

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA/197/2006
JAHURUL JAMADAR
VS
STATE OF WEST BENGAL

For the Appellant : Mr. Biplab Mitra
Ms. Trina Mitra

For the State : Mr. Ranabir Roy Chowdhury
Mr. Avishek Sinha
Mr. Mainak Gupta

Last heard on : 03.04.2025

Judgement on : 29.04.2025

CHAITALI CHATTERJEE DAS, J.:-

1. This instant appeal has been filed under section 374 (2) of the Code of Criminal Procedure against the judgement and order of conviction and sentence dated January 31, 2006 passed by the Learned Additional Session Judge, Fast Track, 3rd court, Diamond Harbour in Sessions Case NO.84(12) 2003, Sessions Trial number 2 (5) 2004/ S.T No.1(6) 2004/8(7) 2005, against the appellant under Section 25(1)(a) of the Arms Act, 1959, sentencing him to suffer rigorous imprisonment for five years and to pay a fine of ₹1000 each in default to suffer simple imprisonment for one month.

Brief facts

2. The fact of the case in a nutshell is that the prosecution case was launched on the strength of a Suo Motu complaint, lodged by the Officer-in-Charge Diamond Harbour Police Station on March 6, 2002 alleging an attack on the police personnel who on secret information constituted a raiding team along with SI Abdul Rahman the officer in charge Usthi P.S with his force, namely 1) C/1359(DAP) Kuddus Mondal C/2152. C/2152 DAP ,Ponchu Ray C/1055 Mohan Mondal C /2203 Sanjeev Banerjee all of Usthi PS, S.I Malay Kumar Mukherjee C/1345 D.A.P Krishna Padam Mandal C /1860 Jayanta Vakil DAD C/1867 Swapan Sardar DAP C/2049 Gopal Das D.A.P all posted at diamond harbour, PS and C/1259, Sunil Biswas C/1394 Amol Biswas C/1876 Tapas Dash C/521 Dhananjay Pal and C/1886 ,Samu Islam all at DAP camp at Dakshin Sherdah went to the house of Anwar Jamadar and arrested 5 miscreants namely , 1) Matal, Jamar @, Zakir HussainJamadar, son of Chhayrab Jamadar , 2) Rafiquil Shaikh @ Kulay son of Rahul Amin,3) Bablu Halder.@ Sk Sattar @ Lalua son of Sk. Abdul Qadir 4) Obaidulla Jamadar @ Balu, son of Lt. Najrul Jamadar ,5) Johurul Jamadar. They also recovered arms and ammunition from the arrested persons and while returning they were attacked by 50/60 persons being armed with deadly weapon at Dakshin Seardah who were the sympathiser of the arrested, dacoits tried to snatch those arrested persons from the hands of police and made a chaos. Despite giving warning, they paid no heed and began to open fire, aiming at police and also some of them where hurling bombs as a result, five policeman, including the complainant, O/C Usthi PS injured .The

complainant ordered Ukil and Swapan both of DAD to fire one round each from their service rifle number 344 and 361 respectively. The complainant and OC. Usthi PS also opened fire of one round each for saving life of the force and also of the Public in general. The complainant further stated that after the mob retracted, on search one person from the mob found lying with severe injury and was shifted to Diamond Harbour Hospital by the villagers and police personnel where he was declared brought dead with the history of Bomb injury and was identified as Habib Jamdar. At the time of the arrest of the dacoits on February 5, 2002 between 1.45 and 14:30 hours the team also recovered one improvised shorter fire arms loaded with one empty cartridge of .303 bore and two live cartridges from the possession of Rafikul Sk @ Kulay ,6 Rounds of .12 Bore from Bablu Halder Lalula @ Sk Sattar ,6 Round.... ,12 live cartridges from Jahurul Jamadar and 5 live bombs from Obaidullah Jamader @ Babu .They also found some remnants of exploded bombs and two. 303 empty cartridges from the place of occurrence. On the basis of this complaint the Diamond Harbour PS case number 40 dated 6.3.2002, under Sections 147/148/149/353/332/186/326/307IPC and 25/27 Arms act and 4/5 E.S Act started and on completion of investigation submitted the charge sheet against 29 accused persons out of which 22 persons faced the trial. The case against seven accused persons was filed as they absconded. The charges were framed by the court of Additional Session Judge, Fast track 3rd court Diamond Harbour, which was read over to the appellant to which the appellant and other accused pleaded not guilty and claimed to be tried. Accordingly, the trial commenced and the Learned court

found the appellant guilty of offences under section 25(1) (a) of Arms Act. Hence this Appeal.

