

Mitthu and ors. Vs. the State

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Court : Rajasthan

Decided On : Nov-28-1975

Reported in : 1975(8)WLN988

Judge : P.D. Kudal, J.

Appeal No. : S.B. Criminal Appeal No. 15 of 1975

Appellant : Mitthu and ors.

Respondent : The State

Judgement :

P.D. Kudal, J.

1. This is an appeal by the accused appellants against the judgment of the learned Additional Sessions Judge. Took at Jaipur dated 12-12-1974, whereby Naihulal, Kesharlal, Mittha and Pooran Nath were convicted under Section 323 I.P.C., and sentenced to three months' rigorous imprisonment; and Jagdish was convicted under Section 304, Part. II I.P.C. and sentenced to six mouths' rigorous imprisonment.

2. The accused-appellants Mitthu, Nathulal, Kesharlal and Pooran Nath have filed a compromise with the legal bests of Nathu injured and his widow Met Kanti Devi. Vide proceedings dated 4-8-1975, it was ordered that this compromise shall be

considered at the time of hearing of the appeal.

3. As regards the accused appellant Jagdish is concerned, it was contended that he was a student studying in secondary, and was below 20 years of age. It was also contended that he was on bail during the pendency of the trial. The accused appellant Jagdish is in custody since 12-12-1974 as a result of which his studies have also been stopped.

4. The learned Counsel for the accused-appellants has prayed that as the accused-appellant Jagdish is not a previous convict, and as he was below 21 years of age at the time of the occurrence, benefit under Section 6 of the Probation of Offenders Act. read with Section 360 of the Code of Criminal Procedure, 1973, may be granted to him. In support of his contention, he has relied on Daulat Ram v. State of Haryana AIR 1972 SC 2434, a Darshana Kumar v. Jabalpur Municipality AIR 1973 SC 906 and Shri Ram v. The State 1973 RLW 495.

5. The learned Public Prosecutor has opposed the grant of benefit under Section 6 of the Probation of Offenders Act to the accused-appellant Jagdish. He has further contended that this plea was also advanced before the learned Additional Session judge who rejected this plea on the ground that the accused appellant was not entitled to it keeping in view the part played by him in the occurrence.

6. Section 360 of the Code of Criminal Procedure, 1973 provides that when any person under 21 years of age, or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, and if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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, or appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the mean time to keep the peace and be of good behaviour.

7. Section 6 of the Probation of Offenders Act reads as under:

When any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to as Sub-section AIR 1972 SC 2434, the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

8. In *Daulat Ram, v. State of Haryana* AIR 1972 SC 2434, it has been held that the object of Section 6 is to see that young offenders are not sent to jail for the commission of less serious offences, because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminal who may happen to be the inmate of the jail. Their stay in jail might well attract them towards a life of crime instead of reforming them. This would clearly do them more harm than good, and would perhaps also be prejudicial to the larger interests of the society as a whole, it is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6.

9. In *Darskan Kumar v. Jabalpur Municipality* AIR 1973 SC 906, it was held that when an accused is found to be below 21 years of age at the time of the commission of the offence the High Court ought to make an order under this section or remand the case for doing so.

10. In *Shri Ram v. The State* 1973 RLW 495, it was held that when the accused was below 21 years of age on the date when the judgment was pronounced by the trial Court, he can claim the benefit of the Probation of Offenders Act. While altering the conviction of the accused from Section 302 to Section 304, Part II, and

maintaining his conviction under Section 324 I.P.C. the sentence passed on both the counts against the accused, who is the first offender, are set aside and he will be released Under Section 4/6 of the Probation of Offender Act, on his entering into a bond with a surety in a sum of Rs. 2000/- each to receive the sentence when called upon during the period of two years and during that period to keep the peace and be of good behaviour.

11. In the instant case, there is ample evidence on record to establish that the accused appellant Jagdish was below 21 years of age at the time of commission of the offence. The learned Additional Sessions Judge has also held so vide paragraphs 9 and 27 of his judgment. It has not been established by the prosecution that the accused-appellant Jagdish was a previous convict.

12. The learned Counsel for the accused-appellants stated that the accused-appellant remained in custody during the investigation and enquiry for about 45 days, and has been in judicial lock-up since 12.12.1974.

13. Looking to the circumstance of the case, and that the accused-appellant Jagdish is below 21 years of age, and was prosecuting his studies as a student, & has not been proved to be a convict, it appears expedient & necessary in the interest of justice that the benefit of Section 6 of the Probation of Offenders Act, read with Section 360 of the Code of Criminal Procedure, 1973 be extended to the accused appellant Jagdish. If he executes a personal bond for a sum of Rs. 9,500/- with two sureties of Rs. 2500/ each to the satisfaction of the Sessions Judge, Jaipur City for maintaining peace and to be of good behaviour for a period of three years and to receive the sentence whenever called upon to do so, he may be released on furnishing bail bonds.

14. So far as the other accused-appellants are concerned, a compromise has already been filed. Looking to the facts and circumstances of the case, permission is hereby accorded to compound the said offence under Section 323 I.P.C. in terms of the compromise entered into between the parties.

15. In the result, the appeal filed on behalf of Mitthu, Pooran, Nathulal and Kesharlal is hereby allowed. Their conviction under Section 323 I.P.C. is set aside

All these accused are on bail to which they need not surrender. Their bail bonds are hereby cancelled.

16. The conviction of the accused-appellant Jagdish under Section 304 Part II I.P.C. is hereby sustained, but he shall be released under Section 6 of the Probation of Offenders Act read with Section 360, Cr. P.C., 1973. as ordered above, on his furnishing a personal bond of Rs. 5000/-and two sureties of Rs. 2500/- each for keeping peace and to be of good behaviour for a period of three years to the satisfaction of the Sessions Judge Jaipur City and to receive the sentence whenever he is called upon to do so.

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