

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1633 of 2014

**Balaram Ghosh @ Buro Ghosh
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Arnab Chatterjee
Ms. Dhanasree Biswas
Ms. Poulami Bose

For the State : Mr. Narayan Prasad Agarwal
Mr. Pratick Bose

Heard on : 10.08.2023, 09.10.2023

Judgment on : 09.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioner against an order dated 29th April, 2014 passed by the Learned Sessions Judge, Nadia in Criminal Appeal No. 5 of 2014 upholding the order of conviction and sentence of the petitioner passed by the Learned Assistant Sessions Judge, 2nd Court, Krishnagar, Nadia in S.T. No. VIII (May) 2013 arising out of Sessions Case No. 108 (3) 2013 for commission of offences punishable under Sections 308/324 of the Indian Penal Code and sentence him to suffer rigorous imprisonment for five years for the offence punishable under

Section 308 of the Indian Penal Code and to suffer rigorous imprisonment for three years for the offence punishable under Section 324 of the Indian Penal Code and to pay fine of Rs. 8000/- in default to suffer simple imprisonment for two months.

2. The prosecution case in short narrated one Paritosh Ghosh to have lodged an information with the Officer-in-Charge Dhubulia Police Station to the effect that over the issue of playing microphone on 15.10.2010, on 16.10.2010 at about 2 p.m. Sagar Ghosh, Dustu Ghosh, Buro Ghosh and Mithun Ghosh being armed with bombs in their hand come in front of temple of Goddess Durga and started throwing bombs. Consequently one Subhas Ghosh had sustained bomb injury on his abdomen and hand. The local people shifted Subhas Ghosh to Dhubulia Hospital wherefrom he was shifted to Shaktinagar Hospital for his treatment.
3. Petitioner along with three others had been placed on trial in connection with Dhubulia Police Station Case No. 406/2010 dated 16.10.2010 under Sections 326/307/34 of the Indian Penal Code and 3/4 of the Explosive Substances Act.
4. Challenging the order of conviction and sentence as passed by the Learned Assistant Sessions Judge, 2nd Court, Krishnagar, Nadia. The petitioner had preferred an appeal before the Learned District Sessions Judge, Nadia and the same was registered as Criminal Appeal No. 5 of 2014.
5. By a judgment and order dated 29.04.2014 in Criminal Appeal No. 5 of 2014 the Learned Sessions Judge, Nadia at Krishnagar was pleased to uphold the

conviction and sentence passed by the Learned Assistant Sessions Judge, 2nd Court, Nadia at Krishnagar.

6. In order to prove its case, the prosecution examined 8 witnesses and exhibited certain document.

- a) One Rabin Ghosh was examined as PW-1. In examination-in-chief he stated that he knew Subhas Ghosh. He had no knowledge about assault caused upon Subhas Ghosh. He knew accused persons namely Bachhan Ghosh, Sagar Ghosh, Balaram Ghosh and Dustu Ghosh prosecution had declared PW-1 as hostile witness. During the course of cross-examination he stated that he did not state to the Investigating Officer that all 4 accused persons hurled bombs at Subhas Ghosh.
- b) One Banshibadan Ghosh was examined as PW-2. In examination-in-chief he stated that Subhas Ghosh was the son of his brother's brother-in-law. A dispute occurred about two and half years ago involving the neighbours namely Dustu Ghosh, Balaram Ghosh, Sagar ghosh, in absence of PW-2. He later on heard that someone hurled bombs at Subhas. He did not know the names of the persons who hurled bombs. He identified his signature on the seizure list. During the course of cross-examination he stated that he had no knowledge about the contents of the seizure list.
- c) Paritosh Ghosh was examined as PW-3. In examination-in-chief he stated that the incident occurred on 16.10.2010 Sagar Ghosh, Dustu Ghosh, Mithu Ghosh, Buro Ghosh hurled bombs in front of Durga

Temple in May Kol village whereby Subhas Ghosh suffered injuries in his abdomen. Local people rushed to the spot. All of them fled at once. Local people carried Subhas Ghosh to Dhubulia Hospital for treatment. Therefrom he was shifted to Shaktinagar Hospital. He informed the police over telephone. Police visited the spot. He lodged complaint before the local police station against the accused persons. He wrote the complaint in his own handwriting. Subhas, the injured was the son his of cousin brother. He was present at the spot during the incident. The incident occurred on the day of Maha-Nabami Puja of Goddess Durga. It was a fact that on the day of Maha-Nabami Puja in usual manner local children as well as local people of the village used to gather in and around the Durga Temple for the purpose of participating in Puja. On that very day also people had gathered for the occasion. He admitted that the residence of Lalu Ghosh was situated just at the southern side of Durga Temple

- d) Prosecution examined Subhas Ghosh as PW-4. He stated in his evidence that on 16.10.2010 the incident had taken place. He was standing in front of the Temple of Goddess Durga. Four persons namely Buro Ghosh, Mithu Ghosh, Dustu Ghosh and Sagar Ghosh hurled bombs, he sustained injuries consequently. He suffered injuries at the left side of the abdomen and towards rib bones. He immediately fell on ground. Local people rushed up to the place. Remaining accused persons at once charged the bombs and escaped. During cross examination he further stated that he was in jail relating to a murder case. He did not know

whether the father of Buro was a witness in the murder case against Lalu Ghosh. It was 2 p.m. when the incident took place. He did not lodge any complaint. He was not examined by the Investigating Officer. He had an operation in Shaktinagar Hospital. On that day he was discharged. He further stated that he was not examined by the Investigating Officer. He denied that the relatives of the accused persons adduced evidence in the case against Lalu.

- e) Dr. Kaushik Sarkar was examined as PW-5. During the course of examination he stated that on 16.10.2010 he examined Subhas Ghosh. The history of assault was on 16.10.2010 at about 1 p.m. bomb blast was caused by Sagar Ghosh, Dustu Ghosh, Buro Ghosh and Mithu Ghosh. On examination deep penetrating injuries over abdomen measuring four fingers to five fingers with deep. Depth could not be measured splint injuries were present on right and left hand and below both the ankles. During cross examination de deposed that he came to know that it was medico-legal case. Upon examination he found that the injury resulted from blast. He did not use tense during treatment. He did not detect foreign body. He did not use tape to measure the size of injuries present on the body of the victim.
- f) Dr. Rahul Gupta was examined as PW-6. During the course of examination he stated that on 16.10.2010 one Subhas Ghosh was admitted under him from Dhubulia B.P.H.C. with history of bomb blast injury at 3:53 p.m. He had found multiple injuries on his person. He had

1 cm. stitched wound. No foreign body was detected. During cross examination he stated that generally foreign bodies were found in case of bomb blast injury. Abdominal injury was not repaired. Hand injury was repaired.

- g) One Paritosh Ghosh was examined as PW-7, he was not present in locale during incident. He had arrived after a considerable period. He was declared hostile by the prosecution and cross examination was declared by the defence.
- h) Sub-Inspector Adar Sk. was examined as PW-8. He had drawn rough sketch map with index. He had examined all available witnesses, recorded their statements under Section 161 Cr.P.C. He had seized some debris, pebbles, etc. from the place of occurrence. Smell of gun powder emanated from these articles. He had sent the seized articles for forensic test to Central Forensic Science Lab. He collected injury report and had also arrested Dustu Ghosh one of accused. He had also submitted Charge-Sheet under Section 307/326/34 of the Indian Penal Code and 3/4 of the Explosives Substance Act. He reached the place of occurrence at 17:10 hours i.e. 5:10 p.m. Thereafter he drew sketch map at 18:10 hours and examined the witnesses available. At that time Subhas Ghosh was not present at place of occurrence. He stated that the injured was the first witness of the seizure list. PW-8 did not answer as to whether the seizure list was prepared, either at the place of occurrence or at the police station. He had not stated about number of pieces of stones and

blast articles in the seizure list. He was shown the copy of the seal kept in the case diary. He had stated that he had not measured a similar seal affixed after packing and labeling of the burnt articles on 27.12.2010. Prior to 27.12.2010. he did not meet Subhas the injured. He heard that he had been admitted in hospital while recorded statements of other witness at on the very day. He was examined him after two months.

7. The Learned Advocate for the petitioner submitted that :-

- a) All the prosecution witnesses were closed relatives, so their evidence are required to be scrutinized carefully with due caution.
- b) It appeared from the evidence all four persons came to the spot and hurled bombs.
- c) The statements of the injured i.e. PW-4 Subhas Ghosh was recorded after two months from the date of alleged incident, there was no explanation given by the Investigating Officer as to by such inordinate delay was caused in recording the evidence of the injured Subhas Ghosh (PW-4).
- d) PW-8 Adar Sk. stated in his evidence that he reached at the place of around at 17:10 hours i.e. 5:10 p.m. he had seen the place of occurrence carefully upto 17:45 p.m. thereafter he draw sketch map. At 18:10 hours he had started to examine the witnesses available there. At that time Subhas Ghosh was not present at the place of occurrence. However in the seizure list Subhas Ghosh was the first witness.

- e) In the sketch map there was no indication of Durga Puja Pandle.
- f) Suggestion was given to the prosecution witness that on the day of Maha-Nabami Puja the local boys were blasting creekers Subhas Ghosh had sustained injuries.
- g) Seizure list was highly doubtful regarding the time and place of seizure and preparation of such seizure list.
- h) Allegedly the incident of assault both place on 16.10.2010 and the injured Subhas Ghosh was examined only on 27.12.2010 i.e. 77 days of the alleged incident.
- i) The Learned Trial Judge was wrong to hold that the petitioner had committed offence under Section 308 of the Indian Penal Code and 324 of the Indian Penal Code.
- j) The charge was framed under Sections 326/307/34 of the Indian Penal Code. However, the prosecution had failed to prove the charges against the petitioner beyond all reasonable doubts. As such conviction under Sections 308/324 of the Indian Penal Code is liable to be set aside.
- K) During the time of cross-examination PW-8 being the Investigating Officer in the Dhubulia Police Station case no. 406/10 have not done proper investigation. He has not stated about the number of pieces of stones in the seizure list. There has been no mention about the burn articles seized from the place of occurrence. The injured named Subhas has been examined after two months.

8. The Learned Judge had failed to appreciate that inordinate delay in examination of the injured i.e. PW-4 Subhas Ghosh without any explanation is fatal to the prosecution.
9. The seizure list of the instant case was highly doubtful.
10. The Learned Trial Judge as well as the Learned Appeal Court had failed to deal with the provision of Sections 360/361 of the Code of Criminal Procedure which was mandatory.
11. Learned Advocate for the petitioner further submitted that –
 - i. While convicting the present appellant the Learned Judge has failed to appreciate that though the FIR was registered on 16th October, 2010, the said First Information Report was placed before the Learned Chief Judicial Magistrate, Nadia at Krishnagar on 30th October, 2010 without complying the provisions envisaged in Section 157 of the Code of Criminal Procedure.
 - ii. Relied on the judgment in Ganesh Bhavan Patel & Anr. Vs. State of Maharashtra reported in (1978) 4 SCC 371, on delay in reporting First Information Report.
 - iii. The Learned Judge failed to appreciate that the alleged incident took place at 14:00 hrs. As per the prosecution case immediately after the incident PW-4 the victim, went to Dhubulia Police Station and from Dhubulia Police Station as per the advice of the police personnel, he went to hospital. Exhibit 3 is the medical document of the victim. From a plain reading of Ext. 3, it revealed that on 16.10.2010 in between 3

p.m. and/or 3:50 p.m., the victim was admitted in the hospital and on the next day he was discharged from the hospital. However, surprisingly when Ext. 1 (seizure list) was prepared by PW-8 (Investigating Officer) on 16.10.2010 at 17:45 hrs.; the signature of the victim was found to present in that seizure list. It became unreliable, if at 1500.hrs. the victim was admitted to the hospital, then he could not have signed on the seizure list at 17.45 hrs. which was prepared at the place of occurrence.

- iv. Thus, the delay in sending the First Information Report before the Magistrate and the self-contradictory medical report and seizure list itself creates shadow of doubt about the actual date and time and place of incident.
- v. Alternatively, the petitioner prayed for modification of sentenced. Alleged incident took place in the afternoon of "Navami" during Durga puja. Physical and mental condition of the petitioner at that point of time may not be of such a nature that he can understand the consequence of this act. Thus, the Court may modify the sentenced imposed upon the petitioner leniently.
- vi. Both Section 308 and 324 of the Indian Penal Code, 1860 have an alternative punishment of fine only. The alleged incident took place thirteen (13) years ago. At that point of time the petitioner was aged about 25 years only but he was not in a position to understand the consequences of his conduct. Thus, the petitioner was praying before

this Hon'ble Court to modify the sentence of imprisonment to a sentence of fine only. The fine could be imposed in such a manner so that adequate compensation could be provided to the victim.

- vii. On this score the petitioner wants to rely upon some judgements of the Hon'ble Apex Court where the Hon'ble Apex Court modified the sentence of imprisonment to fine only.

(2015) 3 SCC 449, in Manohar Singh Vs. State of Rajasthan & Anr.

(2007) 6 SCC 231, in Manjappa Vs. State of Karnataka

12. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.
13. PW-1 was declared hostile by the prosecution.
14. The evidence of PW-2 was based on hearsay.
15. PW-3, during his cross-examination, stated that Subhash had suffered bleeding injury in his abdomen. He fell down on the ground which was staying with blood along with his wearing apparel. He further stated that he was standing beside Subhash however, not too close. When he heard the sound of bomb blast, he looked at Subhash and the accused persons. Thereafter he had seen the appellant Buro Ghosh to hurl a bomb. Subsequently the appellants fled. He did not accompany the injured to the hospital. He further stated that at the relevant moment drums were beaten, band was played and several crackers were also burnt.

16. PW-4 the injured victim narrated the manner in which he sustained the injuries. He did mention Buro Ghosh to hurl bomb. On examination deep penetrative injuries over abdomen measuring four fingers to five fingers with deep. Depth could not be measured splint injuries were present on right and left hand and below the both ankles.
17. PW-5 and 6 were the doctors who had examined the victim.
18. PW-7 was declared hostile.
19. The prosecution failed to distinguish whether the debri, pebbles, stones etc. seized from the place of occurrence were actually the remnants of the bomb blast or crackers. On the occasion of a Durga Puja, the place of occurrence must have been crowded. People must be thronging at the said place of occurrence. A bomb blast to the magnitude as claimed by the prosecution would have injured several persons and not a single person. PW-3 who claimed to have been standing in the vicinity of PW-4 did not sustain an injury out of the said bomb blast.
20. The prosecution failed to cite independent witnesses. There has been a past incident of enmity between the parties which cannot be ignored. The overt act of the petitioner was mentioned only by PW-3 and PW-4.
21. Prosecution failed to prove as to whether it was a bomb or a cracker as well as the mens rea or the criminal intent to cause harm to the victim. Moreover, the bomb blast as alleged had astonishingly only hit the victim Subhash and nobody else is unbelievable as PW-3 in his cross-examination stated at the relevant time apart from him several children were present at the spot

wherein the apparel of Subhash and the blood stained mud were not seized. The seizure of the articles was doubtful as the Investigating Officer did not give a candid reply.

22. In view of the above discussions, the instant criminal revisional application is allowed.

23. The instant criminal appeal being CRR 1633 of 2014 stands disposed of.

24. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

(Ananya Bandyopadhyay, J.)