

GAHC010011902024



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

Case No. : I.A.(Crl.)/93/2024

AMURUN NESSA BARBHUIYA @ AMIRUN NESA
W/O LATE KALAMDHAR ALI BARBHUIYA @ KALAM UDDIN BARBHUIYA
@ KALAMDHAR,
VILL.- NUTAN RAMNAGAR PART- V, P.O.- DAKHIN MOHANPUR, P.S.-
SONAI, DIST.- CACHAR, ASSAM, PIN- 788119.

VERSUS

ABDUL MALIK BARBHUIYA @ MANIK AND 9 ORS.
S/O AMIN ALI BARBHUIYA,
VILL.- NUTAN RAMNAGAR PART- IV, P.O.- DAKHIN MOHANPUR, P.S.-
SONAI, DIST.- CACHAR, ASSAM, PIN- 788119.

2:ALTAF HUSSAIN BARBHUIYA
S/O MD. MASTAN ALI BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM
PIN- 788119.

3:FARUK AHMED BARBHUIYA @ MUSTAFA
S/O AMIN ALI BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM
PIN- 788119.

4:WAJ UDDIN BARBHUIYA
S/O KULI MIA BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM PIN- 788119.

5:SHAHJAHAN BARBHUIYA @ SAJAN
S/O AMIN ALI BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM PIN- 788119.

6:MUMINUR RAHMAN BARBHUIYA @ MUMIN
S/O AMIN ALI BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM PIN- 788119.

7:NAZRUL ISLAM BARBHUIYA
S/O MD. NENADHAN MIA BARBHUIYA
VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM PIN- 788119.

8:SHAMS UDDIN BARBHUIYA @ LALBABU
S/O MD. MASUK ALI BARBHUIYA

VILL.- NUTAN RAMNAGAR PART- IV
P.O.- DAKHIN MOHANPUR
P.S.- SONAI DIST.- CACHAR
ASSAM
PIN- 788119.

9:LALAN AHMED BARBHUIYA
S/O MD. SHARIF BARBHUIYA
VILL.- NUTAN RAMNAGAR PART- IV

P.O.- DAKHIN MOHANPUR
P.S.- SONAI
DIST.- CACHAR
ASSAM PIN- 788119.

10:STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. O LASKAR
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.04.2024

[Manish Choudhury, J.]

Heard Mr. O. Laskar, learned counsel for the applicant and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the opposite party no. 10.

2. The instant application under Section 5 of the Limitation Act, 1963 has been preferred with the prayer to condone the delay of 45 days in filing the connected criminal appeal preferred under proviso to Section 372, Code of Criminal Procedure, 1973.

3. The connected criminal appeal, which is yet to be registered, is preferred against a Judgment and Order dated 28.08.2023 passed by the learned Additional Sessions Judge, FTC, Cachar at Silchar in Sessions Case no. 58/1998, whereby, the opposite party nos. 1 to 9, who stood in the trial as accused, are acquitted of the charges under Sections 342/148/149/357/302, Indian Penal Code [IPC].

4. The applicant has averred that in the alleged incident, the husband of the applicant succumbed to his injuries. It has been averred that the applicant is an illiterate and uneducated pardanashin woman and lives in a remote village in the district of Cachar. The applicant has averred that after the alleged murder of her husband on 10.07.1995, the

applicant has been living with her children in destitution and abject penury. Due to such status of the applicant and for reasons beyond her control, though the connected appeal has been preferred, a period of delay of 45 days as occurred in filing the same.

5. Ms. Jahan, learned Additional Public Prosecutor has submitted that the connected appeal can be heard on merits.

6. After the issuance of notice to the opposite party nos. 1 to 9 on 05.02.2024, the opposite party nos. 1 to 9 have entered appearance by engaging a learned counsel, whose name is reflected in the cause-list. When the instant application was listed on 19.04.2024, the learned counsel for the opposite party nos. 1 to 9 was found absent on call. The learned counsel for the opposite party nos. 1 to 9 is found absent today also on call though his name is reflected in the cause-list.

7. Having gone through the statements and averments made in the instant interlocutory application, we are of the view that the applicant has been able to explain the reasons for delay in preferring the connected appeal showing sufficient cause. We are also of the view that the cause of substantial justice will be better subserved if the connected appeal is heard on merits. Accordingly, the instant interlocutory application seeking condonation of delay of 45 days in preferring the connected appeal is allowed.

8. The Registry to register the connected appeal and list the appeal for admission, in usual course.

JUDGE

JUDGE

Comparing Assistant