

CASE NO.:
Appeal (crl.) 1214 of 2005

PETITIONER:
Sita Ram Paswan & Anr.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 19/09/2005

BENCH:
Ashok Bhan & P.P. Naolekar

JUDGMENT:
J U D G M E N T
(arising out of SLP (Crl.) No.3214 of 2005)

P.P. NAOLEKAR, J.

Leave granted.

Accused-1, Sitaram Paswan and Raj Kumar, Accused-2 were convicted and sentenced for imprisonment for three months under Section 323 I.P.C. and six months under Section 324 read with Section 34 of the Indian Penal Code.

The prosecution case, in short, is that PW-5, Paltoo Paswan lodged the FIR, alleging therein that on 28.7.1998 at about 10.00 AM when his wife was proceeding towards the market, she fell in the ditch, filled with water on the way and was not visible. She made hue and cry as to who had dug the ditch. On this A-1 came out of his house and replied that he has dug the ditch. Smt. Krishna Devi, PW-2 scolded him and asked him to fill up the ditch. On this, A-1 assaulted Krishna Devi with fists. She cried for help, her husband, Paltoo Paswan, PW-5 along with his son Vijay Kumar, PW-4 rushed at the spot. Seeing them, A-1 came with sword along with Raj Kumar when they reached the spot. Raj Kumar assaulted Paltoo Paswan, PW-5 on the head with sword and also assaulted Vijay Kumar with sword and Sitaram Paswan, A-1, with Danda.

The accused-appellants faced trial. As many as 6 witnesses were examined by the prosecution. Witnesses, PW-1 Kalika Singh and PW-3, Raghubansh Raut are independent witnesses whereas PW-2, Krishna Devi, PW-4, Vijay Kumar and PW-5, Paltoo Paswan are related and injured witnesses. The statements recorded of these witnesses are more or less similar. They stated that Sitaram Paswan assaulted Krishna Devi on her mouth with fists. Thereafter Paltoo Paswan and Vijay Kumar reached there. Raj Kumar took sword from the hands of Sitaram and gave blows on the head of Paltoo Paswan and Vijay Kumar, PW-5 and PW-4 respectively. Assault was also made with Danda. The medical evidence produced has corroborated the statements of these witnesses.

The defence version is that the accused person have been falsely implicated. The Courts, after consideration of the entire evidence on record, have found the evidence reliable and accordingly convicted the appellants. The conviction and sentence was unsuccessfully challenged before the High Court. However, the High Court acquitted the appellant of the charge under Section 341 IPC and reduced the sentence to three months from six months under Section 323, IPC and six months from one year under Section 324 read with Section 34, Indian Penal Code in view of the nature of offence which

took place suddenly and as there was no previous conviction against them.

Thus the three Courts have already held that the prosecution has proved its case by cogent evidence and we do not find any ground to take a different view in the matter and acquit the accused-appellants.

It is urged before us by the learned counsel for the appellants that the prayer for releasing the appellants on probation under the Probation of Offenders Act 1958 should have been considered by the Court when such request was made before the Magistrate and the same is apparent from the order of the Magistrate when he records: "learned defence counsel has submitted that the convicts have no previous conviction and they are young, so considering the nature of the offence, they may kindly be released under Section 3 of Probation of Offenders Act". Learned counsel for the appellants submitted before this Court 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 release the accused persons on probation by this Court.

Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of Offenders Act, 1958 reads thus:

"Section 4 - Power of Court to release certain offenders on probation of good conduct - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person 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 release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his 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 the peace and be of good behaviour."

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing

appeal under Article 136 of the Constitution of India.

The fact as emerged in this case. It is apparent that the incident occurred at the spur of the moment and is traverse in nature. There is no material on record to indicate that the appellants have any previous conviction. In the absence of such evidence, we treat appellants as first offenders. A-1, namely, Sitaram Paswan has made the assault using Danda and the fists and caused simple injuries to Krishna Devi, Paltoo Paswan and Vijay Kumar, PW-2, PW-5 and PW-4 respectively. He has been convicted with the aid of Section 34, under Section 324 and under Section 323 I.P.C. whereas the case of A-2 Raj Kumar is different. He has caused injuries to Paltoo Paswan and Vijay Kumar using the sword. Injury found on Paltoo Paswan is sharp cuts on left side of the head and on Vijay Kumar, cut injury on the left side of the head.

Having regard to the aforesaid circumstances and taking the overall view of the matter, we feel that the accused-appellant Sitaram Paswan is entitled for the benefit under Section 4 of the Probation of Offenders Act. Therefore, while confirming his conviction, we direct that he be released on probation on his entering into a bond for Rs.10,000/- within the period of three weeks from today before the Court of S.D.J.M. (Sadar), Sitamarhi, for keeping peace and good behaviour. The appeal of the Raj Kumar is dismissed and he would surrender forthwith.