2025 INSC 540

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2065 OF 2025
[Arising out of SLP (CRL.) NO. 368 OF 2020]

CHELLAMMAL AND ANOTHER **...APPELLANTS**

VERSUS

STATE REPRESENTED BY THE INSPECTOR OF POLICE **...RESPONDENT**

J U D G M E N T

DIPANKAR DATTA, J.

1. This appeal, by special leave, assails the judgment and order dated 5th November, 2019[1], passed by a learned Judge of the High Court of Judicature at Madras, partly allowing the appellants' criminal appeal[2] under Section 374(2), Code of Criminal Procedure[3].

2. The two appellants, mother-in-law and husband, respectively, of the deceased were jointly tried[4] for commission of offences punishable under Section 304-B and Section 498A, Indian Penal Code[5]. The Sessions Judge (Mahila Court), Coimbatore[6], *vide* its judgment and order dated 25th May, 2012, acquitted the appellants of the charge under Section 304-B, IPC but convicted them under Section 498-A, thereof. While the

[1] Impugned order
[2] Crl. A No. 345/2012
[3] Cr. PC
[4] S.C. No.37 of 2009
[5] IPC
[6] Sessions Judge

1st appellant was sentenced to a year's rigorous imprisonment, the 2nd appellant was sentenced to two years' rigorous imprisonment. Both the appellants were sentenced to fine too.

3. The High Court, vide the impugned order, maintained the conviction of the appellants under Section 498A, IPC, together with the sentence of a year's rigorous imprisonment imposed on the 1st appellant; however, the sentence of two years rigorous imprisonment imposed on the 2nd appellant was reduced to a year's rigorous imprisonment. The sentence of fine was not touched.

4. It has been ascertained in course of hearing that the appellants have not been in prison even for a single day.

5. We have heard Mr. N. Rajaraman, learned counsel for the appellants and Mr. V. Krishnamurthy, learned senior counsel and Additional Advocate General for the respondent-State Tamil Nadu at some length.

6. The date of offence relates back to 11th January, 2008. It was the birthday of the girl child of the 2nd appellant and the deceased. A quarrel erupted over how to celebrate the child's birthday with the deceased and the 1st appellant having different ideas. The 1st appellant had her way with the support of the 2nd appellant. This infuriated the deceased, who was only 19 years old, to set herself ablaze. Ultimately, she passed away on 16th January, 2008 because of the burn injuries sustained by her. In the dying declaration of the deceased (dated 11th January, 2008), we find that she truthfully declared that the appellants never demanded dowry. This paved the way for the appellants' acquittal for the graver

offence of dowry death. However, we have found allegations in the dying declaration of the deceased that the appellants occasionally beat her as well as hurled abuses towards her by calling her a mental patient. The Sessions Judge and the High Court having returned finding of facts on appreciation of the evidence on record that the appellants are guilty of the offence under Section 498A, IPC, we do not propose to interfere with the conviction.

7. However, 17 years have passed since the date of the incident. Prior to the incident of crime, the appellants were not involved in any crime. During these 17 years too, they did not indulge in any further crime. On the other hand, they have looked after the child of the 2nd appellant and the deceased well and she is now an adult of 19 years, pursuing her education.

8. Based on such facts and circumstances and urging us to consider the negative impact that could befall the now adult girl child of the 2nd appellant and the deceased if her grandmother and father were to be imprisoned, Mr. Rajaraman implored this Court to set aside the sentence of imprisonment by enhancing the fine.

9. Unfortunately, that is not a permissible course of action in view of Section 498A, IPC. It ordains that a woman's husband or the husband's relative, if found guilty of subjecting the woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Thus, fine is not an alternative to imprisonment. What, therefore, survives for consideration is the

question of grant of probation, either under the Cr. PC or the Probation of Offenders Act, 1958[7].

10. Bare perusal of the order on sentence of the Sessions Judge and the impugned order of the High Court reveal that both the courts omitted to consider, and we assume it to be inadvertent, whether the appellants could be granted the benefit of probation either under sub-section (1) of Section 360, Cr. PC [8] or Section 4 of the Probation Act.

