, being just and proper, did not call for interference by this Court.

9. The fact that the deceased Mallappa Belli died a homicidal death was not very much disputed before the Trial Judge. Indeed, even before us, Sri Ashok S. Patil and Sri Puttaswamy learned Counsel for the accused persons, did not call it in question seriously. P.W. 1 Dr. V.K. Kakareddy, who examined and treated the deceased Mallappa and who subsequently, conducted P. M. examination over the dead body of the deceased Mallappa, gave evidence before the Court stating that there were five injuries as follows :

(1) There is a collection of blood under the scalp over the temporal left side and left side parietal area and on the left temporal area.

(2) There is a fracture of left temporal bone directed from above down words, it is 1' long and runs in the centre of bone.

(3) There is a 'Y' shaped fracture of right temporal bone each measuring 1/2' and tail measuring 3/4'.

(4) Fracture line continues from bottom of 'Y' and joins fracture line of base of skull which runs transversely.

(5) There is bleeding within and outside the membrane at temporal region on both sides. There is bleeding on the temporal lobe and also in their cerebral region and intracerebral region. There is collection of blood at the base of the brain quantity in 210 cc.'

He has stated that the injuries were ante-mortem and rigor-mortis was slightly present in part and, according to him, the cause of death was due to intracranial bleeding and shock. Ex.P.11 is the P.M.report issued by him. He has further stated that all the injuries are collectively responsible for the death of the deceased Mallappa.

10. The medical evidence taken along with the evidence P.Ws. 6 to 8 and 14 establishes beyond doubt that the deceased Mallappa died a homicidal death. The conclusion reached by the Learned Additional Sessions Judge on this point, is therefore, just, based on correct appreciation of the evidence adduced in the case.

11. The defence Counsel in the Trial Court, however, submitted that if proper timely treatment was given to the Mallappa, he could have been survived. In other words, due to lack of treatment on the part of the doctor, who received the deceased in the hospital, the latter expired.

12. Ex. P-8 is the case-sheet maintained by the doctor (P.W.I) who treated the deceased Mallappa right from the time of his admission to the hospital till his death. By a perusal of the same, it is seen that the deceased was admitted to the

hospital at Lokapur by 8-30 P.M. on 19-4-1979 in an unconscious state with head injuries and it also discloses as to what was the condition of the deceased when he was admitted to the hospital and thereafter and how he was treated by the doctor throughout the night right from 8-30 P.M. till 10-30 A.M. on 20-4-1979 when he expired. P.W.1 Dr. V. K. Kakareddy, who admitted and treated the deceased in the hospital, has stated in his evidence that when the deceased was brought to the hospital, he was unconscious and he immediately made him to lie on the table and attended him whole night and the deceased did not regain consciousness till his death. In the cross examination, he has stated that the deceased was aged about 70 years weighing about 78 KGS., that X-ray facilities were not available in the Dispensary at Lokapur ; that such facilities were available in the Cottage Hospital at Bagalkot; that the distance between Bagalkot and Lokapur is 37 K.Ms, and that, regard being had to the condition of the deceased, which, was precarious, he did not send the deceased to Bagalkot because he was not in a position to take a journey from Lokapur to Bagalkot and if he did so, there was every possibility of the deceased being collapsed on the way. He denied the suggestion put to him that if surgical treatment was given to him, the deceased could have survived and that the injuries sustained by him were not sufficient to cause his death. The evidence given by the doctor (P.W.1) coupled with the documentary evidence, Ex. P-8, taken together, it cannot be said that P.W. 1 was not diligent in attending the patient and administering the medicine within his knowledge and that the deceased died due to lack of medical care. In view of the foregoing, the Learned Counsel appearing for the accused did not choose to argue vehemently in regard to this point.

13. Now, the questions that arise for consideration are whether all or any of the accused persons are responsible for causing the death of the deceased Mallappa and whether the learned Sessions Judge was right in releasing A-2 and A-13 on admonition under Section 360 Cr.P.C. after convicting them for an offence punishable under Section 325 I P.C.

