

GAHC040013752022

2025:GAU-AP:1264



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

Case No. : Crl.Petn./118/2022

THE STATE OF AP
Through Public Prosecutor

VERSUS

Legam Takaliang and 5 Ors.
Son of Apimso Takaliang,
Resident of Duraliang Village, PO Changlang and PS Tezu, Lohit District, Arunachal Pradesh.

2:Chowkhia Tyang
Age: 0
Occupation :
Son of Late Solu Tayang

Resident of Huchiliang Village
PO and PS Tezu
Lohit District
Arunachal Pradesh.

3:Behenso Pul
Age: 0
Occupation :
Son of Late Allokthak Pul

Resident of Changung
PO and PS Hawaii
Anjaw District
Arunachal Pradesh.

4:Bachamso Chiba
Age: 0
Occupation :
Son of Late Webla Chiba

Resident of Bekuliang Village
PO and PS Sunpura
Lohit District
Arunachal Pradesh.

5:Charanso Halai
Age: 0
Occupation :
Son of Late Lohaso Halai

Resident of Kathan Village
PO and PS Wakro
Lohit District
Arunachal Pradesh.

6:Asado Ngadong
Age: 0
Occupation :
Son of Somaha Ngadong

Resident of Teluliang
Near Mongpong Gas Agency
PO and PS Tezu
Lohit District
Arunachal Pradesh

- B e f o r e -

Hon'ble Mr. Justice Pranjal Das

For the Petitioner : Mr. L. Kurdu, Spl. P.P. (SIT)

For the Respondent(s) : Ms. N. Danggen, learned *Amicus Curiae*/Legal
Aid Counsel

Date on which judgment was reserved : **07.11.2025**

Date of pronouncement of judgment : **13.11.2025**

Whether the pronouncement is of the
Operative part of the judgment? : **No**

Whether the full judgment has been

pronounced?

: **NA**

(Pranjal Das, J)

Heard Mr. L. Kurdu, learned Special Public Prosecutor (SIT) for the petitioner/State. Also heard Ms. N. Danggen, learned *Amicus Curiae* for the respondents.

2. With regard to the alleged rape and murder of a 5 and ½ years old girl, Tezu P.S. Case No. 22/2018 was registered under section 302/376 IPC read with section 6 of the POCSO Act and on 18/02/2018, two alleged accused persons in the said case namely, Sanjay Sobor and Jagdish Lohar were arrested and kept at the lockup of Tezu police station after obtaining police remand from court. That, on 19/02/2018 at around 12 p.m., a huge crowd of about thousand people armed with iron rods, pipes, hammers, wooden sticks surrounded the Tezu police station, overpowered the police officers and after going inside the police station took out the said two accused persons and lynched them to death. That, the crowd also damaged properties of the police station such as DVRs, tables, gates, locks etc. The incident also caused injuries to some police personnel on duty.

3. The mob even dragged the dead bodies of the two accused UTPs to the town square and burnt the dead bodies. With regard to this incident of mob violence and lynching, Tezu police station Case No. 22 of 2018 was registered under section 120(B)/147/148/149/452/353/448/302 IPC read with section 3 of the PDPP Act. Investigation was conducted initially by the local police and

later by the SIT police headquarters, Itanagar which was entrusted with the investigation vide order dated 03.03.2018.

4. The names of the six respondents herein came up as being involved in the crime during investigation from the statements of eyewitnesses and other relevant materials. After completion of investigation, charge sheet was laid against all these six accused-respondents under section 120(B)/147/148/149/452/353/186/448/201/302 IPC read with section 3 of the PDPP Act. The case proceeded to the stage of consideration of charge during which the respondents filed an application for discharge under section 227 CrPC (as it existed then).

5. After considering the materials and hearing the parties, the learned trial court, being the Court of the learned Sessions Judge Tezu, in Sessions Case No. 3(L)/2022 was pleased to frame charges under section 147/148/149/448 IPC read with section 3 of the PDPP Act. Thus, this meant that vide order dated 13-05-2022, the learned trial court was pleased to discharge the respondents of charges under section 120(B)/452/353/302 IPC. The prosecution/State was aggrieved by the dropping of charges under the aforesaid sections and has taken the grievance to this court by way of this criminal petition.

6. In support of its contentions, the learned Special Public Prosecutor submits that the materials on record clearly proved that the six accused persons were the mastermind behind the incident; that, prior to the incident of mob violence and lynching, there was a meeting organized in the Circuit House of Tezu and the respondents

were present therein, which has been proved by the statements of one of the caretakers of the circuit house and that such statement has been recorded by police as well as before learned JMFC. It is submitted that the evidence on record clearly showed that the respondents were part of the mob which attacked the police station and apart from destroying properties therein, dragged out the accused UTPs and lynched them.

7. It is submitted that there are statements of witnesses which have indicated the presence of the respondents as part of that crowd. It is also submitted by the prosecution that the CDR analysis and mobile tower location of the respondents also indicate their presence around the circuit house and also at the place of occurrence. That, there are also materials to indicate their presence near the town square, where the dead bodies are stated to have been burnt by the unruly mob.

8. On the other hand, the learned *Amicus Curiae* submits that the witnesses have not stated about seeing the respondents as being involved in the act of lynching or killing the accused persons. It is submitted by the learned *Amicus Curiae* that the materials have revealed that some of the respondents had gone to the police station to enquire about the progress of investigation as they were concerned about the incident in their capacity as student leaders of the community. It is further submitted that there is no infirmity in the order of the trial court in not framing charges against the respondents for the offence pertaining to sections 120(B)/452/353/302 of IPC.

9. I have carefully perused the detailed narration in the charge

sheet No. 1 of 2019 dated 02-01-2019. I have also perused the accompanying documents of the charge sheet including the statements of the witnesses, injury reports, CDR, seizure list etc. In the charge sheet, the I/O has made detailed narration of the materials found against each of the respondents as accused persons separately.

10. With regard to *Bachamso Chiba*, it is stated that as per CDR analysis, he was in-touch with co-accused *Charanso Halai* with repeated calls on 19.02.2018. That, CDR analysis also revealed that at the time of missing of the victim girl also initially, both these accused persons were in frequent touch. It is stated that it has emerged from the materials that the said accused had enquired as to who had disclosed his name as member of the mob which committed the lynching incident. Perused the statement of an eye witness who has stated about seeing that accused as a member of the mob, along with all the members of the mob.

With regard to *Charanso Halai* also, he has stated that investigation has found that he associated with co-accused *Bachamso Chiba* on 19.02.2018 to attend a gathering of the students union and joined a mob which indulged in the ransacking. His CDR also implicates him with regard to being in regular touch with the other co-accused and making repeatedly calls around the date and time of the alleged incident. Eye witness statements mentioned about his presence in the mob.

There is stated to be implicating CDR analysis with regard to accused *Chowkhiya Tayang* and that he repeatedly requested

the caretaker of the circuit house to keep one room for the meeting. It is revealed by the materials that this accused along with co-accused *Behenso Pul* had visited the Tezu police station to meet the police official regarding the investigation of other case. Two eyewitnesses have revealed in their statements about the presence of this accused at the lynching spot on 19-02-2018.

Apart from implicating CDR materials, three eyewitnesses have also revealed about the presence of accused *Legem Takaliang* as part of the mob involved in the incident. It is revealed from the investigation that accused *Behenso Pul* attempted to take photographs of the UTPs inside the lockup but was prevented from doing so. This accused *Behenso Pul* is revealed by the materials to have been present in the Tezu police station and being part of the mob, which had vandalized the police station and committed the incident of lynching.

Lastly, accused *Asadso Ngadong* was identified by one of the eyewitness as being involved in rushing into the police station along with the unruly and agitated mob at the time of the incident. Another witness has also identified him as the person who damaged the CCTV setup.

11. Upon perusing the relevant materials, I find force in the contention of the I/O regarding his narration about these accused persons in the charge sheet. The materials revealed by investigation corroborate and lend support to the contentions and narration of the I/O made in the charge sheet with regard to the accused respondents.

12. It is well settled that an order framing charge does not have to be in great detail. In fact, that might even prejudice the accused. With regard to the position of law that an order framing charge need not be in detail, a reference may be made to a decision of ***Bhawna Bai v. Ghanshyam***, reported in **(2020) 2 SCC 217**. Para 16 may be reproduced herein below –

“16. After referring to Amit Kapoor [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , in Dinesh Tiwari v. State of U.P. [Dinesh Tiwari v. State of U.P., (2014) 13 SCC 137 : (2014) 5 SCC (Cri) 614] , the Supreme Court held that for framing charge under Section 228 CrPC, the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.”