Submission

3. The learned Defence counsel argued that in order to prove the case, the prosecution has cited as many as 27 witnesses out of such witnesses PW1, PW2, PW3, PW4, PW6, PW7, PW8, PW9, PW15, PW 16 and PW 18 did not support the prosecution case of all unlawful assembly, use of criminal force, voluntarily causing hurt to the life of police personnel, obstruction in discharging official duties of police personnel as public servant, hurls off bombs with intention and knowledge to cause the death of Habib Jamadar. The prosecution declared them as hostile and the cross examination of PW5, PW17, PW 19 and PW20 were declined by the defence counsel. The learned Defence Counsel argued that glaring inconsistency in the evidences adduced by the prosecution witnesses are evident.
4. It is further argued the seizure list was not sent in the Malkhana after following the procedure, the Malkhana Registrar was not produced, the seizure list witnesses denied to have any knowledge about the said seizure as stated by the police personnel. The signature of the present appellant was not taken on any label and the prosecution never tried to declare those witnesses as hostile even though they did not support the prosecution case. Learned Trial Court on the basis of a believe that the seizure list witnesses who being PW 1 and PW 2 put their signatures on the seizure list since they proved their signatures on the seizure list did not consider their evidence that they put their signatures on a blank paper as per direction of police,

and passed an order of conviction against the present appellant. It was also observed by the Learned Sessions Court that there is overwhelming evidence on record to bring whom the charge under Section 25 (i) (a) Arms Act against the present appellant along with the other accused persons. The Learned Trial Court failed to consider the evidence of the prosecution witnesses of the raiding party that one of the co-accused Samsul Jamadar also deposed as PW 1 being a co-accused in the case said that they requested police personnel to release Jahurul Jamadar as he was innocent and also that the son of the present appellant lodged a written complaint before the Human Rights Commission against the murder of Habibur Jamadar @ Habib by the O.C Diamond Harbour police station. Furthermore the PW 6 (Riajul Sk) being a local resident in his cross- examination by the prosecution deposed that Jahurul Jamadar had a good character and no cartridge was recovered from him. The seizure list was not proved which was the most vital piece of evidence to establish that the fire arms and the ammunition were recovered from the appellant. The Learned Defence Counsel further argued that the seized arms or ammunitions must have a label containing the signature of the I.O or the accused .Furthermore the Learned Trial Court failed to assess the evidences produced by the prosecution witnesses where not a single supporting evidence can be found against the present appellant .Hence the order and judgement of conviction against the appellant is liable to be set aside. He has also cited the decision reported in AIR 2005 SC 1578 in support of his contention . Accordingly the Learned Defence Counsel submitted that the prosecution has miserably failed to prove the case beyond all reasonable doubt against the appellant

and also failed to establish that any arms or ammunition was recovered from the appellant and 06.03.2002, Exhibit 1 shows the place of seizure as Campat village Dakshin Seardah P.S Diamond Harbour 24 parganas South on 6th March, 2002 at 1.45 hours to 2.30 hours without referring to the actual place as per testimonies of the witnesses. At serial no 4 the arms and ammunitions alleged to have been seized which is 6 nos .12 bore cartridges inside the wearing apparel(Lungi). The said seizure list witnesses Mulla Samsul Jamadar the co-accused deposed as PW 1 who denied to have been interrogated by I.O. and he claimed to have signed on a white paper .He was declared hostile and was cross examined where again he deposed that no articles were seized in his presence .The other seizure list witnesses Mozamal Jamadar being PW 6 also declared hostile as he also denied to have been interrogated by the I.O. S.I. Malay Kumar Mukherjee who prepared the seizure list deposed as P.W. 27 where he said that 6.12 bore ammunitions were recovered from the possession of accused Jahurul Jamadar. He also said that those articles were seized in presence of two public witnesses who are PW 1 and PW 2 who are declared hostile. The said witness also deposed that that seizure list is having LTI of all the accused persons from whom such seizures were made which includes the present appellant. The said seized arms and ammunitions were sent before the arms expert for his opinions and the reports from the arms expert was exhibited as exhibit no 8 and such arms expert Mr. P.K. Banerjee deposed as P.W. 26 during his cross examination in chief. He deposed that he examined one improvise fire arms along with 24 improvised cartridges and he found those in live condition. However, in his cross-examination he failed to recollect as

to whether the signatures/ LTI of the accused persons were on the seized incriminating articles/he examined his signature along with seal appear on the cover of one cartridge only. Hence prayed for setting aside the said Judgement of conviction.

