

GAHC010144282023



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

Case No. : Crl.Pet./656/2023

DHARANI KR DAS
S/O DHIREN CHANDRA DAS
R/O VILL- MACHARHAT
P.S. JORHAT
PIN-785001
DIST JORHAT, ASSAM

VERSUS

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

2:SRI DIPANKAR DAS @ BIKI DAS
S/O DIGANTA DAS
R/O VILL- MACHARHAT
P.S. JORHATIN-785001
DIST. JORHAT
ASSA

Advocate for the Petitioner : Mr. P.P. Borthakur

Advocate for the respondents: Mr. B. Sarma learned Addl. P.P.
Mr. D.J. Boro, (R-2)

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved: 02.02.2026

Date of pronouncement of judgment: 00.02.2026

Whether the pronouncement is of

the operative part of the judgment?: No

Whether the full judgment has been pronounced: Yes

JUDGEMENT & ORDER (CAV)

1. Heard Mr. P.P. Borthakur, learned for the petitioner. Also heard Mr. B. Sarma, learned Addl. P.P. for the State and Mr. D.J. Boro, learned counsel for the respondent No.2.

2. This is an application under Section 482 read with 401 of the Code of Criminal Procedure, 1972 (as amended up to date) for setting aside the order dated 11.01.2023 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 156/2022, whereby the said Court was pleased to dispose of the case at the stage of framing of charge by discharging the accused of the offence u/s 302 IPC in Sessions Case No. 156/2022.

3. The facts leading to the present petition may be briefly stated:-

A case was registered on filing of an FIR by one Sri Dharani Kr. Das on 06/03/2021 before the Officer in Charge of Jorhat Police Station, inter alla, stating that on 05/03/2021, at about 10:45 PM, accused Biki Das came to the house of first informant and informed him that the brother of the first informant namely Sri Gopal Krishna Das @ Siddhi is lying in their house. Accordingly when he went to the house of accused, he saw his younger brother lying on a sofa and thereafter with the help of the accused, the younger brother of the informant was brought to the house of the informant. However, as the condition of Gopal Krishna Das @ Siddhi deteriorated he was taken to hospital. However, there he was declared brought dead by the doctor. The first informant has stated in the FIR that he suspects that accused Biki Das and his family members have conspired and killed his brother Gopal Krishna Das.

On receipt of the said FIR, the officer-in-charge of Jorhat Police Station registered Jorhat P.S. case No. 559/21, u/s 302/34 IPC and entrusted Sri Haridev Das, S.I. of Police to investigate the case.

After completion of the investigation, charge sheet was laid against accused Sri Dipankar Das @ Biki Das u/s 302 IPC. It also appears that the Investigating Officer has listed seven prosecution witnesses in the Column No.6 of the Charge sheet.

4. By placing reliance on the decision of the Apex Court in the case of ***Union of India Vs. Prafulla Kumar Samal*** reported in ***(1979) 3 SCC 4*** the learned trial Court came to the following conclusion:

“On perusal of the materials in the case diary as well as statement of witnesses recorded u/s 161 Cr.P.C., it appears that the forensic examination of the viscera of deceased dead body gave positive test for organo phosphorous insecticides. In the blood sample of the deceased ethyl alcohol was found and the percentage of ethyl alcohol in the two samples was found to be 0.191 g % and 0.192 g % respectively. However, there is no evidence on record to show that the deceased was administered any poison or alcohol by the accused. The statements of witness No.1, 2, 3 & 4 does not in any way suggest the involvement of accused Dipankar Das in consumption of liquor or insecticide by the deceased, Mere suspicion cannot take the place of evidence. The Investigating Officer has miserably failed to collect any evidence to show how the accused is linked to finding of poison in the viscera of deceased as well as alcohol in the blood of deceased so as to implicate him under offence u/s 302 IPC. There is no evidence on record to suggest that the death of deceased Gopal Krishna Das @

Siddhi was caused by the accused Dipankar Das @ Biki Das.

Considering the materials on record, this Court is constrained to hold that there is no sufficient ground to proceed against accused Dipankar Das @ Biki Das in this case and accordingly, he is discharged of the offence u/s 302 IPC."