14. In order to establish the case against the accused persons, the prosecution has relied upon the evidence of P.Ws. 6 to 8 and P.W. 14, who sustained injuries during the course of the incident, as also the evidence of P. W. 10 Thimmanna,

P.W. 11 Lakkappa and the independent eyewitness P.W. 15 Hanamappa.

15. P.W. 6 Basappa, son of the deceased Mallappa, has stated in his evidence that, on the date of the incident he was filling cotton in bags in his house along with his son Shivaputrappa (CW-19) and Shivappa (CW-27) and, at that time, he heard a row from the side of the shop of his brother P.W. 9 Venkappa and when he went there, he saw A-13 Ramappa quarrelling with his brother P.W. 9 Venkappa and when his father tried to pacify them, A-2 and A-13 pelted stones at him, as a result of which his father sustained injuries on the left temporal bone and fell unconscious. He has further stated that, at that time, his other brothers and uncles i.e., P.W. 7 Bhimappa, P.W. 8 Appanna, P.W. 14 Ramappa, C.W. Kareppa and C. W. 13 Chandrappa came there and, thereafter, all the accused pelted stones at them and when he requested the accused not to throw the stones, A-1 hit him with a stick on his hand thereby all of them sustained injuries. P. W. 7 Bhimappa and P. W. 8 Appanna who are also sons of the deceased, have stated that on the date of the incident, they were in their house and when they heard a row from the side of the shop of his brother, they went out and saw A-2 and A-13 pelting stones at his father and when they came to the spot, all the accused pelted stones at them and ran away. P.W. 14 Ramappa has given evidence corroborating the evidence of P.Ws. 6 to 8 almost to the same effect. P.W. 1 Dr. V. K. Kakareddy examined P.Ws 6 to 8 and 14 and two others at 8 P M on 19-4-1979, the date of the incident, and issued injury certificates Exs. P-6, P-1, P-2 and P-3 respectively. Therefore, it is clear that these witnesses sustained injuries during the course of the incident in question. Though all of them have stated that all the accused persons pelted stones at them including the deceased Mallappa, they have specifically mentioned the names of A-2 and A-3 only. If all the accused, as stated by them, pelted stones, nothing would have prevented them to name the other accused persons also.

P.W. 9 Venkappa, deceased Mallappa's son, with whom A-13 first picked up a quarrel which resulted in the death of the deceased, has also given evidence almost to the same effect as has been given by the injured witnesses, referred to above. He has also specifically mentioned the names of A-2 and A-13 as the persons who pelted stones at them in which his father sustained grievous injuries

and fell down unconscious.

16. The other evidence relied upon by the prosecution is the evidence of P.Ws. 10, 11 and 15. P.W. 10 Thimmanna is treated as hostile witness as he has not supported the prosecution case. He has stated that, on the date of the incident. He was in his house filling cotton along with P. W. 12 Shettpa and A-6 Lakshmappa and when he heard the row, he went and saw the deceased lying with injuries and he did not see A-2 and A-13 pelting stones though they held stones in their hands. In the cross-examination, he has stated that his house is situated just 3 mares from the place of the incident; that when he went there, he saw P.Ws. 6 to 8, 14 and others having sustained injuries and A-2 and A-13 without stones in their hands. The Learned Sessions Judge discarded the evidence of this witness, rightly so,

P.W. 11 Lokappa is the person who was also present in his house getting the 'Kanaki' cut on the date of the incident and who, on hearing the row, went and saw the presence of P.W. 9 and A-1 to A-3. The Learned Trial Judge, who had opportunity to see the witness in the witness-box, while discussing the evidence of this witness, has observed as follows :-

'Since this witness was feeling difficulty in giving out the names of accused, this Court directed him to identify the accused who were present at that time on the scene of offence and this witness though allowed to go near the accused and after seeing their faces to identify, was staggering and feeling very difficult to see the faces even at a distance of 2 to 3'.

P.W. 11 has also stated that, when A-1, A-2 and A-13 were throwing stones, P.W. 6 and 8 also came there and thereafter, heavy stoning was started and then he went inside the house being scared.

