

GAHC010074642024



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

Case No. : I.A.(CrI.)/360/2024

ARMAN ALI AND ANR.
S/O LATE MOKBUL ALI,
VILL.- DEWAN TEA ESTATE, P.O.- DEWAN, P.S.- LAKHIPUR, DIST.- CACHAR,
ASSAM, PIN- 788102.

2: LUKMAN ALI
S/O LATE MOKBUL ALI

VILL.- DEWAN TEA ESTATE
P.O.- DEWAN
P.S.- LAKHIPUR
DIST.- CACHAR
ASSAM
PIN- 788102

VERSUS

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

2:SABEJAN BIBI
W/O LATE AMIR ALI

VILL.- DEWAN NO. 8 BASTI
P.O.- DEWAN
P.S.- LAKHIPUR
DIST.- CACHAR
ASSAM
PIN- 788102

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20.04.2024
(M. Choudhury,J)

Heard Mr. P.K. Deka, learned counsel for the applicant-appellants and Ms. B. Bhuyan, learned Senior counsel and Additional Public Prosecutor assisted by Ms. B. Bora, learned counsel for the opposite party - respondent no. 1, State of Assam.

2. The instant interlocutory application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 43 [forty three] days, which is stated to have occurred in preferring the connected appeal under Section 374 of the Code of Criminal Procedure, 1973 against a Judgment dated 16.12.2023 and an Order dated 20.12.2023 passed by the learned Sessions Judge, Cachar at Silchar [‘the trial court’, for short] in Sessions Case no. 125/2018. By the said Judgment dated 16.12.2023 and Order dated 20.12.2023, the applicant-appellants have been found guilty of the offence under Sections 302/34 of the Indian Penal Code and the applicant-appellants have been sentenced to undergo rigorous imprisonment for life each and to pay a fine of Rs. 10,000/- each, in default of payment of fine, to undergo further simple imprisonment for 3 [three] months each.

3. Mr. Deka, learned counsel for the applicant – appellants has submitted that the delay of 43 [forty three] days has occurred due to reasons explained in Paragraphs 3 and 4 of the instant interlocutory application. It is submitted that there was no deliberate negligence or laches on the part of the applicant – appellants.

4. Ms. Bhuyan, learned Senior counsel and Additional Public Prosecutor has submitted that since the period of delay is only 43 [forty three] days, the cause of substantial justice would be better subserved if the connected appeal is heard on merits.

5. We have gone through the statements and averments made in the instant interlocutory application more particularly, Paragraphs 3 and 4 thereof.

6. Having considered the fact that the period of delay is 43 [forty three] days, as regards which the applicant - appellant has been able to explain showing sufficient cause, we are of the considered view that instead of issuance of notice to the respondent no. 2, who will have the participatory right to participate in the appellate proceedings, at this stage, the cause of substantial justice will be better served if the connected appeal is heard on merits, after condoning the delay of 43 [forty three] days in preferring the connected appeal.

7. Accordingly, the instant interlocutory application is allowed.

8. The Registry to register the connected appeal and thereafter, list the appeal for admission.

J U D G E

J U D G E

Comparing Assistant