

GAHC010022232023



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

Case No. : Crl.Rev.P./48/2023

UTPAL DEKA

S/O- LATE NILA KANTA DEKA, VILL.- UJANKURI, SUTORMUKH, P.S. HAJO,
P.O. UJANKURI, DIST. KAMRUP, ASSAM, PIN- 781102.

VERSUS

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

2:DIPJYOTI PATHAK

S/O- SRI BHUBANESWAR PATHAK

VILL.- UJANKURI

P.S. HAJO

P.O. UJANKURI

DIST. KAMRUP

ASSAM

PIN- 781102

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : MS. A. BEGUM, ADDL.PP, ASSAM
MR. A. R. MEDHI, FOR R-2

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

21.07.2023

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Ms. A. Begum, learned counsel for the State respondent No. 1 and Mr. A. R. Medhi, learned counsel for the respondent No. 2.

2. This is an application under Sections 397/401 of the Code of Criminal Procedure, 1973, against the impugned order dated 31.10.2022, passed by the learned Additional Session Judge, Rangia, Kamrup, in Sessions Case No. 27/2022, framing charge against the present accused petitioner under Sections 302/201 of the Indian Penal Code.

3. It is stated that the opposite party No. 2 lodged an F.I.R. before the Officer-In-Charge, Kamalpur Police Station, stating *inter alia* that some unidentified person had murdered his relative Pranabjyoti Pathak and his dead body was recovered under Borka-Kamalpur PWD Road Culvert, which is located at village Nuja Bordoipokhiya. On receipt of the said F.I.R., the Officer-In-Charge, Kamalpur Police Station, registered a case, being Kamalpur P.S. Case No. 303/2013, under Sections 302/201 of the Indian Penal Code. Subsequently, the accused petitioner was arrested in connection with the said case and Charge-Sheet was also filed against the present petitioner on 31.10.2022. After filing of the Charge-Sheet, the accused petitioner appeared before the

Committal Court and thereafter also appeared before the Court of learned Additional Session Judge, Rangia, Kamrup, for trial in Sessions Case No. 27/2022. After his appearance, the learned Session Judge, vide order dated 31.10.2022, pleased to frame charge against the present accused petitioner under Sections 302/201 of the Indian Penal Code.

4. On being aggrieved and dissatisfied with the impugned order dated 31.10.2022, passed by the learned Additional Session Judge, Rangia, Kamrup, the present petition has been preferred by the present accused petitioner for setting aside and quashing the said impugned order.

5. It is further stated that the learned Additional Session Judge, Rangia, Kamrup, had failed to appreciate the evidence in its true perspective and came to an erroneous finding which is not tenable in the eye of law and the same is liable to be set aside and quashed. There was no material before the Court of learned Session Judge to presume that the accused petitioner had committed the murder of Late Pranabjyoti Pathak and there is no *prima facie* evidence to support the accusation and as such, the impugned order is bad in law and liable to be set aside.

6. The learned Additional Session Judge also failed to appreciate the fact that none of the witnesses, in their statement recorded under Section 161 Cr.P.C., has stated that the petitioner was with the deceased on 28.09.2013, i.e. the day from when the deceased went missing. The accused petitioner was merely arrested in connection with this case only on suspicion. However, the I.O. failed to bring *prima facie* material on record to establish the fact that the accused

petitioner had committed the murder of Late Pranabjyoti Pathak.

7. During the course of argument, relying on the statement of the witnesses under Section 161 Cr.P.C., the learned counsel for the petitioner, Mr. T. Deuri, has submitted that there is no iota of evidence to *prima facie* establish a case against the present accused petitioner. But, after considering the statement made by the witnesses, the learned Court below framed the charge against the present accused petitioner under Sections 302/201 of the Indian Penal Code, which is bad in law and liable to be set aside and quashed.

8. In this context, the learned counsel for the respondent No. 2, Mr. A. R. Medhi, has submitted that the charge can be framed if the case is *prima facie* established. Framing of charge is itself a *prima facie* order and upon considering the police report, statement of the witnesses and other relevant documents like seizure list etc., the Court can frame the charge if the case is *prima facie* found to be established. In support of his submission, the learned counsel also relied on a decision of Hon'ble Apex court reported in **2000 (1) SCR 27 (Kanti Bhadra Shah & Anr. Vs. State of West Bengal)**, wherein, it has been held that "*framing of charge itself is prima facie order that the trial judge has formed the opinion, upon consideration of the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.*"

9. Further it is submitted by the learned counsel for the respondent No. 2 that as per the seizure list, it is seen that the CDR analysis was seized in connection with this case wherefrom it is seen that the deceased had many

conversation with the accused petitioner on the day of incident itself. Further it is submitted that from the statement made by the mother of the victim as well as the brother of the victim etc., clear allegation is brought against the present accused petitioner which is sufficient to *prima facie* establish a case and to frame charge against the present accused petitioner.

10. After considering the submissions made by the learned counsels for both sides, I have perused the case record and annexures filed along with the petition.

11. It is seen that the learned Additional Session Judge, Rangia, Kamrup, after hearing the statement made by both the parties and also considering the entire materials on record and finding a *prima facie* materials to presume that the accused petitioner had committed the murder, framed charge against the present accused petitioner under Sections 302/201 of the Indian Penal Code on 31.10.2022. On perusal of the copy of the statement made under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C., it is seen that the prosecution could bring a *prima facie* materials to frame charge against the present accused petitioner and it is a settled position of law that to frame a charge the only requirement is to *prima facie* establish a case by the prosecution side.

12. In view of above, I find that the learned Additional Session Judge, Rangia, Kamrup, committed no illegality or mistake while framing charge against the present accused petitioner under Sections 302/201 of the Indian Penal Code, vide order dated 31.10.2022, in Sessions Case No. 27/2022.

13. In the result, I do not find any merit in this petition and accordingly the same stands dismissed.

JUDGE

Comparing Assistant