

(1969) 06 OHC CK 0003
In the Orissa High Court
Case No : Criminal Revision No. 49 of 1967

Jai Biswal and Others

APPELLANT

Vs

Harekrushna Swain

RESPONDENT

Date of Decision : 23-06-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 379, 380, 381, 404
Probation of Offenders Act, 1958 — Section 11, 3, 4, 4(1)

Citation : (1969) 35 CLT 764

Hon'ble Judges : Ray, J

Bench : Single Bench

Advocate : H. Kanungo and R.N. Mohanty, for the Appellant; D. Sahu and B.K. Sahu, for the Respondent

Judgement

Ray, J.—These 12 Petitioners were tried and convicted u/s 380, Indian Penal Code, and each sentenced to undergo R.I. for two months and to pay a fine of Rs. 501- each in default to undergo further R. I. for one week, by Sri P. Section Panda, Magistrate, 1st Class, Cuttack, by his order dated 12-6-1965 passed in Case No. 380/C of 1964.

2. There was an appeal carried by these Petitioners to the Court of sessions, Cuttack, in criminal appeal No. 153/C of 1965, which was heard and dismissed by Sri B.N. Misra Addl. Sessions Judge by his order dated 23-2-1966. Hence this revision by the Petitioners.

3. The prosecution alleges that on 20-5-1964, at about 5 P.M. an these Petitioners armed with lathis, entered into the dwelling house of the complainant, p.w. 1, abused him and carried away six bags of paddy, heedless of protests by the complainant. Prior to this, the complainant had filed a misc. petition against these Petitioners on 22-4-1964, alleging therein that these Petitioners were intimidating him, as a consequence of which a proceeding u/s 107 was started against the Petitioners, subsequent to the date of occurrence. The allegations contained in the misc. petition of the complainant angered the Petitioners which

probably was the motive for what happened on the date of occurrence.

4. The defence plea is one of a denial. The accused further pleaded that this case has been foisted on them due to prior enmity and party faction.

5. Five prosecution witnesses were examined of whom three were eye-witnesses. Of them, two are men from a different villages who obviously had nothing to do with the party faction or with the enmity existing between the complainant and the Petitioners.

6. Both the Courts below have believed the prosecution witnesses and have come to the finding that in fact the Petitioners forcibly entered the dwelling house of the complainant and removed six bags of paddy and thereby committed an offence u/s 380, Indian Penal Code.

7. Learned Counsel for the Petitioners fairly conceded that there is no point of law involved in this case and that it is not possible to attack the findings of fact concurrently arrived at by the Courts below. He, therefore, urges that the provisions of the Probation of Offenders Act should be applied in this case.

Section 3 of the Probation of Offenders Act (20 of 1958)(hereinafter caned as "the Act") runs as follows:

Section 3 Power of Court to release certain offenders after admonition:

When any person is found guilty of having committed an offence punishable u/s 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code...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 any 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 u/s 4, release him after due admonition.

Section 4 runs as follows:

Power of Court to release certain offenders on probation of good conduct:

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life 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 to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to 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 keep the peace and be of good behaviour.

Reading these two sections together, it is clear that when a person is found guilty of having committed an offence punishable u/s 380 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 to release him on probation of good conduct" the Court may direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during a period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

8. Before releasing the offender under these provisions, the Court also must be satisfied that the offender or his surety has a regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

9. The power exercisable under these two sections is specifically conferred on the trial Court by whom the person is found guilty. But Section 11 of the Act empowers the High Court also, either on its appellate or revisional jurisdiction, with the same power as is conferred under Sections 3 and 4 of the Act. The Supreme Court has said in the case reported in *Rattan Lal Vs. State of Punjab*, that the Probation of Offenders Act "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." Having this beneficial objective of the Act in mind, the question of exercising discretion for applying the provisions of Sections 3 and 4 of the Act to a particular case has to be deliberated.

10. Of the 12 Petitioners, six are within the age-group of 23 to 33. One is aged 44 and the rest five are within the age group of 50 to 55. They are all permanent residents of village Mahisamunda within the jurisdiction of Balikuda police station. Two of them are barbers by occupation and the others are regular cultivators. There are admissions by the prosecution witnesses that a party faction was existing in the village in which the complainant and the accused persons belonged to opposite camps and there are also pending litigations between them. This offence was committed by way of reprisal out of anger due to the complainant having filed a misc. petition containing vilifying allegations against the Petitioners, as a result of which a proceeding u/s 107 was initiated. There is absolutely nothing on record to show that the antecedents of these accused persons are in any way disreputable. Having regard to the circumstances of the case, the nature of the offence and the character of the offenders, I think this is a fit case in which Section 4(1) of the Act should be applied.

11. In view of the inimical background existing between the complainant and the Petitioners while I maintain the conviction of the Petitioners u/s 380, Indian Penal Code, and the sentence passed thereunder, I would, however, in exercise of the

powers u/s 4(1) of the Act direct that in lieu of the sentences imposed, the Petitioners shall be released on their entering into bonds for Rs. 200/- each with two sureties for the like amount to receive the sentence when caned upon, during a period of one year from today and in the meantime to keep the peace and be of good behaviour. The bond shall be executed to the satisfaction of the Section D.M. Cuttack. In default of execution of the bonds the Petitioners shall undergo the sentence of imprisonment and pay the fines.