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**Haladhar Nayak and ors. Vs. State of Assam and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/125708](http://sooperkanoon.com/125708)**

**Court : Guwahati**

**Decided On : Jan-20-2005**

**Judge : M.B.K. Singh, J.**

**Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360, 360(4) and 361; [Probation of Offenders Act, 1958](#) - Sections 3 and 4; [Children Act, 1960](#); Indian Penal Code (IPC) - Sections 34, 323, 325 and 448**

**Appeal No. : Criminal Revision No. 128 of 1997**

**Appellant : Haladhar Nayak and ors.**

**Respondent : State of Assam and ors.**

**Advocate for Def. : None**

**Advocate for Pet/Ap. : P.C. Gayan, Adv.**

**Prior history :** M.B.K. Singh, J. 1. This Revision has been filed challenging the legality and propriety of the order passed on 15.6.1996 by the learned Addl. Sessions Judge, Jorhat in Criminal Appeal No. 39 of 1995 allowing partly the appeal, which had been filed against the judgment dated 8.9.95 of the learned Addl. C.J.M. Jorhat. The impugned judgment upheld the convictions and sentences made against the present revisionists by the learned C.J.M. Jorhat for the commission of offences under Section 448/325/3

**Judgement :**

**M.B.K. Singh, J.**

1. This Revision has been filed challenging the legality and propriety of the order passed on 15.6.1996 by the learned Addl. Sessions Judge, Jorhat in Criminal Appeal No. 39 of 1995 allowing partly the appeal, which had been filed against the judgment dated 8.9.95 of the learned Addl. C.J.M. Jorhat. The impugned judgment upheld the convictions and sentences made against the present revisionists by the learned C.J.M. Jorhat for the commission of offences under Section 448/325/34 IPC. Further, the impugned judgment upheld the conviction of the present revisionist, Ruhit Nayak, for the commission of offence under Section 323 IPC and sentenced him to pay a fine of Rs. 200, in default, to undergo imprisonment for a period of one month. But, convictions and sentences against the remaining revisionists in respect of the said offence under Section 323 read with section 34 IPC were set aside.

2. The revisionists are present by their counsel, Mr. PC Gayan, advocate. None appears on the side of the respondents. I have heard the learned counsel for the revisionists at length.

3. The only ground submitted by the counsel of the revisionists as against the impugned order is to the effect that since the revisionists are first offenders, they ought to have been dealt with under the provisions of Section 360 Cr.P.C and Sections 3 and 4 of the [Probation of Offenders Act, 1958](#) and for the reasons of overlooking the above said legal position, the impugned judgment is not sustainable in the eye of law.

4. In order to give a first offender a chance of reforming himself and to protect him from being corrupted and turned into a regular criminal by association with harden criminals in Jail, the Court is empowered by Section 360 Cr.P.C. to deal leniently with such a person by releasing him on probation of good conduct instead of giving him punishment. The said Section 360 of Cr.P.C. is applicable to two classes : (a) woman and all persons under the age of 21 years and (b) persons over that age. The relevant portions of Section 360 Cr.P.C. are as follows :

'(1) When 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 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 kept the peace, and be of good behaviour :

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).....

(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.....

(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.'

5. In the present case all the revisionists were convicted for the commission of offences under Section 448 I.P.C. and 325 I.P.C. read with Section 34 I.P.C. Only one of the revisionists was convicted for the commission of the offences under Section 323 I.P.C. All the above said offences are of the type and nature in respect of which the offenders can be dealt with under Section 360 Cr.P.C. after taking into other relevant considerations. Revisionists 2 to 4 are the sons of the

revisionist. No. 1. They are tea garden labourers of Soykota Tea Estate.

6. On perusal of the records, no previous conviction is found to have been proved as against any of the present revisionists. As per finding of the learned Addl. Sessions Judge, the injuries caused to Babadhan Nayak and Ashali Nayak were by blunt weapons. Having regard to the facts and circumstances under which the said offences were found to have been committed and also keeping in view all the relevant considerations, I am of the opinion that said convicts/present revisionists could have been dealt under the provisions of Section 360 Cr.P.C. However, nothing is mentioned in the impugned judgment as to why they were not dealt with Section. 360 Cr.P.C. It is mandatory for the Court under Section 361 Cr.P.C. to record special reasons if it did not apply the provisions of Section 360 Cr.P.C. or under the provisions of [Probation of Offenders Act, 1958](#) and other Special cases mentioned in Section 361 Cr.P.C. in cases where they might be applied. In the light of the above position of law, the failure on the part of both the trial court and the appellate court to record the required special reasons vitiates the impugned judgment in so far as regards the sentences.

7. As per provisions of Sub-section (4) of Section 360 Cr.P.C. an order under Section 360 Cr.P.C. may be made by any appellate Court or by the High Court or Courts of Sessions when exercising its powers of revision. This Court has already found that the convicts/present revisionists could have been dealt with under Section 360 Cr.P.C.

8. Having regard to all the relevant considerations, this Revision is allowed in respect of the sentences imposed as against the revisionists by the Additional Sessions Judge, Jorhat. The sentences imposed against the revisionists, vide impugned judgment dated 15.6.1996 are hereby set aside. In my opinion, having regard to all the relevant considerations, it is expedient that convicts/present revisionists should be released on probation of good conduct. It is, therefore, directed that the convicts/ present revisionists be released on their entering into a bond of Rs. 2,000 each with a surety of like amount each to the satisfaction of the trial court (the Addl. C.J.M. Jorhat) to appear and receive sentences when call upon within a period of two years from the date of this order and in the meantime

to keep the peace and be or good behaviour. The convicts/present revisionists are to appear before the concerned trial court (Addl. C.J.M. Jorhat) for furnishing the necessary bonds within a period of 36 days from today and copy of this order be sent to the concerned trial court for information and necessary action.

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