

GAHC010202452016



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

Case No. : CrI.A./94/2016

SRI SIBA PAUL @ SIBU PAUL and 2 ORS
S/O SRI PRATAP PAUL

2: PRATAP PAUL
S/O LATE ARJUN PAUL

3: PARIMAL PAUL
S/O SRI PRATAP PAUL
ALL ARE R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUPM
ASSAM

VERSUS

THE STATE OF ASSAM and ANR

2:AJAY PAUL

S/O LATE SUBAL PAUL
R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.S C BISWAS

Advocate for the Respondent : MR.R SARMAR-2

Linked Case : CrI.A./78/2016

SRI HARE KRISHNA PAUL
S/O LATE NITAI PAUL
R/O GOBARDHAN GHORAMARA
JANPAM
CHANDRAPUR
PIN 781150
UNDER PRAGJYOTISHPUR P.S. IN THE DIST. OF KAMRUP M
ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:AJOY PAUL

S/O LATE SUBAL PAUL
R/O GOBARDHAN GHORAMARA
JANPAM CHANDRAPUR
PIN 781150
UNDER PRAGJYOTISHPUR POLICE STATION IN THE DIST. OF KAMRUP M
ASSAM.

Advocate for : MRS I AHMED

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM and ANR

Linked Case : CrI.A./50/2017

SRI BIPUL PAUL
S/O SRI ATUP PAUL
R/O VILL. GOBARDHAN
GHORAMARA
JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP M
ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:AJAY PAUL
S/O LATE SUBAL PAUL
R/O VILL. GHORAMARA JAMPAN
P.S. PRAGJYOTISHPUR
DISPUR
DIST. KAMRUP M
ASSAM.

Advocate for : MRK NAYAK
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM and ANR

Linked Case : I.A.(Crl.)/313/2021

PRATAP PAUL AND ANR.
S/O. LATE ARJUN PAUL

2: PARIMAL PAUL
S/O. SRI PRATAP PAUL
BOTH ARE R/O. VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP(M)
ASSAM
VERSUS

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

2:AJAY PAUL
S/O. LATE SUBAL PAUL
R/O. VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP (M)
ASSAM

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

Linked Case : Crl.A./50/2016

SRI NIRMAL PAUL and ANR
S/O LATE NARAYAN PAUL @ NITAI PAUL

2: SANJU PAUL
S/O LATE NARAYAN PAUL
BOTH ARE THE R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP M
VERSUS

THE STATE OF ASSAM and ANR

2: AJOY PAUL
S/O LATE SUBAL PAUL
THE R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.O. CHANDRAPUR
P.S. PRAGJYOTISHPUR
GUWAHATI 781105
DIST. KAMRUP M
ASSAM

Advocate for : MR. B I KHAN

Advocate for : MR. A D CHOUDHURY R-2 appearing for THE STATE OF ASSAM
and ANR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.08.2023
(K.R. Surana, J)

1. Heard Mr. Z. Kamar, learned senior counsel, assisted by Mr. S.C. Biswas, learned counsel for the appellants in Crl. Appeal No. 94/2016, Mr. N. Ahmed learned counsel for the appellants in Crl. Appeal No. 50/2016 and Crl.

Appeal No. 78/2016 and Mr. P. Kataki, learned counsel for the appellant in Crl. Appeal No. 50/2017. Also heard Ms. S. Jahan, learned Addl. Public Prosecutor for the State respondent in all these appeals.

Crl. Appeal No. 50/2016.

2. In course of hearing, learned counsel for the appellants have referred to the form of examination of the accused persons under Section 313 Cr.P.C. and it is submitted that the age of appellant No. 2 namely, Sri Sanju Paul in Crl. Appeal No. 50/2016 was recorded as 26 years on 26.11.2014, the date of examination and accordingly on 24.04.2001, the date of occurrence, the appellant Sri Sanju Paul would be 13 years of age.

Crl. Appeal No. 78/2016

3. The age of appellant Sri Hare Krishna Paul in Crl. Appeal No. 78/2016, was recorded as 27 years on 26.11.14. Therefore, on 24.04.2001, the date of occurrence, his age would be approximately 14 years.

Crl. Appeal No. 94/2016

4. The age of appellant No. 3 Sri Parimal Paul in Crl. Appeal No. 94/2016, was recorded on 26.11.2014 as 28 years. However, he has referred his age to be 13 years as on the date of occurrence. Nonetheless, his age was 28 years as on the date of examination on 26.11.2014 and thus, on the date of occurrence, i.e. 24.04.2001, his age would be of 15 years.

5. Therefore, it appears that on the date of occurrence, the abovenamed appellants were juvenile. In connection with the determination of the juvenility of the accused persons, Mr. Z. Kamar, learned senior counsel has cited the case of *xxxxxx Vs. In Re State of Assam and another, 2016 (5), GLT 252*, and it is submitted that the Division Bench of this Court had referred to and considered

the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the provisions of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and thereafter while referring to the case of *Abuzar Hossain Vs. State of West Bengal, (2012) 10 SCC 489*, it was submitted that the Supreme Court of India had observed that the claim of juvenility may be raised before any Court and it shall be recognized at any stage even after final disposal of the case and the delay in raising the claim shall not be a ground for rejection and such claim shall be determined in terms of the provisions contained in the Act and Rules thereunder.

6. The learned senior counsel for the appellants has submitted that in the event the Court enters into the merit of the case and finds that no case is made out against the juvenile, the Court may proceed for acquittal of the juvenile accused/appellants. However, in the event, the Court is of the opinion that the said juvenile appellants appear to be guilty of commission of the crime, in that event, by considering them to be juvenile, their respective re-trial has to be recommended before the Juvenile Justice Board.

7. The learned Addl. PP by referring to the case of *Gurpreet Singh vs. State of Punjab, (2005) 12 SCC 615* has also endorsed the submissions made by the learned senior counsel for the appellants that in the event the Court finds that this is a case for acquittal of the juvenile who were tried as appellants, in that event, no such enquiry is called for but if the Court finds that the said appellants have participated in the commission of offence, then the Court shall set aside the conviction and send the case for fresh trial before the Juvenile Justice Board.

8. In the present case in hand, as many as 9 (nine) accused persons were tried together and alongwith the present appeal, 3 separate appeals filed

by the other co-accused are being heard together. Therefore, if the submissions made by the learned senior counsel for the appellants and the learned Addl. PP are accepted, this Court will have to deal it with the voluminous evidence and to examine the merit of the arguments advanced by both sides and then to take a decision on the plea of juvenility. Therefore, the Court is of the considered opinion that as the plea of juvenility has been raised, it would be appropriate to first have an enquiry to be made as to whether the accused/ appellants referred to above were juvenile as on 24.04.2001 i.e. on the date of occurrence. It would be appropriate that the Court of the learned Addl. Sessions Judge, No. 2, Kamrup (Metro), Guwahati that had tried the Sessions Case No. 437(K)/2011, to carry out the assessment and/ or to ascertain whether the appellants abovenamed were juvenile as on 24.04.2001.

9. In order to enable the said learned Court to conduct an enquiry, the Registry shall send back the scanned copy/ photocopy of the records, viz, (i) the arrest memo, (ii) the production memo in respect of the above named accused/appellants, and (iii) photocopies of the statements of the abovenamed appellants recorded, in course of their examination under Section 313 Cr.P.C.

10. On receipt of the true copy of the order of this Court alongwith the documents referred above, the learned Addl. Sessions Judge, No. 2, Kamrup (Metro), Guwahati shall make an enquiry and return the findings regarding the juvenility of the said appellants to this Court. In order to make an enquiry, the said learned court shall have the liberty to examine any witness and/ or to call for any document including their respective birth certificate and/ or school certificate (not transfer certificate), etc so as to ascertain their respective age, and in absence of any documentary evidence of their date of birth, to direct conducting of the ossification test of the accused/appellants by constituting

Medical Board of the respective district to ascertain the age and also to take such steps as permissible/ prescribed under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. The learned Addl. Sessions Judge, No. 2, Kamrup (Metro), Guwahati shall make an endeavour to complete the exercise and to determine the age of the accused, namely - Sri Sanju Paul, Sri Hare Krishna Paul and Sri Parimal Paul preferably within a period of 1(one) month from the date of receipt of the order of this Court and thereafter, send the finding/report to this Court.

12. List the matter after 6 (six) weeks awaiting report from the Court of the learned Addl. Sessions Judge, No. 2, Kamrup (Metro), Guwahati.

JUDGE

JUDGE

Comparing Assistant