

GAHC010146442023



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

**Case No. : I.A.(Crl.)/669/2023**

RAJIB PEGU  
S/O GANESH PEGU R/O KAMREK GAON P.S PANIGAON PIN 787052 DIST. LAKHIMPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.  
REP .BY THE PP  
ASSAM

2:AJOY MORANG  
S/O KHAGESWAR MORANG R/O VILL. KAMREK P.O. PANIGAON DIST. LAKHIMPUR PIN  
787052 ASSAM

-----

Advocate for : MS. D BORGOHAIN  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**In Crl.A./282/2023**

RAJIB PEGU  
S/O GANESH PEGU R/O KAMREK GAON P.S PANIGAON PIN 787052 DIST.  
LAKHIMPUR ASSAM

VERSUS

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

2:AJOY MORAN

S/O KHAGESWAR MORANG R/O VILL. KAMREK P.O. PANIGAON DIST.  
LAKHIMPUR PIN 787052 ASSA

**Advocate for the Petitioner** : MS. D BORGHAIN

**Advocate for the Respondent** : PP, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**  
**HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

**ORDER**

**Date : 17/11/2023**  
**Suman Shyam, J**

Heard Ms. D. Borgohain, learned counsel for the applicant/appellant. Also heard Ms. S. Jahan, learned APP, Assam, appearing for the State and Mr. A. Khanikar, learned counsel appearing on behalf of the informant.

By the judgement and order dated 15/06/2023 passed by the learned Sessions Judge, Lakhimpur at North Lakhimpur in Sessions case No. 197 (LN)/2017, the applicant herein was convicted under section 302 of the IPC for committing the murder of deceased Bishnu Morang and sentenced to undergo rigorous imprisonment for life and also to pay fine. Since then, the applicant is in jail. By filing the instant application under section 389 of the Cr.P.C., the applicant is seeking suspension of his jail sentence and also for his release on bail.

For convicting the applicant, the learned Sessions Judge has primarily relied upon the testimonies of PWs 2, 4, 5, 6, 7, 8, 9 and 10 by treating them as eye witnesses. However, according to Ms. Borgohain, there are material contradictions and inconsistencies in the evidence adduced by those witnesses making them unreliable. She further submits that even if the evidence of those witnesses are taken on face value, even then, this is a case which clearly comes within exception No. 1/IV of section 300 of the IPC and, therefore, conviction of

the applicant under section 302 of the IPC is not sustainable in the facts and circumstances of the case.

Ms. Jahan, learned APP, Assam, has strongly opposed the bail prayer. She has, however, submitted in her usual fairness that the element of grave and sudden provocation due to an altercation leading to the occurrence, cannot be entirely ruled out in this case.

After hearing the submissions of learned counsel for the parties and on perusal of the materials on record, we find that the incident took place in the afternoon of 01/05/2017 when a village feast was organized in which, the applicant, the deceased and several other villagers were present. It further appears that the persons present in the feast had consumed alcohol and in all probability, the applicant and the deceased were under the influence of alcohol when the incident took place. We further find from the testimony of the witnesses that prior to the incident, a quarrel was going on between two persons present there when the deceased tried to intervene. It was at that stage that the accused/applicant gave a blow on the head of the deceased with a *lathi*. It is a case of single blow which had caused the fatal injury upon the deceased.

Having regard to the materials available on record, we are, therefore, of the view that the presence of grave and sudden provocation leading to the incident cannot be completely ruled out in this case. However, the said aspect of the matter can be finally ascertained only after a length hearing of the appeal.

Be that as it may, after hearing the submissions of learned counsel for the parties, we are of the opinion that the applicant has made out a strong *prima facie* case for granting him bail. Moreover, it appears that during trial, the applicant was all along on bail. But there is no

allegation brought against him regarding mis-use of such liberty..

We, accordingly, direct that the applicant *Rajib Pegu* be forthwith released on bail on furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) and one local surety of like amount to the satisfaction of the learned District and Sessions Judge, North Lakhimpur.

The learned Sessions Judge, North Lakhimpur will be at liberty to impose any other additional condition for the release of the applicant on bail.

It is further made clear that the observations made herein above are tentative in nature and have been made purely for the purpose of disposal of the bail application and the same shall not, in any manner, influence the outcome of the appeal at the stage of final hearing.

With the above observation, the IA stands disposed of.

**JUDGE**

**JUDGE**

*sukhamay*

**Comparing Assistant**