

A STATE THROUGH C.B.I.,
ANTI CORRUPTION BRANCH, CHANDIGARH
v.
SANJIV BHALLA & ANR.
(Criminal Appeal Nos. 1338-1339 of 2014)

B JULY 4, 2014

**[RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.]**

C *Probation of Offenders Act, 1958: Held: A person convicted under the provisions of the PC Act cannot be granted benefit of release on probation of good conduct u/ s.360 of the Code of Criminal Procedure or under the provisions of the Probation of Offenders Act, 1958 - Code of Criminal Procedure, 1973 - s.360.*

E *Criminal jurisprudence: Sentence - Just sentencing - Held: Punishment should be rehabilitative and humanizing and need not necessarily be retributive in character - Judges have to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail - Code of Criminal Procedure, 1973 - ss.360, 361.*

F *Sentence/Sentencing: Plea bargaining - Held: There is necessity of giving justice to the victims of a crime and awarding a just sentence to the convicts by treating them in a manner that tends to assist in their rehabilitation - The amendments brought about in the Criminal Procedure Code in 2006 also include a chapter on plea bargaining, which again is intended to assist and enable the Trial Judge to arrive at a mutually satisfactory disposition of a criminal case by actively engaging the victim of a crime - It is the duty of a Trial Judge to utilize all these tools given by Parliament for ensuring a fair and just termination of a criminal case - For awarding a just sentence, the Trial Judge must consider the*

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provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code - When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons - The grant of compensation to the victim of a crime is equally a part of just sentencing - When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons - Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case - Compensation.

The prosecution case that the four accused persons entered into conspiracy to cheat the Insurance Company Ltd. One of the accused was posted as the Divisional Manager in the company and two accused were posted as Administrative Officer and surveyor. The three accused persons abused their official position as public servant and made payment to the fourth accused on the basis of false claim made by him.

The trial court convicted each of the accused under section 120-B r/w Section 420, IPC. Only one accused 'SPG' was convicted under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act. The accused challenged their convictions before the High Court. The accused who was convicted under Prevention of Corruption Act died during pendency of appeals. The accused persons restricted the appeals only to the quantum of sentence. The High Court observed that since the accused were facing mental agony of the trial and they had already suffered imprisonment for twenty days during the trial after conviction they should be released on sentence already undergone by them. The High Court observed that a lenient view in the matter of sentence should be taken and directed that conviction recorded against the accused under Section 120-B read with Section 420 of the IPC, Section 420 of the IPC and

A Section 13(1)(d) read with Section 13(2) of the PC Act shall be maintained. However, it held that the accused persons shall be released on probation of good conduct under Section 4(i) of the Probation of offenders Act, 1958.

B The CBI filed the instant appeals challenging the release of accused persons on probation of good conduct under the Probation of Offenders Act, 1958 alleging that it was impermissible in view of conviction under the PC Act. The accused who died during hearing of appeal before the High Court was also made party
C respondents.

Dismissing the appeals, the Court

Per (Smt.) Ranjana Prakash Desai, J.

D HELD: 1. Since only accused 'SPG' was convicted under the provisions of the PC Act, the High Court could not have observed that all the accused were convicted under the provisions of the PC Act and could not have confirmed the said non-existent conviction. The CBI,
E without applying its mind to the crucial fact that except accused 'SPG' none of the accused was convicted under the provisions of the PC Act, filed instant appeals in this Court making grievance about their release on probation of good conduct under the Probation of Offenders Act,
F 1958 despite their alleged conviction under the PC Act. Initially, in the appeal filed in the High Court, the CBI made 'SPG' a party respondent. Strangely, a dead man was made a party respondent in a criminal appeal. After having realized its mistake, a submission was made in
G this Court that 'SPG' had died even before the case was heard by the High Court, and, therefore, some time may be granted to make necessary corrections in the appeals. This Court granted two weeks time to the CBI to make necessary corrections. Thereafter, amended memo of
H parties was filed in which name of 'SPG' was deleted.

However, a bare look at the questions of law framed by the CBI in the appeals made it clear that they center around release of 'SPG' on probation of good conduct under Section 4(1) of the Probation of Offenders Act, 1958. [Paras 6 and 7] [1088-D-H; 1089-A-B]

2. A person convicted under the provisions of the PC Act cannot be granted benefit of release on probation of good conduct under Section 360 of the Code of Criminal Procedure or under the provisions of the Probation of Offenders Act, 1958. But, since 'SPG' was dead and his name was deleted from the array of parties, to that extent this appeal became infructuous. The High Court also did not notice that other accused were not convicted under the PC Act and wrongly observed that all were convicted under the PC Act. Thus, the appeal was presented before the High Court in a casual manner. The High Court did not notice that only 'SPG' was convicted for offence under the PC Act. It was the duty of the counsel to apprise the correct facts to the High Court and it was the responsibility of the High Court to correctly note the conviction and sentence of each of the accused. It could not have confirmed a non-existent conviction of the accused. [Para 8] [1089-G-H; 1090-A-D]

State through S.P., New Delhi v. Ratan Lal Arora AIR 2004 SC 2364:2004 (1) Suppl. SCR 631; State represented by Inspector of Police, Pudukottai, T.N. v. A Parthiban (2006) 11 SCC 473: 2006 (7) Suppl. SCR 35 - relied on.

3. Accused 'SB' and accused 'MPS' were convicted under Section 120-B read with Section 420 of the IPC and under Section 420 of the IPC. They were sentenced for two years and 2½ years respectively for the said offences. Substantive sentences were ordered to run concurrently. The High Court was moved by 20 days imprisonment undergone by the accused during trial and the agony of

A trial suffered by them. The High Court took a lenient view and released the accused on probation of good conduct under Section 4(1) of the Probation of Offenders Act on their furnishing personal bonds in the sum of Rs. 10,000/- each. It was the case of the appellant that the offence in which the accused were involved was grave and hence, the High Court wrongly exercised the discretion and released them on probation of good conduct. This submission is not accepted because the offence was committed in 1996. The impugned judgment is dated 4/5/2010. Accused 'MPS' has filed affidavit in this Court stating that he has already completed his probation period and his surety has been discharged by Special Judge by his order dated 23/7/2012. This Court does not have the necessary particulars about accused 'SB' but by now his surety must have been also discharged. In any event, in the peculiar facts of this case, at this distance of time, the order releasing the accused on probation of good conduct is not disturbed. [Para 9] [1090-E-H; 1091-A-B].

E *Per Madan B. Lokur, J.*

HELD: 1. Every accused person need not be detained, arrested and imprisoned - liberty is precious and must not be curtailed unless there are good reasons to do so. Similarly, everybody convicted of a heinous offence need not be hanged however shrill the cry "off with his head" - and this cry is now being heard quite frequently. Life is more precious than liberty and must not be taken unless all other options are foreclosed. Just sentencing is as much an aspect of justice as a fair trial and every sentencing judge would do well to ask: Is the sentence being awarded fair and just. Punishment should be rehabilitative and humanizing and, therefore, need not necessarily be retributive in character. [Paras 2 and 4] [1091-E-F; 1092-C]

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2. The philosophical basis of our criminal jurisprudence is undergoing a shift - from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten. There are other legislative requirements that need to be kept in mind. The Probation of Offenders Act provides, in Section 5 thereof for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. [Paras 17 and 18] [1098-C-E; 1099-A-B]