5. I have heard Mr. Borthakur, learned counsel for the petitioner and Mr. B. Sarma, learned Addl. P.P.

6. The learned counsel for the petitioner submits that the learned trial Court, without perusing the entire material on record has arrived at a finding that there is no basis to proceed against the accused and that the discharge of the accused was not warranted in the facts of the present case and the case should have been allowed to proceed to trial where only the guilt or otherwise of the accused could have been established on the basis of evidence recorded in the course of the trial. It is submitted that it was too early on the part of the learned Court below to come to a conclusion which led to the discharge of the accused.

7. Learned counsel for the petitioner has relied upon the decision of the Apex Court in ***Ghulam Hassan Beigh Vs Maqbool Magrey and othrs.*** reported in ***(2022) 12 SCC 657*** in support of his contention.

8. In the aforesaid judgement it was observed by the Apex Court as follows:-

27. ".....However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out

the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice."

9. Further, in the facts of the aforesaid case the Apex Court held as follows:-

29.".....The trial court thought it fit to discharge the accused persons from the offence of murder and proceeded to frame charge for the offence of culpable homicide under Section 304 IPC by only taking into consideration the medical evidence on record. The trial court as well as the High Court got persuaded by the fact that the cause of death of the deceased as assigned in the post-mortem report being the "cardio respiratory failure", the same cannot be said to be having any nexus with the alleged assault that was laid on the deceased. Such approach of the trial court is not correct and cannot be countenanced in law.

30. The post-mortem report, by itself, does not constitute substantive evidence. Whether the "cardio respiratory failure" had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one of its witnesses.

31. To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record....."

10. From the above, it is quite evident that the said case relied upon by the learned counsel for the petitioner is clearly distinguishable on facts. In the said case, the Apex Court was seized of a matter where the learned trial Court discharged the accused under Section 302 IPC and instead framed charge under Section 304 part-II IPC, on the basis of the post-mortem report which mentioned the cause of death as "Cardio respiratory failure' and due to absence of any serious injuries on the person of the deceased by holding that there is no nexus between the cause of death and in the incident in question, despite the fact that there were other evidence on record including the statements of eye witnesses and, all of which along with the evidence of the expert witnesses had to be considered to come to a finding as to whether the case would fall under Section 302 or Section 304 Part-II IPC and this could have been decided by the trial Court only after evaluation of the entire evidence that may be led by the prosecution as well as by the defence, if any and it was too early on the part of the learned trial Court to come to the finding that it did, as observed by the Apex Court in the said judgement.

11. In the present case, there is no dispute with regard to the cause of the death of the petitioner which is organo phosphorus poisoning. What the learned trial Court has observed that is that there is no material to connect the accused with the consumption of organo phosphorous insecticide or alcohol by the deceased on the basis of the statements of the prosecution witnesses. As observed by the learned trial Court, the I.O. had miserably fail to collect any evidence or material in order to establish the said connection between the accused and the cause of the death of deceased.

12. Under the circumstances, there was no basis for the learned Court below, to harbour, a grave or strong suspicion against the accused person of having

committed alleged offence. In **Union Of India Vs. Prafulla Kumar Samal (supra)** upon which the learned trial Court placed reliance, it was held as follows:-

"Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering, the question of framing the charges under

Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test of determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the

Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as conducting a trial."

13. As also held in ***Ghulam Hassan Beigh (supra)*** relied upon by the learned counsel for the petitioner, that all that is required at the stage of framing of charge is that the Court must be satisfied that the evidence collected by the prosecution sufficient to presume that the accused has committed an offence and even a strong suspicion would suffice.

14. I have perused the material on record and do not find anything therewith to come to an opinion different from the one arrived at by the learned trial Court. There does not exist any material to satisfy the Court that the same would be sufficient to lead to the presumption that the accused has committed the alleged offence.

15. Therefore, no ground has been made out requiring interference with the impugned order.

16. Consequently, the instant petition is held to be devoid of merit and is accordingly **dismissed**.

17. Send back the TCR.

JUDGE

Comparing Assistant