

GAHC010035922026



2026:GAU-AS:3932-DB

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

Case No. : Crl.A./85/2026

SAHADEB CHAKMA ALIAS MASTER
SON OF BRIJMOHAN CHAKMA,
RESIDENT OF VILLAGE GIZACHERRA,
P.S LONGTHARAI VALLEY, DISTRICT DHALAI,
TRIPURA 799275. PRESENTLY LODGED AT SPECIAL JAIL,
NAGAON.

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY THE STANDING COUNSEL,
CENTRAL BUREAU OF INVESTIGATION.

Advocate for the Petitioner : ANUBHAB ATREYA, MR. J KONWAR, MS. C KALITA

Advocate for the Respondent : SC, CBI,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

Date : 18.03.2026
(M. Zothankhuma, J)

Heard Mr. A. Atreya, learned counsel for the appellant and Ms. M. Kumari, learned Public Prosecutor for the CBI.

2. This is an appeal against the impugned judgment and order dated 04.08.2016 passed by the Court of learned Addl. Sessions Judge No. 1,

Kamrup (M) at Guwahati in Sessions Case No. 227(K) of 2006, by which the appellant has been convicted under Section 120B read with Section 364A, 395/397 IPC, 201/34 IPC, 365/34 IPC and under Sections 302/34 IPC. While the appellant has been convicted along with five other co-accused under Section 120B IPC read with Section 364A IPC, 395/397 IPC, 201/34 IPC and 365/34 IPC, the present appellant and the five other co-accused have not been given any sentence pursuant to their conviction under Section 302/34 IPC by the learned Trial Court.

3. The learned counsel for the appellant submits that one of the main challenges to the impugned judgment is that the benefit of Section 428 Cr.P.C., providing for setting off the period of detention undergone by the appellant as UTP, against the sentence of imprisonment, has not been made available to the appellant. He submits that in terms of judgment of the Supreme Court in the case of ***Kiran vs. State of Karnataka***, reported in ***2025 SCC Online SC 2863***, the Sessions Court does not have the power to give a sentence of life imprisonment for the remainder of the natural life of the accused and the same can only be given by the High Court, while confirming the conviction and sentence of the Sessions Court. He further submits that the doing away with the setting off period of incarceration as UTP by the learned Trial Court, would intrude into the power of the State Government to grant remission and commutation in terms of Section 432 to 435 Cr.P.C.

4. The learned counsel for the appellant also submits that the learned Trial Court had committed a mistake in not passing any sentence under

Sections 302/34 IPC against the appellant and the five other co accused, pursuant to their conviction under Sections 302/34 IPC, in the impugned judgment.

5. Ms. M. Kumari, learned counsel for the CBI submits that the matter may be remanded back, to enable the learned Trial Court to pass a sentence under Sections 302/34 IPC against the appellant and the five other co-accuseds, as the same appears to have been inadvertently left out by the learned Trial Court. Further, the question of whether the learned Trial Court was correct in doing away with the benefit of the provisions of Section 428 Cr.P.C. in matters relating to sentence for life imprisonment can be decided by the learned Trial Court afresh, after taking into consideration the decision of the Supreme Court in the case of **Kiran (supra)** and other decisions that may be produced before the learned Trial Court by the appellant or the respondent.

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

7. As can be seen from the impugned judgment, charges had been framed against the appellant and the five other co-accused under the provisions of Sections 120B/364A/395/397/ 302/201/365/34 IPC. While the learned Trial Court had convicted all the accused, including the appellant under the above provisions of law and sentenced them in terms of para 88 of the impugned judgment, the learned Trial Court had somehow forgotten to pass a sentence against the appellant and the five other co-accused persons under Sections 302/34 IPC.

8. We accordingly remand the matter back to the learned Trial Court, to pass sentence in terms of Sections 302/34 IPC, after hearing the parties. The learned Trial Court, while deciding the sentence to be passed under Sections 302/34 IPC against the appellant and the five other co-accused persons, shall also take a fresh decision with regard to whether the benefit of the provisions of Section 428 Cr.P.C., regarding set off, can be applied to the sentences awarded to the appellant and the five other co-accused. In this respect, the learned Trial Court shall take into consideration the judgment of the Supreme Court in the case of ***Kiran (supra)*** and also other decisions of the Supreme Court that may be submitted by the appellant or the CBI.

9. Consequently, the impugned judgment is interfered with, to the extent of the learned Trial Court doing away with the grant of benefit of Section 428 Cr.P.C. to the appellant and the five other co-accused persons, as provided in para 89 of the impugned judgment. Accordingly, para 89 of the impugned judgment is set aside. The remaining portion of the impugned judgment is not interfered with.

10. The above being said, it is made clear that the present order is not made on the merits of the case, but only with regard to the fact that the learned Trial Court had forgotten to pass sentence under Sections 302/34 IPC. The learned Trial Court will also decide whether the benefit of Section 428 Cr.P.C. can be done away with by the learned Trial Court, in terms of the law laid down by the Supreme Court.

11. It is needless to add that in the event, either of the parties are

aggrieved with the final decision of the learned Trial Court, after having complied with the directions passed herein, the parties are at liberty to make challenge to the same as per law.

12. The present appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant