

In The High Court At Calcutta
Criminal Appellate Jurisdiction

Present:

The Hon'ble Mr. Justice Rabindranath Samanta

CRA 36 of 1987

Netai Das
v.
State of West Bengal

For the Appellant : Ms. Saini Das,
Learned Advocate, Amicus curiae.

For the State. : Mr. Narayan Prasad Agarwala,
Ms. Subhasree Patel.

Heard on : February 10, 2022.

Judgment on : February 10, 2022.

The Court:- This appeal has been preferred against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 3rd Court, Burdwan, in Sessions Trial No. 51 of 1986 arising out of Sessions Case No. 90 of 1986; whereby and whereunder the appellant, Netai Das, was convicted for commission of the offence punishable under Section 25(1B)(a)

read with Section 35 of the Arms Act and sentenced to suffer Rigorous Imprisonment for two years.

To put briefly, the prosecution case may be stated as follows:

On 25th March, 1983 the Officer-in-Charge of Memari Police Station got an information in the evening that a gang of dacoits assembled at an abandoned brick field at Chaitkhanda. After getting such information he diarised the information and collected force for the purpose of raiding the aforesaid place. He along with S.I. S. K. Roy, S.I. Mrinal Kanti Roy, S.I. Gourhari Mahapatra and some other police officers and constables left the police station in a police vehicle for the aforesaid place of occurrence. After proceeding sometime, they divided into two groups and were approaching the place of occurrence. After crawling for sometime they heard that the dacoits were gossiping amongst themselves and when they felt the presence of police officials, they began to hurl bombs at them and open fire from their firearms. The police personnel immediately rose from the ground and flashed their torch at the dacoits and disclosed their identity. But, as the bombs were still being hurled at them, they opened fire and ultimately they captured seven amongst the dacoits. Two of them became injured.

After apprehending the aforesaid seven persons, the Officer-in-Charge of Memari Police Station took them to the police station. Remnants of the bombs, which were hurled by the dacoits, one country made revolver, one pipe gun with some cartridges were seized from the place of occurrence. Along with the aforesaid persons the Officer-in-Charge brought the seized articles to the police station.

Narrating the episode as above, the Officer-in-Charge lodged a suo motu written complaint at the Memari Police Station. On the

basis of the written complaint, i.e. the first information report, Memari P. S. Case No. 18 dated 25th March, 1983 under Sections 399/402/307 of the Indian Penal Code, Sections 25(1)(a)/27 of the Arms Act and Section 9(b)(ii) of the Indian Explosives Act was registered for investigation against the accused persons.

After taking up the investigation the Investigating Officer forwarded the accused persons to Court. During the course of investigation the Investigating Officer examined the available witnesses under Section 161 of the Code of Criminal Procedure and recorded their statements. The Investigating Officer collected the order of sanction to prosecute against the accused persons under the Arms Act from the District Magistrate of Burdwan. He also got the remnants of bombs, firearms examined by the concerned experts.

After completion of investigation, the Investigating Officer submitted the charge sheet against the accused persons under Sections 399/402/307 of the Indian Penal Code, under Sections 25(1B)(a)/35 of the Arms Act and under Section 9(b)(ii) of the I.E. Act.

As the offences were exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate committed the case to the Court of learned Sessions Judge. Ultimately the case was transferred to the learned Additional Sessions Judge, 3rd Court, Burdwan for trial.

Charges under the aforesaid Sections were framed against the accused persons, who pleaded not guilty to the charges and claimed to be tried. It was the defence of the accused persons that they were innocent and even in their statements under Section 313 of the Code of Criminal Procedure, they pleaded the same.

To bring home the charges the prosecution examined as many as fifteen witnesses. Besides, some documents, upon which the prosecution relied, have been marked as exhibited documents. Amongst the prosecution witnesses P.W. 1 was the Officer-in-Charge of Memari Police Station; P.W. 7 S. Bhattacharjee was the Deputy Controller of Explosives and P.W. 12 R. K. Roy Chowdhury was the Assistant Commandant of the State Armed Police, 5th Batalian, Durgapur and he examined the firearms as an expert.

Perusal of the impugned judgement shows that the learned Trial Judge has recorded the findings that the prosecution failed to prove the charges under Sections 399/402/307 of the Indian Penal Code as well as under Section 9(b)(ii) of the Indian Explosives Act. On assessment and appreciation of the evidence on record, the learned Trial Judge found that the accused persons, namely Jyotish Chandra Mitra, Santosh Bauri @ Ananda, Masi Das, Netai Das and Md. Ali were guilty of commission of offences punishable under Sections 25(1B)(a)/35 of the Arms Act and, accordingly, sentence was imposed upon them.

As I find, amongst the convicts, Netai Das has preferred the instant appeal.

Now the question is whether the conviction as recorded by the learned Trial Judge is sustainable on facts and in law.

As it appears from the evidence of P.W. 1, S.I., S. N. Mondal, he led the police force to conduct the raid at the brick field at Chaitkhanda within the jurisdiction of Memari Police Station. In consonance with the allegations made in the first information report, he deposes that before reaching the place of occurrence the team was divided into two groups and approached towards the brick field. After crawling for sometime they found that the gang of dacoits

were gossiping amongst each other. Sensing the presence of the police, those persons alleged to be dacoits hurled bombs and opened fires indiscriminately at the police officials. However, as I find from the evidence of this witness and from the evidence of P.W. 2, A.S.I. Md. Tayid; P.W. 3, Constable Mahindra Chandra Nag; P.W. 4, Constable Arbinda Bhattacharjee; P.W. 6, A.S.I. Nemai Chandra Dutta, P.W. 9, S.I. P. B. Roy and P.W. 11, Constable Md. Atul, all the police officials led by the Officer-in-Charge of Memari Police Station had been to the place of occurrence, i.e. the brick field on 25th March, 1983 and they found that a gang of dacoits were there for the purpose of committing dacoity. After sensing the presence of the police officials, those miscreants hurled the bombs and opened fire indiscriminately towards them. Because of opening fire by them, some of the police officials became injured.

The evidence of the aforesaid witnesses reveal that seven out of the miscreants of the gang were apprehended and they had been taken to the police station. Some remnants of bombs, fire arms and open cartridges were seized from the place of occurrence and those were also taken to the police station.

The learned Trial Judge on assessment of the evidence of P.W. 7, Deputy Controller of Explosives, and the materials on record, has recorded a finding that the charge under Section 9(b)(ii) of the I.E. Act was not proved against the accused persons. Learned Trial Judge on appreciation of evidence of the prosecution witnesses as above, has come to the inference that the prosecution failed to prove that the miscreants of the gang assembled themselves by forming an unlawful assemble for the purpose of committing dacoity.

However, the learned Trial Judge after analyzing the evidence on record, found that those arrested persons possessed firearms

unlawfully. As they possessed firearms without any valid licence, the District Magistrate, Burdwan accorded sanction to prosecute against the accused persons under Section 25 of the Arms Act. After scrutinising the evidence, the learned Trial Judge acquitted the accused persons of all the charges excepting the charge under Section 25(1B) (a) read with Section 35 of the Arms Act.

As indicated above, the learned Trial Judge convicted the accused persons including the appellant herein for commission of the offence punishable under Section 25(1B) (a) read with Section 35 of the Arms Act.

As the ocular evidence suggest and the materials on record reveal, I concur with the findings of the learned Trial Judge that the prosecution failed to bring home the charge punishable under Sections 399/402/307 of the Indian Penal Code.

Now what will be the quantum of sentence to be imposed upon the appellant.

The accused including the appellant, who were convicted, were arrested on 25th March, 1983. They were detained in judicial custody up to 24th May, 1983.

The appellant had been continuing with the criminal proceedings before the Court of learned Sub-Divisional Judicial Magistrate as well as the learned Additional Sessions Judge since 25th March, 1983. After the appellant was convicted vide judgement dated 15th December, 1986, he preferred the instant appeal in the year 1987. Because of the pendency of the criminal proceedings since 1983, it is quite perceivable that throughout the years since 1983 the appellant has gone through mental agonies awaiting the fate of the case.

Considering the long pendency of the criminal proceedings I feel that if the sentence is reduced to the detention already undergone by the appellant, it will serve the interest of justice.

In view of the above, the conviction as recorded by the learned Trial Judge is confirmed and the sentence imposed by him on the appellant is reduced to the detention already undergone by the appellant for the aforesaid period i.e. from 25.3.1983 to 24.05.1983.

Accordingly, with the observations as above, the appeal is dismissed.

The appellant be set at liberty.

Office is directed to send down the lower Court records along with a copy of this order to the learned Court below immediately.

The photostat certified copy of this order, if applied for, be supplied on priority basis.

(Rabindranath Samanta, J.)