

GAHC010005402009



2025:GAU-AS:97

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

Case No. : Crl.Rev.P./273/2009

ABDUR RAHMAN MANDAL and ANR.
S/O LT. RAHIMUDDIN, R/O VILLAGE NO.2, NACHANGURI, P.O.
GORAIMARI, P.S. BIJNI, DIST. BONGAIGAON, ASSAM.

2: HABIB MAHAMMAD HAMIDUL HAQUE

S/O ABDUR RAHMAN MANDAL R/O VILL- NO.2 NACHANGURI
P.O. GORAIMARI
P.S. BIJNI
DIST. BONGAIGAON
ASSAM

VERSUS

MOSHT RUKIA KHATUN and ANR
W/O MD SAHA ALI R/O VILLAGE NO. 2 NACHANGURI, P.O. GORAIMARI,
P.S. BIJNI, DIST. BONGAIGAON, ASSAM.

2:THE STATE OF ASSA

Advocate for the Petitioner : MD.A MALEQUE, MISSS KANUNGOE,MRM H AHMED,MR D C NATH,MR.A S CHOUDHURY,MR. S K SAHARIAH,MR. I MOZUMDER,MR. C SHARMA

Advocate for the Respondent : MR.H AHMED, ,MRS.F BEGUM,PP, ASSAM,MR.A SHARIF

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. MH Ahmed, Advocate

For the Respondents : Mr. KK Das, Addl. PP, Assam

Date of Hearing : 06.01.2025

Date of Judgement : 06.01.2025

JUDGMENT & ORDER (ORAL)

1. Heard Mr. MH Ahmed, learned counsel for the petitioners. Also heard Mr. KK Das, learned Additional Public Prosecutor, Assam.
2. The present application is filed assailing a judgment and order dated 15.12.2005 passed by the learned Sub Divisional Judicial Magistrate, Bijni in CR case No. 393/2004 convicting and sentencing the petitioners to pay Rs. 500/- each in default to suffer Simple Imprisonment for 2 months each under Section 323/34 IPC.
3. Aforesaid judgment and sentence was challenged by the petitioner before the learned Additional Sessions Judge (FTC), Bongaigaon in Criminal Appeal No. 3(1)/2006 and the learned appellate court uphold the aforesaid judgment and order dated 15.12.2005 passed by the learned Sub Divisional Judicial Magistrate, Bijni in CR case No. 393/2004.
4. The prosecution story in a nutshell is that the complainant Musstt. Rukia Khatoon filed a complaint case alleging, inter-alia, that on 30.12.2004, her son Rakibul Islam, who was a student of Class III of Nachankuri L.P. School, went to his school to collect rice as supplied by the Government to the L.P. School students. It is alleged that the Headmaster of the said school, namely, Md. Abdur Rahman Mandal refused to give him rice and then her son informed the matter to her. Accordingly, she rushed to the school and asked the Headmaster as to why he refused to give rice to his son. The Headmaster told her to stay in the school for some time and left the school by his motorcycle. After some time, the Headmaster along with his son, namely, Habib Mahammad Hamidul Haque came

back and without any reason the son of the Headmaster started to abuse the complainant with filthy language and also started to assault her by his pant's belt. It is also alleged that the Headmaster also assaulted her by the said belt and pushed her. As a result, she fell down on the floor thereby they outraged her modesty and also threatened her with injury.

5. The learned Sub Divisional Judicial Magistrate, Bijni took cognizance of the offence under Sections 341/323/354/506/34 IPC against the accused / petitioners and issued process. The accused/ petitioners appeared before the learned Magistrate on receipt of summons. As they pleaded not guilty and claimed to be tried, the trial proceeded.
6. To bring home the charges, the prosecution examined as many as four witnesses including the complainant. The accused / petitioners were also examined under Section 313 Cr.P.C. The accused/petitioners did not adduce any evidence in their favour.
7. After appreciation of the evidence, the learned trial Court had convicted the petitioners as recorded hereinabove.
8. On appeal, the learned Additional 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 petitioners.
10. Mr. Ahmed, learned counsel for the petitioners, at the outset, submits that he shall not challenge the impugned order of conviction on merit and shall confine his submission in the appeal only in respect of the order of sentence.
11. Mr. Ahmed, learned counsel argues that the petitioners are entitled for benefit under Section 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958

(hereinafter referred to as Act, 1958) which had not been granted by both the learned Courts below. Mr. Ahmed, learned counsel further submits that accused petitioners have not been convicted previously for any offence and he is first time offender.

12. According to Mr. Ahmed, learned counsel though the learned trial Court ought to have considered granting benefit under the Act, 1958, however, same was rejected only on the consideration of the manner of commission of offence by the accused persons to the weaker section and poor and needy woman of the society and at the same time, the learned appellate court even did not consider grant of benefit to the petitioners.
13. It is further contended by the learned counsel for the petitioners that the accused persons are having a right of consideration under the Act, 1958 and therefore, the right of the petitioners have been violated. It is argued that the learned Appellate Court did not invoke the provisions of the Act, 1958 nor the provisions of Section 360/361 Cr.P.C while sentencing the accused petitioners and the Trial court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving benefit of such provision.
14. The learned Addl. Public Prosecutor, Mr. KK Das, also fairly submits that the accused persons 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 manner of commission of the offence.
15. This court after perusal of the materials available on record has also not found any patent error or illegality in the judgments. Therefore, this court will now deal with the entitlement of the petitioners 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 courts are 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 Appellate Court did not make any considerations under the Act, 1958, inasmuch as, such consideration is a right of the accused and duties of the courts. 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 did not grant the benefit under the Act, 1958 to the petitioners citing manner of commission of offence. In the considered opinion of this court, the learned trial court failed to consider the entitlement of the petitioners to the benefit of Act, 1958 on the touchstone of the principle as recorded hereinabove.
21. In the case in hand, the offence was committed on 30.10.2004. The nature of offence and manner it was committed cannot also be said to be heinous or premeditated inasmuch as admittedly there was quarrel between the parties for not delivery of rice to the child of the victim by the accused, who is a school Headmaster. In the given circumstances of the case. It is also asserted by the learned counsel that the petitioners have not committed any similar nature of offence or to say any offence prior to the incident or during pendency of this appeal till date. The learned Additional Public Prosecutor, Assam has also submitted that he has no instruction as regards any criminal activities of the petitioners. This court also had considered that the accused petitioners have suffered for last 20 years litigating in the court and facing 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 provision of Probation of Offenders Act, 1958 should be given to the accused petitioners by this court in exercise of its revisional power. Accordingly, for the reasons

recorded hereinabove, the petitioners be given the benefit under the provision of Probation of Offenders Act, 1958 and accordingly, sentence is modified to that effect and it is provided that instead of sending them to jail, 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 learned Sub Divisional Judicial Magistrate, Bijni 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 one month from the date of this judgment. In the given facts of the present case, this court is also of the opinion that the petitioner, namely, Md. Abdur Rahman Mandal be given benefit of Section 12 of the Act, 1958 and conviction should not affect his service/ pensionary benefit.
24. With the aforesaid, the revision petition stands allowed.

JUDGE

Comparing Assistant