

GAHC010139822023



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

Case No. : I.A.(Crl.)/564/2023

MAJIBUR RAHMAN AND 2 ORS.
S/O ANAB ALI

RESIDENT OF VILLAGE GERJAI PAM
MOUZA GARUBAT
PS KACHUA
DIST NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

Advocate for : MR J C GOGOI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 23.08.2023

(K.R. Surana, J)

Heard Mr. J.C. Gogoi, learned counsel for the applicants as well as Ms. S. Jahan, learned APP for the State.

2. By filing this interlocutory application under Section 389 CrPC, the applicants who are the appellants in the connected appeal and convicted of committing offence under sections 302/34 IPC and sentenced for life with fine of Rs.10,000/- with default stipulation under section 302 IPC, have prayed for suspension of sentence and or bail during the pendency of the connected appeal.

3. The learned counsel for the applicants has submitted that the alleged weapon of offence was not seized and forwarded to the forensic lab for serological examination and it is further submitted that no independent witnesses to the incident has been examined and therefore, the conviction of the applicants is based only on the evidence of the interested witnesses, being the mother and daughter of the victim. The learned counsel for the applicants has also submitted that the applicant no.1 is suffering from various ailments including back ache and has a minor children and he is the only bread earner of the family and that the applicant no. 2, who is suffering from body ache pain and is required to go on bail for his medical checkup and that the applicant no.3 has a minor children and has no source of income to sustain his wife and the minor children. It is also submitted that the applicants are permanent residents

of their respective locality and there is no chance of absconding.

4. The learned APP has taken us to the judgment impugned in the connected appeal and has shown that the evidence in the trial is to the effect that the deceased was first assaulted on the road by the applicants at about 6.00 PM and thereafter, the applicants no. 1 and 3 had tied up the victim and brought him into the compound of the applicant no.2 and thereafter, assaulted him at about 9.00 PM, and then his dead body was recovered with deep lacerated injury over back of the head with exposed brain and there was a lacerated injury on the right side of neck of size 10x3x3 cm and another lacerated injury on the left side of the neck measuring 8x3x3 cm. There was deep lacerated injury over right shoulder of size 10x3x3 cm, there was fracture of the occipital bone of the skull with lacerated and exposed brain. Moreover, there was fracture of humerus and scapula and as per the opinion of the doctor, the death occurred due to the shock and hemorrhage as a result of injury sustained.

5. The learned trial Court found the evidence of PW-1 and 2 fully corroborated with the evidence of PW-4 and 5, who had seen the incident and therefore, the conviction of the applicants is based on evidence which was found reliable by the learned trial Court. The place of occurrence is a rural area and therefore, there is every likelihood that in rural area, independent witness would not be available.

6. Accordingly, the Court is of the view that the nature of evidence which has come out in the trial against the applicants, this is not a fit case to suspend the sentence awarded to the applicants. Moreover, the nature of illness by which the applicants are suffering is not such that it would require them to be granted

bail for treatment. Therefore, the Court is disinclined to either suspend and to grant privilege of bail to the applicants.

7. Accordingly, this interlocutory application stands dismissed.

JUDGE

JUDGE

Comparing Assistant