

GAHC010100752022



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

Case No. : I.A.(CrI.)/280/2022

ABIDUR RAHMAN BARBHUIYA AND ANR.
S/O- LT. AMIR ALI BARBHUIYA,
VILL- JAMALPUR,
P.S.- DHOLAI,
DISTRICT- CACHAR, ASSAM.
PIN- 788114.

2: HAIDOR ALI LASKAR
S/O- MOINUL HOQUE
VILL- KULICHERRA
P.S.- DHOLAI
DISTRICT- CACHAR
ASSAM.
PIN- 788114

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

2:SIMANTINI BARMAN
W/O LATE DHAN SINGH BARMAN
R/O VILL KATLICHERA
PS DHOLAI
DIST CACHAR (ASSAM)
PIN 78812

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./100/2022

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

Linked Case : CrI.A./98/2022

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
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

Linked Case : CrI.A./111/2022

ABIDUR RAHMAN BARBHUIYA AND ANR.
S/O- AMIR ALI BARBHUIYA

VILL- JAMALPUR
P.S.- DHOLAI

DISTRICT- CACHAR
ASSAM.PIN-788114.

2: HAIDOR ALI LASKAR
S/O- MOINUL HOQUE
VILL- KULICHERRA

P.S.- DHOLAI
DIST- CACHAR
ASSAM
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VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP
ASSAM.

2:SIMANTINI BARMAN
W/O LATE DHAN SINGH BARMAN
R/O VILL KATLICHERA
PS DHOLAI
DIST CACHAR (ASSAM)
PIN 788120

Advocate for : MR. L R MAZUMDER
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

06.10.2023

(M. Zothankhuma, J)

Heard Mr. L.R. Mazumder, learned counsel for the appellants and Ms. S. Jahan, learned Addl. PP.

2. This application has been made under Section 389 Cr.PC for suspending the sentence imposed upon the applicant along with 2 (two) other co-accused, who have been convicted by the learned Trial Court, i.e., the Additional Sessions Judge, FTC, Cachar, Silchar in Sessions Case No. 105/2011 under Sections 148/448/302 read with Section 149 IPC in the impugned Judgment & Order dated 23.03.2022. The applicant along with the other 2 (two) co-accused, namely, Chandu Mia Laskar and Salem Uddin Laskar have been sentenced to undergo R.I for life, with a fine of Rs. 5,000/-, i/d S.I for 3 (three) months under Sections 302/149 IPC. They have also been sentenced to undergo R.I for 1 year, with a fine of Rs. 5,000/- each, i/d S.I for 1 (one) month under Sections 148/149 IPC. They have also been sentenced to pay a fine of Rs. 1,000/-, i/d S.I for 1 (one) month under Sections 448/149 IPC.

3. The applicant's main ground in challenging the impugned Judgment & Order dated 23.03.2022 and for suspending the sentence is that his involvement

in the case has been made due to the Police having mistaken his identity for another person. He submits that the applicant's name is Abidur Rahman Barbhuiya, S/o Amir Ali. However, the person who should have been arrested in the case should have been Abidur Rahman, S/o Munsir Ali, in terms of the FIR submitted by the informant and the Charge-sheet filed by the Police. He also submits that though the evidence against the applicant is that he had hit the deceased with a ballam (spear), the injuries not being cut injuries, there was no question of the spear being used as a weapon to injure the deceased. He also submits that an FIR had initially been submitted by PW-3 containing 7 (seven) names. However, the same was hidden by PW-3 and the Police and no one has seen it besides PW-3 and the Police.

4. The applicants' counsel submits that subsequent to the above hidden FIR, a subsequent FIR was filed by PW-3 containing 10 (ten) names, including the name of the applicant herein. The second FIR was filed one day after the first FIR was filed. He submits that no explanation has been given as to why the second FIR was filed after a delay of 24 hours, thereby raising an inference that the second FIR was a fabricated FIR. He accordingly submits that in view of the discrepancies stated above, the sentence should be suspended and the applicant should be allowed to be released on bail.

5. Ms. S. Jahan, learned Addl. PP on the other hand, submits that the arrest memo pertaining to the applicant shows that the applicant's father's name was shown as Munsir Ali @ Amir Ali. She further submits that the evidence of the Doctor clearly shows that there were cuts on the skin of the deceased and as such, the wounds on the body of deceased proved that the spear used by the applicant had caused the injuries on the deceased. She further submits that

though the applicant had the opportunity to raise the issue of a case of mistaken identity having occurred during his examination under Section 313 Cr.PC, the applicant has not given any explanation to that effect. She also submits that the prosecution witnesses were not cross examined by the applicant, on the issue of the applicant being arrested in a case of mistaken identity. She thus submits that the above issue is only an afterthought. She accordingly prays that the application should be rejected.

6. We have considered the submissions made by the learned counsels for the parties and on a cursory look at the documents on record, we find that the Doctor's evidence shows that he had found multiple lacerated injuries present over the scalp, with fractures in both the temporal, parietal and occipital bone. It was the opinion of the Doctor that death was due to coma resulting from head injuries and all the injuries were anti-mortem and caused by a heavy, sharp cutting weapon. Further, as per the definition of the word "lacerate" as given in the Oxford Dictionary of English, it means "tear" or "deeply cut".

7. The applicant's arrest memo shows that his father's name has been recorded as Munsir Ali @ Amir Ali. Further, no explanation was given by him at the time of his examination under Section 313 Cr.PC, to the effect that his arrest and involvement in the case was a case of mistaken identity. The evidence recorded also shows that the applicant did not confront the prosecution witnesses to the effect that his involvement in the case was due to a case of mistaken identity.

8. The above being said, we also find that the application made by the co-accused persons, for suspension of the sentence and grant of bail has been

rejected by this Court. As such, we do not find any ground to allow the present application either. The application is accordingly rejected. The above being said, any observations made herein shall not be construed to be the final observation of this Court at the time of hearing the appeal.

9. I.A. is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant