

GAHC010027842023



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

**Case No. : Crl.Rev.P./85/2023**

ANWAR HUSSAIN CHOUDHURY AND 3 ORS  
S/O LATE ATOWAR RAHMAN CHOUDHURY  
R/O VILL- BASHDAHAR PART-I,  
P.O. MATIJURI  
DIST. HAILAKANDI, ASSAM

2: ABDUL SUKKUR MAZUMDER  
S/O LATE MUBESHIL ALI MAZUMDER  
R/O VILL- BASHDAHAR PART-I

P.O. MATIJURI  
DIST. HAILAKANDI  
ASSAM

3: ISFAQ HUSSAIN CHOUDHURY  
S/O LATE ATOWAR RAHMAN CHOUDHURY  
R/O VILL- BASHDAHAR PART-I

P.O. MATIJURI  
DIST. HAILAKANDI  
ASSAM

4: TAJ HUSSAIN CHOUDHURY  
S/O LATE ATOWAR RAHMAN CHOUDHURY  
R/O VILL- BASHDAHAR PART-I

P.O. MATIJURI  
DIST. HAILAKANDI  
ASSA

VERSUS

THE STATE OF ASSAM AND ANR  
THROUGH THE PP, ASSAM

2:SMT. HUMERA BEGUM BARBHUIYA  
W/O LATE NURUL HAQUE BARBHUIYA  
R/O VILL- BASHDAHAR PART-I

P.O. MATIJURI  
P.S AND DIST. HAILAKANDI  
ASSAM  
PIN 78815

**Advocate for the Petitioner** : MR. M H LASKAR, MR. S ROY,M. HOSSAIN

**Advocate for the Respondent** : PP, ASSAM, MR. D H MOZUMDER (r-2),MR F A LASKAR (r-2)

**Advocates for the petitioners** : MR. M H LASKAR, MR. S  
ROY,M. HOSSAIN

**Advocates for the respondents** : PP, ASSAM, MR. D H  
MOZUMDER (r-2),MR F A  
LASKAR (r-2)

**:::BEFORE:::**

**HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA**

**Date on which judgment is reserved :** 28.04.2026

**Date of pronouncement of judgment :** 07.05.2026

**Whether the pronouncement is of the**

**Operative part of the judgment :** NA

**Whether the full judgment has been**

**Pronounced :** Yes

**Judgment & Order(CAV)**

*(Sanjeev Kumar Sharma,J)*

**1.** Heard Mr. M.H. Laskar, learned counsel for the petitioner, and Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

**2.** The instant criminal revision petition has been preferred challenging the legality and validity of the impugned order dated 16.11.2022 passed in Petition No. 127/05 in Sessions Case No. 45/2014 pending in the Court of Ld. Addl. Sessions Judge, Hailakandi, whereby the Ld. Court below treated the petitioners as accused persons in the instant case in exercise of the power u/s 319 Cr.P.C. and thereby issued impugned summons dated 19.12.2022 to them for their appearance.

**3.** The facts of the case may be briefly stated the informant of the case, one Humera Begum Barbhuiya, w/o Late Nurul Haque Barbhuiya, lodged an FIR on 19.07.2012 before the Officer-in-Charge, Hailakandi Police Station, which is reproduced below:

To,

The Officer In-Charge

Hailakandi Police Station.

Sub: Prayer for FIR

Informant- Humera Begum Barbhuiya, W/O Late Nurul Hoque Barbhuiya, Vill-Bashdhar Part-I, P.S &Dist- Hailakandi.

Sir,

Humble submission is that—

Yesterday, i.e., 18.07.2012 at about 8.30 A.M., the accused persons grouped together, illegally trespassed into the agricultural land of the informant side, and started ploughing thereon. The accused persons cut down the fruit-bearing trees of the informant side and thereafter illegally trespassed into the homestead of the informant side and started throwing stones and assaulting the husband of the informant and his brothers and nephews. The accused were armed with weapons like Dao, sticks, Lenza, and Ballam. The accused Ikbal Amin Choudhury made an assault on the right side of the chest of the informant's husband, namely Nurul Hoque Choudhury, with the Lenza in his hands; the accused Mustak Ahmed Choudhury made a severe assault with a heavy weapon on the left shoulder of the said Nurul; and Tunu Miya assaulted the head of the said Nurul with a stick, as a result of which, Nurul Hoque Barbhuiya died on the spot. Accused Monir Uddin Choudhury assaulted the informant's brother-in-law,

