

**Saradhakar Sahu Vs. State of Orissa**

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**Court :** Orissa

**Decided On :** Feb-15-1985

**Reported in :** 1985CriLJ1591

**Judge :** R.C. Patnaik, J.

**Appellant :** Saradhakar Sahu

**Respondent :** State of Orissa

**Judgement :**

ORDER

R.C. Patnaik, J.

1. The substantial question that has been raised by Mr. G. N. Mohapatra, the learned Counsel for the petitioner, is if the sentence of rigorous imprisonment for three months imposed on the petitioner, who stood trial for Commission of an offence under Section 324 of the Indian Penal Code, is lethally infected due to the failure of the courts below to apply to the petitioner the provisions contained in the Probation of Offenders Act, 1958, which has come into force in this State, in some districts with effect from 1-12-1962 and rest with effect from 1-9-1966 and their unawareness of the mandate contained in Section 361 of the Cr. P.C

2. The incident was a simple one. On a village street the mother of the petitioner and the wife of one Srikar Bhoi entered into a quarrel over some differences among children. Srikar advised his wife to return home forthwith. It is allowed that the petitioner dealt blows on the legs of Srikar. There was an FIR and investigation by the police. At the trial on the charge-sheet witnesses were examined and the magistrate believed the prosecution version. The petitioner was convicted under Section 324 of the I.P.C. and was sentenced to undergo rigorous imprisonment for three months. The appeal was of no avail.

3. Mr. Mohapatra initially though assailed the conviction, ultimately drew attention to the provisions contained in the Probation of Offenders Act and Section 361 of the Cr. P.C. and urged that the sentence was vitiated for non-compliance with the provisions contained in Section 361 of the Code. He even went to the extent of submitting that the courts below were innocent of the provisions contained in the Probation of Offenders Act and Section 361 of the Code.

He submitted that where there has been much advance in the field of penology, in the attitude of the society, in the prescription of the law vis-a-vis an offender, the courts should not lag behind and administer justice under the criminal jurisdiction in a

mechanical and heartless fashion.

4. The concurrent holding of guilt by the courts below, which has not been shown to be erroneous or perverse, is not available to be assailed in revision. Hence the conviction is affirmed. Next comes the sentencing.

5. Sentencing the guilty is the last and the most important, albeit a difficult chapter in a trial. It involves sensitive exercise of discretion and not a 'routine or mechanical prescription acting on hunch'. Theories of punishment are many : Reformative, preventive, deterrent, retributive and denunciatory. Retributive and denunciatory theories have lost their potency in the civilised nations. Deterrent and preventive punishment is sometimes necessary in the interest of society, regard being had to the nature of the offence, the well-being, security and preservation of society. The modern trend places emphasis on the reformation of an offender and his rehabilitation. It has been said by the Supreme Court that reformation and not retribution is the sentencing lodestar. No one is a born criminal. Circumstances, sometimes beyond his control, and social environments sometimes metamorphose an yesterday's innocent into today's offender. Not unoften a crime is committed on the spur, without premeditation, a scheme or planning; by a thoughtless act or due to uncontrollable influence. Given a chance many a person would reform and lead a new chapter, granted. congenial conditions for rehabilitation. Most offenders are first offenders. Many are youthful offenders. Association with and influence of hardened criminals in jail might make redemption impossible. A spell might destroy the personality irretrievably. What Sir Geoffrey Streatfield has said would not be irrelevant here:

If you are going to have anything to do with the criminal Courts you should see for yourself the conditions under which prisoners serve their sentence.

6. All these were in the minds of the legislature when it enacted the Probation of Offenders Act, 1958, making comprehensive provisions for the reformation and rehabilitation of an offender. Let me quote from the statement of objects and reasons:

In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self reliant member of society without subjecting him to the deleterious effects of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the subject which should be uniformly applicable to all the States.

It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences (Section 3). It is also proposed to empower Courts to release on probation in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life (Section 4). In respect of offenders under 21 years of age, special provision had been made putting restrictions on their imprisonment (Section 6). During the period of probation, offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of society....

(words and figures within brackets supplied).

7. The object of the Act is to prevent 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 see J. K. Prasad v. State of Bihar : [1973]1SCR875 .

In Rattan Lal v. The State of Punjab : 1965CriLJ360 it was observed (para 4) : .

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 was made to implement a social reform.; said the Supreme Court in : 1972CriLJ47 .

8. Section 3 confers power on the court to release certain offenders after admonition. Where any person is found guilty of having committed an offence punishable under Section 379 or S. 380 or Section 281 or section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the I.P.C. or any other law and no previous conviction is proved against him and the court by which the person is found guilty-is of the 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, release him on probation of good conduct after due admonition. Section 4 authorises the court to release an offender on probation of good conduct where he is found guilty of having committed an offence not punishable with death or imprisonment for life. The sentence is suspended. The court under this provision keeps control over the offender and calls upon him to receive sentence if he violates the bond during such period, not exceeding three years specified in the bond.

9. Section 6(1) applies to offenders under 21 years of age found guilty of having committed offence not punishable with imprisonment for life. It injuncts the court not to sentence such an offender 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 is not desirable to deal with him under Section 3 or Section 4. If the court, however, decides to pass a sentence of imprisonment of the offender, it casts a duty on it to record its reasons for doing so. Though Section 6 obligates the court to apply the provisions contained therein to offenders below 21 years of age found guilty of having committed an offence not punishable with imprisonment for life, Section 3 or Section 4 does not require the court to record reasons for not applying those provisions to offenders found guilty of having committed offences enumerated therein. The courts were remiss. Hence was enacted the new provision in the Cr. P.C. 1973. It reads as under:

361. Special reasons to be recorded in certain cases. Where in any case the Court could have dealt with -

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958, or

(b) a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

The statement of objects and reasons reads as follows:

It has come to the notice of the Committee that the salutary provisions of the Probation of Offenders Act, 1958, the Children Act, 1960 or other similar laws intended for the treatment of youthful offenders are being applied by Courts only rarely although it was expected that the provisions of these Acts would be applied liberally by the courts. To ensure that they are so applied, the new provision has been inserted requiring the Courts to give reasons in the judgment for not applying the provisions of the special laws whenever they may be applied.

(underlining supplied)

Where it comes within the purview of Section 360 or the Probation of Offenders Act or involves a youthful offender under any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders and the court refrains from dealing with the offender under Section 360 or under the provisions of the Probation of Offenders Act, the law casts a duty on the courts to record special reasons in its judgment for not doing so. Section 361 is mandatory. What was observed by the Supreme Court on Section 361 vis-a-vis Section 360 of the Cr. P.C. is equally applicable to Section 361 vis-a-vis the Probation of Offenders Act. The Supreme Court has said: Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever it is possible to do so and to 'state special reasons' if it does not do so. In the context of Section 360, the 'special reasons' contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed....

More importantly it say:

This is some indication by the Legislature that reformation and rehabilitation of offenders, and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country..

And has exhorted all who have some role to play in the administration of justice with these words:

We will not, therefore, be wrong in assuming that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors....

What has been said by the Supreme Court in the context of section 360 holds good in

the context of the Probation of Offenders Act also. As the statement of objects and reasons goes to indicate, the legislature enacted the mandate in Section 361 recognising the emerging trend in penology and criminal jurisprudence. Consider the eloquent words of Chinnappa Reddy, J. in his inimitable style in Bishnu Deo's case : 1979CriLJ841 :

Criminal justice is not a computer machine. It deals with complex human problems and diverse human beings. It deals with persons who are otherwise like the rest of us, who work and play who laugh and mourn, who love and hate, who yearn for affection and approval, as all of us do, who think, learn and forget. Like the rest of us they too are the creatures of circumstances. Heredity, environment, home, neighbourhood, upbringing, school, friends, associates, even casual acquaintances, the books that one reads, newspapers, radio and TV the economics of the household, the opportunities provided by circumstances and the calamities resulting therefrom, the success and failures of one's undertakings, the affairs of heart, ambitions and frustration, the ideas and ideologies of the time, these and several other ordinary and extraordinary incidents of life contribute to a persons personality and influence his conduct. Differently shaped and differently circumstanced individuals react differently in given situations....

