

GAHC010175282023



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

Case No. : I.A.(CrI.)/708/2023

AZAHAR ALI KHAN
S/O LATE MOHUR UDDIN KHAN, R/O KALAPAKANI PART- II, P.S.- DHUBRI,
DIST.- DHUBRI, ASSAM, PIN- 783324.

VERSUS

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

2:NOOR HUSSAIN @ NUR HUSSAIN
S/O LATE MOHAMMAD ALI

R/O KALAPAKANI PART- II (KHAPARA)
P.S. AND DIST.- DHUBRI
ASSAM
PIN- 783323

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./299/2023

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Advocate for : MR. B D KONWAR SR. ADV.
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

ORDER

Date : 16.10.2023
(Michael Zothankhuma, J.)

Heard Mr. B.D. Konwar, learned Senior counsel assisted by Mrs. J.M. Konwar, learned counsel for the applicant and Ms. J. Jahan, learned Additional Public Prosecutor for the State of Assam.

2. This application under Section 389 Cr.P.C. has been made for suspending the sentence requiring the applicant to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months, pursuant to the

impugned judgment and order dated 08.06.2023 passed by the Court of the learned Additional Sessions Judge, Dhubri, Assam in Sessions Case No. 286/2015, whereby the applicant has been convicted under Section 302 IPC.

3. The applicant's counsel submits that the evidence of the prosecution witnesses nowhere indicates the involvement of the applicant in causing the death of the deceased. He submits that though some of the prosecution witnesses had stated in their testimony that the police had recovered one axe, one rope, one blood stained knife, blood stained cloth etc. from the house of the applicant, no axe, blood stained knife or blood stained cloth had been produced or exhibited before the learned Trial Court. He also submits that though the police had seized some blood stained grass and exhibited the same, the police had not been able to connect the blood found on the grass with the blood type of the deceased. He submits that the seizure of the rope by the police does not have any relevance, in as much as, the deceased had died due to an injury caused by a sharp edged weapon, as per opinion of the Medical Officer. He also submits that though some of the prosecution witnesses had allegedly stated that the deceased was to be taken to the house of the applicant, there is no proof that the applicant had been taken to the house of the applicant. He also submits that though P.W.9 and P.W.12 had given their statements under Section 164 Cr.P.C., to the effect that deceased had been invited to the house of the applicant, the said statements had not been exhibited during trial.

4. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that P.W.1 and P.W.2 in their evidence had stated that the deceased had been asked to meet the applicant. Further, P.W.12 had stated that he had seen the deceased being taken towards the house of the applicant. The body of the deceased was found in a pool, at the back of the

house of the applicant and no explanation for the same had been given by the applicant. Thus, the circumstantial evidence available proved the guilt of the applicant.

5. We have heard the learned counsels for the parties. We have noticed that though the testimony of some of the witnesses is to the effect that blood stained knife, an axe and blood stained cloth had been recovered from the house of the applicant, no such materials had been produced before the learned Trial Court. Though the circumstantial evidence is suggestive of the fact that the applicant was involved in the murder of the deceased, there is no direct evidence linking him to the same. Further, the statements under Section 164 Cr.P.C. made by PW9 and PW12 were not exhibited during trial. Without going deep into the evidence adduced by the prosecution witnesses, we are of the view that the applicant has made out a *prima facie* case for suspension of sentence imposed upon him. Consequently, the sentence imposed, pursuant to impugned judgment and order dated 08.06.2023 passed by the learned trial court in Sessions Case No. 286/2015, is hereby suspended. Consequently, the applicant is allowed to go on bail on a bail bond of Rs.30,000/- with one suitable surety of like amount, to the satisfaction of the learned Additional Sessions Judge, Dhubri, Assam.

6. The interlocutory application is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant