

GAHC010083632023



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

Case No. : I.A.(CrI.)/321/2023

BHURSA KALANDI @BHURSAH KALANDI
S/O LATE SURARA
KALANDI
R/O GIRJA LANE
HARMOTI BAGAN
P.S.- LALUK
PIN- 784160
DIST.- LAKHIMPUR
ASSAM.

VERSUS

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

2:UMESH BORAH
S/O LATE BODHESWAR BORAH

R/O ATHANIBARI

P.S.- BIHPURIA

P.O.- RANGATI CHARALI
PIN- 784165
DIST.- LAKHIMPUR
ASSAM.

Advocate for : MS. S G BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

31.07.2023

(M. Zothankhuma, J.)

1. Heard Ms. S.G. Baruah learned counsel for the applicant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.

2. This is an application under Section 389 Cr.P.C for suspension of the sentence passed in connection with the impugned judgment dated 18.01.2023 passed by the Court of the Additional Sessions Judge (F.T.C.), Lakhimpur, North Lakhimpur in Sessions Case No.122 (N.L)/2015, by which the applicant was convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/-, in default to undergo simple imprisonment for 2 months. The applicant has also prayed for bail.

3. The applicant's counsel submits that the conviction of the applicant has been made only on the basis of the evidence of Prosecution Witness No.2 (PW-2), who is the daughter-in-law of the deceased. She submits that the evidence of PW-2 shows that PW-2 had seen the deceased being taken away at night by the accused persons, to the applicant's house and thereafter they had brought back the deceased to her house. PW-2 and her husband thereafter took her mother-in-law to Harmati Tea Estate Hospital for treatment. As the Doctor in Harmati Tea Estate Hospital stated that treatment could not be done, the PW-2's mother-in-law was taken to Lakhimpur Civil Hospital, where she expired during

treatment.

4. The applicant's counsel submits that in her cross-examination, PW-2 stated that she had heard about the assault made on her mother-in-law from her mother-in-law, who was injured all over her body and blood was oozing out from her mouth. The deceased allegedly stated that she had been assaulted in the house of the applicant.

5. The applicant's counsel submits that the contradiction made by PW-2 during her examination-in-chief and cross-examination shows that the PW-2 is not a reliable witness and as such no conviction could have been made on the basis of such evidence.

6. The applicant's counsel submits that the PW-2 in her examination-in-chief had stated that her mother-in-law had been nailed (gojalire mora). However, the same was not supported by the evidence of the Doctor, who had done the Post Mortem Examination of the dead body of the deceased. The applicant's counsel also submits that as all the other co-accused had been acquitted, there was no justification for the conviction of the applicant, as PW-2 had also implicated all other co-accused persons.

7. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that the evidence of PW-2 clearly shows that the deceased had been taken to the house of the applicant, where she had been assaulted and as such the complicity of the applicant in the death of the deceased has been proved.

8. We have gone through the records and the 161 Cr.P.C statements. On considering the submissions made by the counsels for the parties and keeping in view the discrepancy made in the evidence by PW-2, we are of the view that the sentence should be suspended. Accordingly, the sentence passed in judgment dated 18.01.2023 by the Court of the Additional Sessions Judge (F.T.C.), Lakhimpur, North Lakhimpur in Sessions Case No.122 (N.L)/2015 is suspended till further orders. The applicant is accordingly granted bail on furnishing a bail bond of Rs.30,000/- (Rupees thirty thousand), with one surety of like amount to the satisfaction of the learned Trial Court. Any observations made in this order shall not be considered to be a final observation at the time of hearing of the appeal.

9. The I.A.(Crl.) is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant