

GAHC010096192022



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

Case No. : I.A.(CrI.)/239/2022

CHANDU MIA LASKAR @ CHANDU AND ANR
S/O LATE KUTI MIA LASKAR VILLAGE KULICHERRA, PS DHOLAI, DIST
CACHAR, ASSAM

2: BATAL MIA @ BOTOL
S/O LATE KAMAL UDDIN LASKAR
VILLAGE KULICHERRA
PS DHOLAI
DIST CACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SIMANTINI BARMAN
W/O LATE DHANSINGH BARMAN
R/O VILL KATLICHERRA
PO JAMALPUR
PIN 788120
PS DHOLAI
DIST CACHA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(CrI.)/244/2022

SALEM UDDIN LASKAR @ SALIM UDDIN LASKAR
S/O LATE SIRAF ALI LASKAR
VILLAGE KULICHERRA. PS DHOLAI
L DIST CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SIMANTINI BARMAN
W/O LATE DHANSINGH BARMAN
R/O VILL KATLICHERRA
PO JAMALPUR
PIN 788120
PS DHOLAI
DIST CACHAR

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

17.02.2023

(Michael Zothankhuma, J)

Heard Mr. A. Ahmed, the learned counsel appearing for the applicants in IA(Crl.)/239/2022 and IA(Crl.)/244/2022. Also heard Ms. S. Jahan, the learned Addl. Public Prosecutor, Assam representing the State in both the cases.

The above two applications have been made for suspending the sentence imposed upon the applicants in view of their conviction under Sections 148/448/302 read with Section 149 of the IPC pursuant to the judgment and order dated 23.03.2022 passed by the court of the Addl. Sessions Judge, FTC at Cachar, Silchar in Sessions Case No.105/2011.

The applicants' counsel submits that the applicants' names were not mentioned in the FIR nor in the *charge sheet*. However, due to the evidence of prosecution witnesses who had named the applicants, the applicants along with one Md. Jalal Ahmed Ahmed Mazumdar, were arrayed as accused persons before the trial court under Section 319 CrPC vide order dated 28.08.2014 passed by the learned Trial Court. While the applicants herein participated in the trial proceeding, Md. Jalal Ahmed Ahmed Mazumdar filed Criminal Petition No.160/2014, challenging the order of arraignment. This Court by order dated 04.07.2014 disposed of the Criminal Petition No.160/2014, by setting aside the order of arraignment of the accused dated 28.08.2014.

The applicants' counsel submits that the applicants would also have been given the same order if they had approached this Court, by challenging the order dated 28.08.2014 arraigning them as accused. However, due to poverty, the applicants could not approach this Court.

The applicants' counsel submits that there is no mention of the applicants in the evidence of the accused, to the effect that they had assaulted the deceased, except for the applicant Botol Miya @ Botol. He submits that only one witness i.e. PW-6 has identified Botol Miya @ Botol as one of the persons who assaulted the deceased, amongst the large

crowd of 200 to 300 persons. As such, the learned Trial Court could not have made any finding convicting the applicants herein, and specifically Botol Miya @ Botol in terms of the judgment of the Apex Court in *Binay Kumar Singh & Ors. –vs- State of Bihar*, reported in (1997) 1 SCC 283. He, accordingly, submits that the sentence imposed upon the applicants should be suspended and they should be released on bail.

Ms. S. Jahan, the learned Addl. Public Prosecutor, on the other hand, submits that the evidence of PW-1 and PW-3 clearly identifies the applicants Chandu Miya Laskar @ Chandu and Botol Miya @ Botol as the persons who had assaulted the deceased. Further, PW-5 and PW-7 have also identified Botol as one of the assaulters. She also submits that PW-2 had identified Salem Uddin Laskar @ Salim Uddin Laskar, the applicant in IA(Crl.)/244/2022 as one of the assaulters of the deceased. She, thus, submits that as there was a *prima facie* case against the applicants and as they were a part of the unlawful assembly, their applications should be dismissed.

We have heard the learned counsels for the parties.

In the case of *Binay Kumar Singh & Ors. (supra)*, the Apex Court has held that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of the unlawful assembly. Even the testimony of one single witness if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. The Apex Court further held that when the size of the unlawful assembly is quite large and where many persons would have witnessed the incident,

it would be a prudent exercise to insist on at least two reliable witnesses, to vouchsafe the identification of an accused as a participant.

As can be seen from the decision of the Apex Court in the above case, the evidence of one single witness, if wholly reliable, is sufficient to establish the identification of a member of an unlawful assembly and it is not imperative that there should be at least two witnesses. The preference given by Apex Court in the above case is only by way of abundant caution and does not mean that the identification of an accused by only one witness would be fatal to the prosecution.

In the present case, as there has been identification of all the three applicants pertaining to the above two applications, we are of the view that the applications for suspending the sentence and granting bail cannot be allowed at this stage, keeping in view the nature and gravity of the offence. The observations made herein shall not be regarded as a finding on the merits of the case during the hearing of the appeal.

Both the Interlocutory Applications are accordingly rejected.

JUDGE

JUDGE

Comparing Assistant