

**(2021) 09 GAU CK 0014**

**In the Gauhati High Court**

**Case No :** Interlocutory Application (Criminal) No. 809 of 2019 In Criminal Appeal No. 376 Of 2019

Zakir Hussain

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

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**Date of Decision :** 03-09-2021

**Acts Referred:**

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 232, 233, 311, 313, 391

**Citation :** (2021) 09 GAU CK 0014

**Hon'ble Judges :** Suman Shyam, J; Parthivjyoti Saikia, J

**Bench :** Division Bench

**Advocate :** H R A Choudhury

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## **Judgement**

Heard Mr. A. Ahmed, learned counsel for the applicant/appellant. We have also heard Ms. B. Bhuyan, learned Additional Public Prosecutor appearing for the State.

By the Judgment dated 27.06.2019 and Order dated 01.07.2019 passed by the learned Additional Sessions Judge, Bilasipara in Sessions Case No. 66/2014, the applicant/appellant was convicted under Section 302 of IPC for committing the murder of his wife and sentenced to undergo Rigorous Imprisonment for Life and also to pay fine of Rs.5,000/- with default stipulation. Assailing the Judgment dated 27.06.2019 the applicant, as appellant, has preferred Criminal Appeal No. 376/2019 which is pending disposal before this Court.

By filing this IA, the applicant has made a prayer to release him on bail by suspending the jail sentence with a further prayer to direct the learned trial Court to receive additional evidence as regards his "mental condition" on the date of the occurrence.

It is the admitted position of fact that the plea regarding mental unsoundness was not raised by the applicant/accused before the trial Court but such a plea

has been raised for the first time before the appellate Court. In support of the above plea, the applicant has produced a medical certificate dated 01.08.2010 issued by Dr. B.C. Nath which goes to show that the applicant was suffering from "Psychological Disorder- Excessive C.M." The incident took place on 13.12.2012 and, therefore, if the Medical Certificate is to be believed, then it is apparent that the applicant was suffering from some form of "mental illness" prior to the date of occurrence.

Taking note of the aforesaid Medical Certificate, a Division Bench of this Court had passed order dated 04-10-2019 in IA(Crl.) No. 809/2019 directing the Superintendent of District Jail, Dhubri, to make an assessment of the health status of the applicant, particularly his mental health and submit a report. A direction was also issued to the applicant to subject himself for examination by a Board of Doctors including a Specialist from the Psychiatric Department and, thereafter, a detailed report regarding the claim of mental illness of the applicant be submitted. In terms of the order dated 04.10.2019, a Three-Member Medical Board was constituted and the applicant was examined by the said Board. The Report dated 25.10.2019 submitted by the Medical Board, headed by the Superintendent, DCH, goes to show that the applicant is a known patient of "Schizophrenia" which is a mental disease and he was taking medicine which includes anti-psychiatric drug. His condition is otherwise stated to be stable. Likewise, the Jail Doctor has also examined the applicant and submitted a Report dated 29.10.2019, which goes to show that the applicant was suffering from Schizophrenia which is a mental disease. The aforesaid medical record prima-facie goes to show that the matter requires further enquiry. However, whether the mental disease suffered by the applicant constituted "unsoundness of mind" on the date of occurrence to such an extent that he was incapable of knowing the nature of his act or unable to differentiate the right from the wrong, is a matter which cannot be conclusively ascertained in the absence of proper evidence brought on record.

It is in such context that the applicant has prayed for a direction under Section 391 of CrPC directing the learned trial Court to ascertain the mental condition of the applicant by taking further evidence as may be deemed to be necessary.

We have also noted that by order dated 25.02.2019, the learned trial Court had concluded recording of statement of the accused under Section 313 CrPC and on that date itself posted the case for argument by fixing 25.03.2019 as a next date. The aforesaid order was apparently passed by taking note of the fact that the applicant/accused had declined to adduce evidence. However, going by the mandate of Section 232 read with 233 of the CrPC, we are of the view that the learned trial Court ought to have fixed a date giving an opportunity to the applicant/accused to adduce evidence and it was only upon his failure to do so, the matter could have been fixed for argument. Be that as it may, since it is not the case of the applicant that any prejudice has been caused to him by virtue of the order dated 25.02.2019 passed by the learned trial Court the said aspect of

the matter need not detain us. The applicant's prayer is limited to the extent that he be permitted to adduce evidence so as to establish his mental unsoundness as on the date of occurrence. Taking note of the submission advanced by the learned counsel for the parties and considering the materials available on record, more particularly, the Report of the Medical Board as well as the Jail Doctor, we are of the view that although the plea of unsoundness of mind has been raised by the applicant at a much belated stage, yet, for the ends of justice and in order to eliminate any reasonable doubt on the aforesaid issue, the applicant should be given one opportunity to adduce evidence on such count.

For the foregoing reasons by invoking our jurisdiction under Sections 311 r/w 391 of the CrPC, we direct the learned Additional Sessions Judge, Dhubri, Bilasipara to record evidence/additional evidence to be adduced by the accused/applicant and, thereafter, transmit the record to this Court along with a report. We make it clear that the evidence sought to be adduced by the applicant shall remain confined purely to the question of unsoundness of mind or any mental disorder claimed to be have been suffered by the applicant around the time of the occurrence. The learned Additional Sessions Judge may proceed to record such additional evidence by following the due process of law as laid down in the Code of CrCP. Since the applicant is in jail and his prayer for suspension of jail sentence is not being considered by the Court at this stage, we request the learned Additional Sessions Judge, Bilasipara, Dhubri to complete the process as expeditiously as possible, preferably within a period of 3 (three) months from the date of receipt of the LCR and, thereafter, transmit the record back to this Court.

Registry to take steps for sending the LCR through a Special Messenger, as expeditiously as possible.

Let the appeal be listed after the LCR is returned back.