11. Insofar as relevant for the purpose of the present appeal, Section 360, Cr. PC enabling release on probation of good conduct ordains that 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, 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

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[7] Probation Act

[8] **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).

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.

12. Similarly, Section 361[9], Cr. PC mandating special reasons to be recorded in certain cases, provides that in any case where the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so.

13. Apart from Section 360 providing for the benefit of probation, which was also previously provided by Section 562 of Code of Criminal Procedure, 1898, we noticed that the Parliament in 1958 had enacted the Probation Act with the avowed object of providing scope of reformation to convicts who deserve such benefits. Sub-section (3) of Section 1[10] of the Probation Act stipulates that it (the Act) shall come into force in a State on such date as the State Government may by

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[9] **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 (20 of 1958), or
(*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] **1. Short title, extent and commencement**.—(1) …
(2) …
(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.

notification in the Official Gazette appoint. Section 4[11] thereof, to the extent relevant for ascertaining who is entitled to the benefit of probation, stipulates that 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

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[11] **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) is made, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.
(3) When an order under sub-section (1), the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order or impose such conditions as it deems necessary for the due supervision of the offender.
(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.
(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

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.

14. Section 19 of the Probation Act[12], however, provides that subject to the provisions of Section 18 thereof, Section 562 of the Code (i.e., the Code of Criminal procedure, 1898) shall cease to apply to the States or parts thereof in which it (the Probation Act) is brought into force.

15. Having looked at Section 19 of the Probation Act, we needed a clarification as to whether the provisions thereof were brought into force in the State of Tamil Nadu.

16. While the hearing was in progress, Mr. Nagamuthu, learned senior counsel was found to be present in Court. His assistance was sought by us.

17. Mr. Nagamuthu immediately assisted us by referring to various precedents and later handed over a compilation of judgments on the issue of probation.

18. Based on the same and other precedents, we propose to decide the surviving issue in this appeal as to whether the High Court was justified in not extending the benefit of probation to the appellants.

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[12] **19. Section 562 of the Code not to apply in certain areas**.—Subject to the provisions of Section 18, Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

19. Responding to our query as to whether the Probation Act has been brought into force in the State of Tamil Nadu, as ordained in Sections 1(3) and 19 thereof, Mr. Nagamuthu referred us to the decision of this Court in ***State v. A. Parthiban***[13]. While submitting that the provisions of the Probation Act were brought into force in the State of Tamil Nadu in the year 1964, our attention was pointedly drawn to paragraph '10' of the said decision.

20. On the question whether it is a mandatory duty cast upon the court to record reasons for not invoking Section 360, Cr. PC or Section 4 of the Probation Act, Mr. Nagamuthu, invited our attention to the order passed in ***Chandreshwar Sharma v. State of Bihar***[14]. Relevant excerpt from such order reads as follows:

> "**3.** … From the perusal of the judgment of the learned Magistrate as well as the court of appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the Code of Criminal Procedure. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Code of Criminal Procedure. As such, the mandatory duty cast on the Magistrate has not been performed. …"

21. However, Mr. Nagamuthu was prompt in submitting that the decision in ***Chandreshwar*** (supra) had no occasion to deal with the Probation Act and, therefore, it is not expressly held that the Probation Act also casts such duty; however, the same being a beneficial legislation, he

[13] (2006) 11 SCC 473
[14] (2000) 9 SCC 245

submitted that this Court may draw analogy from Sections 360 and 361, Cr. PC and hold that after recording a conviction it is mandatory for the courts to consider the stated circumstances and, instead of sentencing the offender at once to any punishment, determine whether he deserves extension of the benefit of Section 4 of the Probation Act.

22. Mr. Nagamuthu also cited the following decisions where law has been laid down to the effect as noted below:

(i) ***Ishar Das v. State of Punjab***[15], where it has been held that Section 4(1) of the Probation Act makes no distinction between a convict below 21 years or otherwise and it is applicable to all ages.

(ii) ***Dalbir Singh v. State of Haryana***[16], where this Court emphasized that the courts have to form an opinion that it is expedient to release the offender on probation and such opinion is mandatory.

(iii) ***Jagdev Singh and other v. State of Punjab***[17], holds that it is permissible for the Supreme Court to deal with the plea of application of the Probation Act for the first time in special circumstances, where the relevant material relating to the circumstances in which an offence is committed is on the record and that this Court may justifiably grant such benefit to an appellant while finding him guilty; however, in the absence

[15] (1973) 2 SCC 65
[16] (2000) 5 SCC 82
[17] (1974) 3 SCC 412

of materials, such a prayer may well be disallowed if made for the first time on appeal by special leave.

(iv) While granting benefit of Section 4 of Probation Act, this Court in ***Rajbir v. State of Haryana***[18] held that the circumstances of the case, the nature of the offence and the character of the offender have to be taken into account.

(v) In ***MCD v. State (NCT of Delhi)***[19], construing the word "shall" appearing in sub-section (2) of Section 4 of the Probation Act as mandatory, this Court held that before granting an order for probation, it is essential to obtain the report of the Probation Officer; however, the court may not be bound thereby.

23. At the dawn of this century, this Court in ***Commandant, 20th Battalion, ITB Police v. Sanjay Binjola***[20] dwelled on the object of the Probation Act and what was held has been echoed, fairly recently, in ***Lakhvir Singh v. State of Punjab***[21]. After noticing the Statement of Objects and Reasons[22] of the Probation Act, the coordinate Bench in the latter decision observed that the SoR explains the rationale for the enactment and its amendments : to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, the increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society

[18] (1985) Supp SCC 272
[19] (2005) 4 SCC 605
[20] (2001) 5 SCC 317
[21] (2021) 2 SCC 763
[22] SoR

without subjecting them to the deleterious effects of jail life is what is sought to be subserved.

24. The decision in ***Hari Singh v. Sukhbir Singh***[23] provides the guiding light as to how first-time offenders are to be dealt. It was observed therein that:

> "**8.** … Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the court encourages their own sense of responsibility for their future and protects them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not shown to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate."

25. In ***Gulzar v. State of Madhya Pradesh***[24], the following instructive passages are found:

> "**11.** Where the provisions of the PO Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the PO Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the court under Section 361 of the Code to apply one or the other beneficial provisions; be it Section 360 of the Code or the provisions of the PO Act. It is only by providing special reasons that their applicability can be withheld by the court. The comparative elevation of the provisions of the PO Act are further noticed in sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said section shall affect the provisions of the PO Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.
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> **12.** … The scope of Section 4 of the PO Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the courts in relation to supervision and other matters while the PO Act does make

[23] (1988) 4 SCC 551
[24] (2007) 1 SCC 619

such a provision. While Section 12 of the PO Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the PO Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code 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 provisions of the PO Act, as applicable at the same time in a given area, cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable."

26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. *Inter alia*, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the *non-obstante* clause in sub-section gives overriding effect to sub-section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in sub-section (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.

29. For the foregoing reasons and in the light of the factual matrix, we are unhesitatingly of the opinion that the Sessions Judge and the High Court by omitting to consider whether the appellants were entitled to the benefit of probation, occasioned a failure of justice. Consequently,

there was no worthy consideration as to whether the appellants could be extended the benefit of probation.

30. We are conscious that in ***MCD*** (supra), since followed in ***State of Madhya Pradesh v. Man Singh***[25], this Court has held that the report of the probation officer referred to in sub-section (2) of Section 4 of the Probation Act is a condition precedent and, therefore, must be complied with by the trial courts and the high courts. Importantly, it has also been held that the courts may not be bound by such report. In such view of the matter, we need to make appropriate directions.

31. Accordingly, while maintaining the conviction recorded against the appellants but looking to the facts and circumstances, we are inclined to remit the matter to the High Court for limited consideration of the question of grant of probation to the appellants upon obtaining a report of the relevant probation officer. It is ordered accordingly.

32. Till such time the appropriate Bench of the High Court decides the question as indicated above, the order of this Court dated 10th January, 2020, granting the appellants exemption from surrendering will continue.

33. This appeal, accordingly, stands disposed of on the aforesaid terms.

34. Pending applications, if any, stand closed.

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[25] (2019) 10 SCC 161

35. Before parting, we record our sincere appreciation for the invaluable assistance rendered to us by Mr. Nagamuthu.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI.
APRIL 22, 2025.