

**IN THE COURT OF MS. GEETANJLI GOEL, ADDITIONAL SESSIONS
JUDGE / SPECIAL JUDGE (PC ACT) CBI-24,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

DLCT11-000484-2019

SC No. 4/2019

FIR No.260/13

State Vs. Akhilesh Pati Tripathi & Ors.

PS : Model Town

ORDER ON SENTENCE

1. I have heard arguments on the point of sentence from the Ld. Addl. PP for State Shri Manoj Garg and the Ld. Counsels Shri Prashant Manchanda and Shri Mohit Saroha for convicts Akhilesh Pati Tripathi and Geeta @ Ram Sukhi.

2. The prosecution has filed its affidavit regarding the expenses incurred on the prosecution of the accused. Affidavits of income/ assets were filed by the convicts. Victim Impact Report dated 22.07.2021 has been received from DLSA, Central District regarding paying capacity of the convicts as also containing recommendation regarding compensation. Reports have also been received from Probation Officers in respect of the convicts, which have been perused. No previous conviction of the convicts has been reported.

3. The Ld. Additional Public Prosecutor for the State has submitted that the present is not a case which deserves leniency and maximum punishment ought to be awarded to both the convicts. It is submitted that the

convict Akhilesh Pati Tripathi is a Member of Legislative Assembly and he should have acted more responsibly and not indulged in criminal activities and he should have honored the law but he did not do so. It is submitted that the convict Geeta should also be awarded the maximum punishment.

4. The Ld. Counsel for the convict Akhilesh Pati Tripathi has submitted that the convict is a Member of Legislative Assembly and he is a person of great integrity and has unimpeachable reputation. It is submitted that the entire case was manifested with a political motive and Kanwar Singh was the main factor behind the registration of the case. It is submitted that the convict has been falsely implicated in the present case and police personnel had also given their statements against the convict at the behest of the political dispensation. It is prayed that leniency be shown to the convict and that the convict Akhilesh Pati Tripathi has to support his family. He has faced rigors of 8 years of trial. Moreover the offence for which he has been convicted is not very serious in nature and it is further prayed that he be given the least possible sentence and be released on probation of good conduct. It is submitted that the convict is ready to comply with all the terms and conditions of probation as may be imposed by the Court.

5. For the convict Geeta, the Ld. Counsel has submitted that she is an old and poor lady and she can barely make ends meet. She had to face false accusations and she was also implicated in the present case at the behest of

Senior Police Officials. It is submitted that the convict does not know how to read or write, lives in a shanty and works as a domestic help. She has a daughter of marriageable age and has hardly been able to accumulate any savings which were also for the purpose of marriage of the daughter. It is prayed that she may be dealt with leniently under the Probation of Offenders Act, 1958 and there is no reason why benefit of probation should not be extended to her and she should be sent to jail. It is submitted that at the most it was a case where being a neighbor she got infuriated when the rape victim in the other case was murdered and no investigation was done and she became part of a random crowd. It is submitted that the mitigating circumstances and the economic condition call for leniency being shown to the convict. It is stated that the convict Geeta is ready to comply with all the terms and conditions of probation as may be imposed by the Court.

6. It may be mentioned that the convict Akhilesh Pati Tripathi is involved in one more case (which is pending before this Court), though he is not convicted in any case till date as per the report. The convict Geeta is not involved in any other case. As regards the principles to be borne in mind while passing an order on sentence, the Hon'ble Supreme Court of India made the following observations in **B.G. Goswami v. Delhi Administration** (1974) 3 SCC 85: AIR 1973 SC 1457:

“18. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as

a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs.200/- to Rs.400/-. Period of imprisonment in case of default will remain the same.”

Further in **State of Rajasthan v. Mohan Lal & Another** Criminal Appeal

No.959/2018 decided on 01.08.2018 it was observed as under:

“Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

*11. This Court in the case of **Soman Vs. State of Kerala [(2013) 11 SCC 382]** observed thus:*

“27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.”