5. The Learned prosecution on the other hand argued that on 6.3.2002 the S.I Basudev Das and his raiding team on the basis of source information went to arrest the notorious dacoits Matal Jamadar and his associates and could arrest 5 dacoits including the appellant and during that time they were attacked by 50/60 sympathiser and associates of those dacoits who tried to kill them and hurled bombs upon them which compelled the S.I to give direction upon the other constable to open fire after which the mob was distracted and then found one injured person who when taken to Diamond harbour hospital was declared as brought dead .The said S.I initially lodged the G.D being G.D.E No. 326 dated 6.3.2002 and after the incident lodged one suo motu complaint against the following accused persons over which Diamond Harbour P.S case no 40 dated 6.3.2002 started and after completion of the investigation the I.O submitted the charge sheet and thereby the trial commenced. The said Basudev Das seized the arms and ammunition from said Matal Jamadar and his associates and those were duly examined by the experts which were duly proved before the trial court. The prosecution witness no 13,22,24 and the I.O himself being the members of the raiding party duly supported the prosecution case and withstand the cross examination strongly . It is further argued that the learned Defence counsel never raised the issue regarding non production of Malkhana Registrar and therefore the prosecution never had the opportunity

to explain before the learned trial court on that issue and hence cannot take the said point at this stage. Furthermore the accused person was arrested along with Matal Jamadaar from the same place and due to attack by the mob several police personnel sustained injuries and one Habib Jamader expired due to gunshot injuries. It is further argued that all the accused signed in the seizure list and because of the fact that the seizure list witnesses have turned hostile though admitted their signatures on the said seizure list cannot be the reason to disbelieve the prosecution case . It is further argued that the trial court on perusal of the documentary evidence coupled with the Material exhibits rightly passed the judgement against the appellant and needs no interference.

Analysis

6. In order to set the motion the prosecution case was launched on the basis of a suo motu F.I.R lodged by one Basudev Das the O.C of the Diamond Harbour police Station on March 3, 2002 after a mob of 50/60 persons attacked upon the entire raiding team who went to arrest the notorious dacoits Matal Jamader and his associates from the house of Anwar Hossain Jamadar who according to the source information assembled to watch video. After the police could arrest the 5 dacoits which includes the present appellants and seized certain arms and ammunition from all of them and were returning to the P.S, they were attacked by the sympathizers and associates of those arrested persons who hurled bombs ,tried to kill the police persons by firing upon them and despite repeated warnings given did not disbursed which ultimately caused the police to open fire as the said Basudev Das ordered Joyanta Ukil and Swapan Sardar of their raiding

team to open fire one round each and he himself also O/C Usthi P.S opened fire in order to save themselves as well as the public at large .After the mob was distracted one injured was found who when taken to the hospital was declared brought dead . On the basis of such complaint Diamond Harbour P.S case number 40 dated 06.03.2002 under Sections 147/148/149/353/332/186/326/307 IPC, 25/27 Arms Act and 4/5 ES Act started against the other accused persons including the present appellant. The Learned Trial Court after hearing and assessing the evidence s adduced by the prosecution case held the appellant guilty of offences punishable under section 25 (i) (a) Arms Act .Being aggrieved thereby the instant Appeal has been filed by the Appellant on the ground inter alia the learned court only on the basis of belief passed such order of conviction when the seizure list witnesses said the police obtained such signature in the blank paper, most of the prosecution witnesses turned hostile and the arms alleged to have been seized were without any label containing signature of either I.O or the accused .

7. On the above factual backdrop the moot question now falls for consideration is whether the appellant was guilty of the offence punishable under section 25 (i) (a) of the Arms Act and or whether the Learned Trial court was right in passing the order of conviction.

8. In this case the charge against the present appellant was framed under Sections 147/148/332/353 and 25(i) (a) of Arms Act. The learned trial court passed the order of conviction only under section 25 (i) (a) of the Arms Act since the prosecution failed to prove the other charges against the appellant.

