

GAHC010117632022



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

Case No. : I.A.(Crl.)/293/2022

RAJIB DAS
S/O- LATE RANJIT DAS, R/O- PANIGAON, NETAJI ROAD, P.S. AND DIST.
NAGAON, ASSAM, PIN- 782001.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:HARIPADA SUTRADHAR
S/O- UMESH SUTRADHAR
R/O- ITACHALI
NAGAON
P.S. AND DIST. NAGAON
ASSAM
PIN- 782003

Advocate for the Petitioner : MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./118/2022

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Advocate for : MR D K BHATTACHARYYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 02/01/2023
Suman Shyam, J

Heard Mr. D. K. Bhattcharyya, learned counsel appearing for the applicant. We have also heard Ms. S. Jahan, learned APP, Assam, appearing for the State.

The applicant was convicted u/s. 302 of IPC by judgement dated 21/12/2021 passed by the learned Additional District and Sessions Judge No. 2, Nagaon, in connection with Sessions Case No. 51(N)/2014 for committing the murder of deceased Abhijit Sutradhar and by order dated 23/12/2021, he was sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 20,000/- with default stipulation. Since then, the applicant is in jail.

Aggrieved by the judgement and order of conviction, the applicant as appellant has preferred Criminal Appeal No. 118/2022, which is pending disposal before this Court.

The instant IA has been filed under Section 389(1) of the Cr.P.C. with a prayer for suspension

of sentence and also for releasing the applicant on bail during the pendency of the appeal.

By referring to the materials available on record, Mr. Bhattacharyya, learned counsel for the applicant, submits that the prosecution of the applicant is based on the testimonies of PWs- 3, 4 and 5 but their evidence is full of material contradictions. According to Mr. Bhattacharyya, the learned Court below has also relied upon the telephonic conversation between the deceased and the PW-5, which was allegedly recorded in the mobile phone of PW-5 and subsequently transferred into a C.D, but the CD was neither sent to FSL nor was it produced as evidence. Moreover, submits Mr. Bhattacharyya, even the CDR was not adduced in evidence by the prosecution side. Under the circumstances, it is a clear case where there is not even iota of evidence to sustain the conviction of the applicant u/s. 302 IPC.

Mr. Bhattacharyya has further argued that the two co-accused persons had been acquitted by the learned trial Court and as such, there was no valid basis for the learned Court below to convict the applicant in this case for committing the murder of the deceased based on the same set of evidence brought on record.

Responding to the above, Ms. S. Jahan, learned APP, Assam, has taken us through the impugned judgement as well as the objection filed by the State to submit that even if the CDR was not adduced in evidence and the telephonic conversation was not produced by the prosecution in accordance with law, yet, the oral testimony of PW-5 has been taken note of by the learned trial Court to convict the applicant. Therefore, this is some evidence. According to Ms. Jahan, whether the evidence brought on record is sufficient to sustain the conviction of the applicant, would have to be examined by the Court at the stage of final hearing of the appeal.

We have perused the materials available on record and have also considered the arguments advanced by learned counsel for both the sides. We *prima facie* find that apart from the testimony of PW-5, who had allegedly recorded the telephonic conversation of the victim (deceased) informing him that if something happened to him (victim) than the applicant would be responsible, there is no other evidence to implicate the applicant.

The telephonic conversation recorded by the PW-5 in a mobile phone has not been produced by the prosecution before the learned trial Court nor was the CDR adduced in evidence. The mobile phone had also apparently not been seized by the I.O. We also find that the learned trial Court has taken note of the extra-judicial confession made by one of the co-accused persons during the course of investigation and while he was in Police custody, which was evidently in-admissible in the eye of law. Even the conclusion as to leading to discovery by one of the co-accused, does not appear to be

valid in the eye of law.

We agree with the submission of Ms. S. Jahan, learned APP, Assam, that whether the evidence adduced by the prosecution is sufficient to sustain the conviction of the applicant under section 302 of the IPC, would require minute scrutiny by this Court at the time of hearing of the appeal. However, in view of the reasons indicated above and considering the materials on record, we are of the view that the applicant has made out a strong *prima facie* case to allow him to go on bail during the pendency of the appeal. We, however, make it clear that the observations made herein above are purely for the purpose of disposing the bail application and the same shall not have any bearing at the time of hearing of the appeal.

We, accordingly, direct that the applicant ***Sri Rajib Das*** be released on bail on furnishing a bond of Rs. 30,000/- and one local surety of like amount to the satisfaction of the learned trial Court. It will also be open for the learned trial Court to impose any other additional condition for releasing the applicant on bail, if so desired.

IA stands disposed of.

JUDGE

JUDGE

sukhamay

Comparing Assistant