

GAHC010132082024



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

Linked Case : I.A.(CrI.)/626/2024
In CrI. A. No. 214/2024

ABDUL AZIZ AND ANR.
S/O LATE JAL MAMUD MUKHI
VILL.- MAJERCHAR
P.S.- BAGHBAR
DIST.- BARPETA
ASSAM.

2: JASMAT ALI
S/O ABDUL AZIZ
VILL.- MAJERCHAR
P.S.- BAGHBAR
DIST.- BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P.
ASSAM.

Advocate for : MR. A M BORA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

25-09-2024

(S. K. Medhi, J)

Heard Shri A. M. Bora, learned Senior Counsel assisted V. A. Chowdhury, learned counsel for the applicants, who by means of this application filed under earlier Section 389 Cr.PC has prayed for suspension of the sentence in judgment and order dated 05.06.2024 passed by the learned Court of Sessions Judge, Barpeta, Assam in Sessions Case No. 207/2011 whereby the appellants/accused persons have been convicted under Section 302 IPC and have been sentence to life imprisonment along with a fine of Rs. 10,000/- (each) in case of default in paying the fine rigorous imprisonment for 1 (one) year and to allow the applicant/appellant to go on bail pending disposal of the appeal.

2. Also heard Ms. S. Jahan, learned Addl. PP, Assam.

3. It is the case of the applicants, who are two in numbers that in the trial there was initially an order dated 28.09.2015 passed by the Addl. Sessions Judge, FTC, Barpeta whereby they were acquitted. The said judgment was however the subject matter of an appeal being CrI. Appl. No. 17/2016 preferred by the informant. This Court had disposed of the said appeal vide an order dated 24.07.2019 by making the following observations:-

“13. Accordingly, we remand the matter back to the learned trial Court for taking further evidence and in doing so, the learned Court shall give adequate opportunity to the accused Jasmat, Muktar and Ziaur to render their evidence for discharging their burden under the last seen together theory and also to the accused Abdul Aziz to explain as to how the dead body of the deceased was

found in his house. In doing so, learned Court shall also give an appropriate opportunity to both the parties to cross examine any of the witnesses that have already been examined and also to bring further witnesses for their examination-in-chief as well as their cross examination and for the purpose the parties may bring witnesses they would like to bring, provided otherwise admissible.

14. Upon conclusion of the evidence, further opportunity be given to the accused persons to make their stand under Section 313 Cr.P.C. and upon the evidence on record being complete, the learned trial Court shall pass a fresh order by giving a consideration to the whole of the evidence, including the evidence already on record. The Judgment and Order to be passed by the learned trial Court shall take precedence and prevail over the earlier Judgment and Order dated 28.09.2015 in Sessions Case No. 207 of 2011 passed by the learned Addl. Sessions Judge (FTC), Barpeta."

4. Shri Bora, the learned Senior Counsel, by drawing the attention of this Court to the impugned judgment dated 05.06.2024, has referred to paragraph 7 whereby it has been recorded that the learned Addl. PP, Assam had declined to produce further evidence. It is submitted that on the basis of the same evidence, a contra view could not have been taken by the Court and it is submitted that only because the matter was remanded, the conviction has been made.

5. It is also submitted that the appellant no. 1 is aged about 80 years and he is seriously ill and bedridden. So far as the applicant no. 2 is concerned, it is submitted that he had undergone a surgery recently.

6. Ms. Jahan, the learned Addl. PP has however seriously objected to the prayer for suspension of sentence. By referring to the objection filed on 23.09.2024, it is submitted that in the remand order passed by this Court on 24.07.2019, it was observed that the matter could be reconsidered on the basis

of the existing evidence also apart from the new evidence which could be led. It is submitted that the last seen theory was duly proved on the basis of which the conviction has been made.

7. The rival submissions have been duly considered.

8. Though the learned Senior Counsel for the applicants has stressed on the aspect of not leading further evidence in spite of the clear observation of this Court in the order dated 24.07.2019, this Court is of the opinion that instead of going to that aspect of the matter at this interlocutory stage, the medical condition of the applicant no.1 is taken into consideration. As submitted, the applicant no.1 is bedridden and is seriously ill and this fact has not rebutted by the learned Addl. PP.

9. In view of the above, we are of the considered opinion that interest of justice would be served if the sentence upon the applicant no. 1 is suspended for the time being. Accordingly, let the sentence upon the applicant no. 1 be suspended till the consideration of this appeal on merits.

10. The **applicant no. 1**, namely, **Abdul Aziz** is accordingly allowed to go on bail on furnishing a bail bond of **Rs.20,000/-** (Rupees Twenty Thousand) with one surety of the like amount subject to the satisfaction of learned **Sessions Judge, Barpeta**. The learned Sessions, Judge, Barpeta may however impose necessary conditions while allowing the applicant no. 1 to go on bail. Since it appears that in Crl. App. No. 17/2016, Paper Book was prepared and as no new evidence has been led on remand, the said Paper Book may be tagged with the records of this case.

11. Office may give a fresh requisition for the LCR and the matter be listed for orders after receipt of the LCR.

JUDGE

JUDGE

Comparing Assistant