

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3178 OF 2007

MD. MOMIN ALI

VS

THE STATE OF WEST BENGAL & Ors.

For the Petitioner : Mr. Debapratim Guha, Adv.
Mr. Sumanta Ganguly, Adv.
Mr. Rajiv Lochan Chakraborty, Adv.
Ms. Anchita Sarkar, Adv.

For the State : Mr. Ranabir Ray Chowdhury, Adv.
Ms. Kanchan Roy, Adv.

Last heard on : 30.07.2025

Judgement on : 09.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This criminal revisional application filed under Section 401 read with Section 482 of the Code of Criminal Procedure against the judgement and order dated 30th April, 2007 passed by the Learned Additional Session Judge, Islampur, Uttar Dinajpur in sessions case No. 47 of 2002 whereby passed an order of acquittal against the Opposite Party No 2 to 14 from the charges under Section 326/304 (part-I)/34 of Indian Penal Code and under Section 374 of the Explosive Substance Act and under Section 10 of Maintenance of Public

Order Act. At the outset it is to be noted that during pendency of this appeal the Opposite Party No. 4,5, 6 expired and the appeal stood abated against them vide order dated 6th of May,2024 passed by a co-ordinate Bench of this Court.

2. The prosecution case in a nutshell is that the one Momin Ali (P.W.1) lodged that FIR on May 30, 1999 at the Islampur P.S., Uttar Dinajpur alleging inter alia that on May 30, 1999 at about 12 noon, the FIR named accused persons together with other 20/30 persons being armed with Lathi, Ballam ,Sword, Hasua and other deadly weapons came to catch fish from the pond belonging to the de-facto complainant. The de-facto complainant Md. Abdul (since deceased), Md. Isahaque and Md. Kuddus raised objection to such act as a result they were assaulted by those accused persons and in order to kill them bombs were hurled at them by accused Dil Md. And Bhusa Md. Md. Abdul sustained bomb blast injuries in his left side of the body and also sustained bleeding injuries in his right hand.

3. It was further alleged that an arrow was thrown by the accused Siddique as a result Md. Kuddus sustained bleeding injuries on his left leg. Md. Momin the de-facto complainant and Isahaque also sustained bomb blast injuries and also because of such assault by the deadly weapons. The injured were taken to Islampur Hospital where injured Abul succumbed to his injuries at North Bengal Medical College and Hospital. On the basis of such written complaint Islampur P.S. case no.147/99 under Section 147/148/149/323/324/325/326 I.P.C and under Section 3 and 4 Explosive Substance Act started against the 13 accused persons as named in the F.I.R. The case being exclusively triable by a Court of Sessions Judge the same was transferred before the Learned

Additional Sessions Judge, Islampur, Uttar Dinajpur and the charge was framed against all the above persons under Section 326/34 , 304 part-1/34 I.P.C and under Section 3 and 4 of Explosive Substance Act read with Section 10 of the Maintenance of Public Order, the content which was read over and explained to all the accused persons to which they pleaded not guilty and claimed to be tried and the trial commenced.

4. It is submitted by the Learned Advocate representing the appellant that the complaint was lodged as a counter blast to the complaint lodged by the present petitioners over the self-same incident in which the de-facto complainant, the deceased Abdul and some other persons were arrayed as accused . It is further submitted that before amendment of Cr.PC. criminal revisional application was maintainable as per the relevant provision against the order of acquittal and accordingly this application was filed which is to be treated as a criminal appeal. Accordingly this Court is empowered to assess the evidence as adduced by the prosecution witnesses in order to dig out the truth.

5. It is submitted that the Learned Court did not consider the evidence adduced by P.W. 2 Hafijuddin where in his cross-examination a suggestion was put to him to which he replied that he had no knowledge whether Abdul Hossain since deceased was a left hander or not , Dr. Tapas.. P.W. 1 who examined Md. Abdul Hossain on that day though found the injuries sustained on his left face which is bomb blast injuries and advised him in to go for surgery did not note the history of injury of the victim. Dr. Sujit Saha who was posted as Medical Officer on 2nd July, 1999 who examined Kuddus Ali and Ishaque on that day recorded the injuries suffered which are superficial ,minor and according to

the Doctor caused by cutting object but did not note the history of injury and did not notice any splinter of bomb embedded on any patient he examined. P.W. 10 Kuddus Ali who could not recollect whether he was examined by I.O. and admitted that he did not tell the Doctor as to the history of assault and thereby arrived at an incorrect finding and passed the order of conviction .

6. The Learned Court did not consider that the de-facto failed to prove his ownership on the pond which is otherwise used by the villager for cleaning jute plants. Attention of this Court is drawn to the evidence of P.W. 4 Masiur Rahaman who deposed that Abdul fell down on the ground and serious injury and shifted to Islampur SD Hospital and from there he was taken to North Bengal Medical College Hospital where he died.

7. The Learned Court after assessing this evidence arrived at a conclusion that there is no cogent evidence in order to prove that these accused persons along with bomb or like that came to the disputed pond for catching fishes. The Court further considered the case made out by the defence that the deceased was left hander and he sustained injuries in his left side as he had a bomb in his hand and after he fell down the bomb blasted and he sustained bomb blast injuries and accordingly discarded the evidence adduced by the prosecution witnesses. Similarly the incident of throwing by Siddique causing injury to Kuddus was also held to be not proved to the judicial conscience of the Court and thereby arrived at the conclusion that though Abdul Hossain died as a result of bomb blast injuries, and P.W. 1 Momin Ali, Kuddus and Ishaque sustained injuries in their persons but prosecution has not been proved beyond all reasonable shadow of doubt that the accused persons caused the

above mischief and accordingly extended the benefit in favour of the accused persons and pass the order of acquittal.

8. The Learned prosecution on the other hand submits that the state has not filed any appeal challenging the said order of acquittal and it is submitted that the Court considering all the facts and circumstances and after assessing the evidence of prosecution witnesses and the document exhibited passed the order of acquittal and no such case could be made out for any interference.
9. Heard the Submission considering the rival contentions and the materials on record, the reason assigned by the Learned Court while passing such order of acquittal and the question now falls for consideration is that whether the Learned Court was right in passing such order of acquittal in favour of the accused persons.
10. In this case on the basis of the de-facto complainant qua the petitioner the case was started against the accused persons and the court framed the charge under Section 326 /34 and 304 part -1 of IPC /34 along with section 3 & 4 of Explosive substance Act read with Section 34 and 10 of Maintenance of Public Order. Fact remains a person died suffering bomb blast injury after an impasse took place on 30.5.1999 between the two rival groups being relatives with each other claiming ownership in respect of a tank and catching of fish therefrom followed by assault ,counter assault and hurling of bombs. The present petitioner qua the de-facto complainant adduced evidence narrating the entire incident and identified all the accused persons named in the F.I.R .He specifically deposed that bomb was hurled by Bhusha and Dil Md. who had bombs in his hand and they hurled bomb at this witnesses and his group and one bomb was hurled aiming Abul which hit him on his face and he fell on

the ground. He further deposed some of the splinters hit Ishaque and Kuddus and they sustained injuries .Siddique attacked them with arrow and Kuddus sustained injuries as hit by arrow on his left thigh . The complainant was attacked by Tafilluddin by hasua on his finger and then all fled away. Abul succumbed to his injuries at 1a.m at North Bengal Hospital.

11. It can be gathered from his evidence that the Tank is about 2 to 3 bighas and a case of theft was filed by him against the accused persons and it is admitted that they got order of acquittal from that case . He further admitted that he deposed in that case but failed to produce any documents of title over the said pond. He denied that as per report of the B.L. & L.R.O the said pond belongs to the villagers and it is used for Jute cleaning purpose by the villagers. It is also seen from his evidence during cross examination that they are also facing trial in G.R case no 491/1999. The occurrence of such impasse was admitted by P.W. 2 Hafizuddin who on that date went to the spot after being informed by Momin that Abul Hussain sustained serious injuries as bombs were hurled by Bhusa and Darshan Ali. P.W. 3 Ahmed Ali supported the case of prosecution and saw the incident at a distance of 50 yards that Bhusa hurled bomb at Abul. He also admitted that the tank was used by the villagers for the purpose of cleaning jute and they only reared fish in the year 1998 and not thereafter. P.W. 4 Masiur Rahaman witnessed the incident that a marpit was going on while he was going to his son's in law's house at a distance of 100 to 125 yards. He also saw Ishaque, hit by an arrow thrown by Siddique and Kuddus was injured by splinters of the bomb. He also saw Abul to fell down and seriously injured and was taken to North Bengal Medical College and Hospital. P.W. 5 Fudu Hossain also supported the prosecution

case and he also saw the accused to assault on Momin ,Kuddus, Ishaque and Abul as Bhusa and Dil Md hurled bombs and one bomb bursts on the face of Abul. This witness said that Bhusa has another name Darshan Ali .In this case the charge was framed against all the accused persons including Bhusa Md. and Darshan Ali. The order of acquittal was passed against Bhusa and Darshan Ali and before this Court also both of them including others are made as respondents so with the above evidence the witness loses his credibility regarding his evidence of witnessing the incident. He specifically mentioned that he knows Darshan Ali and hence his statement that Bhusa and Darshan being different person cannot be taken as mistake of fact.

12. P.W. 6 came to the Place of occurrence after hearing halla (hue and cry) and he claimed to have witnessed the incident and also supported the prosecution case. P.W. 7 was an inquest witness. Therefore the prosecution case is found to have supported by a number of witnesses and they vividly described that who hurled bomb on whom, who threw arrow and who sustained such injuries and also who attacked with hasua to whom. P.W. 10 Kuddus Ali deposed to have sustained injuries in his left leg by an arrow thrown by Siddique.

13. It is now necessary to assess how far ocular version of evidences gets the support with medical evidence. Dr. Tapas Burman deposed as P.W. 8 who was posted at Islampur hospital in the same capacity and examined Md. Abul Hossain with bomb injury on the left side of his face. He proved the medical report which is marked with exhibit 4. The exhibit 4 appears to be a letter hand written, intimating the local P.S. about the patient. The note only mentioned about a bomb blast injury, so this report is not of any help since not noted the nature of injuries sustained by the injured testimony of Dr. Sujit

kumar Saha who examined Kuddus Ali ,Ishaque and Momin Ali the de-facto complainant manifest his opinion as he found a lacerated cut injury at the middle of anterior aspect of right forearm and upper part of left thigh and right arm over the bicep muscles .All the injuries were approximately 1 inch 1/4th inch, superficial and minor and might have been caused by cutting objects.

14. The injury found on Ishaque was lacerated cut injury at the back of left forearm 1inch x 1/4th inch, superficial and minor. The cause of such injury will be possibly with cutting object or instrument. So far Momin Ali is concerned it was lacerated superficial cut injury and at the left index finger which had a recent mild injury and might been caused by blunt objects . This witness did not find any penetrating injury on any of the victim and he did not note the history of injury and not noticed any splinters of bomb embedded on any patient he examined .Therefore the medical evidence contradicts the prosecution case qua the version of the De-facto -complainant and injured along with the supporting witnesses that he was attacked with hasua by Tafiluddin or Ishaque and Kuddus sustained injuries by splinters as the bomb was hurled. No such injury was also found to support that any of them was hit by an arrow. This discrepancy between the medical evidence and the prosecution's narrative raises doubt about the validity of the modes and manner of the occurrence of the incident So the entire narration of the occurrence of an incident where deadly weapons were used the injured sustained severe bleeding injuries as a result the wearing apparels were soaked with blood on account of the same gets negated and definitely the foundation of the prosecution case. But the court cannot be oblivious of the fact that a death took place with bomb blast injuries on the same day and

place account of an incident. The inquest report revealed the left side of face having injuries similar to burn injuries and the left shoulder and left hand was covered with bandage. The learned rial court also found the evidences of the witnesses and the medical report was not supporting and thereby discarded their evidences about the injuries sustained as alleged by the De-facto complainant and other witnesses. The learned court further considered the evidence adduced by Bhusa in his 313 examination where he stated that the disputed pond was for the use of all the villagers. That day his daughter & wife at about 12 o clock went to bathe the cows at the pond then Momin, Kuddus, Farukh and ors. tried to abduct said daughter and wife of the witness/accused and on hearing their shouting all of them rushed towards the pond when the accused were tried to fled away and Abul had a bomb like things in his left hand and during that time Abul fell down as a result the said bomb blasted then all of them fled away as bomb blasts. The Learned Trial Court gave much importance to this version and taking note of the nature of injury sustained in the left side and the evidence of Hafisuddin to whom was a positive suggestion was made that Abul was a left handed person and came to a finding that the possibility of sustaining injury on account of sudden fall with a bomb in the hand of Abul on account of the tumultuous situation took place at the P.O due the arrival of the accused person raising strong protest cannot be ruled out. This view further inspire confidence in the mind of the court in view of the failure on the part of the de-facto complainant and the other eyewitnesses to convince the court about the magnitude the severity of the mode and manner of the injury sustained by them .The I.O did not seize any of blood stained wearing apparels as deposed nor any expert opinion was

obtained to assess the power of destruction, which might have been caused due to the bomb blasted from the parties used in the place of occurrence. His evidence also support that G.R. case No. 491/99 was filed which also relates to the same date and time and he is also the I.O. of that case.

15. Severe inimical relationships and family feud over the usage of a tank which is otherwise used by the villagers are very much apparent and also the existence of pending cases between the parties.

16. Therefore this Court is also concur with the same opinion about the investment of the accused persons and their role attributed and that prosecution failed to bring home the charges against the accused persons beyond the shadow of all reasonable doubts and hence do not find any reason to interfere with the order of acquittal.

17. Hence this Revisional Application is hereby dismissed.

18. No order of costs.

19. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)