

GAHC010167332023



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

Case No. : I.A.(Crl.)/664/2023

JABED ALI
S/O ISMAIL HOQUE @ SHEIKH
VILL.- MOISHALDANGA PART-I
P.S.- MANKACHAR
DIST.- SOUTH SALMARA-MANKACHAR.

VERSUS

THE STATE OF ASSAM AND ANR.

REP. BY P.P.

ASSAM.

2:MOHAMMAD PIRU SK.

S/O LATE AZGAR ALI

VILL.- BAMUNPARA

P.S.- MANKACHAR

DIST.- DHUBRI

ASSAM.

Advocate for : MR. B K MAHAJAN

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

25.09.2023

(M. Zothankhuma, J.)

1. Heard Mr. N. Mahajan, learned counsel for the applicant and Ms. S. Jahan, learned Additional Public Prosecutor for the State.

2. By filing this application u/s 389(3) Cr.P.C., the applicant has prayed for suspending the operation of the sentence passed in the judgment and order of conviction dated 06.06.2023 by the learned Sessions Judge, South Salmara-Mankachar in Sessions Case No. 49/2021 (New) & Sessions Case No. 93/2015 (Old), thereby sentencing the appellant to undergo RI for life with a fine of Rs.10,000/-, (Rupees ten thousand only) with default stipulations and to allow him to go on bail.

3. The basic ground for suspending the sentence and releasing the petitioner on bail is that one set of prosecution witnesses had taken the stand that PW-2 had caused the death of the deceased by hitting him with an axe, while another set of witnesses had taken the stand that the applicant was the one, who had hit the deceased with an axe. It is the case of the applicant that while the evidence of PW2 is to the effect that the applicant had caused the death of the deceased, the evidence of PW14 is to the effect that PW-2 had caused the death of the deceased.

4. The learned counsel for the applicant submits that when there are two sets of witnesses giving contrary evidence, the evidence which goes in favour of the accused shall have to be adopted. In this regard, the learned counsel for the applicant has relied upon the Division Bench judgment of this Court in ***Budhua Mura vs. State of Assam***, reported in ***2002 (2) GLT 103***.

5. The learned counsel for the applicant submits that the evidence of PW-12,

PW-13 and PW-14 is to the effect that PW-2, Md. Moynal Hoque, is the one who had wielded the axe which had caused the death of the deceased, while the evidence of PW-2 & PW-3 is to the effect that the applicant was the one who had wielded the axe which had caused the death of the deceased. He accordingly submits that as PW-12, PW-13 and PW-14 have not been declared hostile witnesses, their evidence, which is in favour of the applicant would have to be accepted by this Court. In this respect, he has relied upon the Division Bench judgment of this Court in ***Sah Alom (Md.) vs. State of Assam & Another***, reported in ***2021 (4) GLT 1043***.

6. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that the evidence of PW-2, PW-3 and PW-6 has established the guilt of the applicant, in having caused the death of the deceased, as he was the one who wielded the axe which hit the deceased. She further submits that the evidence of PW-12 is hearsay and the evidence of PW-13, which appears to be in favour of the applicant, has only been made in the cross-examination. No such statement has been made by PW-13 in his statement under Section 161 Cr.P.C. She submits that though PW-14, who is the shop owner has stated that the PW-2 had taken an axe from his shop and hit the deceased, the statement made by PW-14 in his 161 Cr.P.C. statement does not contain such averments. She accordingly submits that the application should be rejected.

7. We have heard the learned counsels for the parties.

8. The evidence of PW-2, PW-3 and PW-6 is to the effect that the deceased

Alimuddin had been assaulted with an axe wielded by the applicant. The evidence of PW-13, in his cross-examination, shows that he had denied the suggestion that PW-2 was present with him on the date of occurrence. Though it has been reflected in the cross-examination of PW-13 that PW-13 had stated that PW-2 got one axe from the shop of PW-14 and attempted to inflict a blow upon one Kuddus and the same had accidentally fallen upon the deceased, who tried to rescue Kuddus, the same appears to be with regard to a suggestion. The only evidence directly linking PW-2 with the death of the deceased Alimuddin, is the evidence of PW-14 who has stated that PW-2 took an axe from his shop and hit the deceased.

9. On perusing the evidence of PW-3 & PW-6, it prima facie appears that the evidence of PW-3 to PW-6 have been contradicted.

10. On considering the contradictory evidence given by PW-2 and PW-14, we are of the view that the sentence passed in the impugned Judgment dated 06.06.2023 in Session Case No. 49/2021 should be suspended, keeping in view the judgment of this Court in ***Budhua Mura (Supra)***.

11. Accordingly, in view of the reasons stated above, the impugned Sentence imposed upon the applicant, vide judgment and Order dated 06.06.2023 is hereby suspended till final disposal of the appeal.

12. The applicant is accordingly allowed to go on bail, on a bail bond of Rs. 20,000/-, with two sureties of the like amount, to the satisfaction of the learned

Trial Court. The bail is however subject to the condition that the applicant will not leave the State of Assam without prior permission of the learned Trial Court.

13. I.A. is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant