

The Public Prosecutor Vs. Nalam Suryanarayana Murthy

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Court : Andhra Pradesh

Decided On : Sep-01-1972

Reported in : 1973CriLJ1238

Judge : Kondaiah and ;Ramachandra Raju, JJ.

Appellant : The Public Prosecutor

Respondent : Nalam Suryanarayana Murthy

Advocate for Def. : Mr. V. Subba Rao

Judgement :

Kondaiah, J.

1. This appeal by the State is directed against the Judgment of the Sessions Court. East Godavari acquitting the respondent of the charge of murder of his wife and releasing him under Section 4(1) of the Probation of Offenders Act. 1958 (hereinafter called the Act) instead of sentencing him to any imprisonment for the offence under Section 323. I. P, C.

2. The case for the prosecution as revealed from the evidence of the witnesses examined by it is as follows: The respondent and his wife, the deceased Sesharatnam were together running a sundry shop in the front portion of their house in Komaragiripatnam, Amalapuram . Taluk in the District of East Godavari.

At about 3.00 P. M, on March 26. 1970. the accused found fault with the deceased for having paid some excess change to one of their customers while managing the shop and abused her. The deceased denying the Payment of any excess change to any customer, retorted, as a result of which there was a sudden quarrel. The accused, in a fit of anffer. picked up the iron weight of 200 grams (M. O. 1) and hit with it on the head of the deceased only once. as a result of which she fell down with a bleeding injury crying aloud. The accused ran away from his shop. On hearing the cries of the deceased. D. Satyavathi and E. Bhagyamma, the neighbours came to the scene and rendered first aid to the deceased who died at about 6-30 P. M, P. Ws. 1 and 2 who had witnessed the occurrence, traced the accused at about 7-00 P. M. near the house of Metla Narasimha Murthi and produced him before P, W. 3 an elder of the village. P. W. 1 gave a complaint Ex. P-I to the village Munsif (P. W. 4) on the next day morning. After preparing the printed reports Exs. P-2 and P-3 P. W. 4 sent Exs. P-I and P-2 to the police at Amalapuram and Ex. P-3 to the Additional Judicial First Class Magistrate Amalapuram. P. W. 9. the Sub-Inspector of Police, on receipt of Exs. P-I and P-2 at about 12-30 P. M. on March 27. 1970 registered the case under Section 302. IPC and sent Ex. P-I 9, the First Information Report to the concerned authorities.

P. W. 10. the Circle Inspector of Police, on receipt of the First Information Report at about 1-15 P, M,. reached the scene of offence by 2-30 P. M. He held inquest over the dead body of the deceased between 3 and 5 P. M. and prepared Ex. P-4 the F.I.R. in the presence of P. W. 7 and others. During the inquest, he examined P. Ws. 1 to 3 and others. P. W. 3. in whose custody the accused was kept, had produced him before P. W. 10 who arrested him. P. W. 10 seized M. O. 1 the iron weight of 200 gms. from the shop of the accused under Exhibit P-18. The dead body was sent through the corpse constable (P. W. 8) to P. W. 5. the Woman Assistant Surgeon. Government Hospital, Amalapuram for conducting autopsy. She conducted post-mortem examination from 10 A. M, on March 28. 1970 and found a lacerated injury 1/2' X 1/2' X1/2' on the left side of scalp placed vertically 2' above the heir margin and issued Ex. P-II. the post-mortem certificate. No indentation to the skull bone nor a fracture of the underlying ekull bones was noticed by the doctor. She opined that the death of the deceased might have been due to shock on account of the injury. After completing the investigation, the

charge-sheet was filed by P. W. 11 on August 3, 1970.

3. The prosecution examined as many as 10 witnesses out of whom. P. We. 1 and 2 are the direct witnesses to the occurrence. P. W. 3 is the village elder in whose custody the accused was kept and who produced the accused before P. W. 10 when he came to the village. P. W. 4 is the village Munsif who recorded Ex. P-I. the First Information Report from P. W. 1. P. W. 5 is the Medical Officer who conducted the autopsy over the dead body. P. W. 6 is the Head Clerk of the Additional Judicial 1st Class Magistrate's Court, who speaks to the receipt of the material objects. P. W. 7 is a panchayatdar for the seizure of M. O. 1 and other material objects. P. W. 8 is the Corpse constable, P. W. 9. the Sub-Inspector of Police and P. W. 10 the Circle Inspector of Police are the investigation Officers. P. W. 11 filed the charge-sheet.

4. The plea of the accused is one of denial. According to his statement under Section 342. Criminal P. C. he had gone out for collecting the outstanding and by the time he returned. Satyavathi and Bhagyamma were attending on his wife, who was injured. He did not see the injury but went out to fetch a doctor and by the time he returned, she was dead.

5. The trial Court believed the evidence of the direct witnesses, P. Ws. 1 and 2 and held that it was the respondent who inflicted the injury on the deceased, but found him guilty under Section 323 IPC as the injury was simple in nature, acquitting him of the charge of murder. Applying the provisions of Section 4(1) of the Act. the accused was released on his entering into a bond for Rs. 500/- with two sureties each for a like sum to appear and receive the sentence when called upon during the period of one year from the date of the judgment. Hence this appeal by the State.

6. The contention of the learned Additional Public Prosecutor is twofold:

(i) that the Court below should have convicted the respondent under Section 304. IPC as he intended to cause the injury which was likely to cause the death of the deceased; and (ii) that in any event, the Court below erred in applying the provisions of Section 4(1) of the Act instead of sentencing the respondent under

Section 323. IPC

7. This claim of the appellant is resisted by Mr. V. Subba Rao. the learned Counsel for the respondent-accused contending inter alia that the evidence of P. Ws. 1 and 2 must be rejected as untrustworthy and unreliable and there is no merit in this appeal.

8. Upon the respective contentions of the parties, the following questions arise for decision:

(1) Whether the prosecution has established beyond all doubt that it was the respondent-accused who inflicted the injury on the left side of scalp of the deceased ?

(2) If question No. 1 is answered in the affirmative, what is the offence that has been committed by the respondent ?

(3) Whether, on the facts and in the circumstances, the provisions of Section 4(1) of the Act have been rightly applied or the respondent is liable to be sentenced under Section 323. I. C. P.?

9. Taking up the first question first, we have no hesitation to agree with the trial Judge that it is the accused, and none else, who inflicted the lacerated injury 12' X 1/2' X 1/2' on the left side of scalp of the deceased with M. O. 1 at about 3-00 P. M. on March, 26. 1970 in their sundry shop. P. Ws. 1 and 2. the neighbours, amply prove the prosecution story relating to the actual causing of the bleeding injury by the accused to the deceased. Nothing in the cross-examination of P. Ws. 1 and 2 to discredit their testimony has been elicited. They are not only natural and competent witnesses but also reliable and trustworthy. P. W. 1 has. in fact, given Ex. P-I. the First Information Report, to the Village Munsif on the next day. They have been examined by the police at the inquest. Their evidence is amply corroborated by P. W. 5. the doctor who conducted the autopsy over the dead body of the deceased. Hence we find point No. 1 in favour of the prosecution.

10. It next falls for determination what is the offence that has been committed by the respondent. The injury, as spoken to by P. W. 5. is simple in nature. The

medical evidence does not corroborate the prosecution version that the deceased died as a result of the injury received by her. Though P. W. 5 deposes in her Chief Examination that the death of the deceased might have been due to shock on account of the injury, she admits in cross-examination that she is not certain or definite that the death of the deceased would have been due to shock. She further deposes as follows:

I am also not definite or certain that the shock would have occurred On account of the injury. The injury is simple in nature.

The medical evidence, therefore, does not support the prosecution case that the deceased died as a result of the injury caused to her. Nor is there evidence to the effect that the injury caused to the deceased is such that it is likely to cause the, death of the deceased. In the circumstances, the accused cannot safely be convicted for the offence of murder or culpable homicide not amounting to murder punishable, under Section 302 or 304. IPC The proper conviction of the respondent is for the offence of causing simple injury to the deceased, punishable under Section 323. I.P.C. For all the reasons, the conviction of the respondent under Section 323, IPC by the trial Court must be upheld. Question No. 2 is, therefore, answered accordingly.

