
(1990) 11 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Appeal No. 124 of 1984

Rafiquddin and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 436

Citation : (1991) 2 GLR 134

Hon'ble Judges : S. Haque, J

Bench : Single Bench

Advocate : M.A. Laskar, F.A. Laskar and N. Mahammad, for the Appellant; D. Goswami, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Haque, J.—Six (6) accused Rafiquddin, Noor jamal, Abdul Safique Sabuddin, Abdul Sahid and Rahimuddin had been convicted u/s 436 of the IPC vide judgment dated 20-9-1984 passed by the Sessions judge, Silchar in Sessions Case No. 34/84 arising out of C.R. Case No. 341/83. So, they preferred this appeal.

2. Prosecution case was that the 6 (six) accused committed mischief by setting fire into the dwelling house of Champarunnessa on 1-9-1982. Initially she lodged the First Information Report with police and Sonai P.S. Case No. 283 (9)/82 corresponding to G.R. Case No. 2325/82 had been registered. After completing the investigation police submitted final report holding that the allegation was false, Final report was accepted by the Chief Judicial Magistrate on 10-1-83. Thereafter the complaint Case No. 341/83 had been instituted on 4-2-1982.

3. Three (3) witnesses had been examined by the prosecution was an admitted fact that the parties had old land dispute and several litigations since 1941. It appears that although the trial court was much convinced with the evidence of the witnesses, but was influenced with some materials of the final report and

case diary. Although in the complaint petition it was alleged that the valuable articles inside the house were burnt, but the Investigating Officer (sic) find articles outside without damage and burning sign. The trial court was not justified to pick up materials from the finally reported case diary in order to substantiate the evidence of the complaint case. The substantive evidence on record of the complaint case was not sufficient to hold accused guilty for commission of offence u/s 436 IPC. A complaint case must succeed on independent evidence and it would be an illegality on the part of trial court to borrow materials from the finally reported case diary without firstly intimating the accused that such materials would be considered and even if the trial court for the interest of justice and assigning special circumstance and reasons for doing so the court must firstly bring it to the notice of the accused by furnishing copy of such materials/statements from the finally reported case diary and then the same must be proved by examining the Investigating Officer as court witness giving full opportunity to the accused to cross-examine him and then such evidence must be put to the accused during examination u/s 313 Code of Criminal Procedure Without observing all such procedure the consideration of the materials from a finally reported case diary to base a conviction is bad in law. Such practice should be discouraged. The trial court committed illegality relying on the materials of a finally reported case diary to All the shortage in the complaint case. The conviction was bad and liable to be set aside.

4. In the result this appeal is allowed. The order of conviction u/s 436 of the IPC in Sessions Case No. 34/1984 silchar is hereby set aside and all the six (6) accused-Appellants are acquitted of the charge and set at liberty forthwith and discharged from bail bond.

send down the records.