Satyabhan Kishore and Another

Vs

The State of Bihar

Criminal Appeal No. 104 Of 1969

(J. M. Shelat, P. Jagmohan Reddy JJ)

23.02.1972

JUDGMENT

SHELAT, J. -

1. The facts leading to the prosecution of the two appellants may first be stated.

2. In 1965, the two appellants were students of Kanhai Lal Sah College, Nawada, a college affiliated to the Magadha University. The college was a centre for the annual examination of B. A. Part I held by the University.

3. May 1, 1965, was the day when the students appeared in English Paper II. At about 10.20 a.m. Guru Prasad (P.W. 1), the Head of the Hindi Department of the College, who also was on that day officiating as the Superintendent of the examination in the absence of the Principal, found appellant 1 talking with an outsider at the eastern gate of the college and taking a slip of paper from that outsider. When appellant 1 returned to his seat in the corridor of the examination hall, where he had been allotted a seat, Guru Prasad P.W. 1. went up to him and took away the said slip of paper from him. He, however, permitted appellant 1 to proceed with his examination.

4. At about 10.30 a.m., the examination was over. Appellant 1 then went up to Guru Prasad and demanded back the said slip of paper. On Guru Prasad refusing to give it back, appellant 1 slapped him and twisted his hand. On the advise of a supervisor (P. W. 2), Guru Prasad retired from the hall and went up to the college office situated on the upper floor. While he was narrating the incident to his colleagues in the office, amongst whom was also P.W. 4, a professor of the Patna Commerce College appointed by the University a an observer, a mob of students made forcible entry into the office room. Amongst that mob were the two appellants. Appellant 2, also a student of the college in B.A. Part II, assaulted Guru Prasad. P.W. 9, a peon of the college, however, prevented appellant 2 from further assaulting Guru Prasad by catching hold of him and removing him from the office room. The office room was then bolted from within.

5. After the students had thus left the office room Guru Prasad sent a report (Ex. 1) of the incident to the Sub-Divisional Magistrate requesting that action against the two appellants should be taken. Since no action was taken by the Magistrate, Guru Prasad filed another application before the Sub-Divisional Officer on June 5, 1965, requesting him to take action against the two appellants. On June 18, 1965, the Sub-Divisional Magistrate took cognizance of the offence on the basis of the said application and sent up the case to the Judicial Magistrate who framed charges against the two appellants under Sections 323, 448 and 504 of the Penal Code.

6. The defence of the appellants was denial of the whole of the incident coupled with the allegation that they had been falsely involved in the case.

7. The Trial Magistrate refused to accept the production case mainly on the ground that the prosecution witnesses were all members of the college staff, and therefore the colleagues of Guru Prasad, and that they belonged to the same caste as Guru Prasad. In the result, he acquitted both the appellants. On an appeal to the High Court against the said acquittal, the High Court found as a fact that the generalisation made by the Magistrate that all the witnesses were colleagues of Guru Prasad and belonged to his caste was far from correct. Of the ten witnesses examined at the trial, one was a clerk of the University who produced the said slip of paper which had been sent to the University by Guru Prasad. There of the witnesses were, a student, a clerk and a peon of the college, and only two witnesses were professors. On a consideration of the evidence and after finding that the reasons given by the Magistrate for declining to accept the prosecution evidence were untenable, the High Court set aside the order of acquittal, except on the charge under Section 504, and convicted the two appellants under Section 323, and in addition convicted appellant 2 under Section 448, and sentenced appellants 1 and 2 under Section 323 to rigorous imprisonment for one year each. The High Court further sentenced appellant 2 under Section 448 to one year's rigorous imprisonment but directed that the two sentences passed against him were to run concurrently.

8. Aggrieved by the said order of conviction and sentence, the appellants sought from this Court special leave to appeal. By its order, dated May 20, 1969, this Court granted special leave but limited it only to the question as to the applicability of the Probation of Offenders Act, XX of 1958. The special leave being so limited it is not possible for the appellants to challenge the findings given by the High Court, nor the order of conviction passed by it against them.

