HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P No.38/2019

1. Md. Safik Baksh,
Son of Late Attar Baksh.

2. Md. Rafik Baksh,
Son of Late Attar Baksh,
Both are R/o. Vill. Kubjar, P.O & PS-Kailashahar,
District – Unakoti.

…… Petitioner(s).

Versus

The State of Tripura,
Represented by its Secretary-cum-Commissioner,
Department of Home, Govt. of Tripura,
P.O-Kunjaban, P.S-New Capital Complex,
District-West Tripura.

…… Respondent(s).

BEFORE
THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s)	:	Mr. Arijit Bhowmik, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P. P.
Date of hearing	:	4th December, 2020.
Date of Judgment & Order	:	**11th December, 2020.**
Whether fit for reporting	:	No.

JUDGMENT AND ORDER

[1] This criminal revision petition is directed against the Judgment dated 14.7.2015 passed by the learned Sessions Judge of Unakoti Judicial District, Kailashahar in Case No. Criminal Appeal 2 of 2019. Each of the accused petitioners were convicted and sentenced to RI

for three years and fine of Rs.10,000/- with default stipulation by the learned Judicial Magistrate of the First Class, Kailashahar in Case No. PRC 72/2015 for having committed offence punishable under Section 325 read with Section 34 of the Indian Penal Code (IPC hereunder). The learned Session Judge by the impugned judgment while affirming their conviction reduced their sentence from RI for three years to RI for six months with fine of Rs.2000/-. Hence, this criminal revision petition.

[2] The brief facts are as under:

Smt. Ranuprava Das, wife of Sri Ujjendra Kr. Das of Kubjhar of Kailashahar lodged a written FIR with the Officer-in-charge of Kailashahar Police Station on 02.05.2015 alleging that at about 11 am on the day, the two petitioners along with their brother Arif Ali alias Babu assaulted her son Jishu Bhusan Das with fist blows and lathi(stick) and caused fatal injuries to him. She also received hurt when she went to rescue him. Her injured son was immediately transported to the RGM Hospital at Kailashahar in a very critical condition.

[3] Based on her FIR Kailashahar P.S Case No.20 of 2015 dated 02.05.2015 under Section 325 read with Section 34 IPC was registered and investigation of the case was taken up.

[4] Sri Gurupada Debnath, Sub-Inspector of Police of Kailashahar Police Station carried out the whole investigation and having completed his investigation he submitted charge sheet No.20 of 2015 dated

31.05.2015 against the two petitioners and their accused brother Arif Ali alias Babu for having committed offence punishable under Section 325 read with Section 34 IPC.

[5] After the case was transferred to the Court of the learned jurisdictional Judicial Magistrate of the First Class, cognizance of the offence punishable under Section 325 read with Section 34, IPC was taken by the learned Magistrate against all the three accused and they were summoned to appear before the Court. Before the trial commenced, the learned trial court found that one of the three accused namely Arif Ali alias Babu was a juvenile on the date of commission of the alleged offence. Therefore, his case was sent to the concerned juvenile justice board for inquiry and trial of the case commenced against the petitioners with the framing of charge. The trial Court framed the charge of offence punishable under Section 325 read with Section 34 IPC against the petitioners which reads as under:

> *"That on 02.05.2015 at about 11 in the morning both of you in furtherance of your common intention caused grievous hurt on the left elbow of victim Jishu Bhusan Das by attacking him with fist blows and stick at Kubjhar within the jurisdiction of Kailashahar Police station.*
>
> *For your above acts & conduct you have committed offence punishable under Sections 325 read with Section 34 of the Indian Penal Code and within my cognizance"*

Both of the accused pleaded not guilty to the charge and claimed a trial.

[6] During trial of the case, 13 witnesses were examined and seven documents (Exbt.1 - Exbt.7/1) were adduced on behalf of the prosecution. Statements of the accused persons were recorded separately under Section 313 Cr. P.C by stating to them the incriminating materials appearing in evidence against them. In answer, they pleaded innocence and claimed that the charges were foisted on them. Opportunity was given to both of the accused for adducing evidence on their defence. But they declined to adduce any evidence on their defence.

[7] On appreciation of evidence, the learned trial Court found the petitioners guilty and convicted both of them. The learned trial Court did not find it a fit case for releasing the convicts on probation. Having recorded the reasons as to why the benefit of the Probation of the Offenders Act,1958 was not given to them, the learned trial Court sentenced each of the petitioners to RI for three years and fine of Rs.10,000/-. The learned Sessions Judge by the impugned judgment upheld their conviction but having observed that the sentence imposed by the learned trial Judge was not proportionate to the offence committed by them, reduced the sentence to RI for six months with fine of Rs.2000/- which is under challenge before this Court.

[8] I have heard Mr. Arijit Bhowmik, learned advocate appearing for the petitioners and Mr. S. Ghosh, learned Additional Public Prosecutor appearing for the State respondents.

[9] Appearing for the petitioners Mr. Arijit Bhowmik, learned counsel submits that conviction and sentence of the petitioners under Section 325 Cr.P.C is erroneous because the medical evidence of PW-8 would show that the injury sustained by the victim cannot be termed as grievous hurt within the meaning of Section 320 IPC. According to Mr. Bhowmik, the doctor found swelling on the elbow of the victim. Though in his report Dr. T. K. Chowdhury (PW-8) noted that it was grievous hurt but in legal parlance such injury cannot be termed as a grievous hurt. Further submission on behalf of the petitioners is that the complainant implicated the accused petitioners in a false case due to her animosity against them. It is also submitted by learned counsel for the petitioners that the evidence of the prosecution witnesses is full of contradiction and infirmity and conviction and sentence of the petitioners on the basis of such evidence is improper and erroneous. At the end, it is submitted by Mr. Bhowmik, learned counsel for the petitioners that if this Court finds it appropriate to uphold the conviction of the petitioners then considering their age and past records and all other relevant factors, benefit of Probation of Offenders Act, 1958 may be extended to them.

[10] Mr. S. Ghosh, learned Additional Public Prosecutor on the other hand submits that the learned trial Court fairly assessed the

evidence available on record and rightly came to the conclusion of guilt of the petitioners. According to Mr. Ghosh, learned Additional Public Prosecutor, there is no reason to interfere with the concurrent findings of the Courts below with regard to the conviction of the petitioners. With regard to sentence Mr. Ghosh, fairly submits that in view of the fact that both of the petitioners are very young in age and they do not have any past criminal antecedents, this Court may consider their release on probation of good conduct without sentencing them to any punishment at once.

[11] As noted, 13 prosecution witnesses have been examined in this case. Among them PW-1, Sri Gobinda Malakar, supported the prosecution case to the extent that he saw the injured son of the informant lying on road near his house and heard his informant mother wailing sitting near her injured son. She was heard saying that the petitioners had broken the elbow of her son. At that time a fire service vehicle came and lifted the injured for transporting him to hospital.

[12] PW-2, Md. Hyder Khan who is a neighbour of the accused also saw the injured lying on road with injury in his elbow and his mother was found sitting nearby her son. The PW came to know from the informant mother of the injured that the petitioners assaulted the son of the informant and caused his injury. He was then taken to hospital.

[13] PW-3, Sri Jishu Bhusan Das is the injured. He gave a detailed account of the incidence during trial. According to him at about 11 am on

the fateful day he saw Babu Baksh, the juvenile accused catching fish from the drain of their house with a fishing net. When the PW raised objection Babu Baksh left the place. After a while he returned with his two elder brothers who are the petitioners herein and all of them entered into the house of the PW by breaking open the bamboo fencing of their house and started assaulting him with fist blows. They also struck him with a Lathi. As a result, he received fatal injury on his left elbow and lost his sense after his mother arrived at the spot. He was then taken to hospital from the place of occurrence.

The PW was subjected to incisive cross examination. In his cross-examination he categorically stated that he did not have good terms with the accused persons. It was admitted by him in his cross examination that the drain from where the juvenile accused was catching fish was on government land. He, however, denied the suggestion of the accused that he was not assaulted by the petitioners.

[14] PW-4, Md. Mashaid Ali was a Fireman on the date of occurrence who transported the injured from the place of occurrence to hospital in a fire service vehicle. PW-5 Krishna Charan Das and PW-6, Pulin Behari Das gave similar evidence. Both of them were employed in the fire service station on the date of occurrence and they witnessed the injured being transported to hospital from the place of occurrence in the fire service vehicle. The evidence of PW-7 is of no significance because the PW simply stated that the birth certificate of Arif Ali alias Babu was seized in his presence.

[15] PW-8, Dr. T. K. Chowdhury is a Medical Officer who attended the injured after he was brought to RGM Hospital at Kailashahar from the place of occurrence. It was stated by the PW that the injured sustained swelling on his left elbow measuring 2 inches X 3 inches which was grievous in nature. The X-ray of the injured was done and the x-ray showed dislocation of the left elbow. According to the PW the injured was discharged from the hospital on 6.5.2015 after four days detention in the hospital with an advice to attend AGMC Hospital, Agartala for better treatment. He identified the injury report prepared by him as Exbt.2. The PW was not cross-examined by the accused.

[16] PW-9, Smt. Ranuprava Das is first informant mother of the injured. She told at the trial that following the cry of her son Jishu she rushed to the place of occurrence and found the three accused assaulting her son with fist and blows and striking him with a Lathi. She and his neighbour Md. Ful Miah tried to rescue her son from the hands of his assailants. As a result of the assault, her son received injury on his elbow and he was immediately shifted to hospital in a fire service vehicle. She told that on the same day she lodged FIR.

In her cross-examination she told the Court that few days prior to the occurrence, petitioner Safik Baksh was called to the police station and he was interrogated by police with regard to his alleged involvement in the incidence of the theft of a cow of the informant. In

cross, the PW denied the suggestion of the accused that she filed a false case against them.

[17] PW-10 is the elder son of the informant. He did not witness the occurrence. Immediately after the occurrence he received a telephone call and rushed to the hospital where his injured brother was taken for treatment after he was assaulted by the petitioners. At the hospital his mother told him that petitioners along with their brother Arif alias Babu assaulted his brother and caused his injuries.

In his cross examination he also stated that few days prior to the occurrence, accused Safik Baksh was interrogated by police in connection with the incidence of theft of their cow.

[18] PW-11, Md. Ful Miah on his way to paddy field on the day of occurrence saw the accused persons and the son of the informant quarrelling near their house. He advised them to stop quarrelling and leave the place. Immediately thereafter he heard a commotion and returned to the spot and came to see that son of the informant sustained injuries on his elbow. He was then taken to hospital for treatment. PW-12 is a Constable of police who witnessed the seizure of the birth certificate of accused Arif Ali alias Babu. His evidence does not carry any significance at all.

[19] PW-13, Sri Gurapada Debnath is the investigating officer who conducted the whole investigation. He examined material witnesses, recorded their statements under Section 161 Cr. P.C, collected the injury

report of the victim as well as birth certificate of the juvenile accused and having found that a case under Section 325 read with Section 34 IPC was established, he submitted charge sheet against all the three accused for committing offence punishable under Section 325 read with Section 34 IPC.

[20] With regard to the assault of the victim (PW-3), prosecution evidence, as discussed above, is very clear, consistent and corroborative. The eye witness version of Md. Ful Miah support the statement of the victim that he was assaulted by the petitioners following a quarrel among them. The statement of the complainant(PW-9) with regard to the assault of her son (PW-3) could not also be impeached to any extent in her cross examination except extracting from her that prior to the occurrence, petitioner Safik Baksh was subjected to interrogation at the police station owing to an oral complaint made by her regarding his involvement in the theft of her cow. The statement of the victim(PW-3) is also consistent and reliable which stands unshaken in cross examination. The fact that immediately after the occurrence the injured was taken to hospital in a fire service vehicle also stands established by the evidence of PW-4, PW-5 and PW-6. The prosecution case with regard to the assault of the victim(PW-3) by the petitioners is thus proved. Whether the hurt caused to the victim(PW-3) can be termed as grievous hurt within the meaning of Section 320, IPC has also been considered. It has surfaced from the medical evidence of Dr. T. K. Chowdhury(PW-8) that immediately after the victim was brought to hospital from the crime scene he was subjected

to x-ray and the x-ray report showed dislocation of left elbow. Doctor's evidence is quite reliable. Diagnosis of such dislocation of bone is not difficult. In the textbook of Medical Jurisprudence and Toxicology, authored by J. P. Modi, it is noted at page-605 of the 24th edition of the book that it is easy to diagnose a dislocation before it is reduced. Owing to swelling ecchymosis and limitation in the movement of a joint it may be easy to find out even after it is reduced. Apparently, the doctor (PW-8) attended the injured within a very short period of the occurrence. When he was brought to the hospital with swelling on his left elbow measuring 2 inch X 3 inches, x-ray was done immediately and dislocation of the elbow was diagnosed. Fracture or dislocation of a bone or tooth is termed as a grievous hurt under the Seventh clause of Section 320 IPC.

Therefore, the submission of learned counsel of the petitioners that the injury sustained by the victim cannot be termed as grievous hurt and Section 325 IPC does not apply to the case is devoid of merit.

[21] In view of the discussions made above this Court is of the considered view that conviction of the petitioners under Section 325 IPC is justified and the same is upheld.

[22] Appearing for the petitioners, Mr. Arijit Bhowmik, Ld. Counsel, submitted that it was a fit case for granting the benefit of the Probation of Offenders Act to the petitioners in view of their age and past records. Mr.

