

Parvesh and anr. Vs. State

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Court : Allahabad

Decided On : Apr-05-1982

Reported in : 1982CriLJ1821

Judge : P.N. Goel and ;S.J. Hyder, JJ.

Appellant : Parvesh and anr.

Respondent : State

Judgement :

P.N. Goel, J.

1. Parvesh, a young lad of 16 years, has been convicted and sentenced under Section 302 I.P.C. simpliciter to undergo imprisonment for life. Raj, a young lad of 18 years, has been convicted and sentenced under Section 302/34, I.P.C, to suffer imprisonment for life. Niranjana, a young lad of 18 years, has been convicted and sentenced under Section 323, I.P.C., to undergo R. I. for one year. These three appellants are residents of Brahmapuri in the city of Meerut. This locality is within the limits of police station Delhi Gate. The police station is about 6 furlongs from Brahmapuri.

2. The occurrence took place on 27-4-1974 at about 8 p. m. in Brahmapuri. In this occurrence Jugal Kishore a young lad of 18 years, was assaulted. On account of the injuries sustained he died.

3. Jugal Kishore was son of Ram Swarup, who had died some years before the occurrence. Jugal Kishore along with his step-mother Smt. Kunti and sisters Mala, aged about 16 years and Madhu, aged about 12 years, used to live in Brahmapuri, the locality of the appellants. His sister's husband Prem Chand (P. W. 1) also used to live in this locality, quite close to the house of Jugal Kishore. One day before the occurrence at about 10 A. M. Parvesh and Raj teased Mala when she was outside her house burning a furnace. In the evening at about 7 p. m. she spoke of the incident to her brother Jugal Kishore, when he returned to the house after having performed his duties at Punjab Shoe Store, within half an hour of her making complaint to Jugal Kishore, Parvesh and Raj passed in front of the house of Jugal Kishore. At that time Jugal Kishore told them that it was not proper on their part to tease young girl. Upon this there took place some heated talks amongst them.

4. On the next day i.e. on the date of occurrence, at about 8 p. m. Jugal Kishore and Harish (P. W. 4) were going from the house of Jugal Kishore. They had reached near the house of Raghubir Shastri where the three appellants were standing. Parvesh and Raj spoke to Jugal Kishore that he had given abuses to them on the previous day and that they were Dada (bad characters) in the mohalla and that they would tease his sister. Upon this there took place heated words between Jugal Kishore on one side and the three appellants on the other side. Then Niranjana caught Jugal Kishore by his waist, Raj assaulted him with slaps and Parvesh assaulted him with a knife. The appellants then bolted away.

5. At the time of occurrence Bishan Lal, Narendra Kumar and Shiv Kumar had also come up. The house of Prem Chand is at 15-20 steps from the house of Raghubir Shastri. Prem Chand saw the occurrence. Harish, Prem Chand and Niranjana immediately carried Jugal Kishore in a rickshaw to the District Hospital. Jugal Kishore breathed his last just reaching the hospital. Prem Chand then immediately went to police station Delhi Gate and lodged report verbally at 9.05 P. M. S. N. Mishra, S. I. (P. W. 15) was entrusted with the investigation of the case. He reached the scene of occurrence and prepared a site plan. Ashok Kumar Chaturvedi, S. I. (P. W. 2) held inquest on the dead body.

6. On 28-4-1974 at 4.45 P. M. Dr. A. S. Gupta (P. W. 9) conducted post mortem examination of the dead body and found following ante mortem injuries. : (1) Incised punctured wound 2.5 cm. x 1.5 cm. x chest cavity deep on the posterior and upper part of left axilla. (2) Abrasion 5 cm. x 2 cm. on the left scapula, 3 cm. away and behind injury (1). (3) Abrasions, 3 in number, on the back of left elbow in an area of 5 cm. x 2 cm. (4) Abrasion 1 cm. x 1/4 cm. on the middle of lateral side of neck on left side.

7. Under injury I it was found that the first interspace was pierced, that the pleura and the upper lobe of the left lung were pierced, that the left pleural artery was punctured and the. left pleural cavity was full of blood.

8. The appellants did not admit the allegations of the prosecution. Raj and Niranjana asserted that they had not taken part in the occurrence, parvesh set up a counter version by saying that the woman of the family of Jugal Kishore and Prem Chand used to carry on illicit profession, that his uncle Braham Singh Verma, a Municipal Commissioner objected to it, that on the date of occurrence at about 7 p. m. he was going to fetch his clothes from the shop of a tailor, that Jugal Kishore, Sammo and Harish attacked him, that Harish had a lathi, Jugal Kishore a hockey stick and Sammo a knife, that he snatched knife of Sammo and wielded it upon Jugal Kishore in his self defence.

9. The prosecution examined Prem Chand, Harish and Bishan Lal (P. Ws. 1, 4 and 8) to prove the occurrence alleged by it. The prosecution further examined Sheo Kumar (P. W. 7), who saw the appellants running away. On the other side Parvesh examined Dr. Dilawar Singh (D. W. 1), Medical Officer Civil (District) Hospital Meerut, who examined him on 28-4-1974 at 1.30 P. M. and found following injuries on his person:

(1) Incised wound 2.5 cm. x 0.5 cm. x muscle on left side chest, 9 cm. above the left nipple. (2) Incised wound 3 cm. x 0.5 cm. x skin on back of left hand. (3) Incised wound 2 cm. x 0.5 cm. x muscle on outer aspect of right forearm upper part. (4) Incised wound 3 cm. X 0.5 cm. x muscle right side back of chest upper part. (5) Contusion 9 cm. x 2 cm. on back of left shoulder. (6) Contusion 5 cm. x 1-5 cm. on left side back upper part. (7) Contusion 5 cm. x 2 cm. x 3 cm. below

injury (6). (8) Contusion 7 cm. x 2 cm. on right scapular region. (9) Contusion 3 cm. x 2 cm. on front of right shoulder. (10) Traumatic swelling over the bridge of the nose 2 cm. x 2 cm. All the above injuries were simple.

10. The prosecution witnesses did not admit that Parvesh received any injury in the occurrence. Dr. Dilawar Singh admitted in cross-examination that all the injuries of Parvesh were superficial and could even be caused on 28-4-1974 at about 6 or 7 in the morning.

11. On an appraisal of the entire evidence, the learned VIIIth Additional Sessions Judge Meerut believed the testimony of the prosecution witnesses and held that the occurrence took place in the manner alleged by the prosecution and that Parvesh did not receive any injury in the occurrence. Therefore, he convicted the appellants as mentioned above.

12. We have heard learned Counsel for the parties and carefully gone through the entire evidence on the record.

13. Prem Chand is sister's husband of Jugal Kishore. He lives quite close to the house of Jugal Kishore. He along with his wife was standing at the door of his house at the time of the occurrence. He saw the entire occurrence with his own eyes. He has narrated the entire story of the prosecution. His testimony is supported by Harish and Bishan Lal. Harish was working at Sharma General Store, Valley Bazar, Meerut. On the first floor of the building in which there was Sharma General Store at the time of the occurrence there was Punjab Shoe Store in which Jugal Kishore used to work, Harish also lived in Brahmapuri. Therefore, Harish and Jugal Kishore used to return from their firms to their houses together. On the date of occurrence Harish and Jugal Kishore returned together and reached the house of Jugal Kishore, then a little later both of them proceeded from the house of Jugal Kishore. Therefore, Harish happened to see the entire occurrence. Bishan Lal is aged about 40 years. He carries on cultivation. He also lives in Brahmapuri. Prem Chand was living on rent in a portion of this house. At the time of occurrence he was in the Sehan of his house. He heard alarm and then came out in the street. Then he saw the entire occurrence. He is quite a natural witness of the occurrence. Sheo Kumar (P. W. 7) lives in Brahmapuri at about 3/4

mile from the house of Jugal Kishore. He along with Narendra had gone to Shiv Temple situated in Brahmapuri, They heard alarm and then they rushed towards the scene of occurrence. Then they noticed the three appellants running away. It may be recalled that Narendra was one of those persons who had carried injured Jugal Kishore in a rickshaw to the hospital.

14. The above named 4 witnesses had no enmity whatsoever with the appellants from before. They had no reason to perjure themselves against any of the appellants. There was electric light on the electric post at the place of occurrence. Therefore, the prosecution witnesses could not have made any mistake in respect of the identity of the assailants.

15. Statement of Prem Chand shows that Mala's marriage was celebrated one month after the occurrence and that she gave birth to a son 6-7 months after the occurrence. His statement further shows that he had not seen his father-in-law, that he did not know the place to which his father-in-law belonged, that he did not know what profession his father-in-law used to carry on, that he did not even know the caste of his father-in-law and mother-in-law Smt. Kunti. He has admitted that his mother-in-law belongs to hill region. Mala's husband Hari also belongs to hill region. He was living in Brahmapuri from before his marriage and was working as private bus driver. Mala is really the daughter of Smt. Sero Devi and not Smt. Kunti Devi. He has shown ignorance if Smt. Sero Devi used to carry on the profession of a prostitute. His statement goes to indicate that Mala was a girl of easy virtue from before her marriage. Therefore, it appears quite natural and probable that Parvesh and Raj, young lads of equal age, would have teased her a day before the occurrence.

16. Prem Chand has admitted that there was some marriage at the house of Parvesh on the date of occurrence, but this fact is not indicative of the fact that the occurrence could not have taken place in the manner alleged by the prosecution.

17. With regard to the defence version, it may be recalled that the injuries noted by Dr. Dilawar Singh, which he found on the person of Parvesh, were superficial, In case 3 persons, 2 armed with blunt weapons and one armed with a knife had intentionally opened assault on Parvesh, they should have caused severe injuries

to him and not superficial injuries to him. It will next be noticed that when Parvesh snatched knife from Sammo and caused injuries to Jugal Kishore, it is obvious that Harish, who had a lathi, would have caused severe injuries to Parvesh. In these circumstances it appears to us that there is absolutely no substance in the defence version. There is no material on record to indicate that Parvesh received injuries in the occurrence alleged by the prosecution. To us it appears that when Parvesh came to know of the report against him, he got fictitious injuries recorded by Sri Dilawar Singh.

18. From what has been found above, we are clearly of the opinion that the prosecution established its case against the appellants.

19. The question now is what offence was committed by each of the three appellants. The learned Additional Sessions Judge convicted Niranjana under Section 323, I.P.C. Niranjana simply caught hold of Jugal Kishore by his waist. He did not cause any injury to Jugal Kishore. From the manner of occurrence alleged by the prosecution the learned Sessions Judge perhaps inferred that the intention of the assailants was to assault Jugal Kishore. On this basis it seems to us that Niranjana was convicted under Section 323, I.P.C., only, if this is so then Raj, who had assaulted Jugal Kishore with slaps, could not have been convicted under Section 302 with the help of Section 34, I.P.C. The learned Sessions Judge has simply stated that as Niranjana was not involved in the events which preceded the actual occurrence and as he did not exhort, he should not be convicted under Sections 302/34 I.P.C. and that he was liable to conviction under Section 323, I.P.C. In case Niranjana could not be convicted under Section 302 with the help of Section 34, I.P.C, it is obvious that he could not be convicted even under Section 323, I.P.C. because he did not cause a single injury to Jugal Kishore. In this way the conviction of Niranjana is wholly unfounded.

20. Raj no doubt teased Mala along with Parvesh one day before the occurrence in the morning. Then in the evening Raj was with Parvesh when Jugal Kishore told them that it was not proper on their part to have teased Mala. On the basis of these two facts it cannot necessarily be said that both of them had the common intention of causing the death of Jugal Kishore or causing such bodily injury which

