

GAHC010014872023



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

Case No. : I.A.(Crl.)/372/2023

JITEN SAIKIA
S/O LATE BHOLARAM SAIKIA
VILL.- 1 NO. GOMARI
MAJARGURI
P.O.- GAMARIGURI
P.S.- MERAPANI
DIST.- GOLAGHAT
ASSAM
PIN- 785705.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE P.P.
ASSAM

2:PAPU SAIKIA
S/O LATE ANANTA SAIKIA
VILL.- 1 NO. GOMARI
MAJARGURI
P.O.- GAMARIGURI
P.S.- MERAPANI
DIST.- GOLAGHAT
ASSAM
PIN- 785705.

Advocate for : MR. T R SARMA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

ORDER

Date : 26.06.2024

[M. Choudhury, J]

Heard Mr. T.R. Sarma, learned Legal Aid Counsel for the applicant-appellant and Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor assisted by Ms. M. Chakraborty, learned counsel for the opposite party no. 1, State of Assam.

2. The instant application under Section 389[1], Code of Criminal Procedure, 1973 [CrPC] is preferred by the applicant-appellant seeking suspension of execution of the sentence passed against him and for his release on bail. The applicant as the appellant has preferred the accompanying criminal appeal under Section 374[2], CrPC against a Judgment and Order dated 06.07.2022 passed by the Court of learned Additional Sessions Judge, Golaghat, Assam [‘the trial court’, for short] in Sessions Case no. 16/2018. By the Judgment and Order dated 06.07.2022, the learned trial court has found the applicant-appellant guilty of the offence of murder under Section 300, Indian Penal Code [IPC] and he has been sentenced under Section 302, IPC to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for further 6 [six] months.

3. Mr. Sarma, learned Legal Aid Counsel appearing for the applicant-appellant has submitted that the applicant is in incarceration for more than seven years till date. It is his contention that although the applicant-appellant has the knowledge but no intention could be attributed to the applicant-appellant to cause murder of his elder brother and as such, the offence could not have been

brought within the scope and ambit of the offence of murder. It is his submission that prior to the alleged act of assault, there was an altercation between the applicant-appellant and the deceased.

4. Opposing the application, Ms. Bhuyan has contended that in considering the application for extending the benefit under Section 389, CrPC, some of the factors which are required to be taken into consideration are the nature of weapon used, the part of the body where the injury was inflicted, the force employed in causing the injury and the nature of death which resulted from the injury.

5. We have considered the submissions of the learned counsel for the parties and have also gone through the materials on record available in the case record of Sessions Case no. 16/2018, in original, for the purpose of considering the instant application.

6. It is settled that while considering the application for suspension of the execution of the sentence at the stage under Section 389 CrPC, what is to be looked into is whether there is something palpable or 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. The appellate court while considering an application under Section 389, CrPC. is not supposed to re-appreciate the evidence meticulously to pick up few lacunas or loopholes here and there in the case of the prosecution.

7. It has emerged from the testimonies of three prosecution witnesses – P.W.1, P.W.5 & P.W.9 – that they had witnessed the incident of assault wherein the applicant-appellant had inflicted a blow on the chest of his elder brother, Ananta Saikia inside the homestead of the deceased. The assault was made by

a sickle. The ocular testimony of the afore-mentioned prosecution witnesses has received sufficient corroboration from the medical evidence, which is in the form of a Post-Mortem Examination Report [Ext.-2] and the testimony of the Autopsy Doctor [P.W.2]. As per the testimony of the P.W.2, the injury was continuous intraverse incised wound extending from mid clancilian line. It was a penetrating wound which was heart deep. It is noticed that when the applicant-appellant was examined under Section 313, CrPC, the applicant-appellant had admitted that the blow was given by him on the chest of his elder brother with a sickle.

8. Whether the contention of the learned legal Aid Counsel that the offence would come within the scope and ambit of culpable homicide not amounting to murder in view of Explanation 4 of Section 300, Indian Penal Code can be considered only at the stage of final hearing of the appeal as for considering such contention, appreciation of the entire evidence/materials on record including the testimonies of all the prosecution witnesses are required to be considered and evaluated.

9. After giving consideration to the relevant factors like the nature of accusation, made against the applicant-appellant; the manner of commission of the alleged crime; and the gravity of the offence and the sentence imposed, we are of the considered view that the applicant-appellant has not been able to made out a *prima facie* case for granting relief of suspension of execution of the sentence pending disposal of the connected appeal in exercise of the power under Section 389[1] CrPC. Consequently, the application is found bereft of merits and the same is accordingly dismissed.

10. It is, however, made clear that the observations made hereinabove are only for the purpose of considering the prayer for suspension of execution of the sentence and grant of bail to the applicant-appellant and the same shall not be

construed as observations made with regard to the merits of the connected appeal.

JUDGE

JUDGE

Comparing Assistant