

GAHC010240292022



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

**Case No. : I.A.(CrI.)/745/2022**

MD. RAMJAN ALI AND ANR.  
S/O- LATE SALAMAT ALI, VILL.- KHALIHAMARIPAM, P.S. BHURAGAON,  
DIST. MORIGAON, ASSAM

2: MD. RAFIKUL ISLAM  
S/O- LATE SALAMAT ALI  
VILL.- KHALIHAMARIPAM  
P.S. BHURAGAON  
DIST. MORIGAON  
ASSA

VERSUS

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

2:MD. SULEMAN ALI  
S/O- LATE SUKENDAR ALI  
R/O- VILL.- KHALIHAMARIPAM  
P.S. BHURAGAON  
DIST. MORIGAON-782127  
ASSA

**Advocate for the Petitioner : MS. S K NARGIS**

**Advocate for the Respondent : PP, ASSAM**

BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA  
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

**19.06.2023**

(M. Zothankhuma, J.)

- 1.** Heard Ms. S.K. Nargis, learned counsel for the applicants and Ms. S. Jahan, learned Additional Public Prosecutor for the State.
- 2.** This is an application under Section 389 Cr.P.C. for suspending the sentence passed by the learned Sessions Judge, Morigaon, Assam in Sessions Case No.132/2013, by which the applicants have been sentenced to undergo R.I. for life and to pay a fine of Rs.1,00,000/- (Rupees one lakh) each, in default to undergo further S.I. for 2 (two) years.
- 3.** The learned counsel for the applicants submits that there is no evidence specifically proving that the actions of the applicants had caused the death of the deceased. Though the evidence of PW-2 is to the effect that the applicants had assaulted the deceased, the presence of PW-2 at the place of occurrence is doubtful as the same has not been corroborated by the other prosecution witnesses. She also submits that the ocular evidence of the witnesses have not been corroborated by the evidence adduced by the Doctor. She thus submits that the applicants should be released on bail. In this regard, the learned counsel has relied upon the judgments of the Apex Court in the case of (i) ***Omprakash Sahni vs. Jai Shankar Chaudhary & Others***, reported in ***MANU/SC/0511/2023***, (ii) ***Krishnegowda & Others vs. State of Karnataka***, reported in ***(2017) 13 SCC 98*** and (iii) ***Khema & Others vs. State of Uttar Pradesh***, reported in ***2022 (3) Crimes 254 (SC)***.

4. On the other hand, Ms. S. Jahan, learned Additional Public Prosecutor submits that the evidence of PW-2 has clearly proved the involvement of the applicants in causing the death of the deceased. She also submits that there is no contradiction between the ocular evidence and the evidence adduced by the Doctor. She also submits that there are other witnesses, i.e. PW-4, PW-5, PW-7, PW-8, PW-9 and PW-11, who have proved the involvement of the applicants in causing the death of the deceased. She accordingly submits that bail should not be granted.

5. In the case of ***Khema (supra)***, the Apex Court has discussed the three categories of witnesses, wherein they are (a) wholly reliable, (b) wholly unreliable and (c) neither wholly reliable nor wholly unreliable. She submits that in this particular case, the witnesses are not wholly reliable.

6. In the case of ***Krishnegowda (supra)***, the Apex Court has held that once there was a clear contradiction between the medical and ocular evidence, coupled with severe contradiction in the oral evidence, clear laches in investigation, then the benefit of doubt has to go to the accused.

7. In the case of ***Omprakash Sahni (supra)***, the Apex Court has held that the principles of law governing suspension, required endeavour on the part of the Court to see whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands a fair chance of acquittal. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a *prima facie* satisfaction that the conviction may not be sustainable. It further held that the Appellate Court should not re-appreciate the evidence at the stage of Section 389 Cr.P.C.

**8.** On considering the evidence of the parties herein, we do not find anything gross or apparent on the face of the record. Further, there is no contradiction with regard to the ocular and medical evidence. In the case of ***Ramji Prasad vs. Rattan Kumar Jaiswal & Another*** reported in ***(2002) 9 SCC 366*** the Apex Court has held that under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted under Section 389 Cr.P.C.

**9.** In view of the reasons stated above, we are of the view that there is no ground for allowing the application and granting bail at this stage. Accordingly, the application stands dismissed. Observations made in this order shall not prejudice the applicants at the time of final hearing of the appeal.

**JUDGE**

**JUDGE**

**Comparing Assistant**