

Baldev Raj Vs. State

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Court : Delhi

Decided On : Nov-06-1968

Reported in : 5(1969)DLT237

Judge : I.D. Dua, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4 and 7

Appeal No. : Criminal Revision Appeal No. 494 of 1968

Appellant : Baldev Raj

Respondent : State

Advocate for Pet/Ap. : K.K. Sood,; V.D. Misra and; Keshav Dayal, Advs

Judgement :

I.D. Dua, J.

(1) The petitioner Baldev Raj, who was stated to be a boy of 20 years age by the Courts below, was convicted on 14th; May, 1968 by a learned Magistrate 1st Class, Delhi, under section 324, Indian Penal Code and sentenced to rigorous imprisonment for one year. The Charge against him was that he had stabbed one Satish Chander on 20th July, 1967 at about 9.15A.M. when the injured person was going for a walk via T. B. Hospital Kingsway Camp along with Inderjit. Two injuries were given with the knife by the accused, one at the back of the neck and the

toher somewhere on the left arm. The conviction was upheld by the learned Additional Sessions Judge but the sentence was reduced to rigorous imprisonment for six months. The order of the learned Additional Sessions Judge is dated 7th October, 1968 and it was directed that the accused, who was on bail, be taken in custody.

(2) Btoh the Courts below considered the question of releasing the accused under the Probation of Offenders Act, but they could nto per- suade themselves to give the prtoection of this Act to the accused. The learned Magistrate disposed of this part of the case in the following words :-

'SINCE the accused was aged 20 years and no previous conviction was alleged against him, report of the Probation Officer was call- ed for and perused. According to the report the accused still moves in the company of had characters and does his own way and there is no control over his activities. They did nto recommend the benefit to be given to him under the Probation of Offenders Act, Keeping in view this report, I sentence the accused to undergo R.1. for the period of one year under section 324 I. P. C.'

On appeal, the learned Additional Sessions Judge observed thus :-

'THE next point urged by the appellant's counsel is that the lear- ned Magistrate observed in her judgment that the appellant was a young boy of 20 years and was nto a previous convict. 'She even sent for the report of the Probation Officer but she did nto afford any opportunity to the appellant to show that the circumstances appear- ing against him in the report were baseless. However, a perusal of section 7 of the Probation of Offenders Act shows that it is discretion ary with the court to communicate the substance of the Probation Officer's report to the offender and give him an opportunity :of producing such evidence as may be relevant to the matter stated in the report. A perusal of this report would show that the appe- llant has been characterised as an irresponsible boy who has no respect for law and order and. believes in the use of knife quite, freely. No doubt, no instance has been cited by the Probation Officer but it shows delinquent tendency on the part of the:..appel- lant who is a source of nuisance even to the neighbours. Anyhow, without going through the merits of this report it would nto be desirable to release

him on probation of good conduct when the Probation Officer does not vouchsafe that he would be able to effectively supervise the activities of the appellant. Hence I do not think it is a fit case for releasing the appellant on probation under the provisions of the said Act. However, having regard to the nature of injuries, the sentence awarded is rather excessive and is reduced to, R. 1. for six months.'

(3) In this Court, the learned counsel for the accused-petitioner has advisedly not taken me through the evidence and has abstained from challenging the conviction and the sentence on the merits. He has confined himself only to the question of the benefit of the Probation of Offenders Act 20 of 1958. The main grievance which he has attempted to make out is that the report called for by the learned Magistrate from the Probation Officer should have been disclosed to the accused so as to enable him to rebut the opinion of the said officer. According to him, he has a right to know what the Probation Officer thinks about him so as to rectify any error in which the Probation Officer may have fallen in his enquiry about the conduct or the behavior of the accused.

(4) In my opinion, as is obvious from section 7 of the Probation of Offenders Act, the report of the probation Officer has to be treated as confidential and it is only if the Court considers it fit that the substance of this report may be communicated to the offender so as to enable him to produce the evidence relevant to the matter stated in the report. The counsel for the accused has emphasised that no incidents have been mentioned by the Probation Officer in his report in support of the undesirable activities of the accused and this, according to him, shows that the impression formed by the Probation Officer may not be quite correct. I am unable to agree.

(5) The Probation of Offenders Act has been enacted to provide for the release of offenders on probation or after due admonition. By and large, the underlying principle of this progressive enactment is to reclaim back to the fold of civilised and orderly society and to reform those delinquent young persons who, for certain reasons, have fallen in wrong company or gone astray, but there are reasonable chances of their being reformed under the influence of Probation Officers or other persons who can influence their outlook and activities. This Act is not meant for

letting loose all young offenders with reckless unharnessed propensities merely because they are first offenders or that they are young. That approach would do more harm than good and would perhaps be contrary to the basic consideration which inspired this piece of legislation. This enactment embodies the modern humanitarian approach of reforming with freedom rather than punishing the individual offender, but to attract this provision, the desired reformation must be reasonably in sight. Without assuring effective steps towards reformation, mere release of all youthful offenders cannot advance the statutory purpose. It may, on the contrary, defeat such purpose and amount to misplaced sympathy, harmful both to the accused and to the society at large. The question has, therefore, rightly been left to the Court to come to its opinion on a consideration of all the information available relating to the character and physical and mental condition of the offender, including the report called for from the Probation Officer. In the case in hand, the Courts below seem to have formed an opinion that the Probation Officer would not be in a position to take the responsibility of controlling and supervising the activities of the accused, who is about 22 years of age and not merely a kid. Nothing has been said at the bar, nor do I find anything on the record of the two Courts below if any elderly relation of the accused is in a position to come forward and take the responsibility of keeping him under proper control. In these circumstances, I find it somewhat difficult to persuade myself to disagree with the opinions expressed by the Courts below and to hold that incorporation under the Probation of Offenders Act would be more beneficial than disciplined life in a prison in which expected care is taken to reform the youthful offenders. I am not unmindful of the fact that sometimes young people who go to jail, instead of getting reformed, come out as more hardened criminals, but for that state of affairs, remedy has to be sought elsewhere and not in this Court. It is, however, hoped that in Indian Republican Prisons, full attention is being paid to the proper education and reformation of their inmates. Certain period of disciplined life in a properly administered prison would thus seem to have a more chastening and reformatory effect on a man who is not irretrievably lost to the civilised society and is pliable, possessing a leaning to come back to the right path of orderly and peaceful way of life.

(6) For all the foregoing reasons, this revision fails and is dismissed.

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