

GAHC010094472020



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

Case No. : I.A.(Crl.)/535/2020

BABUL ALI @ RUSTOM
S/O- LT. AHMED ALI AKAND,
VILL- GERAMARI PART-6,
P.O.- GERAMARI PART-6, P.S.- GAURIPUR, DIST- DHUBRI, ASSAM, PIN-
783132.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:SAHIDA BEWA
D/O- LT. HANIF ALI
VILL- NACHUNGURI KOIMARI
P.O. AND P.S.- BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 04-05-2023

Heard Mr. P.K. Das, learned counsel for the applicant/appellant
Babul Ali @ Rustam, who has filed this application under section 389
Cr.P.C. with prayer for suspension of the order of conviction and

sentence passed by the learned Session Judge, Chirang vide the judgment and order dated 30.11.2019 in Sessions Case No.37(D)/2015 (Old) Session Case No.102(D)/2013 convicting the appellant/applicant under section 376(2)(g) IPC to undergo RI for a period of 10 (ten) years and also to pay a fine of Rs.10,000/- with default stipulation.

2. Heard Ms. N Das, learned Addl. PP, appearing for the respondent No.1 and Ms. T Begum, learned Amicus curiae for the respondent No.2.

3. The learned counsel for the applicant/appellant has submitted that there is every possibility that the applicant will be acquitted from the charges in Crl. Appeal No.202/2020. The statement of the victim clearly reveals that she is not a reliable witness. She has deposed as PW-6 which is marked as Annexure-5 and appended to the appeal memo. She has stated that she went to the house of the Bagadhar Das to bring money. The incident happened at about 5.00 PM, when Babu left her at the house of Bagadhar and then Bagadhar gagged her mouth by a churni (stole). She has described that Bagadar committed rape on her and she could not recognize the other two accused who were present and who also committed rape on her. She has given her age as 15/16 years. Further she has also added that she was locked inside the room but she escaped by cutting he bamboo wall. It is submitted that initially she did not implicate that Babu is complicit and later when she was cross examined by the learned Addl. PP regarding her statement before the Magistrate, then she stated to the Magistrate that Babu committed rape on her, the

entire night.

4. On the contrary in her statement under section 164 Cr.P.C., the victim 'X' has stated that Babu called her over phone and informed her that there is work for her at Shapaguri and then she went along with Babu and thereafter this incident took place. It is also submitted that the other two accused persons were acquitted as the victim could not identify the other two accused persons.

5. It is submitted that the victim had given contradictory statements and her evidence does not inspire confidence. At this juncture I would not like to delve into the evidence as it will be like deciding the entire appeal. The victim has given her age as 16/17 years but the medical officer who has deposed as PW-8 has opined that the victim was above 18 years.

6. The learned Addl. PP and the learned Amicus curiae have raised serious objections stating that the victim was confined inside a room and she had to escape from the room.

7. The Medical Officer P.W – 8's evidence is marked as Annexure – 3 and is appended to the petition and the I.O's deposition is marked as annexure – 2 and is appended to the petition.

8. The learned Addl. PP and the learned Amicus curiae has submitted that the IO's deposition as PW-7 reveals that the IO has seized three knives.

9. I have given my anxious considerations to the submissions at the bar with circumspection. I have considered the submissions that the applicant has been forwarded to custody on 16.11.2019 and since

then he has been behind bars. He was convicted under section 376(2)(g) IPC to undergo RI for 10 (ten) years and to pay a fine of Rs.10,000/- with default stipulation.

10. This case has been pending for appeal since 2020. By bringing forth the merits of the case, will be like deciding the appeal. Without any observations touching on the merits and after due consideration of the submissions of both the sides with circumspections and in view of my foregoing discussions, the applicant is enlarged on bail of Rs.50,000/- with two suitable sureties of the like amount to the satisfaction of the trial Court who may impose conditions which he or she deems fit and proper. The order of conviction and sentence impugned by the applicant is suspended until further orders.

11. In terms of the above, the instant interlocutory application stands disposed of.

JUDGE

Comparing Assistant