

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28th DAY OF JULY 2003

PRESENT

THE HON'BLE MR.JUSTICE M.F. SALDANHA

AND

THE HON'BLE MR.JUSTICE M. S. RAJENDRA PRASAD

CRL.A.375/2003

BETWEEN:

State by Mulbagal
Police Station.

...

APPELLANT

[By Sri. G. Bhavani Singh, Addl. SPP for appellant]

AND:

1. Raju,
S/o Hanumappa Reddy,
Age: 22 years.

2. Khaleel,
S/o Kolar Ameer Jan,
Age: 22 years.

Both residents of Mindahalli,
Tayaloor hobli,
Mulbagal Taluk.

...

RESPONDENTS

[By Sri. Fiyaz Ahmed, Adv. for respondents]



This criminal appeal is filed under Sec.378(1) & (3) Cr.P.C. praying to set aside the judgment and order dated 13/30.9.2002 passed by the learned Prl. Civil Judge (Jr.Dn.) and JMFC, Mulbagal in CC No.446/2001; and to convict and sentence the accused-respondents.

The appeal coming on for orders this day, SALDANHA J., delivered the following Judgment:

JUDGMENT

1. Pursuant to notice having been issued to the respondents, we have heard the learned Counsel ^{on merits} and reviewed the record. The trial court has convicted both the accused for the offences punishable under Sec.323 and 324 IPC but has extended to them the benefit of the Probation of Offenders Act. There is not one word of reasoning or justification as to why the benefit of ~~the~~ Probation of Offenders Act has been extended. The whole purpose of invoking the provision of Probation of Offenders Act is, in deserving cases to save the accused from a jail sentence or a fine because the nature and circumstances of the case are such that even though technically a conviction has to be recorded, the court



genuinely feels that neither of the punishments are awardable. Also, it is very necessary for us to record that this is a special provision of which the benefit is extended provided the accused has, what one calls, a really clean record and this is a singular incident in which the accused has landed on the wrong side of the law and the court in such instances extended the benefit of the Act because of the fact that it is a one default situation. We need to prefer to this aspect of the law principally because we have come across instances where this benefit is indiscriminately misused and the present instance is one of them.

2. The facts indicate that the Accused Nos.1 and 2 in furtherance of their common intention had assaulted the complainants and that a knife was used in the assault apart from ~~the~~ fist blows. The other injuries were of a minor nature but as far as the knife injury was concerned, though it was essentially aimed at the cheek it is a 8 Cms relatively deep incision that has also cut the neck which is a vital part of the body. Normally, the

offence would have been one under Sec.326 IPC but we take a charitable view of the case in not disturbing the finding of the trial court. At the same time, what we need to record is that the facts indicate that the accused had entered the field cultivated by the complainant at night and that they were in the process of committing theft of his tomato crop, which is an aggravating circumstance and when the complainant and his son woke up and confronted the accused instead of leaving the place they attacked the complainant and his son. The nature and circumstances of the case are such that in our considered view, the benefit of the Probation of Offenders Act ought not to have been extended to the accused. On a perusal of the judgment we do not find any reasoning or any justification for invoking the provisions of this Act. There is only a single sentence mentioning that the Probation of Officer has submitted a report with regard to the antecedents of Accused Nos.1 and 2 which appears to be satisfactory.

3. Since in our considered view the Probation of Offenders Act benefit has wrongly been extended to the accused we modify the order passed by the trial court and we direct that the accused shall pay a fine quantified at Rs.1000/- each, in default SI for one month. The fine to be deposited in the trial court within a period of 12 weeks. The whole of the fine amount after recovery to be paid over to the injured complainant by the trial court after issuing notice to him.
4. The appeal succeeds to this extent and stands disposed off.

Sd/-
Judge

Sd/-
Judge

Sub.