P. W. 15 Hanamappa is the resident of Naganapur Village and he came to Petlur to purchase a bull. He has stated in his evidence that, when he came to the shop of P. W. 9 to purchase beedies, A-13 came there and picked up a quarrel with P.W.9 and, thereafter, other persons including some ladies also came there and started pelting of stones and in the melee some persons from Venkappa's (P.W 9)

side sustained injuries and, thereafter, he proceeded to his village.

17. From the evidence of P.Ws. 11 and 15, it is clear that there was free pelting of stones between the accused persons and the injured witnesses. This fact has been suppressed, as has been observed by the Learned Sessions Judge also, by P. Ws. 6 to 8 and 14, the injured witnesses. P.W. 1 Dr. V. K. Kakareddy examined A-1 to A-5 on 26-4-1979 and A-7 on 1-5-1979 and issued injury certificates, Exs. D-1 to D-6, According to the Doctor, the injuries sustained by these accused were simple in nature and could be caused due to contact with hard and blunt surface and the age of the injuries was of more than seven days. That takes us to the date of the incident. Therefore, it is clear that there was a free pelting of stones on the date of the incident between the accused persons on the one hand and the injured witnesses on the other and in the melee, some persons from both sides sustained injuries and the deceased Mallappa also sustained grievous injuries by throwing of stones by A-2 and A-13 resulting in his death. In other words, A-2 and A-13 were alone responsible for causing the injuries found to have been sustained by the deceased Mallappa resulting in his death.

18. Now the question is whether A-2 and A-13 did commit the offence with intention to cause the death of the deceased or had the knowledge that the injuries, which would be caused by them, were likely to cause the death of the deceased Mallappa. As already stated above, there was a quarrel going on at the time of the incident in which persons from both sides started pelting stones at each other and, in that melee, persons from both sides sustained injuries. At that time, A-2 and A-13, who were on the side of the accused persons, in a spur of moment, also pelted stones without knowing its consequences, which hit the deceased and caused grievous injuries resulting in his death, Therefore, merely because A-2 and A-13 hit the deceased at that moment, it cannot be said that they had intention of causing the death of the deceased or they had knowledge that the injuries sustained by the deceased were likely to cause his death. Thus, the Learned Sessions Judge was right in holding that A-2 and A-13 were guilty of the offence of causing grievous hurt punishable under Section 325 I.P.C. and not the offence of murder punishable under Section 302 I. P. C. We do not see any force in the contention of Sri Kuranga, in this behalf.

19. We will now consider the argument advanced by Sri Kuranga, Learned High Court Government Pleader, that the Learned Sessions Judge erred in releasing A-2 and A-13 giving them the benefit of Section 360 Cr. P.C.

20. The only contention taken by the appellant-State in that since A-2 and A-13 are convicted for having committed an offence punishable under Section 325 I.P.C., the Learned Sessions Judge was not right in extending them benefit of Section 360 Cr. P.C. instead of sentencing them, according to law. It is for this reason Sri Kuranga argued that the benefit of Section 360 Cr. P.C. could not have been extended in a case like this in favour of A-2 and A-13. He submitted that that part of the order might be set aside and the accused sentenced, in accordance with law.

The Learned Counsel for A-2 and A-13 however, maintained that the view taken by the Learned Sessions Judge could be sustained having regard to the provisions of Section 360 Cr. P. C.

21. The Trial Judge has discussed the scope of Section 360 Cr. P.C. in paras 62 and 63 while extending its benefit in favour of A-2 and A-13. The provisions of Section 360 Cr. P. C. 1973 are similar to the provisions of Section 562 Cr. P.C. 1898. The corresponding English provisions of law dealing with Probation of Offenders have been dealt with in Halsbury's Laws of England' Third Edition Vol, 10 at pages 498, 499 and 500 It provides :

' Probation orders generally :-

If a Court before which a person has been convicted of an offence (not being an offence the sentence of which is fixed by law) is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order requiring him to be under the supervision of a Probation Officer for a period not less than one year or more than three years. The order must name the petty sessional division in which the offender does or will reside ; and (subject to changes of residence) he will be required to be under the supervision of a Probation Officer for that division. The Court for that division is known as the

supervising Court '.

