

(1950) 06 GAU CK 0001

Gauhati High Court

Case No: Criminal Revision No. 23 of 1950

Charali

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: June 19, 1950

Acts Referred:

- Penal Code, 1860 (IPC) - Section 325, 354, 457

Citation: AIR 1952 Guw 18

Hon'ble Judges: T.V. Thadani, C.J; Ram Labhaya, J

Bench: Division Bench

Advocate: M.N. Roy, for the Appellant; R.K. Goswami, Govt. Advocate (Jr), for the Respondent

Final Decision: Dismissed

Judgement

Ram Labhaya, J.

The petitioner Jamurrudin Ahmed was found guilty and convicted under Sections 457, 354 and 325, I.P.C., by a Magistrate of the 1st Class at Golaghat by his order, dated the 3rd January, 1949. He was sentenced to undergo R.I., for one year u/s 457, I.P.C. No separate sentence was passed u/s 354, I.P.C. The sentence u/s 325, I.P.C., was R.I., for four months. The two sentences under Sections 325 and 354, I.P.C., were to run concurrently.

2. The correctness of the conviction was not questioned in appeal. The sentences were characterised as severe. The learned Sessions Judge after giving due consideration to the matter reduced the sentence of 12 months R.I., u/s 457, I.P.C., read with Section 354 to 6 months R.I. The sentence of 4 months R.I. u/s 325, I.P.C., was upheld; but these two sentences were ordered to run consecutively.

3. The Learned Counsel for the petitioner argues that there has been an alteration of the sentence at the appellate stage. The sentences passed under Sections 457 and 325 were to run concurrently according to the order of the trial Magistrate. On

appeal, though the sentence u/s 457 has been substantially reduced, the two sentences have been made to run consecutively. This, he considers, amounts to an enhancement of the sentence which the appellate Court had no power to order.

4. There is no force in this contention. The sentence u/s 325 was not interfered with. It was allowed to stand. The sentence awarded under S. 457 was actually reduced from one year to 6 months R.I. If the sentences are considered separately, there was reduction of sentence and no enhancement. If the aggregate sentence is taken into account, the petitioner would have had to undergo R.I. for one year if there had been no alteration in the order of the trial Court. The effect of the alteration is that though sentences have been made to run consecutively instead of concurrently, the aggregate sentence of one year is reduced to 10 months R.I. There is thus no enhancement in sentences whether they are looked upon separately or they are combined and their effect is seen in the aggregate. The contention is repelled and the petition is dismissed.

Thadani, C.J.

5. I agree.