

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.16 OF 2006

1. Sri Bulbul Paul,
S/o Sudhangshu Paul.

2. Sri Dulal Paul,
S/o Sudhangshu Paul.

3. Sri Rupan Paul,
S/o Sri Dulal Paul.

All are residents of Muharipur,
P.S. Belonia, South Tripura District.

.....Petitioners.

- Vrs -

The State of Tripura

.....Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioners : Mr. S. Chakraborty,
Mr. A. Das &
Mr. S. Paul, Advocates.

For the Respondent : Mr. R. C. Debnath, Addl. P.P.

Date of hearing & delivery of Judgment & order : **30.09.2013**

JUDGMENT & ORDER (ORAL)

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order dated 22.11.2005 passed by the learned Addl. Sessions Judge, Belonia, South Tripura, in case no. Criminal Appeal No.12(4)/2004

where-under learned Addl. Sessions Judge affirmed the judgment and order of conviction and sentence, dated 06.09.2005, passed by learned Judicial Magistrate 1st Class, Belonia, in Case No. GR 149 of 2002, under Sections 324 and 447 of IPC.

2. Prosecution case, in short, is that on 03.08.2002 at about 9/9-30 p.m., the accused petitioners Bulbul Paul, Dulal Paul and Rupan Paul along with other FIR named accused persons and some others armed with 'lathi', 'dao', iron rod etc. trespassed in the house of Sunil Biswas (P.W.2) and enquired about Dilip Debnath, the informant (P.W.1). When Dilip Debnath came out of the hut, they all on a sudden attacked Dilip Debnath and started to inflict blows with 'lathi' on him and on his cry, Asish Majumder and Jayanta Biswas went there and the accused persons assaulted them also with 'dao', 'lathi' etc. causing bleeding injuries. The wife and mother-in-law of Dilip Debnath also went to the spot and they were also assaulted. It was also alleged that the accused persons stolen away golden ornaments from the neck of the informant i.e. Dilip Debnath.

Narrating the facts, Dilip Debnath lodged an FIR before the O.C., Belonia P.S. on 04.08.2004 and accordingly, Belonia P.S. Case No.66 of 2004 under Sections 447/324/379 read with Section 34 of IPC was registered and on investigation police submitted *charge sheet* against the petitioners and other accused persons for commission of offence punishable under Sections 447 and 324 read with Section 34 of IPC.

3. In course of trial, learned Judicial Magistrate 1st Class examined the accused persons under Section 251 of Cr.P.C. for commission of offence punishable under Sections 324 and 447 of IPC read with Section 34 of IPC to which they pleaded not guilty and claimed to be tried.

4. Prosecution examined 12 witnesses to prove the charge. Prosecution witnesses were cross examined on behalf of the accused persons and after closure of the prosecution evidence, accused persons were examined under Section 313, Cr.P.C. and in their turn they declined to adduce any defence evidence. Defence case was nothing but a denial of the prosecution case.

5. Learned Judicial Magistrate 1st Class found the accused persons guilty of committing offences punishable under Sections 324 and 447 of IPC and sentenced them to suffer S.I. for 6(six) months and to pay a fine of ₹500/- each in default of payment to suffer S.I. for 1(one) month for commission of offence punishable under Section 324 of IPC. He further sentenced the accused persons to suffer S.I. for 1(one) month and to pay a fine of ₹300/- each in default of payment to suffer S.I. for 15(fifteen) days for commission of offence punishable under Section 447 of IPC and directed that both the sentences shall run concurrently.

6. Challenging the judgment and order of conviction and sentence, the convict Dulal Paul, Rupan Paul, Bhuban Paul, Bulbul Paul and Ajit Das preferred Criminal Appeal No. 12(4) of 2005 and learned Addl. Sessions Judge by judgment dated 22.11.2005 upheld the judgment and order of conviction but modified the sentence. In respect of convict-petitioners Rupan Paul, Bulbul Paul and Dulal Paul, he sentenced them to pay a fine of ₹15,000/- each in default of payment to suffer S.I. for 6(six) months under Section 324 of IPC and they were also sentenced to pay a fine of Rs.500/- each in default of payment to suffer S.I. for 2(two) months under Section 447 of IPC.

The convicts Ajit Das and Bhuban Paul were sentenced to pay a fine of ₹1000/- each in default of payment to suffer S.I. for 6(six) months for commission of offence punishable under Section 323 of IPC and also sentenced them to pay a fine of ₹300/- each in default of payment suffer S.I. for 3(three) months under Section 447 of IPC.

Learned Sessions Judge has also directed that if fine money is realized, that should be paid to the victims Ashish Majumder and Jayanta Biswas @ ₹20,000/- each and the rest amount to be paid to victim Dilip Debnath.

7. Being aggrieved, the present revisional application is filed by the convicts Bulbul Paul, Dulal Paul and Rupan Paul.

8. Heard learned counsel, Mr. S. Chakraborty for the petitioners and learned Addl. P.P., Mr. R. C. Debnath for the State-respondent.

