

GAHC010263562023



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

**Case No. : I.A.(Crl.)/444/2024**

DAINEISANG PUDAITE  
S/O SRI KHUNZUL PUDAITE

VILL.- P. HNACHANGJAL  
P.O.- DITTOKCHERA  
P.S.- HARANGAJAO  
DIST.- DIMA HASAO (ASSAM)  
PIN- 788818.

VERSUS

THE STATE OF ASSAM AND ANR.  
REP BY THE PP  
ASSAM

2: BABUL ACHARJEE  
S/O LT. SATISH CHNADRA ACHARJEE

VILL.- KAYANG DESUWALI BASTI  
P.O.- DITTOKCHERA  
P.S.- HARANGAJAO  
DIST.- DIMA HASAO (ASSAM)  
PIN- 788818.

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Advocate for : MR. B BARUAH  
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 : 06.09.2024**  
***(M. Choudhury, J)***

Heard Mr. B. Baruah, learned counsel for the applicant-appellant; Ms. A. Begum, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam; and Mr. B.K. Sen, learned counsel for the opposite party no. 2-informant.

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

3. The applicant as the appellant, has preferred the accompanying appeal, Criminal Appeal no. 474 of 2023, against a Judgment dated 27.09.2023 and an Order of Sentence dated 05.10.2023 passed by the Court of learned Sessions Judge, Dima Hasao, Haflong ['the trial court', for short] in Sessions Case no. 28/2015. By the said Judgment and Order, the applicant-appellant has been convicted for the offences under Section 341, Indian Penal Code [IPC] and Section 302, IPC. For the offence under Section 302, IPC, the applicant-appellant has been sentenced to undergo imprisonment for life and to pay a fine

of Rs. 10,000/- [Rupees ten thousand], in default of payment of fine, to undergo further imprisonment for another six months. No sentence has been imposed on the applicant-appellant for the offence under Section 341, IPC on the premise that the prosecution did not pray for it. The criminal appeal has already been admitted for hearing.

4. Mr. Baruah, learned counsel for the applicant-appellant has submitted that there was no proper identification that Doya Hmar and Daineisang Pudaite is one and the same person. The said aspect is of utmost relevance as none of the prosecution witnesses had mentioned about Daineisang Pudaite as the alleged assailant and by adducing defence evidence, the applicant-appellant was successful in establishing that Doya Hmar is not known as Daineisang Pudaite. In addition, Mr. Baruah has contended that the deceased died about two and half months after the alleged injury sustained by him on 28.03.2015/29.03.2015 and the fact that the deceased died in home goes to substantiate the fact that the deceased did not die for an act which can be termed either as culpable homicide or murder. He has further submitted that the prosecution case, due to the death of the deceased, rested on circumstantial evidence and the learned trial court had erred in law in accepting the dying declaration of the deceased without the same being exhibited. Thus, the applicant-appellant has a fair chance of acquittal.

5. Ms. Begum, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam and Mr. Sen, learned counsel for the opposite party no. 2-informant, have vehemently opposed the instant application contending that immediately after the deceased sustained those injuries on his person, he disclosed to his brother-informant, P.W.3 and to his co-employee, P.W.1, the name of the applicant-appellant along with two of his acquaintance as the

assailants. The learned counsel for the opposite parties have further submitted that there was no delay in lodging the FIR as in the meantime, the informant, who was the elder brother of the deceased, was busy in providing medical treatment to the deceased at the Silchar Medical College & Hospital [SMC&H], which is in another district, and such delay has already been explained during his testimony. The learned counsel for the opposite parties have further referred to the initial Medical Examination Report [Ext.-P-14] of the deceased to submit that when the deceased was first examined on 31.03.2015, the deceased was found to have suffered grievous injury caused by blunt forces and on that day, the deceased was found suffering from traumatic quadriplegia and the fact was further substantiated from the Post-Mortem Examination Report [Ext.-P12]. It is the contention that as regards the oral dying declaration, the defence was not successful to dispute the same and as such, the finding of guilt based on these evidences was correctly reached by the learned trial court.

6. We have duly considered the submissions of the learned counsel appearing for the parties and have gone through the materials for the purpose of considering the instant application, by keeping into consideration the parameters within which an application under Section 389[1], CrPC is to be considered.

7. The prosecution witnesses - P.W.1 & P.W.3 - have deposed to the effect that immediately after the deceased was recovered in an injured condition, he disclosed the name of the applicant-appellant as the assailant as the deceased was then in a condition to speak. The defence appeared to have not seriously contested the said part of their testimony. Regarding identification of the deceased, P.W.3 stated that he knew Doya Hmar from a date earlier to the date of the incident though he did not know whether the name of Doya Hmar was

also Daineisang Pudaite. The issue whether the learned trial court had properly reached the finding that the assailant of the deceased was properly identified or not is a matter which would require a detail consideration on the basis of the entire evidence/materials on record and the same is only possible at the stage of hearing of the accompanying criminal appeal. It appears from the evidence/materials on record, *prima facie*, that the deceased, when he was treated at Silchar Medical College & Hospital [SMC&H] on 31.03.2015, he was not in a position to speak as the I.O. was not able to record his statement at that time. The non-admissibility as regards the oral dying declaration of the deceased, as contended by the learned counsel for the applicant-appellant, would also stand for consideration at the stage of such hearing. It is not in dispute that the deceased was assaulted on 28.03.2015/29.03.2015 and when he was medically examined on 31.03.2015 at Silchar Medical College & Hospital [SMC&H], he was found to be traumatically quadriplegia with absence of reflexes and as per the Post-Mortem Examination Report [Ext.-P12], the deceased sustained transverse fractures on cervical 6 vertebrae and his C<sub>5</sub> to C<sub>7</sub> were found contused. Having considered the aforesaid aspects, we do not find that the applicant-appellant has made out a *prima facie* case for suspension of execution of the sentence passed against him.

8. In view of above discussion and for the reasons assigned therein, the instant application is found not merited and the same is liable to be dismissed at this stage. It is accordingly ordered.

9. It is, however, made clear that the observations made hereinabove are only for the purpose of consideration of the application of the applicant-appellant seeking suspension of execution of the sentence passed against him

and the observations made hereinabove shall not be construed as observations in respect of the merits of the accompanying criminal appeal.

**JUDGE**

**JUDGE**

**Comparing Assistant**