

GAHC010027392024



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

Case No. : I.A.(Crl.)/606/2024

UTTAM BISWAS
S/O LATE SUSHIL BISWAS,
VILL.- JHAPSHABAI PART- IV, P.S.- AGOMANI, DIST.- DHUBRI, ASSAM.

VERSUS

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

2:BISHNU BISWAS
S/O LATE CHANTU BISWAS
VILL.- JHAPSHABAI PART- IV
P.S.- AGOMANI
DIST.- DHUBRI
ASSAM
PIN- 783331

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 15.07.2024

[M. Choudhury, J]

Heard Mr. A. Rahman, learned counsel for the applicant-appellant and Ms.

S.H. Bora, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. The instant application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 84 days in filing the accompanying criminal appeal under Section 374[2], Code of Criminal Procedure, 1973. The accompanying criminal appeal is preferred against a Judgment and Order dated 15.09.2023 passed by the Court of learned Additional Sessions Judge, Dhubri in Sessions Case no. 160/2018. By the Judgment and Order dated 15.09.2023, the accused-appellant has been convicted for the offence under Sections 447/324/302, Indian Penal Code [IPC]. For the offence under Section 302, IPC, the applicant-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, with default stipulation. The applicant-appellant has been sentenced for the offence under Section 324, IPC to undergo rigorous imprisonment for 1 [one] year and to pay a fine of Rs. 1,000/-, with default stipulation. For the offence under Section 447, IPC, the applicant-appellant has been sentenced to undergo rigorous imprisonment for 1 [one] month. The learned trial court has ordered that all the sentences are to run concurrently.

3. The applicant-appellant has explained the reasons for delay of 84 days in paragraph 3 of the instant application.

4. Ms. Bora, learned Additional Public Prosecutor has submitted that though the period of delay of 84 days has not been explained properly, the State has no objection if the Court condones the period of delay on the premise that the accompanying appeal is required to be heard on merits.

5. We have found force in the submission of the learned Additional Public Prosecutor. Though the period of delay of 84 days has not been explained in a manner required, we are of the considered view that to sub-serve justice, the accompanying appeal is required to be heard on merits as the applicant-appellant has been sentenced to undergo life imprisonment. We are also of the considered view that at this stage, the opposite party no. 2-informant will not be prejudiced in any manner as the accompanying appeal will be heard on merits.

6. In view of the above observations, the period of delay of 84 days which is stated to have occurred in preferring the accompanying appeal, stands condoned. Consequently, the instant application under Section 5 of the Limitation Act is allowed.

7. The office to register the accompanying appeal and thereafter, list the same for admission in due course.

JUDGE

JUDGE

Comparing Assistant