

GAHC010008632013



2024:GAU-AS:12335

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

Case No. : Crl.Rev.P./280/2013

BIJOY MUNDA and 4 ORS
S/O LT. DIYA MUNDA

2: SUNIL MUNDA
S/O LT. DIYA MUNDA

3: MUHIDHAR RAJBANGSHI
S/O LT. AKAN RAJBANGSHI

4: PHILIP MUNDA
S/O SRI ATOWA MUNDA

5: SANTOSH CHEY
S/O SRI ALBISH CHAY ALL ARE RESIDENTS OF VILLAGE- AMJARANI
UNDER GOHPUR POLICE STATION
IN THE DISTRICT OF SONITPUR
WITHIN THE STATE OF ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MD.A HUSSAIN, MR.K SARMA,MR.M BERIA,MR.K CHOUDHURY,MS.K M SARMA,MR.D DAS

Advocate for the Respondent : , ,PP, ASSAM,,,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (ORAL)

Date : 06-12-2024

1. Heard Mr. K Sarma, learned counsel for the petitioners. Also heard Mr. B Sarma, learned Addl. PP, Assam.
2. The present criminal revision petition is filed assailing the judgment and order dated 22.04.2013, passed by the learned Additional Sessions Judge in Criminal Appeal No.39(S-3)/2012, arising out of GR Case No.100/2016, under sections 447/323/324/326/34 IPC, whereby the learned Additional Sessions Judge though set aside the conviction of the petitioner for offence under section 324/326/34 IPC passed by the learned JMFC, Biswanath Chariali but conviction and sentence awarded by the learned trial court to the petitioners under sections 447/323/34 IPC was upheld.
3. The prosecution case in a nutshell is that on 21.02.2006 one Bipul Behera son of Sutku Behera of village Amjarani under Gohpur PS lodged an FIR alleging that all the FIR names accused came to their house with Dao and Lathi in their hands and beaten him along with his family members and caused injury.
4. On receipt of the FIR, Gahpur PS Case No.28/06 under sections 447/323/34 IPC was registered and on completion of the investigation the I/O submitted charge sheet against the accused persons under section 447/323/324/326/34 IPC. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.
5. To bring home the charges, the prosecution examined as many as ten witnesses including the Medical Officer and the Investigating

Officer. The accused were examined under section 313 Cr.P.C. In his 313 statement, the accused had denied the incriminating materials found against him and wished to adduce evidence and examined two defence witness on their behalf.

6. After appreciation of the evidence, the learned trial court had convicted the petitioner as recorded hereinabove.

7. On appeal, the learned Sessions Judge re-appreciated the evidence in details and came to the conclusion as recorded hereinabove.

8. Feeling aggrieved by the aforesaid judgment, the present revision petition is preferred by the petitioner.

9. M. Sarma, learned counsel for the petitioners, at the outset, submits that he is not arguing the matter on merit of the conviction and shall confine his submission in the appeal only in respect of the order of sentence.

10. The learned counsel contends that the accused petitioners have not been convicted previously for any offence and they are a first time offender. According to him, the informant and the petitioners are residents of same village and the dispute arose out of demand of a twenty rupees. Therefore, in the aforesaid backdrop, the learned trial court ought to have considered granting benefit of provision of the Probation of Offenders Act, 1958 (hereinafter referred to as Act, 1958) to the accused, however, the learned court rejected to grant the benefit of Act, 1958 to the petitioners considering the nature and gravity of offence.

11. According to the learned counsel, the accused are having a right of consideration under the Act, 1958 and therefore, the right of the petitioners have been violated. According to the learned counsel for the petitioners, the learned Appellate Court did not invoke the provisions of the Act, 1958 nor the provisions of Section 360 Cr.P.C while sentencing

the accused petitioners.

12. Mr. Sarma, learned Addl. PP appearing for the State submits that it is an admitted position that the accuseds' and the victim are residents of same village, and that there were some dispute between them and the issue of the fight was also very trivial in nature. Therefore, in his usual fairness he submits that he had no objection if the case of the petitioners are considered under the Act, 1958 by upholding the decision passed by the learned court's below.

13. The learned Addl. PP Mr. B Sarma, further 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 nature of the offence.

14. I have given my anxious considerations to the arguments advanced by the learned counsel for the parties.

15. This court after perusal of the materials available on record has also not found any patent error or illegality in passing the judgment. Therefore, without going into the merits of this case any further, this court will now deal with the entitlement of the petitioner of the benefit under the Act, 1958.

16. 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.

17. 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 court is 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.

18. 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.

19. 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.

20. 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 this court. 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, but rejected to grant the benefit of the Act, 1958 considering the nature and gravity of the offence. In the considered opinion of this court, learned trial Court while considering did not give emphasis on the parameters which are to be considered while granting benefit under the Act, 1958.

21. In the case in hand, the offence was committed in the year 2006. The parties are admittedly residents of same village. The nature of offence cannot also be said to be heinous in the given circumstances of this case. It is also on record that there was previous enmity before lodging of the FIR. It is also asserted by the learned counsel that the petitioner has not committed any similar nature of offence or to say any offence prior to the incident or during pendency of this petition till date. The learned counsel for the respondent has also submitted that his clients are not aware of any criminal activities of the petitioner. This court also had considered that the accused petitioner has suffered for last 18 years litigating in the court and faced prolonged trial, appeal and revision.

22. 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, 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 provided to the accused petitioner by this court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the petitioners namely, ***Bijoy Munda, Sunil Munda, Muhibdar Rajbonshi, Philip Munda*** and ***Santosh Chey*** are benefitted under the

provision of Probation of Offenders Act and 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.

23. Accordingly it is directed that the petitioners will file two sureties to the tune of Rs.20,000/- each along with personal bond before the learned trial court i.e., the Judicial Magistrate First Class, Biswanath Chariali 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.

24. Accordingly, the revision petition stands allowed to the extent recorded hereinabove.

JUDGE

Comparing Assistant