

GAHC010202452016



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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, MR Z KAMAR,MR. F A HASSAN,MR. E AHMED,MR. S BISWAS,MS.J BORAH

Advocate for the Respondent : MR.R SARMA-2, MR.A D CHOUDHURY(R-2),PP, ASSAM,MR.K K DEKA(R-2),MRK K BARMAN(R-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 : CrI.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:AJAY 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 MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

01.09.2025

(M. Zothankhuma, J)

1. Criminal Appeal No.50/2016, Criminal Appeal No.78/2016, Criminal Appeal No.94/2016 and Criminal Appeal No.50/2017 have challenged the conviction of 8 accused persons, vide judgment dated 19.01.2016 passed by the learned Additional Sessions Judge No.2, Kamrup(M) at Guwahati in Sessions Case No.437(K)/2011, under Section 302/34 IPC.
2. Two persons had been killed on 24.04.2001, due to which 10 accused persons were arrested. Two accused persons died during trial proceedings and the learned Trial Court convicted the remaining 8 accused persons under Section 302/34 IPC, who are the appellants in the above 4 appeal petitions.
3. Three out of the convicted 8 persons filed Criminal Appeal No.50/2016 and they are Nirmal Paul and Sanju Paul. Criminal Appeal No.78/2016 was filed by Harekrishna Paul. Criminal Appeal No.94/2016 was filed by Siba Paul @ Sibul Paul, Pratap Paul and Sri Parimal Paul and Criminal Appeal No.50/2017 was filed by Sri Bipul Paul.
4. On a plea of juvenility having been taken by Harekrishna Paul, Sanju Paul and Parimal Paul, this Court vide order dated 28.09.2023, directed an inquiry was to be made by the learned Additional Sessions Judge No.2, Kamrup(M) at

Guwahati, with regard to age of Harekrishna Paul, Sanju Paul and Parimal Paul.

5. Pursuant to the order dated 28.09.2023 passed by this Court, the learned Additional Sessions Judge No.2, Kamrup(M) at Guwahati has submitted an inquiry report dated 16.11.2023, regarding the age determination test carried out on the above three persons in terms of Section 94 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as the "J.J. Act, 2015"). The Court of the learned Additional Sessions Judge No.2, Kamrup(M), Guwahati ensured that an ossification test and x-ray was done on the three appellants, as there was apparently no date of birth certificate issued by a school or municipal authorities, to determine their age.

6. The age determination test done on the above three persons, by way of an ossification test, brought out the following results :

Harekrishna Paul was found to be approximately 12 years 6 months 9 days on the date of occurrence of the crime i.e. 24.04.2001. On the other hand, Sanju Paul was found to be approximately 17 years 6 months 9 days, while Parimal Paul was found to be approximately 12 years 6 months 9 days on the date of the incident.

7. Though the learned Additional Public Prosecutor stated that the age determination ossification test should not be considered, as a prayer of the same had been made after many years, the Supreme Court in the case of ***Vinod Katara vs. State of Uttar Pradesh*** reported in **(2023) 15 SCC 210**, has held that the plea of juvenility could be raised in any Court, at any stage, even after disposal of a Special Leave Petition under Article 136 of the

Constitution. As the age determination of the three appellants had been made during the pendency of the present appeal and in pursuance to the orders of this Court, it would not be proper for this Court to ignore the results of the ossification test. Though the learned Additional Public Prosecutor has stated that the ossification test which had been done after 35 years of the incident, should not be considered, we are bound by the decision of the Supreme Court in various judgments including ***Vinod Katara (supra)***. As such, we do not intend to turn a Nelson's eye to the test report made in terms of Section 94 of the J.J. Act, 2015, which had in turn been made on the basis of an order passed by this Court.

8. A perusal of the ossification test report shows that the appellant Harekrishna Paul (Criminal Appeal No.78/2016), Sanju Paul (Criminal Appeal No.50/2016) and Parimal Paul (Criminal Appeal No.94/2016) were below 18 years of age, on the date of the offence. Though the results of the ossification test cannot be precise/exact and a margin of error of plus or minus two years is to be taken into consideration, we have to lean towards the lower end of the range, i.e. towards juvenility, as it is settled law that the view in favour of the accused should be taken. As the applicants Harekrishna Paul, Sanju Paul and Parimal Paul have apparently been in judicial custody for more than 10 years, the said juveniles would have to be released from judicial custody, even if they are found to be guilty of the crime in the present appeal. In the case of ***Karan @ Fatiya vs. The State of Madhya Pradesh***, reported in ***2023 Live Law (SC) 159***, the Supreme Court held that juveniles below 16 years of age cannot be punished beyond a term of 3 years in terms of the J.J. Act, 2015. Consequently, the above two appellants/applicants having been found to be juveniles in terms of Section 94 of the J.J. Act, 2015, the 2 appellants/applicants

are accordingly directed to be released from judicial custody, if not earlier released. In the event they are on bail, they are discharged from the rigors of the bail order issued against them.

9. As the counsels for the parties are not ready for final hearing today, with regard to other appellants, list these matters for hearing on 16.09.2025.

JUDGE

JUDGE

Comparing Assistant