

Kamroonissa

Vs

The State of Maharashtra

Criminal Appeal No. 63 of 1974

(Y. V. Chndrachud, A . C. Gupta, R. S. Sarkaria JJ)

04.10.1974

JUDGMENT

CHANDRACHUD, J. -

1. The appellant was tried by the learned Presidency Magistrate, 36th Court, Bombay on the charge that on March 7, 1973, she had committed theft of a gold necklace. Accepting the evidence led by the prosecution in support of the charge, the learned Magistrate convicted the appellant under Section 379 of the Penal Code and sentenced her to suffer rigorous imprisonment for 18 months and to pay a fine of Rs. 500; in default to suffer further rigorous imprisonment for six months. The appellant carried an appeal against that judgment but the High Court of Bombay dismissed the appeal summarily by a brief order. This appeal by special leave is directed against the order of the High Court, the leave being restricted to the question of sentence.

2. While granting leave, this Court had called for the report of the Probation Officer. Learned Counsel appearing on behalf of the appellant argues that since the appellant was less than 21 years of age on the date of conviction, she ought to have been given the benefit of Section 6 of the Probation of Offenders Act, (XX of 1958). That section provides, to the extent material, that when any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment, but not with imprisonment for life, the court shall not sentence him to imprisonment unless it is satisfied that it would not be desirable to deal with him under Section 3 or Section 4 of the Act. Sub-section (2) of Section 6 provides that, for the purpose of satisfying itself whether it would not be desirable to proceed under Section 3 or Section 4 of the Act, the court shall call for a report from the Probation Officer and consider it. It appears from the judgment of the learned Magistrate that though his attention was drawn to the Probation of Offenders Act he did not consider the applicability of Section 6, which could only be done after calling for the report of a Probation Officer.

3. But we have before us the report of the Probation Officer from which we are satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the appellant it would not be desirable to deal with her under Section 3 or Section 4 of the Act. The report shows that the appellant was arrested in 1971 while moving in a local in suspicious circumstances but she was released on a bond of good behaviour in the sum of Rs. 100. Thereafter, she was tried under Section 379 of the Penal Code in connection with an incident, dated March 5, 1973, but she was given the benefit of doubt and was acquitted. The appellant herself stated before the Probation Officer that she had committed similar thefts on two or three other occasions but those theft went undetected. Though at the relevant time the appellant was under 21 years of age this, in our opinion, is not a proper for applying the provisions of the Probation of Offenders Act.

4. The learned Magistrate, has, in paragraph 21 of his judgment, given various reasons why the appellant should not be released on probation. We agree with those reasons, confirm the order of sentence and dismiss the appeal.

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