13. However, an order of discharge has been held to be requiring proper reasons as to why the accused persons were let off even before commencement of the trial. Reference may be made to the decision of ***Lalu Prasad v. State of Bihar***, reported in **(2007) 1 SCC 49**. Para 15 may be reproduced herein below –

“15. In Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] again the question was examined. It was held that the moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the court is required to form an opinion that there is ground for presuming that the accused has

committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 of the Code. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. It was inter alia held as follows : (SCC pp. 725-26, paras 10-11)

10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

11. Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the

charge he may do so without recording his reasons for showing why he framed the charge.”

14. With regard to the principles governing charge vis-a-vis discharge, there are a catena of decisions of the Hon'ble Supreme Court on the subject. A reference may be made to the case of ***Union of India v. Prafulla Kumar Samal***, reported in ***(1979) 3 SCC 4*** and para 10 reproduced herein below –

“10. 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 to 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 mouthpiece 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 if he was conducting a trial."

15. In the case of ***P. Vijayan v. State of Kerala***, reported in ***(2010) 2 SCC 398***, it was held in para 10 that –

"10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against

the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.”

16. Thus, one of the settled principles regarding framing of charge is that, if the materials give rise to grave or significant suspicion against the accused, the trial court will be justified in framing charges. However, if there is suspicion, rather than grave suspicion against the accused persons from the materials revealed by investigation – then the trial court would have the discretion to discharge the accused as well.

17. In the instant case, the learned trial court has already framed charges against the respondents/accused for offense of rioting, being members of unlawful assembly, common object, and criminal/house trespass. There are significant implicating materials revealed by the investigation that the respondents/accused persons were part of this unlawful assembly. The materials *prima facie* indicate that they were part of the unlawful assembly, which indulged in vandalism and destruction of property of the police station, and obstructed the police personnel from carrying out their duty.

18. Under the provisions of section 149 IPC (as it existed then), a

person would be guilty under section 149 IPC, if he is a member of unlawful assembly, and he would also be vicariously liable for any offense which is committed in pursuance of common object of unlawful assembly, or an offense that was likely to be committed in furtherance of the common object of such unlawful assembly.

19. Now, upon perusing and analyzing the materials of the charge sheet and the case diary revealed by the investigation, I am **unable** to hold that there is no grave suspicion against the respondents/accused – *that besides being member of the unlawful assembly, they also shared the common object of such assembly of vandalizing the police station and killing the accused UTPs.*

20. The materials revealed by the investigation would not justify discharging the respondents/accused persons – of the offense of conspiracy; preventing or obstructing public servant on duty from discharging their duties; committing the murder of the two UTPs which were in the police lockup in connection with the case of rape and murder of the minor girl.

21. In the instant case, in my considered opinion, the *grave suspicion test* is satisfied in favor of the prosecution, rather than that of the accused. The materials revealed by the investigation constitute sufficient grounds to proceed against the respondents/accused for these penal provisions also, including section 302 IPC. Whether the involvement of the respondents/accused in these offenses is actually proved or not, would be a matter of evidence during the trial and its appreciation by the trial court.

22. However, at this stage, there are materials revealed by the investigation which raises triable issues and are materials of a nature where it would be justified to allow the prosecution to adduce evidence in support thereof. To put it *alternatively*, it can be said that on the basis of the materials revealed by the investigation, it would **not be justified** – *to not even proceed against the respondents/accused persons with regard to these penal provisions.*

23. Consequently, in the facts and circumstances; on the basis of the materials perused and analyzed; considering the submissions of the learned counsels on both sides – the order dated 13-05-2022 passed by the learned trial court, not framing charges against the respondents/accused under sections 120(B)/452/353/302 IPC, is found to be suffering from infirmity and **to that extent, the order is hereby interfered with.** *Accordingly, the learned trial court shall frame additional charges against the respondents/accused under sections 120(B)/452/353/302 IPC, in addition to the charges already framed, and thereby proceed with the trial.*

24. Resultantly, the instant criminal petition filed by the State is **allowed** and disposed of on the aforesaid terms.

JUDGE

Comparing Assistant