

GAHC010010592014



2024:GAU-AS:12483

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

Case No. : Crl.Pet./406/2014

ROBINDRO BASUMATARY
S/O LT. NRIPENDRA BASUMATARY R/O UTTAR KAJALGAON P.S.
BONGAIGAON, DIST. BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.A K BHUYAN, MS.P PATHAK,MS.B BARUAH,MS.N CHOUDHURY,MS.I KRISHNATRAIYA

Advocate for the Respondent : , ,PP, ASSAM,,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 11.12.2024

1. Heard Mr. A.K. Bhuyan, learned counsel for the petitioner. Also head Mr. P Borthakur, learned Addl. PP, Assam.
2. The present petition under section 482 Cr.P.C, 1973 is filed for quashing of the FIR dated 12.01.1994 registered as Dhaligaon PS Case No.5/1994 under section 395/397 IPC and for setting aside the charge sheet No.44/94 dated 11.09.1994 under sections 395/397 IPC.
3. The FIR was lodged by one Milan Dey, inter alia alleging that on

11.01.1994 at about 1.30 AM, 30 persons entered into his house and fled away taking all his house belongings. It was further alleged that they attacked the father of the informant by using weapon and fled away, when the father of the informant got injured and fell down.

4. During the course of investigation, the investigating authority recorded the statement of the informant and other five witnesses under section 161 Cr.P.C. The informant in his statement under section 161 Cr.P.C, specifically stated that he could not recognize the culprits and also he don't know the name of persons who had committed the offence. None of the other witnesses whose statements were recorded under 161 Cr.P.C also identified the accused person. No test identification parade was also done.

5. After completion of the investigation as many as 11 accused were sent for trial including the present petitioner, namely, Rabindra Basumatary. It is the contention of the petitioner that the petitioner did not receive any summons or warrants from the trial court and therefore, he did not appear in the trial though he was sent to face trial.

6. Be that as it may, when the petitioner did not appear in the trial, the other accused persons were tried and the learned trial court relying on the submission of the PW-1 i.e., the informant, acquitted all the accused persons.

7. It is on record that the PW-1 in his deposition during the trial testified that at the time of incident that he could not identify the accused persons as they had covered their face with black clothes and he further deposed that he failed to recognize them. All the accused persons who faced the trial were acquitted by the learned trial court in the meantime.

8. The learned trial court had made its conclusion in the following manner:

“In the instant case the informant alleged that on the day of occurrence a group of 30 persons committed dacoity in his house and taken away valuable things along with gold ornaments. But in his FIR he has not mentioned the name of the accused persons. In his deposition before the court he also stated that he failed to recognize the accused persons as they have covered their face with black clothes. Moreover, the prosecution failed to examine the father of the informant as he had already expired. From the deposition of PW 1 it appears that he did not say that the alleged offence was committed by the present accused persons. He failed to recognize the accused persons. On the other hand, prosecution side in support of the alleged offence failed to adduce any other eyewitnesses in respect of the commission of offence by the accused persons as alleged. It is burden of prosecution side to prove the case against the accused persons as alleged. But the prosecution side totally failed to prove the case. So, the court found no material against the accused persons for commission of offence under sections 395/397 IPC. In view of the above, the accused persons are entitled to get acquittal.”

9. Thus from the aforesaid, it is also seen that the PW-1 never testified that he could recognize any of the accused persons.

10. Therefore, in the totality of the matter, this court is of the view that there is no material to prosecute the accused persons even if the statement under section 161 Cr.P.C as well as the FIR accepted to be correct at its face value, coupled with the determination made by the learned trial court.

11. Accordingly, the Dhaligaon PS Case No.5/94 under section 395/397 IPC and charge sheet No.44/94 dated 11.09.94 is set aside and quashed, so far the same relates to the present petitioner.

12. The LCR be returned back.

JUDGE

Comparing Assistant