
(1982) 04 GAU CK 0012
In the Gauhati High Court

Wazamao and Others

APPELLANT

Vs

The State of Nagaland

RESPONDENT

Date of Decision : 20-04-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313
Penal Code, 1860 (IPC) — Section 120B, 323, 365, 395

Citation : (1983) CriLJ 57

Hon'ble Judges : T.C. Das, J;K.M. Lahiri, J

Bench : Division Bench

Judgement

K. Lahiri, J.—This is a criminal appeal by 50 appellants who have been convicted u/s 120B (D, 323, 365 and 395 of the I.P.C. The substantive sentence is imprisonment till the rising of the Court and also fine. The total fine comes to Rs. 18,000/-. The conviction is based on admission of guilt to the charges.

2. The first contention of the learned Counsel for appellants is that the appellants were convicted but without furnishing them with the copies of the "Police Reports and other documents" required to be furnished u/s 207 Cr. P.C. The second contention is that the appellants Nos. 1 to 4 and 59 were never present on 27-4-1978, when the alleged pleas of guilt were recorded by the learned magistrate. The third contention of the appellants is that the accused are Lotha Nagas who had no working knowledge of Nagamese so they could not follow what were the charges explained and what statements were recorded by the learned Magistrate. They were taken aback to hear about their conviction and immediately presented an application to obtain the order of conviction to prefer appeals as they never pleaded guilty to the charge. The learned Counsel submits that the appellants never admitted guilt.

3. We find sufficient force in the contentions made by the learned Counsel. We find from records that when the accused were apprehended they applied for bail. We have looked into the bail petitions and found they had mentioned that they were not guilty of the charges. In the bail petitions they claimed that they were

innocent of the charges. They were enlarged on bail, as well. We fail to see how the very same persons who had taken a different stance in their bail petitions could in one fine morning turn around and admit guilt of serious offences like dacoity, kidnapping, etc. It creates a strong doubt as to whether the pleas of the accused were properly understood and recorded. We have perused the charges framed against the accused. We are constrained to observe that the charges were neither full nor fair nor adequate-they did not disclose the prosecution case. Further the statements in the charges were complex and pretty hard and difficult to fathom the purport and meaning-at least to the simple folks in dock who were undefended. If we turn to the statements of the accused purported to have been recorded u/s 313 Cr. P.C., we are surprised to find that they were not recorded in the usual prescribed form. A short-cut or slipshod method was adopted by the Court. The manner and method of recording the statements do not inspire any confidence in any judicial mind. The recording of the pleas was hasty and does not reflect in respect of what charges and in respect of what allegations the appellants allegedly admitted guilt. We are unhappy to note the manner in which the statements were recorded and we are inclined to hold that the appellants must get the benefit of doubt. Now turning to the question of non-furnishing the Police papers which the accused were entitled to obtain u/s 207 Cr. P.C., we find no record to ascertain whether they were handed over on the date of framing of charges or earlier. If we assume that the Police papers were handed over to the appellants on the date of framing charges we must hold that serious prejudice was caused to the accused. It was impossible for the accused to go through the entire Police papers, prepare their cases and to meet the charges. There is absolutely no reason why the learned magistrate was so hasty to hand over the papers and to frame charges on the very same day. We have every reason to believe that perhaps the learned magistrate was informed by the police that the appellants had been furnished with Police papers on some other date, and, accordingly, learned magistrate recorded the statements. On scrutiny of the entire records we fail to come across any acknowledgement made by the appellants of the receipt of the Police papers. We are constrained to hold that the accused persons were not furnished with the Police papers before the charges were framed.

4. There is another interesting facet. We find that the learned magistrate himself categorically admitted in the order that the incident is a sequel to a land dispute between the appellants and the other side. The learned Magistrate observed:

As established from the hearing of each of the accused persons that the offences with which they stand charged were committed because of land dispute between Yikhum and Humtse village.

It shows, therefore, that the appellants claimed that they took the crop claiming them to be their property. In any view of the matter the learned Magistrate gathered this from the statement of the accused but we do not find any such statement. So it was a vital omission which shows that : (1) the recording of the

statement was improper, (2) the recording was neither full nor fair nor adequate, and (3) the statements which were in favour of the appellants were not recorded by the learned magistrate. All these go to show that what were recorded as plea of guilt were not the complete statements of the appellants.

5. Therefore, considering all these aspects we reach the finale that (1) the Police papers were not furnished to the appellants as enjoined by and u/s 207 Cr. P.C., (2) we have strong doubt whether the Police papers were furnished to the accused, and (3) the statement which were considered to be plea of guilt were not fully, fairly and adequately recorded by the learned Magistrate.

6. For the reasons set forth above, we hold that the conviction of the accused, based on the alleged plea of guilt, must be set aside which we hereby do and remit the case to the District Magistrate, Wokha who shall try the case himself or transfer the case to any other competent magistrate. The learned Magistrate shall hear and dispose of the case as expeditiously as possible, if possible within 3 months from the date of receipt of the records. If the Magistrate finds any of the accused to be indigent, he shall direct engagement, of lawyers at the expense of the State to defend those indigent accused.

7. In the result the impugned judgment and order are set aside. The appeal is allowed. Send down the records to the learned District magistrate.