

Sessions case No. 292/2022

04.11.2022

Present: Shri S.K. Poddar

Sessions Judge

Morigaon

Accused Padum Boro is produced from jail custody. He is represented by learned Legal Aid Counsel Mr. A.U. Siddique. Learned P.P., Morigaon is present on behalf of State of Assam.

I have heard both the sides on the matter of consideration of charge.

In this case I/O has submitted charge-sheet for trial against the accused u/s 304/337/338/427 IPC. I have carefully gone through the case diary and the relevant papers.

It is well settled that for the purpose of framing charge, court must be satisfied that there is sufficient materials to presume that the accused person have committed the offence.

In this case, from the FIR dated 25.06.2022 lodged by Sunita Das discloses that due to flood situation in the locality while the entire family of the informant have taken shelter at National Highway No. 37 in the relief camp and on 25.05.2022 at about 00:15 a.m. the driver of the vehicle No. AS-01-NC-1204 (Tata Yodha) with an intention to cause death drove his vehicle in high speed and knocked his vehicle on the back side of a Tata Magic vehicle bearing registration No. AS-21C-6825 which was parked on the road side and used as place of human shelter and caused injuries to Raju Das, Sanjib Das, Bubu Das, Nabajyoti Das, Sangita

Das, Soham Das, Shiva Das and the informant and they sustained simple/grievous injuries. Immediately, the injured, were taken to Nellie Civil Hospital and thereafter they were shifted to GMCH, Guwahati. However, during shifting, on the way to GMCH, Guwahati, injured Babu Das expired. It is also alleged that after causing the accident, the driver of the said vehicle flee away and caused damage to the Magic vehicle also.

During hearing learned Legal Aid Counsel Mr. A.U. Siddique has submitted that from the materials available, no case is made out for the offence u/s 304 IPC. It is further pointed out that the putting of section 337/338 along with 304 IPC appears to be self-contradictory. The entire incident took place of the alleged offence of negligent and rash driving of the accused Sri Padum Boro and at the best, it may be a case u/s 279/304A/337/338/427 IPC. There is no evidence of intention of the accused to cause death or knowledge of the accused to cause death or injury due to his rash driving. At the best accused may be held liable for negligent driving of his vehicle. Learned P.P. has conceded the submission made by learned Legal Aid Counsel and fairly submitted that from the statement of the witnesses except the evidence of excessive speed, there is no evidence of causing death knowingly and intentionally or either of these two.

I have considered the submissions of both the sides.

On going through the materials available in the record, I am of the considered opinion that there is sufficient force in the submission of learned Legal Aid Counsel. No case is made out against the accused Padum Boro for the offence u/s 304 IPC for causing culpable homicide not amounting to murder of Babu Das. The death of Babu Das appears to be an incident of rash and negligent driving. The materials in the CD made out a prima facie case is made out against the accused for the offences u/s 279/304A/337/338/427 IPC only.

As none of the offences are exclusively triable by the court of Sessions, by using the powers provided u/s 228(I) Cr.P.C. and without framing charge/explaining the contents of the charge, I remand back the matter to learned CJM, Morigaon for taking trial for the above offences by following the due process of law.

Send a copy of this order with the entire case record received on commitment along with original CD to learned, CJM, Morigaon.

It may be mentioned here that vide order dated 27.09.2022 accused has already been granted bail, but he could not furnish bail bond. As such, he is remanded back to judicial custody till 10.11.2022.

Jail Superintendent, Morigaon is directed to produce the accused before learned CJM, Morigaon on 10.11.2022.

Also seen the petition NO. 3132/2022 filed by learned remand advocate for reconsidering the bail amount and furnishing sureties. Same be placed before learned CJM, Morigaon for consideration.

Learned Legal Aid Counsel Mr. A.U. Siddique is requested to continue the brief before learned CJM, Morigaon.

Sessions case is disposed of.