

(2021) 07 GAU CK 0107

Gauhati High Court

Case No: Interlocutory Application (Criminal) No. 301 Of 2020, Criminal Appeal No. 227 Of 2019

Bhupen Boro

APPELLANT

Vs

State Of Assam And
Anr

RESPONDENT

Date of Decision: July 27, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 389(3)
- Indian Penal Code, 1860 - Section 376(2)(f)

Hon'ble Judges: Ajit Borthakur, J

Bench: Single Bench

Advocate: B K Mahajan, S Hazarika

Judgement

Hearing held through remote video conference.

Heard Mr. S. Hazarika, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State respondent.

By this interlocutory application filed under Section 389(3) Cr.P.C., the accused/appellant has prayed for suspension of sentence in connection with

Sessions case No. 46(K)/2011 passed by the Additional Sessions Judge No. 4 (FTC), Kamrup(M), Guwahati, convicting the accused/appellant under

Section 376 (2)(f) of the I.P.C. sentencing him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.5,000/- and in default of payment

of fine to undergo simple imprisonment for 2 months.

The case record in connection with Crl. Appeal No. 227/2019 is received.

The prosecution case as is unfolded by the First Information Report dated 04.06.2010, lodged by the mother of the victim is that on 30th of May, 2010, when she went to attend the shradha ceremony of her mother-in-law by keeping her minor daughter in the house of the accused/appellant, during night, the accused/appellant committed rape upon her minor daughter by gagging her mouth. Thereafter, the accused/appellant threatened the victim not to divulge the incident, else he would kill her. On 04.06.2010, when the victim had severe abdominal pain, she disclosed to her mother that the accused/appellant raped her.

On perusal of the case record, it appears that the accused/appellant has been serving out the sentence for more than 7 years out of the substantive period of sentence of 10 years.

The evidence on record shows, subject to final hearing of the appeal which is now ready, there is sufficient prima facie material against the accused applicant/appellant. However, the final hearing may be delayed due to the current Covid-19 pandemic restricted guidelines.

For the above stated reason, the sentence passed against the accused/appellant in connection with Sessions case No. 46(K)/2011 under Section 376(2)(F) passed by the Addl. Sessions Judge No. 4 (FTC), Kamrup(M), sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo simple imprisonment for 2 months, is hereby suspended till disposal of the connected appeal mentioned above and it is directed that he be released on bail of Rs. 30,000/- with two sureties subject to the satisfaction of the learned Addl.

Sessions Judge No. 4(FTC), Kamrup(M) at Guwahti.

Registry to list the appeal after restrictions are lifted.

With the above direction the application stands disposed of.