

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 432 of 2018

Jinnaha @ Jinnat Ansari & Ors.

-vs.-

The State of West Bengal & Anr.

For the Appellants	:	Mr. Manjit Singh, Ms. Shabana Hasin, Mr. Mobaidur Hossain, Mr. Gagganjit Singh, Mr. Biswajit Mal.
For the State	:	Mr. Iqbal Kabir
Heard on	:	12.07.2022, 28.07.2022, 18.08.2022, 22.08.2022 & 29.08.2022.
Judgment on	:	26.09.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 26.07.2018 passed by the Learned Additional Sessions Judge, First Fast Track Court, Berhampore, Murshidabad in Sessions Trial No.5(7)2013, corresponding to Sessions Serial Case No. 240 of 2013 thereby convicting the appellants under Sections 324/34 of the Indian Penal Code and sentencing them to suffer simple imprisonment for one year and pay

a fine of Rs.5,000/- each, in default to undergo further simple imprisonment for two months each.

The genesis of the case relates to Hariharpara police station case no. 79/09 dated 22.04.2009 under Sections 326/307/34 of the Indian Penal Code and 3/4 of the ES Act. One Soleman Mandal son of Nasiruddin Mandal lodged a complaint with the Hariharpara police station to the effect that on 21.04.2009 at about 8.30 p.m. his son Tahidul Islam Mondal was returning to his own house from the house of his friend namely, Barkat Ali Sk, at that time the accused persons namely, (1) Md. Jinnaha Ansari, (2) Rajesh Ansari and (3) Sagar Sk hurdled bombs towards him, as a result of which he sustained grievous injuries. Hearing his hue and cry as also the sound of explosion of bombs many local people rushed to the place of occurrence when the accused persons fled away. Tahidul was able to identify the accused persons and he having sustained injuries was admitted to Berhampore General Hospital. The complainant requested the Officer-in-charge, Hariharpara Police Station to take steps against the accused persons.

The Investigating Officer on conclusion of investigation submitted charge-sheet under Sections 326/307/34 of the Indian Penal Code and Sections 9(B)(1)(b) of the Indian Explosive Act against the three accused persons named in the FIR. On submission of charge-sheet the learned CJM, Murshidabad was pleased to take cognizance of the offence and committed the case to the learned Sessions Judge, Murshidabad, after compliance with the

provisions of Section 207 of the Code of Criminal Procedure. The learned Sessions Judge thereafter transferred the case to the Learned Additional Sessions Judge, First Fast Track Court, Berhampore, Murshidabad for trial and disposal. The learned trial Court framed charges under Section 326/307/34 of the Indian Penal Code against (1) Jinnat Ansari, (2) Rajesh Ansari and (3) Sagar Sk. and a separate charge under Section 9(B)(1)(b) of the Indian Explosive Act. The contents of the charge were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case examined 7 witnesses namely, PW1, Soleman Mondal, complainant/father of injured; PW2, Azad Mondal, a quack doctor who took Tahidul Islam to hospital; PW3, Bandana Bibi, wife of complainant and mother of injured; PW4, Tahidul Islam, Injured; PW5, Dr. Daud Hossain, scribe of the FIR; PW6, S.I. Gopinath Chatterjee, Investigating Officer of the case and PW7, Dr. Nefaur Rahaman, RMO of Murshidabad who treated the injured.

PW1, Soleman Mondal, is the complainant who deposed before the Court that the incident occurred four years seven months ago at about 8.30 P.M. when his son Tahidul Islam went to the house of Bachhu Sk. Prior to the incident the accused Jinnat Ansari and Rajesh Ansari threatened his son with dire consequences. He deposed that at the relevant point of time he and his wife Bandana Bibi were standing beside the road in front of their house waiting

for his son. At that time he found his son was coming through the road and when he reached near the house of Atai Ansari, Jinnat Ansari (appellant no.1) hurled bomb towards his son and immediately thereafter two other bombs were also hurled by Rajesh Ansari and Jinnat Ansari. At that time Sagar Sk, another accused was standing there with other two accused persons. As a result of such bomb being hurled Tahidul Islam sustained injury on his belly and even after the same he ran towards his parents. It is stated that the complainant and his wife (being the parents) along with many others persons of the neighbourhood rushed towards the injured. The accused person thereafter fled away and went to the house of Atai Ansari. His son, injured Tahidul was able to reach in front of the shop of Ajad from where he was shifted to the hospital at Berhampore. The witness stated that he could identify the accused persons in the electric light which was available at the place where he was standing and the accused persons were also standing. On the next morning the incident was reported to Hariharpara Police Station by way of complaint which was drafted as per his dictation, he signed the same after the contents were read out to him. The complaint/petition along with his signature was admitted in evidence and marked as Ext.1. All the three accused persons were identified by the witness.

PW2, Azad Mondal, deposed that he is a quack doctor by profession having his chamber at Tartipur. He deposed that the incident occurred about four and half years ago at about 8.00/8.30 p.m. when he was in his chamber and suddenly heard a hue and cry in the locality. Along with other villagers he

also went out and found Tahidul Islam in an injured condition. Seeing the injuries of Tahidul he immediately arranged a Maruti Van and took Tahidul firstly at Hariharpara Hospital where doctors refused to provide any treatment and he was referred to Berhampore N.G. Hospital. According to the witness he did not see any incident but while on his journey to hospital Tahidul informed him that he sustained injury because of Jinnat and Rajesh. The witness identified two of the appellants namely, Jinnat and Rajesh in Court. He further deposed that on the next date police came to their village and recovered one live bomb which was defused by them and was subsequently seized. Police obtained his signature in the seizure list. The seizure list was shown to the witness. He identified his signature which was marked as Ext.2.

PW3, Bandana Bibi, is mother of the injured Tahidul Islam (PW4), wife of the complainant (PW1), Soleman Mondal. She deposed that the incident occurred four years and seven months ago at about 8.30 p.m. when at the relevant point of time she along with her husband (PW1) were standing beside the road, outside their house waiting for his son Tahidul to return. At that time she noticed that her son was returning through the road and when he reached near the house of Kurban, suddenly Jinnat hurled bomb towards him which struck him causing injuries, thereafter Jinnat and Rajesh again hurled one bomb each aiming at his son but the same missed their target. She raised hue and cry and rushed to the place of occurrence. She further deposed that her son sustained injury on his belly and in some portion of his chest, blood oozed out from those injured parts of his body. Her son was shifted to Hariharpara

Hospital but as the doctors refused to admit him he was again taken to Berhampore N.G. Hospital. She further identified the accused persons namely, Jinnat, Rajesh and Sagar Sk in Court and stated that she could identify them on the date of the incident in the electric light. She also deposed that prior to the occurrence Jinnat and Rajesh threatened her husband and son with dire consequences.

PW4, Tahidul Islam, stated that PW1, Soleman Mondal is his father. According to him the incident occurred about four years and seven months ago at about 8.30 p.m. when on the relevant date and time he was returning to his home from the house of his friend Barkat and when he reached at the back side of the house of Kurban, suddenly Jinnat hurled a bomb aiming at him. The witness also stated before reaching that place he saw Jinnat, his son Rajesh and one Sagar were standing at the place. After hurling the first bomb Rajesh and Jinnat again threw one bomb targeting him. He stated that the first bomb struck his belly and chest and then he ran away from the place out of fear and fell down in front of the chamber of Azad. He narrated that it was Azad who took him to Hariharpara Hospital by a Maruti Van and from there he was taken to Berhampore Hospital as the doctor of Hariharpara Hospital refused to admit him in this hospital. He was admitted in the hospital for 5/6 days. He identified the accused persons in Court.

