

GAHC010182142012



2025:GAU-AS:13140

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Criminal Revision Petition No. 132/2012

1. Chandradhar Bora,
S/o-Late Satram Bora.
2. Sri Dwijen Bora@Dijen.
3. Sri Brojen Bora,
Both are sons of Sri Chandradhar Bora.
4. Sri Gobinda Paul @Maina,
S/o-Late Umapada Paul,
All are R/o Vill-Baruabamun Gaon,
Sugar Mill Colony, Kuralguri,P.S.Dergaon,
Dist. Golaghat, Assam.

.....Petitioners

-Versus-

1. The State of Assam.

.....Respondent

For Petitioner

1. Mr. T.J. Mahanta, Sr. Advocate.
2. Mr. T. Gogoi, Advocate.

For Respondent : Mr. K. Baishya, Additional Public Prosecutor.

Date of Judgment : 22.09.2025.

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

1. Heard Mr. T.J. Mahanta, the learned Senior Counsel, assisted by Mr. T. Gogoi, the learned counsel for the revision petitioners. Also heard Mr. K. Baishya, the learned Additional Public Prosecutor appearing for the State of Assam.

2. This application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973, has been filed by the petitioners, namely, 1. Sri Chandradhar Bora, 2. Sri Dwijen Bora@Dijen, 3. Sri Brojen Bora, and 4. Sri Gobinda Paul @Maina, impugning the Judgment and Order dated, 17.12.2011, passed by the learned Sessions Judge, Golaghat, in Criminal Appeal No.13/2009, whereby the appeal preferred by the present petitioners against Judgment and Order dated, 19.01.2009, passed in GR Case No. 876/2004, whereby the petitioners were convicted under Section 323 of the Indian Penal Code, 1860 and were sentenced to undergo rigorous imprisonment for 3(three) months,

and to pay a fine of Rs. 500/-each, in default, to undergo simple imprisonment for 15(fifteen) days.

3. By the judgment of the Trial Court, which was upheld by the Appellate Court, the petitioners herein were convicted under Sections 341/323 and 325 of the Indian Penal Code, 1860. They were sentenced to pay a fine of Rs.400/- each under Section 341 of the Indian Penal Code, 1860 and to undergo simple imprisonment of 15(fifteen) days, each in default of payment of fine. They were also sentenced to undergo rigorous imprisonments of 3(three) months and to pay a fine of Rs. 500/- each under Section 323 of the Indian Penal Code, 1860 and in default of payment of fine to undergo 15(fifteen) days of simple imprisonment.

4. The petitioners were also sentenced to undergo rigorous imprisonment for 6(six) months and to pay a fine of Rs. 1000/- each for the offence under Section 325 of the Indian Penal Code, 1860 and in default of payment of fine to undergo simple imprisonment for 1(one) month.

5. The facts relevant for consideration of the instant criminal revision petition, in brief, are that one Bolen Rajbonshi had lodged an FIR before the Officer-In-Charge of Dergaon police station, on 24.08.2004, *inter alia*, stating that on that day, at about 1:00 PM, while he was on duty, along with Constable Padmakanta Bora and Home Guards Bipul Bora and one Ashok Pachoni at the sugar mill premises.

The accused persons, (the present petitioners), armed with iron rods and kukri assaulted the Constable Padmakanta Bora, and administered blow with kukri and iron rod on him, as a result of which, Padmakanta Bora sustained severe injuries on his person. Thereafter, the petitioners also assaulted Ashok Pachoni and Bipul Bora, as well as the informant, Bolen Rajbonshi.

6. On receipt of the said FIR, Dergaon police station Case No. 2011/2004 was registered under Sections 341/333/325/326/307/34 of the Indian Penal Code, 1860 and investigation was initiated. Ultimately, on completion of the investigation, the charge sheet was laid against the present petitioners under Sections 341/333/325/307/326/34 of the Indian Penal Code, 1860.

7. Since the case was exclusively triable by the Court of Session, initially it was committed to the Court of the learned Sessions Judge, Golaghat. However, by order dated 29/07/2006, it was remanded back to the Court of the learned Chief Judicial Magistrate, Golaghat with a direction to frame charges under Sections 341/323/325/34 of the Indian Penal Code, 1860 against all the petitioners. Thereafter, on their appearance before the Court of the learned Chief Judicial Magistrate, Golaghat, the charges under Sections 341/323/325/34 of the Indian Penal Code, 1860 were framed against the petitioners. When the charges were read over and explained to the petitioners, they declined to plead guilty and claimed to be tried.

8. The prosecution side examined as many as 13 (thirteen) witnesses to bring home the charges against the accused persons (petitioners). During their examination under Section 313 of the Code of Criminal Procedure, 1973, the petitioners denied the truthfulness of the testimony of the prosecution witnesses and pleaded their innocence.

9. Ultimately, by the judgment and order, passed on 19.01.2009, the Court of the learned Chief Judicial Magistrate, Golaghat, convicted the petitioners and sentenced them in the manner as already described hereinabove in the foregoing paragraphs. Being aggrieved by the judgment passed by the Trial Court, the petitioners preferred an appeal before the Court of the learned Sessions Judge, Golaghat, which was registered as Criminal Appeal No. 13/2009. However, by the impugned judgment, the appeal was dismissed and the judgment of conviction and sentence imposed on the petitioners by the Trial Court was upheld.

10. Mr. T. J. Mahanta, the learned Senior Counsel for the petitioners has submitted that the Trial Court as well as the First Appellate Court have erred in convicting and sentencing, as well as upholding the impugned judgment respectively, inasmuch as it ignored the fact that there were major contradictions in the testimony of PW-10, PW-11 and PW-12, namely, Padma Kanta Bora, Bolen Rajbanshi and Ashok Pachoni. He submits that the Trial Court had ignored the said contradiction while convicting and sentencing the present petitioners,

whereas, the First Appellate Court also did not consider the said erroneous appreciation of evidence on record by the Trial Court in the impugned judgment.

11. The learned Senior Counsel for the petitioners has also submitted that the Trial Court as well as the First Appellate Court also erred in not giving the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958 as well as Section 360 of the Code of Criminal Procedure 1973, to the petitioners, considering the fact that no previous criminal antecedent was there of the petitioners. Moreover, the petitioner Nos. 2, 3 and 4 were of tender age, when the alleged offence was committed by them.

12. The learned Senior Counsel for the petitioners has also submitted that the Trial Court did not apply its judicial mind, as to whether to grant the benefit of provisions under Section 4 of the Probation of Offenders Act, 1958 to the petitioners or not, and simply denied the said benefit by stating that considering the nature of offence, they are not entitled to the same. The learned Senior Counsel for the petitioners has also submitted that the reason shown for not granting the benefit of the Probation of offenders Act, by the Trial Court does not amount to special reasons, which are required to be mentioned for denying the said benefit to the petitioners under beneficial legislation like the Probation of Offenders Act, 1958.

13. On the other hand, Mr. K. Baishya, the learned Additional Public Prosecutor, has submitted that the Trial Court has correctly considered the materials available on record and rightly convicted the petitioners as well as sentenced them under appropriate provisions of law. He further submits that the First Appellate Court also correctly appreciated the materials on record before upholding the judgment of the Trial Court.

14. He further submits that while exercising its revisional powers, this Court may not re-appreciate the evidence on record to come to a different finding from that of the Trial Court as well as the First Appellate Court. Unless the findings of the Trial Court are *prima facie* found to be perverse, the invocation of revisional powers against the concurrent finding of two Courts may not be proper.

15. He, however, submits that while denying the benefit of provisions of the Probation of Offenders Act, 1958, to the petitioners, the Trial Court has only stated that "considering the nature of the offence", they were denied the benefit of said provisions.

16. I have considered the submissions of the learned counsel for both sides and have also gone through the materials on record.

17. While considering the question of the applicability of provisions under Probation of Offenders Act, 1958, a co-ordinate bench of this Court has observed in the case of "***Ratul Bhuyan Vs. The State of***

Assam,” (judgment dated 13.11.2024 in Criminal Revision Petition No. 383/2013) as follows:-

"16. It is by now well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by Hon'ble Apex Court in the case of Ved Prakash Vs. State of Haryana reported in 1981 1 SCC 447, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial court should collect material necessary to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.

17. In the case of Sita Ram Paswan Vs. State of Bihar reported in AIR 2005 SC 3534, the Hon'ble Apex Court has laid down certain principle for exercise of discretionary power under the Act and the consideration required. The hon'ble Apex Court opined that while exercising the discretionary power under the Act 1958, the court is to consider the circumstances of the case, the nature of offence and the character of the

offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. It was concluded by the hon'ble Apex Court that the benefit available to the accused under section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may' clearly indicates that the discretion is vested with the court whether to release the offender in exercise of power under section 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

18. It was further held by the hon'ble Apex Court that such power can be exercised by the court even at the appellate or revisional stage or also by Apex Court hearing appeal under Article 136 of the Constitution of India."

18. In the instant case also, there is no material to show that the petitioners had any criminal antecedents prior to their conviction in this case. The Trial Court, while denying the benefit of beneficial provisions of Section 4 of the Probation of Offenders Act, 1958, has only considered the nature of offence involved in this case and merely held that considering the nature of offence, they were denied the benefit of provisions of Section 4 of the Probation of Offenders Act, 1958.

19. It has been observed by the Apex Courts in the case of "**Sitaram Paswan and Another Vs. State of Bihar**" reported in "**2005, 13 SCC 110,**" that while considering the question as to whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, 1958, due consideration must be given to the nature of offence, the character of the offender and overall circumstances of the case. However, in the instant case, the Court failed to take into consideration the fact there was no criminal antecedent of the petitioners before sentencing them in the manner discussed in the foregoing paragraphs.

20. This Court also takes into consideration the fact that the petitioners have also suffered for last 16(sixteen) years in pursuing the prolonged litigation during the trial, appeal and thereafter in the instant revision. The alleged offence had occurred in the year 2009 and nothing on record indicating to any previous criminal antecedent of the petitioners could be found. Thus, it was for the first-time that the petitioners were convicted for a criminal offence.

21. Considering the circumstances discussed in the foregoing paragraphs, this Court is of considered opinion that the benefit of Section 4 of the probation of the offender Act, 1958 may be granted to the present petitioners.

22. Accordingly, this revision petition is disposed of with a direction that the petitioners shall appear before the Trial Court within a period of 30(thirty) days from the date of this judgment and shall furnish bond of Rs. 30,000/ each with one surety of like amount before the Trial Court, i.e. the Court of the learned Chief Judicial Magistrate, Golaghat with an undertaking to the effect that they shall maintain peace and good behavior for a period of 1(one) year from the date of this judgment.

23. This revision petition is accordingly disposed of.

JUDGE

Comparing Assistant