Thus, it is seen that the provisions of corresponding English law dealing with the matter are more or less similar in language as we find in Indian law. The scope of Section 4 of the Probation of Offenders Act of 1958 and that of Section 360 Cr. P. C. is more or less generally one and the same. Therefore it applies to all kinds of offenders whether under or above twenty-one years of age. The only limitation imposed by Section 6 is that in the first instance an offender under Twenty one years of age will not be sentenced to imprisonment. Therefore, when the Court deals with an offender under Section 4 of the Act whether or not he was under twenty-one years of age is of little consequence. The word 'punishment' is wide enough to comprehend both the punishment of imprisonment and the punishment of fine. It is true that a person found guilty of having committed an offence punishable with death or imprisonment for life cannot get the benefit of this Section; but this Section however vests in the Court the discretion to release the person found guilty of having committed an offence not punishable with death or imprisonment for life on probation of good conduct. In the instant case, A-2 and A-13 have been found guilty of having committed an offence punishable under Section 325 I.P.C. As we have already observed the provisions of Section 360 Cr. P.C. are in parimateria with the provisions of Section 562 of 1898 wherein a person found guilty of having committed an offence not punishable with death or imprisonment for life may instead of sentencing him to imprisonment be released on probation of good conduct.

22. The object of these Sections is to attempt for the possible reformation of the offenders instead of inflicting on them the normal punishment of their offences and thereby to prevent the turning of youthful offenders into the walls of a prison. These provisions are the result of recognition of the doctrine that the object of Criminal Law is more to reform the individual offender than to punish him (Rattan Lal v. The State of Punjab, A.I.R. 1963 S.C. 444.) It is ordinarily intended for persons led astray for the first time by force or circumstances or by bad company or evil influence (Public Prosecutor v. Madathi, A.I.R. 1942 Madras 1415.) Since the provisions of Section 360 Cr. P.C. are similar to those of Section 4 of the Act of 1958 and they speak about punishment and not of imprisonment, the Court will not

punish the offender in any manner if on the facts it is satisfied that he should be released on probation of good conduct. (Rajeswari Prasad v. Rama Babu Gupta, : AIR1961 Pat19 .) However, we must bear in mind, as has been observed in (Emperor v. Ahmed Haji Sidik, A.I.R. 1941 Sind 109) that these benevolent provisions must be applied with discretion; otherwise, rather than preventing the manufacture of criminals, it may assist in their manufacture, for it may become known that first offence even of cattle-lifting, can be committed with impunity as the accused has only got to plead youth, produce sureties, show that he has no previous conviction for the sureties to be accepted. Therefore, while exercising the discretion extending the benefit of Section 360 Cr. P.C., the Court must carefully scrutinise the nature of the offence, the circumstances in which the offence is committed, the nature and character including the antecedents of the offender to assess the worthiness of the offender to extend the benefit of Section 360 Cr. P.C.

23. In *Dilbagh Singh v. State of Punjab*, 1979 Cr.L.J. 636 the Supreme Court observed as follows :

'The accused was 32 years old. His behavioral attitude was stated to be obedient and law-respecting in nature. His character was fairly good, was upright, alert and interested in rural games. He was wrestler of the locality. He was a petty farmer who left school in his teens, had ten acres of land belonging to the joint family of himself and five brothers and the mother. Being a cultivator and living in the joint family, there were no adverse remarks against him in the locality. On the other hand, he had great respect for the former Sarpanch of the village. His family circumstances evoked commiseration because his father was dead having been murdered in 1960. His mother was alive and had to be maintained by himself and his two brothers who were truck drivers and the third a jawau. He had his own nuclear family to maintain with a young wife and fond children. A pitiable factor was that his elder daughter was paralytic from birth. His social position showed that he belonged to a lower middle class family, lived by agriculture, loved his mother and brothers and had earned the goodwill of his neighbours who thought that the occurrence in question was induced by irritating land issue and temporary intoxication. A sense of remorse had overcome him according to the Probation Officer who said that he was a first offender and not a received. Role of the

accused in the occurrence was lesser and related to causing simple injury to deceased, He was sentenced to rigorous imprisonment for one year and a fine of Rs. 200/-. He was held vicariously guilty under Ss. 324/34 I.P.C and awarded two years rigorous imprisonment and a fine of Rs. 1,000/-. In addition, he was convicted under Section 323 I.P.C. for causing hurt to the daughter of the deceased and on this count punished with R.I. for one year together with a fine of Rs. 200.

