

GAHC010018342024



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

I.A.(Crl.)/412/2024

SARALA MANDAL
W/O-BOLDIP KUMAR
R/O-NO.1 DONGARGAON
P.S.-TAMULPUR
DISTRICT-BAKSA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PUBLIC PROSECUTOR
ASSAM

2.:JOGENDRA CHANDRA BARMAN

S/O-LT. JAMINI KANTA BARMAN
R/O-VILL-BIHANGAPUR(KAWLI)
P.S.-TAMULPUR
DISTRICT-BAKSA
ASSAM

Advocate for : MR. S BISWAS
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

14.08.2024

[Manish Choudhury, J.]

Heard Mr. S. Biswas, learned Legal Aid Counsel for the applicant-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the opposite party-respondent State of Assam assisted by Ms. M. Chakraborty, learned counsel for the opposite party-respondent State.

2. The instant application under Section 389[1], Code of Criminal Procedure [CrPC] is preferred seeking suspension of execution of the sentence passed against the applicant-appellant and for her release on bail. The applicant-appellant has preferred the accompanying criminal appeal, Criminal Appeal [J] no. 44/2024 against a Judgment and Order dated 11.08.2023 passed by the learned Sessions Judge, Baksa at Mushalpur in Sessions Case no. 189 of 2022. By the Judgment and Order dated 11.08.2023, the applicant-appellant has been convicted for the offence of murder under Section 302, Indian Penal Code [IPC] and she has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/-, in default of payment of fine, to undergo simple imprisonment for another 2 [two] months.

3. The accompanying criminal appeal has already been admitted for hearing.

4. Mr. Biswas, learned Legal Aid Counsel for the applicant-appellant has submitted that P.W.3 has been projected by the prosecution as eye-witness. It is contended that there is glaring inconsistency in the testimony of the said witness, P.W.3 vis-à-vis her statement recorded under Section 161, CrPC. The alleged weapon of assault, a knife though it was admittedly of the applicant-appellant, was not sent for serological examination to the Forensic Science Laboratory [FSL] and in the absence of any FSL report, the applicant-appellant could not have been connected with the alleged death of the deceased, Ratan Barman. Mr. Biswas has further submitted that the three witnesses including an Executive Magistrate, were present at the time of seizure of Mat. Ext.-1. The Executive Magistrate was not examined by the prosecution during trial though the other two witnesses to the seizure were examined by the prosecution. He has further contended that the alleged incident of assault occurred

suddenly and as such, there was no pre-meditation on the part of the applicant-appellant.

5. Ms. Bhuyan, learned Additional Public Prosecutor has submitted that the case in hand is based on direct evidence. The prosecution witness, P.W.3 is an eye-witness to the incident of assault which resulted in the instantaneous death of the deceased, Ratan Barman. As the testimony of P.W.3 could not be discredited in so far as the core of the prosecution is concerned, the question of consideration of suspension of execution of the sentence passed against the applicant-appellant does not arise.

6. We have given due consideration to the submissions of the learned counsel for the parties and have gone through the evidence/materials on record, for the purpose of consideration of the instant application preferred under Section 389, CrPC.

7. The First Information Report [FIR] was lodged in connection with the alleged murder of one Ratan Barman. From the testimony of the Autopsy Doctor, P.W.1 and the Post-Mortem Examination [PME] Report [Ext. P-1], it emerges that the deceased sustained an incised stab wound below 3 cm thyroid cartilage of size 2 cm x 5 cm depth. P.W.1 testified to the effect that the kind of injuries sustained by the deceased were sufficient to cause death of a person in ordinary course. P.W.1 opined that the cause of death was due to haemorrhage following stab injury on front of neck leading to perforation of trachea and injury on the right laryngeal nerve adjacent muscle and blood vessels. P.W.3 who was with the deceased at the time the alleged assault, testified to the effect that after a brief argument between the deceased and the accused, the accused brought out a knife from inside her blouse and stabbed on the neck of the deceased and thereafter, the accused fled away from the scene by riding a bicycle. P.W.3 also stated during her cross-examination that the accused used to carry a knife along with her. P.W.6 deposed to the effect that on the date of the incident at about 06-00/06-30 p.m. when she was at her home, she heard hue and cry of P.W.3 from the road shouting that the accused killed the deceased. After hearing the hue and cry, when she went to the place of occurrence, she saw the accused leaving the place by riding her bicycle and the deceased was lying on the side of the road with profuse bleeding from his neck. P.W.7 also reached the place of occurrence immediately after hearing hue and cry of P.W.3 from the road and on

going to the place of occurrence, he saw the accused leaving the place of occurrence by riding her bicycle and the deceased was found lying on the side of the road with profuse bleeding from his neck. P.W.8 also reached the place after hearing hue and cry from P.W.3 immediately after the occurrence and after reaching the place of occurrence, she saw the accused going on the road by riding a bicycle. P.W.8 witnessed the presence of P.W.3 on the road and it was P.W.3, who reported to P.W.8 that the accused stabbed on the neck of the deceased. P.W.8 also claimed to have witnessed the deceased lying on the side of the road with blood oozing out from his neck. In her examination under Section 313, CrPC, the accused sought to explain that it was the deceased who tried to commit rape upon her and in the scuffle, the knife which was with her, hit the neck of the deceased. While deposing as D.W.1, the accused admitted her presence at the place of occurrence.

8. Having considered the above evidence/materials on record, we find *prima facie* that the eye-witness account of P.W.3 appears cogent and credible and the defence failed to discredit such eye-witness account of P.W.3 in any manner so as to create a dent in the case of the prosecution. The evidence of the three prosecution witnesses, P.W.6, P.W.7 and P.W.8 are *prima facie* admissible under the rule of *res gestae*. From the medical evidence which are in the form of testimony of Autopsy Doctor [P.W.1] and the PME Report Ext.P-1, it appears that the death of the deceased was evidently a homicidal one.

9. The question whether the case of the accused would come under any of the exception to Section 300, IPC is a matter which requires consideration at the stage of hearing and upon due appreciation of the evidence on record.

10. It is settled proposition that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the Court is required to consider the relevant factors like the nature of allegations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence and the desirability of releasing the accused on bail after having been convicted for committing the serious offence of murder.

11. Having considered the case of the applicant-appellant keeping the above factors in purview, we do not find that the present case in hand is a fit one for exercising the discretion of Section 381, CrPC. Finding the application bereft of any merits, the instant application is dismissed.

12. It is, however, observed that the observations made hereinabove are only for the purpose of consideration of the instant application of the applicant-appellant under Section 389, CrPC and such observations shall not be construed as observations on merits as regards the accompanying criminal appeal.

JUDGE

JUDGE

Comparing Assistant