

Md. Syad Ali and ors. Vs. State of Assam

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Court : Guwahati

Decided On : Feb-07-1989

Judge : B.P. Saraf, J.

Appellant : Md. Syad Ali and ors.

Respondent : State of Assam

Advocate for Pet/Ap. : Mr. Kalimuddin

Judgement :

B.P. Saraf, J.

1. The four petitioners in this case were charged with offences under Sections 147/325/324 of the Penal Code and were convicted by the Sub-Divisional Judicial Magistrate, Morigaon under Section 147 only and sentenced to rigorous imprisonment for 2 (two) months. The said sentence was confirmed by the Sessions Judge, Nagaon, The present criminal revision petition under Section 401 read with Section 482 of the Cr. P.C. has been filed on the ground that the learned trial Court and the Sessions Judge did not consider the applicability of Section 360 of the Cr. P.C. and did not record any reason for not applying the provision of Section 360 of the said Act of the case of the petitioners.

2. Heard Mr. Kalimuddin, learned Counsel for the petitioners and Mr. G. K. Bhattacharjee, learned Public Prosecutor appearing for the State. Also perused

the orders passed by the Courts below. It appears that at the time of occurrence, the petitioner 3 Gazi Mia was aged only about 16 or 17 years. The other three petitioners were little above 21 years. Mr. Kalimuddin, appearing for the petitioners contended that the petitioner 3 Gazi Mia being 16 or 17 years of age was entitled to benefit of Section 360 of the Cr. P.C. It was submitted that the other three petitioners also were entitled to the benefit of the said provision as they were convicted of an offence punishable with imprisonment of a term of two years only. According to the learned Counsel, in the instant case in hand, the trial Court or the Sessions Judge did not at all consider this aspect of the matter and failed to exercise the power vested in them under Section 360 of the Act. I have perused the judgment of the trial Court as well as the Sessions Judge. It appears that both the Courts below failed to consider the applicability of Section 360 of the Cr. P.C. to the case of the present petitioners and did not, therefore, record any special reason for not doing so as envisaged by Section 361 of the Act.

3. From the facts of the case, it appears that the petitioner 3 was aged about 16 or 17 years at the time of the occurrence. The other three petitioners also, though slightly above 21 years of age at the relevant time, were convicted of an offence under Section 147 of the Penal Code which is punishable with imprisonment for a term of two years only. The case of the appellants, therefore, undoubtedly falls within the four corners of Section 360 of the Act. The Courts below, however, did not consider their case under Section 360 of the Cr. P.C.

4. Section 360 of Cr. P.C. empowers the Court to deal leniently with persons who have committed an offence specified in the said Section 2 for the first time. If it is satisfied that Having regard to the age, character or antecedents, it is expedient that the offender should be released on probation of good conduct. The Section 2 is mandatory in nature and its benefit has to be given to an offender fulfilling condition laid down therein. If the Court refrains from giving benefit to an offender fulfilling the conditions of Section 360 of the Code, it can do so only by complying with the requirements of Section 361 of the Code which makes it mandatory for the Court to record in the judgment 'special reason' for not doing so. Section 361 thus casts a duty upon the Court to give benefit of Section 360 of Cr. P.C. wherever is possible to do so and to record 'special reason' if it does not do so. In

the instant case, the Courts below did not even apply their mind to the applicability of Section 360 of the Code in the case of the present petitioners.

5. It is stated that the petitioner 3 Gazi Mia was below 21 years of age at the time he is alleged to have committed the offence. The other petitioners were convicted under Section 147 of the Penal Code which is an offence punishable with imprisonment for the term of two years only. The case of the petitioners, therefore, falls within the four corners of Section 360. From the record, it appears that no previous conviction has been proved against the petitioners nor the petitioners have any bad antecedents. Keeping in view of the aforesaid facts and circumstances regarding age, character etc., it appears to be a fit case for release of the offenders on probation of good conduct.

6. In the circumstances stated above, the sentence of imprisonment imposed on the petitioners is suspended and they are released on probation of good conduct by entering into a bond of Rs. 2,000/- each for a period of 6 (six) months to the satisfaction of the Sub-Divisional Judicial Magistrate, Morigaon. In case, the petitioners violate the condition of the Bond, they will be called upon to receive the sentence.

8. This revision is disposed of accordingly.