

GAHC010059932023



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

**Case No. : I.A.(Crl.)/217/2023**

BUL MUDI  
S/O LT MANGAL MUDI,  
R/O SERELIA PATHAR,  
P.O.- BEHALI,  
P.S.- BEHALI,  
DIST.- BISWANATH, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.  
NOTICE THROUGH P.P., ASSAM.

2:FAGU BIRJA  
S/O LT. BIRCHING BIRJA  
R/O KACHAMARI  
P.O.- BEHALI  
P.S.- BEHALI  
DIST.- BISWANATH  
ASSAM

**Advocate for the Petitioner : MR. P J SAIKIA, B BURAGOHAIN**

**Advocate for the Respondent : PP, ASSAM,**

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

**ORDER**

**Date : 05-08-2024**

**[M. Choudhury, J]**

Heard Mr. P.J. Saikia, learned counsel for the applicant-appellant and Ms. A. Begum, learned Additional Public Prosecutor for the opposite party, State of Assam.

2. The instant application is preferred under Section 389[1], Code of Criminal Procedure, 1973 seeking suspension of execution of the sentence passed against the applicant-appellant and for his release on bail.

3. The applicant-appellant has been convicted by a Judgment dated 27.09.2022 passed by the Court of learned Sessions Judge, Biswanath, Biswanath Chariali in Sessions Case no. 285/2015 for the offences under Section 302, Indian Penal Code [IPC] and Section 457, 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/-, in default of payment of fine, to undergo rigorous imprisonment for another 1 [one] month.

4. Mr. Saikia, learned counsel for the applicant-appellant has submitted that the prosecution claimed that the daughter of the deceased, P.W.4 was the only eye-witness to the alleged incident of assault which resulted into the death of the deceased. By referring to the testimony of the P.W.4, Mr. Saikia has contended that the testimony of the P.W.4 as an eye-witness does not inspire confidence as the said witness has only cryptically mentioned that she witnessed the assault on her mother without describing any details as regards the weapon by which such assaults were made. He has further contended that P.W.4 did not mention about the parts on the person of the deceased where the

injuries were inflicted. Mr. Saikia has further contended that there is contradiction in the testimony of the informant-P.W.1 qua the testimony of the P.W.4. According to Mr. Saikia, it is, thus, not a case where reliance can be placed on the only eye-witness to base an order of conviction.

5. The contention made by Mr. Saikia, learned counsel for the applicant-appellant have been seriously opposed by Ms. Begum, by submitting that the defence was not able to discredit P.W.4 in any manner and her testimony on the material points was credible and trustworthy.

6. We have gone through the contents of the application preferred by the applicant-appellant under Section 389[1], CrPC and the objection filed to the said application on behalf of the State, apart from the materials/evidence on record, available in the case record of Sessions Case no. 285/2015.

7. On perusal of the evidence/materials on record, it is found that the deceased, Phuleswari Mudi died in her own house on 10.03.2015. From the testimony of P.W.5, the Doctor who performed the post-mortem examination on the dead body of the deceased and the Post-Mortem Examination Report [Ext.-2], it can be noticed that there were several injuries on the person of the deceased. The spinal cord of the deceased was completely cut. There was an incisional wound at temporo parietal area and there was an injury on the occipital area also. The death of the deceased was due to cerebro vascular accident as a result of the injury sustained. *Prima facie*, the deceased met a homicidal death. On perusal of the evidence/materials on record, it is found that the alleged incident had occurred during the evening hours of 10.03.2015. P.W.4 was the daughter of the deceased. P.W.4 testified to the effect that at around 06-30 p.m. on 10.03.2015, the accused trespassing into their house, killed her mother and seeing the same, she raised hue and cry. Then the accused chased

her and P.W.4 out of fear, had to run out of the house. It was elicited by the defence by cross-examining her that at the time of occurrence, only she [P.W.4] and her mother [the deceased] were there in the house. Thus, the presence of P.W.4 in the house at the time of occurrence seemed natural. The defence did not elicit anything material from the cross-examination of P.W.4 to discredit her testimony that she was not in the house along with the deceased at the relevant point of time, when the assaults were made.

8. It is settled that in cases involving conviction under Section 302, IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. 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. While undertaking the exercise whether the convict has fair chances of acquittal, what is to be looked into is something palpable, which is very apparent on the face of the record, on the basis of which the court can arrive at a *prima facie* satisfaction that the conviction may not be sustainable.

9. The learned trial court had arrived at a satisfaction that the testimony of the only eye-witness, P.W.4 was credible and trustworthy to inspire confidence in the absence of any contradiction in the testimony of material points, to base the conviction.

10. Having gone through the testimony of the P.W.4 and the medical evidence, which points towards the homicidal death of the deceased, we do not find any merit in the present application. Thus, the prayer made by the applicant-

appellant for suspension of the execution of sentence passed against him and for his release on bail is found bereft of merit.

11. Consequently, the instant application deserves to be dismissed and it is accordingly ordered.

12. It is observed that the observations made hereinabove are only for the purpose of considering the applicant-appellant's prayer for suspension of execution of the sentence passed against him and for his release on bail and such observation shall not have any bearing on the merits of the accompanying criminal appeal.

**JUDGE**

**JUDGE**

**Comparing Assistant**