

GAHC010061502018



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

Case No. : CrI.A./85/2018

AMIR BHUYAN @ AMIR ALI BHUYAN AND 6 ORS
S/O LATE NEBAJ ALI BHUYAN

2: SIRAJ BHUYAN @ SHIRAJUL HAQUE BHUYAN
S/O LATE HARMUJ ALI BHUYAN
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

4: NURUZ ZAMAN BHUYAN @ NUR JAMAL BHUYAN
S/O AMIR ALI BHUYAN
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

5: TAZBAR ALI BHUYAN AND TAJIBAR ALI BHUYAN
S/O LATE HARMUJ ALI BHUYAN
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

6: TAIJUDDIN BHUYAN
S/O LATE HARMUJ ALI BHUYAN
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

7: SADEK ALI @ SADEK BHUYAN
S/O LATE HARMUJ ALI BHUYAN
R/O FINGUA PATHAR

P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

8: SAIJUDDIN ALI BHUYAN @ SAIJUDDIN BHUYAN
S/O HARMUJ ALI BHUYAN
ALL ARE R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

VERSUS

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

2:MD. BAHADUR ALI
S/O MAKSED ALI
R/O FINGUA PATHAR
SARTHEBARI
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(CrI.)/1038/2019

TAIJUDDIN BHUYAN
S/O LATE HARMUJ ALI BHUYAN
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP
ASSAM.

2:BAHADUR ALI
S/O MAKSED ALI
R/O FINGUA PATHAR
SARTHEBARI
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN 781307

Advocate for : MR. B K MAHAJAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : CrI.A./82/2018

MUSTAK ALI @ GOLAP MOSTAFA @ GOLAM MOSTAFA
S/O KARIM ALI
R/O FINGUA PATHAR
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
S/O MAKSED ALI
R/O FINGUA PATHAR
SARTHEBARI
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN 781307

2:MD. BAHADUR ALI
S/O MAKSED ALI
R/O FINGUA PATHAR
SARTHEBARI
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN 781307

Advocate for : MR. B K MAHAJAN
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 18.03.2024

(Kalyan Rai Surana, J)

This court by order dated 15.06.2023, had elaborately discussed about the patent error which had crept in the common judgment and order dated 16.2.2018 passed by the learned Sessions Judge, Barpeta in Sessions Case No.131 of 2014 and Sessions Case No. 347 of 2015. Therefore, there is no necessity of reiterating of the contents of the order dated 15.6.2023.

2. It would suffice to mention that the said 2 (two) Sessions cases were tried together and a common judgment was delivered, but in the process, reliance was placed on the evidence led in both the cases and therefore, this Court had arrived at a conclusion that the evidence recorded in the cross case cannot be looked into and nor can a judge be influenced by whatever has been argued in the cross case and that each case must be decided on the basis of the evidence which has been placed on record in that particular case.

3. Therefore, this court had expressed an opinion that the matter has to be remanded back to the learned trial court for disposing of the two cross cases by two separate judgments after recording separate evidence of the common witnesses and not considering the evidence recorded in one case for adjudicating the issue in the other case.

4. This court had also noticed that the accused persons were acquitted in Sessions Case 347 of 2015 have not been made a party in the present appeals.

5. Although it is observed that in connection with Sessions Case No. 131 of 2014, order of acquittal was passed in respect of Ali Bhuyan @Alim Bhuyan (accused No.3), Sahjahan Bhuyan (accused No.8), Nurul Bhuyan (accused No.9), Anisur Rahman (accused No.11) and Halim Bhuyan (accused No.13). Pursuant to notice issued by the court on the 5 (five) acquitted person in Session Case No.131 of 2014, Ms. A. Haque, learned counsel for the said respondents is present. Upon instructions, the learned counsel for the said acquitted accused Nos. 3, 8, 9, 11 & 13 has submitted that the said respondents have no objection to the remand of the matters back to the learned trial court for afresh hearing and decision.

6. In so far as all the acquitted accused in Sessions case No.347 of 2015 are concerned, their names are (1) Abu Bakkar Sidique, (2) Mobarak Ali, (3) Taijuddin and (4) Bilat Ali, upon whom notices were issued and though served, have not appeared.

7. As there is likelihood of prejudice being caused to them on remanding the matter without hearing them. Therefore the only way to overcome the impasse would be to examine if the judgment of acquittal in Sessions case No.347/2015 is liable to be set aside as the common judgment & order dated 16.02.2018 impugned in these appeals is not sustainable as there is a procedural impropriety which vitiates the judgment and renders it void ab initio. Hence, the only way we perceived is to exercise the power of this Court

under sections 397 and 401 Cr.P.C. read with section 378 Cr.P.C.

8. Hence, the matter is being sent to the Registry to register it as Suo Motu Revision against the judgment and order dated 16.2.2018, in so far as Session case No. 347 of 2015 is concerned by which all of the 5 (five) accused named hereinbefore were acquitted.

9. As the certified copy of the common judgment is already available in the record of Crl. Appl. No.82/2018 as well as in the record of Crl. Appl. No. 85 of 2018, we exempt enclosing of the certified copy of the judgment in the Suo Motu Revision. The photo copy of the said common judgment and copy of the order of this Court order dated 15.6.2023 passed in common both the appeals would be sufficient, for the time being for the registration of the Suo Motu Revision.

10. Upon registration, the same shall be laid before the Court for passing appropriate orders.

11. List the matter after 2 (two) weeks along with these 2 (two) appeals.

JUDGE

JUDGE

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Comparing Assistant