11. We shall now turn to question No. 3. The sum and substance of the plea of the learned Additional Public Prosecutor is twofold;

(i) that the Court is bound to call for the report of the Probation Officer and consider the same before applying the provisions of Sub-section (11 of Section 4 of the Act (Probation of Offenders Act. 1958). as the provisions of Sub-section (2) of Section 4 are mandatory; and

(ii) that the Court must have regard to the death of the deceased as one of the circumstances of the case including the nature of the offence and the character of the offender, in arriving at a conclusion whether or not it is expedient to release him on probation of good conduct,

12. But Mr. Subba Rao refers to the words 'at once' used in Sub-section (1) of Section 4 as lending support to his submission that no report from the Probation Officer need be called for, before making an order under that provision. In other words, his argument is that the use of the words 'if any' in Sub-section (2) of Section 4(1) indicates that the Court has to consider the report of the Probation Officer only if one such report has been called for from him in its discretion, otherwise not.

13. In order to appreciate the scope of the respective contentions, it is necessary to refer briefly to the scheme and intendment of the Act and the material provisions thereof. The Act, which came into force on June 12, 1958 in the State of Andhra Pradesh, was enacted to provide for the release of offenders on probation or after due admonition and for matters connected therewith. Section 3 empowers the Court to release, after due admonition, an offender found to be guilty of having committed an offence punishable under Sections 379, 380, 404 or 420, IPC or any offence punishable with imprisonment for not more than two years or with fine, if no previous conviction is proved against him, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4.

The Court, having regard to the circumstances of the case, the nature of the offence and the character of the offender, must think it just and proper to release him under Section 3 after due admonition. Sub-ss. (1) and (2) of Section 4 being material for the purpose of the present case; it is profitable to read the same:

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.

Section 4 empowers the Court to release an offender found guilty of having committed an offence not punishable with death or imprisonment for life, on probation of good conduct instead of sentencing him to any punishment. In order to apply the provisions of Section 4(1), the following requisite conditions must be satisfied: (1)the offence found to have been committed by the offender must not be one punishable with death or imprisonment for life. In other words, only in cases where a person is found guilty of an offence punishable with any sentence other than death or imprisonment for life, the Court-can apply these provisions. (2) The Court must opine that it is expedient to release him on probation of good conduct instead of sentencing him to anv punishment. (3)' The offender or his surety must have a fixed place of abode or regular occupation in a place situate within the iuris-diction of the Court. The factors which are material and relevant for the Court to form its opinion about the expediency of releasing the offender on probation of good conduct are (i) the circumstances of the case, (ii) the nature of the offence and (in) the character of the offender. The Court shall consider the report of the concerned Probation Officer before passing an order under Sub-section (1). If the aforesaid requisite conditions are satisfied the Court may direct the release of the offender on his executing a personal bond, with or without sureties undertaking to appear and receive sentence when called upon during such period not exceeding three years and in the meantime to keep the peace and be of good behaviour. As the provisions of sub-sections (31 to (5) are not relevant for the controversy on hand, we feel it unnecessary to refer to them.

Section 5 empowers the Court to make an offender being released under Section 3 or under Section 4 to pay a reasonable compensation for the loss or injury caused to any person by the commission of the offence and costs of the proceedings, if it thinks it fit and reasonable. Section 6 prohibits the Court from sentencing an offender under 21 years of age to imprisonment unless it is satisfied that it would not be desirable to deal with him under Section 3 or Section 4. The Court has to record its reasons in, cases where it passes any sentence of imprisonment on an offender aged below 21 years. Sub-section (2)1 to Section 6 makes it obligatory for the Court to call for a report from the Probation Officer and consider the same as well as any other information available to it relating to the character and physical and mental condition of the offender, for the purpose of satisfying itself whether it would not be desirable to deal¹ with him under Section 3 or Section 4. The report of the Probation Officer shall be treated under Section 7 as confidential. Section 8 refers to the variation of conditions of probation whereas Section 9 provides for the procedure to be followed in case of an offender failing to observe the conditions specified in the band. Section 11 provides for appeals and revisions against the orders passed by any Court under Section 3 or Section 4 of the Act. Sections 13, 14 and 15 provide for the appointment of Probation Officers and their duties. Section 17 empowers the State Government, with the approval of the Central Government, to make rules to carry out the purposes of the Act.