HELD that in the above circumstances the accused should be released under Section 360. He would enter into a bond before the Trial Court together with surely in the amount of Rs. 1,000/- within two weeks of his release to keep peace, be of good behaviour, and to abjure alcohol and not commit offence for a period of three years.'

24. In *Lekh Raj v. The State of Punjab*, 1960 Crl.L.J. 1234. His Lordship Dua, as he then was, who lately became Judge of the Supreme Court, dealing with Section 562 Cr. P.C., 1898 (now Section 360 Cr. P.C., 1973), held as follows :

'Application of the provisions of Section 562 calls for exercise of discretion by the Court requiring a considerable sense of responsibility. The fact that the accused is a first offender is by itself not enough ; the additional fact that he is a youthful offender also does not by itself conclude the matter. In order to attract those provisions, the nature of the offence, the circumstances in which it is committed, the age, character and antecedents of the offender must also be taken into account ; and it is only if, after considering all these factors, the Courts consider it to be expedient to do so that action under this Section should be taken'.

In para-7 of the Judgment, His Lordship observed :

'Generally this provision of law is applied to crimes committed out of mere thoughtlessness, inadvertence or ignorance, sudden temptation or others, or by those who have been led astray for the first time by the force or circumstances; it can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relations or other causes of like nature, attempt to put an end to their own lives.'

In the same paragraph, further observation made indicates the essence of the Section to be understood by the Court. It is as follows :

This Section, as I understand it, is really intended to enable the court to carry out the highly desirable object of reformation and to give the accused person a chance in that direction; from this point of view it is generally applied to cases where the offender, but for such isolated lapse as led by him to commit the offence, would be expected to make a good citizen.....

I need hardly emphasise that out of the four objects of punishment for crimes (i) deterrent, (ii) preventive, (iii) retributive and (iv) reformative, great stress is laid in all progressive and welfare States on the last object. Of course, I do not, as at present advised, intend to unduly minimise the position properly assignable to the first three objectives in the present state of our society, but it cannot be denied that increasing importance is being attached to the last named objective and most of the progressive societies are concentrating more and more on reforming the social delinquents, by properly educating them and making them realise the importance of being peace abiding citizen.'

25. Viewed from the circumstances, in the instant case, it is undisputed that A-2, as on the date of the incident, was hardly 25 years of age and an agricultural coolie, while A-13, is, more or less, of the same age and he had been serving soldier in the Indian Army. Indeed, he had an unblemished history of life disclosing the character and antecedents without any stigma attached to it. As a matter of fact, the prosecution case discloses that A-13 had come to the village on leave from the Army to visit his family. A-2 being a friend of him, accompanied A-13 to the scene of offence and when the situation resulted in wordy quarrel, stones on both sides were thrown and A-2 and A-13 threw a stone each that struck the head of the deceased who was an old man with delicate health. He fell down and sustained injuries. There was no instantaneous death. All these circumstances go to show that there was neither any motive nor intention on the part of these two accused persons to cause such bodily injuries as are likely to cause his death much less knowledge that such injuries would cause the death of the deceased. These circumstances have been discussed by the Learned Sessions Judge while

extending the benefit of Section 360 Cr. P. O. to A-2 and A-13. In the circumstances having regard to the nature of the offence, weapons used, age, character and antecedents of the family, background of the accused and other circumstances attending thereon, we are of the opinion that the learned Sessions Judge was perfectly justified in releasing A-2 and A-13 on admonition giving them the benefit of Section 360 Cr.P.C.. This conclusion, in our opinion, being neither arbitrary nor illegal, does not call for our interference.

26. In the result and for the reasons stated above, we do not see any merit in this appeal and, accordingly it is dismissed. The judgment and order under appeal is confirmed.

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