S. Ghosh, learned Additional Public Prosecutor did not oppose such contention of learned counsel of the petitioners.

[23] The learned trial Court seems to have considered the matter with regard to release of the petitioners under Section 360 Cr. P.C or the Probation of Offenders Act, 1958 and recorded the reasons for not giving the benefit of either of those provisions to the petitioners. It has been noted by the learned trial Judge that none of the petitioners is a 'youthful offender' and none of them belongs to the poor strata of society to be entitled to such benefit. Other reasons recorded by the learned trial Judge are that they did not commit the offence at the spur of the moment and they did not have an unblemished past because one of them was involved the theft of cow of the complainant. Therefore, the learned trial Judge was of the view that it was not fit case to apply the provisions of either Section 360 Cr. PC or the Probation of Offenders Act, 1958.

[24] There are distinction between Section 360, Cr. P.C and the Probation of Offenders Act with regard to their scope and application. Therefore, it would be apposite to discuss the said provisions at this juncture. Section 360, Cr. P.C reads as follows:

> ***"360. Order to release on probation of good conduct or after admonition.--***
>
> ***(1)** When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being*

had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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 where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

***(2)** Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.*

***(3)** 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 (45 of 1860), 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.*

***(4)** An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

***(5)** When an order has been made under this section in respect of any offender, the High Court or Court of*

Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

***(6)** The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.*

***(7)** The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.*

***(8)** If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.*

***(9)** An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.*

***(10)** Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."*

[25] Section 4 of the Probation of Offenders Act, 1958 which also deals with matters pertaining to release of offenders on probation of good conduct 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."

[26] The Apex Court underlined the distinctions between the provisions of Section 360 Cr.P.C and Section 4 of the Probation of Offenders Act, 1958 in ***Chhanni Vrs. State of U.P;*** reported in ***(2006) 5 SCC 396*** and held that scope of Section 4 of the Probation of Offenders Act is much wider in comparison to Section 360 Cr. P.C. The Apex Court also held that in view of Section 8(1) of the General Clauses Act, where the provisions of the Probation of Offenders Act have been brought into force, the provisions of Section 360 Cr. P.C does not apply. Observation of the Apex Court in the said judgment in paragraphs 6, 7 and 8 are as follows:

> ***"6.*** *Where the provisions of the Probation Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.*
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> ***7.*** *Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while the Probation Act does make such a provision.*

> *While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable.*
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> ***8.*** *Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 of the Code in that area."*

[27] Similar observation was made by the Apex Court in paragraphs 6 and 7 in ***Daljit Singh and Others Vrs. State of Punjab (Through Secretary Home Affairs);*** reported in ***(2006) 6 SCC 159.***

[28] The Apex Court reiterated the same principle in a later decision in ***Ramesh Dass Vrs. Raghu Nath and Others;*** reported in ***(2008) 4 SCC 588*** and observed in paragraph 8 of the judgment as follows:

> *"8. "6. Where the provisions of the Probation Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in sub-section (10) of Section*

360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.

7. Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while the Probation Act does make such a provision. While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable.

8. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 of the Code in that area."

[29] This High Court in ***Mithun Debnath Vrs. State of Tripura;*** reported in ***(2014) 2 Tripura Law Reports 922*** while applying the provisions of Probation of Offenders Act, 1958 to a first time offender convicted under Section 325 IPC held as follows:

*"12. ******* Imprisonment is not always the only answer. Sentencing need not only be retributive in*

nature it can also be reformative in nature. There can be no hard and fast rule as to in which cases probation is to be granted and in which cases it is not to be granted. Even with regard to the same offence, in certain cases probation may be granted and in certain cases probation may not be granted. Many factors will have to be taken into consideration. One of the principal factors will be the nature of the offence and by nature it is not only the section under which the offence is committed which is relevant but the manner in which the offence has been committed is also relevant. If the offence is committed at the heat of the moment due to a sudden altercation, the Court would be lenient towards the offender. However, if it is a case of a premeditated offence, then the Court may not grant probation. If a plan is made out to assault a certain person, that may be a ground not to grant probation. On the other hand, in case an occurrence takes place at the heat of the moment and a grievous injury is caused, then also probation may be granted if other conditions are satisfied.

*13. Another important aspect to be taken into consideration is the age of the offender. If the offender is a person of young age, then the Court should always make an endeavour to release him on probation. It does not serve society any purpose if a young boy or girl of 20 or 21 years is sent to jail and made to live with hardened criminals. This Court is not oblivious to the fact that despite best intentions of the State and the jail authorities, the state of the jails is very bad and the young offenders may come in contact with hardened criminals in jail and may themselves become hardened criminals. This Court is not oblivious to the fact that in jails throughout this country many vices are available which are not so easily available outside the jails. Jails themselves are dens of corruption and it is better to keep young impressionable minds outside the jail rather than send them to jail. **********"*

[30] It was further observed by this Court in paragraphs 22 and 23 of the judgment as follows:

*"22. ********* 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. 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.

23. Another consideration will also be the social status of the accused. If he belongs to the poor strata of society and has committed a theft because of his penurious financial condition, the Judge can take the same into consideration and give him an opportunity to improve himself. If on the other hand, it is shown that the person who has committed a crime has thought about the crime, committed it in a manner like a practiced criminal, then he may not be given the benefit thereof. However, as far as possible, the Courts must make an endeavour to find out whether the accused is to be granted this benefit or not and they should not discard these provisions of the Cr.P.C. and the Probation of Offenders Act only by writing two lines that the Judge is not inclined to release the convict under the Probation of Offenders Act or that the offender does not merit the benefits of these provisions."

[31] In the instant case one of the petitioners is 28 years old and another is 34 years old. Obviously, they do not have any criminal antecedents. Finding of the learned trial Judge that petitioner Safik Baksh had doubtful antecedents and he cannot be said to have an unblemished past because he was suspected by the complainant to have stolen her cow is not at all a correct view. The complainant merely suspected the petitioner. Such suspicion was removed by police interrogation. Stigma cannot be attached to him for such unfounded suspicion particularly when no prosecution was launched against him. There is no criminal record against either of the petitioners. One of them is a day labourer and another is a mason by occupation. In a rainy day when their brother who is the juvenile accused in this case was catching fish with a home made net from the water flowing throw a drain on Government land, the victim

son of the informant stood on his way and resisted him from catching fish from there since the drain was situated in front of his house. They had a quarrel over the issue. The two petitioners then joined the quarrel and following such quarrel they assaulted the victim (PW-3). Obviously therefore, the occurrence took place at the spur of the moment. There was no pre-meditation or pre-plan on the part of the petitioners to commit the offence. It is true that the parties were not on good terms. But the alleged incidence was not the outcome of their inimical relationship.

[32] Apparently, the two petitioners are first offenders. Keeping in view the object of the provisions of the Probation of Offenders Act, 1958, the principles of law laid down in the judgments cited above and the facts and circumstances leading to the occurrence it would be appropriate in this case to give the benefit of Probation of Offenders Act to the petitioners as a chance to improve themselves instead of sending them to jail at once.

[33] For the forgoing reasons, the two petitioners namely, Md. Safik Baksh and Md. Rafik Baksh are released on probation for a period of one year in terms of Section 4 of the Probation of Offenders Act, 1958. Each of the petitioners are directed to appear before the trial Court within one month from today and execute a bond of Rs.20,000/- each with one surety of like amount to the satisfaction of the learned Trial Court on condition that during the period of probation they would

maintain peace and be of good behaviour. In addition, the petitioners be placed under the supervision of the jurisdictional Probation Officer for the said period of one year for appropriate counselling. After the petitioners appear before the learned trial Judge, the learned trial Judge shall appoint a day for appearance of the Probation Officer for placing the petitioners under the supervision of Probation officer in terms of sub-sections (3), (4) and (5) of Section 4 of the Probation of Offenders Act, 1958. The Probation Officer shall thereafter submit periodical report in the trial Court about the conduct of the petitioners during the period of their probation.

[34] Section 5 of the Probation of Offenders Act, 1958 provides for compensation to be paid to the victim in appropriate cases. It appears from the record that the victim was in hospital for about four days for treatment of his injury and he was further advised to undergo better treatment in AGMC hospital at Agartala. Therefore, the victim should be adequately compensated for the loss suffered by him at the hands of the petitioners. Accordingly, each of the petitioners are directed to pay compensation of Rs.15,000/-(rupees fifteen thousands) to the victim. The petitioners will deposit such amount of compensation at the trial Court within a month from today and the learned trial Judge (Judicial Magistrate, First Class, Kailashahar, Unakoti Judicial District) shall issue notice to the victim to appear and receive the compensation from the Court. The learned trial Judge shall submit compliance report to the High Court within the time.

[35] The revision petition is accordingly disposed of. Send back the LCR along with a copy of this judgment to the learned trial Judge.

JUDGE

HIGH COURT OF TRIPURA

Dipankar