

ABC 2025 (II) 607 HP

ACQUITTAL & BAIL CASES

a

HIGH COURT OF HIMACHAL PRADESH

(Virender Singh,J.)

Criminal Appeal No. 132 of 2025

b

Decided On 3 September 2025

STATE OF H.P.

- Appellant(s).

Versus

RAJIKA GUPTA

- Respondent(s).

c

Law Covered:- (A) Probation of Offenders Act, 1958 - S. 11 (2) - Appeal Against Grant of Probation - Maintainability Limited - State appeal against grant of probation after upholding conviction u/ ss 279, 337, 304A IPC - Held, appellate court's discretion in probation not lightly interfered with unless perverse.

d

(B) Indian Penal Code, 1860 - Ss. 279, 337, 304A (BNS - 281, 125(a), 106(1)) - Rash and Negligent Driving Causing Death - Probation Instead of Sentence - Conviction for causing death by rash driving - First offender, clean record - Held, benefit of probation appropriate instead of imprisonment.

e

Facts:- State appealed against appellate court order granting probation to respondent after upholding conviction for rash driving causing death. Original sentence modified to probation. High Court dismissed State appeal.

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Law of relief:- Conviction for causing death by rash driving - Held, benefit of probation appropriate instead of imprisonment.

Counsel:-

For Appellant(s): Mr. Tejasvi Sharma, Additional Advocate General.

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For Respondent(s): Mr. N.K. Thakur, Senior Advocate, with Mr. Karanveer Singh, Advocate.

JUDGMENT

h

Virender Singh, J.:-

1. The State of Himachal Pradesh has filed the present Criminal Appeal, under Section 11(2) of the Probation of Offenders Act, 1958, against the judgment dated 07.05.2024 passed by the Court of learned Additional Sessions Judge(II), Kangra, at Dharamshala, District Kangra, H.P., (hereinafter referred to as the 'learned Appellate

Court'), in Criminal Appeal No.20-D/X/2022, titled as Rajika Gupta versus State of Himachal Pradesh.

2. By way of the impugned judgment, the judgment of conviction dated 18.11.2022 passed by the Court of learned Additional Chief Judicial Magistrate, Kangra, District Kangra, H.P., (hereinafter referred to as the 'learned trial Court'), in Criminal Case Registration No.186 of 2015, titled as State versus Rajika Gupta, has been upheld and benefit of Section 3 of the Probation of Offenders Act, has been given to the respondent, by modifying the order of sentence, dated 08.12.2022.

3. Vide judgment of conviction dated 18.11.2022, the respondent-accused has been convicted for the offence punishable under Sections 279, 337 and 304A of the Indian Penal Code (hereinafter referred as the IPC) and vide order of sentence dated 08.12.2022, she has been sentenced as under:-

4. Being aggrieved by the judgment passed by the learned Appellate Court, the present appeal has been filed by the State mainly on the ground that the learned Appellate Court has wrongly extended the benefit of Section 3 of the Probation of Offenders Act to the respondent, in violation of the decision of the Hon'ble Supreme Court, in case titled as Dalbir Singh versus State of Haryana: AIR 2000 SC 1677, as well as, decision of this Court in case titled as State of H.P. versus Piar Chand: 2003 STPL HJ 282 HC.

5. As per the documents annexed with the appeal, respondent-Rajika Gupta (hereinafter referred as the accused) was directed to face trial, arising out of FIR No. 218 of 2014, dated 14.09.2014, registered under Sections 279, 337 & 304-A of IPC. The learned trial Court framed the charges under Sections 279, 337 & 304-A of IPC, which were put to the accused, for which, she had pleaded not guilty and claimed to be tried.

6. Consequently, the prosecution was directed to adduce evidence. Prosecution has examined, as many as, 10 witnesses. Thereafter, the learned trial Court, after hearing the learned APP and learned defence counsel, has convicted the accused for the offences punishable under Sections 279, 337 & 304-A of IPC, vide judgment dated 18.11.2022 and vide order of sentence dated 08.12.2022, she has been sentenced, as aforesaid.

7. All the sentences had been ordered to be run concurrently and the total amount of Rs.3,000/- had been ordered to be paid to the legal heirs of deceased Pushpa Devi, as compensation.

a 8. The accused has assailed the judgment of conviction and order of sentence passed by the learned trial Court, before the learned Appellate Court.

b 9. The learned Appellate Court has decided the appeal on 07.05.2024 by partly allowing the appeal, upholding the judgment of conviction passed by the learned trial Court, however, order of sentence, dated 08.12.2022, has been modified by extending the benefit of Section 3 of the Probation of Offenders Act, by releasing the accused on probation, on furnishing the bond of good conduct for 3 years, and with the condition that the accused shall deposit the compensation amount of Rs.50,000/- before the learned trial Court, which has been ordered for injury caused to the victim by the commissioning of the offence.

c 10. In addition to this, the cost of Rs.10,000/- has also been imposed, which were ordered to be deposited with the District Legal Services Authority, Kangra, within a period of one month from the date of order. In addition to this, the accused has further been directed to offer her medical services, free of cost, at least 1 day in fortnight for 3 years of the order, in any Charitable Hospital/ Dispensary, located within the jurisdiction of District Kangra and also deposit an amount of Rs.20,000/- in the office of Red Cross Society, Dharamshala, against due receipt.

d 11. The another ground to assail the judgment/order passed by the learned Appellate Court is that the learned Appellate Court has failed to appreciate the fact that there is alarming increase in number of accidents, caused by the vehicles, driven by the drivers under the influence of liquor or in a rash and negligent manner.

e 12. On the basis of the above facts, a prayer has been made to allow the appeal and set-aside the order, by virtue of which, the accused has been released on probation. It has also been prayed that the order of sentence passed by the learned trial Court, may kindly be restored.

f 13. As stated above, the learned trial Court has declined to extend the benefit of probation to the accused, however, the learned Appellate Court, has dismissed the appeal against the judgment of conviction, on the basis of the statement, so made by the accused and modified the order of sentence, as referred to above.

g 14. In such situation, the material question, which arises for determination, before this Court is about the fact, whether, the benefit of probation can be given to the accused, in this case.

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15. Hon'ble Supreme Court, in case titled as Dalbir Singh versus State of Haryana and others: AIR 2000 Supreme Court 1677, has categorically held that the benefit of probation is not to be extended to the person convicted of offence of causing death, by rash and negligent driving. Relevant paragraphs 13 and 14, of the judgment are reproduced as under:-

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A of IPC as attracting the benevolent provisions of Section 4 of the P.O. 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. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance think that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

14. Thus, bestowing our serious consideration on the arguments addressed by the learned counsel for the appellant we express our inability to lean to the benevolent provision to Section 4 of the P.O. Act. The appeal is accordingly dismissed".

16. This decision has again been reiterated by the Hon'ble Supreme Court, in case titled as Thakur Singh versus State of Punjab: (2003) 9 Supreme Court Cases 208.

17. Hon'ble Supreme Court in case titled as State of Punjab versus Balwinder Singh and others: (2012) 2 Supreme Court Cases 182, has held that nature of offence under Section 304A IPC cannot be treated to be attracting Section 4 of the Probation of Offenders Act. Relevant paragraph 13 of the judgment is reproduced as under:-

a "13. It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to b motor accidents that they cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh".

c 18. In view of the decisions of the Hon'ble Supreme Court, as referred to above, this Court would now proceed further, to consider as to whether, the judgment passed by the learned Appellate Court, modifying the order of sentence, passed by the learned trial Court, by extending the benefit of probation to the accused, is sustainable in the d eyes of law or not. The answer to this question is in negative, as, it has constantly been held by the Hon'ble Supreme Court that the benefit of the provisions of Probation of Offenders Act, should not be given to the person, who has been convicted for the offence for causing death, due to the rash and negligent driving.

e 19. Learned counsel appearing for the accused has relied upon the decision of Hon'ble Supreme Court, in case titled as Paul George versus State of N.C.T. of Delhi: (2008), 4 Supreme Court Cases 185. With due respect to the law laid down in the said case, the Hon'ble Supreme Court has released the convict on probation considering the f peculiar facts and circumstances of the case.

g 20. Moreover, the accused cannot take benefit of the decision of *Paul George's* case supra, in view of decision of Hon'ble Supreme Court in case titled as National Insurance Company Limited versus Pranay Sethi and others: (2017) 16 Supreme Court Cases 680. Relevant paragraphs 15 to 18 of the judgment are reproduced as under:-

"15. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

h *In State of Bihar v. Kalika Kuer, it has been held:- (SCC p.454, para 10)*
"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the (2003) 5 SCC 448 decision was rendered per incuriam and liable to be ignored. The

earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...”

The Court has further ruled:- (SCC p.454, para10)

“10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways – either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

“17. In *G.L. Batra vs. State of Haryana and others* 20, the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.* *Sundarias Kanyalal, Bhatija v. Collector, Thane, Maharashtra and Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel.* It may be noted here that the Constitution Bench in *Madras Bar Association v. Union of India* and another has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Association* is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.”

“18. In this regard, we may refer to a passage from *Jaisri Sahu v. Rajdewan Dubey* (AIR p.88 para 10)

“10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata Narasimharao* that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800:*

“1687....the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.”

a *"In Katragadda Virayya v. Katragadda Venkata Subbayya, it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in Bilimoria v. Central Bank of India. The better course would be*

b *for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."*

c (self-emphasis supplied)

d 21. Another ground, upon which, the appeal is liable to be accepted, is that the learned Appellate Court has given reasons for releasing the accused on probation, which are outside the scope of Sections 3 and 4 of the Probation of Offenders Act.

22. In view of the discussion made above, this Court is of the view that the judgment passed by the learned Appellate Court, by virtue of which, the order of sentence passed by the learned trial Court has been modified, does not sustain, in judicial scrutiny by this Court.

e 23. In this case, learned Appellate Court has not decided the appeal against the conviction, on merit and the same has simply been dismissed on the ground that the accused has stated that she does not want to press her appeal against the order of conviction.

f 24. Once, it has been held by this Court that the judgment, by virtue of which, the order of sentence has been modified, does not survive, in the judicial scrutiny by this Court, in that eventuality, the valuable right of the accused to get her appeal decided, on merit, cannot be snatched away. Accused has every right to get the decision over her appeal, on merit.

g 25. In view of discussion made above, the judgment passed by the learned Appellate Court, by virtue of which, the order of sentence passed by the learned trial Court has been modified, is set-aside and the matter is remanded back to the learned trial Court, to decide the appeal against the judgment of conviction and order of sentence, passed by the learned trial Court, afresh, after securing the presence of the accused.

h **Result:-** Appeal dismissed. Probation order upheld.
