

GAHC010254692022



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

Case No. : I.A.(Crl.)/794/2022

JESMINARA BIBI
W/O WAHIDUR RAHMAN, R/O SUKLARTARI, P.S. BILASIPARA, DIST.
DHUBRI, ASSAM, PIN 783351.
VERSUS
JIAUR RAHMAN AND 2 ORS.
S/O- LATE MONDAL SK., VILL.- SUKLARTARI, P.S. BILASIPARA, DIST.-
DHUBRI.
2:THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSAM.
3:MOSTAFIZUR RAHMAN
S/O- LATE MONDAL SK
VILL.- SUKLARTARI
P.S. BILASIPARA
DIST.- DHUBRI
PIN- 783351

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

17.02.2023

(M. Zothankhuma, J)

1. Mr. A. Alim Sk., learned counsel appears on behalf of Mr. M.U. Mondal,

learned counsel for the applicant. Ms. S. Jahan, learned Additional Public Prosecutor appears for the State while Mr. A. Ahmed, learned counsel appears for the appellant/convict.

No one appears for the informant though notice has been issued to the informant and this Court, vide order dated 23.02.2021 had held that service of notice on the respondent no.2 was complete.

2. Mr. A. Alim Sk., learned counsel prays that the applicant, who is the mother of the victim should be impleaded as respondent no.3 in the appeal filed by the appellant/convict.

3. The counsel for the applicant submits that the informant is the uncle of the victim, while the applicant is the mother of the victim. Also, the informant is the brother of the appellant. The applicant's counsel submits that the informant has entered into a compromise with the appellant and as such, is not appearing before this Court, despite issuance of notice. He submits that the applicant who is the mother of the victim, should be allowed to appear as a respondent or else the applicant would suffer irreparable loss, hardship and injustice.

4. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that there is no provision for impleadment of a third party in an appeal in a criminal case. She also submits that the interest of the applicant, if any, would be taken care of by the State and the only role that an informant/victim could have is to assist the Prosecution.

5. We have heard the counsels for the parties.

6. The applicant has not given any reason for being impleaded as respondent no.3, besides stating that the informant has entered into a compromise with the appellant. Though this Court has asked the counsel for the applicant the reason as to why the applicant should be impleaded, no reason has been given to us by the counsel for the applicant. However, what is discernable is that there is some anxiety on the part of the applicant that the informant would not be taking part in the appeal proceedings, by providing assistance to the Prosecution, in view of the alleged compromise entered into between the informant and the appellant.

7. There is nothing brought before us to show that any compromise had been entered into between the informant and the appellant. Further, the appellant having been convicted by the Court of the Additional Sessions Judge, Bilasipara, Dhubri, vide judgment dated 14.03.2019 passed in Sessions Case No.169/2012, whereby he has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.15,000/-, in default rigorous imprisonment for 8 (eight) month, there is no question of any compromise being affected between the informant and the appellant, which would be sustainable in law.

8. In the case of "Smt. Bormoty Panggeng v. State of Arunachal Pradesh & Anr", Criminal Appeal no. 205/2018, the Division Bench of this Court held that as per Section 301(2) and the proviso to Section 24(8) CrPC, a victim or a private

person has the locus to appear and participate in a proceeding initiated by the State or the accused. Further, Section 2(wa) Cr.P.C. defines a "victim" as follows:-

"2(wa). "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

9. On considering the provision of Section 2(wa) whereby the word "victim" has been defined, read with the proviso to Section 24(8) and Section 302(1) Cr.P.C, we allow the applicant to participate in the Appeal proceedings at the time of hearing. However, the role of a lawyer engaged by the applicant as contemplated under the proviso to Section 24(8) and Section 301(2) Cr.P.C. shall be limited to assisting the Public Prosecutor in charge of the case and to give arguments, with the permission of the Court. The applicant is accordingly impleaded as respondent no.3 to give her participatory rights in the appeal. Registry to make necessary correction to the appeal petition.

10. The application is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant