
(1998) 01 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Appeal No. 202 of 1993

Tadang Tamut

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 27-01-1998

Acts Referred:

Arms Act, 1959 — Section 25(1)(a), 25(1)(a)
Criminal Procedure Code, 1973 — Section 229
Criminal Procedure Code, 1973 (CrPC) — Section 229
Penal Code, 1860 — Section 304
Penal Code, 1860 (IPC) — Section 304

Citation : (1998) 1 GLJ 365

Hon'ble Judges : B.N.Singh Neelam, J

Bench : Single Bench

Advocate : C.Barua, P.J.Saikia, Advocates appearing for Parties

Judgement

1. This criminal appeal is so preferred by the sole accused/appellant Shri Tadung Tamut against the conviction and sentence dated 9th September, 1993 in Case No. 11 of 1991 passed by the Deputy Commissioner, Pasighat, East Siang District. Arunachal Pradesh.

2. Heard Mr. C. Baruah, the learned counsel for the appellant and Mr. TN Srinivasan, the learned Public Prosecutor, representing the State of Arunachal Pradesh.

3. It transpires that the impugned judgment was so passed by the learned Court below under the provisions of section 229 of the CrPC when a date was so fixed as on 24.8.93 for hearing on the point of charge. The charges were so framed under two heads against the accused/appellant for an alleged occurrence taking place on 21st January, 1991 and the charges so framed under two heads were under section 304 of the IPC with that of the 25 (1) (a) of the Arms Act. The learned Court below at the foot of the form of the charge has incorporated that this accused/appellant has pleaded not guilty of committing any offence coming

under the provisions of section 304 of the IPC and claimed to be tried whereas with regard to the charge under section 25 (1) (a) of the Arms Act. as incorporated therein by the learned Court below, he pleaded guilty to the said charge and in that light, the learned Court below by the impugned order without entering into the evidence, convicted the accused/appellant under the Arms Act and sentenced him to undergo PJ for three years. The learned Court below in the same judgment also observed that the present accused/appellant shall also be tried under section 304 of the IPC. perhaps not splitting the record.

4. Mr. C. Baruah. the learned counsel for the appellant submits that in the instant case knowing fully well that provision of section 375 of the CrPC is barred to prefer appeal but, this appeal is so preferred challenging the very conviction and sentence so passed on the ground that before the learned Court below the statement said to have been recorded under section 229 of the CrPC cannot be said to be of the accused/appellant treating guilty particularly in the background that the charge is read over to him on 24.8.93 and the said statement, as per lower Court record so available, is said to be taken next date i.e. on the 25th August 1993, and by looking into the order sheets it transpires that there is no order sheet dated 25.8.93. It is onerous duty of the learned Court below, as submitted by the learned counsel for the appellant Mr. C. Baruah, as to see when any accused pleads guilty as to whether the same is done properly and without any misapprehension. There should have been definite acknowledgement of the guilt by the accused on the same date when the charge was read over which is not so done in the instant case making the judgment of conviction and sentence so passed liable to be set aside. Hence, the prayer is that the impugned judgment of sentence be set aside and the matter rather be remanded to the trial Court so that the present accused/appellant, if he so wishes, can defend himself and in that case by framing charge would proceed according to the provisions so contained under Chapter 18 of the CrPC.

5. Mr. TN Srinivasan, the learned Public Prosecutor, on behalf of the State of Arunachal Pradesh submits that by going through the statement of the accused/appellant dated 25.8.93 it transpires that he had specifically mentioned with regard to his using the fire arm having no licence.

6. After hearing both the sides" lawyers taking into consideration the facts discussed above also after going through the grounds so taken in this appeal for setting aside the impugned judgment of conviction and sentence particularly in the background of scrutiny of the LCRs so available by perusal, it transpires that on 24.8.93 no statement of the accused/appellant with regard to his pleading guilty is recorded, the same is found to have been recorded next day i.e. on 25th August. 1993 without opening any order sheet on that day i.e. 25.8.93 that makes the judgment of conviction and sentence liable to be set aside.

7. Taking that view, I find that there is much substance in the argument so advanced by the learned counsel representing the accused/appellant. Mr. C. Baruah, and the impugned judgment of conviction and sentence, in my

considered opinion, required interference.

8. Consequently, the judgment of conviction/sentence under challenge is thus hereby set aside and the matter is remanded to the learned trial Court so that the accused/appellant named above, if he so desires to defend himself against the charge or if he is to plead guilty, the same is recorded strictly according to law as provided under section 229 of the CrPC and at the time of trial if the situation so warrants the trial Court in such case shall decide the matter on the reliability or non reliability of the evidence adduced.

9. The matter stands according disposed of.

10. However, this order in no way will prejudice the mind of the learned Court below for passing necessary orders according to law after remand of the matter.

11. It is submitted that the accused/appellant is on bail and he be discharged from the liability of bail bond in connection with his conviction in this matter under Arms Act. The petitioner/accused to surrender and make a prayer for grant of bail afresh which be considered and disposed of by the learned Court below as per the provisions of law.

12. Since the occurrence is said to have taken place in the year 1991, the learned Court, below shall, in such case, dispose of this matter along with the allegation against him of committing offence coming under the purview of provisions of section 304 of the IPC within a period of six months from today.

13. The LCRs so called for, be sent back to the Court concerned at once.