was sufficient in the ordinary course of nature to cause death. On the date and time of occurrence Raj, Niranj,an and Parvesh were standing near the house of Raghubir Shastri. Jugal Kishore came with Harish. Paresh only spoke to Jugal Kishore and asked as to why he had given abuses to him and that he would tease his sister as he had done before. He added that he is Dada (bad character) in the mohalla. Jugal Kishore asked him not to tease his sister (vide first information report). Thereupon there took place heated exchange of words between Jugal Kishore and the three appellants, (vide statement on oath of Prem Chand). This fact, however, does not find place in the first information report. Just then Niranj,an caught Jugal Kishore by his waist, Raj assaulted him with slaps and Parvesh gave a knife blow to Jugal Kishore which unfortunately proved fatal.. It is in evidence that Parvesh attacked Jugal Kishore with knife twice but Jugal Kishore was hit only once. The fact remains that Jugal Kishore received only one knife injury at the hands of Parvesh. It is in evidence that after Niranj,an caught Jugal Kishore by the waist and Raj assaulted him with slaps, Parvesh took out knife from the pocket of his pant and then wielded it on Jugal Kishore. There is not a word in the first information report that Niranj,an and Raj called upon Parvesh to assault Jugal Kishore with a knife. In these circumstances it is difficult to presume that Niranj,an, Raj and parvesh or Raj and Parvesh had the common intention of causing fatal injury to Jugal Kishore with a knife. In this circumstance we are clearly of the opinion that Raj could not be convicted under Section 302 with the help of Section 34, I.P.C. He could only be convicted for having assaulted Jugal Kishore with slaps. In this way, he could be convicted under Section 323 I.P.C. The learned Sessions Judge has not convicted him under the said section.

21. The learned State counsel urged that in fact the three appellants had the common intention to cause fatal or grievous injury to Jugal Kishore with a knife, According to him the three appellants were standing together waiting for Jugal Kishore to come up. We have set out the entire evidence above and we are of the opinion that the common intention to cause fatal injury or grievous injury to Jugal Kishore cannot be presumed from the facts appearing in the case. Therefore, we are unable to accept the contention of the learned State counsel. It may be recalled that Jugal Kishore had reached his house in the evening of the date of occurrence along with Harish. There is nothing on record to indicate that the

appellants would have anticipated that Jugal Kishore would then come up along with Harish. Therefore, it is not correct to say that the three appellants had intentionally gathered at the scene of occurrence to cause injuries to Jugal Kishore.

22. So far as Parvesh is concerned, we are of the opinion that he cannot be convicted under Section 302, I.P.C. Two facts clearly appear on the record. Firstly, Jugal Kishore and Harish proceeded from the house of Jugal Kishore. The three appellants met them near the house of Raghubir Shastri. Parvesh said to Jugal Kishore that he was a bad character of the locality, that he would continue to tease his sister and that he had given abuses to him. The prosecution has no doubt proved the two incidents of the previous day, one which took place with Mala in the morning and the other which took place with Jugal Kishore in the evening. In case the appellants had gathered with the intention of assaulting Jugal Kishore at the time of occurrence, because of the incident of the previous evening, they would have immediately opened assault on Jugal Kishore. In that case we would have expected some weapons with Raj and Niranjan. But these two persons had no weapons. Niranjan first of all caught Jugal Kishore and then Raj assaulted him with slaps. Before this there took place exchange of hot words between Jugal Kishore on one side and the three appellants on the other side. It was in the heat of this passion that Niranjan caught Jugal Kishore and Raj assaulted him with slaps. The next fact which is noticeable is that then Parvesh took out a knife from the pocket of his pant and then gave a blow at Jugal Kishore. Rai did not cause any injury to Jugal Kishore with a knife. There is no evidence worth the name that the knife was a big one i.e. having a long blade. As the knife was taken out from the pocket we can easily assume that it was a small knife.

23. In this connection it will be useful to refer to the case of Yusuf v. State of U.P. 1973 Ali LJ 111 : 1973 Cri LJ 1220. In this case Yusuf had given a single blow with a knife which was not visible till it was taken out of the pocket. It was held that the knife was a small one and as such Yusuf was not guilty of the offence punishable under Section 302, I.P.C, and that he was guilty, in the circumstances of the case, under Section 304, Part II, I.P.C. The circumstances of this case may be narrated. Yusuf, Kalua and Babu were asking Nasib Ullah to restore Yusuf's son who was

