



2025:AHC:210224

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2886 of 1984

Samsheer Singh and Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	H.S. Nigam
Counsel for Respondent(s)	:	A.G.A., Shyam Shanker Pandey

Court No. - 80

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard learned counsel for the appellants, learned A.G.A. for the State and perused the record.
2. This appeal has been preferred against the judgment and order dated 21.09.1984 passed by II Additional Sessions Judge, Saharanpur in Sessions Trial No. 379 of 1983, convicting and sentencing the appellant Balbir to undergo S.I. till rising of Court under Sections 323/34 and Shamsher Singh and Ashok under Section 323/34 IPC to three months simple imprisonment.
3. It has been urged that the co-convict appellant No. 1 Shamsher Singh and appellant No. 2 Balbir have died and the appeal against the said appellants has already been abated on 04.08.2022.
4. Learned counsel for the surviving appellant Ashok has submitted that he is not inclined to argue the case on merits and seeks the benefit of probation as the appellant has been convicted for the offence under Sections 323/34 I.P.C.
5. Learned counsel for the surviving appellant has relied upon the judgment in the case of **Subhash Chand & others Vs. State of U.P. (2015 Law Suit (All) 1343)** and the judgment passed in **Criminal Revision No. 1319 of 1999 (Hargovind & Others vs. State of U.P.)** passed by this Court on 11.01.2019.

Section 3 of the Probation of Offenders Act reads as follows:

"3. Power of court to release certain offenders after admonition.- When any person is found guilty of having committed an offence punishable under section 379 or section

380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation.- For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4."

6. Thus, this was the bounden duty of the learned Trial Court and also the appellate court to consider why they did not proceed to grant the benefit of Probation of Offenders Act.

Section 4 of the Probation of Offenders Act reads as follows:

"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.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being

less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

7. A similar provision finds place in the Code of Criminal Procedure. There, Section 360 provides:

"360. Order to release on probation of good conduct or after admonition :

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one 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, 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, 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 where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or

evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

Again, Section 361 reads as below:

"361. Special reasons to be recorded in certain cases.- Where in any case the Court could have dealt with-

(a) an accused persons under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so."

8. These statutory provisions very emphatically lay down the reformatory and correctional object of sentencing and obligates the trial court as well as appellate courts to give benefit of probation in fit cases as provided under law. Unfortunately, this branch of law has not been much utilized by the trial courts. It becomes more relevant and important in our system of administration of justice where trial is often concluded after a long time and by the time decision assumes finality, the very purpose of sentencing loses its efficacy as with the passage of time the penological and social priorities change and there remains no need to inflict punishment of imprisonment, particularly when the offence involved is not serious. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

9. In this instant case, the court below has not considered the probation law, although, the appellant was convicted for the offences under Section 323/34 IPC for which the appellant was convicted for the maximum period of three months simple imprisonment. Therefore, the benefit of probation could have been given in view of the law referred above. But, while awarding sentence this aspect was not considered. The learned court below did not even write a single word as to why the benefit of this beneficial legislation was not given to the accused whereas it was mandatory to do so under the provisions of Section 361 Cr.P.C. Moreover, the occurrence relates to the year 1982 and therefore, no purpose of justice will be served if the appellant is sent to jail

to undergo the terms of sentence after lapse of such long time.

10. That Hon'ble Supreme Court in **Ratan Lal vs State of Punjab, AIR 1965 SC 444**, while discussing the purpose and object of Probation of Offenders Act, 1958, has observed in para no. 4, as follows:

"4. The Act is a milestone in the progress of the modern liberal trend of reform in the field 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. Broadly stated the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the condition laid down in the appropriate provision of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them 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 offenders, it is not desirable to deal with them under Ss. 3 and 4 of the Act."

11. Further the Hon'ble Supreme Court in the case of **Ved Prakash vs State of Haryana, (1981) 1 SCC 447 : AIR 1981 SC 643** while discussing on the duty of Bench and Bar regarding compliance of Section 360 Code of Criminal Procedure read with Section 4 of Probation of Offenders Act, 1958 was pleased to observe as under:-

"The offence, for which conviction has been rendered, is one which will be attracted by S. 360 or at any rate the Probation of offenders Act, 1958. The materials before us are imperfect because the Trial Court has been perfunctory in discharging its sentencing functions. We must emphasise that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if S. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitative slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislation which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even

if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of offenders Act."

12. That it is also noteworthy that this Hon'ble Court in the case of **Subhash Chand vs State of U.P; [2015 Law Suit (All) 1343]**, has emphatically laid down the need to apply the law of probation and give benefit of the beneficial legislation to accused persons in appropriate cases. This court issued following directions to all trial courts and appellate courts:

"It appears that the aforesaid beneficial legislation has been lost sight of and even the Judges have practically forgotten this provision of law. Thus, before parting with the case, this Court feels that I will be failing in discharge of my duties, if a word of caution is not written for the trial courts and the appellante courts. The Registrar General of this Court is directed to circulate copy of this Judgment to all the District Judges of U.P., who shall in turn ensure circulation of the copy of this order amongst all the judicial officers working under him and shall ensure strict compliance of this Judgment. The District Judges in the State are also directed to call for reports every months from all the courts, i.e. trial courts and appellate courts dealing with such matters and to state as to in how many cases the benefit of the aforesaid provisions have been granted to the accused. The District Judges are also directed to monitor such cases personally in each monthly meeting. The District Judges concerned shall send monthly statement to the Registrar General as to in how many cases the trial court/appellate court has granted the benefit of the aforesaid beneficial legislation to the accused. A copy of this order be placed before the Registrar General for immediate compliance."

13. Further the Hon'ble Apex Court in **State of Maharashtra vs Jagmohan Singh Kuldip Singh Anand; (2004) 7 SCC 659** has extended the benefit of Probation of Offenders Act, 1958 to the appellants, and observed as under:

"The learned counsel appearing for the accused submitted that the accident is of the year 1990. The parties are educated and neighbors. The learned counsel, therefore, prayed that benefit of the Probation of Offenders Act, 1958 may be granted to the accused. The prayer made on behalf of the accused seems to be reasonable. The accident is more than ten years old. The dispute was between the neighbors over a trivial issue of claiming of drainage. The accident took place in a fit of anger. All the parties educated and also distantly related. The accident is not such as to direct the accused to undergo sentence of imprisonment. In our opinion, it is a fit case in which the accused should be released on probation by directing them to execute a bond of one year for good behaviour."

14. That coming to the point of desirability of extending the benefit of Probation Act to the accused/ appellants in **Sitaram Paswan and Anr v.**

State of Bihar, AIR 2005 SC 3534, Supreme Court held as under:-

"For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India."

15. That it is also noteworthy that Hon'ble Apex Court in the case of **Mohd. Hashim v. State of U.P and Ors., AIR 2017 SC page 660**, was pleased to observe as under:

"20-.....In **Rattan Lal v. State of Punjab AIR 1965 SC 444**. Subba Rao, J., speaking for the majority, opined thus:-

"The Act is a milestone in the progress of the modern liberal trend of reform in the field 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. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them 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 offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act."

16. Similarly, in **Jagat Pal Singh & others Vs. State of Haryana, AIR 2000 SC 3622**, the Hon'ble Apex Court has given the benefit of probation

while upholding the conviction of accused persons under Sections 323, 452, 506 IPC and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

17. Recently, the Hon'ble Apex Court in **Ramesh v. State of Rajasthan 2025 INSC 46** had released the appellant who was at his advance age, by extending the benefit of probation under the Probation of Offenders Act, 1958.

18. That it is noteworthy that the incident took place way back in the year 1982. The accused-appellant has suffered prolonged criminal proceeding and there is no any criminal antecedent of the appellant during these years.

19. Having regard to the sentence imposed and having regard to fact that there are no criminal antecedents against the appellant, Court is inclined to give the benefit of releasing the appellant on probation. The appellant is at the advance age and has been convicted only under Sections simple imprisonment for three months for the offence u/s 323/34 149 IPC.

20. Hence, while maintaining the conviction, it is directed that, appellant **Ashok** be released giving the benefit of Section 4 of the Probation of Offenders Act. Consequently, the appellant shall file two sureties with personal bonds before District Probation Officer concerned and also an undertaking to keep peace and good behaviour for the period of three months from the date of filing of bail bonds.

21. If there is breach of any of the conditions, the appellant shall be taken into and shall be called upon to undergo sentence imposed by Trial Court. The bonds and sureties aforesaid be filed by the appellant within two months from the date of the Judgment as per law and Rules.

22. With the above modification, the appeal is accordingly **partly allowed**.

23. Office is directed to send the certified copy of this judgment along with Trial Court record to the court concerned for information and necessary action.

November 24, 2025
Shivani

(Nand Prabha Shukla,J.)