

GAHC010220182024



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

Case No. : I.A.(Crl.)/132/2026

BHAIJAN MORANG
S/O. SRI MOINA MORANG
R/O. VILL.-SANTIPUR RONGANOI
P/S. DHEMAJI
DIST.-DHEMAJI
ASSAM.

VERSUS

THE STATE OF ASSAM
REP BY THE PP
ASSAM

2:PADMAWATI NGATE
D/O. DEVESWAR NGATE
R/O. ADIKOLIA BALIGAON
P/S. DHEMAJI
DIST.- DHEMAJI
ASSAM.

Advocate for : MR. A LAL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.A./363/2024

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S/O. SRI MOINA MORANG, R/O. VILL.-SANTIPUR RONGANOI, P/S.
DHEMAJI, DIST.-DHEMAJI, ASSAM.

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P/S. DHEMAJI
DIST.- DHEMAJI
ASSAM

Advocate for the Petitioner : MR. A LAL, MR A BRAHMA

Advocate for the Respondent : PP, ASSAM, MS. R D MOZUMDAR (R-2)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 31.03.2026
(M. Zothankhuma, J)

Heard Mr. A. Lal, learned counsel for the applicant-appellant. Also heard Mr. R.R. Kaushik, learned Addl. P.P., Assam appearing for the respondent No.1 and Ms. R.D. Mojumdar, learned counsel for the respondent No. 2.

2. This application is for suspending the sentence imposed upon the applicant-appellant by the Court of the learned Sessions Judge, Dhemaji vide Judgment and Order dated 22.08.2024, passed in Sessions Case No. 88/2017, arising out of Dhemaji P.S Case No. 55/2017, by which the applicant-appellant has been convicted under Sections 341 and 376 of IPC and sentenced to undergo simple imprisonment for 1 month under Section 341 of IPC and to undergo rigorous imprisonment for 25 years with fine under Section 376 of

IPC.

3. The learned counsel for the applicant-appellant submits that the challenge to impugned judgment and order passed by the learned Trial Court is on four grounds. Firstly, that the question put to the applicant-appellant was a composite question under Section 313 Cr.P.C., while the same should have been divided into different questions. Secondly, except for the victim, there is no other evidence against the applicant-appellant. Thirdly, the medical evidence does not support the testimony of the victim that she had been raped by the applicant-appellant. Fourthly, proper legal assistance was not provided to the applicant-appellant during trial.

4. The learned counsel for the applicant-appellant has also taken us through the affidavit filed by the respondent No.2 before this Court on 23/05/2025, wherein it has been reflected in para 4 to 8 as follows-

“4. That I state that due to some personal and physical issues, I was not in a proper state of mind on the day of the alleged incident i.e. 24.02.2017. I submit that I was having an intimate relationship with the Accused/Appellant and I cannot say with certainty that on that day i.e. 24.02.2017 my sexual activity with the Accused/Appellant was forceful or conscientious.

5. That I state that I have settled the issue with the Accused/Appellant as the FIR was filed upon mistaken facts. Furthermore, I came to know that at the time of occurrence the Accused/Appellant was juvenile.

6. That I state that due to the sentence of 25 years imprisonment to the Accused/Appellant his whole life would be ruined. He was a juvenile at the time of the offence.

7. That I state that I made the statement in the FIR as also before the learned Magistrate out of fear. I further state that I adduced the evidence before the Court on mistaken facts under duress. However, with the passage of time, more particularly when the sentence has been inflicted upon the Accused/ Appellant I have decided to settle the issue as an innocent Juvenile is being punished.

8. That I state that both the parties have agreed and we have no grievance against each other and we have no objection if the Accused/Appellant is acquitted and the instant criminal appeal is allowed.”

5. Ms. R.D. Mojumdar, learned counsel for the respondent No. 2 submits that she drafted the affidavit made by the respondent No.2 and filed on 23/05/2025. She submits that the contents of the affidavit are as per the narration made to her by the respondent No.2.

6. Mr. R.R. Kaushik, the learned Addl. P.P. submits that it is settled law that conviction can be based on the sole evidence of the prosecutrix, provided the same is truthful and inspires the confidence of the Court. As the medical evidence of the Doctor in the Trial Court shows that the respondent No.2 was pregnant, it is possible that a child has been born unless there was a miscarriage. He accordingly submits that the question of paternity of the child can be ascertained by having a DNA test/profiling done on the applicant-appellant and the child born to respondent No.2.

7. With regard to the affidavit filed by the respondent No.2 on 23/05/2025, the learned Addl. P.P. submits that the same amounts to perjury.

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

9. It is quite surprising that during trial the respondent No.2 has blamed the applicant as the person who had raped her, while in her affidavit filed on 23/05/2025 before this Court, the respondent No.2 has stated that she was having an intimate relationship with the applicant-appellant and that she could not say with certainty that the sexual activity between them was forceful or conscientious. The respondent No.2 in her affidavit has also stated that the applicant-appellant was innocent and a juvenile at the time of the incident.

10. The action of the respondent No.2 has clearly jeopardised the life of the applicant-appellant, as an innocent person could have been in jail for 25 years for no fault of his.

11. Without going into the merits of the case, we are of the view that the applicant-appellant should be released on bail and the sentence imposed upon him should be suspended, in view of the fact that the applicant-appellant prima facie appears to be innocent. However, we are surprised that the respondent No.2 has opened herself up to being prosecuted for perjury, in view of the affidavit filed on 23/05/2025.

12. Be that as it may, we are of the view that the applicant-appellant has made out a case for bail and for allowing the application under Section 430(1) of BNSS. Accordingly, the applicant-appellant is granted bail on furnishing a bond of Rs.25,000/-, with one surety of like amount to the satisfaction of the learned Trial Court. Consequently, the sentence imposed upon the applicant-appellant by the learned Trial Court, in view of his conviction in Sessions Case

No. 88/2017 vide Judgment and Order dated 22.08.2024, passed by the learned Sessions Judge, Dhemaaji is suspended till final disposal of the appeal.

13. The I.A. is accordingly allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant