

GAHC010171662023



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

Case No. : I.A.(CrI.)/829/2023

RABIRAM DAS,
S/O SRI SABIR DAS, R/O VILLAGE KHARUAJAN, P.S. BARAMA, DIST.
BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J KALITA

Advocate for the Respondent : PP, ASSAM

Linked Case : CRL.A(J)/31/2022

PRAFULLA DAS
BAKSA
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MR. B BHAGAWATI
AMICUS CURIAE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI**

ORDER

25.09.2023

(Michael Zothankhuma, J)

Heard Mr. J. Kalita, learned Counsel for the applicant. Also heard Ms. S. Jahan, learned Addl. Public Prosecutor for the State respondent.

2. This application under Section 389 (3) CrPC is for suspending the sentence passed in the impugned Judgment dated 16.11.2021 passed by the Session Judge, Baksa, Mushalpur, in Session Case No. 233/2018, by which the applicant has been convicted under Section 302/34 IPC.

3. The applicant's counsel submits that there is nothing in the evidence recorded by the prosecution witnesses showing the involvement of the applicant in the crime in which one Gobinda Ramchiary had been killed. He submits that the applicant had no hand in the killing of the deceased with a knife and the circumstantial evidence does not point to the guilt of the applicant. He submits that the applicant has been convicted on the basis of circumstantial evidence and as such, the circumstantial evidence must rule out any likelihood of the innocence of the accused. He submits that in a case of conviction on the basis of circumstantial evidence, all the links in the chain given should form an irresistible conclusion about the guilt of the accused and the guilt must be proved beyond all reasonable doubt. In this regard, he has relied upon the Judgment of the Supreme Court in the case of *A. Jayaram & Another Vs.*

State of A.P, CBI reported in AIR 1995 SC 2128.

4. Mrs. S. Jahan, the learned Addl. Public Prosecutor, on the other hand submits that the applicant and two other persons had, after killing the deceased with a knife, surrendered themselves before the Police Station with the bloodied knife. She submits that the circumstantial evidence, which is to the effect that the applicant had surrendered himself with the bloodied knife, alongwith two others, proved the guilt of the applicant. She also submits that the applicant had surrendered within half an hour of the occurrence of the crime and as such, there was nothing to show that the applicant was innocent of the crime. Thus, the application for suspension of the sentence and bail should be rejected.

5. We have heard the learned counsels for the parties and on perusing the evidence of Court Witness-1(CW-1), we find that the applicant had surrendered alongwith two co-accused in the Police Station with the 10 inch knife, which was blood-stained. On considering the evidence of CW-1 and the evidence of PW-12, we are of the view that the sentence inflicted upon the applicant cannot be suspended at this stage. Accordingly, the application for suspension of the sentence and prayer for bail is rejected.

IA is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant