

Bisikesan Suna Vs. the State

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Court : Orissa

Decided On : Jul-20-1966

Reported in : AIR1967Ori4; 1967CriLJ100

Judge : G.K. Misra, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 3, 6 and 11

Appeal No. : Criminal Revn. No. 477 of 1965

Appellant : Bisikesan Suna

Respondent : The State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S. Mohanty, Amicus Curiae; S.C. Mohapatra, Adv.

Judgement :

ORDER

G.K. Misra, J

1. The petitioner has been convicted under Section 380, Indian Penal Code and sentenced to six months rigorous imprisonment. Prosecution case is that the Settlement Patwari, Chudamani Mahananda and his chainman Hinaketan Giri (P.W. 4) were putting up in the Deraghar of village Bhagatpur in the district of Sambalpur. Gayadhar Nariha (P.W. 1) was guarding the Deraghar during their

absence on the field and was also cooking food for them. The petitioner was a sworn friend of Chudamani. He stayed with the Patwari with the hope of getting the post of a Chainman. The Revenue Inspector asked the Patwari and the villagers including the Gountia not to keep the petitioner in the Deraghar as the Patwari and the Chainman were being fed by the villagers and the stay of the petitioner meant further expenses for them. The petitioner was accordingly driven out on 3-1-64. On 4-1-04, the Patwari and P.W.. 4 left the Deraghar for the field work. They locked the Deraghar keeping inside it a cycle and their clothings. At about 11 A. M. P.W. 1 found the petitioner sitting inside the Deraghar. The petitioner admitted to have opened the Deraghar. He went out with the cycle and a bag containing the clothings of the Patwari and the Chainman after directing P.W. 1 to cook food for him and the Patwari. Thereafter he did not return. He was prosecuted under Sections 454 and 380 I. P C. The defence was one of denial. The learned Magistrate convicted him under Sections 454 and 380. I P C and sentenced him to rigorous imprisonment for six months under each of the sections, the sentences to run consecutively. In appeal, the learned Sessions Judge upheld the conviction and sentence passed under Section 380, I. P. C, and set aside the conviction and sentence under Section 464, I. P. C.

2. In revision, Mr. Mohapatra challenged the concurrent finding as being based on unreliable evidence. After having gone through the evidence I am satisfied that the learned Sessions Judge correctly assessed the evidence. The finding of fact based on pure assessment of evidence is not assailable. This contention is accordingly rejected.

3. Mr. Mohapatra next contended that the petitioner was under 21 years of age at the time when he was convicted by the Magistrate and was entitled to be released after due admonition under Section 3 of the Probation of Offenders Act (Act No. 20 of 1958), hereinafter referred to as the Act. Sections 3 and 6 of the Act are relevant for the purpose. Section 6 reads thus---

'6. (1) When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment (but not 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 offender, 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.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in Sub-section (1), the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender'

The petitioner was 20 years old on the date he was convicted by the learned Magistrate. He thus being under twenty-one years of age, the learned Magistrate should not have sentenced him to imprisonment straightway. Before sentencing him to imprisonment, the Magistrate must first be satisfied that, having regard to the circumstances of the case including (he nature of the offence and the character of the offender, it is not desirable to deal with him under Section 3 or 4 of the Act. If the Magistrate is satisfied that the offender should not be dealt with under Section 8 or 4, he shall record reasons for doing so. There is a further restriction imposed by Sub-section (2) of Section 6. To satisfy himself that it is not desirable to deal with that class of offenders under Section 3 or 4, it is incumbent upon the Magistrate to call for a report from the Probation Officer, consider the report, if any and any other information available to him relating to the character and physical and mental condition of the offender.

4. Law is now well settled that the crucial date for reckoning the age is the date on which the trial Court had to deal with the offender. (See AIR 1968 SC 1088, *Ramji Misser v. State of Bihar*). The further question for consideration is to find out the meaning of the expression 'the circumstances of case including the nature of the offence and the character of the offender', as used in Sections 8, 4 and 6 of the Act. An expression, almost in similar language, has been used in Section 562 (1), Cr. P. C. which is to the effect 'regard being had to the age, character or antecedent of the offender and to the circumstances under which the offence was

committed'. This expression has received judicial construction in several well known authorities. The tests laid down under that section are that the exercise of power under the section is entirely in the discretion of the Court to be exercised according to the circumstances of each case. The fact that an offender is a first or a youthful offender is by itself not sufficient to invoke the section. Both the conditions are the first essentials without which the section would have no application. Further restriction has been imposed after a youthful offender commits a first offence. The section is generally made applicable where a youthful first offender succumbs to sudden temptation or uncontrollable impulses or does a thoughtless act or acts under the influence of others. The section is not to be applied to cases where the offence was act of daring and reprehensible nature, or the commission of the offence implied previous preparation or deliberate effort on the part of the accused, or where the conduct shows a design or a general character of craft and deceit. It is not necessary to refer to various authorities dealing with the aforesaid tests. Neither it is possible to give a comprehensive enumeration to cover all cases. The tests under Section 562 (1), Cr.P.C. are applicable to Sections 3, 4 and 6 of the Act more liberally. The Act has been enacted as a measure of social reform. As was observed in AIR 1965 SC 444, *Rattan Lal v. State of Punjab*, the Act is a mile-stone in the progress of 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,

5. Section 3 of the Act enacts as follows:

"When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (46 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine or with both under the Indian Penal Code or any other law, and no previous conviction is proved against him 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 so to do then, notwithstanding anything contained in other law for the time being in force, the Court may, instead of sentencing him to

any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition.'

Section 380, I. P. C., under which the petitioner has been convicted, has been specifically referred to in the section. No previous conviction has been proved against the petitioner. Section 3 would be directly applicable to the petitioner and he can be released after due admonition, if in the opinion of the Court, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do.

The only question for consideration, therefore, is whether in the facts and circumstances of this case Section 3 of the Act should apply to the case of the petitioner. As has been already said, the petitioner was a sworn friend of the Patwari. He remained with him in the Deraghar for sometime waiting to get the post of chainman. He was driven out just the previous day at the instance of the Revenue Inspector. He came back next day and removed the cycle and a bag with clothings. In the facts and circumstances of this case it would not be unreasonable to infer that the theft was committed out of annoyance and anger with his friend, the Patwari. The theft was not the outcome of a deliberate preparation or design, but appears to be the outcome of an uncontrollable impulse, or at the worst of the petitioner becoming a victim to the sudden temptation. This is a fit case for application of Section 3 of the Act.

On the aforesaid reasonings, instead of the petitioner being sentenced to punishment, he is to be released after due admonition.

6. Thus the conviction of the petitioner stands but the sentence passed against him is set aside. In its place he is released after due admonition under Section 3 of the Act. Subject to the aforesaid modification on the question of sentence, the revision is dismissed.