9. Act XX of 1958, was brought into force in the State of Bihar by a notification bearing No. DPS/118-JL, dated June 4, 1959, as provided by Section 1(3) of the Act. In Rattan Lal v. Punjab, (AIR 1965 SC 444) this Court, after examining Section 11 of the Act held that the language of that section was comprehensive enough to enable this Court either to apply Section 6 on its own whenever it was applicable, or direct the High Court to do so. Section 3 of the Act confers on the Court discretion in the case of a person 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 Penal Code or any offence punishable with imprisonment of not more than two years or with fine or both under the code or any other law provided there is no previous conviction proved against such an offender, if the court by which he 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 do so, to release him after due admonition. Section 4 likewise gives discretion to the Court in cases where a person is found guilty of an offence provided it is one which is not punishable with death or imprisonment of life and the court by which such offender is found guilty is of opinion having regard to the circumstances of the case and the nature of offence, that it is expedient to release him on probation on good conduct, to direct that instead of sentencing him to any punishment he should be released on 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 peace and be of good behaviour. Sub-section (2) of Section 4 requires the court to take into consideration the report, if any, of the prohibition officer in relation to the case before passing an order under Sub-section (1).

10. Whereas Sections 3 and 4 leave it to the discretion of the court to make an order as provided therein, Section 6 provides that where a person under 21 years of age is found guilty of an offence

punishable with imprisonment (but not with imprisonment for life), the court by which he is found guilty shall not sentence him to imprisonment, unless it is satisfied, having regard to the circumstances of the case, including the nature of the offence, that 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 such offender it shall record its reasons for doing so. Under sub-section (2), the court, for the purpose of satisfying itself whether it would not be desirable to deal with such an offender under Section 3 or Section 4, shall call for a report from the probation officer and consider such report, if any, and any other information available to it relating to the character and physical and mental condition of the offender. Section 6 thus lays down an injunction, as distinguished from the discretion under Sections 3 and 4, not to impose a sentence of imprisonment upon an offender of the class covered by the Section unless for reasons to be recorded by it, the court finds it undesirable to proceed with him under Section 3 or Section 4.

11. It is not in dispute that appellants 1 and 2 were at the date of offence, of which they have been found guilty, and at the time of the trial, below the age of 21 years. The offences of which they have been found guilty being punishable under Sections 323 and 448 of the Penal Code are also not offences punishable with imprisonment for life. There is, therefore, no doubt that Section 6 applies to the present case. Nothing is shown to us which would lead us to think that it is not desirable to apply the provisions of Sections 3 and 4 of the Act to the appellants. We were shown the reports of the relevant probation officer in respect of both the appellants which appear to have been called for during the trial before the Trial Court. Neither of the two reports contains any matter which would lead us to believe that it would not be expedient to apply Section 3 or Section 4. We had, no doubt, disallowed an application by appellant 1 and the said Guru Prasad to compound the case on the ground that the compounding of such offences in the circumstances in which they were committed was not commensurate with the absolute necessity of maintenance of discipline within the university campus. But that is quite different from complying with the legislative policy and injunction contained in Section 6 of the Act.

12. We, therefore, partially allow the appeal and set aside the order of sentence passed by the High Court against the two appellants and as was recently done in Abdul Qayum v. Bihar, (AIR 1972 SC 214 : (1972) 1 SCC 103) directed that the two appellants be released under Section 4 of the Act upon their entering into bonds and their respective fathers also giving surety bonds in the sum of Rs. 500/- each, to appear and receive sentence by the High Court whenever called upon to do so within a period of one year from the date of this order and to keep peace and be of good behaviour during that period. We direct the High Court to take through an officer authorised by it in this behalf the said bonds and the said surety bonds from the respective fathers of the appellants in the manner stated above.

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