PW5, Daud Hossain, deposed before the Court that he is a Homeopathy doctor by profession and he wrote the complaint as per the instruction of

Soleman Mondal. The said complaint was signed by Soleman Mondal after he read out the contents. The witness stated that he also signed the complaint as a scribe. The complaint/petition was marked as Ext.1/1.

PW6 is S.I. Gopi Nath Chatterjee, who deposed before the Court that on 22.04.2009, he was posted at Hariharpara Police Station as Sub-Inspector of Police and on that date ASI Tarapada Bairagya was also posted and as such he received the complaint of Soleman Mondal. The witness identified the signature of ASI Tarapada Bairagya which was marked as Ext.1/2. He also deposed that on receiving the complaint the formal FIR was filled up by ASI Tarapada Bairagya and the Officer-in-charge namely, Nihar Ranjan Roy endorsed the case. The Formal FIR along with the signature of ASI Tarapada Bairagya, the endorsement of the then Officer-in-charge, Hariharpara Police Station, Nihar Ranjan Roy were admitted in evidence and marked as Ext.3 as a whole. The case was entrusted to the witness who deposed that he visited the place of occurrence, prepared rough sketch map with index, examined the available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure, collected the injury report of the injured Tahidul Islam. The rough sketch map with index was admitted in evidence which was marked as Ext.4 series. On completion of investigation he submitted charge-sheet against the appellants and one Sagar Sk. The witness also stated he recovered one live socket bomb which was seized from a place behind the house of Atai Ansari. The carbon copy of the seizure list prepared by him in his own hand writing was admitted in evidence and marked as Ext.2/1.

PW7 is Dr. Nefaur Rahaman, who was posted at Murshidabad Medical College and Hospital as R.M.O. Cum-Clinical Tutor. He deposed that on 21.04.2009 he was posted as Medical Officer (Surgeon) at Berhampore New General Hospital and examined one Tahidul Mondal and on examination he found that he was suffering from bomb blast injury with multiple splinter injury all over his body. The relevant report of his evidence is set out as follows:

“On 06.06.2016 I came to this Court for adducing evidence. Today on seeing the injury report I find the history of assault was a bomb blast injury with multiple splinter injury all over the body of Tohidul Mondal. On examination I found splinter injuries all over his body. The injury was recent in nature. By ‘recent’ I meant that the injury occurred within the past 24 hours. I examined him at 10:00 P.M. on 21.04.2009. The nature of injury was simple.

This is the certified copy of the Injury Report duly attested by Deputy Superintendent of Berhampore General Hospital. The Injury Report was prepared by my hand-writing which bears my signature and seal. The Injury Report is a photocopy of the original one.

*This is the Bed Head Ticket of Tohidul Mondal. He was admitted in the hospital from 21.04.2009 till 26.04.2009 as per Bed Head Ticket. (The certified photocopy of the Injury Report is marked as **Exbt.-5**)”*

In his cross-examination he categorically stated that the injury caused was of splinter injury and crackers which were burned during the Kali Puja do not generally cause such injury.

Mr. Manjit Singh, learned Advocate appearing for the appellants submitted that the learned trial Court acquitted the accused persons from the

charges under Section 9(B)(1)(b) of the Indian Explosives Act and also found that the ingredients of Section 307 of the Indian Penal Code were lacking as there was no intention to kill the injured. Additionally he submitted that the learned trial Court did not find the injuries to be grievous in nature as such converted the charges to Section 324/34 of the Indian Penal Code and sentenced the appellants only to simple imprisonment for one year. His argument was two-fold, firstly, regarding the veracity of the eye-witness with respect to their version before the Court of law clubbed with disputes relating to property with the appellants which according to him makes out a case of false implications and secondly, learned advocate pleaded for application of the provisions of Probation of Offenders Act, 1958 and Section 360 of the Code of Criminal Procedure as there were no antecedents reflected, so far as the present appellants are concerned.

