

GAHC010116452024



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

Case No. : I.A.(Crl.)/552/2024

MOMI SAIKIA
W/O LATE SIMANTA PRATIM SAIKIA, R/O VILL.- AMGURI, MORNOI
KHORA, KALABIL MORNOI NEPALI BOR ALENG SATRA, P.S.- BIHPURIA,
DIST.- LAKHIMPUR, ASSAM, PIN- 787054.

VERSUS

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

Advocate for the Petitioner : MR Z ALAM

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 19.06.2024

[Manish Choudhury, J.]

Heard Mr. Z. Alam, learned counsel for the applicant; Ms. A. Begum, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam; and Ms. M. Bora, learned counsel for the opposite party no. 2.

2. The instant interlocutory application is preferred seeking leave to continue the accompanying appeal, Crl. Appeal no. 433/2023, which is preferred to assail a Judgment dated 11.09.2023 passed by the Court of learned Sessions Judge, Lakhimpur at North Lakhimpur [‘the trial court’, for short] in Sessions Case no. 22[NL] of 2018. By the Judgment

dated 11.09.2023, the learned trial court had acquitted the accused therein, that is, the opposite party no. 2 herein from the charge under Section 302, Indian Penal Code [IPC].

3. The accompanying appeal was preferred by Budheswar Saikia, who was the father of one Simanta Pratim Saikia. The charge of murder under Section 302, IPC was framed in the trial of Sessions Case no. 22[NL] of 2018 for the alleged killing of Simanta Pratim Saikia. The connected appeal has been preferred under the proviso to Section 372, CrPC. It is stated that the occasion to prefer the instant application has arisen as the appellant, Budheswar Saikia has expired on 27.04.2024. A copy of the Death Certificate recording the death of Budheswar Saikia on 27.04.2024, issued by the concerned Registrar [Birth and Death] under the Registration of Births & Deaths Act, 1969 has been appended to this application. The appellant herein is the wife of Late Simanta Pratim Saikia.

4. Mr. Alam, learned counsel for the applicant has submitted that the connected appeal has been preferred under the proviso to Section 372, CrPC. He has referred to a Judgment and Order dated 22.12.2021 passed by a coordinate Division Bench of this Court in I.A.[Crl.] no. 472/2021 wherein it has been held therein that the rigours of limitation contained in the proviso to sub-section [2] of Section 394, CrPC is not applicable in case of an appeal preferred by a victim, defined in 2[wa], CrPC.

5. The learned counsel for the opposite parties have submitted that they have no objection if the instant interlocutory application is allowed.

6. By the Judgment and Order dated 22.12.2021 in I.A.[Crl.] no. 472/2021 [*On the death of Late Abul Hussain by one his Legal heirs-Amradul Hussain vs. Abdul Jalil Munchi and others*], it has been held by the coordinate Division Bench that period of limitation provided in Section 394, CrPC is not applicable in respect of an appeal which has been instituted under the proviso to Section 372, CrPC.

7. As the death of the appellant has occurred on 27.04.2024 and the instant application is filed on 10.06.2024, we are of the considered view that the instant application has been filed

within a reasonable period of time. The applicant herein has preferred the instant application seeking leave to pursue the appeal on the premise that the connected appeal has been preferred against a Judgment of acquittal regarding the homicidal death of the spouse [husband] of the appellant. Having regard to the factors mentioned hereinabove, we deem it proper, for ends of justice, to allow this application.

8. The office to carry out the necessary corrections in the cause-title in the connected appeal, CrI. A. no. 433/2023.

JUDGE

JUDGE

Comparing Assistant