

GAHC010021562023



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

Case No. : CrI.A./32/2023

KARNA PEGU
S/O LATE BIMALA PEGU,
VILL.- KULAMUWA,
P.S.- PANIGAON,
DIST.- LAKHIMPUR, ASSAM, PIN- 787052.

VERSUS

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

2:KRISHNA KANTA PEGU
S/O LATE LEBET PEGU

VILL.- KULAMUWA

P.S.- PANIGAON

DIST.- LAKHIMPUR
ASSAM
PIN- 787052

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(CrI.)/76/2023

KARNA PEGU
S/O LATE BIMALA PEGU
VILL.- KULAMUWA
P.S.- PANIGAON
DIST.- LAKHIMPUR
ASSAM
PIN- 787052.

VERSUS

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

Advocate for : MS D BORGOHAIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

20.02.2023

1. Heard Ms. D. Borgohain, learned counsel appearing for the applicant as well as Mr. R.R. Kaushik, learned Addl. P.P. appearing for the state respondent.
2. The learned Addl. P.P. has also filed an objection against the bail petition. The applicant/appellant was convicted under Section 304 Part I of IPC to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,000/- with default stipulation in connection with Sessions Case No. 129(N.L.)/2019. It is submitted on behalf of the applicant that there is not a single eye witness and this case has not been proved beyond reasonable doubt. The appellant/applicant was convicted on assumption. The FIR incriminates the appellant but later not a single witness testified against the applicant. This is a case where the applicant in all probability will be acquitted and in case he is acquitted, he will be prejudiced, if he is left to the incarcerated during the appeal period.

3. I have perused the entire judgment. Except the FIR, which incriminates the appellant/applicant, there is not a single witness who incriminated the applicant/appellant. At this juncture, I would not like to get into the nitty gritty of the merits of this case, which will be like deciding the appeal

4. The Learned Addl. P.P. has raised serious objections stating that a clean cut injury was detected on the neck of the deceased. The deceased was the applicant's father and the applicant eliminated his own father, which reflects the conduct of the applicant. It is also submitted that all the witnesses have stated that the deceased had a fall from the 'chang ghar' but only one clean cut injury was detected by the Medical Officer. A fall from the 'chang ghar' may result in several injury and not one clean cut injury.

5. The learned counsel for the applicant/appellant has also relied on decision of the Hon'ble Supreme Court in ***Gangabhavani Vs Rayapati Venkat Reddy and others (2013) 15 SCC 298***, wherein, it has been held that:-

" Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence stands crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

6. I have given my anxious consideration to the submissions at the Bar. I have also gone through the judgment. Considering all aspects and in view of my foregoing discussions, I deem it proper to allow the application.

7. The applicant shall be enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the learned trial Court, till the disposal of the connected appeal. Meanwhile, the operation of the impugned judgment and order dated 16.12.2022 is hereby suspended till the disposal of the connected appeal. The sentence is suspended till the disposal of the connected appeal.

8. With the aforesaid observation and direction, this I.A. stands disposed of accordingly.

JUDGE

Comparing Assistant