

(2015) 09 BOM CK 0241
In the Bombay High Court
Case No : Criminal Appeal No. 1143 of 2011

The State of Maharashtra

APPELLANT

Vs

Balu Gena Sarvade and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307
Probation of Offenders Act, 1958 — Section 11(2), 4, 5

Citation : (2015) ALLMR(Cri) 4062

Hon'ble Judges : A.M. Thipsay, J.

Bench : Single Bench

Advocate : Deepak Thakre, A.P.P., for the Appellant; Ujwal R. Agandsurve, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J.—These ten respondents along with four others were prosecuted on allegations of having committed the offences punishable under Section 307 of the IPC, Section 326 of the IPC, Section 504 of the IPC read with Section 149 of the IPC read with Section 34 of the IPC, as also the offences punishable under Section 143 of the IPC, Section 147 of the IPC and Section 148 of the IPC. The learned Assistant Sessions Judge, Solapur, after holding a trial, found the original accused Nos. 2, 6, 10 and 12 not guilty and acquitted them. The respondents were convicted of an offence punishable under Section 324 of the IPC read with Section 34 of the IPC. They were acquitted of the other offences. The learned Assistant Sessions Judge, however, instead of sentencing the respondents, granted them the benefit of the provisions of the Probation of Offenders Act (P.O. Act) and directed them to be released on their entering into a bond in the sum of Rs. 15,000/- for a period of 2 years, as contemplated under Section 4 of the P.O. Act. Being aggrieved by the order passed by the Assistant Sessions Judge in granting the benefit of the provisions of the P.O. Act to the convicted respondents, the State of Maharashtra has filed this appeal purportedly under

Section 377 of the Code of Criminal Procedure (Code). I have heard Shri Deepak Thakre, the learned APP for the State. I have heard Shri Ujwal Agandsurve, the learned counsel for the respondents.

2. Whether the present appeal under Section 377 of the Code is maintainable, is extremely doubtful, - to say the least. When the respondents have been granted the benefit of the provisions of the P.O. Act, actually, no sentence has, yet, been imposed upon them. Therefore, there should be no question of inadequacy of the sentence or the enhancement thereof. Infact, the proper course for the State ought to have been to file an appeal as contemplated under Section 11(2) of the P.O. Act.

3. Even then, since the appeal is pending before this court for quite sometime, after hearing the learned APP and the learned counsel for the respondents, instead of dismissing the appeal as not maintainable, I think it fit to dispose it of as follows.

4. It is a fact that the prosecution witnesses Nos. 1, 2, 3, 4 and 5 had sustained injuries. While granting benefit of the provisions of the P.O. Act to the convicted respondents, the learned Assistant Sessions Judge ought to have awarded suitable compensation to the injured victims. He could have done so, by virtue of provisions of Section 5 of the P.O. Act. Though after going through the facts of the case, as reflected in the impugned judgment, I do not find the order granting the benefit of the provisions of the P.O. Act to the respondents, illegal or needing interference, I am of the opinion that the aspect of compensation should not have been lost sight of, while taking a decision to extend the benefit of the provisions of Section 4 of the P.O. Act to the convicts. I think the ends of justice would be met if the respondents are directed to pay compensation to the injured victims in accordance with the provisions of Section 5 of the P.O. Act. The learned counsel for the respondents has agreed before me that the respondents would pay compensation to the victims in the amount, as may be specified by this court. He, however, submits that, the respondents come from an economically lower strata of the society, and that, this is reflected from the judgment itself.

5. Considering all the relevant aspects of the matter, it is directed that each of the respondents shall pay compensation of Rs. 1,000/- each, to each of the injured victims i.e. prosecution witnesses Nos. 1, 2, 3, 4 and 5. That means, each respondent shall pay an amount of Rs. 5,000/- totally as compensation, which will be divided equally between the injured victims. The learned counsel for the respondents agrees that the respondents shall pay such compensation within a period of six weeks from today, by depositing the same in the trial court. In view of the fact that now the injured victims are being suitably compensated in accordance with the provisions of Section 5 of the P.O. Act; and subject to the modification of the impugned order to the extent indicated above, the appeal is dismissed.