

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 345 of 2002
CRAN 1 of 2002

BASUDEB SHARMA & ORS.
VS.
STATE OF WEST BENGAL

For the Petitioners : Mr. Prabir Majumder, Adv.,

For the Opposite Party : Mr. N.P. Agarwala, Adv.,
Mr. Pratick Bose, Adv.

Hearing concluded on : 7th September, 2022

Judgement on : 12th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioners suffering an order of conviction for committing offence under Section 323/324 of the I.P.C.
2. Briefly stated, on 10th April, 1994, the petitioners herein being armed way with lathi, axe, attacked Uttam Sharma and Monoranjan Sharma, who were constructing a temple of Lord Shiva by the road side. Rabin Sharma landed blow of lathi on the head of Uttam Sharma. Basudeb Sharma assaulted Uttam Sharma with an axe. Monoranjan

Sharma was assaulted by other accused persons. Both Uttam Sharma and Monoranjan Sharma sustained injuries and admitted to hospital. Mother of the victim Smt. Sudevi Sharma set the criminal administration of justice into motion and Karimpur P.S. Case No. 97 of 1994 dated 10th April, 1994 was registered against 9 accused persons.

3. Police took up investigation that culminated into submission of charge sheet. The accused persons pleaded their innocence being charged under Section 147/325/34 of the I.P.C. and claimed to be tried.
4. To bring home charges the prosecution examined 8 witnesses including the victims and learned Trial Court after considering the evidence on record both oral and documentary was pleased to record an order of conviction against all the accused persons. Accused Basudeb Sharma was found to have committed the offence under Section 324 of the I.P.C. and was sentenced to suffer rigorous imprisonment for two years while rest eight accused persons were sentence to suffer simple imprisonment for six month and to pay fine of Rs. 500/- each for committing offence under Section 323 of the I.P.C. The convicts were unsuccessful in challenging the said order of conviction before the learned Additional Sessions Judge, 4th Court Nadia.
5. The petition under consideration is filed seeking order to quash the judgement passed by learned Appellate Court upholding the order of conviction.

6. Mr. Prabir Majumder, learned Advocate for the petitioners strenuously argued to underscore the infirmities in the judgement passed by learned Appellate Court affirming the order of conviction passed by the learned Trial Court.

According to Mr. Majumder prosecution case has not been proved beyond reasonable doubt because of the yawning gap between the injury report as to the nature of weapon used and nature of injury found on the person of Uttam Sharma.

7. Drawing my attention to the judgement passed by learned Trial Court, Mr. Majumder argued that the accused persons are not habitual offenders. While imposing sentence learned Trial Court did not look into the provision of Section 360 of the Cr.P.C. Section 361 of the Code of Criminal Procedure indicates that if the Court decides not to exercise its jurisdiction under Section 360 of the Cr.P.C. then it is obligatory to record the reasons as to why the benefit of provision of Section 360 Cr.P.C. is being denied.

According to Mr. Majumder the provision of Section 361 is peremptory in nature and by not indicating such provision of Section 360 of the Cr.P.C. both learned Trial Court and learned Appellate Court committed grave mistake resulting into miscarriage of justice.

8. To buttress his submission Mr. Majumder, learned Counsel placed his reliance upon a decision of Hon'ble Supreme Court in the case of **OM PRAKASH & ORS. VS. STATE OF HARYANA** reported in **(2001) 10 SCC 477.**

9. Concurrent findings of learned Trial Court and learned Appellate Court towards culpability of the petitioners in committing the offence, persuade me to consider the critical question of sentence. Admittedly offence was committed on 10th April, 1994 and the petitioners were found guilty on 29th January, 1998. The order of conviction was affirmed by learned Appellate Court on 24th September, 2001. Therefore, the petitioners are suffering the proceeding for nearly 24 years.

10. In **DILBAG SINGH VS. STATE OF PUNJAB** reported in **AIR 1979 SC 680** Hon'ble Justice V.R. Krishna Iyer observed:-

“1. xxxxxx

2. Surely, 'the law must keep its promises.' Justice Holmes expressed the obvious when he said this, but the breach of promise by the law on delivering criminal justice is daily experience, from police arrest to prison trauma. The focus in this case is on the sentencing alternatives in the Criminal Procedure Code; and the grievance pressed by counsel, when traditional grounds on the merits failed, was that the compassion of Section 360 professionally suffering benign neglect, be kindled and he be released. Enacted law is guilty of inaction, because its obscure presence on the statute book escapes the vigilance of the Bar. Where even the court ignores what is vital to the little man the guarantee of sentencing legality becomes a casualty. This case is an instance in point.”

11. Having regard to the facts and circumstances of the present case and particularly taking into consideration the fact that the petitioners herein, found to have committed offence within the meaning of Section

323 and 324 of the I.P.C. I am not inclined to interfere with order of conviction. But both the Courts below since failed to act in consonance with the legislative mandate engrafted in Section 360 and 361 of the Cr.P.C. I am of the view that ends of justice would be met if the sentence imposed upon the petitioners is altered and the petitioners are directed to be released on their entering into bond in the sum of Rs. 10,000/- with one surety of like amount to be furnished before the learned Chief Judicial Magistrate, Krishananagar, Nadia to appear and receive sentence when called upon during the period of two years and in the meantime, to keep the peace and be of good behaviour, which I accordingly do.

12. The case is thus disposed of together with CRAN 1 of 2022. Interim order if any stands vacated.
13. Let a copy of this judgement be sent down to learned Court below along with L.C.R. for information and necessary action.
14. Parties to act on server copy.
15. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)