

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.REV.P. NO. 74 OF 2011

Sri Ratan Deb,
son of Sri Rama Nanda Deb,
resident of Betcherra, P.S. Kumarghat
presently Mach Mara Bazar, North Tripura

..... Petitioner

– Vs –

The State of Tripura

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. B.N. Majumder, Advocate.

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing : 11.06.2015

Date of judgment & order: 03.08.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This is a petition under Section 397 read with section 401 of the Cr.P.C., questioning the legality and propriety of the judgment and order dated 24.08.2011 delivered in Criminal Appeal No. 21(2) of 2011 by the Addl. Sessions Judge, North Tripura, Dharmanagar, affirming the judgment of conviction dated

28.04.2011 delivered in G.R. case No. 269 of 2008 by the Sub Divisional Judicial Magistrate, Kanchanpur, North Tripura.

2. Prosecution was initiated when one Rajkumar Debnath (PW.1) by filing a written ejahar to the Officer-in-charge, Pecharthal police station disclosed that on 18.07.2008 after the business hour he closed down his shop on the nightfall and returned home as usual. In the early morning of 19.07.2008, the land lord of his shop informed him that the bamboo wall of his shop was seen broken. He was asked to rush immediately with the keys of the shop. After entering into the shop, he found that some articles made of silver were burgled out. One Aditya Sarkar had seen the accused Ratan Deb and when he was challenged, the accused managed to flee away from the place. Subsequently, he was detained with the stolen articles. Alongwith the accused, Ratan Deb, one Bishu Barua was also detained, who had confessed that they had stolen those articles.

3. Based on the said ejhar dated 19.07.2008, Pecharthal P.S. case No. 27/2008 was registered under Sections 457/380 of the IPC and was taken up for investigation. On completion of the investigation, the final police report, chargesheeting the petitioner was filed. The charge was framed under Section 457 of the IPC for committing the offence of lurking house-trespass with intention to commit any criminal act

and under Section 380 of the IPC for committing offence of theft of some valuable articles made of silver from the shop of the PW.1. The petitioner and the other accused person pleaded total innocence and claimed to face the trial.

4. In order to substantiate the charge as stated, the prosecution adduced 9(nine) witnesses including the complainant (PW.1), said Aditya Sarkar (PW.2) and the Investigating Officer, namely Krishna Dayal Tripura (PW.7). After the prosecution evidence was recorded, the accused persons were examined separately under Section 313 of the Cr.P.C. on the incriminating materials those surfaced against them. Thereafter, as the defence did not adduce any evidence, on appreciation of the evidence led by the prosecution the accused person, namely Bishu Baruah was acquitted whereas the petitioner, namely Ratan Deb had been convicted for commission of offence punishable under Sections 457/380 of the IPC by the judgment of conviction dated 28.04.2011. On appreciation of the evidence, it has been observed that :

“Here the strong evidences of PW No.3, PW No.4, PW.No.5, PW No.6 are so trustworthy that the defence side could not shake the credibility of the witnesses by cross examination. Moreover, PW No. 1, PW No. 2, PW No. 8 and PW No.9 are the circumstantial witness who rushed to the spot just after incident and found both the accused persons and in the Machmara bazar apprehended by public.”

5. As the petitioner felt aggrieved by that judgment of conviction, he preferred an appeal under Section 374(3) of the Cr.P.C. in the court of the Addl. Sessions Judge, North Tripura, Dharmanagar. By the impugned judgment dated 28.04.2011, the appellate court dismissed the appeal and affirmed the judgment of conviction as returned by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura. On observing that the evidence of the complainant, PW.2 and PW.3 have received sufficient corroboration from the other prosecution witnesses. In the cross-examination those witnesses remained unshaken on materials particulars. When the petitioner was running away from the shop with the stolen booties which were located later on in the house of the other accused person, Bishu Baruah who was caught red-handed with the stolen articles. Thereafter, the petitioner and the other accused person were handed over to the police with the stolen articles. The stolen articles were properly identified by the owners. Now, the said judgment dated 24.08.2011 delivered by the Addl. Sessions Judge, North Tripura in Criminal Appeal No. 21(2) of 2011 has been challenged here by the petitioner.

6. Mr. B.N. Majumder, learned counsel has fairly submitted that the finding of conviction is based on oral testimonies of PW.3, PW.4, PW.5 and PW.6. According to Mr. B.N. Majumder, learned counsel, PW.2 has stated in the trial that he was informed by one Rakhi Paul that she saw the petitioner committing the theft in his shop premises. When the

local people searched for the petitioner they found him in the house of Bishu Baruah. As Sri Bishu Baruah was suspected of being accomplice in the crime, both the petitioner and the other accused person were detained and brought to the market. From the petitioner and Bishu Baruah, the stolen articles were recovered. PW.2 has given a detailed account of the transaction.

7. PW.1, Rajkumar Debnath has also stated in similar manner with a variation little about his gathering information.

8. Smt. Rakhi Paul, PW.3 has corroborated what PW.2 has stated in the trial. Based on the information of PW.3, the house of Bishu Baruah was searched by the local people and the petitioner was found there with the stolen articles. They detained both Bishu Baruah and the petitioner and from them, the stolen articles were recovered and later on, they were handed over to the police.

