

GAHC010236682023



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

Case No. : I.A.(Crl.)/1126/2023

MEGHRAM NAIK
S/O LATE HARIYA NAIK, VILL.- NAHARJAN T.E, P.S.- BOKAKHAT, DIST.-
GOLAGHAT, ASSAM.

VERSUS

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

2:RANJAN KARMAKAR
S/O LATE BABLU KARMAKAR
VILL.- NAHARJAN TEA ESTATE
P.S.- BOKAKHAT
DIST.- GOLAGHAT
ASSAM

Advocate for the Petitioner : MR. B HALDAR (LEGAL AID COUNSEL)
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

06.03.2024

[Manish Choudhury, J.]

Heard Mr. B. Haldar, learned Legal Aid Counsel for the applicant-appellant and Ms. B. Bhuyan, learned senior counsel and Additional Public Prosecutor, Assam assisted by Ms. M. Chakraborty, learned counsel for the opposite party-respondent no. 1 State of Assam.

2. The instant application is preferred by the applicant-appellant seeking suspension of sentence under Section 389, Code of Criminal Procedure [CrPC], 1973. The applicant as the appellant has preferred the connected criminal appeal, Criminal Appeal [J] no. 130/2023 against the judgment and order dated 11.08.2023 passed by the learned Sessions Judge, Golaghat in Sessions Case no. 06/2023. By the judgment and order dated 11.08.2023, the applicant-appellant has been convicted under Section 302, Indian Penal Code [IPC] and 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 3 [three] months.

3. Mr. Halder, learned Legal Aid Counsel appearing for the applicant-appellant has submitted that the prosecution witnesses, P.W.5 & P.W.6, who had purportedly given eye-witness accounts, did not state before the police during the course of investigation that the applicant-appellant threw Petrol on the person of the victim. Mr. Halder has further submitted that as per the Post Mortem Examination [PME] Report, the victim who died on 04.11.2022 after the incident of 26.10.2022, died due to septicemia as a result of ante-mortem burn injury all over the body surface. As such, the charge under Section 302, IPC is not sustainable in law.

4. Objecting to the prayer for suspension of sentence, Ms. Bhuyan, learned senior counsel and Additional Public Prosecutor, Assam has strenuously urged that in the eye-witness accounts of P.W.5 and the P.W.6, the victim who was incidentally the wife of the applicant-appellant with marriage solemnized about 3 [three] months earlier, they had unerringly pointed to the applicant-appellant as the person who had thrown inflammable materials like petrol on the person of the victim. She has further pointed out to Ext.P-5 which is a statement of the victim, recorded by the Investigating Officer [I.O.] on 26.10.2022, to oppose the prayer for suspension of sentence.

5. We have considered the deposition of the witnesses as well as the documentary evidence led by the prosecution in the trial.

6. Ext.P-5 is a statement of the victim recorded under Section 161, CrPC by the I.O. [P.W.11]. As per the evidence of P.W.11, the said statement was recorded when the victim was being treated at the Golaghat Civil Hospital and the statement was recorded immediately after the incident. In the Ext.P-5, the victim had clearly implicated the applicant-appellant for the act of throwing Petrol on her person. Considering the fact that such version of the victim was also *prima facie* corroborated by the purported eye-witness accounts of the P.W.5 and the P.W.6, this Court is of the view that the present application seeking suspension of sentence is not merited at this stage in view of the nature of accusation against the applicant-appellant and the gravity of the offence. Consequently, the present application stands rejected.

JUDGE

JUDGE

Comparing Assistant