

GAHC010172442022



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

Case No. : I.A.(Crl.)/487/2022

BABU SAIKIA
S/O LATE SUNTI SAIKIA RESIDENT OF NIMATI PANCHGHORIA GAON,
BORPATHAR UNDER BORPATHAR PS, DIST GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SHRI PHANIDHAR GOGOI
S/O LATE REBO KANTA GOGOI

RESIDENT OF TENGANI PANCHGOHOIRA GAON
PS BORPATHAR
DIST GOLAGHAT
ASSA

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./209/2022

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RESIDENT OF NIMATI PANCHGHORIA GAON
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Advocate for : MR. B M CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

ORDER

12.01.2024

(M. Zothankhuma, J)

Heard Mr. B.M. Choudhury, learned Sr. Counsel appearing for the applicant/appellant. Also heard Ms. S.H. Bora, learned Addl. P.P., Assam appearing for the State.

This application under Section 389 Cr.P.C is filed for suspending the sentence imposed upon the applicant/appellant, who has been convicted under Section 302 IPC, in pursuance to the judgment dated 23.06.2022, passed by the learned Sessions Judge, Golaghat in Sessions Case No. 173/2014, arising out of G.R. Case No.241/2011.

The counsel for the applicant submits that though the evidence of the hostile witnesses shows that in their statements made under Section 161 Cr.P.C, the applicant along with Basanta Saikia, Min Rajkhowa and Akanman Rajkhowa had been seen to be slapping and hitting the deceased with a lathi, only the applicant has been convicted. He also submits that there is no evidence recorded by the learned trial Court to show that the action of the applicant had caused the death of the deceased.

Ms. S.H. Bora, learned Addl. P.P. submits that the learned trial Court having found the applicant guilty, after going through the testimony of the witnesses, there is no ground to suspend the sentence or release the applicant on bail.

We have heard the learned counsels for the parties.

We have considered the fact that the 161 Cr.P.C statements made by the hostile witnesses show that though the applicant, Basanta Saikia, Min Rajkhowa and Akanman Rajkhowa were found to have been slapping and hitting the deceased, besides assaulting the deceased with a lathi, only the applicant has been convicted by the learned trial Court. There is no other evidence recorded by the learned trial Court, except the questions put to the hostile witnesses, that is, PW Nos.10, 11 and 12, with regard to what they stated to the police regarding the names of the perpetrators of the assault on the deceased.

On considering the above, we are of the view that the sentence awarded to the applicant should be suspended for the time being and the applicant should be released on bail.

Accordingly, the sentence is suspended and the applicant is directed to be released on bail, on furnishing bail bond of **Rs.50,000/-** with one surety of like amount to the satisfaction of the learned trial Court.

The I.A. is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant