

GAHC010157562023



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

Case No. : I.A.(Crl.)/675/2023

HASEN ALI
S/O AKHER ALI
R/O AKHER ALI
VILL.- HALDHIAPAR
P.S.- CHAPAR
DIST.- DHUBRI.

VERSUS

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

2:MD. MOHAR ALI
S/O LT. BARON ALI

VILL.- KHARSHIMARI
P.S.- PANCHARATNA
BONGAIGAON.

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

Linked Case : Crl.A./286/2023

HASEN ALI
S/O AKHER ALI

R/O AKHER ALI
VILL.- HALDHIAPAR
P.S.- CHAPAR

DIST.- DHUBRI.

VERSUS

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

2:MD. MOHAR ALI
S/O LT. BARON ALI

VILL.- KHARSHIMARI
P.S.- PANCHARATNA
BONGAIGAON.

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

I.A.(Crl.)/679/2023

AKHER ALI
S/O LATE MOZIBAR MONDAL RESIDENT OF VILLAGE HALDHIAPAR
PS CHAPAR
DIST DHUBRI

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MD. MOHAR ALI
S/O LATE BARON ALI

RESIDENT OF VILLAGE KHARSHIMARI
PS PANCHARATNA
BONGAIGAON.

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

Linked Case : Crl.A./288/2023

AKHER ALI
S/O LATE MOZIBAR MONDAL

RESIDENT OF VILLAGE HALDHIAPAR
PS CHAPAR
DIST DHUBRI

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MD. MOHAR ALI
S/O LATE BARON ALI

RESIDENT OF VILLAGE KHARSHIMARI
PS PANCHARATNA
BONGAIGAON.

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

11.01.2024

(M. Zothankhuma, J)

1. Heard Mr. A.K. Bhuyan, learned counsel for the applicants in I.A. (Crl.) 675/2023 in Crl. A. 286/2023 and I.A. (Crl.) 679/2023 in Crl. A. 288/2023. Also heard Ms. A. Begum, learned Addl. P.P., Assam appearing for the State respondent.

2. These two applications, which have been filed by Hasen Ali [I.A. (Crl.) 675/2023] and Akher Ali [I.A. (Crl.) 679/2023] are being disposed of by this common order.

3. The two applicants in these two applications under Section 389 Cr.P.C pray

for suspension of the sentence passed by the learned Addl. Sessions Judge, Bilasipara, Assam in Sessions Case No. 168/2012, pursuant to the judgment and order dated 28.06.2023.

4. At the outset, it may be stated that the applicant Hasen Ali is the son of the applicant Akher Ali.

5. The applicants herein along with eight other co-accuseds have been convicted under Sections 147/148/302/201 IPC read with Section 149 IPC and sentenced (1) to undergo simple imprisonment for 1(one) year under Section 147 IPC; (2) to undergo simple imprisonment for 2(two) years under Section 148 IPC; (3) to undergo rigorous imprisonment for life under Section 302/149 IPC and to pay fine of Rs.10,000/-(Rupees Ten Thousand) each and in default, to undergo simple imprisonment for 2(two) months; and (4) to undergo simple imprisonment for 2(two) years under Sections 201/149 IPC and to pay fine of Rs.4,000/-(Rupees Four Thousand) each and in default, to undergo simple imprisonment for another 1(one) month. All the sentences were directed to run concurrently.

6. The matter pertains to the murder of two persons, namely Jahar Ali and Sahar Ali on 21.09.1999.

7. The learned counsel for the applicants submits that the applicants were co-accused along with 8(eight) other persons in respect of the charge of murdering Jahar Ali and Sahar Ali who are all convicted by the learned trial Court. The applicants' counsel submits that there was a delay of two days in filing the FIR, besides the fact that in terms of the Form used by the learned

trial Court for examining the applicant Hasen Ali under Section 313 Cr.P.C, the age of the applicant Hasen Ali was shown as 35 years of age in the year 2020, thereby implying that Hasen Ali was only 14 years of age at the time of the incident. He also submits that in the production letter submitted by the police to the Magistrate's Court in the year 1999, Hasen Ali was shown as 52 years of age. However, in the charge-sheet dated 29.12.2000, Hasen Ali was shown to have expired. In view of the fact that Hasen Ali was shown to have expired in the charge-sheet dated 29.12.2000, it could not be understood as to how the statement of Hasen Ali could have been taken under Section 313 Cr.P.C in the year 2020. In any event, the age of Hasen Ali being shown as 35 years in the Form used for his examination under Section 313 Cr.P.C, the conviction of Hasen Ali would have to be set aside, as he was a minor at the time of the incident.

8. The learned counsel for the applicants submits that the applicant Akher Ali, who is the father of Hasen Ali is 72 years old and accordingly, bail should be granted to Akher Ali on humanitarian ground. He also submits that there are 5(five) eyewitnesses to the incident as per the evidence recorded. They are PW Nos.5, 6, 8, 11 and 15. He submits that PW Nos. 5 and 6 gave evidence on being brought from jail. As they were having enmity with the present applicants and other co-accused, their evidence could not be relied upon. He submits that the evidence of PW Nos. 8, and 11 does not make a whisper of the involvement of Hasen Ali and Akher Ali in the assault made on the two dead persons. As such, the sentence should be suspended and the applicants should be released on bail.

9. Ms. A. Begum, learned Addl. Public Prosecutor, on the other hand, submits that the evidences of the prosecution witnesses clearly show the involvement of

the applicants in assaulting the deceased persons, which led to their death. As such, it would not be proper to suspend the sentence and release them on bail, as their conviction has been made on the basis of the testimonies of eyewitnesses, who are reliable witnesses.

10. A perusal of the LCR shows that there are two accused persons having similar names, that is, Hasen Ali. However, the applicant herein is actually Hasen Ali Mondal. Though the earlier Hasen Ali was 52 years of age and had expired by the time the charge-sheet had been filed, the present applicant Hasen Ali Mondal was arrested by the police only in the year 2002, wherein he was shown to be 26 years of age. In the examination of Hasen Ali Mondal under Section 313 Cr.P.C in the year 2020, his age was shown to be 35 years and the name 'Mondal' was missing in the Form used for examining him under Section 313 Cr.P.C. Be that as it may, as the present applicant Hasen Ali has been shown to be 26 years of age at the time of his arrest in the year 2002, there is nothing to show that the present Hasen Ali was a minor at the time of the incident, inasmuch as, the recording of the age of Hasen Ali in the Form under Section 313 Cr.P.C could have been a mistake. In any event, as the applicant has not produced any document to show that he was a minor at the time of the incident, the said issue cannot be decided at this stage. Further, no such stand that he was a minor had been taken by Hasen Ali during trial or even by way of any application in the present appeal.

11. A perusal of the evidence of PW No. 5 shows that the deceased person Jahar Ali was being followed by Hasen Ali. Hasen Ali and others had assaulted the victim Jahar Ali. The evidence of PW No. 6 shows that the applicant Hasen Ali and Akher Ali were involved in the beating up of the deceased Jahar Ali. The

evidence of PW No. 15 shows that Hasen Ali had caught hold of Jahar Ali and that Jahar Ali had been beaten up by all the accused persons.

12. On considering the testimony of the above prosecution witnesses, we are not inclined to allow these applications at this stage. The applications are accordingly rejected.

13. The observations and findings made in this order shall not be considered to be final observations or findings by the Court at the time of hearing the appeal.

14. The interlocutory applications are accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant