

## Basanta Kumar Pal and Others Vs Kamini Mohan Pal

**Court:** Gauhati High Court (Agartala Bench)

**Date of Decision:** June 7, 1957

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 323

**Citation:** (1957) CriLJ 1458

**Hon'ble Judges:** Datta, J.C.

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

Datta, J.C.

1. This revision petition is directed against the order of the District Magistrate by which he dismissed the appeal preferred by the three Petitioners

against their conviction for an offence punishable u/s 323 of the I. P. C., and sentence of R. I. for 15 days with a fine of Rs. 15 each by the

Magistrate 3rd Class, Dharmanagar, The appeal was heard after notice to the parties. The judgment of the District Magistrate was as follows:

Gone through the records and heard both parties.

The grounds for appeal are vague and not at all to the point. In fact they have not made any points either of law or facts worth considering,

Firstly the accused was discharged by N. Sinha, Magistrate 3rd Class and the learned Sessions Judge ordered for further enquiry and was then

convicted by the lower Court (Shri A. Dutta, Magistrate 3rd Class).

No point has been brought out by this Court to set aside the conviction. Hence

ORDER

The appeal is rejected.

Stay order is vacated.

2. Section 367 of the Criminal P. C., requires that a judgment shall contain the point or points for determination, the decision thereon and the

reasons for the decision, and the provisions of 8, 367 apply to judgments of Subordinate Appellate Courts also by virtue of Section 424 of the

Criminal P. C.

3. It will be thus clear that the judgment of the learned Magistrate was in total disregard of the requirements of Section 367. In the absence of

reasons, it is difficult to understand how the grounds of appeal were vague and not at all to the point. There was no discussion of the evidence at all

to show how the learned District Magistrate reached the finding that no case was made out for setting aside the conviction, that is, the conviction

was correct. The learned District Magistrate also failed to consider whether the sentence awarded was proper or not.

4. Such a judgment cannot be sustained, has it is vitiated on account of the total non-compliance with the requirements of Section 367, and [for

reasons only too obvious. Section 537 of the Criminal P. C., cannot be invoked in aid of such a Judgment.

5. Authorities are also not wanting on the point and it will be enough, in my opinion, to refer to a few of them only. In *Sanmukh v. Emperor* AIR

1930 Bom 163 (A), the judgment of the appellate Court suffered from a similar infirmity as in the present case. It did not go beyond saying that the

trial Court's order contained everything, and its appreciation of the evidence was correct and the appellants' pleader's arguments were not

convincing.

It was held that the language of Section 367 was peremptory on the points already mentioned by me in para 2 and consequently failure to comply

with those requirements amounted to an illegality which vitiated the order.

6. In *Abdul Karim v. Emperor* AIR 1940 Sindh 113 (B), the appellate order was set aside on the ground that the reasons given in the judgment of

the appellate Court were not Such as to enable the Revisional Court to form any conclusions as to the correctness, legality or propriety of the

findings.

7. To the same effect were the observations in *Bhola Nath Mullick v. The Emperor* 7 Cal WN 30 (C), in which the appellate judgment of the

Sessions Judge was set aside, because he had failed to state the facts or the reasons for his decision in his judgment, and the appeal was sent down

for a proper retrial.

8. A suggestion was. made that this Court may, ignoring the appellate order look into the judgment of the trial Court and the evidence adduced in

that Court, and decide this revision. I must decline to do so, as that would be acting as an appellate Court in a revision. The duty of going into the

evidence and trying the appeal in a proper way is of the appellate and not the revisional Court.

9. The next question to be considered is whether the appeal should be sent down to the same Court Or to some other Court because in view of

the change in the Criminal P. C., effected by the Amending Act No. 26 of 1955, this appeal can be heard and disposed of by the Court of Session

also. It is well recognized that when a re-trial is ordered, unless it is not possible to get a Magistrate other than the one who convicted him or unless

there are reasons which make it necessary that the re-trial should be by the same Magistrate, it is highly desirable that the trial should not be held

before the same Magistrate (see Bali Ram Kalwar and Another Vs. Sitaram Kalwar, Following that principle, I think that this appeal should now

be retried by another Court.

10. In the premises, I set aside the order of the District Magistrate dismissing the appeal and direct that the appeal be reheard and disposed of by

the Sessions Judge, Tripura. The Sessions Judge will however have the liberty to make over the appeal to some other Judge of his Court as

provided for by Section 409 (2) of the Criminal Procedure Code.