Mr. Iqbal Kabir learned Advocate appearing for the State on the other hand submitted that the learned trial Court has shown leniency to the appellants by convicting the appellants under Section 324/34 of the Indian Penal Code. It has been submitted that the statement of the injured, the evidence of the doctor as well as the deposition of the eye-witnesses, proves the case beyond reasonable doubt. He further added that the doctor was emphatic regarding the detection of splinter injuries on the person of the injured and the same was recent injury i.e. within 24 hours (as stated by the doctor). The complainant, as also the injured narrated the same names which according to the State fully corroborates the prosecution case in its true and proper

prospective and do not leave any scope for interference by this Court, so far as the order of conviction and sentence passed by the learned trial Court. The learned Advocate for the State also resisted the submissions of the appellants with regard to the applicability of the provisions of Probation of Offenders Act and Section 360 of the Cr.P.C. and drew the attention of the Court to the relevant part of the judgment of the trial Court wherein it has been recorded that there are no special reasons for applicability of the said provisions in respect of the present appellants.

I have considered the submissions of the learned Advocate appearing for the appellants as well as that of the State, on an overall analysis I find that the evidence of Soleman Mondal (PW1), Bandana Bibi (PW3) and Tahidul Islam (PW4) are in same tune to the extent that the Appellant no.1 hurled the first bomb which struck the belly and injured the belly and chest of PW4, Tahidul Islam. There was also corroboration in respect of the other two bombs being hurled by the appellants (one each), which did not hit PW4. The medical evidence in this case so far as the injury sustained relates to splinter injury and the identification of the accused persons were in the electric light available at the place of occurrence. The learned trial Court as such did not commit any error, so far as the involvement of the present appellants are concerned. The evidentiary value of an injured witness and its appreciation was observed by the Hon'ble Apex Court in paragraph 9 of State of M.P. -Vs. - Man Singh reported in (2003) 10 SCC 414, which has been followed in a catena of judgments. The relevant part of the said judgment is set out as follows:

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”

Having regard to the observations made above and the present position of law, I am of the opinion that so far as the finding of guilt relating to the conviction of the accused persons under Section 324/34 of the Indian Penal Code is concerned the same do not call for any interference.

As argued by Mr. Singh, learned Advocate appearing for the appellant regarding applicability of the provisions of Probation of Offenders Act and Section 360 of the Code of Criminal Procedure is concerned the same requires to be dealt with in the background of the judgments relied upon by the learned Advocate appearing for the appellants. In *Gopal @ Shri Gopal -Vs. - State of Rajasthan* reported in 2008(2) Rajasthan LR 321, the Hon'ble Court was

pleased to deal with the provisions of Sections 360 of the Cr.P.C. and the Probation of Offenders Act in the background of an incident which occurred on 15.03.1982 and one of the consideration happened to be the time period which has lapsed i.e. about 26 years.

In State –Vs. – Lucky reported in 2017 (5) AD(Delhi) 1 the Hon’ble High Court was pleased to deal with the provision in a case under Section 394/411 of the Indian Penal Code wherein the trial Court being the learned Additional Sessions Judge was pleased to grant probation and there was already available a report of the Probationary Officer which has been set out in paragraph 18 as follows:

“18. Though the respondent has been convicted under Sections 394 and 411 of the I.P.C. but considering the nature of the offence, the character of the offender, the report of the Probationary Officer and the respondent leading a disciplined life on the reformed path, this Court has not been persuaded to differ with the order of sentence by the Trial Court.”

In Purushottam Pandey –Vs. – State of U.P. reported in 2016(10) ADJ 12 the Hon’ble Allahabad High Court was pleased to convert a case under Section 307/34 of the Indian Penal Code to Sections 323/34 of the Indian Penal Code and extended the benefit under the provisions of Section 4 of Probation of Offenders Act, however, the facts of the case reveal that the incident was 33 years prior to the date when the appeal was considered by the Appellate Court.

Having regard to the facts of the present case I have considered the submissions in relation to release of the appellants under the provisions of Probation of Offenders Act as well as Section 360 of the Code of Criminal Procedure. In Nanak Ram –Vs. – State of Rajasthan reported in (2014) 12 SCC 297, the Hon'ble Supreme Court while dealing with the aforesaid provisions in paragraphs 13 and 21 was pleased to opine as follows:

“13. Mr Mahabir Singh, learned Senior Counsel appearing for the appellants contended that the occurrence took place about 30 years ago and the accused persons went to the occurrence place only to remove the fence put up by Shivji Ram and his brothers and when it was resisted a free fight followed which was accidental and there was no intention to kill and only one blow on the head of Shivji Ram was fatal and the other injuries were only minor injuries, and the courts below have failed to appreciate that there are material improvements and infirmities in the prosecution case and the presence of eyewitnesses is highly doubtful and the conviction of the appellants is wholly unwarranted and liable to be set aside. The alternative plea of the learned counsel for the appellants was that the appellants have undergone three years of their sentence and they be granted the benefit of probation under the provision of Section 360 of the Code of Criminal Procedure as well as under Section 4 of the Probation of Offenders Act, 1958, and in support of the submission he relied on the decision of this Court in State of Karnataka v. Muddappa [(1999) 5 SCC 732 : 1999 SCC (Cri) 1046] and Eliamma v. State of Karnataka [(2009) 11 SCC 42 : (2009) 3 SCC (Cri) 1227] .

21. *We are of the considered view that imposition of 7 years' rigorous imprisonment on each of the appellants for the conviction under Section 304 Part I IPC would meet the ends of justice. We sustain the other conviction and sentences imposed on the appellants. **We are also of the view that the appellants are not entitled for release on probation.***

In Karamjit Singh –Vs. – State of Punjab reported in (2009) 7 SCC 178 the application of the provisions of Probation of Offenders Act and Section 360 of the Code of Criminal Procedure were taken into consideration. Paragraphs 25, 26 and 27 are relevant for the said purpose and are set out as follows:

“25. *At this juncture, Mr Nigam learned Senior Counsel has submitted that as it was the first offence of the appellant and he has served part of the sentence and a long period has elapsed since the date of occurrence of the incident, it is desirable that the appellant may be granted benefit of the provisions of the Probation of Offenders Act, 1958 or Sections 360 and 361 of the Criminal Procedure Code, 1973 (CrPC). On the contrary, Mr Kuldeep Singh, learned counsel for the respondent has opposed the reliefs sought by Shri Nigam.*

26. *In Manjappa v. State of Karnataka [(2007) 6 SCC 231 : (2007) 3 SCC (Cri) 76 : JT (2007) 7 SC 226] this Court considered the scope of grant of relief under the provisions of Section 361 CrPC or under the provisions of the Probation of Offenders Act, 1958 reconsidering earlier judgment of this Court in Om Prakash v. State of Haryana [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] , and held that such a relief should be granted where the offence had not been of a very grave nature and in certain cases*

where mensrea remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC. Where the High Court itself reduces the sentence substantially, such beneficial provisions should not be given effect to.

27. *In the instant case, the High Court reduced the sentence from three years to one year and as the instant case is of a very grave nature as there had been a large number of injuries, we are not inclined to grant leave sought by the appellant.”*

In the present case the appellant no.1 hurled a bomb which struck the victim Tahidul in his belly and there were injuries at his belly and chest. The same was followed by again hurling bomb by both the appellants separately which missed the target. The intention of the appellants therefore is imminent. Although the appellants were acquitted from the charges of the Indian Explosives Act yet both the doctor substantiated that the injuries sustained were splinter injuries and which were ‘recent’.

Considering the nature of preparation involved before committing such offence, I am of the opinion that in spite of the plea regarding the age of 21 years and 48 years of the appellants as pleaded by the learned Advocate for the appellants such benefit cannot be extended to them.

Thus, CRA 432 of 2018 is dismissed.

The appellants are on bail their bail bonds stand cancelled, they are directed to surrender before the Jurisdictional Court within a week from date.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records to the respective Courts and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)