

Jugal Kishore Prasad

Vs

State of Bihar

Criminal Appeal No. 46 of 1969

(I.D. Dua, J. M. Shelat, H. R. Khanna JJ)

16.08.1972

JUDGMENT

KHANNA, J. -

1. The short question which arises for determination in this appeal on certificate granted by Patna High Court is whether the appellant who was less than 21 years of age on the date of his conviction for an offence under Section 326, read with Section 149, Indian Penal Code, can claim the benefit of Section 6 of the Probation of Offenders Act, 1958 (Act No. 29 of 1958).

2. The appellant and five others, who belong to village Mandil in District Gaya, were tried in the court of Additional Sessions Judge, Gaya for offences under Sections 147, 148, 307, 323 and 307 read with Section 149, Indian Penal Code and Section 25 of the Arms Act. Jugal Kishore appellant was convicted under Section 326 read with Section 149 and Section 148, Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of five years on the first count and rigorous imprisonment for a period of two years on the second count. The sentences awarded to the appellant were ordered to run concurrently. The other five accused were also convicted for various offences and were sentenced on those counts.

3. On appeal the Patna High Court as per judgment, dated January 22, 1968, acquitted two of the accused. The conviction of the appellant for offences under Section 326 read with Sections 149 and 148, Indian Penal Code was maintained. The sentence of the appellant for the offence under Section 326 read with Section 149, Indian Penal Code was reduced from five years to three years. The sentence for the offence under Section 148, Indian Penal Code was, however, maintained. The conviction of the other three accused was maintained for some of the offences, and they were awarded sentences of imprisonment on that court. After the pronouncement of the Judgment by the High Court, an application was made on behalf of the appellant that his case be dealt with under the Probation of Offenders Act on the ground that he was below 21 years of age at the time of his conviction by the trial court. This application was rejected by the High Court as per order, dated December 12, 1968, on the ground that the offence for which the appellant had been convicted was punishable with imprisonment for life, and as such, the provisions of Probation of Offenders Act could not be invoked in his case. On prayer made by the appellant, the High Court certified the case to be fit for appeal to the Supreme Court as it involved the question relating to the applicability of the Probation of Offenders Act.

4. The appellant and his companions were tried on the allegation that on October 14, 1964, at about 10 a.m. while Madho Saran was getting his field bearing No. 1678 ploughed by his ploughman Rakshya Mahto, the appellant and Raghu accused went there and questioned Madho Saran for

cutting the ridge between field No. 1678 and 1719. Field No. 1719 belonged to the appellant. Madho Saran went to his house and narrated the incident to his brother, Sadho Saran. Madho Saran and Sadho Saran along with others then came out of their house and while they were near a barrage, they met the accused who were accompanied by about 30 persons of their village. One of the accused, namely, Hira Lal, who was armed with a gun, fired a shot as a result of which Sadho Saran was hit on his head. Sadho Saran fell down, whereafter the other accused, including the appellant who was armed with a garasa, caused further injuries to Sadho Saran and his companions with sharp-edged and blunt weapons. The injured were thereafter taken to Jehanabad Hospital. On receipt of intimation from the doctor incharge of the hospital, a police Sub-Inspector went to the hospital and recorded the statement of Madho Saran. Nand Kishore, one of the accused, also lodged a report at the police station.

5. The question with which we are concerned in this appeal, as mentioned earlier, is whether the appellant can claim the benefit of the Probation of Offenders Act. The appellant gave his age to be 19 years in his statement under Section 342 of the Code of Criminal Procedure, and the case has been argued before us on the assumption that the appellant was less than 21 years of age at the time of his conviction by the Additional Sessions Judge. The main offence for which the appellant has been convicted is Section 326 read with Section 149, Indian Penal Code. Section 326 deal with the offence of voluntarily causing grievous hurt by dangerous weapons or means and the punishment prescribed for the offence is imprisonment for life, or imprisonment of either description for a term which may extend to ten years. The convicted person shall also be liable to pay fine. According to Section 149 of the Code, if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. It is, therefore, manifest that the appellant on being convicted for the offence under Section 326 read with Section 149, Indian Penal Code was liable to be punished for imprisonment for life or with imprisonment of either description for a term which may extend to ten years and was also liable to pay fine.

6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition of the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act. Sub-section (1) of the section reads as under :

"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."

7. Mr. Misra on behalf of the appellant has urged that as the offence under Section 326 read with Section 149, Indian Penal Code is punishable not only with imprisonment for life but also with imprisonment which may extend up to ten years, the benefit of Section 6 of the Act can be invoked by the appellant. This contention, in our opinion, is not well founded. Plain reading of Section 6 makes it manifest that it deal with persons under twenty-one years of age who are found guilty of having committed an offence punishable with imprisonment but not with imprisonment for life. As imprisonment for life can also be awarded for the offence under Section 326 read with Section 149, Indian Penal Code, a person found guilty of such an offence would not be entitled to claim the benefit of Section 6. To hold otherwise, would have the effect of ignoring the words "but not with imprisonment for life" and treating them to be otiose. Such a construction is plainly not permissible. We also cannot subscribe to the view that the offences excluded from the purview of the section are only those offences wherein punishment prescribed is imprisonment for life and not for a lesser term, for the language used in the section does not warrant such a view. On the contrary, the plain meaning of the section does not warrant such a view. On the contrary, the plain meaning of the section is that the section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life. The policy underlying the Act appears to be that it is only in cases of not very serious nature, viz., offences not punishable with imprisonment for life that the convicted person should have the benefit of provisions of the Act. Where, however, the offence for which a person has been convicted is of a serious nature punishable with imprisonment for life, the benefit of the Act would not be permissible in his case. Likewise, there are certain offences like those under the Prevention of Corruption Act wherein the convicted person claim the protection of the Act. Section 18 of the Act expressly excludes such offences from the purview of the Act.

8. In the case of Som Nath Puri v. State of Rajasthan the appellant had been convicted for an offence under Section 409, Indian Penal Code. Punishment for the offence under Section 409, Indian Penal Code is the same as for the offence under Section 326, namely, imprisonment for life, or imprisonment of either description for a term which may extend to ten years and the liability to pay fine. It was held by this Court that in such a case the provisions of Section 4 of Probation of Offenders Act cannot be invoked. It may be mentioned that Section 4 of the Probation of Offenders Act also excludes from its operation persons convicted of offences punishable with imprisonment for life. In that connection, the Court observed :

"As the offence of criminal breach of trust under Section 409, I.P.C. is punishable with imprisonment for life, the High Court, in our view, was right because of Section 4 are only applicable to a case of a person found guilty of having committed an offence not punishable with death or imprisonment for life."

9. We, therefore, hold that the appellant cannot invoke the benefit of Section 6 of the Probation of Offenders Act. The appeal fails and is dismissed.

10. Appellant to surrender to the bail bond.

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