

GAHC010237492022



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

Case No. : I.A.(Crl.)/735/2022

KETENG BORO AND 9 ORS.

S/O- BANARU BORO, R/O- VILL.- BANDUGURI, P.S. BIJNI, DIST. CHIRANG,
ASSAM, PIN- 783390.

2: GENA BASUMATARY

S/O- LATE MOHAN BASUMATARY

R/O- VILL.- BANDUGURI

P.S. BIJNI

DIST. CHIRANG

ASSAM

PIN- 783390.

3: GONGAR BASUMATARY

S/O- LATE MOHAN BASUMATARY

R/O- VILL.- BANDUGURI

P.S. BIJNI

DIST. CHIRANG

ASSAM

PIN- 783390.

4: GOGO BASUMATARY

S/O- LATE MOHAN BASUMATARY

R/O- VILL.- BANDUGURI

P.S. BIJNI

DIST. CHIRANG

ASSAM

PIN- 783390.

5: AKHU BASUMATARY

S/O- LATE JALATAR BASUMATARY

R/O- VILL.- BANDUGURI

P.S. BIJNI

DIST. CHIRANG

ASSAM

PIN- 783390.

6: THIREN BASUMATARY
S/O- OBORSIN BASUMATARY
R/O- VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390.

7: SAMBARU BASUMATARY
S/O- LATE JAMANI BASUMATARY
R/O- VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390.

8: JABAJI BASUMATARY
S/O- LATE JALADAR BASUMATARY
R/O- VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390.

9: HEBRO GAYARI
S/O- SOBHARAM GOYARI
R/O- VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390.

10: SAMAR MUCHAHARY
S/O- LATE BANESWAR NUCHAHARY
R/O- VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390

VERSUS

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

2:GANESH BASUMATARY

S/O- SRI SIKI RAM BASUMATARY
VILL.- BANDUGURI
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN- 783390

Advocate for the Petitioner : MR R DHAR

Advocate for the Respondent : PP, ASSAM

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

ORDER

20.02.2023

(M. Zothankhuma, J)

1. Heard Mr. R. Dhar, learned counsel for the applicants and Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.
2. This is an application under Section 389 Cr.P.C., to suspend the sentence passed in the impugned Judgment and Order dated 24.05.2022 by the Court of the Additional Sessions Judge, Bijni, Chirang in Sessions Case No.98(B)/2018.
3. The applicants' counsel submits that there is discrepancy in the evidence given by PW-1 with regard to the date of the crime in question and that the evidence of PW-2 also does not give the exact date when the crime allegedly occurred. He also submits that no weapon was seized by the police. Further, the Doctor (PW-6) having stated in his Post Mortem Examination that the female body being decomposed, there is no question of the witnesses identifying the

body to be that of Kangalin Basumatary. The learned counsel for the applicants also submits that the applicants having surrendered themselves before the police during the time of investigation, the applicants should be released on bail till the appeal is disposed of. The learned counsel for the applicants further submits that all the names of the applicants/accused were not reflected in the FIR and as such, the prosecution of the applicants whose names are not in the FIR was vitiated.

4. Ms. B. Bhuyan, learned Additional Public Prosecutor, on the other hand submits that the witnesses to the crime in question have categorically identified the applicants as the perpetrators of the crime. She further submits that as the Post Mortem Examination was done just within a week of the crime, the decomposition of the body would not be to such an extent that the same could not be identified. She further submits that the date of occurrence of the crime as stated by PW-1 in her evidence is due to the fact that the evidence of PW-1 was taken 18 years after the crime had been committed and as such, there could have been mistake on the exact date of the crime due to the long lapse time between the date of the offence and the evidence taken by the Court. She also submits that there is no contradiction in the deposition of the witnesses.

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

6. The facts of the case show that the incident had apparently occurred on the night of 31.08.2001 and 01.09.2001. However, PW-1 has given a wrong date during her evidence. In this respect, it should be kept in mind that the

evidence has been taken by the learned Trial Court, 18 years after the incident had occurred. As such, there was bound to be some discrepancies due to the long period of time that had elapsed. Similarly, PW-2 may not have been stated the exact date of the incident in view of the evidence being recorded after 18 years from the date of the incident. The evidence recorded by the learned Trial Court is to the effect that 3 (three) persons have been killed by the applicants, who are identified by the prosecution witnesses. The identification of one of the victims had also been done within 7 (seven) days.

7. On considering the evidence that had been recorded in the Trial Court and keeping in view the gravity of the offence, we are of the view that bail should not be granted at this stage. Accordingly, the application for suspension of sentence and granting of bail is rejected. However, the observation made today should not influence the merits of the case at the time of hearing of the appeal.

8. Interlocutory Application is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant