

Form No. J(1).
Item No.10

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

PRESENT:
THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A.(SB). 79 of 2022

**SK. JAHIR
-VERSUS-
THE STATE OF WEST BENGAL**

Appearance:-

Mr. Saryati Datta
Mr. Sanjib Kumar Dan
Mr. Chitrak Biswas

....For the Appellant

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

..... For the State

HEARD ON: -- 06.07.2022, 14.07.2022, 18.07.2022,
12.08.2022, 26.09.2022, 18.11.2022, 06.12.2022.

JUDGMENT DELIVERED ON:- 21.12.2022.

Tirthankar Ghosh, J.:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 31.03.2022 passed by the Learned Additional Sessions Judge, Fast Track Court, Suri, Birbhum in connection with Sessions Trial No.01/April/2017 arising out of Sessions Case No.44 of 2016 wherein the Learned Trial

Court was pleased to convict the appellant under Section 25(1B)(a) of the Arms Act and sentenced him to suffer simple imprisonment for a term of one year.

The genesis of the case relate to Sadaipur Police Station Case No.148/13 dated 15.11.2013 under Sections 286/ 326/ 308/ 201 of the Indian Penal Code, Sections 3/ 4 of the E.S. Act and Section 25(1B)(a) of the Arms Act. The case was initiated on the basis of a complaint lodged by Sub-Inspector, Sanjay Srivastava of Sadaipur Police Station.

The summary of the incident/allegations is that Sk. Azad and Ajmira Khatun both children of Sk. Zahir suffered grievous and life threatening injuries from some unknown explosives kept in a negligent manner by Sk. Zahir, in spite of the knowledge that such an act is liable to cause grievous injury or death to someone. The accused also washed the place of explosion and the courtyard with water and swiped away the remnance of explosion for the purpose of disappearance of the evidence. It was also found that the accused was storing illegal firearms in his house and at the relevant point of time when the incident took place and the police went there, he could not be traced out.

The Investigating Agency on conclusion of investigation submitted charge-sheet before the Jurisdictional Court and accordingly, the Learned Trial Court was pleased to frame charges under Sections 4/ 5 of the E. S. Act, under Section 25(1B)(a) of the Arms Act and Section 201 of the Indian Penal Code.

The prosecution in order to prove its case relied upon 17 witnesses which included P.W.1, Sanjay Srivastava, Officer-in-Charge of Sadaipur Police Station; P.W. 2,

Abu Bakkar, a seizure list witness; P.W. 3, Sk. Samik, a seizure list witness; P.W. 4, Ummennesha daughter of the accused/appellant and also a seizure list witness; P.W. 5, Abhijit Dey is a constable of Sadipur Police Station who had been to the place of occurrence and signed in the seizure list; P.W. 6, Zahangir Alam, who at the relevant point of time was Constable of Sadaipur Police Station, and was also a seizure list witness; P.W. 7, Sk. Azad son of the appellant who suffered because of explosion and was admitted at the hospital; P.W. 8, Goutam Mukherjee, Constable attached to Sadaipur Police Station at the relevant point of time who received the report from CFSL, Kolkata and submitted the same before the Officer of Sadaipur Police Station; P.W. 9, Ajmira Khatun who received injury because of bursting of explosives; P.W. 10, Barun Kar, Constable of Sadaipur Police Station who submitted the CFSL Report at the Sadaipur Police Station after collecting it from CFSL, Kolkata; P.W. 11, Thakurdas Pramanik who seized the firearms; P.W. 12, Pankaj Chakraborty who was the Constable of Police at the relevant point of time attached to Sadaipur Police Station, and also signed the seizure list which was prepared in course of investigation; P.W. 13, Siuli Acharya Das, a lady Constable attached to Sadaipur Police Station who seized the articles and prepared the seizure list; P.W. 14, Pareshnath Dhak, a constable attached to Sadaipur Police Station at the relevant point of time and was the signatory to the seizure list in respect of seizure; P.W. 15, Tapas Biswas, Sub-Inspector who was endorsed the case; P.W. 16 is another Investigating Officer of the case who recorded the statement of some of the witnesses, sent requisition for return of the Arms and sent requisition to

CFSL and also prayed for sanction before the Learned District Magistrate, Birbhum and P.W. 17 is also an Investigating Officer of the case.

Mr. Saryati Datta, learned advocate appearing for the appellant submits that the appellant has been falsely implicated in the instant case out of village rivalry. No case was earlier pending before the appellant and according to the learned advocate the seizure which has been shown from the courtyard of the house of the appellant do not have any nexus in connection with the instant case. Learned advocate draws the attention of this Court to the statement of different witnesses which reflect that none of the witnesses were aware regarding the factum of seizure and according to him even if the facts are taken to be true, the facts which has surfaced reflect the child/children of the appellant was injured. Learned advocate submits that the Learned Trial Court on the basis of vague surmises and conjectures convicted the appellant without any foundation in law.

Mr. Roy Chowdhury, learned advocate appearing for the State opposes the contentions and submits that in this case the search and seizure were affected and recovery made from the courtyard of the present appellant/petitioner. According to the learned advocate appearing for the State there are overwhelming materials which supports regarding the search and seizure and the present appellant was also a party to the seizure list which was prepared. Additionally, it has been submitted that the CFSL report substantiated the charges and there were complete adherence to the provisions of law as sanction was also obtained in connection with the instant case.

I have considered the submissions advanced by the learned advocate appearing for the appellant as also that of the learned advocate appearing for the State. On an assessment of the evidence of the witnesses, I find that there were recovery of firearms, the said firearm on test responded to have been in working condition, the admissibility of the documentary evidence in this case was never challenged by the accused persons and Learned Trial Court on an assessment of the overall circumstances present in this case, in the background of the incident which occurred was pleased to convict the present appellant/petitioner.

I have considered the seventeen witnesses so relied upon by the prosecution as well as the exhibits and material exhibits which were placed as documentary evidence and seized materials in the present case and on an assessment of the same, I am of the view that there is no scope for interference with the order of conviction so passed by the Learned Trial Court.

However, I find from the facts of the present case that the injured victims were the child/children of the present appellant, the incident occurred more than nine years ago and the State has not been able to show that against the appellant any criminal case was pending. The provision of Section 25(1B) (a) prescribes a minimum sentence for one year which for adequate and special reasons can be reduced to a period of lesser than the minimum sentence.

The shock which the appellant had to undergo because of the children having suffered injury and the fact that more than nine years have passed in the meantime, I am

of the opinion that the sentence which have been imposed should be modified to a term of six months simple imprisonment.

The appellant/petitioner is on bail. His bail bond shall be cancelled. He is directed to surrender before the Learned Trial Court. Learned Trial Court would set off the period of sentence which he had undergone during the stage of investigation, trial and appeal.

Accordingly, C.R.A.(SB). 79 of 2022 is partly allowed.

Pending applications, if any, are consequently disposed of.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(TIRTHANKAR GHOSH, J.)