

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 21 of 1982
The State of West Bengal
-Vs-
Lilu Kumar & Ors.

For the State : Mr. Debashis Roy, Ld. PP
Ms. Faria Hossain
Ms. Sujata Das

Heard on : 25.06.2025

Delivered on : 25.06.2025

Rajarshi Bharadwaj, J.:

1. No one appears for the respondents.
2. The prosecution case, inter alia, is as follows:
3. Upon a First Information lodged by Srimati Baramoni Kumar (P.W.5) at the P.S., Bagmundi P.S. Case No.2 dated 04.11.1979 under Section 148/149/302 of the Indian Penal Code was started against the opposite parties and investigation and charge-sheet accordingly followed. Upon a committal proceeding, thus the accused persons as above were committed by the learned judicial Magistrate before the learned Court of Sessions to stand trial accordingly.

4. The prosecution case is that on 04.11.1979 early morning, the accused persons, being members of an unlawful assembly, variously armed came to the field at Ekra, where Upendra Kumar of the village with his son Balaram (P.W.5) had been engaged in irrigating waters into his field from the tank known as "Hirbundh" and they raised a dispute in regard to such irrigation with them and under the orders of opposite party no.2 Gopal Kumar, Upendra was assaulted by the other accused persons variously by lathi, pick-axe, blunt side of the axe etc. As a result Upendra died on the spot then and there. Seeing the assault on his father, P.W.5 escaped and ran home, informing his mother P.W.1 and others of the occurrence and the names of the assailants as above. P.W.1 and other people thus came to the field, to see the accused persons hastening away from the direction of the P.O. and Upendra lying dead on his field. The dead body of Upendra was brought to the Police Station by Cart. The First Information Report was lodged at about 9:30 a.m. in the morning.

5. Being thus committed to the Court of Sessions, the opposite party no.2 was tried on charges under Sections 148/149/302 Indian Penal Code and also under Sections 109/302 of the Indian Penal Code. And the other accused persons charged under Sections 148/149/302 Indian Penal Code, for being members of an unlawful assembly with the common intention to commit murder of Upendra and in prosecution of the same having abated/committed the offence of murder of Upendra. The opposite party pleaded innocence to the charges and their further defence was that they had been implicated in the case falsely out of enmity.

6. In support of the prosecution 13 witnesses were examined. Out of them P.W.1 is the widow of the deceased, P.W.5 is a son of the deceased who was working with him at the P.O. and is an eye-witness. P.W.8 is wife of P.W.5 and P.W.11 is another son of the deceased who came to the spot immediately after and saw Upendra lying dead on the field in injured condition. P.W.3 and P.W.4 are amongst other who also came to the field and carried the dead body in a

cart to the P.S. They heard the occurrence from other P.W.s. P.W.9 is doctor S. Chatterjee, holding the post mortem examination on the body of Upendra. According to the witness death was the effect of the injuries suffered which might have been caused by lathi, spade etc. as above and were ante-mortem and homicidal in nature. P.W.12 and 13 are the Police Officers. Other witnesses were formal in nature.

7. By his said judgment and order dated 21.04.1982, however, the learned Sessions Judge have been pleased to find the accused persons not guilty of the charges and to acquit them.

8. The Trial Court after compliance of necessary formalities, recorded an order of acquittal which is in challenge before this Hon'ble Court. In spite of service of administrative notice, the accused/respondents are unrepresented and as such, we propose to deal with the appeal on its merits as no one responded even after issuance of such administrative notice.

9. Dispensing with the service upon the respondents as in our view, it will not be prejudicial in the interest of the respondents for the order we propose to pass.

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

11. We are, however, not convinced with the arguments advanced on behalf of the State by the learned Public Prosecutor in view of the fact that the order of acquittal has been recorded by the learned Trial Judge upon consideration of all the materials placed before him.

12. In view of the proposition 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.

13. Accordingly, the appeal fails and is dismissed, however, with regard to no order as to costs.

14. Copy of this judgment along with the trial court records be sent down to the trial court immediately.

15. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all requisite legal formalities.

[Rajarshi Bharadwaj, J.]

I agree

[Apurba Sinha Ray, J]