14. We may notice some of the material and relevant rules made by the Governor of Andhra Pradesh with the approval of the Central Government by virtue of the powers conferred on him under Sub-section (1) to Section 17 of the Act, which are called Andhra Pradesh Probation of Offenders Rules, 1963 (hereinafter referred to as the rules). Rule 28 prescribes the procedure for the Courts to call for the report of the Probation Officer. The Court may direct in Form V the concerned Probation Officer to enquire into the character and antecedents of the offender, the circumstances in which the offence was committed and other matters and to submit a report in Form VI on a stipulated date which is not later than the date of delivery of judgment. The Court has to consider the report of the Probation Officer only after finding the offender guilty in case the accused is acquitted, the report shall be returned to the concerned Probation Officer for record for purposes of future reference. The Court is competent under sub-rule (2) to Rule 28 to direct the

Probation Officer to make any further investigation. The material portion of Form V reads as follows:

Please make preliminary inquiries into the character, antecedents, home surroundings, etc., of the accused mentioned above.

We may usefully refer to Form VI in which the report has to be submitted by the Probation Officer to the Court. The particulars required to be given by the Probation Officer are classified under three heads viz.. (1) personal history. (2) external influences and (3) legal history. Personal history includes childhood, behaviour and habits, temperament and physical and mental history and present condition; whereas legal history takes in previous institutional record, statement of the present offence and circumstances in which it was committed, offender's own reaction to the offence and his attitude towards possible punishments, summary of investigations relating to assets and liabilities, etc. The particulars that come within the category of external influences are school record and report of teachers, employment history, associates, home conditions, family history and other interested relations social agencies, institutions or individuals interested in the family, report of parents and relations, attitude of the family and of neighbours towards the offender and extent of its influence on him, home surroundings and general outlook. The remarks of the Probation Officer including recommendation regarding probation must be given in Form VI. This, in short, is the scheme of the Act.

15. 'The Act', as stated by the learned Judge. Subba Rao, J. (as he then was), in *Rattan Lai v. State of Punjab* : 1965 CriLJ360 'is a milestone in the progress of the modern liberal trend 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'. As observed by the Supreme Court in *Ramji Missar v. State of Bihar*. : AIR 1963 SC1088 . 'the object of the Act is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crime.' See also *Isher Das v. State of Punjab* : 1972 CriLJ874 .

16. A close reading of the material provisions of the Act manifests that the Act classified the offenders into two categories /i) offenders under 21 years of age. and (ii) others aged 21 and above. Section 6 deals with offenders aged below 21 years. The court is prohibited from sentencing young offenders at once to imprisonment unless it is satisfied that it is not desirable to release him after admonition under Section 3 or on probation of good conduct under Section 4 of the Act. The Court, in each case, has to invariably apply its mind to consider the application ' of Section 3 or Section 4 after calling for a report. There is no discretion left with the Court, unlike in the case of offenders aged 21 and above, in any case to sentence an offender aged below 21 years to imprisonment without applying its mind and deciding against the offender about the application of Sections 3 and 4 of the Act. It is pertinent to notice that Section 4 applies to offenders of all ages. It is a general provision. If the requirements of Section 4(1) are satisfied in the case of an offender below 21 years of age. that section has to be applied without resorting to the provisions of Section 6. But Section 6 has no application to offenders aged 21 and above. In the case of offenders aged 21 and above, the Court may exercise its discretion under Section 3 or Section 4. as the word used in Section 3 as well as in Section 4 is 'may', whereas the expression 'shall' is used in Section 6.

As the power vested in the Court under Section 3 or 4 of the Act to release the offenders after admonition or on probation of good conduct respectively, is discretionary, the onus is initially on the offender to establish the requisites justifying the application of those beneficial provisions. However, it must be noted that the discretion vested in the Court, being statutory, must be invariably exercised objectively, judicially, justly and properly and keeping in view the intent and object of the Act. The court is not justified in refusing to exercise its discretion arbitrarily without applying its mind to the facts and circumstances of each case. The question of applying the provisions of Section 3 or Section 4 of the Act in a given case would arise only when the Court makes up its mind on the evidence on record to hold the accused guilty of an offence. Till then, the question of considering the application of Section 3 or 4 does not arise. The Court has to call for a report from the Probation Officer so as to reach him before it pronounces its judgment. It is open to the Court even after pronouncing the judgment relating

to the conviction of the accused, to call for a report from the Probation Officer and consider the case of the accused under Section 3 or 4 after the receipt of the report and pass final orders in that regard. If the court is not satisfied that it is desirable to apply Section 3 or 4 in a given case, the offender may be sentenced to imprisonment. However, normally, it is not only just and proper but desirable to call for the report of the Probation Officer before pronouncing the judgment in the Court.

17. The submission of Mr. Subba Rao that no report from the Probation Officer need be called for. before making an order under Section 4(1) of the Act cannot be acceded to. Viewed from the intendment and object of the Act referred to above. the particulars required to be given in Form VI indicate that the report of the Probation Officer is really essential for the Court to base its opinion relating to the expediency or otherwise of the offender being released on probation of good conduct under Section 4(1) of the Act. To put it differently, without the requisite particulars in Form VI. it would be very difficult for the court to form its opinion about the expediency or otherwise of releasing the offender on probation of good conduct. Admittedly the essential particulars mentioned in Form VI would not normally be available to the Court unless a report is called for from the concerned Probation Officer. Section 4(2) is analogous to Section 6(2) of the Act with a slight modification in respect of calling for a report. Section 6 (2) specifically provides for calling for a report from the Probation Officer and the requirement is mandatory as the word used therein is 'shall'. There is no such specific provision in Sub-section (2) to Section 4. But. however, the provisions of Sub-section (2) regarding the consideration of the report of the Probation Officer before making any order under Sub-section (1) are mandatory. The submission of Mr. Subba Rao that the use of the words 'if any' after the words 'the report' in Section 4 (2) would support his contention that a report need not be called for in every case and in cases where the report is called for it has to be taken into consideration by the Court before passing an order under Sub-section (1) thereof, cannot be given effect to.

The expression 'if any' used in Section 6(2) has been construed by the Supreme Court in : 1965 CriLJ360 The learned Judge, Subba Rao, J. (as he then was), who spoke for the majority. rejected the submission of the counsel therein that the

expression 'if any' in Sub-section (2) to Section 6 indicates that it is open to the Court to call or not to call for a report. In that context the learned Judge ruled thus: the word 'shall' makes it a mandatory condition and the expression 'if any' can in the context only cover a case where notwithstanding such requisition the Probation Officer for one reason or other has not submitted a report. Briefly stated the calling for a report from the Probation Officer is a condition precedent for the exercise of the power under Section 6(1) of the Act by the Court.

The aforesaid construction of the expression 'if any' occurring in Sub-section (2) to Section 6 would, in our considered opinion, equally apply to the same expression used in Section 4(1) of the Act. We may notice in this context the decision of the Mysore High Court in *State of Mysore v. Saib Gunda*, 1964 (1) Cri LJ 460 at P. 461 (Mys.) wherein H. Hombe Gowda. Officiating C. J. observed thus: in the absence of a report from the Probation Officer the Magistrate had no authority to release the respondents on probation. There is nothing on record to show that a report of the Probation Officer concerning the activities of the respondents had been filed.

In *State v. Naguesh*. AIR 1970 Goa 49 : 1970 Cri LJ 465. the Judicial Commissioner has held that consideration of the report of the Probation Officer is a condition precedent to the validity of the order passed under Sub-section (1) to Section 4. The language of Section 4(1) manifests that the calling for the report of the Probation Officer is mandatory and without considering the report of the Probation Officer, no order under Sub-section (1) can be made. Unless and until the report, is called for, the question of consideration of the report will not arise. That apart, the provisions of Section 4(1) must be construed in the light of the intendment and object of the Act. The report of the Probation Officer furnishing the particulars specified in Form VI after the requisite investigation and inquiry into the matter, would certainly assist the Court in arriving at a correct conclusion in exercising its powers under Section 4(2) to the advantage of the offender. It is also pertinent to notice that one of the factors to be taken into consideration is the character of the offender and the court has to be satisfied that it is expedient to release the offender on probation of good conduct.