Bachan Singh v. State of Punjab (1980) 2 SCC 684; *Ved Prakash v. State of Haryana* (1981) 1 SCC 447; 1981 (1) SCR 1279; *Hari Singh v. Sukhbir Singh* (1988) 4 SCC 551; 1988 (2) Suppl. SCR 571; *State of Karnataka v. Muddappa* (1999) 5 SCC 732; *State of Haryana v. Prem Chand* (1997) 7 SCC 756; *State of Himachal Pradesh v. Dharam Pal*. (2004) 9 SCC 681; *Om Prakash v. State of Haryana* (2001) 10 SCC 477; *Dalbir Singh v. State of Haryana* (2000) 5 SCC 82; 2000 (3) SCR 1000; *Karamjit Singh v. State of Punjab* (2009) 7 SCC 178; *Manjappa v. State of Karnataka* (2007) 6 SCC 231; 2007 (7) SCR 275; *State of Punjab v. Balwinder Singh* (2012) 2 SCC 182; 2012 (1) SCR 45 ; *Alister Anthony Pareira v. State of Maharashtra* (2012) 2 SCC 648;; 2012 (1)

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A SCR 145; *State v. Sanjeev Nanda* (2012) 8 SCC 450; 2012 (12) SCR 881 ; *Ajaha Ali v. State of West Bengal* (2013) 10 SCC 31; 2013 (9) SCR 911 ; *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770; *Jitendra Singh v. State of U.P.* (2013) 11 SCC 193 - relied on.

B 3. There is a necessity of giving justice to the victims of a crime and by arriving at a fair balance, awarding a just sentence to the convicts by treating them in a manner that tends to assist in their rehabilitation. The amendments brought about in the Criminal Procedure Code in 2006 also include a chapter on plea bargaining, which again is intended to assist and enable the Trial Judge to arrive at a mutually satisfactory disposition of a criminal case by actively engaging the victim of a crime. It is the duty of a Trial Judge to utilize all these tools given by Parliament for ensuring a fair and just termination of a criminal case. To sum up: (a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code; (b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons; (c) The grant of compensation to the victim of a crime is equally a part of just sentencing; (d) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and (e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case. [Paras 20 and 21] [1100-A-F]

G Case Law Reference:

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2004 (1) Suppl. SCR 631 Relied on Para 8

2006 (7) Suppl. SCR 35 Relied on Para 8

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(1980) 2 SCC 684	Relied on	Para 2	A
1981 (1) SCR 1279	Relied on	Para 3	
1988 (2) Suppl. SCR 571	Relied on	Para 5	B
(1999) 5 SCC 732	Relied on	Para 5	
(1997) 7 SCC 756	Relied on	Para 6	
(2004) 9 SCC 681	Relied on	Para 6	
(2001) 10 SCC 477	Relied on	Para 7	C
2000 (3) SCR 1000	Relied on	Para 8	
(2009) 7 SCC 178	Relied on	Para 10	
2007 (7) SCR 275	Relied on	Para 11	D
2012 (1) SCR 45	Relied on	Para 12	
2012 (1) SCR 145	Relied on	Para 13	
2012 (12) SCR 881	Relied on	Para 14	E
2013 (9) SCR 911	Relied on	Para 16	
(2013) 6 SCC 770	Relied on	Para 19	
(2013) 11 SCC 193	Relied on	Para 19	F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No(s). 1338-1339 of 2014.

From the Judgment and Order dated 04.05.2010 of the
High Court of Punjab & Haryana at Chandigarh in Criminal
Appeal No. 1230-SB and 1231-SB of 1999.

Mukul Gupta, ASG, Rajiv Nanda, T.A. Khan, B.V.
Balramdas, Arvind Kumar Sharma for the Appellant.

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A Ashok K. Mahajan, Shishpal Laler, N.P. Midha, Balbir Singh Gupta for the Respondents.

The Judgment of the Court was delivered by

B (SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

C 2. The High Court of Punjab and Haryana by judgment and order dated 04/05/2010 disposed of two criminal appeals being Criminal Appeal Nos.1230-SB and 1231-SB of 1999 since they arose out of a common judgment. The said judgment and order is impugned in the present appeals.

D 3. For disposal of these appeals it is not necessary to narrate the facts in great detail. FIR was registered on 31/05/1996 against S.P. Gupta, the then Divisional Manager, National Insurance Company Limited, Hoshiarpur, R.P. Chopra, Assistant Administrative Officer, National Insurance Company Limited, Hoshiarpur, Sanjiv Bhalla, Surveyor and Major Purshotam Singh (Retd.) on the basis of a source information report. It was, inter alia, alleged in the FIR that S.P. Gupta while
E posted and functioning as Divisional Manager in National Insurance Company Limited, Hoshiarpur, entered into a criminal conspiracy with R.P. Chopra, Assistant Administrative Officer, National Insurance Company Limited, Hoshiarpur, Sanjiv Bhalla, Surveyor and Major Purshotam Singh (Retd.) - proprietor of M/
F s. Kisan Poultry Farm, District Kangra and some other unknown persons with the object of cheating the National Insurance Company Limited by abusing his official position as a public servant and, in pursuance of the said conspiracy S.P. Gupta passed a fire claim of Rs.7,02,873/- and also made part
G payment of Rs.2,00,000/- to Major Purshotam Singh (Retd.) on the basis of a false claim and that caused pecuniary loss to the National Insurance Company Limited. The FIR further stated how S.P. Gupta, Divisional Manager of National Insurance Company Limited abused his official position and by corrupt

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and illegal means obtained pecuniary advantage for himself or for his co-accused.

4. The Central Bureau of Investigation (for short, 'the CBI') investigated the complaint and upon completion of the investigation, filed charge-sheet against (1) S.P. Gupta, (2) Sanjiv Bhalla and (3) Major Purshotam Singh (Retd.) for offences under Section 120-B read with Section 420 of the IPC, Section 420 of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). The CBI examined 16 witnesses in support of its case. The accused denied the prosecution case. The Special Judge, CBI, Patiala, by his judgment and order dated 30/11/1999 convicted each of the accused under Section 120-B read with Section 420 of the IPC and sentenced them for the said offence to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further rigorous imprisonment for six months. The Special Judge further convicted Sanjiv Bhalla and Major Purshotam Singh (Retd.) under Section 420 of the IPC and sentenced them to undergo rigorous imprisonment for 2½ years each and to pay a fine of Rs. 3,000/- each and in default of payment of fine to undergo further rigorous imprisonment for six months. Only accused S.P. Gupta was convicted under Section 13(1)(d) read with Section 13(2) of the PC Act and sentenced to undergo rigorous imprisonment for 2½ years and to pay a fine of Rs.1,000/-, in default of payment of fine, to undergo rigorous imprisonment for six months.

5. The accused carried appeals to the High Court of Punjab and Haryana. The High Court, in the impugned order, noted that during the pendency of the appeals accused S.P. Gupta had died and, therefore, proceedings against him had abated. Counsel for the accused made a statement that he does not want to challenge the conviction of the appellants on merits and he confines his arguments only to the quantum of sentence.

A 6. Attention of the High Court was not drawn to the fact that
 only accused S.P. Gupta, who had died, was convicted for
 offence under the PC Act. Noting that counsel appearing for
 appellants had restricted the appeals only to the quantum of
 B sentence, the High Court observed that since the accused were
 facing mental agony of the trial and they had already suffered
 imprisonment for twenty days during the trial after conviction
 they should be released on sentence already undergone by
 them. The High Court observed that a lenient view in the matter
 of sentence should be taken and directed that conviction
 C recorded against the accused under Section 120-B read with
 Section 420 of the IPC, Section 420 of the IPC and Section
 13(1)(d) read with Section 13(2) of the PC Act shall be
 maintained. However, they shall be released on probation of
 good conduct under Section 4(i) of the Probation of Offenders
 Act, 1958, on their furnishing personal bonds in the sum of
 D Rs.10,000/- each with one surety each in the like amount. Since
 only accused S.P. Gupta was convicted under the provisions
 of the PC Act, the High Court could not have observed that all
 the accused were convicted under the provisions of the PC Act
 and could not have confirmed the said non-existent conviction.

E 7. The CBI, without applying its mind to the crucial fact that
 except accused SP Gupta none of the accused was convicted
 under the provisions of the PC Act, filed instant appeals in this
 Court making grievance about their release on probation of
 F good conduct under the Probation of Offenders Act, 1958
 despite their alleged conviction under the PC Act. Initially, in
 the appeal arising out of Criminal Appeal No.1231-SB of 1999
 filed in the High Court, the CBI made S.P. Gupta a party
 respondent. As to how a dead man could be made a party
 G respondent in a criminal appeal is not understood by this Court.
 It appears that having realized its mistake, on 27/01/2012 a
 submission was made in this Court that S.P. Gupta who was
 an accused before the trial court was also impleaded as one
 of the respondents, however, it appears from the High Court
 H judgment that S.P. Gupta had died even before the case was

heard by the High Court, and, therefore, some time may be granted to make necessary corrections in the appeals. This Court granted two weeks time to the CBI to make necessary corrections. Thereafter, amended memo of parties was filed in which S.P. Gupta's name was deleted. However, a bare look at the questions of law-'A' and 'C' framed by the CBI in the appeals makes it clear that they center around S.P. Gupta's release on probation of good conduct under Section 4(1) of the Probation of Offenders Act, 1958. We may reproduce the said questions of law:

"A. Whether provisions of Probation of Offenders Act are applicable and/or can be granted in relation to offences punishable under the Prevention of Corruption Act?

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C. Whether the impugned order in contrary to the law laid down by this Hon'ble Court in AIR 2004 SC 2364 in the matter of State through SP v. Rattan Lal Arora where in this Hon'ble Court has held that the principles enunciated under the provisions of Probation of Offenders Act cannot be extended to the conviction under the Prevention of Corruption Act?"

8. Reference to judgment of this Court *State through S.P., New Delhi v. Ratan Lal Arora*¹ in the appeal memo itself is sufficient to indicate that the main plank of CBI's submissions is that a person who is convicted under the PC Act cannot be released on probation of good conduct under the provisions of the Probation of Offenders Act, 1958. That a person convicted under the provisions of the PC Act cannot be granted benefit of release on probation of good conduct under Section 360 of the Code of Criminal Procedure or under the provisions of the Probation of Offenders Act, 1958 is well settled by a catena of

1. AIR 2004 SC 2364.

A judgments. In *State v. Ratan Lal Arora* this Court has stated
 so. This Court has again reiterated this in *State represented
 by Inspector of Police, Pudukottai, T.N. v. A Parthiban*². But,
 it is really not necessary for us to go into this because S.P.
 Gupta is dead and his name is deleted from the array of
 B parties. To that extent this appeal has become infructuous and
 this cannot be disputed by counsel for the CBI. I am, however,
 unhappy to note that the High Court also did not notice that other
 accused were not convicted under the PC Act and observed
 that all were convicted under the PC Act. Thus, the appeal was
 C presented before the High Court in a casual manner. The High
 Court did not notice that only S.P. Gupta was convicted for
 offence under the PC Act. It was the duty of the counsel to
 apprise the correct facts to the High Court and it was the
 responsibility of the High Court to correctly note the conviction
 and sentence of each of the accused. It could not have
 D confirmed a non-existent conviction of the accused.

9. The only challenge which remains to be dealt with is that
 accused Sanjiv Bhalla and accused Major Purshotam Singh
 (Retd.) were wrongly released on probation of good conduct.
 E As already noted, accused Sanjiv Bhalla and accused Major
 Purshotam Singh, (Retd.) were convicted under Section 120-B
 read with Section 420 of the IPC and under Section 420 of the
 IPC. They were sentenced for two years and 2½ years
 respectively for the said offences. Substantive sentences were
 F ordered to run concurrently. The High Court was moved by
 twenty days imprisonment undergone by the accused during
 trial and the agony of trial suffered by them. The High Court took
 a lenient view and released the accused on probation of good
 conduct under Section 4(1) of the Probation of Offenders Act
 on their furnishing personal bonds in the sum of Rs. 10,000/-
 G each. It appears to be the case of the appellant that the offence
 in which the accused were involved is grave and hence, the
 High Court wrongly exercised the discretion and released them
 on probation of good conduct. I am not inclined to entertain this

H ². (2006) 11 SCC 473.

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submission because the offence was committed in 1996. The A
impugned judgment is dated 4/5/2010. We are in 2014.
Accused Major Purshotam Singh (Retd.) has filed affidavit in
this Court stating that he has already completed his probation
period and his surety has been discharged by Special Judge, B
CBI Patiala by his order dated 23/7/2012. This Court does not
have the necessary particulars about accused Sanjiv Bhalla but
by now his surety must have been also discharged. In any
event, in the peculiar facts of this case, at this distance of time,
I am not inclined to disturb the order releasing the accused on
probation of good conduct. It is, therefore, not necessary to refer C
to the judgments cited by the counsel on this aspect.

10. In view of the above, I find no merit in the appeals. The
appeals are dismissed.

MADAN B. LOKUR, J. 1. While agreeing that the appeals D
deserve dismissal, I thought it necessary to express my views
on sentencing, particularly with regard to the release of a
convict on probation.

2. Every accused person need not be detained, arrested and E
imprisoned - liberty is precious and must not be curtailed
unless there are good reasons to do so. Similarly, everybody
convicted of a heinous offence need not be hanged however
shrill the cry "off with his head" - and this cry is now being heard
quite frequently. Life is more precious than liberty and must not F
be taken unless all other options are foreclosed¹. Just
sentencing is as much an aspect of justice as a fair trial and
every sentencing judge would do well to ask: Is the sentence
being awarded fair and just?

3. *In Ved Prakash v. State of Haryana*² this Court G
observed that:

1. *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

2. (1981) 1 SCC 447.

A "[I]t is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitation slant."

A little later in the judgment, it was held that:

B [E]ven if the Bar does not help, the Bench must fulfil the humanizing mission of sentencing implicit in such enactments as the Probation of Offenders Act."

C 4. In other words, this Court was of the view that punishment should be rehabilitative and humanizing and, therefore, need not necessarily be retributive in character.

D 5. Subsequently, in *Hari Singh v. Sukhbir Singh*³ this Court held that extending the benefit of probation to first time offenders is generally not inappropriate. The humanizing principle was extended even to a conviction under Part II of Section 304 of the IPC in *State of Karnataka v. Muddappa*⁴ in which case the benefit of release on probation was granted to the convict.

E 6. The benefit of the provisions of Section 6 of the Probation of Offenders Act (relating to restrictions on the imprisonment of offenders below 21 years of age)⁵ was

3. (1988) 4 SCC 551.

4. (1999) 5 SCC 732

F 5. Section 6: Restrictions on imprisonment of offenders under twenty-one years of age.-(1) When any person under twenty-one years of age is 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.

G (2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and other information available to it relating to the character and physical and mental conditions of the offender.

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extended to persons convicted of attempted rape. This was in *State of Haryana v. Prem Chand*⁶ which was followed in *State of Himachal Pradesh v. Dharam Pal*.

7. Similarly, in *Om Prakash v. State of Haryana*⁸ the convicts, first time offenders, were given the benefit of Section 360 and Section 361 of the Criminal Procedure Code and it was held that reasons ought to have been recorded for the denial of such a benefit⁹. The offence in this case was

6. (1997) 7 SCC 756

7. (2004) 9 SCC 681.

8. (2001) 10 SCC 477.

9. **Section 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 ... [not relevant].

(2) [Not relevant].

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) to (10) [Not relevant].

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

A punishable under Section 323 and Section 325 read with Section 148 and Section 149 of the IPC.

B 8. In the meanwhile, however, in *Dalbir Singh v. State of Haryana*¹⁰ this Court declined to give to the appellant, convicted of an offence punishable under Section 279 and Section 304-A of the IPC, the benefit of Section 4 of the Probation of Offenders Act¹¹ keeping in mind "the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families." It was held that,

C "[C]riminal courts cannot treat the nature of the offence

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

D (b) a youthful offender under 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,

but has not done so, it shall record in its judgment the special reasons for not having done so.

10. (2000) 5 SCC 82

E 11. 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:

G 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) is made, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

H (3) to (5) [Not relevant].

under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence."

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9. This decision, in which a cyclist was killed, resulted in a sentence of three months and one year respectively for the violation of the two Sections mentioned above. This decision, in a sense, was a precursor to a stricter application by this Court of the provisions for releasing a convict on probation and went contrary to the grain of earlier decisions of this Court.

C

10. In *Karamjit Singh v. State of Punjab*¹² the convict, a first time offender, was denied the benefit of release on probation in view of the gravity of the offence and a large number of injuries on the victim. The conviction in this case was for an offence punishable under Section 307 of the IPC and Section 27 of the Arms Act. This decision contains an inadvertent error, to the following effect:

D

*"In Manjappa v. State of Karnataka*¹³ *this Court considered the scope of grant of relief under the provisions of Section 361 CrPC or under the provisions of the Probation of Offenders Act, 1958 reconsidering earlier judgment of this Court in Om Prakash v. State of Haryana, and held that such a relief should be granted where the offence had not been of a very grave nature and in certain cases where mens rea remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC."*

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11. As has been noticed above, *Om Prakash* related to an offence punishable under Section 323 and Section 325 read with Section 148 and Section 149 of the IPC. *Manjappa* relates

12. (2009) 7 SCC 178

13. (2007) 6 SCC 231.

H

A to offences punishable under Sections 323, 325 and 504 of the
 IPC. There is no reference to any offence punishable under
 Section 279 or Section 304-A of the IPC. However, it appears
 that this Court desired to convey that an offence punishable
 under Section 279 and Section 304-A of the IPC is the result
 B of an accident and is, therefore, not 'grave' since there is an
 absence of mens rea.

12. Notwithstanding this, in *State of Punjab v. Balwinder
 Singh*¹⁴ it was again held that the punishment for causing death
 by rash or negligent driving should be deterrent, in view of the
 C frequency of such incidents. The accident in this case resulted
 in the death of five persons, and the punishment was six months
 rigorous imprisonment with a fine of Rs. 5000/-.

13. In *Alister Anthony Pareira v. State of Maharashtra*¹⁵
 D the convict's driving resulted in the death of seven persons and
 injuries to eight others. This Court upheld his conviction by the
 High Court for offences punishable under Part II of Section 304,
 Sections 338 and 337 of the IPC and sentenced him to rigorous
 imprisonment for three years and a fine of Rs. 5 lakhs. This
 E Court also observed that the case was not a fit one for releasing
 the convict on probation. It was also observed that our country
 has the dubious distinction of registering the maximum number
 of deaths in road accidents and that "It is high time that
 lawmakers revisit the sentencing policy reflected in Section
 F 304-A IPC."

14. In *State v. Sanjeev Nanda*¹⁶ six persons were killed
 and one injured as a result of the convict's driving. The Trial
 Court convicted him for an offence punishable under Section
 304 Part II of the IPC and sentenced him to undergo rigorous
 G imprisonment for five years. On appeal, the High Court found
 the convict guilty of commission of an offence punishable under

14. (2012) 2 SCC 182.

15. (2012) 2 SCC 648.

H 16. (2012) 8 SCC 450.

