

GAHC010184832023



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

Case No. : I.A.(CrI.)/820/2023

BADAL CHINKU @ BADAL MURA
S/O MANTU CHINKU MURA, VILL.- NO. 1 HULUGAMORA, P.S.-
SAPEKHATI, DIST.- CHARAIDEO, ASSAM.

VERSUS

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

2:LABONYA KR. BORAH
S/O LT HARENDRA BORAH
ASSISTANT MANAGER
KANU TEA ESTATE BAGABAGH DIVISION OF

SAPEKHATI
P.S.- SAPEKHATI
DIST.- CHARAIDEO
ASSAM

Advocate for the Petitioner : MS M DAS,

Advocate for the Respondent : PP, ASSAM,

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

ORDER

Date : 05.09.2024

[Manish Choudhury, J]

Heard Ms. M. Das, learned Legal Aid Counsel for the applicant-appellant and Ms. A. Begum,

learned Additional Public Prosecutor for the opposite party, State of Assam.

2. The instant application under Section 389[1], Code of Criminal Procedure, 1973 is preferred seeking suspension of execution of sentence passed against the applicant-appellant and for his release on bail. The applicant as the appellant has preferred the accompanying criminal appeal, Criminal Appeal [J] no. 97/2023 against a Judgment and Order dated 09.03.2023 passed by the Court of learned Sessions Judge, Charaideo, in Sessions CHA Case no. 23/2019. By the Judgment and Order dated 09.03.2023, the applicant-appellant has been convicted for the offence of murder under Section 300, Indian Penal Code [IPC] and he 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 simple imprisonment for another 1 [one] month.

3. Learned Legal Aid Counsel appearing for the applicant-appellant has submitted that the evidence/materials on record go to indicate that there was presence of another person named Buda Sinku Mura and that person was actually involved in stealing of raw tea leaves. On the said aspect, there is inconsistency between the statements of the alleged eye-witness; Basanta Gogoi recorded under Section 164, CrPC and the deposition of Basanta Gogoi as P.W.2 before the court. In view of such inconsistency, the applicant-appellant should have been granted the benefit of doubt.

4. Ms. Begum, learned Additional Public Prosecutor appearing for the State has contended that the testimony of Basanta Gogoi as P.W.2 remained unshaken and his testimony received sufficient corroboration from P.W.3 and P.W.6 whose evidence are admissible under the rule of res gestae. Ms. Begum has further contended that the medical evidence as regards injuries sustained by the deceased is in conformity with the ocular testimony of these prosecution witnesses.

5. We have considered the submissions of the learned counsel for the parties and have perused the materials/evidence on record to consider the rival submissions.

6. The prosecution case, in brief, is that in the afternoon hours on 20.08.2017, the applicant-appellant, that is, the accused had hacked one Dilip Das, that is, the deceased who was a Chowkidar in

Bogabagh Division of Kanu Tea Estate. One Basanta Gogoi, P.W.2 testified as an eye-witness. Basanta Gogoi deposed to the effect that he was a Chowkidar of Bogabagh Tea Estate and the deceased, Dilip Das, who was also a Chowkidar in the tea garden, was his co-employee. As per his testimony, at around 04-40 p.m. on 20.08.2017 when he and deceased were on duty, they found the accused stealing green tea leaves. When the accused was questioned, the accused cut the deceased on his neck by a dao. Seeing the assault, P.W.2 stated to have fled from the scene shouting. Immediately thereafter, the deceased with blood all over on his person, also reached the place. At that moment, the wife of the deceased, Moni Das [P.W.3] arrived there and asked the deceased about the matter. The testimony of Moni Das [the wife of the deceased], who testified as P.W.3, corroborated the testimony of P.W.2 as regards the time and death of the incident. P.W.3 stated that she saw her husband coming towards their house having blood all over the body, fell on the road. P.W.3 further stated that when she asked about the matter, she was told by the deceased that the accused had cut him. The testimony of P.W.6, Rahul Dey has supported the testimony of P.W.2 and P.W.3 deposed to the effect that he saw the accused coming down towards his house and when he asked the deceased, he was told by the deceased that the accused had hacked him. All these three prosecution witnesses stated that they saw injuries on the neck and hand of the deceased. P.W.6 further stated that he saw the accused running away from the scene.

7. The testimony of P.W.3 and P.W.6 are prima facie admissible under the rule of evidence embodied in Section 6 and Section 8 of the Evidence Act. The medical evidence in the form of testimony of the Autopsy Doctor [P.W.8] and the Post-Mortem Examination [PME] Report [Ext.-6] are found in conformity with the testimony of the prosecution witnesses, P.W.1, P.W.2 and P.W.6.

8. In considering an application under Section 389[1], CrPC involving in a serious offence like murder punishable under Section 302, IPC, the court is required to consider the relevant factors like the nature of accusation meant against the accused, the manner in which the crime is alleged to have been committed and the gravity of the offence.

9. Having considered the evidence/materials on record on the aforesaid aspects, as discussed hereinabove, we do not find any merit in the instant application preferred under Section 389[1], CrPC to extend the benefit of suspension of the execution of the sentence passed against the applicant-

appellant and for his release on bail.

10. As the application is found not merited, the same stands rejected.

11. It is made clear that the observations made hereinabove are only for the purpose of consideration of the application under Section 389[1], CrPC and the observations made herein shall not be construed as observations made in respect of the merits of the accompanying criminal appeal and the observation shall not have any bearing on the outcome of the appeal.

JUDGE

JUDGE

Comparing Assistant