A Judge has to balance the personality of the offender with the circumstance, situation and the reactions and choose the appropriate sentence to be imposed. He must try to answer the myriad questions, such as was the offence committed without premeditation or was it after due deliberation? What was the motive for the crime? Was it for gain? Was it the outcome of village feud? Was it the result of a petty, drunken street brawl, or a domestic bickering between a hapless husband and a helpless wife? Was it due to sexual jealousy? Was the murder committed under some stress, emotional or otherwise? What is the background of the offender? What is his social and economic status? What is the level of his education or intelligence? Do his actions betray a particularly callous indifference towards the Welfare of society or, on the other hand, do they show a great concern for humanity and are in fact inspired by such concern? Is the offender so perpetually and constitutionally at war with society that there is no hope of ever reclaiming Mm from being a menace to society? Or is he a person who is patently amenable to reform?

10. All these are involved in the exercise. Can there be any doubt that sentencing is not just a routine or mechanical exercise? But let us be very frank. Is such an exercise undertaken at the stage of sentencing? Despite the humanising penological trend and the mandate of the legislature, are not offenders being sentenced in a mechanical fashion?

11. The change in attitude and philosophy' is perceivable in the enactment of the Probation of Offenders Act, the Juvenile Acts, the Children Acts and by re-enacting Section 562 of the Code of 1898 with improvements in Section 360 of the present Code of Criminal Procedure and more importantly by providing the mandate in Section 361. When the mandate is clear, deviation amounts to dereliction.

12. Most of the criminal cases tried before subordinate criminal courts involve offences coming within the eligibility threshold. Not that in each such case the offender should be released on probation of good conduct or after admonition. But in each case where an offender has been convicted of an offence coming within the purview of Section 3 or Section 4 or where the offender is below 21 years of age and

has been convicted of an offence not punishable with imprisonment for life, there ought to be an exercise to find out if the provisions can be applied or not; not a routine or mechanical but a genuine, earnest and sensitive exercise. Let not the wind of change pass us by without inspiring us.

13. The incident was the outcome of acting on the spur or an act of mere thoughtlessness or uncontrollable influence. May be the petitioner was irked by the intervention of P.W.3 in a ladies' quarrel. There could be no better case satisfying the threshold eligibility under the Probation of Offenders Act. Whether the offender could have been dealt, with under it was a different consideration, regard being had to the factors enumerated in the section itself. But there was no exercise at all. It was certain that the petitioner was a first offender. No previous conviction had been proved against him. Having regard to the circumstances of the incident and in the absence of any adverse material as regards his character and antecedents, had the magistrate applied his judicial mind, the petitioner should have been dealt with under the mandate.

14. The learned Addl. Sessions Judge did not perceive the illegality; perhaps he was not conscious of the mandate while disposing of the appeal. The appellate court, therefore, failed in its humanising mission under the Probation of Offenders Act.

15. Sitting in revision and having considered the features of the case, I could have dealt with the petitioner under the Probation of Offenders Act. It has, however, been brought to my notice by Mr. Indrajit Ray, the learned Additional Government Advocate, that the petitioner has already suffered imprisonment pursuant to the sentence imposed, for about 25 days. He surrendered to the sentence on 21-1-1985 to satisfy the rule framed by the High Court that unless a person sentenced to substantive imprisonment surrenders to the sentence, his revision would not be placed for admission, though in suitable cases the petitioner may be granted exemption. When the petitioner has already suffered imprisonment for 25 days, injustice would be compounded if I would now grant him the treatment under the Probation of Offenders Act. I would, therefore, while maintaining the conviction, reduce the sentence to the period already undergone. The revision is allowed to the aforesaid extent. The petitioner be set at liberty forthwith.

16. I am grateful to Mr. G. N. Mohapatra, the learned Counsel for the petitioner, and Mr. Indrajit Ray, the learned Counsel for the State, for the able assistance rendered in this case.