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Section 304-A of the IPC and reduced the sentence to two years. By the time the appeal filed by the State was taken up for disposal, the convict completed his term of imprisonment. That being so, while restoring the conviction under Section 304 Part II of the IPC, this Court did not deem it appropriate to enhance the sentence awarded. Several reasons were given for this, including the fact that the convict had given compensation to the families of the deceased to the extent of Rs. 10 lakhs each and to the family of the injured to the extent of Rs. 5 lakhs. The convict was further directed to deposit an amount of Rs. 50 lakhs with the Central Government for paying compensation to victims of other hit and run cases and to do community service for two years.

15. It does appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of Section 304 of the IPC, not warranting the release of the convict under probation. There may also be situations where an offence is punishable under Section 304-A of the IPC in an accident "where mens rea remains absent" and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under Section 304-A of the IPC should a convict be released on probation. This is certainly not to say that in all cases falling under Section 304-A of the IPC, the convict must be released on probation - it is only that the principles laid down in Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case.

16. In *Ajhar Ali v. State of West Bengal*¹⁷ the appellant was convicted of an offence of outraging the modesty of a woman punishable under Section 354 of the IPC. This was held

17. (2013) 10 SCC 31.

A to be "a heinous crime and with the social condition prevailing
 in the society, the modesty of a woman has to be strongly
 guarded" and so the benefit of the Probation of Offenders Act
 was not given to him. This may be contrasted with *Prem Chand*
 B and subsequently *Dharam Pal* where the convict was guilty of
 a far more serious offence of attempted rape and yet granted
 the benefit of the Probation of Offenders Act, notwithstanding
 the nature of the crime, and only because of his age.

17. These decisions indicate that the philosophical basis
 C of our criminal jurisprudence is undergoing a shift - from
 punishment being a humanizing mission to punishment being
 deterrent and retributive. This shift may be necessary in today's
 social context (though no opinion is expressed), but given the
 legislative mandate of Sections 360 and 361 of the Criminal
 D Procedure Code and the Probation of Offenders Act, what is
 imperative for the judge is to strike a fine balance between
 releasing a convict after admonition⁷⁸ or on probation or putting
 such a convict in jail. This can be decided only on a case by
 case basis but the principle of rehabilitation and the humanizing
 mission must not be forgotten.

E 18. There are other legislative requirements that need to

18. Probation of Offenders Act, 1958, Section 3: Power of court to release
 certain offenders after admonition.- When any person is found guilty of
 F 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
 G 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
 H section or Section 4.

be kept in mind. The Probation of Offenders Act provides, in Section 5 thereof¹⁹ for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. How often have the Courts used these provisions?

19. In *Ankush Shivaji Gaikwad v. State of Maharashtra*²⁰ and *Jitendra Singh v. State of U.P.*²¹ this Court held that consideration of grant of compensation to the victim of a crime is mandatory, in the following words taken from *Ankush Shivaji Gaikwad*:

"[W]hile the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation."

19. **Section 5: Power of court to require released offenders to pay compensation and costs.**-(1) The court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Section 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

20. (2013) 6 SCC 770

21. (2013) 11 SCC 193

A 20. This being the position in law, there is a necessity of giving justice to the victims of a crime and by arriving at a fair balance, awarding a just sentence to the convicts by treating them in a manner that tends to assist in their rehabilitation. The amendments brought about in the Criminal Procedure Code in
B 2006 also include a chapter on plea bargaining, which again is intended to assist and enable the Trial Judge to arrive at a mutually satisfactory disposition of a criminal case by actively engaging the victim of a crime. It is the duty of a Trial Judge to utilize all these tools given by Parliament for ensuring a fair and
C just termination of a criminal case.

21. To sum up:

(a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and
D the provisions on probation in the Criminal Procedure Code;

(b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(c) The grant of compensation to the victim of a crime is
E equally a part of just sentencing;

(d) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and

F (e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

22. The appeals are dismissed.

G Devika Gujral

Appeals dismissed.