GAHC010000992017

2026:GAU-AS:10849

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

Case No. : Crl.A./370/2019

HUSSAIN AHMED
S/O-LATE ABDUL SALAM,
VILLAGE- MATIKHULA,
P.S.- MURAJHAR, DIST- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS
REPRESENTED BY PP, ASSAM.

2:MD. UMARUDDIN @ OMARUDDIN
S/O- LATE NURUL HOQUE
R/O-VILLAGE- MATIKHULA
P.S.- MURAJHAR
DIST- NAGAON
ASSAM.PIN-782439.

3:MD. AJMAL HUSSAIN
S/O- LATE AMIRUDDIN
R/O-VILLAGE-MATIKHULA
P.S.- MURAJHAR
DIST- NAGAON
ASSAM.PIN-782439.

4:MD. ALIM UDDIN
S/O- MD. SAMSUL HOQUE
R/O-VILLAGE-MATIKHULA
P.S.- MURAJHAR DIST- NAGAON
ASSAM.PIN-782439.

5:MD. AFTAR HUSSAIN
S/O- JAMIRUDDIN
R/O-VILLAGE-MATIKHULA
P.S.- MURAJHAR DIST- NAGAON ASSAM.PIN-782439.

6:MD. AMIR UDDIN
S/O- SHURAFAT ALI
R/O-VILLAGE-MATIKHULA
P.S.- MURAJHAR
DIST- NAGAON
ASSAM.PIN-782439

Advocate for the appellant	:	Mr. A. Ahmed, Advocate.
Advocate for the respondent no.1	:	Mr. R.R. Kaushik, Addl. P.P.
Advocates for the respondent nos.2,4 & 5	:	Mr. D. Talukdar, Sr. Adv. Ms. B. Goswami, Advocate
Advocates for the respondent nos.3 & 6	:	Mr. M.U. Mondal, Advocate Mr. K. Islam, Advocate.

:::BEFORE:::
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Date of hearing and judgment : 05.08.2026

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. A. Ahmed, learned counsel for the appellant, who is the informant. Also heard Mr. R. R. Kaushik, learned Addl. P.P, Assam appearing for the State respondent No.1. Mr. D. Talukdar, learned Sr. Counsel assisted by Ms. B. Goswami, learned counsel appears for the respondent Nos.2, 4 & 5; while Mr. K. Islam, learned counsel appears on behalf of Mr. M.U. Mondal, learned counsel

for the respondent Nos.3 & 6.

2. The present appeal is against the impugned Judgement dated 20/12/2016 passed by the learned Additional District and Sessions Judge, Hojai, Sankardev Nagar in Sessions Case No.42(N)/2016, by which the four respondents, i.e, respondent Nos.3, 4, 5 & 6 have been acquitted from the charges under Sections 342/34 IPC and Sections 302/34 IPC.

3. The appellant's counsel submits that though the charge-sheet submitted by the Prosecution witnesses had 22 Prosecution witnesses listed, the learned Trial Court had only examined 4 Prosecution witnesses who are as follows:-

PW-1 - Md. Hussain Ahmed

PW-2- Md. Abdul Hoque

PW-3- Md. Abdul Wahid

PW-4- Dr. Lalit Chandra Nath

4. The learned counsel for the appellant submits that even though there were another 18 Prosecution witnesses to be examined by the learned Trial Court, the learned Trial Court acquitted the respondent Nos.3, 4, 5 & 6, on the ground that the evidence of the 4 Prosecution witnesses, whose testimonies were recorded, failed to prove all the necessary elements of the 'last seen together theory' and as such, the Prosecution had failed to prove the guilt of the respondent Nos.3, 4, 5 & 6. He submits that the impugned judgement and order shows that while the arguments of the counsels had been heard on 20/12/2016, the judgement

was delivered on the same day. Further, the evidence of the witnesses apparently had also been recorded on 20/12/2016. He accordingly submits that the manner in which the learned Trial Court has acquitted the respondent Nos.3, 4, 5 & 6, without taking the evidence of all the Prosecution witnesses or giving a chance to the Prosecution to produce all the witnesses, needs to be set aside. He also submits that when the learned Addl. P.P had submitted an application dated 20/12/2016 to the learned Trial Court, asking for time to produce other Prosecution witnesses for recording their evidence before the Court, there was no occasion for the learned Trial Court to have decided the criminal proceedings on 20/12/2016, without deciding the learned Addl. P.P's application for grant of time.

