

GAHC010147962020



2024:GAU-AS:13135

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

Case No. : Crl.Pet./516/2020

DIPEN PATOR
S/O LT. BHOGESWAR PATOR, R/O VILL. NALBARI, W/NO.2, P.S. UDALGURI,
DIST- UDALGURI, BTR, ASSAM, PIN-784526

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SITARAM CHUHAN
S/O LT. NAGINA CHAUHAN
R/O KOTHALGURI
P.S. AND DIST- UDALGURI
BTR
ASSAM
PIN-78452

Advocate for the Petitioner : MR. T DEURI,

Advocate for the Respondent : PP, ASSAM, MR. R S CHAUHAN (R-2)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

02/09/2024

Heard Mr. Tapan Deuri, learned counsel for the petitioner and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the State respondent No.1. Also heard Mr. R. S. Chauhan, learned counsel for the opposite party No.2/informant.

2) Petitioner is an accused in Udalguri Police Station Case No. 145/2013 corresponding to G.R. No. 1258/2013 and on completion of the investigation charge-sheet No.93 was filed in said Udalguri P.S. Case on 31.08.2019 against the petitioner under Sections 302/376 IPC.

3) According to the petitioner, the learned Chief Judicial Magistrate, Udalguri in the said G.R. Case No. 1258/2013 issued summon to the petitioner for his appearance and he appeared before the said learned Magistrate.

4) By filing this petition on 14.10.2020 under Section 482 CrPC, the petitioner has prayed to set aside and quash the charge sheet dated 31.08.2019 filed against him under Sections 302/376 IPC in said Udalguri P.S. Case No. 145/2013.

5) Petitioner stated that on the face value of the said charge sheet dated 31.08.2019 filed against him, if taken on entirety, it can be seen that no case has been made out against him. Further, the said charge sheet dated 31.08.2019 do not prima facie make out the case under Sections 302/376 IPC against him.

6) According to the petitioner, the uncontroverted allegations made in the said charge-sheet dated 31.08.2019 does not disclose the commission of any offence by the petitioner, nor any case has been made out against him. It is also stated by the petitioner that neither from the FIR of said Udalguri P.S. Case No. 145/2013 as well as the charge-sheet dated 31.08.2019 filed against him in the said Udalguri P.S. Case, it can be seen that no specific allegation has been made against the petitioner.

7) The petitioner also submitted that there is no eye witness to the incident that he was present at the place of occurrence at the relevant point of time and that merely on the statement

of a child witness aged about five years, son of the deceased, it cannot be corroborated the fact that the petitioner as well as the child witness were present at the place of occurrence and that it was the accused who committed the crime.

8) The petitioner further stated that the FSL report pertaining to DNA test of the blood sample of the petitioner as well as the materials of the deceased recovered from the place of occurrence specifically stated that the exhibits were found to be fragmented and those could not be amplified and therefore, comparison could not be done. As such, in the absence of any eye witness to the incident, there was no reason for the concerned Investigating Officer to come to a conclusion that it is the accused petitioner, who had committed rape upon the deceased and killed her.

9) As summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course, the petitioner submitted that considering the materials in the record in said Udalguri P.S. Case No. 145/2013 as well as the charge sheet dated 31.08.2019 submitted against the petitioner under Sections 302/376 IPC in the said Udalguri P.S. Case, the impugned charge sheet No. 93 dated 31.08.2019 in said Udalguri P.S. Case No. 145/2013 should be set aside and quashed by the Court.

10) By order dated 02.12.2020, the Court called for the records of G.R. Case No. 1258/2013 along with the records of Udalguri P.S. Case No. 145/2013 from the Court of learned Chief Judicial Magistrate, Udalguri.

11) Perused the same.

12) It is seen that the opposite party No.2 as an informant on 03.11.2013 lodged a written Ejahar before the Officer-in-Charge of Udalguri Police Station stating that his sister-in-law Urmila Devi aged about 40 years around 01:00 pm left from her residence at Kathalguri to Belguri Pathaar to harvest paddy. As she did not return home till late in the evening, family members went out in search of her and found her dead in Belguri paddy field. Seeing injuries on her body it appears that some miscreants have killed her and left her in the said paddy field.

13) Said Ejahar of the opposite party No.2 was accordingly registered as Udalguri P.S. Case No. 145/2013 under Section 302 IPC.

14) It is seen from the records that the FSL report dated 24.04.2013 the seized apparel of the

deceased from the place of occurrence gave positive test for human spermatozoa.

15) On the prayer of the concerned Investigating Officer, statement of the minor son of the deceased was allowed to be recorded under Section 164 CrPC by the learned CJM, Udalguri vide its order dated 25.04.2019.

16) It is seen that on the prayer of the concerned Investigating Officer of the case and on considering the medical examination report of the victim, learned CJM, Udalguri by order dated 26.04.2019 allowed to add Section 376 IPC in said Udalguri P.S. Case No. 145/2013.

17) It is also seen from the statement of the minor son of the Dina Nath Chouhan and the deceased, namely, Birju Chouhan, aged about ten years recorded by the learned CJM, Udalguri on 25.04.2016 in said Udalguri P.S. Case No. 145/2013 that on the date of the incident when he went to the paddy field in search of his mother, he met the present petitioner in the said field and on being enquired, the petitioner told him that "your mother is dead, you go home now otherwise you will get a slap". As the petitioner approached him to beat him, the said minor ran away from the paddy field and then he informed his father, grandfather, uncle and his family members.

18) In his said 164 CrPC statement, the minor son also stated about the injuries that he saw on his mother. On being enquired by the Magistrate, as to why he did not said it for the last three years, the said minor son specifically answered before the Court that he had stated it before the police.

19) From the records of the case, it is seen that the petitioner was arrested in said Udalguri P.S. Case No. 145/2013 on 04.05.2019 under Section 302 IPC with added Section 376 IPC and was produced before the Court of learned Chief Judicial Magistrate, Udalguri on 04.05.2019 itself. Thereafter, the petitioner was released on bail by this Court in Bail Appln. No. 1497/2019 by order dated 28.06.2019.

20) From the records of the case, it is also seen that the petitioner used to stay in front of house of the informant's family at Udalguri. Further, the case records reveals that there is a land dispute between the petitioner and the husband of the deceased and that said disputed land of the petitioner is adjacent to the land of the husband of the deceased wherein, the dead body of the deceased was recovered. Further, the record also reveals that the deceased victim was earlier

a neighbour of the accused petitioner in Nalbari village, Udalguri and she along with her family shifted to Kathalguri due to land related conflict between them just five days before the crime.

21) After hearing the learned counsels for the parties and considering the relevant records including the charge sheet and the case diary, the Court is of the opinion that it cannot be said that there are no such evidence in the case that are not conclusive to prove the charges against the petitioner.

22) The case diary, FSL report, Postmortem examination report of the deceased and the statement of the witnesses acquainted with the facts of the case indicate the involvement of the petitioner in the case.

23) Considering the above, this Court is of the view that it is not a fit case to exercise the power of the Court under Section 482 CrPC to set aside and quash the charge-sheet No. 93 dated 31.08.2019 submitted in said Udalguri P.S. Case No. 145/2013 against the petitioner under Sections 302/376 IPC.

24) For the reasons above, this criminal petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant