

GAHC010007702012



2024:GAU-AS:12337

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

**Case No. : Crl.Rev.P./412/2012**

RADHESHYAM GUPTA  
S/O LT. RAM NARESH GUPTA R/O TETELIA VILLAGE P.S. JALUKBARI,  
DIST. KAMRUP, ASSAM,

VERSUS

THE STATE OF ASSAM

**Advocate for the Petitioner** : MR.A K BHUYAN, MS.B BHUYAN

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

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

**JUDGMENT**

**Date : 06-12-2024**

1. Heard Mr. A.K. Bhuyan, learned counsel for the petitioner.  
Also heard Mr. B Sarma, learned Addl. PP, Assam.
2. The present criminal revision petition is filed assailing the judgment dated 30.04.2011, passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in GR Case No.2598/2001 convicting

the petitioner to undergo SI for six months.

3. The further challenge is the appellate judgment and order dated 07.08.2012, passed by the learned Additional Sessions Judge, Kamrup, Guwahati in Criminal Appeal No.25/2011 arising out of GR Case No.2598/2001 whereby the judgment and order dated 30.04.2011 passed by the learned CJM was upheld.

4. The prosecution case in a nutshell is that on 21.07.2001 one Shri P.J. Dutta, Superintendent Engineer (Operation) OIL lodged an FIR with the Jalukbari PS alleging inter alia that there was some abnormal behaviour at the cathodic current of their pipeline at R.O.W. km 420 (Tetelia) and on physical survey they found one extra pipe was connected to the main oil carrying pipe of Oil India Ltd.

5. On the basis of the said information, Jalukbari PS Case No.155/01 under section 379/427 IPC read with section 3(2)(B) of Prevention of Damage of Public Property Act, 1984 was registered. Charge was framed under sections 379 IPC read with section 3(2)(B) of the Prevention of Damage to Public Property were framed to which he pleaded not guilty and claimed to be tried.

6. To bring home the charges, the prosecution examined as many as eleven witnesses. The accused was examined under section 313 Cr.P.C. In his 313 statement, the accused denied the incriminating materials found against him. The accused has not adduced any evidence on his behalf.

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

8. On appeal, the learned Sessions Judge re-appreciated the

evidence in details and came to the conclusion as recorded hereinabove.

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

10. Mr. Bhuyan, learned counsel for the petitioner, 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.

11. The learned counsel contends that the accused petitioner has not been convicted previously for any offence and he is a first time offender. And 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 petitioner considering the nature and gravity of offence.

12. According to the learned counsel, the accused is having a right of consideration under the Act, 1958 and therefore, the right of the petitioner has been violated. According to the learned counsel for the petitioner, 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 petitioner.

13. The learned Addl. PP Mr. B Sarma, fairly submits that the accused is 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 2001. The nature of offence cannot also be said to be heinous in the given circumstances of this case. It is 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. This court also had considered that the accused petitioner has suffered for last 23 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 petitioner namely, Radheshyam Gupta is benefitted under the provision of Probation of Offenders Act and sentence is modified to that effect and it is provided that instead of sending him to jail, he should be given the benefit of section 4 of the Probation of Offenders Act, 1958.

23. Accordingly it is directed that the petitioner will file two sureties to the tune of Rs.20,000/- along with personal bond before the learned trial court i.e., the learned Chief Judicial Magistrate, Kamrup, Guwahati and undertake to the effect that the petitioner shall maintain peace and good behaviour during the period of one year from today. The aforesaid bond be filed by the petitioner within

a period of 2 months from the date of this judgment.

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

**JUDGE**

**Comparing Assistant**