No appeal has been filed by the prosecution against such order of acquittal in terms of the other charges. Out of 27 witnesses adduced on behalf of the prosecution P.W 1 Shamsul Jamadar is a co-accused person who however turned hostile. PW 2, PW 3, P.W 4, PW 6, P.W 7, P.W 8, P.W 9 turned hostile and the defence declined to cross examine P.W 5, 15,16,17,18,19,20 since they were mostly tendered for cross examination . P.W1 deposed before he was declared hostile that on 6.3.2002 the police came in the house of Anwar Hossain and took away Matal, Jahirul and others .He requested to release the appellant as he is innocent but police did not release him. He proved his signature which according to him was taken on a blank paper. In his cross examination by the prosecution he said no articles were seized in his presence. P.W 2 before declared as hostile admitted his signature on a seizure list but denied the alamsats were seized during his presence. P.W 3 said he was sleeping and on hearing halla he woke up and heard Habib Jamadar has expired. He brought the dead body of Habib Jamadar to Diamond harbour police station. P.W 4, 6,7,8,9 denied to have given any statements before the I.O .P.W 10 Amal Biswas on the fateful day was performing the duty of a centry in the police camp when he heard the sound of bomb hurling and shouting .Thereafter the police force along with the O.C of Diamond Harbour P.S returned with 3 miscreants who were arrested during raid. Local people brought the injured and fled away leaving the injured lying at a van rickshaw and police personnel took him to the hospital. He could not identify the accused person. He also said about arrest of 3 miscreants on the said night at about 1.00 hrs whom he could not identify. P.W 11 deposed he was posted at the relevant time as a constable

at South Seardah police camp and was performing as a centry and on the relevant date three miscreants were arrested and brought them to police station. He could not recognise the accused persons in court.

9. P.W 12 was posted on the relevant day at Usthi P.S as constable and he was a member of the raiding party. He said 5 miscreants were arrested from the house of Anwar Jamadar and they also recovered live bombs ,pipe guns and ammunitions from there and while returning they were attacked when bombs hurled and police personnel injured . Police also fired three rounds of ammunitions. He could identify Matal Jamadar but failed to identify the rest of the accused persons. P.W 13 is also a member of the raiding party who sustained injuries due to attack upon them and arrested 5 miscreants and also recovered some bombs from the arrested persons. He failed to identify the accused persons. P.W 14 deposed similar evidences as of P.W 13. P.W 21 is the seizure list witness who identified his signature on the seizure list and also deposed that police seized 6 pieces of stone chips with bloodstain, one net Kathi made with iron and some portion of jute rope with bloodstain in his presence however since the charge is only under section 25(i) (a) of Arms Act this evidence will be of no help. P.W 22 is a member of raiding party who went to arrest Matal Jamadar and his associates and they cordoned the area and he arrested, Matal Jamadar with a pipe gun in his possession. Other officers arrested 4 persons and also seized arm and ammunition from their possession. He opened one round of fire from his service revolver when they were attacked by a mob of 50/60 persons .He also proved his signature in the seizure list and identified the pipe gun and

the seized cartridges `being Mat Exhibit VI and VII . He did not say anything about the appellant. P.W 23 is the Medical officer who did post mortem upon the body of the deceased so his evidence is not much relevant so far the appellant is concerned.

10. PW 24, Inspector Basudeb Das lodged the complaint to the police station and drew Formal F.I.R. He deposed that as per indication of such source around one video place at Dakshin Seardah in front of the house of Annuar Hossain Jamadar on that day at about 1.45 hours and he held raid with a team of constables and could arrest four notorious dacoit cum killer namely Matal Jamadar @ Jakir Hossain Jamadar (ii) Rafikul Sk @ Kuley S/o (illegible) Amin Sk of Kamalpur (iii) Bablu (torn) sattar @ Lalua S/o Sk Abdul Kader of Kamalpur and (iv) Obaidulla Jamadar @ Babu S/o, late Nazrul Johurul Jamadar S/o late Saburali Jamadar of Dakhin Sheardah .While returning they were attacked by 50 to 60 associates and sympathiser of the arrested dacoits who tried to snatch the accused from the hands of the police accordingly made chaos and despite warning given loudly they paid no heed . Moreover, they also began to open fire aiming police and also a series of bombs were hurled upon them resulting injuries inflicted upon 5 police personnel including the said complainant and under such circumstances he ordered one Jayanata Ukil and Swapan Sardar both of D.A.D to open fire one round each from their service. Subsequently, the mob retracted after that on search one person from the mob was found lying with severe injury and he was shifted to Diamond Harbour Hospital along with some villagers where he was declared brought dead with a history of bomb

injury and he was identified as Habib Jamadar S/o late Bhoda Jamadar of Dakshin Seardah. It was narrated in the written complaint that while arresting the dacoits on 06.03.2002 between 1.45 and 14.30 hours recovered some arms and ammunitions from various accused persons which includes 6nos of .12 live cartridges from the present appellant on the basis of which the Diamond Harbour P.S Case No. dated 06.03.2002 under Sections 147/148/149/353/332/186/326/307 IPC, 25/27 Arms Act and 4/5 ES Act started against the other accused persons including the present appellant. After investigation the charge sheet was submitted against them and thereafter on commitment of the case before the Learned Additional Sessions Judge Fast Track Court, Diamond Harbour, the trial started.

- 11.** He deposed that after arrival at the spot they found some persons watching video show in the house of Anwar Jamadar and the police could arrest some of them which include Jahurul Jamadar and on searching six .12 bore cartridges were found from the possession of this Appellant. Interestingly he failed to identify the accused Jahurul Jamadar but he could identify other 3 accused persons and the seized empty cartridges in open court which had no special identification mark .During his cross examination he stated that signature of Jahurul Jamadar not was not taken on any label and there is no special identification mark on the body of the seized empty cartridges. He could not recollect as to whether the I.O made any prayer before the learned court below for recording the confessional statement of the accused persons. He also denied that agitation was made at the locality for arresting Jahurul Jamadar In order to have further

corroboration the evidence of I.O be examined. P.W 26 the Arms expert Inspector P.K Banerjee deposed he could not recollect as to whether the signature /L.T.I of the accused persons were on the seized incriminating articles which he examined. His signature appears on the cover of one cartridge.

P.W 27 Malay Kumar Mukherjee the I.O who was entrusted to investigate Diamond Harbour P.S case no 40 dated 6.3.2002 deposed that he prepared sketch map of the P.O with Index ,examined the available witnesses , arrested the accused and forwarded them to the court of Learned SDJM, Diamond Harbour P.S . He also said 6 nos of shell of .12 bore ammunition was recovered from the possession of the accused Jahirul Jamadar. Those articles were seized in presence of two public witnesses viz Mujjammwel Jamaddar Aand Samsul Jamadar. This investigating officer was also a member of the raiding party and according to him the arms were recovered from the places shown by the P.C accused persons. He could only identify Matal Jamadar and Rafiqul S.k @ Kulay, Salauddin in court. During his cross examination he specifically stated that the signature of the accused from whose possession the seized incriminating materials were recovered did not bear their signatures.

- 12.** So from the above nature of evidence the undisputed fact can be found that on 6.3.2002 at the house of Anwar Hossain when some miscreants were watching the video the police personnel of Diamond harbour on the basis of secret source information conducted a raid and arrested 3/5 miscreants one of them was Matal Jamadar a notorious dacoit of that area.

On careful perusal of the entire evidences adduced by the members of the raiding party including the P.W 24 the complainant and the I.O it transpires that not a single witness could identify the present appellant though they could identify the principle accused Matal Jamader and even the seized pipe gun and empty cartridges which did not bear any specific identification .Only from the deposition of P.W 1, the co-accused who declared hostile, the arrest of Jahirul Jamadar can be seen but he said Jahirul Jamadar was innocent and they requested the police team not to arrest him. In this case the defence has tried to establish that the deceased who was found injured on account of the commotion took place died due to gunshot injuries by the police personnel and accordingly a complaint has been lodged before the human rights commission against the police personnel so in order to save their skin they lodged a false complaint against the accused persons including this Appellant. In order to attract the provision under section 25(1) (a) of the Arms Act the prosecution must establish as a pre-condition that the arms or ammunition was recovered from the accused person. The most astonishing part in this case is that P.W 1 being the co accused has been cited as a chargesheet witness when section 315 of code of criminal procedure has made the provision for the accused to adduced evidence on oath in disproof of the charge levelled against him provided he has made a request in writing to adduce evidence. However Defence has not raised this issue and the learned court also did not discuss this aspect. The learned trial court on careful scrutiny of the seizure list and its pattern of preparation and making shape relied upon such document and did not accept the contention of the defence counsel

that the seizure list witnesses denied their presence during the time of seizure. It was the observation of the trial court that the L.T.I put in the seizure list was not questioned and the said two witness being the residents of local area did not dare to divulge the truth and denied their presence when admitted their signatures.