5. Mr. D. Talukdar, learned Sr. Counsel appearing for the respondent Nos.2, 4 & 5 submits that the respondent No.2 could not have been made a party in the present appeal, inasmuch as, he was never made an accused in the charge-sheet filed by the Investigating Officer in the learned Trial Court. As such, no charges were framed against the respondent No.2 by the learned Trial Court and neither did he face trial. As such, the respondent No.2 should be deleted as a party from this present appeal. He also submits that there was no infirmity with the closure of the Prosecution case, after the learned Addl. P.P had made an oral submission that the Prosecution case could not be bettered beyond the evidence given by the 4 Prosecution witnesses, which could not prove the guilt of the respondent Nos.3, 4, 5 & 6.

6. Mr. K. Islam, learned counsel for the respondent Nos.3 & 6 submits that he adopts the submission made by the counsel for the respondent Nos.2, 4 & 5.

7. Mr. R. R. Kaushik, learned Addl. P.P submits that as the learned Addl. P.P has submitted an application to the learned Trial Court on 20/12/2016, for producing the other Prosecution witnesses, the learned Trial Court should have disposed of the said written application, prior to disposing of the entire case on the same day.

8. We have heard the learned counsels for the parties.

9. (i) A perusal of the order sheet of the learned Trial Court shows that charges had been framed against the respondent Nos.3, 4, 5 & 6 on 20/08/2016, fixing 21/09/2016 for evidence of the Prosecution witnesses.

(ii) On 21/09/2016, the accused persons were present, while Prosecution witnesses were absent. As such, the learned Trial Court fixed 31/10/2016 for Prosecution evidence.

(iii) On 31/10/2016, 3 Prosecution witnesses were examined and discharged. The learned Trial Court then fixed 29/11/2016 for further Prosecution evidence.

(iv) On 29/11/2016, the learned Trial Court examined the Medical Officer and directed issuance of fresh summons to all the remaining Prosecution witnesses fixing 15/12/2016 for further evidence.

(v) The order dated 15/12/2016 shows that the learned Trial Court directed issuance of fresh summons to all the remaining Prosecution witnesses including the I.O. fixing 20/12/2016 for further evidence.

(vi) The order dated 20/12/2016 shows that the impugned judgment had been delivered on the said date, as the learned Addl. P.P having verbally submitted that in view of the evidence of the Prosecution witnesses who had already been examined, there was no chance of improving the Prosecution case.

10. The order dated 20/12/2016 passed by the learned Trial Court is reproduced hereinbelow as follows:-

> *"20/12/2016*
>
> *All accused are present. P.W.'s are absent.*
>
> *Ld. Addl. P.P. has verbally submitted that, in view of the evidence of P.W.'s who have already been examined, there is no chance of improving the prosecution's case.*
>
> *Perused the evidence of P.W.'s. Considering the material on the evidence of P.W.'s, I find that no prejudice will be caused if remaining P.W.'s are not examined. So, evidence of prosecution side is closed.*
>
> *Accused are examined u/s 313 Cr.P.C. Accused decline to adduce evidence for their defense.*
>
> *Heard arguments from both sides.*
>
> *The Judgment is also delivered on today.*
>
> *The judgment is written in separate sheets and enclosed with the Case Record.*
>
> *Accordingly the case is disposed off."*

11. As can be seen from the order dated 20/12/2016 which is in the Trial Court records, the main reason for closing the Prosecution case/trial is that the learned Addl. P.P had verbally submitted that in view of the evidence of the

Prosecution witnesses who had already been examined, there was no chance of improving the Prosecution case. Interestingly, the said reason for closing the Prosecution case is not found in the impugned Judgment and Order dated 20/12/2016. It is also interesting to note that the learned Trial Court had examined the respondent Nos.3, 4, 5 & 6 under Section 313 Cr.P.C on 20/12/2016, when 20/12/2016 was not the date fixed for examination of the accused persons under Section 313 Cr.P.C.

12. The above being said, we have also noticed the written application dated 20/12/2016 submitted by the learned Addl. P.P to the learned Trial Court, praying for time to produce the other Prosecution witnesses. However, the learned Trial Court has not made any decision with regard to the written application submitted by the learned Addl. P.P and has instead, disposed of the main case on the basis of the alleged oral submission made by the learned Addl. P.P, that there was no chance of improving the Prosecution case.

13. All the above facts goes to show that on 15/12/2016, the learned Trial Court had fixed 20/12/2016 for recording evidence of all the remaining 18 Prosecution witnesses, i.e, 5 days later. On 20/12/2016, the learned Addl. P.P had submitted an application to grant him more time to produce the Prosecution witnesses. As only 5 days had been granted by the learned Trial Court to the learned Addl. P.P for producing all the remaining 18 prosecution witnesses, it was expected of the learned Trial Court to take a reasoned decision as to why the application of the learned Addl. P.P dated 20/12/2016 should not be allowed or accepted. The learned Trial Court has however not made a mention of the written application dated 20/12/2016 submitted by the learned Addl. P.P.

Instead, the learned Trial Court had closed the trial/Prosecution case on the alleged verbal submission made by the learned Addl. P.P that there was no chance of improving the Prosecution case. Interestingly, as per the order dated 20/12/2016, the four respondent Nos.3, 4, 5 & 6 have been examined under Section 313 Cr.P.C on 20/12/2016. Final arguments were heard and the impugned judgement and order issued, acquitting all the 4 respondent Nos.3, 4, 5 & 6 on 20/12/2016. The manner in which the entire case has been closed leaves us wondering as to whether there is something more to it than meets the eye. The hurried manner in which the Prosecution case had been closed on the verbal submission made by the learned Addl. P.P, which is totally contrary to the application dated 20/12/2016, for grant of time for producing Prosecution witnesses made by the learned Addl. P.P, appears to be not only perverse, but also leaves the Trial Court Judge open to the charge of being totally arbitrary.

14. The above being said, we are also of the view that the inclusion of the respondent No. 2 in the present appeal by the appellant is not sustainable, keeping in view the fact that the respondent No.2 was never an accused in the charge-sheet filed by the Investigating Officer and as no charges were framed against the respondent No.2 by the learned Trial Court. Accordingly, the respondent No.2 is deleted from being a party from the present appeal.

15. Coming back to the main issue, it would be profitable to refer to the decision of the Hon'ble Supreme Court in the case of ***Bablu Kumar and others vs. State of Bihar and others***, reported in ***(2015) 8 SCC 787,*** where the Supreme Court has held that the Court is under the legal obligation to see that the witnesses, who have been cited by the prosecution, are

produced by it or if summons are issued, they are actually served on the witnesses. If the Court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses.

16. Para 22 of ***Bablu Kumar (supra)*** is reproduced herein below as follows:-

> "***22.*** *Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or highjack the community interest (2009) 6 SCC 767 (1999) 8 SCC 715 (2004) 10 SCC 598 (1995) 5 SCC 518 (2012) 8 SCC 263 by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a 'mock trial'. It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or*

if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial."

17. In the present case, the learned Trial Court should have applied its mind with regard to whether the application for time for production of witnesses, submitted by the learned PP on 20.12.2016 should have been allowed, instead of acting upon the oral submission made by the learned PP.

18. As we have already held in the earlier paragraphs, that the closure of the prosecution case and the trial appears to be not only perverse but arbitrary, we hold that the impugned judgment dated 20/12/2016 passed by the learned Trial Court is unsustainable. The impugned judgment is not only faulty, but has been closed in a very haphazard manner, without giving the serious consideration it deserves.

19. In view of the reasons stated above, the impugned judgment dated 20/12/2016 passed in Sessions Case No. 42(N)/2016 is hereby set aside. The

case is remanded back to the learned Trial Court to continue with the trial, from the stage of taking a decision on the learned PP's application dated 20/12/2016, for granting time to the prosecution to produce prosecution witnesses.

20. The appeal is accordingly allowed.

21. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant