

GAHC010102952024



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

Case No. : I.A.(Crl.)/381/2024

MONIRUDDIN AND ANR.
S/O LATE AKKASH ALI
VILL.- LATANI CHAPORI
P.S.- RUPAHIHAT
DIST.- NAGAON
ASSAM.

2: MOHAMMAD ALI
S/O LATE AKKASH ALI

VILL.- LATANI CHAPORI

P.S.- RUPAHIHAT

DIST.- NAGAON
ASSAM.
VERSUS

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

2: ABBAS ALI
S/O ZINNAT ALI

VILL.- LATANI CHAPORI

P.S.- RUPAHIHAT

DIST.- NAGAON
ASSAM.

Advocate for : MR. Y S MANNAN
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

ORDER

23.02.2026

(M. Zothankhuma, J)

Heard Mr. Y S Mannan, learned counsel for the applicants/ appellants. Also heard Mr. R R Kaushik, learned Additional Public Prosecutor, Assam for the State.

2. This interlocutory application under Section 389 of the CrPC is for suspension of the sentence passed due to the conviction of the applicants under Sections 302/34 IPC vide judgment and order dated 25.01.2024 passed by the learned Sessions Judge, Nagaon in Sessions (T-1) Case No. 14(N)/2014. The applicants have been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 20,000/- each, in default, to undergo further 6 months of simple imprisonment.

3. The applicants' case is that the conviction has been made solely on the basis of the oral dying declaration of the deceased before his sons, which he says is not in consonance with each other. He accordingly submits that when the procedure to be followed has not been followed in respect of a dying declaration, conviction solely on the basis of the said oral dying declaration is erroneous and the applicants should be acquitted from the charge against them.

4. The counsel for the applicants further submits that the medical doctor was not examined and no fitness certificate was given by him to the deceased, to the effect the deceased could make a dying declaration.

5. Mr. R R Kaushik, the learned Additional Public Prosecutor, Assam submits that the issues raised by the applicants' counsel would decide the entire case and as such, the said issues should be decided at the time of final hearing of the appeal and not at the time of disposal of the interlocutory application. He also submits that there is an appeal filed by the informant against 4 co-accused persons who had been discharged by the learned Trial Court. As such, the decision made in the interlocutory application, if any, would also decide the appeal filed by the informant challenging the acquittal of the four co-accused persons.

6. Considering the submission made by the learned counsels for the parties and on perusal of the records, we are also of the view that the issues raised by the applicants' counsel would have a direct bearing on the appeal filed by the applicants and also the appeal filed by the informant, which is Criminal Appeal No. 191/2024.

7. Keeping in view the above and on perusal of the records, we are not inclined to allow the instant interlocutory application at this stage.

8. Accordingly, the instant interlocutory application stands rejected.

JUDGE

JUDGE

Comparing Assistant