

GAHC010144292023



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

Case No. : I.A.(Crl.)/595/2023

BAHARUDDIN
S/O LATE MAJIBAR RAHMAN, VILL.- POKALAGI, P.O. AND P.S.- SALBARI,
DIST.- BAKSA, ASSAM, PIN- 781318.

VERSUS

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

2:MUHURUDDIN
S/O LATE WAHED ALI
VILL.- POKALAGI
P.O. AND P.S.- SALBARI
DIST.- BAKSA
ASSAM
PIN- 781318

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 03-05-2024

[Manish Choudhury, J.]

Heard Mr. A. Hussain, learned counsel for the applicant-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. M. Chakraborty, learned counsel for the opposite party-respondent no. 1, State of Assam.

2. The instant application is preferred under Section 389, Code of Criminal Procedure, 1973 [CrPC] for suspension of execution of the sentence passed against the applicant-appellant and for his release on bail. The applicant as the appellant, has preferred the connected appeal, Criminal Appeal no. 246/2023. The criminal appeal is directed against a Judgment and Order dated 30.05.2023 passed by the court of learned Sessions Judge, Baksa at Mushalpur [‘the trial court’, for short] in Sessions Case no. 136/2018. In the Judgment and Order dated 30.05.2023, the learned trial court has found applicant-appellant guilty for the offence of murder under Section 302, Indian Penal Code [IPC] and the applicant-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/- in default of payment of fine, to undergo rigorous imprisonment for another 2 [two] months.

3. Mr. Hussain, learned counsel for the applicant-appellant has submitted that it has emerged from the testimonies of the prosecution witnesses that another person was involved in the commission of the crime, which led to the death of the deceased, Shah Jamal. It is his submission that the informant-P.W.2 in the FIR lodged on 27.12.2011 mentioned the name of Mohammad Giasuddin as an accused apart from the applicant-appellant. It is further submitted by him that the Investigating Officer [I.O.] of the case were not examined during the course of trial as the concerned I.O. expired, in the meantime. In view of non-examination of the I.O., the applicant-appellant was prejudiced in his defence as he could not bring out the contradictions of the prosecution witnesses with regard to their previous statements recorded under Section 161, CrPC.

4. Ms. Bhuyan, learned Additional Public Prosecutor has submitted that there were 3 [three] prosecution witnesses, who witnessed the incident of assault. It has been submitted that the witnesses are related to deceased as well as to the applicant-appellant and as such, there is no question of any exaggeration in their testimonies. Moreover, the evidence of the 3 [three] eye-witnesses, P.W.1, P.W.2 & P.W.3 were consistent with the medical evidence.

5. We have considered the submissions of the learned counsel for the parties and have also gone through the evidence/materials on record of Sessions Case no. 246/2014, in

original.

6. The prosecution witnesses – P.W.1, P.W.2 & P.W.3 – testified before the learned trial court as eye-witnesses. In their testimonies, they stated that the incident took place at around 09-00 a.m./09-30 a.m., on 27.12.2011. P.W.1 had deposed that the accused assaulted on the head and the neck of the deceased with a dagger. P.W.2 deposed that he had also witnessed the incident and as per his testimony, the accused gave a blow on the head of the deceased and then, pushed the dagger on his neck. P.W.3 also stated that he saw the accused putting a dagger on the neck of the deceased. As per the Post-Mortem Examination Report, Ext.-2, there were two incised wounds – [1] 6cm x 4cm over the left side of the neck just above the clavicle; and [2] 5cm x 1cm x 5cm over the posterior part of the middle of the forehead region.

7. Section 389 of the Code deals with suspension of execution of the sentence pending appeal and release of the applicant on bail. In considering an application for suspension of execution of the sentence and the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the appellate court has to consider the factors like the nature of the accusations made against the accused, the manner in which the crime was alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing a serious offence like murder.

8. The submissions of the learned counsel for applicant-appellant as regards the provisions of Section 319, CrPC is not directly relevant for the purpose of considering an application under Section 389, CrPC. The learned counsel for the applicant-appellant has, however, fairly submitted that during the course of the trial, no application on behalf of the applicant-appellant was filed under Section 319, CrPC before the learned trial court. Whether due to non-arraignment of any other person whose role as a perpetrator of the crime had emerged from the evidence on record, the applicant-appellant had been prejudiced in any manner can at best be considered at the time of final hearing of the connected criminal appeal.

9. In view of the eye-witnesses' accounts in the form of testimonies of P.W.1, P.W.2 & P.W.3, whose versions are found to be prima facie consistent with the medical evidence on record and since with the conviction of the applicant-appellant for the offence of murder under Section 302, IPC, the presumption of innocence has already stood removed, this Court is of the considered view that the present case is not a fit case for suspension of the execution of the sentence passed against the applicant-appellant and for his release on bail. Accordingly, the instant application being devoid of merit, stands dismissed.

JUDGE

JUDGE

Comparing Assistant