

GAHC010273332023



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

Case No. : Crl.Pet./1282/2023

ABDUL KADER AND 4 ORS
S/O JONAB ALI
R/O VILL- PAKDAH BIL PATHAR
P.S. BARPETA,
DIST. BARPETA, ASSAM

2: AYMONA BEGUM @ AYMAN NESSA
W/O ABDUL KADER
R/O VILL- PAKDAH BIL PATHAR
P.S. BARPETA

DIST. BARPETA
ASSAM

3: MD. JAKIR HUSSAIN
S/O ABDUL KADER
R/O VILL- PAKDAH BIL PATHAR
P.S. BARPETA

DIST. BARPETA
ASSAM

4: LOKMAN HUSSAIN
S/O ABDUL KADER
R/O VILL- PAKDAH BIL PATHAR
P.S. BARPETA

DIST. BARPETA
ASSAM

5: NASIR HUSSAIN
S/O ABDUL KADER
R/O VILL- PAKDAH BIL PATHAR
P.S. BARPETA

DIST. BARPETA
ASSA

VERSUS

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

2:ASMA BEGUM
W/O IMRAN ALI
VILL- PAKDAH BIL PATHAR
P.O. PALHAJI
P.S. BARPETA

DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

07.06.2024

1. Heard Mr. R. Ali, learned counsel for the petitioners. And also heard Mr. A.M. Khan, learned counsel for the respondent No. 2. and Mr. R. J. Baruah, learned Additional P.P. for the state.

2. By filing this application u/s 482 Cr.PC, the petitioners have prayed to quash the impugned order dated 07/04/2022, passed by the learned JMFC, Barpeta in PRC Case No. 08/2022, whereby cognizance was taken against the petitioners and impugned order dated 04/05/2023, whereby formal charge was framed against the petitioners u/s 341/325/326/302/34 IPC.

3. The brief fact of the case is that on 15/08/2015, an FIR has been lodged before the officer- in-charge, Barpeta PS, alleging inter alia that on 14/08/2015 at about 8:30 PM, while the father-in-law and husband of respondent No.2, arrived at their house, the accused/petitioners stabbed her father-in-law with a dagger causing injury on his head, stomach and backside with an intention to kill him. The accused persons also cut the right hand little finger of her husband and also caused cut injury to his left leg, stomach and backside. When her sister-in-law came to the spot, then the accused persons also assaulted her causing injuries on her stomach and hand. Thereafter, the injured was brought to Barpeta Civil Hospital, but her father-in-law was referred to Hayat Hospital for better treatment. Accordingly, a case was registered vide Barpeta PS case No. 2124/2015 u/s 147/149/341/326/307 IPC.

4. Learned counsel for the petitioners has argued that though the case was registered u/s 307 IPC along with some other sections but the injured Muslim Uddin Ahmed died after five months of the incident at his house due to some other reason. Subsequently, the investigating officer filed an application before the learned CJM, Barpeta to add section 302 IPC against the petitioners but which was rejected on 19/08/2016 on the ground that there was no material in the case diary u/s 302 IPC.

5. It is further submitted that thereafter the previous investigating officer was transferred and another officer was entrusted to investigate the case. Accordingly, after two years on 27/07/2018, the second investigating officer filed another petition before the learned CJM, Barpeta, praying for adding section 302 IPC in the case. But the learned CJM again rejected the prayer of the IO to add section 302 IPC. Thereafter, charge sheet has been laid on 27/09/2021, i.e., after five years of the incident against the petitioners u/s 341/325/326/302/34

IPC. Subsequently, charge was also framed by the trial court under the same sections of law.

6. According to learned counsel for the petitioners, though the charge sheet was submitted against the petitioners by adding section 302 IPC but the prayer of the IO was earlier rejected by the learned CJM, Barpeta, twice to add section 302 IPC. The rejection order was not put under challenge by the prosecution. Therefore, after rejecting the prayer for adding section 302 IPC by the learned CJM, Barpeta, the investigating officer has no jurisdiction to add section 302 IPC in the charge sheet. Hence, the impugned charge sheet as well as the entire proceeding of the instant case is bad in law and is liable to be set aside and quashed.

7. Learned Additional P.P, on the other hand, submits that in the instant case, three persons were injured including the deceased. The incident occurred on 14/08/2015 and in the said incident the Muslim Uddin sustained injury on his head. He was referred to Hayat Hospital for his better treatment as his condition was critical. He died on 22/01/2016 around 5 months after the incident, which is due to the injury sustained in the alleged incident. From the post mortem report, it also reveals that death caused due to Coma as a result of the injury sustained on his head. Hence, the trial court has rightly took cognizance against the petitioners u/s 302 IPC and subsequently, framing of charge under the said section of law.

8. Learned counsel for the respondent no.2 has also argued in the same tune by stating that the injury sustained by the deceased was in connection with the alleged offence. Though initially the case was registered under section 307 IPC, subsequently on the death of the victim, the investigating officer prayed to add section 302 IPC which was not considered by the Learned CJM, Barpeta. The

order does not reflect any reason for rejecting the prayer of the investigating officer. The charge was framed by the trial court u/s 302 IPC. Trial is going on, some witnesses were also examined. As such it is not a fit case to quash further proceeding of the case.

