

Ram Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-13-1987

Reported in : 1987(1)WLN497

Judge : Panna Chand Jain, J.

Appeal No. : S.B. Cr. Appeal No. 29 of 1987

Appellant : Ram Kumar

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. S.K. Jain

Judgement :

Panna Chand Jain, J.

1. This criminal appeal is directed against the judgment and order dated 20th December, 1986, passed by the learned Sessions Judge, Bundi, in Sessions Case No. 136/1986, where by he convicted the appellant under Section 304-11, I.P.C. and sentenced to five years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to further undergo rigorous imprisonment for six months. The learned Sessions Judge refused to grant benefit of probation under Section 6 of the Probation of Offenders Act, and Section 360, Cr. P.C. As a consequence where of the accused-appellant has preferred this appeal under Section 11 of the

Probation of Offenders Act (in short as Act).

2. The facts of the case lie in a narrow compass. The appellant was convicted by the learned Sessions Judge, Bundi for the offence under Section 304-11, I.P.C., against which an appeal was preferred to this Court. This Court vide its judgment dated 22nd January, 1986, dismissed the appeal of the appellant and maintained the conviction under Section 304-II, I.P.C.

Aggrieved by the same, the appellant preferred a special leave petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court in its order observed as follows:

While maintaining the conviction of the appellant we set aside the sentence imposed on the appellant and we direct the trial Court to consider whether the appellant is entitled to the, benefit of Section 360 of Code of Criminal Procedure, 1973, or to the provisions of the Probation of Offenders Act. If the trial Court on a consideration of the entire matter comes to the conclusion that the appellant is entitled to the benefit of either of the two provisions, it shall extend the benefit of those provisions to him. If the trial court finds that the appellant is not entitled to the benefit of the above provisions, the sentence now imposed by the High Court shall revive and the appellant shall under go the sentence.

The trial Court shall dispose of this case within eight weeks from the date it receives the copy of this order. The parties are at liberty to adduce evidence on the question of the age and on all relevant matters. In the meanwhile, the appellant shall continue to remain in custody.

3. After the remand of the case, the appellant examined Ram Pal and Bhagirath and produced certain documents. The prosecution examined Ram Chandra. Report of the Probation Officer was also obtained. The learned trial Court vide its judgment dated 20th December, 1986, maintained the conviction of the appellant as aforesaid and refused to give benefit of probation to the appellant. Aggrieved by the same, this appeal has been preferred by the appellant.

4. I have heard Shri S.K. Jain, learned Counsel for the appellant and the learned Public Prosecutor.

5. As regards the age, the learned trial Court has recorded a clear finding that the appellant was below 21 years of age at the time of the incident and also at the time of his conviction. The report of the Probation Officer is also in favour of the appellant i.e. it is not adverse to the appellant. The prosecution also admits that the appellant is not a previous convict. It is also not disputed that the provisions of Section 360, Cr. PC and also the provisions of Section 6 of the Probation of Offenders Act are mandatory in nature. Ordinarily, the accused below the age of 21 years is entitled to the benefit of probation. In case, the trial Court declines to grant benefit of probation to such an accused who is below 21 years of age, he is required to give special reasons for doing so. Through the evidence of Ram Pal and Bhagirath the defence has placed on record that the appellant's father is a handicapped person. The appellant is the only bread-earner in the family. He is married and having five children.

6. On merit, it is also on record that the offence was not pre-designed or pre-meditated, The offence was committed by the appellant under a sudden impulse. The accused caused only one injury by a stick which landed on his head and did not take any advantage of the helplessness of the deceased.

7. Section 360(1), Cr. PC casts mandate on the court to record special reasons for not giving the accused the benefit of Section 360, Cr. P.C. The learned trial Court in its impugned order declined to grant the benefit of probation simply on the ground that the accused-appellant murdered an innocent person. It is true that the appellant was responsible for causing the death of deceased Ghasi, but that by itself cannot be a ground to deny the benefit of probation to the accused. In fact, there is enough evidence on record to prove that in the facts and circumstances of the case the accused-appellant was entitled to the benefit of probation. He was below 21 years of age when the occurrence took place and when the order of conviction was made against him. Further, he is the only bread-earner in the family. He has to support his father who is handicapped and above all, he has to support his wife and five children. The report of the Probation Officer is in no way

adverse to the accused-appellant. Shri Jain placed reliance on Sunil Dull and Anr. v. The State of Rajasthan (1986) 2 JS 355, where in a Division Bench of this Court in almost similar circumstances in which the accused was convicted under Section 304-II, I.P.C., was given the benefit of Section 6 of the Probation of Offenders Act, to the same effect is the judgment in Murari Lal v. State of Rajasthan 1986 (2) JS 635. In that case, the accused who was convicted under Section 304-11, I.P.C. was given the benefit of probation under Section 360, Cr. P.C. In Sabal Singh and Ors. v. State of Rajasthan 1985 (2) WLN 581, the accused who was below 20 years of age on the date of incident, was released on probation. After carefully analysing the facts and circumstances of the case, I am of the opinion that the learned trial Court failed to assign any proper reason for denying the benefit of probation to the accused-appellant. In the absence of any such reasons, it would, therefore, be proper to release the accused-appellant on probation of good conduct under Section 360, Cr. P.C. The accused-appellant was below 21 years at the time of the incident and also at the time of his conviction. There is no previous conviction against him. The offence was committed by him under a sudden impulse and there was no pre-design or premeditated planning for committing the offence. The report of the Probation Officer is not against the accused-appellant and, above all, the accused-appellant is the only bread-earner of the family, as discussed above.

8. In the result, I allow the appeal and here by direct that the accused appellant shall immediately be released, on his entering into a bond for a sum of Rs. 3,000/- (Rupees three hundred only) together with a surety in the like amount to the satisfaction of the learned Sessions Judge, Bundi, to appear and receive the sentence when called upon during the period of two years and, in the mean time, to keep peace and be of good behaviour. The accused-appellant is allowed one month's time to furnish the aforesaid bond.

9. The appeal is accordingly disposed of in the manner indicated above.