18. The decision of Anantanara- vana Ayyar, J. in the case of Salem Govindappa Chettv : AIR 1970 AP293 and that of Mohammed Mirza J. in Cri R C No. 121/68 (Andh-Pra) and Cri. R. C. No. 521 of 66 (Andh-Pra) do not indicate any discussion or reasons in support of the view canvassed by the accused. In those decisions, the learned Judges have considered the cases to be fit for action under Section 4(2) of the Act. This particular aspect was not decided in these cases. Nor was there any decision to the effect that no report need be called for from the Probation Officer before taking action under Section 4(2) of the Act. Evidently that was not canvassed by the respective counsel and a decision was not arrived at by the Court. Except that Section 4(1) of the Act was applied in those cases and the accused were released on probation of good conduct, this particular question was not decided in the cases referred to above. Hence, those decisions do not render any assistance to the accused herein.

19. For all the reasons stated, we must hold that the provisions of Section 4(2) are mandatory and the Court is bound to call for the report of the Probation Officer and consider the same before making an order under Sub-section (1) of Section 4. It may be noticed that no such requirement is needed in cases where Section 3 can be applied. The distinction between the two provisions can be easily understood. Section 3 is applicable to cases where the offence is punishable with imprisonment of less than two years, whereas Section 4 will take in all offences except those punishable with death or imprisonment for life. In the present case, no report from the concerned probation officer has been called for by the trial Court before exercising the power vested in it under Section 4(1) of the Act. Hence, the exercise of the power is illegal and in any event, improper and irregular.

20. That apart we find another formidable objection for the application of Section 4 in the instant case. The lower Court did not correctly understand the scope and import of the expression 'circumstances of the case' used in Section 4(1) of the Act while applying its provisions to the case on hand. The Court below has taken into consideration only the fact that the offence committed by the accused is causing hurt to the deceased punishable under Section 323. I.P.C. The expression 'circumstances of the case' occurring in Section 4(1) as well as Section 3(1) is

wide enough to take in all the relevant and material particulars of the case on hand. The circumstances, no doubt, include 'the nature of the offence' and 'the character of the offender' which are specifically stated in the section. If the expression 'circumstances of the case' is to be equated to the nature of the offence, the language of the section would have been different. Admittedly, the death of the deceased is one of the circumstances in the case to be taken into consideration. Where the injury caused by the offender is only simple in nature punishable under Section 323. I.P.C. without the death of the injured, the court would be justified in applying the provisions of Section 4(1). It should not be understood to have been laid down by us that the court is not empowered to apply the provisions of Section 4(1) in cases where the injured person died. What we want to stress is that the death of the deceased also is one of the material factors and circumstances of the case, which must be taken into consideration by the Court, in arriving at a conclusion whether or not it is expedient to release the offender on probation of good conduct.

21. We may add that the trial Judge has not kept in view the conduct and character of the accused before applying the beneficial provisions of Section 4(1) of the Act to his advantage. We shall, therefore examine the conduct of the accused immediately after the occurrence as well as at the trial, which is one of the relevant and material factors to be taken into account before the Court exercises the power vested in it under Section 4(1). In the present case, the accused did not admit his guilt at any stage. The conduct, of the accused is not that of a man of good character. Admittedly he ran away after the incident. He was kept in the custody of P.W. 3 and was handed over to the police on the day following the date of offence, at the inquest. He never repented for what had happened to his wife either immediately after the occurrence or at any time subsequent thereto. His statement under Section 342. Cr.PC makes it abundantly clear that he is not entitled to have the benefit of Section 4(1) of the Act. The Court, as pointed out earlier, has to assign valid and justifiable grounds in support of its conclusion to apply the provisions of Section 4(1). The judgment of the Court below does not disclose any valid and adequate grounds justifying the application of the provisions of Section 4(1) of the Act in the instant case. We are therefore, in entire agreement with the submission of the learned Additional Public Prosecutor

that the Court below is not justified in applying the provisions of Section 4(1) of the Act and the accused must be sentenced to imprisonment under Section 323. I.P.C.

22. In the result, the conviction of the respondent accused for the offence under Section 323. I.P.C. is confirmed and he is sentenced to undergo rigorous imprisonment for 6 (six) months. The appeal is accordingly allowed to the extent indicated.

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