

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

PRESENT:

***The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Apurba Sinha Ray***

GA 3 of 1992

The State of West Bengal

Vs.

Dulal Banerjee & ors.

For the State : Mr. Debasish Roy, Ld. P.P.
: Mr. Parthapratim Das, Adv.

Heard On : 14.07.2025

Judgment Delivered On : 14.07.2025

Apurba Sinha Ray, J. :-

1. The prosecution case, in a nutshell, is that on 02.11.1983 at about 11-11.30 a.m all the accused persons along with 60 other people under the leadership of Ajit Banerjee, came to the disputed plot situated within Mouza Daula, Malda, to harvest paddy forcibly which was cultivated by the complainant. The accused persons were armed with deadly weapons such as lathis, Hasua etc. The complainant was the bargadar of the land of Ajit Banerjee. When the complainant and his associates protested, they were chased by the accused persons and one accused person, namely, Dulal Banerjee assaulted an individual namely, Doma, with sphere head and as a result of such, Doma died immediately. Thereafter, the miscreants left the place of occurrence. A written complaint was lodged by Ramesh Das (PW7) at Harischandra Police Station.

2. On the basis of said complaint Harischandra Police Station was started a case, being no. Harischandra Police Station case no. 1 dated 2.11.1983 against 61 accused persons. After investigation, charge-sheet was submitted under sections 302/149 of I.P.C against 17 accused persons who are the respondents in this instant appeal. Thereafter, the case was committed to Learned Sessions Judge, Malda for trial and disposal. The prosecution has examined 13 witnesses to prove its case and defence has examined 2 witnesses.

3. The Learned Sessions Judge, Malda found that the prosecution witnesses said that the incident took place under the leadership of Ajit Banerjee, but there was a statement before I.O that the incident took place under the leadership of Subhas Mitra. Neither Ajit Banerjee or any of his family members were accused in the case nor they were examined as witnesses. Both the parties admitted that there was a dispute between them regarding the land. The superior landlords were banerjees and PW7 was the bargadar. Moreover, Banerjees got an order of injunction to restrain PW7 and others from entering into the disputed land. Thus, the argument on behalf of prosecution that accused persons came to the disputed land and forcibly tried to harvest paddy, was discarded because here the complainant was the trespasser and complainant along with others were instructed not to enter in the disputed land. On the other hand, the prosecution has not examined some of charge-sheeted witnesses who were eye witnesses in the case. DW1 as a defence witness deposed that he was the owner of Fauzdar Nursing Home and accused Dulal Banerjee was admitted as indoor patient from 30.10.1983 to 4.11.1983 in the said Nursing Home and his discharge certificate was also exhibited. DW2 as a defence witness deposed that complainant along with others came to the disputed land and tried to harvest paddy and they were obstructed by banerjees and thereafter they went away. After some time, the complainant along with his other associates brought the dead body of Doma and kept the dead body lying down by the side of the kalai field of the Ajit Banerjee when he

was working in his field with his labours. The blood stain in the sphere head had not sent for chemical examination to ascertain whether the blood in the sphere head was human blood or not. The I.O. did not explain why he failed to send the sphere head for chemical examination. Thus, prosecution failed to prove its case beyond reasonable doubt.

4. By the judgment and order dated 23.11.1990, the accused persons, namely, Dulal Banerjee, Ratan Chakraborty, Jahar Sinha, Nagen Das, Kabiraj Das, Amar Rai, Habibur Rahman, Daru Das, Basiruddin, Abdul Khalek, Sushil Roy, Mantu Roy, Khiroll Das, Nripendranath Tarafdar, Birendranath Roy, Subal Ch. Roy, Subhash Mitra were found not guilty under sections 302/149 of I.P.C and they were acquitted from all the charges of the case.

5. Challenging the said judgment of acquittal, the State has preferred this appeal on 15.05.1991. In spite of service, the respondents remained unrepresented, and as such, the matter is taken up for disposal on its merits.

6. The Trial Court, after compliance with necessary formalities, recorded an order of acquittal which is under challenge before this Hon'ble Court. In spite of service, the respondents are unrepresented, and hence, the matter is taken up for disposal on merits.

7. In our view, it will not prejudice the respondents even if the service is dispensed with after taking into consideration all materials available on the record and in view of the order that we propose to pass.

8. We have heard the Learned Public Prosecutor who argues in favour of the appeal and points out some infirmities in the order of the Trial Judge.

9. This court, however, is not convinced with the arguments advanced on behalf of the State since, according to us, the order of acquittal has been

recorded by the Learned Trial Judge upon consideration of all the materials placed before him.

10. In view of the law laid down by the Hon'ble Apex Court from time immemorial and recently in the case of Constable 907 Surendra Singh & Anr. Vs. State of Uttarakhand, reported in 2025 SCC Online, SC 176, We do not think there is any scope for interference by this Hon'ble Court as the impugned judgment and order seems to be justified and reasonable.

9. Accordingly, the appeal fails and is, thus, dismissed. No order as to costs.

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)