

GAHC010290372023



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

Case No. : I.A.(CrI.)/89/2024

DEBASHREE CHETIA @ DEBASRI CHETIA
S/O RIKHESWAR CHETIA
R/O BOKOTA KUKURACHOWA GAON
P.S.- NEMGURI
IN THE DISTRICT OF CHARAIDEO
PIN- 785674.

VERSUS

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

2:MINU SHYAM
W/O RANA SHYAM

R/O DESANGPANI
P.O.- DESANGPANI
P.S.- SEPON
DIST.- CHARAIDEO
ASSAM
PIN- 785673.

Advocate for : MR S DAS
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 09.04.2024

- 1.** Heard Mr. S. Das, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent
- 2.** This application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, Debashree Chetia, @ Debasri Chetia, praying for suspension of sentence imposed on him by the judgment and order dated 22.11.2023, passed by learned Sessions Judge, Charaideo in Sessions Case No. 20 (s-c) of 2014, whereby the present applicant has been convicted under Section 324 as well as Section 307 of the Indian Penal Code. He has been sentenced to undergo simple imprisonment for two years under Section 324 of the Indian Penal Code and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for one month. The applicant has also been sentenced to undergo simple imprisonment for 5 years under Section 307 of the Indian Penal Code and to pay a fine of Rs. 15,000/- and in default of payment of fine to undergo simple imprisonment for one month.
- 3.** The applicant has impugned the aforesaid judgment by preferring a connected criminal appeal which has been registered as Criminal Appeal No. 26/2024.
- 4.** Learned counsel for the applicant has submitted that the present applicant was convicted in Sessions Case No. 20 (s-c) of 2014, however, a cross case was also registered against the PW-3 and PW-10 of the instant case which has arisen out of the same incident and the said case was registered as

Sessions Case No. 40 (s-c) of 2014 where one Rana Shyam and Achyut Mohan stood trial.

5. Learned counsel for the applicant has submitted that though both the cases namely, Sessions Case No. 20 (s-c) of 2014 and Sessions Case No. 40 (s-c) of 2014 were cross cases, same ought to have been tried as per the procedure prescribed by the Apex Court in the case of "**Nathi Lal & Ors. Vs. State of U.P. & Anr**". reported in **{1990 (Supp) SCC 145}** wherein the Apex Court has observed as follows:

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

6. However, learned counsel for the applicant has submitted that bare perusal of the judgment of both the cross cases would show that the trial of both the cases were not conducted one after another, but on the same day, and also the depositions of at least two witnesses appears to have been copied and pasted in both the cases. The testimony of two witnesses in both the cases are exactly same word by word, which is, quite abnormal if the cases would have

been tried one after another.

7. Learned counsel for the applicant has also submitted that the for violation of the mandate of guideline laid down in ***Nathi Lal & Ors. Vs. State of U.P. & Anr (Supra)***, there is every probability of the applicant getting a favorable order in the connected appeal.

8. It is also submitted that apart from the non-following of the procedure laid down in the case of ***Nathi Lal & Ors. Vs. State of U.P. & Anr (Supra)***, the trial court has also ignored the contradictions between the prosecution witnesses.

9. Learned counsel for the applicant has submitted that the testimony of PW-7 clearly shows that the victim suffered injuries when the present applicant had pushed him and he fell on bamboo fencing. However, the said fact was not taken into consideration by the trial court while coming to the finding of guilt of the present applicant.

10. On aforesaid grounds, learned counsel for the applicant has prayed for suspending the sentence of the present applicant during the pendency of the connected criminal appeal.

11. On the other hand, learned Additional Public Prosecutor has opposed the prayer for suspension of sentence by the applicant on the ground that the trial court has correctly arrived at the finding of guilt of the present applicant and to substantiate his submission, the learned Additional Public Prosecutor put this Court to the deposition of PW-9 i.e., the doctor who examined the injured witness.

12. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record.

13. It appears that there are cross cases related to the same incident for

which the present appellant has been convicted in this case and said cases were registered as Sessions Case No. 20 (s-c) of 2014 in which the present applicant has been convicted and Sessions Case No. 40 (s-c) of 2014 which was registered on the basis of an FIR lodged by the brother of the present applicant.

14. It appears on perusal of the testimony of witnesses recorded in both the cases that at least the testimony of PW-1 and PW-2 tallies word by word and in both the cases the testimony of PW-1 and PW-2 were recorded on the same date.

15. It is no *res-integra* where cross cases are there the procedure prescribed by the Supreme Court of India in ***Nathi Lal & Ors. Vs. State of U.P. & Anr (Supra)***, has to be followed while conducting the trial of the cross cases.

16. It also appears from the materials available on record the argument made by the learned counsel for the applicant appears to be cogent and he has an arguable case in the connected appeal.

17. Further, it also appears that the applicant has been sentenced for a short period of 5 years and 2 years respectively and considering the number of pending appeals in this Court, it is unlikely that the connected appeal would be heard soon.

18. Therefore, if in the event ultimately the applicant/appellant gets a favorable order in the connected appeal, he would be highly prejudiced if the execution of the sentence imposed by the impugned judgment is not stayed during the pendency of the connected appeal.

19. In view of above, the sentence imposed on the applicant by the impugned judgment shall remain suspended during the pendency of the connected criminal appeal and the applicant shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject

to the satisfaction of the learned Sessions Judge, Charaideo with following conditions:

- i. That the applicant shall surrender before the learned Sessions Judge, Charaideo in the event if the connected criminal appeal fails.
- ii. That during the pendency of the connected criminal appeal the applicant shall not indulge in any similar offence with which he has been convicted in this case.

20. With above observation this Interlocutory Application is allowed and accordingly disposed of.

JUDGE

Comparing Assistant