missing for the last 3-4 days because Yusuf suspected the hand of Nasib Ullah. Nasib Ullah refused to disclose the whereabouts of the child unless Yusuf was prepared to restore Nasib Ullah's son. Mohan had come three times to take his Farshi which he had given to Nasib Ullah for repairs 4-5 days before. Nasib Ullah took Mohan aside and demanded Rs. 200/- from him in order to get rid of Yusuf, Kalua and Babu by paying the said sum to them. Mohan showed his inability to give him Rs. 200/-. Thereupon Nasib Ullah shouted that Yusuf's son was with Mohan. Mohan said that he had nothing to do with the son of Yusuf, One Akhtar intervened saying that the matter will be settled in the evening. This incident took place in the morning hours of 8-5-1968. Then in the evening of the said day at about 8 P. M. Yusuf and Kalua brought Mohan to the place of Nasib Ullah. Puran, son of Mohan accompanied them. Akhtar was called. Mohan insisted that he had nothing to do with the son of Yusuf. As parties were in no mood to settle the matter, Akhtar went away at about 11.30 P. M. At midnight Kunwarpal, another son of Mohan along with one Ram Lal reached there and asked his father to return to his house. Thereupon Mohan and Puran left the place and had gone a little distance that on the exhortation of Nasib Ullah, Babu and Kalua assaulted Mohan with sticks. Puran rushed to the rescue of his father, Yusuf took out a knife from his pocket and gave a blow at the abdomen of Puran, who fell down and died instantaneously. In these circumstances it was held that the knife was small and that Yusuf should have knowledge that knife blow could prove fatal. In the result, Yusuf was held guilty of an offence punishable under Section 304, Part II, I.P.C. It is apparent that Puran was nowhere in the quarrel. The quarrel was between Mohan on one side, Yusuf and others on the other side. Yusuf assaulted Puran because he rushed to the rescue of his father. In this way it is clear that Yusuf had no intention to assault Puran. He assaulted him in the heat of the moment. Therefore, the rule of knowledge embodied in Part II of Section 304 was applied.

24. The circumstances of the case before us are different. In this case Parvesh teased Mala, sister of Jugal Kishore in the morning of 26-4-1974. Then in the evening of the same day Jugal Kishore asked Parvesh and Rai not to tease his sister. Upon this there took place heated talks amongst them. The occurrence in question took place in the background of these facts. On 27-4-1974 (date of occurrence) at about 8 P. m. Jugal Kishore and Harish were going together. When

they reached near the house of Raghubir Shastri, Parvesh only spoke to Jugal Kishore and asked as to why he had given abuses to him and that he would continue to tease his sister. There took place some exchange of heated words. Then Niranjan caught Jugal Kishore, Raj assaulted him with slaps and Parvesh took out a knife from his pocket and struck it at the chest of Jugal Kishore. No doubt the knife can be considered a small one, but it is evident that parvesh intentionally caused knife blow at the chest of Jugal Kishore. In the entire occurrence Jugal Kishore had no fault. He was quite justified in his conduct on both the days. The conduct of Parvesh on both the days was unjustified. Taking into consideration the incidents of both the days, and also the fact that Parvesh said that he was Dada (bad character) of the locality, it can easily be presumed that Parvesh intentionally struck knife at the chest of Jugal Kishore and thereby caused such injury as was likely to cause death. In the circumstances of the case we are of the opinion that the rule of knowledge embodied in Part II of Section 304 cannot appropriately be applied and that the case more appropriately falls within the ambit of Part 1 of Section 304.

25. We may at this place indicate a broad difference between the offences of murder and culpable homicide. In the case of murder, the offender has a positive intention to cause the death of the victim. He assaults him with the intention of causing death or with the definite knowledge that - (1) the bodily injury inflicted by him would cause death, or (2) the injury would be sufficient in the ordinary course of nature to cause death, or (3) the injury was so imminently dangerous that it must cause death. In the case of culpable homicide the intention or knowledge is not so positive or definite. The injury caused may or may not cause death. Even if exceptions 1 to 4 to Section 300, I.P.C., are not applicable, the offence can still be culpable, homicide. To find that the offender is guilty of murder, it must be held that his case falls with any of the four clauses of Section 300, otherwise, he will be guilty of culpable homicide not amounting to murder.

