

GAHC010017162024



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

Case No. : I.A.(Crl.)/85/2024

TILOK KONWAR @ TILAK KONWAR
S/O SRI BHUPEN KONWAR, R/O MOTHYA CHIGA, KONWAR GAON, P.S.-
NAZIRA, DIST.- SIVASAGAR, ASSAM, PIN- 785685.

VERSUS

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

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.07.2024

Heard Mr. P. Kataki, learned counsel for the appellant/ applicant and Mr. P. Borthakur, learned Addl. Public Prosecutor appearing on behalf of the State respondent.

This is an application under Section 389(2) of the Code of Criminal Procedure, 1973 for suspension of sentence rendered by the judgment and

order dated 07.12.2023, passed by the learned Sessions Judge, Sivsagar in Sessions Case No. 113(S-N)/2019 arising out of Nazira P.S. Case No. 318/2019, whereby the present appellant was convicted under Section 304 Part (I) of IPC and sentenced him to undergo rigorous imprisonment for a period of 5 (five) years and to pay fine of Rs. 10,000/- (Rupees ten thousand) only, in default to suffer a simple imprisonment for another 3 (three) months.

It is submitted by Mr. Kataki, learned counsel for the applicant/ appellant that he has already preferred an appeal against the said impugned judgment and order, which is pending for disposal. He further submitted that during trial of the case, altogether, 8 (eight) number of witnesses were examined by the learned Sessions Judge including the I.O. and the Medical Officer but these witnesses have not supported the prosecution case. Rather, from the evidence of the witnesses, it reveals that the deceased was a habitual drunker and sometimes she used to fell down on the road due to over consumption of liquor. PW 1, who is son of the deceased also, did not support the prosecution version and the PW 2, the informant had also made contradictory statement and states that he did not find any fresh injury in the body of the deceased.

It is further submitted by the learned counsel for the applicant/ appellant that there is no fresh injury or blood injury on the body of the deceased at the time of post-mortem. Rather, she died, due to comma, as a result of head injury. Further, he submitted from the evidence of PWs that it is very much evident that the deceased was found lying unconscious in the bank of river and subsequently, she died due to consumption of over dose of liquor. But, the learned Sessions Judge convicted the accused/ appellant only on presumption that the deceased might have sustained injury and died due to assault on her head by the accused/ appellant and accordingly, on the basis of such

presumption, the learned Sessions Judge convicted the accused/ appellant under Section 304 Part (I) of the IPC. Accordingly, Mr. Kataki, learned counsel for the appellant/ applicant has submitted that there are sufficient grounds for succeeding the appeal and it is submitted that it is a fit case where the sentence can be suspended under Section 389 Cr.P.C.

Mr. Borthakur, on the other hand has submitted that though there are some contradictions in the evidence of the PWs. But, from the evidence of the doctor i.e. PW 4 it is seen that the deceased sustained multiple injury and sustained fracture injury on her head chest and she died due to comma, as a result of head injury. Mr. Borthakur further submits that the deceased died not for consumption of liquor but due to injury sustained by her on her head, which is evident from the evidence of the doctor. Therefore, Mr. Borthakur submits that it is not a fit case to suspend the sentence awarded against the accused/ appellant as per the provisions of Section 389 Cr.P.C.

After hearing the submissions of the learned counsel for the parties and on perusal of the evidence on record, and after going through the judgment and order of conviction passed by the learned Sessions Judge as well as the evidence of PWs and also considering the entire aspect of the matter, I find that it is a fit case to suspend the order of conviction and sentence, passed by the learned Sessions Judge against the present accused/ appellant complying the provisions of Section 389 Cr.P.C.

Accordingly, the operation of impugned judgment and order dated 07.12.2023, passed by the learned Sessions Judge, Sivsagar in Sessions Case No. 113(S-N)/2019 arising out of Nazira P.S. Case No. 318/2019, convicting the accused/ appellant under Section 304 Part (I) of IPC is hereby suspended/ stayed till disposal of the connected appeal and further the accused/ appellant/

applicant herein is allowed to go on fresh bail on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Sessions Judge, Sivsagar.

With the above observations, the I.A. stands disposed of.

JUDGE

Comparing Assistant