
(1986) 08 GAU CK 0012
In the Gauhati High Court
Case No : Criminal Revision No. 208/81

Beni Madhav Das and Others

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 20-08-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 447

Citation : (1986) 2 GLR 266

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; M. Sarma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—This is a revision petition against the judgment and order dated 6.8.81 passed by the learned Sessions Judge, Cachar Silchar in Criminal Appeal No. 31(4)/80, affirming the conviction and sentences passed by the learned Judicial Magistrate, 1st Class, Silchar in G.R. Case No. 823 of 1976. On 6.12.80, the learned Magistrate convicted the Petitioner under Sections 143 and 447, IPC and sentenced each of the Petitioners to pay a fine of Rs. 200/. on each count in default to suffer S.I. for one month.

2. Mr. P. Roy, the learned Counsel for the Petitioners, has drawn my attention to the judgment of the learned Sessions Judge and has submitted that the learned Session Judge has not discussed the evidence relating to the facts which would constitute the offences under Sections 143 and 447, IPC.

3. The Appellants had a right to question the finding and conclusion of the trial Court both on the matter of fact or law. They had a right to ask for re-appraisal of the entire evidence and to challenge the appraisal of the evidence by the trial Court and its conclusion reached thereof. But the learned Sessions Judge has not reappreciated the entire evidence on record, in order to support the order of the

learned Magistrate. In this view of the matter, the judgment of the learned Sessions Judge cannot be allowed to stand.

4. As regards the judgment of the learned Magistrate, the charges were framed against 23 persons including the Petitioners. It appears that during the trial 3 persons namely, Abinash, Nirmalendu and Sudhir Das expired. Out of the said remaining 20 persons, the learned Magistrate convicted 14 persons u/s 143 and 447, IPC. The learned Magistrate without dealing with the case of each of the accused, generally came to the conclusion that the charges under Sections 143 and 447, IPC have been proved. It is not specified against which of the accused the charges have been proved. Therefore, the learned Magistrate abruptly came to the conclusion that the 14 out of 20 person were guilty of committing offences under Sections 143 Sod 447, IPC.

5. The learned Magistrate has not given reasons in his judgment for acquitting the other 6 accused, although he concluded generally that the charges under Sections 143 and 447, IPC have been proved.

6. In a criminal trial in which more than one accused are involved, the Court has to deal with the case of each accused separately and has to ascertain and give a finding as regards the act or acts proved to have been committed by each of the accused. The Court has to see whether what is proved in respect of each accused amount to an offence. In this view of the matters the judgment of the learned Magistrate also cannot be allowed to stand.

7. The next question which arises for consideration is whether the case is to be remanded, in such a situation. An offence u/s 143, IPC is punishable with imprisonment for a term not exceeding 6 months, or fine, or both. Offence under Section, 447, IPC it punishable with imprisonment not exceeding 3 months or fine of Rs. 500/- or both. Offences are triable as Summons Cases by the Magistrate. The occurrence took place on 25.4.1976 about 10 years ago. The charge-sheet was submitted on 20.7.1976. The order of conviction was passed on 6.12.1980. The conviction has been in force for about 6 years. The accused had been on their trial for about four and half years. Considering over the overall circumstances of the case, if the proceeding is terminated by exercising the powers of the High Court u/s 482, Code of Criminal Procedure it will meet the ends of justice.

8. The Supreme Court in *Machander Vs. State of Hyderabad*, and in *Union of India (UOI) Vs. Lt.Col. G.K. Apte*, refused to order remand on the ground of the trial having protected for four and half years. The observation and refusal to order remand in the said cases will apply with greater force in the present case considering the magnitude of the offences.

9. For the foregoing reasons, the order of conviction and sentences passed by the learned Magistrate and affirmed on appeal by the learned Sessions Judge are set aside. With the above observations and direction, the petition is allowed and disposed of.