

**Attaur Rahman Vs. the State of Assam**

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**Court :** Guwahati

**Decided On :** Jul-18-1973

**Judge :** D.M. Sen, J.

**Appellant :** Attaur Rahman

**Respondent :** The State of Assam

**Judgement :**

**D.M. Sen, J.**

1. This is a petition under Section 439, Criminal Procedure Code, directed against a judgment and order passed by the learned Sessions Judge, Cachar, affirming a conviction under Section 457, Indian Penal Code and a sentence of two months' rigorous imprisonment and a fine of Rs. 50/- in default of rigorous imprisonment for 15 days, passed by the learned S. D. M. (J.), Hailakandi.

2. Mr. Laskar, the learned Counsel for the petitioner, submits that the conviction of the accused petitioner is legally untenable. He has taken me through the part of the evidence; I, however, find that the evidence given by Kamalai, P. W. 2, can be the foundation for a legal conviction. In an application under Section 439, Criminal P. C., the revisional Court is not required, nor is it within its competence, to reappraise the evidence on record. It can only interfere, if there be a flagrant miscarriage of justice, in the sense that the conviction is against some law or that there is no evidence at all to support the same. In the instant case, I do not find

any justification for interference with the conviction.

3. Mr. Laskar however has made another submission, which has a good deal of force in it. He states and it is in-deed supported by an affidavit sworn by the uncle of the accused petitioner, that the latter is about fifteen years of age. Mr. Laskar submits that having regard to the tender age of the accused petitioner and also the attendant circumstances, the learned Magistrate should not have sentenced the accused to rigor-pus imprisonment, but should have acted in accordance with Section 6 of the Probation of Offenders Act, 1958. I agree that there is considerable merit in this submission. However, the records do not clearly show the age of the accused petitioner. In fact, the examination under Section 342, Criminal P. C., in course of which the age of the accused person should have been stated, does not indicate the age at all. The learned Public Prosecutor, when asked regarding the age of the accused petitioner, states that in the absence of any records, he is not in a position either to admit or deny that the accused is fifteen years of age, as contended by the petitioner. It also appears that the submission, which is being made now, that is to say, that the accused should have been dealt with under the Probation of Offenders Act, 1958 was not made either before the learned Magistrate or before the learned Sessions Judge, when the matter came to him on appeal. The attention of the Courts below does not appear to have been invited to the mandatory provisions of Section 6 of the aforesaid Act. Sub-section (1) of Section 6 of the Probation of Offenders Act reads as under:

6(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offenders, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

4. Their Lordships of the Supreme Court had occasion to examine the provisions of the aforesaid Act in *Ishar Das v. State of Punjab* : 1972 CriLJ874 where they

observed:

The Probation of Offenders Act, as observed by Subba Rao, J. (as he then was) speaking for the majority in the case of *Rattan Lal v. State of Punjab* : 1965 CriLJ360 , is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the Court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act.

Their Lordships further observed:

Section 6 of the Act deals specifically with persons under twenty-one years of age convicted by a court for an offence punishable with imprisonment other than imprisonment for life. In such a case an injunction is issued to the court not to sentence the young offender to imprisonment unless the court is of the view that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to release him after admonition under Section 3 or on probation of good conduct under Section 4 of the Act.

5. The beneficent measure of the above Act, which reflects and incorporates the modern approach and latest trend in penology should receive wide interpretation and not be read in a restricted sense and, in particular, the mandatory provisions of Section 6 of the Act must not be ignored by trial Courts.

6. Considering the above, I feel that this case must go back to the trial Court, before whom the accused petitioner may make his submission regarding his age and also support the same by relevant evidence. He will also be free to canvass before that court that his case must be dealt with under the Probation of Offenders Act, 1958.

7. I, accordingly, while not disturbing the conviction, send this case back for disposal by the learned trial Court, in accordance with law and in the light of my above observations. The application is disposed of accordingly. The accused-petitioner will continue to remain on bail pending disposal of the case by the learned court below.

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