

(2020) 05 GAU CK 0015

In the Gauhati High Court

Case No : Criminal Petition (Suo Moto) No. 1 Of 2019

X X X X

APPELLANT

Vs

In Re - The State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 326, 447, 506

Citation : (2020) 05 GAU CK 0015

Hon'ble Judges : Ajai Lamba, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : T.J. Mahanta, R.K. Dev Choudhury

Final Decision : Disposed Off

Judgement

Ajai Lamba, CJ

1. Heard Mr. T.J. Mahanta, learned senior counsel and Standing Counsel, Gauhati High Court for the petitioner. Also heard Mr. R.K. Dev Choudhury, learned Senior Government Advocate, Assam for the respondent State.

2. The Court proceedings have been conducted through Video-Conferencing in view of the present scenario so as to maintain social distancing.

3. One Shri Debising Chetry filed a letter petition addressed to Hon'ble Chief Justice of the Gauhati High Court for speedy trial of G.R. Case No.61/1993 corresponding to Tezpur P.S. Case No.31/93 under Sections 447/326/307/506/34/302 I.P.C. Judicial notice of the letter was taken and, consequently, the petition has been listed on taking suo-moto cognizance.

4. Gist of the issue that raised concern of the Court, and directions issued by this Court is contained in order dated 27.02.2020. The order reads as under:-

"In deference to order dated 23.1.2020, Superintendent of Police, Sonitpur, Tezpur has furnished the report indicating that special enquiry team has been formed which would be working under the supervision of Superintendent of

Police, Sonitpur, Tezpur and the process of reconstruction of the file in regard to Tezpur PS Case No.31/1993 under Sections 447/326/307/506/34/302 IPC is going on.

2. We find that more than one month has gone by, however the needful has not been done.

3. Prima facie we are not satisfied with the pace at which the investigation is proceeding.

4. We hereby direct Superintendent of Police, Sonitpur, Tezpur to take emergent steps in reconstruction of the file and furnish all the documents before the District & Sessions Judge, Sonitpur, Tezpur so that the trial can again commence.

We are taking serious note of the matter because serious crime of murder was committed in the year 1993. Such missing of record has only helped the accused to evade the process of law. Other than that passage of time would result in extinguishment of evidence or destruction of evidence.

5. We hereby direct Superintendent of Police, Sonitpur, Tezpur to file his affidavit.

6. List on 31.3.2020, high up on the list, by which time we expect that the needful would be done.

7. Let copies of this order be forwarded to the Secretary Home, Government of Assam; Director General of Police, Assam; and Superintendent of Police, Sonitpur, Tezpur.

The Director General of Police is directed to take notice of the happenings in district of Sonitpur and ensure that such actions are not committed in future."

5. From the above, it becomes evident that Superintendent of Police, Sonitpur, Tezpur was directed to take relevant steps for reconstruction of the file and furnish the documents before the District and Sessions Judge, Sonitpur, Tezpur. This Court took serious notice of the fact that although the crime was committed in 1993, yet no progress has been made, rather the record was stated to have been lost. The Court took serious view of the matter considering the extinguishment of the evidence and destruction of the evidence on account of delay caused and on account of loss of file.

6. Order dated 23.04.2020, reads as under :

"Heard Mr. T.J. Mahanta, learned senior Standing Counsel, Gauhati High Court, appearing for the petitioner. Also heard Mr. R.K.D. Choudhury, Senior Government Advocate, Assam appearing for respondent Nos.1 to 3.

2. The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology, so as to maintain distance between the staff, Advocates and the Presiding Judge.

3. Learned counsel for the prosecution seeks time to bring the latest status

report in regard to investigation in Tezpur Police Station Case No.31/1993 under Sections 447/326/307/506/34/302 IPC.

Let the status report be filed through affidavit of Superintendent of Police, Sonitpur, Tezpur on or before 11.05.2020 in the Registry.

4. List on 18th May, 2020, high-up on the list."

7. In deference to order dated 23.04.2020, affidavit has been filed by Shri Mugdhajyoti Dev Mahanta, APS, posted as Superintendent of Police, Sonitpur, Tezpur, sworn on 27. 04.2020. In the affidavit, it has been pointed out that in the course of investigation, incriminating evidence has been found against five persons named in sub-para (vii) of para-4, namely, (1) Sri Nripen Kalita, S/o Babul Kalita, (2) Sri Pankaj Kalita, S/o Late Ganga Ram Kalita, (3) Sri Kartik Saikia, S/o Sri Homeswar Saikia, (4) Sri Bhupen Saikia, S/o Late Thaneswar Saikia, and (5) Sri Bhusan Saikia, S/o Late Thaneswar Saikia.

8. Para-6 of the said affidavit also makes it evident that sanction to prosecute the accused has also been granted.

One of the accused Kartik Saikia, named at Serial No.3 in sub-para(vii) (supra) has died.

9. Be that as it may, the investigation having been concluded with the approval of Superintendent of Police, charge-sheet has been filed. Four of the accused, therefore, have been forwarded to stand trial.

10. Since the matter is now before a Court of law, we hereby direct the District and Sessions Judge, Sonitpur, Tezpur, to ensure speedy trial in the matter. In case the witnesses do not appear, Superintendent of Police, District-Sonitpur, Tezpur, be directed to ensure presence of the witnesses/accused.

11. With the above observations/directions, the petition is disposed of.