

GAHC010019972023



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

Case No. : I.A.(Crl.)/57/2023

SABIBAR RAHMAN
S/O LATE HARAB ALI,
R/O NEW BONGAIGAON, SAMSANPUR, ISLAMPUR,
P.S. AND SIT.- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:SAHERA KHATUN
W/O ABDUL HUSSAIN
VILL.- SANTOSH PUR
P.S.- CHAPAR
P.O.- CHAPAR
DIST.- DHUBRI
ASSAM
PIN- 78

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./286/2022

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Advocate for : MR. A RAHMAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

27.06.2023

(M. Zothankhuma, J)

Heard Mr. A. Rahman, learned counsel for the applicant and Ms. S. Jahan, learned Addl. Public Prosecutor.

2. This is an application under Section 389(2) Cr.PC, for suspending the

sentence passed in the impugned Judgment & Order dated 26.09.2022 by the learned Special Judge, Bongaigaon, in Special Case No. 1(BGN)/2022, by which the applicant has been convicted under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for a term of 20 years with a fine of Rs. 50,000/-, in default Simple Imprisonment for 1 year.

3. The applicant's counsel submits that the Grandfather of the victim girl i.e., Juran Ali and one Sabibor Rahman were made the accused in the case, on the ground that Sabibor Rahman had sexual intercourse with the victim girl, while the Grandfather gagged her mouth and threatened her with a knife, telling her not to disclose the matter to anybody. He submits that despite the evidence of the victim girl (PW-1), the learned Trial Court has acquitted the Grandfather and convicted the appellant. He submits that the learned Trial Court could not have accepted a part of the evidence of the victim girl and on the other hand, not accepted the other part of the evidence. He accordingly submits that the Grandfather having been acquitted of the charge of abatement under Section 17 of the POCSO Act, the charge under Section 6 of the POCSO Act cannot be established against the applicant. He prays that the sentence should be suspended and the applicant released on bail.

4. Ms. S. Jahan, learned Addl. Public Prosecutor submits that the evidence of the victim girl clearly shows that the appellant had raped the victim. As there is no challenge to the acquittal of the Grandfather, the acquittal of the Grandfather does not mean that the appellant did not rape the victim girl. She also submits that the 164 Cr.PC statement made by the

victim tallies with the evidence made by the victim girl. Accordingly, the application should be rejected.

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

6. The victim girl's statement is to the effect that the appellant had raped her and that her Grandfather had gagged her mouth and told her not to tell others about the matter, while threatening her with a knife. Though the evidence of the victim girl is similar to her statement made under Section 164 Cr.PC, the statement of the I/O during cross-examination is to the effect that the victim girl did not state before him that she and her sister were sleeping together in the same room or that the accused threatened her not to disclose the matter to anyone or that the appellant forcefully committed sexual intercourse with her by uncovering her clothes. However, the victim's statement made before the police under Section 161 Cr.PC is the same as she has stated under Section 164 Cr.PC and her evidence, except for the part that the appellant had taken off her clothes.

7. On considering all the above facts, we are not inclined to suspend the sentence and allow the applicant to go on bail at this stage. The application is accordingly rejected. However, any observations made in this Order shall not be considered to be the final observations of this Court at the time of hearing of the appeal.

JUDGE

JUDGE