

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 85 of 2011

**Raju Panigrahi
Vs.
The State of West Bengal**

Amicus Curiae : Ms. Sibangi Chattopadhyay.

For the State : Mr. Pravas Bhattacharya,
: Mr. Mirza Firoz Ahmed Begg.

Hearing concluded on: 01/03/2023

Judgment on: 24/07/2023

Rai Chattopadhyay, J.

1. The judgment and order of conviction dated February 21, 2007, of the Additional Sessions Judge, Fast Track, 3rd Court at Paschim Medinipur is assailed in this appeal. The appellant has been convicted in Sessions Trial No. 34/June/2004 under Sections 25 and 27 of the Arms Act, 1959, (for contravening provisions of Sections 3 and 5 of the Arms Act, 1959) and also has been sentenced to suffer rigorous imprisonment for three years and five years respectively, for the offence under Sections 25 and 27 of the Arms Act respectively, along with payment of fine to the tune of Rs. 500/- and Rs. 1000/- respectively, in default of which he would suffer simple imprisonment for one month and two months more, respectively.

2. Trial commenced on framing of charges under Sections 307, 326, 324 and 34 of the IPC and also Sections 25 and 27 of the Arms Act, 1959, for contravention of the provision of Sections 3 and 5 of the Arms Act respectively. The trial commenced on July 23, 2004.
3. Since, in this old appeal pending since 2011, no one has represented the appellant, the Court appointed Ms. Sibangi Chattopadhyay, amicus curiae to assist in disposing of this appeal. The sincere and able assistance of the amicus curiae is acknowledged. State is represented. It has been submitted that previously appellant's bail prayer was rejected and the appellant had preferred this appeal from correctional home.
4. Before that, the complainant had filed FIR on December 5, 1999, which was registered as KGP (L) Police Station Case No. 274/1999 dated December 5, 1999, under Sections 323, 326, 307 and 34 IPC and Sections 25 and 27 of the Arms Act, 1959. The crux of allegation, as made out in the FIR may be noted to be that the complainant and the accused person, namely, Nanda Das developed enmity with the issue involving dealing with a goat of the complainant. They had allegations and counter-allegations with respect to the same and decided to go for a compromise meeting at the behest of the Panchayet. Allegedly at 5.30 p.m. on the same dated, i.e, December 5, 1999, when they assembled together for deliberations on compromise, the accused person namely, Raju/the appellant, firstly, threatened the complainant with abusive languages and when protested by the complainant, put out a pistol and fired openly aiming the brother of the complainant namely, Chandu Murmu. The victim suffered bullet injury and was immediately removed to Kharagpur Sadar Hospital. The informant was also allegedly assaulted by the handle of the pistol, at his head and suffered head injury.

5. Thirteen witnesses have been examined. Excepting the victim himself, the prosecution would not have any affective supporting witness to substantiate its case. P.W 1, P.W 2 and P.W 3 are hostile whereas P.W 8 is the witness not examined by police during investigation, and deposing for the first time in Court. P.W 6 and P.W 7 are formal witnesses though during their cross-examination the veracity of their substantive evidence has been nullified. P.W 9, P.W 10, P.W 11 and P.W 14 are police witnesses including the investigating officers and P.W 13 is the ballistic expert. P.W 12 is the doctor who has ascertained that the victim has suffered gunshot injury.
6. So far as that the victim has suffered gunshot injury, this fact is definitely on record and proved through the evidence of the victim himself (P.W 5) and P.W 12, i.e, the doctor. However, the principle and gross lacuna in the prosecution's evidence in this case would be not proving the offending weapon. None of the witnesses have stated to have seen the appellant either to carry or use the country made pistol, which the ballistic expert (P.W 13) has examined. The same has been recovered from an open space and has also not been marked with level, signature and has also not been sealed. There is no substantive or corroborative evidence on record to show that the gunshot injury was suffered by the victim with the bullet released from the country made firearm, sized in this case.
7. All these are vital lacuna in the prosecution's evidence, which restrain this Court to find the allegations in this trial, to have been proved at all, much less to the standard of beyond scope of all reasonable doubt.

8. In such view of the evidence on record, the trial Courts judgment appears to be erroneous and to have suffered from non-consideration of the evidence on record. As such the same is found not to be sustainable in the eyes of law.
9. On the premises as above the judgment and order of sentence of the trial Court in Sessions Trial No. 34/June of 2004 dated February 21, 2007, is set aside. The appellant is found not guilty of the offence punishable under Sections 25 and 27 of the Arms Act, 1959 and acquitted. He is immediately released from the bail bonds.
10. With these directions this appeal being C.R.A 85 of 2011 is allowed and disposed of along with applications, if any.
11. Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to "Category-A" lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
12. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay,J.)