

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.05 of 2007

1. Md. Fakar Uddin
2. Md. Noor Uddin

Both are son of Late Sukkur Mia
Resident of Bilthai, Chandpur
P.S. Panisagar
North Tripura

.....**Convict Petitioners**

- Vs -

The State of Tripura

.....**Respondent**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners	:	Mr. S. Chakraborty, Advocate
		Mr. I. Banik, Advocate
For the respondent	:	Mr. D. Sarkar, PP
Date of hearing	:	13.06.2013
Date of delivery of judgment & order	:	31.07.2013

Yes	No

JUDGMENT & ORDER

Heard Mr. S. Chakraborty, learned counsel appearing for the petitioners as well as Mr. D. Sarkar, learned Public Prosecutor appearing for the State-respondent.

02. This revisional petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C. in short), is directed against the judgment and order dated

04.12.2006 delivered in Criminal Appeal No.25(3) of 2006 by the Addl. Sessions Judge, North Tripura, Dharmanagar affirming the judgment of conviction and order of sentence dated 21.07.2006 delivered in GR Case No.93 of 2004 by the Judicial Magistrate, Dharmanagar, North Tripura.

03. Prosecution was launched against the petitioners when a written ejahar lodged by one Dharendra Debnath was received by Panisagar PS on allegation that over a dispute on sharing water from the agricultural land of the complainant, the petitioners had engaged themselves in a quarrel with his sisters Malati Nath, Pranati Nath and mother Arati Nath and suddenly the petitioners gave blow by means of dao, lathi etc. on the various parts on the person of his father Jitendra Debnath. It has been alleged as well that the petitioners namely Md. Fakar Uddin and Md. Noor Uddin gave blow by means of dao on the head and hand of Malati Nath and Pranati Nath. His mother was also not spared. She was hit on her loin.

04. On receipt of the said complaint on 29.03.2004, the day of occurrence, Panisagar PS Case No.19 of 2004 under Section 326/34 of Indian Penal Code was registered and taken up for investigation. On investigation the charge-sheet was filed and on taking cognizance , the charge was framed against the petitioners under Sections 326/323 read with Section 34 of the IPC. As the petitioners pleaded not guilty and claimed to be tried, the trial commenced and the prosecution adduced as many as 11 witnesses including the investigating officer and the complainant. The

petitioners were examined under Section 313 of the Cr.P.C. for having their response against the incriminating materials revealed in the testimonies. Thereafter, on appreciation, the Judicial Magistrate, Dharmanagar, North Tripura has returned the finding of the conviction by the judgment dated 21.07.2006 and convicted the petitioner No.1 under Sections 324/323 of the IPC and sentenced him to suffer RI for two years under Section 324 and fine of Rs.1,000/- under Section 323 of the IPC and in default of payment to suffer SI for four months and the petitioner No.2 was only convicted under Section 323 of the IPC and directed to suffer RI for one year.

05. Being aggrieved, an appeal under Section 374 of the Cr.P.C. was filed in the Court of the Addl. Sessions Judge, North Tripura, Dharmanagar but the Addl. Sessions Judge did not interfere the judgment of conviction and order of sentence passed by the trial court by the impugned judgment and order dated 04.12.2006 delivered in Criminal Appeal No.25(3) of 2006.

06. Mr. Chakraborty, learned counsel for the petitioners at the outset has candidly submitted that he would not criticize the finding of conviction. But he has criticised the sentence for non-consideration of Section 361 of the Cr.P.C. which provides that:

"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."

07. Mr. Chakraborty, learned counsel for the petitioners has further submitted that in view of Section 360 of the Cr.P.C. where 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 them to any punishment they should be released on probation of good conduct. He has further submitted that the term of the sentence in this case is less than 7 years and from the final report submitted under Section 173 of the Cr.P.C. it would be apparent that the age of the petitioner No.1 was 40 years whereas the age of the petitioner No.2 was 35 years and no criminal antecedents against them has been recorded. He has continued to submit that the quarrel broke out regarding share of water for irrigation in their respective agricultural land and on the spur of a moment the petitioners had indulged in the offence. But the trial court has given a very strange reason for discarding the consideration for releasing on probation on condition of good conduct. The trial court has provided the following reason denying the benefit of probation to the petitioners:

"Now I am to see as to whether the accused persons are entitled to get benefit of probation in this case. The accused persons have committed offence against women also and now days crime against women has been seriously increased. As such if I release the convicts on probation in that case they would mark a bad signal to the society. So, I do not find any scope to release the convicts on probation in this case."

08. Mr. Chakraborty, learned counsel for the petitioners has finally made a reference to the celebrated decision of the apex court in ***Bishnu Deo Shaw Vs. State of West Bengal*** reported in **1979 Crl. L. J. 841** wherein the apex court in para-25 has held that:

"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 Section 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 Section 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 Section 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."

09. Mr. Sarkar, learned Public Prosecutor for the State has fairly submitted that the reasons as provided by the trial judge and affirmed by the Addl. Sessions Judge does not have any relation to the object of Section 360 read with Section 361 of the Cr.P.C. Those are in the ambit of deterrence.

10. On meticulous scrutiny of the record, the impugned judgments, the testimonies and other evidences as placed it has surfaced that there is no infirmity in the judgment of conviction but while considering the aspect as to whether the petitioners would be provided with the benefit of the probation, the trial court as well as the appellate court fell into grave error. The apex court in ***Bishnu Deo Shaw*** (supra) has highlighted the premises of consideration. Personality of the offenders as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. But the reason as provided in this case under Section 361 of the Cr.P.C. does not have any nexus with those factors as delineated by the apex court. Therefore, those can not be considered as the special reasons as expected of the trial court for considering the sentence vis-à-vis the probation. In the record, there is no adverse report or observation against the petitioners about their antecedents and from the circumstances in

which the offence was committed it appears that on the spur of moment the petitioners had indulged in the commission of offence but those are not the offence against the women as bracketed by the trial court. Both the petitioners are the marginal agriculturists and in the prime age of their life. Since the petitioners are above the age of 21 years having no adverse antecedents and moreover the circumstances in which the offence has been committed does indicate they committed the offence on the spur of moment and out of rage over a dispute on sharing of water. This Court is of the opinion that the sentence is required to be altered by providing the petitioners the benefit of Section 360 of the Cr.P.C. As corollary, the impugned sentence is altered vis-à-vis the conviction under Section 324/323 of the IPC against the petitioner No.1 and the Petitioner No.2.

11. It is directed that both the petitioners shall remain under probation on condition of good conduct for one year and for that purpose they will surrender to the court of the Judicial Magistrate, Dharmanagar, North Tripura for executing the requisite bond of probation in terms of Section 4 of the Probation of Offenders Act, 1958 and the court of the Judicial Magistrate shall place them under superintendence of the designated probation officer of that area to supervise their activity for a period of one year. It is made clear that in case the probation officer reports anything adverse amounting to serious breach of condition of the probation, the Judicial Magistrate shall recall the bond and send the petitioners to the jail to undergo the sentence as imposed by the

judgments and orders dated 21.07.2006 and affirmed by the judgment and order dated 04.12.2006.

Accordingly, this petition is allowed to the extent as indicated above.

Send down the LCRs forthwith.

JUDGE

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