

GAHC010235022017



2024:GAU-AS:11655

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

Case No. : Crl.Pet./304/2017

RABENDRA NATH DAS
S/O LT. DEBENDRA NATH DAS VILL- NAMATI-KA KALIBARI, P.S. MAZBAT
DIST. UDALGURI, BTAD, ASSAM

VERSUS

STATE OF ASSAM and 3 ORS

2:BISHAL GHOSH
S/O JADAB GHOSH VILL- NAMATI -KA
MAZBAT RAILWAY STATION BLOCK
P.S. MAZBAT
DIST. UDALGURI
BTAD
ASSAM
PIN - 784507

3:GUNAJIT KALITA
S/O BHABEN KALITA VILL- NAMATI KA KALIBARI
P.S. MAZBAT DIST. UDALGURI
BTAD
ASSAM
PIN - 784507

4:ABHIJIT SARKAR
S/O BIJOY SARKAR VILL- NAMATI-KA
KALIBARI
P.S. MAZBAT
DIST. UDALGURI
BTAD
ASSAM

PIN - 78450

Advocate for the Petitioner : MS.P UPAMANYU, MR.U DAS,MS.B CHAKRABARTTY,MR.S UPADHAY,MR.P SARMAH

Advocate for the Respondent : MR.L BARMANR- 3and4R-2, MR.S DAS(R- 3&4)(R-2),MS.J DEKA(R- 3&4)(R-2),MR.A GANGULY(R- 3&4)(R-2),MR.S KALITA(R- 3&4)(R-2),PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

26-11-2024

- 1.** Heard Mr. B. Chakraborty, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the respondent No. 1. Also heard Mr. A. Ganguly, learned counsel for the respondent Nos. 2 to 4.
- 2.** The present petition is filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, read with Section 482 of the Code of Criminal Procedure, 1973.
- 3.** By this petition, the petitioner has challenged an order dated 05.01.2017 passed by the learned Principal Magistrate, Juvenile Justice Board of Udalguri, BTAD, accepting the Final Closure Report of the police and thereby, setting the child in conflict with law at liberty rejecting the objection raised by the petitioner.
- 4.** The fact of the present case in a nutshell is to the effect that on 27.09.2015, the grandson of the petitioner, namely, Bhargav Kashyap, a juvenile, went out with the accused persons, who were also juveniles, to the nearby railway station and thereafter, they went to a pond and the victim died.
- 5.** It is suspected by the grandfather of the deceased that it was the accused persons

who had killed his grandson and therefore, on 03.11.2015, the petitioner submitted an application to the Superintendent of Police, Udalguri, BTAD, which upon being forwarded to the police, was registered on 25.11.2015 as Mazbat Police Station Case No. 89/2015, corresponding to GR Case No. 1223/2015 under Sections 120(B)/302 IPC.

6. It is on record that the dead body was recovered on the date of the incident i.e., on 27.09.2015, however, neither FIR was lodged by his grandfather nor by the police suo moto and no post-mortem was conducted. The FIR was lodged on 25.11.2015 by the informant/ grandfather of the deceased. Thereafter, on registration of the FIR, the buried body of the victim was taken out and the post-mortem was conducted but the doctor opined that the reason of death could not be concluded for the reasons that the body was already in decomposed stage.

7. It is seen from the record that during the investigation of the case, a complaint was filed by the grandfather before the learned Sub-Divisional Judicial Magistrate (S), Udalguri and on receipt of such complaint, the learned Magistrate under its order dated 20.11.2015 directed the Mazbat Police Station to file a report under Section 210 CrPC. Subsequently, the Superintendent of Police, Udalguri submitted a report to the effect that the investigating authority had preserved part of femoral condyle and part of rib of the deceased and the same was forwarded for forensic examination. Subsequently, the investigation was proceeded and the Final Closure Report was filed by the investigating authority. At the time of examination of the witnesses under Section 161 CrPC, it was found that no single witness had deposed that the accused persons, as a result of their joint conspiracy, had killed said juvenile victim and threw his body in the ditch and it was also expressed that the case is suspected to be a death by an accident and there is no proof of killing against the minor accused persons.

8. The complainant filed a protest petition alleging that the police had not properly conducted the investigation inasmuch as there were eye-witnesses to suggest that when the deceased was taken out from the water, there was no water in his abdomen. However, the learned Principal Magistrate, Juvenile Justice Board, Udalguri, BTAD, by its

order dated 05.01.2017 rejected such contentions of the petitioner.

9. The learned Principal Magistrate, Juvenile Justice Board, Udalguri, BTAD after going through the case record including the post-mortem report and the statements of the witnesses recorded by the Investigating Officer under Section 161 CrPC, opined that no sufficient material could be found against the children in conflict of law regarding the commission of alleged offences under Sections 120(B)/304 IPC. It was further opined that no specific ground had been stated in the objection petition filed by the informant for dissatisfaction to the Final Closure Report. It was also opined by the learned Magistrate that the objection petition did not fulfil the requirement of a 'complaint' as defined under Section 2(d) of CrPC.

10. Being aggrieved, the present petition is filed.

11. As the grandfather of the deceased has raised an issue as regards inadequate and improper investigation, this Court thought it prudent to exercise its power under Section 482CrPC to go through the case diary of the case which is available on record. After perusal of the case diary, more particularly, the statements of the grandfather and other witnesses who had seen those three children reveal that the three children went to a pond near railway station. These three are from the same locality and known to each other. There is no material even remotely suggesting any intention to commit the offence or that there were some quarrel between the parties. Infact the grandfather of the victim became suspicious, when someone said that there was no water inside the stomach of the child. In the backdrop of the aforesaid material, this Court is of the opinion that the conclusion arrived at by the learned Magistrate is a reasonable conclusion and the said conclusion had been arrived at on the basis of the material available on record. This Court has not found any lackadaisical approach of the investigating authority or any material irregularity in conducting the investigation resulting in violation of the right of the fair investigation of the informant.

12. In view of the aforesaid reasons, this Court is not inclined to interfere with the

impugned 05.01.2017 passed by the learned Principal Magistrate, Juvenile Justice Board of Udalguri, BTAD. Accordingly, the present criminal petition stands dismissed.

13. LCR be returned back.

JUDGE

Comparing Assistant