

GAHC010174372024



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

Case No. : I.A.(CrI.)/848/2024

GULZAR HUSSAIN
S/O. LT. SAMSUDDIN AHMED @ SAMSUR, R/O. VILL. MAZ DABLONG, P.O.
LASKARPATHER,P.S. LANKA, DIST. HOJAI, ASSAM, PIN-782446.

VERSUS

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

2:MD. KAJIM UDDIN
S/O. LT. EDRIS ALI
VILL. NO. 2 PANCHALI
P.O. LASKAR PATHAR
P.S. LANKA
DIST. HOJAI
ASSAM
PIN-782446

Advocate for the Petitioner : MR A A DEWAN, MR H A RASHID

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 11.09.2024

[Manish Choudhury, JJ]

Heard Mr. A.A. Dewan, learned counsel for the applicant-appellant and Mr. K.K. Das, learned

Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. The instant interlocutory application is preferred by the applicant-appellant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 179 days, which has occurred in filing the accompanying criminal appeal. The applicant as the appellant, has preferred the accompanying criminal appeal against the Judgment and Order dated 20.12.2023 passed by the Court of learned Sessions Judge, Hojai [‘the trial court’, for short] in Sessions[1] 07[H] of 2023. By the Judgment and Order dated 20.12.2023, the learned trial court has convicted the applicant-appellant for the offence of murder under Section 300, Indian Penal Code [IPC] and the applicant-appellant has been sentenced under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 6 [six] months. The applicant-appellant is presently in jail serving the afore-mentioned sentence.

3. Mr. Das, learned Additional Public Prosecutor has fairly submitted that he has not received any instruction to oppose the instant application seeking condonation of delay. Mr. Das has further submitted that the State will have no objection if the accompanying criminal appeal is heard on merits.

4. On perusal of the application, we find that the period of delay which has occurred for filing the accompanying criminal appeal is 179 days beyond the statutory period of limitation.

5. We have perused the statements and averments made in the instant application, more particularly, paragraph 9 & 10 thereof, wherein the applicant-appellant has explained the reasons for the delay.

6. Section 5 of the Limitation Act, 1963 is engrafted in order to enable the court to do substantial justice to the parties by disposing of matters including the criminal appeals, on merit. The expression ‘sufficient cause’ is interpreted as an elastic concept to enable the court to apply the law in a meaningful manner with the ultimate objective to sub-serve the ends of justice. When the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. From the reasons shown by the applicant-appellant, it cannot be presumed that the delay has been occasioned deliberately and it is also clear that a convict like the applicant-appellant, does not stand to gain any benefit by resorting to delay. If the refusal to condone the delay itself results in

miscarriage of justice, it could also be a ground to condone the delay.

7. In view of the above fact situation obtaining in the case, we find that the accompanying criminal appeal deserves consideration of merits to sub-serve the ends of justice. Accordingly, the instant application seeking condonation of delay of 179 days in preferring the accompanying criminal appeal stands allowed.

8. The Office to register the accompanying criminal appeal and thereafter, list the same for admission.

JUDGE

JUDGE

Comparing Assistant