9. Mr. B.N. Majumder, learned counsel appearing for the petitioner has submitted that there may not be any apparent defect in the appreciation, but both the trial court and the appellate court did not consider, in the manner the appreciation is called for by the statute, the provision of Section 360 of the Cr.P.C., which provides that in any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian

Penal Code punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition when any person not under 21(twenty-one) years of age is convicted of an offence punishable with fine only or imprisonment for a term of 7(seven) years or less. In this regard, Mr. Majumder has relied on a decision of this court in **Shri Mithun Debnath vs. State of Tripura** (the judgment and order dated 18.07.2014 in Crl.Rev.P. No. 31 of 2011), where it has been held that the modern trend of penology is towards reformation of criminals, especially those who are at the younger age. First time offenders must normally be given a chance to improve themselves. Sending first time offenders to jail in offences where they can get benefit of the Probation of Offenders act or section 360 of the Cr.P.C. is against the spirit of these provisions. As held by this Court above, it is not that in every case this benefit must be extended. The Court convicting the accused is best suited to decide this matter. It is the Judge who

has seen the accused, seen his behaviour in Court and also knows how the occurrence took place is best situated to decide. If the occurrence shows that the accused is a cruel person and is not likely to improve, the Court would be fully justified in not granting this benefit but if on the other hand, there is material to show that reformation can be carried out if the convict is a first time offender, he must be given benefit of these provisions.

10. When the petitioner committed this crime, it appears that he was aged about 23 years of age. From the form of examination under Section 313 of the Cr. P.C., it has transpired that the petitioner was 25 years of age on 27.10.10. The trial court simply observing that, "on the above reasoning, I refrain myself to apply the probation in favour of the convict", has refused to extend the benefit under Section 360 of the Cr.P.C.

11. Mr. Majumder, learned counsel has submitted that the petitioner has come from an impoverished family and he has no antecedent of criminal activities. No such record has been placed by the prosecution. Nor the trial court or the appellate court had asked for any report of the probation officer. Hence he urged for granting the benefit of probation to the petitioner, who is amenable to reformation.

12. Mr. R.C. Debnath, learned Addl. Public Prosecutor has submitted that there is no infirmity in the finding of

conviction as affirmed by the appellate court. From the method of execution of crime it would be apparent that the petitioner is a 'practiced criminal'. Hence, the benefit under Section 360 may not be extended to the petitioner. It has been observed by this court more than one occasion that while considering whether the convict should be extended with the benefit of Section 360 of the Cr.P.C., the trial court shall always take into consideration the age of the accused, the antecedent, character, nature of the crime and the circumstances relating to the crime etc., even if the prosecution does not file any report related to the antecedent of the convict.

13. The trial court in appropriate circumstances may ask for the report of the probation officer. Having regard to the age of the petitioner and absence of any criminal antecedent on the record, this court is inclined to assume that a reformatory action rather than punitive sentence would be more beneficial for the society inasmuch as the appellate court without interfering with the finding of conviction has interfered with the sentence on modifying it to rigorous imprisonment for six months and to pay a fine of ₹1000/-, in default, to suffer rigorous imprisonment for one month for committing the offence punishable under Section 457 of the IPC and to suffer rigorous imprisonment for six months and to pay a fine of ₹1000/-, in default, to suffer rigorous imprisonment for one month for committing the offence punishable under Section 380 of

the IPC. The trial court sentenced the petitioner to suffer rigorous imprisonment for one year and a fine of ₹5000/-, in default, to suffer simple imprisonment for two months for commission of offence punishable under Section 457 of the IPC and to suffer rigorous imprisonment for one year and a fine of ₹5,000, in default, to suffer simple imprisonment for two months for commission of the offence under Section 380 of the IPC.

14. This is clear on the face of records that the courts below did not take any consideration of the age of the petitioner or absence of criminal antecedent. No doubt, the method of execution is dangerous, but at the same time it is a desperate act. Hence, in the considered opinion of the court, this is a fit case where the petitioner shall be given the benefit of Section 360 of the Cr.P.C. by granting him probation under Section 4 of the Probation of Offenders Act in lieu of deterrent imprisonment. Hence, the sentence is recalled, subject to that the petitioner shall file a bond of good conduct for a period of two years, when the petitioner shall be observed and guided by the Probation Officer. The said bond of good conduct shall be supported by one surety who would undertake that in the event of breach of the bond of good conduct he shall produce the petitioner before the trial court to suffer the sentence. The bond shall be of ₹20,000 (Rupees Twenty thousand) binding the surety. It is clarified that if any adverse report is available against the

petitioner from the Probation Officer, the petitioner shall have to suffer the sentence as modified and awarded by the appellate court.

15. Having observed thus, this revision petition stands partly allowed, subject to what has been indicated above.

Send down the LCRs forthwith.

JUDGE

Moumita