

(2003) 08 JH CK 0088

In the Jharkhand High Court

Case No : Criminal Revision No. 12 of 1997 (R)

Md. Tahir

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360(1)
Penal Code, 1860 (IPC) — Section 323, 324, 325, 34

Citation : (2003) 3 BLJR 1873

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : D.K. Prasad, for the Appellant; S.N. Sinha, for respondents 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—When this revision application was taken up, no body appears from the side of the respondent Nos. 6 and 7, though office notes dated 8-4-1997 shows that notice had been validly served upon them and the daily cause list also shows the name of Mr. S.N. Sinha as the Advocate for them. Therefore, in the aforesaid circumstances, in the absence of the learned counsel for the respondent Nos. 6 and 7, this revision is being heard.

2. Lower Court records have been received and perused, Heard the learned counsel appearing for the petitioner-revisionist and no body appears from the side of the State.

3. This revision is directed against the judgment dated 27-9-1996 passed in G.R. Case No. 301/1985/T.R. 474/1996 by Shri Arvind Azad, Judicial Magistrate, 1st Class, Lohardaga, whereby and whereunder the learned Magistrate hold accused Irshad Ansari guilty of an offence u/s 325 IPC and accused Rajamat Ansari guilty of an offence u/s 324 IPC and convicted them for these offences respectively and at the same time, convicted Khurshid Ansari, Shamsuddin Ansari @ Shamsul, Ram Sundar Oraon and Shyam Sundar Oraon u/s 323/34 I.P.C. It appears from

perusal of the impugned judgment and lower Court record that on the same day, when he passed the order of conviction, the learned Magistrate heard the convicts on the point of sentence, He released (a) Shamsuddin Ansari @ Shamsul, Ram Sundar Oraon and Shyam Sundar Oraon u/s 360(3) Cr. P.C. on admonition, considering their age and antecedent, (b) he found that Khurshid Ansari was previously convicted in G.R. Case No. 167/84 and in that case, he was released u/s 360(1) Cr. P.C., considering his age on the date of occurrence and the circumstances in which the offence was committed and released him on probation on entering bond of Rs. 2000/- with two Sureties for keeping peace and good behaviour for a period of one year and (c) he found that Rojmat Ansari and Irshad Ansari, who were also previously convicted in the same case, i.e. G.R. Case No. 167/84, and released on admonition, and directed their release on probation on entering bond of Rs. 3000/- and 5000/- respectively with two sureties for keeping peace and good behaviour for a period of two and three years respectively with a direction to appear and receive sentence when called upon during such respective period.

4. The informant-revisionist had challenged the order of sentence awarded by the learned Magistrate on the ground that in the face of the admitted earlier conviction, the benefit u/s 360(3) Cr. P.C. could not have been extended to Irshad Ansari and Khurshid Ansari.

5. The question is whether in the face of the earlier conviction of these two convicts, namely, Irshad Ansari and Khurshid Ansari, it was proper on the part of the learned Magistrate to give them the benefit u/s 360(3) Cr. P.C.?

6. The learned counsel appearing for the petitioner, relying on the decisions rendered in the case of Shyama Pradhan alias Shyam Sundar Pradhan and Others Vs. State of Orissa, and of K. Ramdas Shenoy v. The Chief Officer, Town Municipal Council, Udipi and Ors., argued that as these convicts were not the first offenders, this provision would not have been applicable to their case. His further case is that while awarding the benefit, even the report of the Probation Officer had not been called for by the learned Magistrate.

7. On perusal of the impugned judgment and the lower Court records, it appears that the previous conviction against these two convicts, Irshad Ansari and Khurshid Ansari, is admitted and proved. On perusal of the impugned judgment, it also transpires that the occurrence took place at a lonely place and grievous injury was caused by Irshad. The findings of the learned Magistrate are that "P.W. 2 sustained grievous injury upon his head and from the evidence as on record, it has been established specifically that accused Irshad assaulted him with iron-fixed lathi upon his head and hence the charge u/s 325 I.P.C. has been established against Irshad. ...that there is specific evidence that accused Khurshid assaulted P.W. 2 with the back portion of "Kudal" and Khurshid was found guilty u/s 324/34 I.P.C. From perusal of the impugned judgment, it also transpires that the parties were on perpetual inimical term and there were land disputes between them. It was further contended by the learned counsel

appearing for the petitioner that the earlier case in which these two convicts were convicted was not between the informant of this case and these convicts but between different persons. Thus, the learned counsel appearing for the petitioner has tried to show that these two accused persons had a bad antecedent and that it is not a fit case, in which the benefit u/s 360(1) Cr. P.C. could have been given to them as they were not entitled to be given the benefit under the Probation of Offenders Act on account of their earlier conviction aforesaid. The Apex Court, while discussing the case of a girl, who was involved many times in small theft, found that it was not a case for the benefit under the Probation of Offenders Act. I find that it was not proper on the part of the learned Magistrate, in the face of the fact that Idrish and Khurshid were not the first offenders, to give this benefit to them. Thus, the learned Magistrate passed the order with impropriety. Consequently, the impugned sentence is modified, so far as Idrish and Khurshid are concerned. Considering, the nature of the offence, Idrish is sentenced to R.I. for a period of two months and Khurshid is sentenced to R.I. for a period of one month.

8. These two persons, Idrish Ansari and Khurshid Ansari, are directed to appear before the Court below within 15 days from today to serve the sentence. If they do not appear before the Court below, the Court below will issue non-bailable warrant for their arrest. The lower Court record are directed to be returned forthwith.

9. With the aforesaid modification in sentence, this revision application is allowed.