

GAHC010011992023



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

Case No. : I.A.(Crl.)/39/2023
In Crl. Appeal No. 247 of 2022

MD. FARUK AHMED @ FARUK AHMED CHOUDHURY AND 2 ORS.
S/O LATE ABDUL MANNAN, VILL.- KHANISHAIL, P.S. AND DIST.-
KARIMGANJ, ASSAM, PIN- 788711.

2: MD. SABIR AHMED @ MAJU
S/O- FARUK AHMED @ FARUK AHMED CHOUDHURY
VILL.- KHANISHAIL
P.S. AND DIST.- KARIMGANJ
ASSAM
PIN- 788711.

3: JAINA BEGUM
W/O- FARUK AHMED @ FARUK AHMED CHOUDHURY
VILL.- KHANISHAIL
P.S. AND DIST.- KARIMGANJ
ASSAM
PIN- 788711

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MUSSTT. SABIHA MEHBUB CHOUDHURY
D/O- LATE MASUK AHMED CHOUDHURY
VILL.- EAST KHANISHAIL
P.S. AND DIST.- KARIMGANJ
ASSAM
PIN- 788711

Advocate for the Petitioner : MR B B NARZARY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

13.03.2023

(Michael Zothankhuma, J.)

Heard Mr B B Narzary, learned Senior Counsel for the applicants. Also heard Ms B Bhuyan, learned Additional Public Prosecutor for the State of Assam. Mr A Ahmed, learned counsel appears for the informant.

2. This is an application under Section 389 CrPC, for suspending the sentence and releasing the applicants from jail.

3. The basic challenge to the impugned Judgment and Order dated 22.06.2022, passed by the Court of learned Sessions Judge, Karimganj, in Sessions Case No. 88 of 2012, is that the learned trial Court had, in the list of Court Exhibits, marked-M.Ext.I against an axe, which was never produced before the learned trial Court. Learned Senior Counsel for the applicants, submits that no evidence was given by any of the prosecution witnesses, stating that an axe had been used for killing the deceased person. As such, the impugned Judgment and Order cannot be sustained and the consequential sentence should be suspended, pending final decision in the appeal. He thus submits that in the meantime, the applicants should be allowed to go on bail.

4. Ms B Bhuyan, learned Additional Public Prosecutor submits that as per the evidence given by PW-8, who is the Investigating Officer of the case, a spade had been used as a weapon to hit the head of the deceased and not an axe. She submits that the same is fortified by the discussion made by the learned trial Court in paragraph-17 of the impugned judgment and order, wherein eye-witnesses have seen the applicants assaulting the deceased with a spade on the back of his head. She accordingly, submits

that the medical evidence also supports the case of the prosecution that the deceased had died due to being hit by a blunt weapon on the head.

5. We have heard the learned counsels for the parties.

6. A perusal of the seizure memo made by the Police, which is in the Assamese vernacular, shows that a spade has been seized as the weapon used for committing the crime. The evidence of the Investigating Officer of the case, i.e., PW-8, is also to the effect that a spade was seized with butt measuring 3 feet and one piece of wood measuring 2 cubits long. The learned trial Court has discussed the evidence adduced in paragraph-17 of the impugned judgment and order, wherein it has been stated that the applicant, Faruk Ahmed assaulted the head of the deceased with a spade, as a result of which the deceased fell down.

7. On considering the evidence given by the witnesses, vis-a-vis the seizure of the spade, vide the seizure memo, we are of the view that there appears to be a typographical error in the Judgment and order of the learned trial Court, by reflecting the word-‘axe’ in the Court Exhibits, which is attached to the impugned Judgment and Order. The alleged mistake in mentioning the word-‘axe’ does not take away the fact that a spade has been allegedly used in the crime, as the same is in consonance with the seizure memo and the ocular evidence given by the witnesses.

8. In view of what has been stated above, we do not find any ground to suspend the sentence at this stage. The Interlocutory Application is accordingly rejected and disposed of.

9. Any observation made by this Court should not be considered to be a finding made on the merits of the case, at the time of hearing of the appeal.

JUDGE

JUDGE

Comparing Assistant