13. From the evidences adduced the witnesses whose cross examination were declined are all found to be the local residents who failed to recollect the date of incident and only tendered for cross examination. If now the evidence of the seizure list witness no 22 can be examined once again it can be found that he arrested Matal and found a pipe gun from him. Other officials arrested other accused and also seized some arms and ammunition. However the seizure list dated 6.3.2002 bears the signature of Basudev Das as dictated and seized by him. So he personally did not seize any article from this Appellant but this witness signed on the seizure list whereby the cartridges were also exhibited being Mat exhibit no VI and VII. He proved his signature as 1/ 2 in the Seizure list. He also admitted that the signature of the accused and the public witness were not found on the cover of the seized Cartridges. P.W 24 the said Bsaudev Das was also one of the seizure list witness who said during his cross examination that there was no specific identification mark in the seized empty cartridges. It is a settled law that if the evidence of seizure tendered by the I.O is convincing enough in that event even if seizure list witness do not support prosecution version the recovery evidence may not be rejected. In a decision reported in **(2006) 6 SCC 39 (M.S Narayana Menon vs State of Kerala)** it was observed that a

presumption is a legal or factual assumption drawn from the existence of certain facts. So it is the duty of the court is to separate the chaff from the grain. In this case other than the two police person the P.W 1 and P.W2 are the independent seizure list witness and both of them turned hostile. This court fails to fathom it that why the police authorities who went to raid of notorious criminals and arrested them and allegedly recovered and seized some articles from them could make one of the F.I.R named /co-accused as the seizure list witness. In the cross examination by the prosecution no suggestion was put to him regarding his claim of a co accused in the same case. This witness stated he signed on a blank paper and no articles were seized in his presence. He further stated that this Appellant is innocent and he is the full brother of Habib. So in view of the above nature of evidence creates cloud of suspicion regarding recovery of any weapon from this appellant who has not even been identified by the police personnel who arrested them. P.W 2 also denied that any alat were seized in his presence. At this stage the issue raised by the Learned Defence counsel becomes pertinent as to the onus lies upon the prosecution to prove the case beyond all reasonable doubts .The defence put the suggestion to the I.O that in order to save themselves the articles lying at P.S Malkhana were produced as seized articles from the appellants which was denied by the said witness. It is also a fact that non-sealing of seized articles creates a serious doubt on the prosecution version and prosecution despite having knowledge of this lacuna did not take a step forward to prove the Malkhana Registrar. The decision relied upon by the Learned Defence Counsel in A.I.R 2005,1568 (State of Rajasthan vs Gurmail Singh) it was claimed that

the seized articles were kept in Malkhana but the Malkhana Registrar was not produced ,no sample of seal sent along with the sample to Excise Laboratory to prove that the seals found were the same as were put on the sample bottles after seizure of the contraband .The Hon'ble Supreme court affirmed the order of acquittal on the ground that the link evidence adduced by the prosecution is not satisfactory in view of the loopholes in the prosecution case .

14. In the case in hand the P.W 26 Inspector P.K Banerjee who examined the improvised fire arms along with 24 cartridges and submitted his report failed to recollect as to whether the signature L.T/I of the accused persons were on the seized articles were there or not which he examined .However he said that his signature was not visible on seized fire Arms but on the cover of one cartridge his signature exists. No other evidence has come to prove that the said cartridge was the same six, 12 bore cartridges allegedly recovered from this appellant .Moreover the I.O himself admitted that the incriminating articles recovered from the possession of accused person did not bear their signatures, and Basudev Das admitted that the signature of Jahurul Jamadar was not on any label. The incriminating evidences were put to the present Appellant in 313 examinations where he denied his attachment with the case and also said the O.C did not investigate the case properly and he is innocent.

Conclusion

15. In the light of aforesaid discussion this court is of the opinion that the prosecution was not able to prove the case beyond all reasonable doubts

and the learned trial court relied upon the seizure list which was not proved and most importantly the credibility of prosecution witnesses was not enough to be relied upon to that extent that an order of conviction can be passed.

16. Hence this court is constrained to extend the benefit of doubt to the appellant. Conviction and sentence of the Appellant are set aside.

17. Hence this Criminal Appeal stands allowed.

18. The Appellant Jahurul Jamadar be released from the bail bond if any in terms of section 437 A of the Code of Criminal Procedure. Trial Court Records along with a copy of this Judgement be sent down at once to the Learned Trial Court for necessary action.

19. Photostat certified copy of this Judgement be given to the parties on priority basis on compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)