

Court No. 40
Item No. 8

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Rabindranath Samanta

C.R.A. 133 of 1989

Abdul Hamid

-Vs-

The State of West Bengal

For the Appellant : **Ms. Payel Ghosh, Advocate
As Amicus Curiae**

For the State : **Mr. Narayan Prasad Agarwal, Advocate,
Ms. Manisha Sharma, Advocate**

Heard on : **February 18, 2022**

Judgement on : **February 18, 2022**

Rabindranath Samanta, J. :-

It appears that despite service of administrative notice to the appellant, neither the appellant nor his learned Advocate has turned up before the Court.

In view of the above Ms. Payal Ghosh, learned Advocate is appointed as Amicus Curiae to represent the appellant.

Mr. Narayan Prasad Agarwal, learned Advocate with Ms. Manisha Sharma, learned Advocate appear for the State. Their appointment is regularized.

Now the appeal is taken up for hearing.

I have heard Ms. Payel Ghosh, learned Advocate for the appellant as Amicus Curiae and Mr. Narayan Prasad Agarwal, learned Advocate assisted by Ms. Manisha Sharma, learned Advocate for the State.

The appointment of Mr. Agarwal and Ms. Sharma be regularized.

This appeal has been preferred against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri in Sessions Trial No. 34 of 1988 arising out of Sessions Case No. 2 of 1987 whereby the appellant, Abdul Hamid was convicted for commission of offence punishable under Section 30 of the Arms Act and sentenced to suffer rigorous imprisonment for three weeks and to pay a fine of Rs. 250/-, in default, to suffer further simple imprisonment for fifteen days only.

The prosecution case, in short campus, may be delineated as under :-

On October 17, 1980 at about 20.05 hrs. an information was received that a gang of dacoits armed with gun and other deadly weapons had assembled at the house of one Kandra Mal Paharia at Chaddar Line, Bagatpur Tea Estate, with a view to commit dacoity in the house of Head Clerk, Tea Research Association, Nagrakata.

After receiving the information, Sub-Inspector, Prasanta Chanda, Officer-in-Charge of Nagrakata Police Station, diariesed the information in the General Diary and left the Police Station with force for the house of Kandra Mal Paharia. He took four witnesses from the public with him and reached the house of Kandra Mal Paharia. On their arrival at the spot 6/7 persons sensing the presence of police ran away from the spot under the cover of darkness. However, police party secured the arrest of two accused persons, namely, Lundra Uraon and Md. Jhilu Mia, both of them were the residents of Khayerbari, Police Station – Nagrakata. On interrogation, accused Lundra Uraon stated that they along with

Kundramal Paharia, Chamra Uraon, Osman Ali, Abdul Hamid, Bandhu Uraon, Kandra Uraon and Koresh Ali all of Khayerbari, assembled at the place for the purpose of committing dacoity.

On identification of two apprehended persons, two Bhojalis, three Bamboo Lathis, one Spear, one axe, two arrows, one bow and one S.B.B.L. Gun were seized.

The officer-in-charge took the arrested persons along with seized articles to the Police Station and lodged a complaint narrating the incident as above at the Police Station. On the basis of the written complaint one Nagrakata Police Station Case No. 3 of 1980 was registered for investigation. After taking up the investigation, the Investigating Officer forwarded the arrested persons to the Court. During the course of investigation, the Investigating Officer arrested the appellant Abdul Hamid and forwarded him to Court. The Investigating Officer examined the available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure (in short Cr.P.C).

After completion of the investigation, the Investigating Officer submitted charge sheet against the accused persons, namely, Lundra Uraon and Md. Jhilu Mia, under Sections 399/402 of the Indian Penal Code (in short IPC) read with Section 25(1)(a)/27/30 of the Arms Act and against the appellant Abdul Hamid, under Section 30 of the Arms Act.

After the case was committed to the Court of the learned Sessions Judge, the learned Sessions Judge transferred the case to the Court of the learned Additional Sessions Judge, 3rd Court, Jalpaiguri for disposal.

Charge under Sections 399/402 was framed against the accused persons Lundra Uraon and Md. Jhilu Mia and charge under Section 30 of the Arms Act was framed against the appellant Abdul Hamid.

To bring whom to the charge, the prosecution examined as many as nine witnesses. The prosecution relied on some documents which have been marked as Exhibited documents. Some articles seized by the police have been marked as 'material Exhibits' before the Trial Court.

On analyzing and appreciating the ocular as well as documentary evidence as produced by the prosecution, the learned Trial Judge acquitted the accused persons, namely, Lundra Uraon and Md. Jhilu Mia of the charge under Sections 399/402, IPC, but the learned Trial Judge convicted the appellant Abdul Hamid for commission of offence punishable under Section 30 of the Arms Act and inflicted the sentence as indicated above.

Now let us see whether the conviction and sentence as passed by the learned Trial Judge, is sustainable on facts and in law.

As pointed out by the learned Trial Judge, I also find that PW-9, Sub-Inspector, Prasanta Chanda is the star witness of the occurrence. PW-9 in his evidence has stated that to work out the source information, a team of police party led by him, had been to the place of occurrence, where they apprehended the accused persons, Md. Jhilu Mia and Lundra Uraon and seized two Bhojalis, three Bamboo Lathis, one Spear, one axe, two arrows, one bow and one S.B.B.L. Gun. After interrogating them he came to know that the appellant Abdul Hamid was also with them for the purpose of committing dacoity. Thereafter, Abdul Hamid was arrested.

As analyzed by the learned Trial Judge, I on appreciation of the evidence of PW-9 and other evidence on record find that the prosecution has proved the allegations as made in the F.I.R. It appears from the evidence on record that a Gun was seized from the possession of the appellant, but he failed to produce any valid licence to possess the Gun.

Therefore, in the absence of any evidence to the contrary this Court concurs with the findings of the learned Trial Judge that the appellant Abdul Hamid possessed the Gun without any valid licence, and accordingly, he was convicted for commission of offence under Section 30 of the Arms Act.

No cross appeal has been filed by the respondent State of West Bengal as against the acquittal of the other two accused persons. The learned Trial Judge in the impugned judgment has recorded the findings that no incriminating evidence has been produced by the prosecution to rope the other two accused persons, namely, Md. Jhilu Mia and Lundra Uraon in commission of the offence punishable under Sections 399/402 of IPC.

Now the question is what will be the quantum of sentence to be imposed upon the appellant. I find that after the appellant was arrested on October 19, 1980 and he was produced before the learned concerned Court on the following day. He was detained in the judicial custody for more than thirty days.

The criminal proceeding was initiated on October 18, 1980 and the trial of the offence came to an end on January 28, 1989 when the impugned judgment was delivered. Thereafter, the appellant preferred the instant appeal in the same year in 1989. It is quite perceivable that since continuance of the proceedings since October 18, 1980 and continuance of the appeal since 1989, the appellant has

gone through mental pains and agonies. By this the appellant has been penalized to a great extent.

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From the statement of the appellant before the learned Trial Judge under Section 313 of the Cr.P.C. I find that as on 4.1.1989, the appellant was aged about 50 years. Now, he has crossed the age of 80 years. From the documents on reocrd, it is not found whether the appellant is alive or not.

However, considering the long pendency of the criminal proceedings and the instant criminal appeal and the age of the appellant, I feel that if the appellant is sentenced to the period already undergone by him, it will sub-serve the interest of justice. In fact, the appellant by undergoing the detention has already served out the sentence.

In view of the above, I find no infirmity or illegality in the judgment and conviction passed by the learned Trial Judge.

Therefore, the appeal is dismissed.

The judgment and the order of conviction and sentence dated 28.1.1989 passed by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri in Sessions Trial No. 34 of 1988 arising out of Sessions Case No. 2 of 1987 is hereby affirmed.

The appellant be discharged from the bail bonds and he be set at liberty.

Let Lower Court Records along with a copy of this judgment be sent down to the learned Court below for information immediately.

Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(*Rabindranath Samanta, J.*)

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