Thus, the factors to be considered while imposing sentence have been laid down in a catena of decisions.

7. In the present case, the convict Akhilesh Pati Tripathi has been convicted for the offence under Section 186 IPC read with Section 149 IPC and the convict Geeta has been convicted for the offences under Sections 147/186/353/333 IPC read with Section 149 IPC. The maximum punishment for the offence under Section 186 IPC is imprisonment of either description which may extend to three months, or with fine which may extend to five hundred rupees, or with both; the punishment for the offence under Section 147 IPC is imprisonment of either description which may extend to two years, or with fine, or with both; punishment for the offence under Section 333 IPC is imprisonment of either description for a term which may extend to ten

years, and also fine; and the punishment for the offence under Section 353 IPC is imprisonment of either description which may extend to two years, or with fine, or with both.

8. The present case was registered in the year 2013 and the convicts have faced the proceedings for several years. The convict Geeta has not been involved in any other case and as regards the convict Akhilesh Pati Tripathi, though there is another case against him but as per the report, he has not been convicted in any other case. He has deep roots in the society and the convicts are not a threat to the society. Further, the convict Geeta is a poor lady which is also reflected from the report of the Probation Officer and has a daughter of marriageable age. Both the convicts have already remained in custody for around 13 days. The Ld. Counsel for the convicts had prayed that the convicts be released on probation. Section 4 of the Probation of Offenders Act, 1958 reads as under:

“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.”

None of the offences in the present case are punishable by death or life imprisonment. There is nothing negative in the probation reports against the convicts, rather the probation officer has recommended that the cases of the convicts be considered for the benefit of probation. Considering the mitigating circumstances and the facts of the case and in order to give an opportunity to the convicts to reform themselves, I deem it fit to give the benefit of Section 4 of the Probation of Offenders Act, 1958 to the convicts and to release the convicts on probation of good conduct.

9. Further Section 5 of the Probation of Offenders Act, 1958 provides as under:

“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 sections 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.”

Thus, under Section 5 of the Probation of Offenders Act, the court can direct payment of costs of the proceedings as well as compensation.

10. The convict Akhilesh Pati Tripathi is released on probation of good conduct for a period of 3 months on furnishing a bond of good conduct on the following conditions:

i) He shall not involve himself in any offence and registration of any further case shall make him liable for cancellation of probation.

ii) He shall receive the sentence as may be given by the Court if the benefit of probation is withdrawn.

iii) He shall maintain peace and harmony and refrain from criminal activity.

iv) As per the affidavit filed by the prosecution, the cost of proceedings incurred by the prosecution is Rs.12,299/-. The convict is directed to deposit Rs.6,150/- as cost of proceedings under Section 5 of the Probation of Offenders Act, 1958.

11. Convict Geeta is also released on probation of good conduct for a period of 2 years on furnishing a bond of good conduct on the following conditions:

i) She shall not involve herself in any offence and registration of any further case shall make her liable for

cancellation of probation.

ii) She shall receive the sentence as may be given by the Court if the benefit of probation is withdrawn.

iii) She shall maintain peace and harmony and refrain from criminal activity.

iv) She is further directed to deposit Rs.6,150/- as cost of proceedings under Section 5 of the Probation of Offenders Act, 1958.

v) She is further directed to pay compensation of Rs.30,000/- to Inspector Rajender.

12. Probation bonds have not been furnished by the convicts Akhilesh Pati Tripathi and Geeta and they have sought time to furnish the same and to deposit the cost and to pay the compensation.

Put up for same on 22.09.2021.

Copy of the order be supplied to the convicts free of cost.

**ANNOUNCED IN THE OPEN COURT
On this 15th day of September, 2021**

**(GEETANJLI GOEL)
ASJ/SPL. JUDGE (PC ACT) (CBI)-24
(MPs/MLAs CASES
ROUSE AVENUE DISTRICT COURT,
NEW DELHI**