26. In the instant case, if Parvesh had really a positive intention to cause the death of Jugal Kishore then he would have brought a big knife and would have caused more than one blow to him and he should have immediately assaulted him without waiting for Niranjan to catch hold of him and Raj assaulting him with slaps. In

these circumstances, we are of the view that Parvesh did not have the intention required in the case of murder and that, therefore, he cannot be convicted under Section 302 I.P.C.

27. As the occurrence took place about 8 years ago, we shall not now be justified in convicting Raj under Section 323 I.P.C. simply for his giving some slaps to Jugal Kishore. The victim did not receive any visible injury from these slaps.

28. We find that Parvesh gave out his age as 16 years in his statement under Section 313, Cr. P.C. on 20-8-1975. It means that in April 1974 he was aged 14 years and 8 months i.e. below 15 years. It means that he was a child within the meaning of the word defined in Section 2(4) of the U.P. Children Act 1961. For the purpose of this Act a person under the age of 16 years is a child. If a child is said to have committed an offence punishable with transportation or imprisonment, he is a youthful offender vide Section 2(3) of the U.P. Children Act. The Sessions Judge has not taken into consideration the age of parvesh and the provisions of the U.P. Children Act.

29. At this stage we consider it necessary to refer to Rule 53, General Rules (Crl.) 1957 as amended up to the year 1979 or 1980. Rule 53 of Chap. VII captioned 'the recording of evidence' requires that on every statement of an accused and deposition of a witness, the person mentioned, shall be indicated by his full name, father's name, profession, residence and age. This rule further provides that if the court considers the age given by an accused to be an underestimate or an overestimate it should form its own estimate and mention it also on the record and if the accused is charged with an offence punishable with death and the Court considers the age given by him to be an underestimate or overestimate, it may order medical examination of the accused about his age and should direct the State counsel to produce documentary evidence of his age, if any. is available,

30. The learned Addl. Sessions Judge did not form his own opinion/estimate about the age of Parvesh. In other words he considered that Parvesh had given his age correctly and had not underestimated it.

31. We may also refer to Section 73 of the U.P. Children Act. Sub-section (1) of this section purports to lay down that where an accused is brought before any court and it appears to the court that he is a child (i. e. he is under the age of 16 years), the court may make due inquiry as to the age of that person and for that purpose may take such evidence as may be forthcoming and may record a finding thereon, stating his age as nearly as may be. The finding in respect of age has been made final and cannot be interfered with in appeal or revision (vide Sub-section (2) of Section 73). In the instant case the Addl. Sessions Judge perhaps did not notice that the appellant Parvesh was a child as defined in U, P. Children Act; therefore, he did not follow the procedure given in Sub-section (1) of Section 73.

32. The position that follows is that in the instant case it has to be held that on the date of occurrence Parvesh was a child or youthful offender.

33. It was pointed out by the parties' counsel that Dr. Dilawar Singh has written the age of Parvesh on 28-4-1974 as 17 years at the top of the injury report Ex Kha 6. We find that in his statement on oath Dr. Dilawar Singh has not given out the age of Parvesh. He has no doubt proved the injury report Ex. Kha 6. His statement shows that he has not said a word about, the age of Parvesh. It seems that just by looking at Parvesh he assessed his age as 17 years; but this fact, in the circumstances of the case, does not go to indicate that Parvesh was really 17 years on 28-4-1974.

34. We consider useful to refer to the case of Raisul v. State of U.P. : 1977 CriLJ1555 . In this case Rajsul accused gave his age as 18 years in the Court of Session. Therefore, on the date of occurrence he was less than 18 years. The Supreme Court observed that the courts should not substitute their own estimate in regard to age. It means that the age given out by the accused at the trial should be taken as correct.

35. From all what we have said above we are of the opinion that on the date of occurrence Parvesh was a child. S. N. Misra, I. O. submitted charge sheet on 30-5-1974. It means that Parvesh was arrested prior to the said date. The trial Judges should keep in view the provisions of the Children Act and Rule 53 of G.R. (a),

1957.

36. As Parvesh was juvenile at the time of occurrence he could be tried by a juvenile court, a court of session is one of the juvenile courts vide Section 60(2) of U.P. Children Act. Therefore, the Addl. Sessions Judge could have tried Parvesh. But he could not have sentenced him to imprisonment for life. Section 27, U.P. Children Act, clearly lays down that notwithstanding anything to the contrary contained in any law, no court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. There is a proviso to this general rule. The proviso says that a child who is 12 years of age or upwards may be committed to prison when the court certifies that he is of so unruly, or of so depraved character that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable. In the circumstances of the present case, we are of the opinion that this proviso is not applicable to Parvesh.

37. In this connection it will be appropriate to refer to Sections 30 and 33 of this Act. Section 30 lays down that a court may, if it thinks fit, instead of directing any youthful offender to be detained in an approved school, order him to be - (a) discharged after due admonition, or (b) released on probation of good conduct and committed to the care of his parents or guardian or other adult relative or other fit person, on such parents, guardian, relative or person executing a bond, with or without sureties as the court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and for the observance of such other conditions as the Court may impose for securing that the youthful offender may lead an honest and industrious life.

38. The court may order that the youthful offender released under this clause may be placed under the supervision of a Reformation Officer or of some other person appointed for the purpose by the court.

39. Section 33 enumerates methods of dealing with children charged with offences. 10 methods in Clauses (a) to (j) are given in this section. Clauses (a), (b)(d) and (e) correspond to (a) and (b) of Section 30.

40. Clause (j) of this section reads, 'when the offender is a child of 12 years of age or upwards by sentencing him to imprisonment.'

41. Reading Sections 27, 30 and 33 together we are of the opinion that the courts should first pass orders in accordance with S- 30 and that in exceptional case the courts may pass an order in accordance with Clause (j).

42. We consider appropriate to refer to the case of Satto v. State of U.P. : 1979 CriLJ943 . It was a case under Section 376, I.P.C. In this case 3 boys, between the ages 10 and 14, who were cutting grass saw a girl (cowherd) aged 11 years. They committed rape on her. They were convicted by the Assistant Sessions Judge and sentenced to imprisonment. Their conviction and sentence were affirmed in appeal by the Addl. Sessions Judge. The High Court declined to interfere in revision. The Supreme Court released them on probation under Section 30(b) of the Children Act and passed order in accordance with the provisions of Clause (b) of Section 30. Taking into consideration the entire circumstances of the present case, the ages of Parvesh and his companions Raj and Niranjana, the provisions of Section 27 of the U.P. Children Act, we are of the opinion that it would be expedient if Parvesh is released on probation of good conduct under Section 30(b) of the said Act. We may mention that the relevant provisions of the U.P. Children Act, referred to above, were/are applicable to the district of Meerut by virtue of two notifications, noted below . (1) Notification No. 627 (P) (iii) XXXVI-SW-576 (P)-61 dated June 20, 1962, and (2) notification No. 432 (P)/XXXVI-SW-48 (P)-65 dated July 12, 1965 with effect from 24-7-1965.

43. In the result, the conviction and sentence of all the three appellants have to be set aside and Parvesh has to be convicted under Section 304. Part I, I.P.C. and released on probation as provided in Section 30(b) of U.P. Children Act.

44. Both the appeals are allowed. The conviction and sentence of all the three appellants recorded by the VII Addl. Sessions Judge, Meerut on 2-9-1975 in Sessions Trial No. A-6660 of 1974 are set aside. Raj and Niranjana appellants are acquitted in the case. They are on bail to which they shall not surrender. Their bail bonds are discharged.

45. Parvesh, however, is convicted under Section 304, Part I, I.P.C. He is ordered to be released on probation of good conduct and committed to the care of his parents and if not surviving parents, then his guardian, on his parents or guardian executing bonds without sureties, to be responsible for the good behaviour of Parvesh for a period of two years from the date of the execution of the bonds under Section 30(b) of U.P. Children Act, 1951. Parvesh shall be placed under the supervision of Reformation Officer (Probation Officer) Meerut. The Reformation Officer shall make report once every three months to the trial court, Parvesh is also on bail. His bail bonds shall stand discharged as soon as the bonds under Section 30(b) of U.P. Children Act are furnished before the trial court. The bonds may be furnished before the trial court within two months of this day.