

GAHC010280552019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./493/2019

MD. SAHIDUL KHAN AND ANR.
S/O REZZAK KHAN, R/O VILL-KAWAIMARI 12 NO. BLOCK, MOUZA-PAKA,
P.S.-SARTHEBARI, DIST-BARPETA, ASSAM

2: MATU KHAN
S/O LATE MOKDAM KHAN
R/O VILL-KAWAIMARI 12 NO. BLOCK
MOUZA-PAKA
P.S.-SARTHEBARI
DIST-BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MUSSTT. BATASHI KHATUN
W/O MUKTAR ALI
ADD-VILL-KAWAIMARI 12 NO. BLOCK
MOUZA-PAKA
P.S.-SARTHEBARI
DIST-BARPETA
ASSA

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

20.06.2024

Heard the learned counsel Mr. M.J. Quadir appearing for the petitioners. Also heard Mr. B. Sarma, the learned Addl. Public Prosecutor, Assam representing Respondent No.1. None appears for the Respondent No.2.

2. This is an application under Sections 401 and 397 of the Code of Criminal Procedure challenging the judgment dated 27.09.2019 passed by the learned Sessions Judge, Barpeta in Criminal Appeal Nos.13/2019 and 14/2019 as well as the judgment dated 15.06.2019 passed by the learned Judicial Magistrate First Class in G.R. Case No.6626/2013.

3. The present petitioners were convicted under Sections 448 and 326 of the Indian Penal Code by the learned Judicial Magistrate First Class. Thereafter, they filed an appeal challenging the said judgment. The victims also filed an appeal for enhancing their sentences.

4. By a common judgment, the learned Sessions Judge, Barpeta held that examination of a particular doctor is necessary and therefore, remanded the case to the learned trial court for retrial of the case by examining the said doctor.

5. Mr. Quadir has pointed out that the order passed by the learned Sessions Judge is bad in law in view of the law laid down under Section 391 of the Code of Criminal Procedure.

6. I have considered the submissions made by the learned counsel of both sides. I have decided to agree with Mr. Quadir.

7. Therefore, the impugned order is bad in law under Section 391 of the CrPC. The Sessions Judge could have directed the trial court to examine the doctor and to send his evidence back to the Sessions/Appellate Court. Thereafter, the appeal could have taken up for disposal on merit.

- 8.** The criminal revision petition is allowed.
- 9.** The impugned judgment dated 27.09.2019 passed by the learned Sessions Judge, Barpeta in Criminal Appeal Nos.13/2019 and 14/2019, is set aside.
- 10.** The case is remanded to the appellate court. The learned Sessions Judge, Barpeta is directed to pass an order asking the trial court to examine the said doctor and after recording his evidence, the said evidence shall be sent back to the appellate court. Thereafter, the appellate shall dispose of the appeal in accordance with law.
- 11.** The petitioners shall remain on previous bail till disposal of the appeal.

With the aforesaid direction, the revision petition is disposed of.

JUDGE

Comparing Assistant