

GAHC010132222026



undefined

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

Case No. : I.A.(CrI.)/660/2026

SRI AJAY KR SINGH
SON OF HIRALAL SINGH
RESIDENT OF - M-7
APNA ENCLAVE
AMBEDKAR CITY
NEAR GREEN FIELD CRICKET GROUND
SECTOR123
NOIDA
.- NOIDA
DISTRICT - GAUTAM BUDDHA NAGAR
UTTAR PRADESH
PIN- 201301. ---- APPLICANT/ APPELLANT

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. P P DUTTA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : I.A.(CrI.)/673/2026

SRI PRASUN GOSWAMI
SON OF LATE NAGENDRA MOHAN GOSWAMI
RESIDENT OF MIRZA

P/S. PALASHBARI
DISTRICT KAMRUP ASSAM

VERSUS

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

2:JAYANTA MAHANTA
SON OF LATE HARICHANDRA MAHANTA
RESIDENT OF VILLAGE AND P O AGCIA
P S AZARA
DISTRICT KAMRUP ASSAM
PIN 781017

Advocate for : MR P AGARWAL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 04.08.2026

Heard Mr. T. J. Mahanta, learned Senior Counsel, assisted by Ms. P. P. Das, learned counsel appearing for the applicant in I.A.(CrI.)/660/2026 and Mr. N. Mahajan, learned counsel appearing for the applicant in I.A.(CrI.)/673/2026. Also heard Mr. B. Sharma, learned Additional Public Prosecutor appearing for the State respondent.

2. By way of this application under Section 430 of the BNSS, 2023, the applicants, i.e., **Sri. Ajay Kr. Singh and Sri. Prasun Goswami**, in I.A. (CrI.)/660/2026 connected with CrI.A. No. 234/2026 and I.A.(CrI.)/673/2026 connected with CrI.A. No.238/2026, respectively, are praying for suspension/stay of the sentence contained in the judgment and order dated

20.06.2026, passed by the Additional Sessions Judge, Kamrup, Amingaon, in Sessions Case No. 241/2014, and to enlarge them on bail during the pendency of the connected criminal appeals.

3. The prosecution case, in brief, is that the deceased, a student of Class VI of Saraswati Siksha Niketan School, Mirza, allegedly died as a consequence of physical assault inflicted by the applicants. It is alleged that applicant No. 1, Shri Ajay Kumar Singh, who was serving as the Computer Teacher of the school, and applicant No. 2, Shri Prasun Goswami, the Vice-Principal of the said school, assaulted the deceased for not completing his class work. According to the prosecution, the applicants severely beat the deceased, particularly on his legs, resulting in injuries which subsequently developed into septicaemia, ultimately leading to his death. On the basis of the said allegations, a criminal case was registered against the applicants.

4. Upon completion of the investigation, the Investigating Officer submitted charge-sheet against the applicants under Sections 325/302/34 of the Indian Penal Code, whereupon the case was committed to trial. During the course of the trial, the prosecution examined seventeen witnesses. The applicants, while denying the incriminating circumstances put to them in their respective statements recorded under Section 313 of the Code of Criminal Procedure, did not adduce any evidence in defence.

5. Upon appreciation of the evidence on record, the learned trial Court found both the applicants guilty and convicted them under Sections 325 and 304 Part II of the Indian Penal Code. For the offence under Section 325 IPC, each of the applicants was sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/-, with a further sentence of simple imprisonment for six months in default of payment of fine. For the offence

under Section 304 Part II IPC, each of the applicant was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹10,000/-, with a further sentence of simple imprisonment for six months in default of payment of fine. The period of detention undergone by the applicants during investigation and trial was directed to be set off under the law.

6. Aggrieved by the aforesaid common judgment of conviction and order of sentence, the applicants have preferred the present criminal appeals. Upon admission of the appeals, the present interlocutory applications have been filed seeking suspension of the sentence and release of the applicants on bail pending disposal of the appeals. Since both applications arise out of the same judgment and involve common questions of fact and law, they are being disposed of by this common order.

7. Mr. T. J. Mahanta, learned Senior Counsel, submits that the post-mortem report which indicates that it was normal death has not been exhibited before the trial court. He further submits that had the post mortem report been exhibited, it would have been clear that the deceased did not die because of any beating as alleged by the prosecution.

8. Mr. N. Mahanta, learned counsel, submits that it is evident from the prosecution witnesses itself that there are two versions as regards what had happened on that fateful day due to which the deceased ultimately perhaps may have died. He further relies upon a judgment of the Division Bench of this Court, in **Budhua Mura v. State of Assam**, reported in **2002 (2) GLT 103**, wherein the Division Bench of this Court has clearly held that when prosecution adduces two set of witnesses, one contradicting the other, and the Court is not in a position to hold confidently as to which set of witnesses has told the truth, then, both sets of witnesses have to be discarded, or, atleast,

the set of evidence, which goes in favour of the accused shall be adopted by the Court.

9. On the other hand Mr. B. Sharma, learned Additional Public Prosecutor, while vehemently opposing the interlocutory application for suspending the sentence thereof, submits that it has clearly come out from the prosecution evidence that both the applicants have brutally beaten the deceased student for which ultimately he succumbed to his injury. He further submits that though one witness, i.e. PW-8 has stated a different version; however, the other prosecution witnesses, i.e., PW-10 and PW-13 have clearly stated that both the applicants have brutally beaten the deceased student on his leg.

10. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the parties and have carefully perused the materials available on record, including the evidence adduced during trial. I have also considered the authorities cited at the Bar.

11. It is well settled that once an accused stands convicted by a competent court, the presumption of innocence available to him during trial no longer survives. Consequently, while considering an application for suspension of sentence pending appeal, the appellate court is not expected to undertake a meticulous reappraisal of the entire evidence. The Court is, however, required to examine whether the appeal raises substantial and arguable grounds and whether, on a prima facie assessment of the record, the conviction is open to serious doubt so as to justify suspension of the sentence pending disposal of the appeal.

12. Reverting to the facts of the present case, it appears that the prosecution has relied upon three eyewitnesses, namely, PW-8, PW-10 and

PW-13. A prima facie examination of their testimonies reveals material variations with regard to the manner in which the occurrence allegedly took place.

13. PW-8 deposed that the deceased was given a single blow with a stick by applicants Shri Ajay Kumar Singh during the computer practical class for creating mischief and that, thereafter, while descending the staircase after the class, the deceased, in a playful manner, accidentally fell and sustained injuries to his left knee. The testimony of PW-8, therefore, attributes the injury on the knee to an accidental fall.

14. PW-13, on the other hand, stated that applicant Shri Ajay Kumar Singh assaulted the deceased with a stick upon finding that he had not completed his homework. PW-10 went a step further and specifically deposed that applicant Shri Ajay Kumar Singh struck the deceased four times on his left knee with a stick for not completing his homework. However, there is no direct evidence as regards the alleged beating of the applicant Shri Prasun Goswami.

15. Prima facie, therefore, there appear to be material inconsistencies in the ocular version of the prosecution witnesses with regard to the nature of the assault as well as the role attributed to each of the applicants.

16. At this stage, reference may be made to the decision of the Division Bench of this Court in **Budhua Mura** (supra), wherein it has been held that where the prosecution itself produces two sets of evidence which materially contradict each other and the Court is unable to confidently determine which version represents the truth, the benefit must necessarily enure to the accused. Relevant paragraph of the aforesaid judgment read as under: -

“(24) Coupled with the above, we have to also bear in mind that when prosecution adduces two sets of witnesses, one contradicting

the other, and the Court is not a position to hold confidently as to which set of witnesses has told the truth, then, both sets of witnesses have to be discarded or, at least, the set of evidence, which goes in favour of the accused shall be adopted by the Court. Reference may be made to Harchand Singh and another-Vs-State of Haryana (AIR 1974 SC 344). Keeping in mind this salutary principle of criminal law in mind, when we revert to the case before us, we find that the evidence given by PW-2 not only projects mangra Mura alone as assailant of the deceased Ashok but it rules out the possibility of the present appellant having shot the deceased with arrow or having helped Mangra in killing the deceased by shooting the latter with arrow. Viewed from this angle too, we have no option but to discard the evidence of PW-1, PW-4 and pw-5 as unsafe to place reliance upon.

(25) Since the trial against the accmsed mangra Mura is still incomplete, we do not wish to make any comment on the evidence on record, which may point to mangra Mura as a possible assailant. We, therefore, keep ourselves completely confined to the appreciation of evidence on record vis-a-vis the case of the accused-appellant. On a close and dispassionate analysis of the evidence on record, we: are firmly of the view that depending upon the inconsistent evidence on record regarding the dying declaration it will be highly hazardous to place reliance on the evidence of PW-1, PW-4 and PW-5 to found conviction of the accused-appellant.”

17. Without expressing any final opinion on the merits of the appeal, this Court is of the prima facie view that the evidence led by the prosecution raises certain arguable issues which require a comprehensive examination at the stage of final hearing of the appeals.

18. It also appears from the record that the applicants were on bail throughout the course of the trial and there is nothing to indicate that they had misused the liberty so granted or attempted to interfere with the administration of justice. No criminal antecedent has also been brought to the notice of this Court.

19. Having regard to the totality of the circumstances, I am satisfied that the

appeals raise substantial and arguable questions warranting consideration. Consequently, a case for suspension of the execution of the sentence pending disposal of the appeals is made out.

20. Accordingly, the execution of the sentence imposed upon the applicants in Sessions Case No. 241/2014 shall remain suspended during the pendency of Criminal Appeal No. 234/2026 and Criminal Appeal No. 238/2026.

21. Consequently, the applicants, namely, Shri Ajay Kumar Singh and Shri Prasun Goswami, shall be released on bail on furnishing a bail bond of ₹20,000/- each with one surety of the like amount each to the satisfaction of the learned Additional Sessions Judge, Kamrup, Amingaon.

22. The interlocutory applications stand accordingly allowed.

JUDGE

Comparing Assistant