

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1306 OF 2013

LAKHANLAL @ LAKHAN SINGH

.....APPELLANT

Versus

STATE OF MADHYA PRADESH

.....RESPONDENT

ORDER

The challenge in the present appeal is to an order passed by the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur on 05.01.2019 maintaining the conviction and sentence of the appellant for the offences under Section 325 read with Section 34 of IPC. The appellant was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-. In the event of non-payment of fine, the appellant was to undergo another period of imprisonment for six months.

2. Initially, eight accused were made stand to trial for the offences under Sections 147, 148, 149, 325 and 307 of IPC in respect of the incident, which occurred on 30.10.1989 at 20.30 hours at Village Sirodi Police Station Doraha,

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POUJAN KUMAR  
Date: 2019.08.  
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Reason: 

District Sehore.

3. The prosecution's case is that on 30.10.1989, when Ramesh and Munshi

Lal were returning to their home after seeing Jaware, accused-appellant hit complainant Munshi Lal with lathi which struck on the elbow of his left hand whereas the second blow was on the left side of his head. After completion of investigation, the accused-appellant along with other accused was made to stand trial before the learned Magistrate.

4. The appellant was convicted for the offences under Section 325 read with Section 34 IPC. The two other accused convicted by the learned trial court also went in appeal to the High Court and their conviction and sentence were also maintained. However, the appellant alone is in appeal before this Court.

5. The High Court held that Section 360 of the Code of Criminal Procedure<sup>1</sup> will not be applicable as the matter falls within Sections 3 and 4 of Probation of Offenders Act, 1958<sup>2</sup>. The relevant extracts from the judgment read as under: -

“The submission of the appellant is considered. In this reference, it is profitable to refer to Sub section 10 of section 360 of the Cr.P.C. which prescribes that nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders. Therefore, matter as such is governed by Section 3 and 4 of the Probation of Offenders Act, 1958 and Section 360 of the Cr.P.C. shall have no application in the present case.

A careful reading of section 3 and 4 of Probation of Offenders Act, 1958 does not stipulate that the benefit of the release on probation for good conduct after admonition is to be given to such offenders who are 21 years or less than 21 years of age which is a specific provision made in Section 360 of the Cr.P.C.”

1 Code

2 1958 Act

6. We find that the order of the High Court is based upon erroneous reading of the provisions of law and that the appellant is entitled to benefit of probation in terms of Section 360 of the Code as well as under the 1958 Act. The relevant provisions of Section 360 of the Code read as under:

“360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

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(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

7. Section 360(1) of the Code contemplates as to which offenders are entitled to the benefit of probation and on what conditions. It contemplates that firstly, if any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less; and secondly, when any person under twenty- one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, is entitled to the benefit of probation. Both categories of offenders have to further satisfy that he is not a previous convict; satisfaction of the Court having regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed. The court being satisfied can order, instead of sentencing him at once to any punishment, 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) and in the meantime to keep the peace and be of good behaviour.

8. Thus, if the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life; such offender can be granted benefit of probation on satisfaction of the court on the basis of parameters contained in Section 360 of the Code. However, in respect of an offender more than 21 years of age, the benefit of release is available only if the offence is punishable for less than seven years imprisonment or fine. The object of Section 360 of the Code is to prevent young persons from being committed to jail, who have for the first-time committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.

9. The Court is empowered to release an offender who is convicted of an offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law in terms of Section 3 of the 1958 Act, subject to the condition that no previous conviction is proved against him. In terms of Section 4 of the 1958 Act, an offender cannot be released on probation if such offender has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond, after taking into consideration the report, if any, of the probation officer before making any order. Such exercise is required to be performed if an offender is not convicted of an offence punishable with death or imprisonment for life, then, notwithstanding anything contained in any other law for the time being in force, the court may release a convict instead of sentencing him at once to any punishment on probation subject to the conditions specified in Section 4 of 1958 Act. Sections 3 and 4 of the 1958 Act read as under:-

**“3. Power of court to release certain offenders after admonition.**—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

**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:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.”

10. A three Judge Bench of this Court in **Rattan Lal v. State of Punjab**<sup>3</sup> while examining the provisions of 1958 Act held that in case the offenders are below 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to circumstances of the case, it is not desirable to deal with them under Sections 3 and 4 of 1958 Act but in respect of offenders who were above age of 21 years, the Court has

absolute discretion to release such offenders either after admonition or on probation of good conduct. The Court held as under:-

“The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. The Act distinguishes offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them 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 offenders, it is not desirable to deal with them under section 3 and 4 of the Act.”

11. This Court in **Jugal Kishore Prasad v. State of Bihar**<sup>4</sup> explained the rationale of the provision as 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 Court held as under:-

“6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders 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 recognises 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 to 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.”

12. The offence under Section 325 is punishable for a term which may extend to seven years. The sentence imposed upon the appellant is of one year. The finding of the High Court that Section 360 of the Code shall not have any application is misreading of the bare provisions of the Code. Sub-Section (10) of Section 360 of the Code specifically contemplates that the provisions of the 1958 Act or Children Act 1960 or any other law for the time being in force for the treatment, training or rehabilitation of the youth of the offenders are not affected by the Code. Therefore, the provisions of the Code are not excluded by the 1958 Act. Both the provisions, Section 360 of the Code as well as 1958 Act, are applicable in respect of the offenders before the Court. Therefore, we find that the High Court misread the provisions of the 1958 Act to hold that such Act is not applicable to the offender under the age of 21 years. The Court omitted that Section 6 of the 1958 Act provides that an offender of less than 21 years if 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. Thus, the High Court erred in law in not granting benefit of probation to the appellant for an offence under Section 325 read with Section 34 of the IPC.

13. The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the Code.

14. At this stage, it may be noticed that a two Judge Bench of this Court in **Sanjay Dutt v. The State of Maharashtra**<sup>5</sup> considering the provisions of Section 360 of the Code and Sections 3 and 4 of 1958 Act held that the co-existence of such provisions would lead to enormous results. It was further held that the intention to retain the provisions of Section 360 of the Code and 1958 Act at the same time in a given area cannot be gathered from the provisions of Section 360 or any provision of the Code, when the Court held as under:-

“81) Section 360 of the Code of Criminal Procedure does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation of Offenders Act does make such a provision. While Section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under Section 3 or 4 of the Probation of Offenders Act, shall not

suffer disqualification, if any, attached to the conviction of an offence under any law. The Code of Criminal Procedure does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the Probation of Offenders Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provisions of the Code.”

15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

17. Coming to the facts of the present case, the incident has occurred more than thirty years back in the year 1989. The appellant has suffered the proceedings for more than 30 years. There is no material on record that the appellant was involved in any other offence during the last more than thirty years. Therefore, we find that the High Court erred in law in not granting benefit of probation to the appellant convicting for an offence under Section 325 and Section 34 of IPC. Therefore, in terms of Section 360, it is ordered that the

appellant be released on probation of good conduct for a period of one year on furnishing personal bond before the learned Trial Magistrate within a period of two months from the date of receipt of the certified copy of the order by the appellant.

18. The appeal is disposed of in above terms.

.....J.  
(SANJAY KISHAN KAUL)

.....J.  
(HEMANT GUPTA)

New Delhi  
April 4, 2019.

ITEM NO.106

COURT NO.12

SECTION II-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Criminal Appeal No.1306/2013**

**LAKHANLAL @ LAKHAN SINGH**

**Appellant(s)**

**VERSUS**

**STATE OF MADHYA PRADESH**

**Respondent(s)**

**(FOR EXEMPTION FROM FILING OF THE TRANSLATION OF ALL THE DOCUMENTS  
ON IA NO.46693/2017)**

**Date : 04-04-2019 This appeal was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE HEMANT GUPTA**

**For Appellant(s)**

**Mr. Uday Ram Bokadia, Adv.  
Ms. Divya Garg, Adv.**

**Dr. (Mrs. ) Vipin Gupta, AOR**

**For Respondent(s)**

**Mr. Kuber Boodh, Adv.**

**Mrs. Swarupama Chaturvedi, AOR**

**UPON hearing the counsel the Court made the following  
O R D E R**

**The appeal is disposed of in terms of the signed order.**

**Pending application (s), if any, shall also stand disposed of.**

**(POOJA ARORA)  
COURT MASTER**

**(ANITA RANI AHUJA)  
COURT MASTER**

**(Signed order is placed on the file)**