

SUPREME COURT OF INDIA

State of Haryana

Vs.

Prem Chand

Crl.A.No.625 of 1990

(M.M. Punchhi and S.B. Majmudar, JJ.)

07.05.1997

ORDER

M.M. Punchhi, J.

1. This appeal by the State of Haryana would merit dismissal. The relief sought therein is to deny to the respondent the benefit of Section 360 of the Code of Criminal Procedure or that of Section 4 of the Probation of Offenders Act, 1958 (the Probation Act), as the case may be, and to have him sentenced and put to prison for offence under Sections 376/511 IPC.

2. The finding recorded by the Court of Session is that the prosecutrix had not been actually raped but an attempt had been made in that direction. Holding him guilty for the offence under Sections 376/511 IPC, the Court of Session viewed that since the respondent was less than 21 years of age, the benefit of probation could not be denied to him, when he was not a previous convict. The Court then ordered his release on probation. It is not clear from the order, however, whether the release was under Section 360 of the Code of Criminal Procedure or under Section 4 of the Probation Act. The prosecutrix, on the other hand, was found to be above 16 years of age.

3. If the conviction of the appellant were to be one under Section 376 IPC he could have been awarded imprisonment for life or one extending to 10 years. But the offence for which the respondent has been found guilty, is for attempt to rape. Therefore, it is idle to contend that the respondent has been held guilty for an offence which would attract imprisonment for life, disentitling him to the benefit of probation under the aforementioned two statutes. Section 57 of the IPC clearly points out that in calculating fractions of terms of imprisonment, imprisonment for life shall be reckoned as imprisonment for 20 years. Thus, on employment of Section 511 IPC, the punishment for the offence, for which an attempt has been made, would be ^ for a term which may extend to one half of the longest term of imprisonment provided for the offence. Therefore, for offence under Sections 376/511 IPC, the respondent could be awarded imprisonment up to 10 years. On this reasoning, his case for probation was clearly made out, be it under Section 360 CrPC or under Section 4 of the Probation Act. The

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Court of Session, therefore, was not wrong in extending to him such benefit and the High Court committed no error in declining to interfere therein. The appeal thus has no merit and is, therefore, dismissed.