
(2003) 12 GAU CK 0035
In the Gauhati High Court
Case No : Criminal Revision No. 242 of 1996

Nagen Das and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 323

Citation : (2004) 2 GLR 267

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : C.C. Deka, K. Basar and R. Saikia, for the Appellant; J.M. Choudhury and B.M. Choudhury and P.P., for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard the learned counsel for both sides.

2. This revision is preferred by the petitioners whereby the judgment and order dated 22.1.1996 passed by the Sub Divisional Judicial Magistrate (S), Barpeta in G.R. Case No. 48/92 has been challenged. In the above trial, the respondent Nos. 2, 3, 4 and 5 were charged and tried for the offence u/s 323/324/326/34 IPC and on conclusion of the trial, the trial court acquitted certain persons and convicted respondent Nos. 2 to 5 u/s 323/34 IPC and the charge u/s 324/326 IPC has been held to be not established.

3. The learned counsel for the petitioners has submitted that he has not challenged the acquittal of the accused who are not before us. The petitioner is aggrieved for not convicting the respondent Nos. 2 to 5 for the offence u/s 324/326 IPC and prays for enhancement of sentence.

4. So far the sentence is concerned, the accused persons have been directed to pay a fine of Rs. 500/- each in default to undergo S.I. for one month each. Admittedly, there was a cross case in between the parties in respect of the same incident which led to "Marpit". So far the acquittal u/s 324/326 IPC the same has

been recorded on the finding that the prosecution has failed to examine the informant, one of the injured Mahendar and the Medical Officer. So far the informant is concerned, he died during the pendency of the trial and as such he could not be examined. So far the injured Mahendar, he could not be examined as he was serving in Punjab and his presence could not be procured. The that court recorded that the Medical Officer Could not be examined as he failed to appear in spite of issuance of summons to him on several occasions. The trial court, therefore, held that in the absence of medical evidence on record, the convict on u/s 324/326 IPC is not warranted and accordingly convicted the respondent Nos. 2 to 5 u/s 323/34 IPC. The law on this point is well settled that in order to convict the accused u/s 323 IPC, absence of medical evidence is not at all fatal The learned counsel for the petitioner has submitted that when Medical Officer's presence could not be procured by summoning him, the court should have taken recourse to Section 87 Cr PC which provides that the court is empowered to issue warrant for appearance of any person after recording its reasons. It was the bounden duty of the prosecution to produce the Medical Officer. Admittedly, in this case, the prosecution failed to produce the Medical Officer's evidence. The court could have taken recourse to Section 87 CrPC. The learned counsel has referred to the observations of Allahabad High Court in the case of the State of U.P. Vs. Babu,

5. In the present case, we find that the incident had taken place on 9.1.1992. Section 87 CrPC is an enabling provision only. Admittedly, neither the prosecution nor the petitioner had approached the trial court for issuance of warrant against the Medical Officer during trial. Although the trial court has failed to exercise its power u/s 87 Cr.PC, after long 12 years we hold that no case for interference or ordering de-novo trial is made out. Accordingly, the revision petition stands dismissed.