
(1967) 12 GAU CK 0003
In the Gauhati High Court

Md. Rahamad Mia and Others

APPELLANT

Vs

Government of Manipur

RESPONDENT

Date of Decision : 08-12-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 323, 441, 447

Citation : (1968) CriLJ 1295

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a reference made by the Additional Sessions Judge, Manipur u/s 438, Cr.P.C. to set aside the conviction of the accused-petitioners u/s 447 I.P.C. and sentences that they should pay Rs. 50 each and that, in default of payment, they should suffer S.I. for one month each, imposed by the M.I.C., I.W. in G.R. Case No. 35 of 1962 on his file.

2. The petitioners 8 in number, belonging to Paobitek village in Mayang-Imphal were charged for the offences under Sections 447, 323 and 148 I.P.C. on the ground that they committed criminal trespass into the paddy land possessed by P.W. 5 (Abdul Salam) covered by Patta No. 85/14-1. W.T. rioting armed with deadly weapons, and that they caused hurt to P. W. 3 (Abdul Manaf), P.W. 5 (Abdul Salam) and P.W. 7 (Abdul Hei) at about 6-30 a.m. on 13.5.1962.

3. The prosecution examined 8 witnesses. The Magistrate came to the conclusion that the paddy field was in the possession of P.W. 5 (Abdul Salam) at the time of the occurrence and that the petitioners entered into his land with intent to annoy or assault him. Also, he held that in the absence of any medical report regarding the injuries sustained by P.Ws. 3, 5 and 7 (Abdul Manaf, Abdul Salam and Abdul Hei), the petitioners could not be held liable u/s 323, I.P.C. He further held that the prosecution did not exhibit the daos or sticks, said to have been used by the petitioners and that, therefore, the charge u/s 148, I.P.C. failed. He, however,

held the petitioners guilty of the offence u/s 447, I.P.C. and sentenced them as mentioned above.

4. The petitioners filed Criminal Revision Petition No 6/65/11 of 1966, which was disposed of by the Additional Sessions Judge, Manipur. He opined that, since the charges under Sections 148 and 323. I.P.C. failed, the petitioners could not be said to have had any intention to commit any offence when they trespassed and that, therefore, they were not guilty of the offence even u/s 447 I.P.C. So, he submitted the present reference to this Court.

5. The point for determination is whether the petitioners are guilty of the offence u/s 447, I.P.C. The evidence of P.Ws. 1 to 8 (Md. Nurdin, Moham Uddin, Abdul Manaf. Amer Uddin, Abdul Salam, Abdul Karim. Abdul Hei, and Moirangthem Netrajit Sinah), which was discussed by the Magistrate, shows that P.W. 5 (Abdul Salam) was in possession and enjoyment of the paddy field in question and that the petitioners trespassed into it at about 6-30 a.m. on 13.5.1962 with intent to cause hurt or annoyance to him. The judgment of the Magistrate that they had intent to cause annoyance to P.W. 5 (Abdul Salam) or assault him was not challenged. u/s 441 I.P.C. the offence of criminal trespass is committed, whenever a person enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property In the present case, the petitioners entered into the possession of the land of P.W. 5 (Abdul Salam) with intent to commit an offence or to assault or to annoy P.W. 5 (Abdul Salam). It is not necessary that the actual offence of assault should be committed. It is not necessary that the intention must be actually carried out into action. So, the Additional Sessions Judge went wrong in thinking that, as no actual assault was committed, the petitioners are not liable to be punished u/s 447, I.P.C. The judgment of the Munsiff-Magistrate in finding them guilty u/s 447 I.P.C. is correct.

6. In the result, the reference is reject-D.D.R.