

GAHC010003442011



2024:GAU-AS:13144

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

Case No. : Crl.Rev.P./40/2011

HALIMON NESSA
W/O LT. JALU KHAN VILL- HAJIPARA, P.O. HOWLY, P.S. BARPETA, DIST.
BARPETA, ASSAM.

2: JAHIDUL ISLAM
S/O GAJIBAR RAHMAN

3: NUR NEHAR BEGUM
D/O GAJIBAR RAHMAN

4: MISS MOMTAZ AHMED
D/O GAJIBAR RAHMAN

5: RABIA KHATUN
W/O GAJIBAR RAHMAN
ALL ARE R/O VILL- HAZIPARA
P.O. HAOLY
P.S. BARPETA
DIST. BARPETA
ASSAM

VERSUS

GAJIBOR RAHMAN and ORS.
S/O LT. JABED ALI

**Advocate for the Petitioner : MS.N SULTANA, MS B BORA,AMICUS CURIAE,MISSS
KANUNGOE,MRM H AHMED,MRS.S AHMED,MR.A S CHOUDHURY**

Advocate for the Respondent : , „MR.A GANGULY,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

01-08-2024

Heard Mr. M H Ahmed, learned counsel for the petitioner and Mr. P Chetry, learned counsel for the respondent Nos. 1 to 5. Also heard Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State.

2. The informant of Barpeta Police Station Case No. 544/2005 as petitioner has filed this petition under Section 401 CrPC, read with Section 397 CrPC, read with Section 482 CrPC against the Judgment dated 10.12.2010 passed by the learned Additional Sessions Judge (FTC), Barpeta in Sessions Case No. 24/2008, arising out of said Barpeta P S Case No. 544/2005, acquitting the respondent Nos. 1 to 5 for the offence under Sections 448/302/34 IPC.

3. By order dated 27.09.2012, the record of Sessions Case No. 24/2008 was called for that is perused.

4. Brief facts of the case is that the petitioner as informant on 20.09.2005 lodged a written Ezahar before the Officer-in-Charge of Howley Outpost under the jurisdiction of Barpeta Police Station alleging that on the night of 18.09.2025 around 10:00 pm the accused persons, i.e., present respondent Nos. 1 to 5 had trespassed into her house at Hajipara and on the allegation of committing theft of bananas from the house of the accused persons, they assaulted her husband Jalu Khan on different parts of his body, told her not to file any case against them and they gave Rs. 200/-to her for treatment of her husband assuring her that they will provide all the expenditure for treatment of her husband. But they did not provide any medical help to her husband and shirk off their responsibility. On 20.09.2005 as her husband Jalu Khan felt severely ill, he was shown to Dr. Samsul Alam and he referred her husband to Barpeta Civil Hospital. While taking him to the said Hospital at Barpeta, her husband expired on his way. As the accused persons told her that they will compromise the

matter, but they did not, for which there was delay in filing the FIR. By the said FIR, the informant petitioner requested the authority concerned to register a case and to punish the guilt persons.

5. On receipt of the said FIR, the In-Charge of Howley Police Outpost entered it as GD Entry No. 484 dated 20.09.2005 and forwarded it to the Officer-In-charge of Barpeta Police Station where it was registered as Barpeta Police Station Case No.544/2005 under Sections 147/302 IPC, corresponding to G R No. 1263/2005, PRC No. 574/2007.

6. During the course of the investigation, inquest was done on the person of the deceased in presence of the Magistrate and other witnesses and accordingly inquest report was made. Postmortem examination on the person of the deceased was also made. The concerned investigating officer of the case visited the place of occurrence, recorded the statements of the witnesses acquainted with the facts of the case, including the informant, the doctor concerned who attended the husband of the petitioner and referred him to Barpeta Civil Hospital; arrested the accused persons, i.e., the present respondent Nos. 1 to 5, where respondent Nos. 3 to 5 were granted police bail and respondent Nos 1 and 2 were sent to judicial custody on 14.03.2006. On 13.06.2006 the respondent Nos.1 & 2 were granted default bail.

7. On completion of the investigation of the case, the concerned investigating officer on 26.04.2007 vide No.151 submitted the charge sheet in said Barpeta P.S. Case No. 544/2005 against the respondent Nos. 1 & 2 under Section 448/304/34 IPC and did not forward the names of the respondent Nos. 3 to 5 as the concerned I.O. did not find sufficient evidence to proceed against those three accused persons. In the said charge sheet the I.O. concerned requested the authority to relieve the respondent Nos. 3 to 5 from any such accusations in said Barpeta P.S. Case No. 544/2005. Along with the said Chargesheet the concerned I.O. also forwarded the postmortem report of the deceased, i.e., husband of the petitioner, his inquest report and the relevant FIR etc. along with the case diary of said Barpeta P S Case No. 544/2005.

8. On 26.06.2007 the said Charge-sheet of Barpeta P.S. Case No. 544/2005 corresponding to G R No. 1263/2005 was placed before the Court of learned Chief Judicial Magistrate (CJM),

Barpeta. On 26.06.2007 itself the learned CJM, Barpeta took cognizance of the offence under Section 448/304/34 IPC against the accused persons/respondent Nos. 1 and 2 and relieved the accused persons/respondent Nos. 3, 4 and 5 from such accusation. Further, on 26.06.2007 itself, the learned CJM, Barpeta transferred the said matter to the Court of learned Sub-Divisional Judicial Magistrate (SDJM), Barpeta for disposal of the said case. Said G.R. No. 1263/2005 arising out of Barpeta P.S. Case No. 544/2005 was subsequently numbered as PRC No. 547/2007.

9. On 28.03.2008 learned SDJM, Barpeta in said PRC No. 547/2007 allowed the accused persons/respondent Nos. 1 and 2 to go on fresh bail. On 28.03.2008 itself, the learned SDJM, Barpeta committed the said case to the Court of learned Sessions Judge, Barpeta directing the accused persons/respondent Nos. 1 and 2 to appear before the Court of learned Sessions Judge, Barpeta on 17.04.2008.

10. On receipt of the records of said PRC No. 547/2007 corresponding to G.R. No. 1263/2005 arising out of Barpeta P S Case No. 544/2005, the learned Sessions Judge, Barpeta on 17.04.2008 directed to register it as Session Case and allowed the accused persons/respondent Nos. 1 & 2 to remain on previous bail. Accordingly, it was registered as Sessions Case No. 24/2008. On 25.06.2008 the learned Sessions Judge, Barpeta transferred the said Sessions Case No. 24/2008 to the Court of learned Additional Sessions Judge (FTC), Barpeta for its disposal.

11. On 15.09.2008 learned Additional Sessions Judge (FTC), Barpeta in said Sessions Case No. 24/2008 framed charge under Sections 448/302/34 IPC against the accused persons/respondent Nos. 1 and 2. During the trial prosecution adduced evidence of nine witnesses, including the informant/petitioner as PW.2; the autopsy doctor who conducted postmortem examination on the person of the deceased, i.e., husband of the petitioner, Jalu Khan on 21.09.2005 as PW.1; the doctor concerned who at first on 20.09.2005 looked at Jalu Khan and referred him to Barpeta Civil Hospital as PW.7; the concerned investigating officer who conducted and completed the investigation of said Barpeta P S Case No. 544/2005 as PW.8, amongst others. The defence, i.e., the accused persons cross examined the prosecution witnesses but they did not adduce any evidence.

12. It is to be noted here in that after recording of the evidence of the informant/petitioner as PW.2 and considering her evidence, the learned Trial Court by order dated 30.12.2008 for the ends of justice, arrayed/impleaded the respondent Nos. 3, 4 and 5 as accused persons of the case and charge under Sections 448/302/34 IPC were also framed against them. The respondent Nos. 3 to 5 along with respondent Nos. 1 and 2, all of them faced the trial.

13. Though the petitioner submitted that the learned Trial Court failed to interpret the law and appreciate the material available on record in proper perspective and has passed the impugned judgment dated 10.12.2010 wrongly acquitting the accused persons, respondent Nos. 1 to 5, submitted that she herself as PW.2 as eye witness stated that accused persons trespassed into their house by breaking the house and charged her husband Jalu Khan and they assaulted her husband. Similarly, the PW.3 Haru Khan also being an eye witness to the incident clearly stated that he saw that the accused persons assaulting Jalu Khan due to which said Jalu Khan sustained injuries on his chest, on his back, on his right hand etc. and that said PW.3 corroborated the statement of the informant/PW.2.

14. It is also submitted by the petitioner that the autopsy doctor, PW.1 did not deny the injuries on the person of the deceased. The petitioner also stated that the concerned doctor who attended her husband Jalu Khan at first on 20.09.2005, PW.7 as well as the Investigating Officer of the case, PW.8 have been managed by the defence. For all such reasons, the petitioner prayed to set aside and quash the impugned judgment of acquittal dated 10.12.2010 in Sessions Case No. 24/2008 passed by learned Additional Sessions Judge (FTC), Barpeta and to convict the respondent Nos. 1 to 5 under Section 448/302/34 IPC.

15. On perusal of the records of the case, it is seen that the concerned autopsy doctor PW.1 clearly stated that the husband of the petitioner Jalu Khan died due to cardiac arrest as a result of Cardiomyopathy and the aberrations in his right and left elbow joint, anterior aspect of left knee joint as well as anterior aspect of right knee joint were old one that means before 48 hours and such injuries might be occurred by falling on hard metal and that injuries on the body of the deceased persons are not sufficient in the ordinary course of nature to cause death. The said autopsy doctor PW1 clearly stated that he did not find injury on the vital part of the body of the deceased and that deceased died due to heart deceased. He also

stated that there were no injuries affected over abdomen of the deceased.

16. It is to be noted herein that the post mortem examination of the deceased, husband of the petitioner was done on 21.09.2005. The deceased died on 20.09.2005. The alleged incident of assault on the husband of the petitioner as per the informant and other witnesses occurred on the night of 18.09.2005 and those injuries found by the PW.1 autopsy doctor are old, before 48 hours and those injuries are not sufficient in the ordinary course of nature to cause death.

17. PW.7, the doctor concerned who was named in the FIR itself dated 20.09.2005 attended the husband of the petitioner Jalu Khan on 20.09.2005 who referred said Jalu Khan to Barpeta Civil Hospital deposed that the husband of the petitioner was suffering from acute diarrhea and therefore he was referred to the Barpeta Civil Hospital.

18. PW.8, the concerned I.O. of Barpeta P.S. Case No. 544/2005 deposed before the learned Trial Court that the accused Nos. 3 & 4 trespassed into the house of the informant by breaking open the door and abused her husband by saying filthy words. Said PW.8, concerned I.O. of the case stated that the allegations lodged by the petitioner/informant of said Barpeta P.S. Case No. 544/2005 pertaining to assaulting on her husband by the accused persons on the night of the incident did not state before him while he recorded her statement under Section 161 CrPC.

19. Similarly, PW.3 Haru Khan did not state that he saw the accused persons assaulting said Jalu Khan and also did not state that when said PW.3 made hue and cry, the accused persons left the place of occurrence.

20. Said PW.8, I.O. of the case further deposed before the Trial Court that the PW.6, Surat Khan (brother of the deceased) also did not state before him that his sister-in-law/informant/present petitioner told him that the accused persons alleged Jalu Khan of committing theft of Bananas and about assaulting Jalu Khan by the accused persons and also did not state that said PW.6 saw injuries on chest, left side of the waist as well as back side of said Jalu Khan.

21. It is seen that the learned Trial Court after considering the depositions of the prosecution witnesses, the materials available on record found that the evidence adduced by

the informant/petitioner/PW.2 as well as PW. 3, neighbor of the deceased; PW.4, father of the deceased; PW.6, brother of the deceased have not been corroborated by other independent witnesses like PW. 1, the autopsy doctor; PW. 7, the doctor concerned who first attended said Jalu Khan the deceased and PW.8, the concerned Investigating Officer of the case.

22. Accordingly, the learned Trial Court after weighing all the evidence of the prosecution came to the finding that the evidence of the informant/petitioner/ PW.2, PW. 3, PW.4 and PW.6 have not been supported by the evidence of the PW. 1, PW. 7 and PW. 8.

23. In the case in hand, it is seen that the learned Trial Court have meticulously considered and appreciated the evidence adduced by all the prosecution witnesses including the evidence of the wife of the deceased, father of the deceased, brother of the deceased and the neighbor of the deceased vis-à-vis the independent witnesses like the autopsy doctor, the doctor concerned who first attended the husband of the petitioner and the concerned Investigating Officer of the case who investigated the case from the initiation of the registration of the case as GD Entry No. 484 dated 20.09.2005 till completion of the investigation and it is the PW.9 the concerned I.O. who submitted the charge-sheet in the case, investigation of which was already completed by the PW.8.

24. From the reading of the evidence adduced by the prosecution witness and the impugned judgment dated 10.12.2010 passed in Sessions Case No. 24/2008, it is seen that the learned Trial Court have meticulously scrutinized the evidence adduced by the prosecution and came to the conclusion that the prosecution failed to prove beyond reasonable doubt about the involvement of the accused persons/respondent Nos. 1 to 5 in committing the alleged offence under Sections 448/302/34 IPC.

25. Accordingly, the learned Trial Court, i.e., the Court of learned Additional Sessions Judge (FTC), Barpeta by the impugned judgment dated 10.12.2010 categorically came to the conclusion that the prosecution failed to prove the case against the accused persons/respondent Nos. 1 to 5 beyond all reasonable doubt and therefore, by the said judgment dated 10.12.2010 the learned Trial Court acquitted all the accused persons/respondent Nos. 1 to 5 from the liability of said Sessions Case No. 24/2008 arising out of Barpeta P.S. Case No. 544/2005, acquitting them from the liability of charge under Sections

448/302/34 IPC and set all the accused persons, respondent Nos. 1 to 5 at liberty, discharging the bail bonds submitted on their behalf.

26. Considering such materials in the records of said Sessions Case No. 24/2008, this Court is of the opinion that the impugned judgment dated 10.12.2010 passed by the Court of learned Additional Sessions Judge (FTC), Barpeta in Sessions Case No. 24/2008 does not call for any interference and the said judgment dated 10.12.2010 passed in Sessions Case No. 24/2008, noted above, is hereby affirmed.

27. For the reasons above, this criminal revision petition, being devoid of merits, stands rejected.

28. Registry shall return the records of said Sessions Case No. 24/2008 to the Court of the learned Additional Sessions Judge (FTC), Barpeta, along with a copy of this order.

JUDGE

Comparing Assistant