

GAHC010287732023



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

Case No. : CrI.A./484/2023

MD. AFTAB UDDIN AND 4 ORS.
S/O MD. HUSSAIN ALI, VILL.- DHOLAI PART- III, P.O.- DHOLAI MOLAI, P.S.-
KATLICHERRA, DIST.- HAILAKANDI (ASSAM), PIN- 788161.

2: MD. NAZIM UDDIN
S/O MD. ABDUL NOOR

VILL.- DHOLAI PART- III
P.O.- DHOLAI MOLAI
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788161.

3: MD. SELIM UDDIN
S/O MD. ABDUL NOOR

VILL.- DHOLAI PART- III
P.O.- DHOLAI MOLAI
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788161.

4: MD. ANAM UDDIN
S/O MD. ABDUL NOOR

VILL.- DHOLAI PART- III
P.O.- DHOLAI MOLAI
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788161.

5: MD. MOINUL HAQUE
S/O LATE CHNADRA MIA

VILL.- NISKAR
P.O.- KATLICHERRA
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788001

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY P.P., ASSAM.

2:ON THE DEATH OF MD. ABDUL ALI MAZUMDER HIS LEGAL HEIR
ANWAR UDDIN MAZUMDER
D/O LT. ABDUL UDDIN MAZUMDER

VILL.- DHOLAI PART- III
TILLAGAON
P.O.- DHOLAI MALAI
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788161.

3:ON THE DEATH OF MD. ABDUL ALI MAZUMDER HIS LEGAL HEIR
MUSTT. ASARUN NESSA MAZUMDER
D/O LT. ABDUL UDDIN MAZUMDER

VILL.- DHOLAI PART- III
TILLAGAON
P.O.- DHOLAI MALAI
P.S.- KATLICHERRA
DIST.- HAILAKANDI (ASSAM)
PIN- 788161

Advocate for the Petitioner : MR. A H ALAMGIR,

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

08.08.2024

Heard Mr. A.H. Alamgir, learned counsel appearing for the appellants and Mr. B. Sharma, learned Additional Public Prosecutor, Assam appearing for the State respondent No.1.

2. The learned Additional Sessions Judge, Hailakandi by its judgment and order dated 09.11.2023 passed in Sessions Case No.85/2016, arising out of Katlicherra Police Station Case No.259/2013, convicted the appellants under Sections 148/323/149 read with Section 302 of the IPC and sentenced them to suffer Simple Imprisonment for a period of 06 (six) months for the offence under Section 148 IPC; to suffer Simple Imprisonment for a period of 03 (three) months for the offence under Sections 323/149 IPC and to suffer Rigorous Imprisonment for a period of 10 (ten) years with fine of Rs. 5000/- (rupees five thousand) by each of the convicted accused; in default of payment of fine, to suffer Simple Imprisonment for another period of 01 (one) month for the offence under Sections 302/149 IPC, where all the sentences to run concurrently, setting off the period already undergone in judicial custody during investigation.

3. Aggrieved with the said conviction and sentence dated 09.11.2023, noted above, the five convicted accused in said Sessions Case No.85/2016 preferred this appeal on 22.12.2023.

4. Both Mr. A.H. Alamgir, learned counsel for the appellants and Mr. B. Sharma, learned Additional Public Prosecutor, for the State respondent placed before the Court that Section 302 IPC specifies punishment for murder with

death or imprisonment for life and also liable to fine. As such, they submitted that the trial Court, i.e., the learned Additional Sessions Judge, Hailakandi in Sessions Case No.85/2016 while imposing the sentence upon the appellants/convicted accused, have committed wrong in imposing sentencing upon them to suffer Rigorous Imprisonment for a period of 10 (ten) years and with fine of Rs. 5000/- (rupees five thousand) by each, in default of payment of fine, to suffer Simple Imprisonment for another period of 01 (one) month for the offence under Sections 302/149 IPC.

5. Perused the records of the case that was called for by order dated 04.01.2024. The incident involved in the case occurred on 30.11.2013.

6. The appellants were earlier arrested in said Katlicherra P.S. Case No. 259/2013 on 28.12.2013 and later on 03.02.2014 they were released on bail. Thereafter, from 09.11.2023 the appellants are serving the sentence imposed upon them by the learned Additional Sessions Judge, Hailakandi in Sessions Case No.85/2016 arising out of said Katlicherra P.S. Case No. 259/2013.

7. From the records it is seen that one, Ahad Uddin @ Abdul Ahad Laskar, son of Abdul Nur Laskar was impleaded as an accused during the trial of said Sessions Case No. 85/2016, but on perusal of the School Leaving Certificate wherein his date of birth was recorded as 13.07.1998 and considering the date the incident occurred on 30.11.2013, the said accused was found to be a juvenile in conflict with law and therefore, by order dated 10.10.2023 the learned Trial Court directed the said JCL Ahad Uddin @ Abdul Ahad Laskar to appear before the Juvenile Justice Board at Hailakandi.

8. Further, it is also seen from the records that appellant/convicted accused No. 1, Aftab Uddin was arrested in connection with SC(K)9 of 2023, arising out of Criminal Trial No. 17/2023 with reference to Kolasib Police Station Case (Mizoram) No. 23/2022 under Section 363 IPC read with Section 6 of the

POCSO Act and since 08.02.2023 he was detained as an under trial prisoner in the District Jail, Hailakandi in the said case of State of Mizoram. However, after the impugned judgment dated 09.11.2023 the Superintendent of District Jail, Hailakandi enquired into the matter with the learned Chief Judicial Magistrate, Kolasib, Mizoram as well as the Superintendent of Police, Kolasib, Mizoram vide WT Message dated 20.11.2023. In response to the same, the Chief Judicial Magistrate cum Civil Judge, Senior Division, Kolasib District, Mizoram by its communication dated 30.11.2023 informed that the learned Additional Sessions Judge, Kolasib, Mizoram by judgment dated 30.03.2023 discharged said Aftab Uddin in said SC(K)9 of 2023, arising out of Criminal Trial No. 17/2023 due to failing of submission of sufficient evidence against him based on the charged Section upon him intimating that he is no longer required in the said case.

9. Section 302 of the IPC that relates to “Punishment for Murder”, stipulates that – *Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

10. After hearing the learned counsels for the parties, this criminal appeal is disposed of remanding the matter back to the learned Additional Sessions Judge, Hailakandi with a direction to it to issue a fresh order regarding the sentence imposed upon the convicted accused persons in the said Sessions Case No. 85/2016 considering the evidence already adduced by the prosecution as well as by the defence and the arguments of the parties that were already heard.

11. To that extent, the impugned judgment of conviction and sentence, more particularly, the sentence part pertaining to Sections 302/149 IPC, sentencing the appellants to suffer Rigorous Imprisonment for a period of 10 (ten) years and to pay a fine of Rs. 5000/- (rupees five thousand) by each, in default of payment of fine, to suffer Simple Imprisonment for another period of 01 (one)

month is set aside and quashed, enabling the said trial Court to pass a fresh order of sentence, as directed above.

12. However, finding the appellants involved in the heinous crime, since the learned Additional Sessions Judge, Hailakandi in said Sessions Case No.85/2016 convicted the accused persons i.e., the appellants herein under Section 302 IPC, who are in pursuance to the impugned judgment dated 09.11.2023 in custody since then, they shall not be released on bail in the said Sessions Case.

13. Considering the fact that the appellants/convicted accused persons are in custody since 09.11.2023 pursuant to the impugned judgment passed in the said Sessions Case No.85/2016, arising out of Katlicherra P.S. Case No.259/2013, the learned Additional Sessions Judge, Hailakandi is directed to pass the fresh order of sentence relating to Section 302/149 IPC, as noted above, at the earliest, preferably on or before 30.09.2024.

14. Registry shall return the records of Sessions Case No.85/2016 along with a copy of this order to the Court of learned Additional Sessions Judge, Hailakandi forthwith.

15. With the above observation and direction, this appeal stands disposed of.

JUDGE

Comparing Assistant