Azir Uddin Barbhuiya, on the right side of his stomach with the Lenza in his hands; the accused Imran Hussain Laskar fired a shot at the face of the said Azir with his gun; and the accused Mayazul Hoque Laskar made various assaults on the body of the said Azir with the Dao in his hands, as a result of which, Azir Uddin died on the spot. When the other brothers and nephews of the informant's husband tried to prevent the accused from such acts, the accused persons assaulted them severely with deadly weapons, as a result of which, Abdul Sattar, Abdul Mannan, Moynul Hoque, Tuku Miya @ Mizanur Rahman, Luku Miya, Mahmudur Rahman, Amzad Hussain, Tafazzul Ali, Abu Salekh, and small children and other members of the family sustained serious injuries. With the help of the police, some of them were taken to S.K. Roy Civil Hospital, Hailakandi, and the remaining seriously injured persons were referred to Silchar Medical College & Hospital in very critical condition. Although both the deceased persons informed the Hailakandi police authority to save their lives from the hands of the accused, they could not be saved. Thereafter, the police reached the spot and took the dead bodies to S.K. Roy Hospital, Hailakandi, for postmortem. The names of the witnesses will be disclosed during investigation.

It is prayed that the aforesaid matter may be investigated by visiting the spot and collecting witnesses to provide justice. Dated: 19.07.2012.

Names of the accused:

1. Monir Uddin Choudhury, S/O Late Harun Al Rashid Choudhury
2. Mustak Ahmed Choudhury, S/O Late Harun Al Rashid Choudhury
3. Ikbal Amin Choudhury @ Piklu, S/O Monir Uddin Choudhury
4. Imran Hussain Laskar @ Rahim, S/O Alauddin Laskar
5. Mayazul Hoque Laskar, S/O Late Raj Ali Laskar
6. Anowar Hussain Laskar, S/O Late Harun Al Rashid Choudhury
7. Isfak Hussain Choudhury @ Ratul, S/O Late Ataur Rahman Choudhury
8. Anowar Hussain Choudhury @ Babul, S/O Late Harun Al Rashid Choudhury
9. Abdul Wahid Choudhury @ Montu, S/O Late Montaj Ali Choudhury
10. Abdul Sukkur Mazumdar, S/O Late Mubeshil Ali Barbhuiya
11. Sayar Hussain Barbhuiya, S/O Muktar Ali Barbhuiya
12. Taj Uddin Choudhury @ Kubul, S/O Late Ataur Rahman Choudhury
13. Tunu Miya, S/O Namur Ali. *All are residents of village Bashdhar Part-I, P.S &Dist- Hailakandi.*

**4.** It may be stated that in respect of the same incident, another FIR was lodged by one Monir Uddin Choudhury, uncle of the present petitioners, which was registered as Hailakandi Police Station Case No. 254/2012 under Sections 147, 148, 149, 294, 325, 326, 302 IPC, in respect whereof the IO has already submitted a charge sheet against 8 accused persons vide Charge Sheet No. 26/2016 dated 31.01.2016, and trial is underway in the said case.

**5.** As far as the present case is concerned, the investigation in respect of

Hailakandi Police Station Case No. 255/2012 u/s

147/148/149/447/325/326/336/427/302 IPC, which was registered on the basis of the aforesaid FIR dated 19.07.2012, has been completed. A charge sheet has been submitted against 7 persons vide Charge Sheet No. 294 of 2013 dated 24.12.2013, wherein the present petitioners were not sent up for trial on the ground of absence of sufficient evidence against them.

**6.** It is stated that no protest petition was filed by the informant due to the non-inclusion of the present petitioners in the charge sheet as accused persons. Subsequently, the trial proceeded after the framing of charges and the depositions of two witnesses, i.e., the informant, Humera Begum Barbhuiya as PW-1, and Morion Begum Barbhuiya (sister-in-law of the informant) as PW-2 have so far been recorded by the learned Trial Court.

**7.** After the conclusion of the examination-in-chief of the two PWs, their cross-examination was kept reserved, and the prosecution filed an application u/s 319 CrPC for arraigning the present petitioners and some other persons as accused in the case in view of the depositions of PW-1 and PW-2. The learned court below, by way of the impugned order, allowed the aforesaid application by issuing summons to 7 persons, including the present four petitioners, i.e., (i) Anwar Hussain Chowdhury, (ii) Isfaq Hussain Chowdhury, (iii) Taj Hussain

Choudhury, and (iv) Abdul Sukkur Mazumdar.

**8.** Assailing the aforesaid impugned order, the learned counsel for the petitioners has stated that although the present petitioners were named as accused in the FIR, no overt act was attributed to them. Subsequently, after a thorough investigation of the case and due to the absence of any credible evidence against the present petitioners, the IO submitted the charge sheet wherein the present petitioners were not sent up for trial. However, on the basis of the trial depositions of two witnesses, wherein also no specific act was attributed to the present petitioners, the learned Court below exercised powers u/s 319 CrPC to arraign the present petitioners along with three more persons as accused. The learned counsel has referred to the decision of the Hon'ble Apex Court in the case of ***Hardeep Singh Vs State of Punjab*** reported in ***(2014) 3 SCC 92***, wherein it was held by the Constitution Bench as follows:

*"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried*

*together with the already arraigned accused persons.*

*105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court should such power be exercised, and not in a casual and cavalier manner.*

*106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if it goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC, the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."*

**9.** It is submitted by the learned counsel for the petitioners that there exists no such material or evidence of the standard expected when the powers u/s 319 CrPC are sought to be invoked; therefore, the impugned order is liable to be

interfered with.

**10.** Per contra, Mr. R.J. Baruah, learned Additional Public Prosecutor, submitted that the learned Magistrate, after taking into consideration the evidence of PW-1 and PW-2, who have fully implicated the present petitioners, has invoked his powers u/s 319 CrPC by referring to the very same decision in ***Hardeep Singh (Supra)***, and therefore, the same cannot be faulted. Referring to ***Hardeep Singh (Supra)***, the learned Additional Public Prosecutor highlighted Para 13 thereof:

“13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.”

**11.** I have perused the impugned order and other material on record and have given my anxious consideration to the rival submissions.

**12.** A perusal of the FIR would show that besides naming the present petitioners among several others as accused in the list of accused persons at the bottom of the FIR, no overt act has been attributed to them. In her evidence, PW-1, Humera Begum Barbhuiya, deposed that the accused persons also assaulted her husband and brother-in-law with sticks and lenza, etc., and

also assaulted Tafazul, Masum Ahmed, Mizazur Rahman Barbhuiya, Mahmudur Rahman Barbhuiya, and Amzad Hussain Barbhuiya, all of whom are her family members who sustained cut injuries. Similarly, PW-2 deposed that the other accused persons also assaulted her husband and brother-in-law with sticks and lenza, and that the accused Anwar Hussain Choudhury (petitioner No. 1), Abdul Sukkur Mazumder (petitioner No. 2), and Isfak Hussain Choudhury (petitioner No. 3) also assaulted her husband and brother-in-law as well as her family members.

**13.** However, a perusal of the statements of PW-1 and PW-2 before the IO, recorded u/s 161 CrPC, shows that they had nowhere mentioned the names of the present petitioners as being involved in the alleged occurrence, far from attributing any specific role to them. Mention has been made of one Anwar Hussain Choudhury, but it cannot be discerned therefrom that the said reference relates to one of the present petitioners, i.e., Anwar Hussain Chowdhury, inasmuch as another Anwar Hussain Laskar is already an accused in the case as per the charge sheet.

**14.** Therefore, the statements made in the depositions of PW-1 and PW-2 in their examination-in-chief regarding the role played by the present petitioners have been made for the first time before the Court and were omitted before the

IO. Therefore, unless corroborated by other evidence on record leaving aside the question of cross-examination the evidence of PW-1 and PW-2 as far as the present petitioners are concerned cannot be said to be of such standards which are higher than *prima facie* satisfaction regarding the involvement of the accused persons.

In that regard, I have also perused the statements of the remaining witnesses recorded under 161 CrPC, and therein also no mention is to be found of the names of the present petitioners. Therefore, it would not be reasonable to expect that in the course of the trial, the remaining witnesses would corroborate the version of PW-1 and PW-2 given in their examination-in-chief. In any case, no such corroboration is available as of now. Consequently, the available evidence is no stronger than that indicating the mere probability of the complicity of the present petitioners, which standard is not sufficient to invoke powers u/s 319 CrPC.

**15.** Furthermore, on a perusal of the impugned order, it does not appear that the Magistrate has considered the issue vis-à-vis the material available on record, including the previous statements of the witnesses, which in the considered opinion of this Court was necessary before invoking the powers u/s 319 CrPC, which are to be exercised sparingly and only under the circumstances

outlined in **Hardeep Singh (Supra)**.

**16.** In the case of **Brijendra Singh & Ors Vs State of Rajasthan** reported in **(2017) 7 SCC 706**, the view of the Apex Court is worth noting:

*“15. This record was before the trial court. Notwithstanding the same, the trial court went by the depositions of the complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the "evidence" recorded during trial was nothing more than the statements which were already there under Section 161 CrPC recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. **However, in a case like the present where a plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty-bound to look into the same while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature.** Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the revision petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.” (Emphasis supplied).*

**17.** In the instant case also, rather than solely relying upon the depositions of PW-1 and PW-2 in their examination-in-chief, it was necessary for the learned trial court to have assessed the available material on record in arriving at its conclusion, which the learned Trial Court failed to do and because of which the impugned order cannot be sustained.

**18.** In view of the discussions above, the impugned Order dated 16.11.2022, insofar as it relates to the present petitioners, is set aside and the revision stands allowed.

**19.** It is however made clear that this judgment would not operate as a bar to invoke the powers under Section 319 Cr.P.C, on the basis of evidence recorded in further course of the trial, if the facts and circumstances so justify.

**20.** Send back the TCR.

**JUDGE**

**Comparing Assistant**