

GAHC010170862023



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

Case No. : I.A.(Crl.)/958/2023

MONSHA GOWALA
S/O-SRI SANTANU GOWALA
R/O-VILL-CHUTIAKARI GAON
P.S.-BORHAT
DIST.-CHARAIDEO
ASSAM

VERSUS

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

2:SRI JOYDHAN GOWALA
S/O-MONSHA GOWALA
R/O-VILL-CHUTIAKARI GAON
P.S.-BORHAT
DIST.-CHARAIDEO
ASSAM

Advocate for : MR. B HALDAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

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

ORDER

Date : 14.06.2024

[Manish Choudhury, J.]

Heard Mr. B. Haldar, learned Legal Aid Counsel for the applicant-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. R. Das, learned counsel for the opposite party no. 1, State of Assam.

2. The instant application under Section 389[1], Code of Criminal Procedure, 1973 [CrPC] is preferred seeking suspension of execution of the sentence passed against the applicant-appellant in Session [Cha] Case no. 15/2020 and for his release on bail. By the Judgment and Order dated 29.05.2023 rendered in Session [Cha] Case no. 15/2020, the applicant-appellant has been convicted for the charge of murder under Section 302, Indian Penal Code [IPC] and he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 6 [six] months.

3. The applicant as the appellant, has preferred the connected criminal appeal, CrI.A[J] no. 112/2023.

4. Learned Legal Aid Counsel for the applicant-appellant has submitted that there is no direct evidence in that there was no eye-witness who had seen actual assault. He has further submitted that there was only one injury on the person of the deceased.

5. Opposing the application, Ms. Bhuyan, learned Additional Public Prosecutor has submitted that the severity of the blow was such that it was sufficient to cause death of a person. On the issue of direct evidence, Ms. Bhuyan has contended that the evidence of P.W.1 and P.W.2 were categorical and consistent in that they were present in the close vicinity of the place of occurrence.

6. We have considered the submissions of the learned counsel for the parties and have also gone through the materials available in the case records of the Session [Cha] Case no. 15/2020 in original, for the purpose of consideration of the instant application.

7. P.W.1 is the daughter-in-law of the applicant-appellant and the sister-in-law of the deceased. P.W.2 is a son of the applicant-appellant and a brother of the deceased. Both P.W.1 and P.W.2 are equi-related to the accused and the deceased. Evidence on records *prima facie* establishes the fact that P.W.1 and P.W.2, at the time of occurrence, were in the close vicinity of the place of occurrence. They were in the same campus with the accused and the deceased, when the alleged assault was made on the deceased by the accused inside a room of their house. The testimony of P.W.1 and P.W.2 were to the effect that they saw the deceased

coming out of the room with a deep cut injury on his neck. The accused was the only inmate of the room wherefrom the deceased had come out. The Autopsy Doctor who was examined as P.W.7, in the Post-Mortem Examination [PME] Report exhibited as Ext.P-2, had deposed that deceased sustained a six inches long deep sharp cut on the posterior aspect of neck placed obliquely extending from C2 level to the mid portion of occipital bone. As per the opinion of the Autopsy Doctor, the cause of death of the deceased was coma arising out of the injury sustained on the spinal cord.

8. It is settled law that the appellate court at the stage of consideration of an application under Section 389[1], CrPC should not appreciate the evidence. In considering the prayer for suspension of execution of sentence, some of the relevant factors which are to be looked into are the nature of accusation against the accused, the manner in which the murder of the deceased was committed, the gravity of offence, etc. At this stage, the issue which can also be considered is whether there is a fair chances of acquittal due to any reason like gross illegality apparent on the face of the record.

9. Having regard to the above materials/evidence of record, we are of the *prima facie* view that the present case is not a fit case for extending the benefit under Section 389[1], CrPC to the applicant-appellant. Resultantly, the instant application is dismissed.

10. It is, however, clarified that any observation made herein shall not be construed as observations on merit in connection with the pending appeal.

JUDGE

JUDGE

Comparing Assistant