9. I have considered the submissions of the learned counsel for the parties. I have also perused the order of the learned CJM, Barpeta dated 19/08/2016 which is reproduced as follows-

“CR is put up today. IO S.I Hashim Ali of Barpeta PS prayed for add section 302 IPC for the interest of this case.

I have heard the IO. Perused the C.D. There is no material on the basis of which section 302 IPC maybe added. Hence, prayer of the IO is rejected.”

10. After two years, dated 27/07/2018, the subsequent IO also filed a petition before the Learned CJM, Barpeta to add section 302 IPC. The order reads as follows-

“ CR is put up today. IO S.I Rahul Deury of Barpeta PS prayed to add section 302 IPC in connection with above noted case reference for the interest of justice.

Heard the IO. Perused the CD and the CR. From the material available before me, it is found that IO has not collected any further material to substantiate the prayer since 19/08/16 and as vide order dated 19/08/16, the prayer of the IO to add Sec.302 IPC was rejected in the instant case, in absence of any new material collected by IO to substantiate the prayer, same is rejected.”

11. After going through the aforesaid orders, it reveals that the learned CJM did not consider the matter in connection with the alleged offence that the deceased sustained grievous injuries on his head and he had undergone treatment in different hospitals and thereafter he was discharged from the

hospital and died at home. It also appears from the record that there are two other injured persons i.e. Imran Hussain and Sahida Parbin. From their medical report, it reveals that they also sustained grievous injuries on their person due to the alleged incident. From the postmortem report of the deceased, it also reflects that death of the deceased was caused due to coma resulting from head injuries. Thereafter, charge-sheet has been laid by adding section 302 IPC.

12. It is true that charge-sheet has been filed after 5 years of the incident but from the record as well as case diary it reveals that during the investigation, the victim died and as there was prayer of the IO to add section 302 IPC in the case and which was rejected twice by the learned CJM, it is presumed that which caused delay in filing of charge-sheet.

13. By referring the judgment of (2023) O Supreme (SC) 334, learned counsel for the respondent no.2 has pointed out that Hon'ble Supreme Court has observed that as per the cardinal principle of law, at the stage of discharge or quashing of the criminal proceedings while exercising the powers u/s 482 Crpc, the court is not required to conduct the mini trial. This is not the stage where the prosecution/investigating agency are required to prove the charges. The charges are required to be proved during trial on the basis of the evidence led by the prosecution/investigating agency.

14. The relevant sections of the [CrPC](#) with which we are concerned are as follows:

“156. Police officer's power to investigate cognizable case.-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

xxx xxx xxx (3) Any Magistrate empowered under [Section 190](#) may order such an investigation as above-mentioned. xxx xxx xxx

173. Report of police officer on completion of investigation.-

xxx xxx xxx (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

190. Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

15. As the Chapter headings themselves show, there is a neat distinction between the powers of the police to investigate and jurisdiction of the criminal courts in inquiries - followed by the procedure once the trial itself begins. [Section 156](#) deals with a police officer's power to investigate "cognizable cases". A "cognizable case" is defined under [Section 2\(c\)](#) of the CrPC as follows:

"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

The expression "complaint" is defined in [Section 2\(d\)](#) as follows:

“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

“Inquiry” is defined in [Section 2\(g\)](#) as follows:

“inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

“Investigation” is defined in [Section 2\(h\)](#) as follows:

“investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

16. The statutory scheme contained in the [CrPC](#) therefore puts “inquiry” and “trial” in water-tight compartments, as the very definition of “inquiry” demonstrates. “Investigation” is for the purpose of collecting evidence by a police officer, and otherwise by any person authorised by a Magistrate in this behalf, and also pertains to a stage before the trial commences. Investigation which ultimately leads to a police report under the [CrPC](#) is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in “complaint” cases.

17. [Article 21](#) of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in [Mrs. Maneka Gandhi v. Union of India & Anr.](#) (1978) 1 SCC 248, be “right, just and fair and not arbitrary, fanciful or oppressive”. Equally, in [Commissioner of Police, Delhi v. Registrar, Delhi High Court](#), New Delhi (1996) 6 SCC 323, it was stated that [Article 21](#) enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice.

18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. This is the minimal procedural requirement, that is the fundamental requirement of [Article 21](#) of the Constitution of India, cannot be doubted.

19. In view of the above and for the reasons as aforesaid, this court is of the view that while exercising power u/s 482 Crpc, the court has a very limited jurisdiction. Whether criminal proceedings were malicious or not, or whether any sufficient material is available to proceed further against the accused, is not required to be considered at this stage. Same is required to be considered during trial on the basis of the evidence led by the prosecution.

20. In the result, the criminal petition is dismissed and disposed of accordingly. The trial court is directed to proceed with the case in accordance with law.

JUDGE

Comparing Assistant