9. It is submitted by learned counsel, Mr. Chakraborty that the trial Court as well as the appellate Court failed to comply provisions of Section 361 of Cr.P.C. and in the given facts and circumstances, the accused persons were entitled to get the benefit of Section 360 of Cr.P.C. and/or Section 4 of the Probation of Offenders Act. The trial Court as well as the appellate Court assigned no reason at all for refusing them the benefit of those provisions though the accused petitioners prayed for releasing them on probation.

10. Learned Addl. P.P. has submitted that prosecution has nothing to say if the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act is extended to the accused petitioners.

11. On going through the judgment, passed by the learned Judicial Magistrate 1st Class, Belonia, I find that at the time of hearing of sentence all the convicts prayed for giving them benefit of the Probation of the Offenders Act but learned Magistrate rejected the prayer only with an observation--

“Considering all aspects as well as the gravity of offence committed by the convicts, I refrain myself of giving the convicts the benefit under the Probation of Offenders’ Act.”

12. It is apparently clear that learned Magistrate did not consider the prayer of the petitioners only observing one line i.e. gravity of offence committed by the convicts. The offences as alleged were under Sections 447 and 324 of IPC and are not a serious offences of major punishment.

13. Learned Addl. Sessions Judge in the appeal has observed that –

“From the evidence on record, it appears that the incident occurred on trivial matter. The convicts had no prior intention to cause any cut injury or any assault, but it took place because of altercation with the complainant on the demand of Rs.100/-. Convict Rupan Pal is 27 years old as per arrest memo. Bhuban Pal is 24 years old and Ajit Das is 22 years old. These convicts are not previously convicted in any other case. The incident occurred in the heat of the moment. These young men may turn into jail bar if sentence of imprisonment is confirmed. Considering all aspects and also to give relief to the victims, I consider that sentence of fine will meet the ends of justice.”

14. The above observation of the learned Addl. Sessions Judge shows that the incident occurred because of altercation with the informant on a demand of Rs.100/- and there was no record of any previous conviction and that the incident occurred in a heat of the moment. Under those circumstances, the appellate Court would extend the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act to the petitioners.

15. The Supreme Court in the case of ***Bishnu Deo Shaw V. State of West Bengal*** reported in **1979 C.R.I.L.J.841** in paragraph

25 of the judgment has observed thus:-

“25. Apart from Section 354(3), there is another provision in the Code which also uses the significant expression 'special reasons'. It is Section 361. Section 360 of the 1973 code re-enacts, in substance, Section 562 of the 1898 Code and provides for the release on probation of good conduct or after admonition any person not under twenty one years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or any person under twenty one years of age or any women who is convicted of an offence not punishable with death or imprisonment of life, if no previous offence is proved against the offender, and if it appears to the Court, having regard 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 or after admonition. If the Court refrains from dealing with an offender under Section 360 or under the provisions of the Probation of Offenders Act, or any other law for the treatment, training, or rehabilitation of youthful offenders, where the Court could have done so, Section 361, which is a new provision in the 1973 Code makes it mandatory for the Court to record in its judgment the 'special reasons' for not doing so. Section 361 thus casts a duty upon the Court to apply the provisions of S.360 wherever it is possible to do so and, to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by S. 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders, and not mere deterrence, are now among the foremost objects of the administration of criminal Justice in our country. Section 361 and Sec. 354(3) have both entered the Statute Book at the same time and they are part

of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. We will not, therefore, be wrong in assuming that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors.

16. Section 361 of Cr.P.C. prescribes thus:-

“361. Special reasons to be recorded in certain cases.—Where in any case the Court could have dealt with,--

- (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or
- (b) a youthful offender under 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, but has not done so, it shall record in its judgment the special reasons for not having done so.”

17. Section 4 of the Probation of Offenders Act prescribes as follows:-

“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.”

18. Section 360 of the Code of Criminal Procedure prescribes 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 behavior:

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 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 the 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 apprehensions.*

(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.”*

19. It is apparently clear that the learned Judicial Magistrate 1st Class and learned Addl. Sessions Judge ignored the provisions of Section 361 of Cr.P.C. and failed to discharge their duty to invoke the provisions of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act.

20. In the given facts and circumstances, I think it is appropriate to give the accused petitioners the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act.

21. Accordingly, it is hereby ordered that the accused petitioners namely Bulbul Paul, Dulal Paul and Rupan Paul be released on probation on their execution of a bond of ₹10,000/- each

with one surety of like amount on condition to appear and receive sentence during a period of two years from the date of execution of the bond and within the period of 2(two) years they should keep the peace and be of good behaviour in the locality and should keep themselves away from committing any criminal offence punishable by law. During the period of probation they shall remain under the supervision of the Probation Officer, Benonia and the Probation Officer should submit report time to time to the Court of learned Judicial Magistrate 1st Class, Belonia as and when necessary.

22. With this observation, the Criminal revision petition stands disposed of.

23. Send back the L.C. record along with a copy of this judgment to the Court of learned Judicial Magistrate 1st Class, Belonia.

JUDGE