

GAHC010173082022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Interlocutory Application (Criminal) No. 497 of 2022

Topeswar Rabha, age 27 years,
Village –Sopai Baligaon, P.S.- Dhekiajuli,
District-Sonitpur, Assam.

.....Accused/Applicant

VERSUS

1. State of Assam,
represented by Public Prosecutor, Assam

2. Anthony Bhengra,
S/o Bricha Bhengra,
Village- Sopai Baligaon,
P.S.- Dhekiajuli, District- Sonitpur,
Assam.

.....Respondent/Informant

Advocate for the Applicant : Mr K Sarma
Advocate for the respondents : Ms S Jahan, Addl. P.P,
Assam.

BEFORE

HON'BLE MR. JUSTICE AJIT BORTHAKUR
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Order : 30.01.2023

ORDER (ORAL)

(Malasri Nandi, J.)

Heard Mr K Sarma, learned counsel appearing on behalf of the applicant/appellant and Ms S Jahan, learned Additional Public Prosecutor for the State of Assam.

2. The present interlocutory application has been filed under Section 389 CrPC, by the accused applicant, Topeswar Rabha seeking suspension of his sentence, pending Criminal Appeal (J) No. 68 of 2022, arising out of the Judgment and Order dated 06.05.2022, passed by the learned Sessions Judge, Sonitpur, Tezpur, in Sessions Case No. 04 of 2019, convicting the accused/applicant under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for Life and to pay fine of Rs. 5,000/-, in default stipulation.

3. The brief facts of the case is that the informant Anthony Bhengra lodged an FIR on 01.05.2018, before the In-Charge, Rakyasmari Police Outpost, under Dhekiajuli Police Station, stating inter alia that on 30.04.2018, at about 04:00 pm, when his elder brother, Raju Bhengra, went to their land to bring back his cattle, the two persons, i.e., son of Munna Rabha and wife of Munna Rabha, armed with bamboo sticks assaulted him causing grievous injuries on his person, as a result of which, his elder brother became unconscious and fell on the ground. On receipt of the news, the informant went to the place and found his brother in an unconscious state. Immediately, he was shifted to Dhekiajuli Primary Health Centre, then he was referred to Tezpur Medical College and Hospital, for better treatment, as he had sustained severe injuries.

4. On receipt of the complaint, a case was registered vide Dhekiajuli PS Case No. 319/2018, under Section 325/506/34 IPC. After two days of lodging of the FIR, the elder

brother of the informant died and subsequently, Section 302 IPC was added and after completion of investigation, charge sheet was submitted against the accused/applicant, Tapeswar Rabha, under Section 302 IPC.

5. It is submitted by the learned counsel for the accused/applicant, Mr K Sarma that the alleged occurrence took place on 30.04.2018 at about 04:00 pm, but the FIR was lodged next day, i.e., on 01.05.2018, at about 12:00 am, without mentioning the name of the accused. On the basis of the said FIR, a case was registered under Section 325/506/34 IPC, but when the injured died on 03.05.2018, Section 302 IPC was added and charge sheet was submitted accordingly, which is not as per provision of law.

6. It is also the submission of the learned counsel for the accused/applicant that the injured was allegedly assaulted by split-bamboo and what type of injury was sustained by him could not be ascertained because he was not examined by any doctor and only PM examination was held after his death and as such, whether deceased died as a result of injury allegedly sustained by him by split bamboo or not is not established and under such circumstances, the ingredients of offence under Section 302 IPC is not attracted.

7. Learned counsel for the accused/applicant has also submitted that there is no eye-witness to the incident nor any strong circumstantial evidence causing direct link between the accused and the crime committed. As such, the accused/applicant is entitled to bail at this stage, pending appeal.

8. On the other hand, learned Additional Public Prosecutor, Ms S Jahan, has vehemently opposed for granting bail to the accused/applicant, at this stage. She has submitted that there are two eye-witnesses to the incident, i.e., PW-2 and PW-6 and they had clearly stated

in their evidence before the learned trial Court, that they had seen the incident and nothing has come out from their cross-examination to discredit their evidence and at this stage, much more is not required and therefore, the application for suspending the sentence may be rejected.

9. We have considered the submissions of the learned counsel for both the parties. We have also gone through the record.

10. In the case of ***Ramji Prasad vs Rattan Kumar Jaiswal And Anr;*** reported in **(2002) 9 SCC 366** and in the case of ***Gomti vs Thakurdas & Ors;*** reported in **(2007) 11 SCC 160**, it was held that in heinous crime like murder, proper application of mind to relevant factors and recording of reasons germane to justify grant of bail by the Court, is essential.

11. Though the learned counsel for the accused/applicant has submitted that there are lots of contradictions in the statements of witnesses and it is reflected from the FIR that two boys informed about the matter to the informant and the said two boys were not examined by the prosecution, and also pointed out that there was delay in lodging FIR and the victim was not examined by the doctor immediately after the incident, but to our consideration, those facts would be taken up at the time of final hearing of the appeal.

12. It is an undisputed fact that the incident took place on 30.04.2018, but the person died on 03.05.2018, for the injuries sustained by him on the date of incident. The FIR was lodged at the instance of the brother of the deceased, on the next date of incident, i.e., on 01.05.2018. From the FIR, it also discloses that immediately after the incident, the deceased was taken to Primary Health Centre, Dhekiajuli and subsequently, he was shifted to Tezpur

Medical College and Hospital and it has also come out from the evidence of the witnesses that the deceased sustained injuries on his head, which is a vital part of the body and is corroborated by the Post-Mortem Report. Apart from that, PW-2 and PW-6 had categorically stated that they had seen the incident. According to PW-2, on the date of incident, at around 4:00 pm he went to the field to bring cattle. The deceased also went there to take his cattle. At that time, two boys were chasing the cattle. On this, accused preventing the boys, chased them and assaulted Raju Bhengra with a lathi, causing injury on his head. PW-6 also deposed before the trial Court in the same tune by stating that on that day, he also went to the field to bring his cattle and saw the incident, while the accused/applicant had assaulted the deceased with a bamboo stick, causing injury on his person. Both PW-2 and PW-6 stated that after the incident, the deceased was taken to hospital, but he died after 3/4 days.

13. We have also gone through the detailed reasons, assigned by the trial Court, while convicting the accused/applicant in the heinous crime of murder and sentenced him for Life.

14. In view of the above, without discussing the evidence in detail, at this stage, and following the decisions of the Apex Court in ***Ramji Prasad (supra)*** and ***Gomti (supra)***, we do not find it appropriate to suspend the sentence of the accused/applicant, during the pendency of the appeal. Accordingly, the prayer of the accused/applicant is rejected.

15. Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant