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

Case No. : I.A.(CrI.)/993/2024

DIPAK SUBEDAR AND 2 ORS
S/O. SRI BANESWAR SUBEDAR

VERSUS

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

2:AJIT SUBEDAR
S/O. SRI BANESWAR SUBEDAR

3:BANESWAR SUBEDAR
S/O. LATE RAKHESWAR SUBEDAR
' ALL ARE RESIDENT OF VILL. PASCHIM BALIGAON
P/O. AND P/S. RAHA
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR. D K BAIDYA, MR. S. BORAH,MR. A M BORA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

09.12.2024

(Suman Shyam, J)

Heard Mr. D. K. Baidya, learned counsel for the applicant. Also heard Ms. B. Bhuyan, learned senior counsel (Addl. P.P., Assam) appearing for the State.

By the judgment and order dated 19.08.2024 passed by the learned Additional Sessions Judge No.2, Nagaon in connection with Sessions (T₁) Case No.48/2017 the present applicant/appellant along with two other accused/appellants viz., Dipak Subedar and Ajit Subedar were convicted under Sections 341/302/34 of IPC and each of them were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months, for committing the offence under Section 302/34 IPC and to undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/- each, in default to suffer simple imprisonment for 7 days, for committing the offence under Section 341 of the IPC. All the three accused persons, who have been convicted by the learned Additional Sessions Judge No.2, Nagaon including the present applicant, have preferred Criminal Appeal No.345/2024 which is pending disposal before this Court. The appellants are in Jail.

One of the appellants viz., Baneswar Subedar has approached this Court, as sole applicant, by filing the instant application under Section 430 of the Bharatia Nagarik Suraksha Sanhita (BNSS) with a prayer to suspend his Jail sentence and to release him on bail during the pendency of the connected appeal.

The State has filed objection opposing the prayer made in the I.A.

By referring to the materials available on record, Mr. Baidya has argued that save and except the PW-7, none of the witnesses have implicated the present applicant in any manner. Even if the evidence of PW-7 is taken on its face value, even then, submits Mr. Baidya, this witness did not implicate the

applicant while recording his statement before the I.O. Even while recording his statement under Section 164 Cr.P.C. which was recorded nearly two months after the occurrence the witness did not implicate the applicant. In his 164 Cr.P.C. statement, the PW-7 has merely mentioned that the applicant had asked for a lathi from his wife and not sharp weapon which was used in the incident Under such circumstances, submits Mr. Baidya, the conviction of the applicant would be unsustainable under Section 302/34 of the IPC. Hence, the applicant deserves to be released on bail during the pendency of the connected appeal.

Opposing the above prayer, Ms. B. Bhuyan, learned Addl. P.P. has strenuously argued that the PW-7, who is an eye-witness to the occurrence, has clearly implicated the applicant. This witness has also implicated the applicant while recording his statement under Section 164 Cr.P.C. The fact that the applicant was present in the place of occurrence has gone unrebutted. Under the circumstances, submits Ms. Bhuyan, the applicant is equally guilty and stands on equal footing with the other two appellants/accused, who have been convicted by the learned court below. The learned Addl. P.P. has also invited the attention of this Court to the medical opinion which indicates that the cause of death was shock and haemorrhage as a result of head injury caused by blunt weapon resulting in the fracture of scalp leading to death. In view of the above, the learned Addl. P.P. has prayed for dismissal of the bail application.

We have considered the submissions made at the Bar and have also gone through the materials available on record. There is no denial of the fact that save and except the PW-7, none of the other witnesses have mentioned the

name of the applicant or had deposed about his involvement in the incident.

The question that would arise is, whether the evidence of PW-7 would be sufficient to establish the guilt of the applicant beyond reasonable doubt? We are of the view that such a conclusion cannot be drawn without a full length hearing of the appeal. We say so for the reasons indicated herein below.

In his deposition, the PW-7 has stated that the applicant was present in the place of occurrence and had asked his wife to hand over a lathi and a dao.

However, in his statement recorded under Section 164 Cr.P.C. this witness has only mentioned about the applicant asking for a lathi and not a dao.

Moreover, the PW-7 had not stated before the I.O. about the applicant asking for lathi or dao, which fact has been proved during the cross-examination of the I.O., i.e. the PW-9. Therefore, it appears that there is some improvement in the evidence of PW-7. Save and except PW-7, other witnesses have not implicated the applicant. Viewed from that angle, we are of the opinion that there is reasonable doubt in this case as to whether, the applicant herein had, in reality, played any role leading to the death of the deceased. Such a doubt, however, may not arise with regard to the other two accused persons against whom sufficient and cogent evidence appear to be available on record. Under such circumstances, we are unable to agree with the submission made by the learned Addl. P.P. that the applicant herein stands on equal footing with the other two accused/appellants, who have also been convicted in this case.

For the foregoing reasons, we are of the view that the applicant has made out a strong *prima facie* case for suspension of his Jail sentence and also to release him on bail. We, accordingly, direct that the applicant viz., Baneswar Subedar be released on bail on furnishing a bond of Rs.30,000/- and one surety of like

amount to the satisfaction of the learned Additional Sessions Judge No.2, Nagaon. In addition to the above, the learned Additional Sessions Judge No.2, Nagaon shall also be at liberty to impose any other additional condition for release of the applicant on bail.

Consequently, the jail sentence of the applicant viz., Baneswar Subedar shall remain suspended until further orders.

We, however, make it clear that the observation made herein above are tentative in nature and have been made for the limited purpose of deciding this I.A.. The observations shall not have any bearing during the final hearing of the connected appeal.

The I.A. stands disposed of.

JUDGE

JUDGE

Comparing Assistant