

GAHC010052112023



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

Case No. : I.A.(CrI.)/289/2023

JAGAT DAS
S/O SRI MONGOLA DAS RESIDENT OF DOLIJOLIA GAON, PS AND DIST
MAJULI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. M K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 18.03.2024
(K.R. Surana, J)

Heard Mr. N.K. Das, learned legal aid counsel for the applicant. Also heard Ms. S. Jahan, learned APP appearing for the State.

2. This interlocutory application has been filed under Section 389 Cr.P.C.

for suspension of the judgment and sentence dated 20.08.2022, passed by the learned Sessions Judge, Majuli in Sessions Case No. 38(JM)/2016.

3. The learned legal aid counsel has strenuously referred to the evidence on record and it is submitted that the medical evidence does not suggest sexual assault on the victim and in this regard, he has referred to the radiological examination of the victim as well as her physical examination by the doctor, which is recorded in the Medical Examination Report (Ext.2). It may be stated that at the relevant point of time when the medical examination was conducted on 03.03.2015, the victim was alive and she had also lodged the ejahar narrating the offence of commission of rape by the applicant on 02.03.2015 at about 11.30 PM. However, the victim had died on 13.03.2015 and her postmortem examination was conducted on 14.03.2015. It is submitted that in the postmortem report, the medical opinion of the cause of death was due to syncope as a result of chronic coronary insufficiency – natural death. Accordingly, it is submitted that the cause of death cannot be correlated to the alleged incident, which had occurred on 02.03.2015.

4. The learned legal aid counsel for the applicant has also submitted that the judgment and sentence was passed on 22.08.2022 and since then the applicant is serving his sentence.

5. The learned APP has referred to the objection filed by the State and it is submitted that this was not a fit case for grant of bail to the applicant or to suspend his sentence on the ground that the victim herself had lodged an ejahar and immediately when the crime was detected, witnesses had deposed to the effect that the victim had informed them about the incident. Moreover, it is submitted that the Doctor (PW-3) found as many as 11 (eleven) numbers of injuries on various parts of the body of the victim, which were indicative of

sexual assault on the victim.

6. It noted that in the ejahar dated 03.03.2015, the victim was then alive, had stated that the applicant had entered her house while she was sleeping by cutting a corner of the wall and grasped her mouth, felled her on the ground and raped her as well as assaulted her physically and when she told him that she will inform the villagers, he had pressed her neck and said that he would kill her and caused the injury to her mouth by putting his hand inside her mouth. The evidence reveals that the victim had suffered 11 (eleven) numbers of injuries including injuries on her mouth and immediately after the incident, witnesses saw blood oozing out from her mouth. The rest of the injuries found on the body of the victim are as follows:

- (a) Bruise of size 2 cm x 1 cm is present over forehead right side.
- (b) Abraded contusion of size 3 cm x 4 cm is present over right side of face 6 cm from midline and in front of right ear, red in colour.
- (c) Abraded contusion of size 4 cm x 1 cm over left side of face, 8 cm from midline.
- (d) An abrasion of size 0.4 cm x 0.2 cm over midline of lower lip.
- (e) Contusion of size 19 cm x 9 cm over posterior aspect of right hand 12 cm from right elbow (above).
- (f) Contusion of size 3 cm x 2 cm is present over right elbow.
- (g) Contusion of size 6 cm x 6 cm is present over dorsum of left palm on lateral aspect.
- (h) Contusion of size 4.5 cm x 2 cm over anterior aspect of left hand 3 cm above left elbow joint.
- (i) Contusion of size 3 cm x 3 cm over forearm 4 cm above left

wrist.

(j) Contusion of size 2 cm x 1 cm over right knee.

(k) Contusion of size 2.5 cm x 1 cm is present red in colour over medial side of inner thigh.

7. At this stage of examining the matter in exercise of jurisdiction under Section 389 Cr.P.C., the Court is not inclined to examine the evidence and to find out whether it would lead to conviction or not.

8. The record indicates two age of the victim. At some places, her age was shown as 60 years, and in some documents, her age was shown as 75 years. We do not find any material on record to infer that the victim had any axe to grind against the applicant so as to falsely implicate him of causing injuries and raping her.

9. Under such circumstances, the Court is not inclined to suspend the sentence imposed on the applicant or to grant him bail at this stage.

10. Accordingly, this interlocutory application stands dismissed.

JUDGE

JUDGE

Comparing Assistant