

GAHC010048452024



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

Case No. : I.A.(CrI.)/276/2024

JAFOR ALI
S/O LATE RAJAB ALI
VILL.- BHELAKOBA PART- III
P.S.- SAPATGRAM
DIST.- DHUBRI
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE P.P.
ASSAM.

2:ALI AZOM AHMED
S/O SHAHAJUDDIN SHEIKH
VILL.- BHELAKOBA PART- III
P.S.- SAPATGRAM
DIST.- DHUBRI
ASSAM
PIN

Advocate for : MS. R CHOUDHURY
Advocate for : PP ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 28.08.2024
[Manish Choudhury, J.]

Heard Mr. A. Ahmed, learned counsel for the applicant-appellant; Ms. A. Begum, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam; and Mr. A.

Thakuria, learned counsel for the opposite party no. 2-informant.

2. The instant interlocutory application under Section 389[1], Code of Criminal Procedure, 1973 is preferred seeking suspension of the execution of sentence passed against the applicant-appellant and for his release on bail. The applicant as the appellant, has preferred the accompanying criminal appeal, Crl. A.[J] no. 77/2024 against a Judgment and Order dated 20.12.2023 passed by the Court of learned Additional Sessions Judge, Bilasipara, District – Dhubri [‘the trial court’, for short] in Sessions Case no. 55 of 2011. The learned trial court by the Judgment and Order dated 20.12.2023 has convicted the accused-appellant for the offences under Sections 447/326/302, 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 fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 2 [two] months. For the offences under Section 326, IPC and Section 447, IPC, different terms of imprisonment have been imposed upon the applicant-appellant, with the observation that all the sentences are to run concurrently.

3. During the trial of Sessions Case no. 55 of 2011 the accused, Jafor Ali [A-1] faced the trial with another accused, Amjad Ali [A-2] for the charges under Section 447/323/302/34, IPC. During the course of the trial, the prosecution side examined twenty nos. of witnesses and exhibited six nos. of documents, apart from a material exhibit, Mat. Ext.-1 in the form of a wooden batten [plank]. At the end of the trial, the learned trial court while acquitting the accused, Amjad Ali [A-2], had convicted the applicant-appellant [A-1] for the offences mentioned hereinabove.

4. Mr. Ahmed, learned counsel for the applicant-appellant has submitted that during the course of the trial, the Post-Mortem Examination [PME] Report, exhibited by the prosecution through the Autopsy Doctor [P.W.15], was a carbon copy only. It is his further conviction that the applicant-appellant could not have been convicted for the offences under Section 326, IPC and Section 302, IPC for causing grievous hurt and murder against the same person, at the same time, allegedly occurred in the course of same transaction. Mr. Ahmed has also alternatively submitted that the applicant-appellant could not have been convicted for the

offence of murder.

5. On the other hand, the learned Additional Public Prosecutor and Mr. Thakuria have contended that there were eye-witnesses, whose testimonies could not be discredited by the defence, and their testimonies are consistent with the medical evidence and as such, the instant application does not deserve consideration at this stage. It is their contention that the contentions advanced by the learned counsel for the applicant-appellant could, at best, be considered at the stage of final hearing of the appeal.

6. We have considered the submissions of the learned counsel for the parties and have also perused the materials/evidence available in the case records of Session Case no. 55 of 2011 in original, for the purpose of considering the instant application under Section 389[1], CrPC.

7. From a perusal of the testimonies of the prosecution witnesses – P.W.2, P.W.3 and P.W.7 – we find that these witnesses had categorically deposed that in the morning hours on the date of the alleged incident, that is, on 21.02.2008, a quarrel occurred between the family members of the deceased and the applicant-appellant took place with regard to ownership of betel nut grown at the place of occurrence. As per their testimonies, after a verbal altercation, the applicant-appellant hit the deceased, Sobahan Ali on his head by way of a wooden batten, which the prosecution side exhibited as Mat. Ext.-1 during the trial. These prosecution witnesses had categorically testified that they had witnessed the assault made by the applicant-appellant on the deceased. The Autopsy Doctor, who testified as P.W.15, had testified to the effect that there was an injury on the vault of the skull with haematoma of size 5 inches x 5 inches. During autopsy, he found that the skull bone of the deceased was fractured involving both the parietal and occipital bones. There was massive extra-dural and sub-dural haemorrhage in the occipital and parietal region and the said head injury involving parietal and occipital bones was ante-mortem in nature. The cause of death, according to him, was due to shock and haemorrhage as a result of the head injury sustained.

8. Whether the offence involved is murder or culpable homicide not amounting to murder can only be considered in a detailed hearing after evaluation of the entire evidence on record. The submission that the applicant-appellant could not have been convicted for the offences under Section 326, IPC and Section 302, IPC at the same time would require consideration at the stage of detailed hearing.

9. For the purpose of consideration of the instant application is concerned, we find that there is prima facie evidence to the effect that the alleged head injury on the deceased was caused by the applicant-appellant and the said injury ultimately resulted into his death. As there is no apparent consistency between the eye-witness accounts as regards the alleged incident and the medical evidence, we are of the considered view that the applicant-appellant has not been able to make out a prima facie case for consideration of his prayer under Section 389[1], CrPC. As the application is found not merited, the same is dismissed.

JUDGE

JUDGE

Comparing Assistant