



2026:DHC:663



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment Reserved on: 17.01.2026**
Judgment pronounced on: 28.01.2026

+ CRL.A. 1290/2019 and CRL.M.A. 40214/2019

STATE

.....Appellant

Through: Mr. Pradeep Gahalot, APP for the
State.
SI Himanshu P.S. Alipur

Versus

SUNIL @ PAHALWAN & ANR

.....Respondents

Through: Mr. Abhishek, Mr. Krishan Kumar
and Mr. Sandeep, Advocates

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA
JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 377 of the Code of Criminal Procedure, 1973 (the Cr.PC.), has been filed by the respondent/State in SC No. 755/2017 on the file of the Additional Sessions Judge/Special Judge (NDPS), North, Rohini Courts, New Delhi, assailing the order on sentence dated 16.05.2019, as per which the accused persons have been released on probation for



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good conduct with an undertaking to maintain peace and good behaviour for a period of one year and fine of ₹5,000/-.By the impugned judgment dated 03.05.2019, accused no. 3 and 5(A3 and A5), respondent nos. 1 and 2 herein, have been found guilty of the offences punishable under Sections 365 and 395 of the Indian Penal Code, 1908 (the IPC) and accused no. 5 has also been found guilty of the offence punishable under Section 174A IPC. *Vide* the order on sentence dated 16.05.2019, accused nos. 3 and 5 have been directed to be released on probation of good conduct on furnishing a bond for a sum of ₹10,000/- with an undertaking to keep peace and be of good behaviour for a period of one year. The prayer in this appeal is limited to the extent of seeking enhancement of the punishment imposed *vide* order on sentence dated 16.05.2019.

2. The prosecution case is that in the intervening night of 29/08/2017 and 30/08/2017 at about 11:45 pm, the accused persons, five in number, abducted CW17 Yashish Arora at



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gunpoint for ransom. Hence, the accused persons, as per the final report/charge sheet are alleged to have committed the offences punishable under Sections 364A, 394, 395, 397, 186, 353, 307, 332/34 IPC and Sections 25, 27 of the Arms Act, 1959 (the Arms Act).

3. On the basis of Ext. PW2/1 FIS of PW2, given on 30.08.2017, Crime no. 368/17, Alipur Police Station, was registered. CW32, Inspector, conducted the investigation and on completion of the same submitted the final report dated 13.11.20217 alleging the commission of offences punishable under the above mentioned Sections against A1, 2 and 3. Thereafter, supplementary charge sheet dated 30.03.2018 was submitted against A4 and 5, alleging commission of offences punishable under Sections 364A, 394, 395, 397, 186, 353, 307,174A, 332 read with Section 34 IPC and Sections 25 and 27 of the Arms Act.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to



them as contemplated under Section 207 of the Cr.PC. After hearing both sides, the trial court, as per order dated 20.04.2019, framed charge under Sections 356 and 395 IPC against A1 to A5; charge under Sections 397 and 332 IPC against A1; charge under Sections 25 and 27 of the Arms Act against A2; charge under Sections 397 and 307 IPC along with Section 27 of the Arms Act and Section 174A IPC against A4; charge under Sections 394, 186, 353 and 34 IPC against A1. A charge for the offence punishable under Section 174A IPC was also framed against A5. The charges were read over and explained to the accused persons, to which A3 and 5 pleaded guilty of the offences punishable under Sections 365 and 395 read with Section 34 IPC.

5. The trial court found the plea to be voluntary and, hence, by way of the impugned judgment dated 03.05.2019, convicted A3 and A5 of the offences punishable under Sections 365, 395, read with Section 34 IPC. *Vide* Order dated 03.05.2019, they have been directed to be released on probation of good conduct on furnishing



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bond for a sum of ₹10,000/- with an undertaking to keep peace and be of good behaviour for a period of one year from today. In case of breach of any such conditions, they would submit themselves to receive sentence as per law. Aggrieved, the State has filed the present appeal.

6. It was submitted by the learned Prosecutor for the appellant/State that the trial court went wrong in applying the provisions of the Probation of offenders Act, 1958 (the PO Act) in a case involving offence of dacoity, which is punishable with imprisonment for life or with imprisonment for a term extending to ten years.

7. *Per Contra*, it was submitted by the learned counsel for accused A3 and A5 that a case of road rage has been falsely converted into a case of abduction and dacoity. It was also submitted that A3 and A5 have no criminal antecedents. They are youngsters aged between 23 and 26 years old with family responsibilities. After their release on probation, they have strictly



complied with all the conditions imposed by the trial court and have not violated the probation order in any manner. It was also submitted that A5 voluntarily surrendered before the Magistrate concerned, fully cooperated with the investigation. No active role has been attributed A 3 and A5. No recovery was effected from them, and that they have already undergone substantial incarceration. It was also submitted that the offences in question do not carry mandatory sentence of death or life imprisonment and therefore, probation was rightly granted. There is no infirmity calling for interference by this court. In support of the argument, reliance was placed on the dictum in **State v. Lucky, 2017 SCC OnLine Del 8328.**

8. The only point that arises for consideration in this appeal is whether the trial court was right in giving the benefit of Section 4 of the PO Act to A3 and A5, that is, respondents 2 and 3 herein.

9. Heard both sides and perused the records.

10. The power of the court to release certain offenders on



probation of good conduct is envisaged in Section 4 of the PO Act

which reads thus:-

“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), 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) is made, 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 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.”

(Emphasis supplied)

11. A perusal of the Section shows that the power of the Court to release offenders on probation of good conduct is not to be extended to persons who have committed an offence punishable with death or imprisonment for life. In the case on hand, A3 and 5 have been convicted of the offences punishable under Sections 365, 395 read with Section 34 IPC. The offence of dacoity, punishable under Section 395 IPC, provides for imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and fine. The phrase used in S.4 of the PO Act is “*not*



punishable with death or imprisonment for life”. It cannot be read conjunctively so as to mean that it provides an alternative sentence for an offence. But it must be read disjunctively. In **Jagdev Singh v. State of Punjab, 1974 KHC 577: AIR 1973 SC 2427**, the Apex Court was called upon to consider whether the benefit of S.4 of the PO Act could be extended in a case involving S.326 IPC, which offence is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 yrs. This was answered in the negative, and it was held that both Sections 4 and 6 of the PO Act clearly provide that the benefit of the Sections will not be available to persons found guilty of an offence punishable with imprisonment for life. The PO Act is intended to carry out the object of keeping away from the unhealthy atmosphere of jail life where normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offenses, by providing for dealing with them more leniently, with a view to their reformation under S.3, 4



or 6 of the PO Act as the case may be. An offence punishable under S.326 IPC is indisputably punishable with imprisonment for life. The benefit of the Act on the plain language of S.4 and 6 is thus not available in such cases. (See also **Som Nath Puri v. State of Rajasthan, 1972 KHC 414: AIR 1972 SC 1490** and **State of Gujarat v. V. A. Chauhan, 1983 KHC 570: AIR 1983 SC 359**).

12. In **Jugal Kishore Prasad v. State of Bihar, 1973 SCC (Cri) 48: 1973 CriLJ 23**, it has been held that it is wrong to contend that the offence excluded from the purview of the Section are only those offences wherein punishment prescribed is imprisonment for life and not for a lesser term for the language used in the section does not warrant such a view. The plain meaning of the Section is that the Section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life.



13. Thus, the trial court erred in invoking the benevolent provision under Section 4 of the PO Act in the case on hand. Hence, the order on sentence dated 16.05.2019 is set aside.

14. Now, coming to the sentence to be imposed. The incident took place in the year 2017. Nine years have elapsed. A3 and A5 were aged about 21 years and 24 years, respectively, when the incident took place. It was at the time of framing the Charge that A3 and A5 pleaded guilty, apparently before any witnesses were examined. No materials have been placed on record by the appellant to show as to what was the result of the case against the remaining accused persons. The appellant/State has no case that A3 and A5 have any criminal antecedents. A3 and A5 were in judicial custody for a period of one year and eight months, and one year and three months, respectively. In the absence of any other materials, the sentence is confined to the period already undergone by them.

15. In the result, the appeal is allowed. A3 and A5, the



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respondents herein, are sentenced to rigorous imprisonment for six months each for the offence punishable under Section 365 and to fine of ₹ 5000/- each and in default, simple imprisonment for two months each; to rigorous imprisonment for one year each for the offence punishable under 395 read with Section 34 IPC and to a fine of ₹ 6000/- each and in default, simple imprisonment for three months each. The substantive sentence is confined to the period already undergone by them. The fine amount, when realised, will be given to CW17 Yashish Arora, the informant/victim in the case under Section 357(1)(b)Cr.PC.

16. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JANUARY 28, 2026