

GAHC010008412011



2024:GAU-AS:11078

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./371/2011

JADAB BARMAN and ANR

2: SRI RATNESWAR BARMAN
BOTH SONS OF LT. AGHONA BARMAN R/O AKHARA VILLAGE
NALBARI UNDER NALBARI P.S.
IN THE DIST. OF NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:SMTI SUWALA BARMAN
W/O JOGENDRA BARMAN R/O VILL- AKHARA
UNDER NALBARI P.S.
IN THE DIST. OF NALBARI
ASSAM

Advocate for the Petitioner : MR.J M CHOUDHURY, MRS.N BAROOAH,MR.B M
CHOUDHURY

Advocate for the Respondent : MR.R PHUKAN, MR.N S LASKAR,MR.P TALUKDAR,MR.C
THAKURIA,PP, ASSAM,MR.R BORAH,MR.B BARMAN

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. B. M. Choudhury, Advocate.

For the Respondents : Mr. P. Borthakur, APP.

Date of Hearing : 13.11.2024

Date of Judgment : 13.11.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. B. M. Choudhury, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent. None appears for the respondent No. 2.
2. The present CrI. Rev. Petition is filed under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 assailing the Judgment and Order dated 17.01.2009 passed by the learned Additional Chief Judicial Magistrate, Nalbari, in C.R. Case No. 425^c/07, whereby the present petitioners were convicted under Sections 447/325/34 of IPC and were sentenced to pay fine of Rs. 500/- each for offence under Section 447 of IPC and in default Simple Imprisonment for 10 days. They were further sentenced to Rigorous Imprisonment for 2 (two) years and to pay a fine of Rs. 1000/- and in default Rigorous Imprisonment of 15 days each under Section 325/34 of IPC.
3. Aforesaid judgment and sentence was challenged by the petitioners before the learned District and Sessions Judge, Nalbari in Criminal Appeal No. 06/2009. The said appeal also met with the same fate, however, the learned Sessions Judge, Nalbari modified the judgment and order impugned whereby the accused petitioners were convicted under Section 323 of IPC and were sentenced to pay a

fine of Rs. 1000/- in default to jail custody for 15 days. The aforesaid two judgments are challenged before this Court.

4. The prosecution story in a nutshell is that on 07.06.2007 at about 08:00 AM, when the complainant and her sister-in-law went to the paddy field to serve tea to her brother-in-laws, the accused persons had come there and surrounded the victim. When the complainant and her sister tried to stop the accused persons, they hit her with the handle of a spade and she fell down and as a result her left hand was injured. According to the informant, the accused persons also pushed the sister of the informant and tore her blouse. Accordingly, the complaint was filed before the learned Court of Chief Judicial Magistrate, Nalbari.
5. The learned Chief Judicial Magistrate, Nalbari issue process, the accused appeared before the learned Magistrate on receipt of summons. Formal charges were framed under Section 447/325/323/34 of IPC, which the accused pleaded not guilty and claimed to be tried.
6. To bring home the charges, the prosecution examined as many as four witnesses including the Medical Officer and the Investigating Officer. The accused was examined under Section 313 Cr.P.C. The accused/petitioners did not adduce any evidence in their favour.
7. After appreciation of the evidence, the learned trial Court had convicted the petitioners as recorded hereinabove.
8. On appeal, the learned Sessions Judge re-appreciated the evidence in details and came to the conclusion as recorded hereinabove and modified the sentence.
9. Feeling aggrieved by the aforesaid judgment, the present revision petition is preferred by the petitioner.
10. Mr. B. M. Choudhury, learned counsel for the petitioner, at the outset, submits

that he shall not challenge the impugned order of conviction on merit and shall confine his submission in the appeal only in respect of the order of sentence.

11. Mr. Choudhury, learned counsel argues that the petitioner is entitled for benefit under Section 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958 (hereinafter referred to as Act, 1958) which had not been granted by both the learned Courts below. Mr. Choudhury, learned counsel further submits that accused petitioners have not been convicted previously for any offence and they are first time offender.
12. The learned counsel further contends that the accused and the informant are villagers of the same village and admittedly there was a cross case and a civil suit was pending between the parties as regards ownership of the plot of land where the alleged offence was committed. Mr. Choudhury, learned counsel further argues that PW-1 had admitted such position during her cross-examination.
13. According to Mr. Choudhury, learned counsel though the learned trial Court ought to have considered granting benefit under the Act, 1958, however, same was rejected only on the consideration of gravity of the alleged offence and at the same time, the learned appellate court even did not consider grant of benefit to the petitioners though the conviction under Section 325 of IPC was reversed and the petitioners were convicted under Section 323 of IPC.
14. It is further contended by the learned counsel for the petitioner that the accused are having a right of consideration under the Act, 1958 and therefore, the right of the petitioners have been violated. It is argued that the learned Appellate Court did not invoke the provisions of the Act, 1958 nor the provisions of Section 360/361 Cr.P.C while sentencing the accused petitioners and the Trial court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving benefit of such provision.

15. The learned Addl. Public Prosecutor, Mr. P. Borthakur, also fairly submits that the accused are having a valuable right for proper consideration under the Act, 1958, however, the learned Trial court has mechanically rejected such prayer taking note of the gravity of the offence.
16. This court after perusal of the materials available on record has also not found any patent error or illegality in the judgments. Therefore, this court will now deal with the entitlement of the petitioner of the benefit under the Act, 1958.
17. It is by now well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by Hon'ble Apex Court in the case of ***Ved Prakash Vs. State of Haryana*** reported in ***1981 1 SCC 447***, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial court should collect material necessary to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.
18. In the case of ***Sita Ram Paswan Vs. State of Bihar*** reported in ***AIR 2005 SC 3534***, the Hon'ble Apex Court has laid down certain principle for exercise of discretionary power under the Act and the consideration required. The hon'ble Apex Court opined that while exercising the discretionary power under the Act 1958, the courts are to consider the circumstances of the case, the nature of offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. It was concluded by the Hon'ble Apex Court that the benefit available to the accused under section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may'

clearly indicates that the discretion is vested with the court whether to release the offender in exercise of power under section 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

19. It was further held by the hon'ble Apex Court that such power can be exercised by the court even at the appellate or revisional stage or also by Apex Court hearing appeal under Article 136 of the Constitution of India.
20. Now in the backdrop of the aforesaid settled proposition of law, let this court consider the arguments advanced by the learned counsel for the parties.
21. This court after perusal of the judgment, is of the opinion that the learned Sessions Judge did not make any considerations under the Act, 1958, inasmuch as, such consideration is a right of the accused and duties of the courts. A court may not grant benefit in the given facts of a case, however, consideration must be given. At the same time, the learned trial Court though exercised its discretion under the Act, 1958, however it did not cite any reason for rejection of such benefit. In the considered opinion of this court, such is a failure of exercise of jurisdiction by the learned trial courts below resulting in miscarriage of justice.
22. In the case in hand, the offence was committed on 07.06.2007, the parties are admittedly villagers of the same village. The nature of offence cannot also be said to be heinous in the given circumstances of the case. It is also on record that there was previous enmity and counter FIR was lodged and a civil dispute was also there over the claim of the plot of land where the offence was committed. It is also asserted by the learned counsel that the petitioners have not committed any similar nature of offence or to say any offence prior to the incident or during pendency of this appeal till date. The learned APP has also submitted that he has no instruction as regards any criminal activities of the

petitioner. This court also had considered that the accused petitioner has suffered for last 15 years litigating in the court and facing trial, appeal and revision.

23. Considering the above stated facts and without entering into the merits of the judgments impugned and considering the relevant provisions and settled propositions of law and the period lapsed from the date of incident, the evidences on record and also that the incident took place without any premeditation of mind and that the punishment awarded for the offences are maximum one year, this court is of the considered opinion that this is a fit case where the benefit of provisions of Probation of Offenders Act, 1958 should be given to the accused petitioners by this court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the appellants namely, **Sri Jadav Barman** and **Sri Ratneswar Barman** be given the benefit under the provision of Probation of Offenders Act, 1958 and accordingly, sentence is modified to that effect and it is provided that instead of sending them to jail, they should be given the benefit of section 4 of the Probation of Offenders Act, 1958.
24. In the given facts of the present case, the determination made hereinabove, this Court is of the opinion that when the petitioner has been released on probation, he shall also be given benefit, in the given facts of the present case, the protection under Section 12 of the Probation of Offenders Act and accordingly, it is made clear that in view of determination made hereinabove, the service career of the petitioner shall not be affected and he shall not suffer any disqualification only for the reason of being found guilty, more particularly, in view of grant of benefit of probation by this Court.
25. Accordingly it is directed that the petitioners will file two sureties to the tune of Rs.20,000/- along with personal bond each before the learned trial court i.e., the learned Chief Judicial Magistrate, Nalbari and undertake to the effect that the petitioners shall maintain peace and good behaviour during the period of one

year from today. The aforesaid bond be filed by the petitioners within a period of 2 months from the date of this judgment.

26. With the aforesaid, the revision petition stands allowed.

JUDGE

Comparing Assistant