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Crl.A.No. 334 OF 1997
ITEM No.106

Court No.5

SECTION II

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

CRIMINAL APPEAL NO.334 OF 1997

State of Himachal Pradesh Appellant (s)
VERSUS

Dharma Pal Respondent (s)

Date : 13/11/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. J.S. Attri,Adv.

For Respondent (s)Mr. B.D. Sharma,Adv.

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

The appeal is dismissed in terms of the
signed order.

(Neena Verma) (Vijay Aggarwal)

Court Master

Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.334 OF 1997

State of Himachal Pradesh..... Appellant

Versus

Dharam Pal..... Respondent

O R D E R

The State of Himachal Pradesh calls in question legality of the judgment of the High Court of Himachal Pradesh directing release of the respondent-accused under Section 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act') while upholding the conviction for an offence punishable under Section 376 read with Section 511 of the Indian Penal Code, 1860 (in short 'the IPC).

The factual aspects need not be gone into in details as the view expressed by the High Court has to be tested on the principles of law.

The victim and the accused are related to each other, the latter being cousin brother of the former. Law was set in motion on 01.08.1989 on the accusation that the accused committed rape on the victim. Investigation was undertaken and the accused faced trial. The Trial Judge was of the view that commission of rape was not established. However, an attempt to do so was established unerringly. Three years' custodial sentence and a fine of Rs.3,000/- was imposed. In an appeal, the High Court upheld the conviction, but considering the relationship, the age of t

he accused, applied Section 4 of the Act. According to learned counsel for the appellant-State, looking at the gravity of the offence and its impact on the society, the beneficial provisions of the Act should not have been extended and they are not intended to be extended in such a case. The offence of rape is punishable with death or imprisonment for life and, therefore, the Act has no application to an offence under Section 376 IPC. When there was an established attempt to commit rape, no leniency should have been shown.

Per contra, learned counsel for the respondent submitted that the accused and the victim are related to each other, the incident is more than fourteen years old, the High Court judgment is in operation for about six years, and no adverse report about the conduct of the respondent has been received and in that background, the judgment of the High Court should not be interfered with.

According to us, the offence of an attempt to commit rape is a serious offence, as ultimately if translated into the act leads to an assault on the most valuable possession of a woman i.e. character, reputation, dignity and honour. In a traditional and conservative country like India, any attempt to misbehave or sexually assault a woman is one of the most depraved acts.

The Act is intended to reform the persons who can be reformed and would cease to be a nuisance in the society. But the discretion to exercise the jurisdiction under Section 4 is hedged with a condition about the nature of offence and the character of the offender. Section 6 of the Act makes the provisions applicable in cases where offenders are under 21 years of age, and restrictions on imprisonment of offenders have been indicated in the said provision. In a case involving similar facts, this Court in State of Haryana Vs. Prem Chand (1997 (7) SCC 756) upheld the judgment of the High Court which extended the benefit of provisions under Section 4 of the Act. Considering the peculiar circumstances of the case and taking into account the fact that on the date of occurrence the accused was less than 21 years old, we feel this is a case where no interference is called for with the judgment of the High Court, though some of the conclusions arrived at by the High Court do not have our approval. The appeal fails and is dismissed.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
November 13, 2003.