

(2018) 01 BOM CK 0097
In the Bombay High Court
Case No : 418 of 2004

Robin s/o Rupchand Nandgave

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 439](#), [Section 167\(2\)](#), [Section 299](#) - Saving of inherent powers of High Court - Special powers of High Court or Court of Session regarding bail - Procedure when investigation cannot be completed In twenty-four hours - Record of evidence in absence of accused
[Indian Penal Code, 1860](#), [Section 324](#), [Section 149](#), [Section 425](#) - Voluntarily causing hurt by dangerous weapons or means - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Mischief
[Probation of Offenders Act, 1958](#), [Section 3](#), [Section 4](#), [Section 6](#) - Power of Court to release certain offenders after admonition - Power of court to release certain offenders on probation of good conduct - Restrictions on imprisonment of offenders under twenty-one years of age

Citation : (2018) 01 BOM CK 0097

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : Ranjit Singh, ?A.M. Ghare,?V.P. Gangane

Final Decision : Allowed

Judgement

1. Exception is taken to the judgment and order dated 14.06.2004 passed by 2nd Ad-hoc Additional Sessions Judge, Wardha in Sessions Trial 28/2003, by and under which, the appellant (hereinafter referred to as "the accused") is convicted for offence punishable under section 324 of the Indian Penal Code

(" IPC " for short) and is sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs.500/-.

2. Heard Shri Ranjit Singh, the learned Counsel for the appellant and Shri V.P. Gangane, the learned Additional Public Prosecutor for the respondent-State.

3. The learned counsel for the accused would submit that the judgment and order of acquittal militates against the weight of evidence on record. Concededly, as is also the finding of the learned Sessions Judge, the only material witness in a position to testify about the incident of assault is P.W.1 Raju Laxmanrao Bhagat. It is apparent from the evidence of P.W.2 Laxman s/o Chokhaji Bhagat and P.W.3 Smt. Suman w/o Shatrughna Bhagat that they have not witnessed the actual incident. The other witness examined by the prosecution to throw light on the incident is P.W.4 Dilip s/o Keshav Manik, who did not support the prosecution and was declared hostile. In the cross-examination conducted by the learned A.P.P., P.W.4 Dilip has supported the prosecution to a certain extent. However, even if the evidence of Dilip is considered holistically, despite he being a hostile witness, it is apparent that he is not an eye witness to the actual incident.

4. The injury certificate Exh.61 would reveal that the injuries suffered are simple. The finding recorded by the learned Sessions Judge that the injuries are simple is unexceptionable.

5. On a holistic appreciation of evidence on record, the finding that the accused assaulted P.W.1 Raju does not suffer from any serious error or infirmity. I have closely scrutinized the evidence of injured P.W.1 Raju, who has no reason to falsely implicate the accused and to exculpate the guilty. Concededly, the incident occurred in the court-yard of the accused. I have no hesitation in upholding the finding of conviction.

6. However, although the age of the accused is recorded to as 22 by the learned Sessions Judge, the case papers would show that the accused was not more than 20 at the time of the incident. In order to satisfy the conscious of the court, the learned counsel has produced before me the driving licence of the accused, who incidentally is also present in the court since non-bailable warrant was directed to be issued. The accused appeared suo motu although the non-bailable warrant and prayed for recall of the non-bailable warrant which is yet to be executed. Be that as it may, it is indubitable that the accused was less than 20 years old as on the date of the incident.

7. It is axiomatic, that had the learned Sessions Judge, been alive to the age of the accused, would have been impelled to consider grant of benefit of section 3 and 4 of the Probation of Offenders Act, 1958 unless, having regard to the nature of the offence and the character of the offender, the learned Sessions Judge were to be satisfied that it is not desirable to deal with the accused under section 3 or 4 of the Act. It would suffice to refer to the following observations of the Apex Court in *Ram Prakash v. The State of H.P.* reported in AIR 1973 SC 780.

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, 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 (*Rattan Lal v. State of Punjab*, (1964) 7 SCR 676 = (AIR 1965 SC 444) and *Ramji Missir v. The State of Bihar*, (1962) Supp 2 SCR 745 = (AIR 1963 SC 1088).

8. Nothing is brought to my notice to suggest that there is any impediment in granting the benefit of section 3 and 4 of the

Probation of Offenders Act to the accused. This court is statutorily bound to consider granting the benefit, unless for reasons to be recorded this court is satisfied that it would not be desirable to deal with the accused under section 3 or 4 having regard to the circumstances of the case including the nature of offence and character of the offender.

9. Section 6 of the Probation of Offenders Act, 1958

reads thus:

6. Restrictions on imprisonment of offenders under twenty-one years of age.--(1) When any person

under twenty-one 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, it 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 in sub-section (1) the Court shall not 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.

10. The enunciation of law, consistent with the dictum in

Ram Prakash v. The State of H.P . reported in AIR 1973 SC 780 is

also discernible in the judgments of the Apex Court in Musakhan

and others vs. State of Maharashtra reported in AIR 1976 SC 2566

and the relevant observations read thus:

7. Taking A-4 we find that he was a young man of 20 years in 1968 when the occurrence took place and he is the brother of A-11 and A-12. The only evidence of his participation in the incident at the Bharat Lodge consists of P.W. 1 Prakash and P.W. 16 Vishwanath. So far as P.W. 16 is concerned his evidence has been rejected as he was not able to identify the

appellant at a test identification parade. Further more, in view of the evidence of P.W. 16 extracted above, it would appear that he does not mention A-4 as one of the persons who had taken part in removing the cash box from the counter. In these circumstances, therefore, A-4 can only be convicted at the most under

Sections 149/425, I.P.C . As this appellant does not appear to have taken any part either in the raid which was made at the Engineering College hostel or at the chawl he can only be responsible for the mischief which was caused at the Bharat Lodge. As his conviction under Sections 395 / 149 fails, the appellant can only be convicted under Sections 149 / 425, I.P.C . The other convictions and sentences recorded against him are set aside. As, however, the appellant was a boy of 20 years, his case clearly falls within the purview of the Probation of Offenders Act, 1958. The Probation of Offenders Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformatory treatment to them by the Government. Unfortunately, though the provisions of Section 6 of the Probation of Offenders Act are mandatory, the Courts do not appear to make wise use of these provisions which is necessary to protect our younger generation from becoming professional criminals and, therefore, a menace to the society. It may be that the appellant A-4 was not dealt with under the provisions of Section 6 of the Probation of Offenders Act because of the charge under Section 395, I.P.C . but that charge having failed, there is no impediment now in his being dealt with under the provisions of Section 6 of the Probation of Offenders Act. In these circumstances, therefore, we would set aside the convictions and sentences imposed on A-4 Musa Khan and direct that he be released on his entering into a bond with two sureties of Rs. 500/- each for a period of one year in order to keep the peace and be of good behavior. The appellant will report to the Probation Officer appointed within the jurisdiction of the place where he resides.

11. I am satisfied that the accused was only 20 years old as on the date of the incident. I am also satisfied that having regard to the circumstances, the character of the accused and the nature of offence and the backdrop in which the alleged incident took place, the accused deserves to be granted the benefit of section 3 and 4 of the Act.

12. In the result, I pass the following order:

[i] The conviction of the accused under section 324 of the Indian Penal Code is maintained.

[ii] However, the accused is granted the benefit of probation and is released on his entering into a bond, to appear and receive sentence when called upon during the period of one year and in the meanwhile to keep the peace and be of

good behaviour.

[iii] The accused shall furnish the bond in the trial court.

13. The appeal is partly allowed in the above terms.