

GAHC010155722022



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

Case No. : I.A.(Crl.)/423/2022

MANTU DEY
S/O- LATE JAGANNATH DEY
VILL.- ARAIANI PT-1
P.S. BAGRIBARI
DIST. KOKRAJHAR
ASSAM
PIN- 783370.

VERSUS

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

2:SMTI. DIPASUTRADHAR
W/O- JAYDEB CH. SUTRADHAR
R/O- ARAIANI
PT-1
P.S. BAGRIBARI
DIST. KOKRAJHAR
ASSAM
PIN- 783370.

Advocate for : MR. M U MAHMUD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

24.01.2023

(Ajit Borthakur, J)

Heard Mr. M.U. Mahmud, learned counsel for the accused appellant as well as Mr. D. Das, learned Addl. P.P., Assam appearing for the State respondent No.

1.

2. By this interlocutory application under Section 389 (1) Cr.P.C., the accused appellant, who is convicted vide the impugned Judgment and Order, dated 20.07.2022, passed in Sessions Case No. 109/2019 by the learned Asstt. Sessions Judge, Kokrajhar and sentenced to undergo R.I. for 10 years with fine of Rs.10,000/- (Rupees Ten Thousand), in default, to undergo S.I. for another 3 (three) months u/s 376 of the IPC, has prayed for suspension of sentence and to allow him to go on bail.

3. LCR is received in connection with Criminal Appeal No. 176/2022.

4. The prosecution case, in brief, is that an F.I.R., dated 16.07.2019, was lodged by the victim woman alleging, *inter-alia*, that the accused/appellant, since a long time, had been indicating obscene gestures to her. On 14.07.2019, at around 2.30 a.m., while the alleged victim woman stepped out of home for urinating, the accused appellant, all on a sudden, gagged her mouth with a gamocha and by showing sharp weapon forcibly raped her. During the incident, the victim's husband rushed to the spot and attempted in vain to apprehend the accused appellant. The accused managed to flee away. In connection with the aforesaid incident, a village bichar was convened to settle the incident amicably, for which, the F.I.R. was lodged late.

5. Mr. M.U. Mahmud, learned counsel appearing for the accused/appellant, submits that the learned trial Court has convicted and sentenced the accused on misappreciation of the evidence of the victim woman (P.W. 1) and other evidence on record including that of the doctor (P.W. 7) as well as the Investigating Officer (P.W. 8). Mr. Mahmud further submits that the learned trial Court seems to have convicted the accused on moral ground only disregarding the inherent inconsistency and lack of credence of the prosecution witnesses. Mr. Mahmud also submits that despite there being no incriminating evidence which can be termed as beyond all reasonable doubt, the accused appellant has suffered more than 10 months in judicial custody and his conduct during trial of the case was absolutely satisfactory and as such, subject to the result of the connected appeal, he may be directed to be released on bail subject to suitable condition, if deemed necessary. Mr. Mahmud has relied on the ratio of the judgments rendered by the Hon'ble Supreme Court in 1. *Mousam Singha Roy and Ors. Vs. State of W.B.*, reported in (2003) 12 SCC 377; 2. *Bhagwan Rama Shinde Gosai and Ors. Vs. State of Gujarat*, reported in (1999) 4SCC 421; 3. *Harjinder Singh alias Bhola Vs. State of Punjab*, reported in (2004) 11 SCC 253; 4. *Imrat Singh and Ors. Vs. State of Madhya Pradesh*, reported in (2020) 14 SCC 257; 5. *Samadhan Dhudaka Koli Vs. State of Maharashtra*, reported in (2008) 16 SCC 705; 6. *State of Madhya Pradesh Vs. Ratan Singh and Ors.*, reported in (2020) 12 SCC 630 as well as the judgments rendered by this Court in 1. *Ramnarayan Jha Vs. State of Assam*, reported in 1999 (1) GLT 54 and 2. *Bul Turi Vs. State of Assam*, reported in 2014 (2) GLT 252.

6. *Per contra*, Mr. D. Das, learned Addl. Public Prosecutor appearing for the state and referring to the grounds of objection, submits that the primary question in this application is whether the evidence of the victim woman (P.W.1)

instils the confidence of the Court and if her evidence is considered to be inspiring, her evidence alone is sufficient for holding the accused guilty of the charge. Therefore, Mr. Das submits that as the matter is now ready for hearing after paper book is prepared, the matter may be finally disposed of on merit instead of consideration of the instant bail application of the accused at the present intermediate stage.

7. We have given due consideration to the above submissions of the learned counsel of both the sides and perused records including the impugned judgment and order and the judgments cited by the accused appellant's side referred to above.

8. A perusal of the evidence of the victim woman (P.W. 1), it is prima facie revealed that she is a married woman aged about 21 years and that the accused appellant since before the alleged incident, had been uttering slang language and touched her body. Further, the accused appellant took care of the alleged victim's child for about 5-6 months before the incident indicating her acquaintance with him from before and the aforesaid continuation of the alleged unwarranted advancement of the accused towards her remained unreported even to her husband as it has come in her cross-examination. The alleged incident took place on 14.07.2019 at about 2.30 a.m. and the aforesaid incident was reported after 2 days to the police ostensibly to arrive at an amicable settlement in the village bichar. The medical examination was done at R.N.B. Civil Hospital, Kokrajhar on 17.07.2019 at 1.10 p.m. and the doctor (P.W. 7) reported that no injury mark was seen on her body and private parts vide medical report, Exhibit-4. The aforesaid finding of the doctor casts on a different perspective of the incident as has been highlighted in the cross-examination of the Investigating Officer (P.W. 8). In this connection, we have perused the

sketch map of the place of occurrence.

9. Having considered the submissions made by the learned counsel for both the sides and consideration of the evidence so far recorded in the case, we are of the considered opinion that subject to outcome of final hearing on merit of the connected appeal, the accused appellant's prayer for bail may be considered favourably.

10. Accordingly, it is provided that the sentence passed against the accused appellant vide the impugned Judgment and Order, dated 20.07.2022, by the learned trial Court of Asstt. Sessions Judge, Kokrajhar in Sessions Case No. 109/2019 shall remain suspended till disposal of Criminal Appeal No. 176/2022 and the accused appellant is directed to be released on bail of Rs.50,000/- (Rupees Fifty Thousand) only with one surety of like amount to the satisfaction of said learned trial Court/Sessions Judge, Kokrajhar, Assam.

With the above directions, the Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant