

VED PRAKASH

v.

STATE OF HARYANA

November 13, 1980

[V. R. KRISHNA IYER AND E. S. VENKATARAMIAH, JJ.]

*Sentencing exercise by the Court—Code of Criminal Procedure, 1973, Section 360 read with Section 4(1) of the Probation of Offenders Act, 1958—Duty of the Bench and the Bar, explained.*

Maintaining the conviction, allowing the appeals as to, sentence and releasing the accused on Probation, the Court.

HELD : Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting as hunch. The social background and the personal factors of the crime-doer are very relevant, although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if Section 360 Criminal Procedure Code is not attracted, it is the duty of the sentencing court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act. [1279 H, 1280 A-D]

CRIMINAL APPELLATE JURISDICTION. Criminal Appeal Nos. 291-292 of 1980.

(Appeals by Special leave from the Judgment and Order dated the 10th of February, 1977 of the Punjab and Haryana High Court in Criminal Appeal Nos. 430, 828 and 429/73.)

A. P. Mohanty and S. K. Sabharwal for the Appellant.

R. N. Poddar for the Respondent.

The Order of the Court was delivered by

KRISHNA IYER, J.—In this case, the question of dealing with the appellant under S. 360 Cr.P.C. remains to be considered. For this purpose we had directed that a report be called for from the Probation Officer having jurisdiction. That report has been put in. His age, according to the Jail Doctor, was 24 years on 23-4-1973 which means that on the date of the offence, he was less than 21 years old. The offence, for which conviction has been rendered, is one which will be attracted by S. 360 or at any rate the Probation of Offenders Act, 1958. The materials before us are imperfect because the Trial Court has been perfunctory in discharging its sentencing functions. We must emphasise that sentencing an accused person is

**A** a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social *milieu* or the personal circumstances of the offender. Even if S. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislations which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act. In the present case, the offender is a young person and his antecedents have no blemish. His life is not unsettled or restless and the report indicates that he is an agriculturist, pursuing a peaceful vocation. His parents are alive and he has a wife and children to maintain. These are stabilising factors in life. A long period of litigation and the little period of imprisonment suffered, will surely serve as a deterrent. We are mindful of the fact that a fire-arm has been used by the appellant and we cannot sleep over the gravity of the offence. Nevertheless, the report of the Probation Officer states that the appellant is not given to any bad habits or stresses of poverty. A land dispute led to the crime and that does not survive any longer. The Probation Officer recommends that an opportunity be given to the appellant to improve himself and bring up his family by honest labour as an agriculturist so that the interests of social defence may be secured. We are inclined to agree that in this case the appellant may be given the benefit of the Probation of Offenders Act. We are satisfied that the offender has a fixed place of abode and regular occupation. We are inclined also to rely on the Probation Officer's report which supports the direction for release on probation. We, therefore, direct that the appellant be released under S. 4(1) of the Probation of Offenders Act, 1958, and instead of sentencing him, direct that he be released on his entering into a bond before the trial Court with two sureties, one of whom shall be his father, to appear and receive sentence when called upon during the period of three years from the date of release and in the meantime to keep the peace and be of good behaviour. In addition,

we pass an order that the Probation Officer shall have supervision over the offender for a period of one year and shall make reports once every three months to the Sessions Court about the conduct of the offender. We direct further, that the appellant shall be specially supervised from the point of consumption of intoxicants and the matter brought to the notice of the Court in case the appellant violates. The undertaking to be incorporated in his bond shall contain a term that he shall not consume alcohol during the period covered by the bond. We allow the appeals in the manner above indicated.

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S.R.

*Appeal allowed.*

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