

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 10 of 1987
The State of West Bengal
-Vs-
Jibon Nandi & Ors.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Partha Pratim Das

Heard on : 26.06.2025

Delivered on : 26.06.2025

Rajarshi Bharadwaj, J.:

1. The prosecution case, inter alia, is as follows:
2. Upon a charge-sheet by the police in connection with an F.I.R. entered as Behala P.S. Case no.78 dated 12.08.1981 and the commitment proceedings following the same, the accused abovenamed, along with six others, including one Gouranga Nandi were tried before the said learned Sessions Judge, in the said Sessions Trial 3(4) of 1986, on charges under Sections 302/149 of the Indian Penal Code and Sections 148/448/324/149 of the said Code, for having committed the said offences, on the 11.08.1981 at about 10:30 p.m. at Ramkrishna Palli, Behala South, within the jurisdiction of P.S. Behala trespassing into the house of Naresh Chandra Bhattacharyya, being members of an unlawful assembly, variously armed with the common object of trespass,

grievous hurt, murder etc. injuring the several members by Bomb, Iron Rod etc. as a result of which Deb Kumar Bhattacharyya, an inmate of the family, aged about 39 years met with instantaneous death.

3. All the said accused thus tried, pleaded innocence to the charges, their defence inter alia being a denial altogether of any such occurrence or their involvement in the same.

4. The witnesses examined on behalf of the prosecution in support of the specific charges, P.W.s 1, 4, 5, 6, 7, 9, 11 and 17 are the inmates of the house, P.W.22 a visitor to the family, through a married daughter of the family. P.W.11 is the mother of P.W.s 1, 5 and 6. P.W.9 is the wife of P.W.1, P.W.7 is a niece of P.W.1, P.W.4 is a nephew of P.W.1. All of them proved the participation of the accused, as members of the unlawful assembly. P.W.s 8, 12, 13 and 14 are the neighbours, who also proved the occurrence as alleged, by the accused being the members of the unlawful assembly. The evidence, however, disclosed that the Bomb hitting Deb Kumar was one thrown by Gouranga Nandi, a co-accused under Section 302 of the Indian Penal Code read with section 149 of the Indian Penal Code.

5. The other prosecution witnesses, P.W.21 Dr. D. K. Biswas, Assistant to the Chief Medical Officer of Health who held post mortem examination on the body of Deb Kumar on 12.08.1981 proved that he found 5 black burnt injuries on different parts of the body and one lacerated wound on left lower abdomen, lacerated injuries and fracture of the thigh were also detected. According to the doctor the injuries were ante-mortem and sufficient in ordinary course to cause death. P.W.2 Dr. K. Sinha attached to the Vidyasagar Hospital, Behala proved that on 11.08.1981 at about 11:25 p.m. Deb Kumar was brought to the Hospital with various injuries on the body. On examination, he found no sign of life in the body. P.W.23 A. Bhattacharyya, Dy. Controller of Explosives, West Circle Calcutta proved that the remnants of splinters allegedly seized and sent for examination were parts exploded throw down type home made bombs,

containing explosive mixture of chloride of potassium and sulphide of arsenic and such bombs endanger life on explosion.

6. By his judgment and order, dated 16.02.1987, as above, the learned Judge was thus pleased to find inter alia:-

A. "It was accused Gouranga Nandi who hurled a bomb on Deb Kumar who instantly succumbed to his injuries and so he is guilty under Section 302 I.P.C."

B. "Accused Jibon, Saral, Niranjana, Ratan, Mintu and Anil Nandi, being members of the unlawful assembly with common object and intention armed with dangerous and deadly weapons are also guilty under Sections 302/149 I.P.C. All the charges in my considered opinion have also been proved against the seven accused."

7. The learned Sessions Judge however by his orders on the same day, 16.02.1987, was pleased to impose a sentence of rigorous imprisonment for seven years and a fine of Rs.1000/- each in default to suffer rigorous imprisonment for one month on the respondents/accused under Sections 302/149 of the Indian Penal Code, no separate sentence being passed in respect of the charges under Sections 148/448/324/149 of the Indian Penal Code. The fines, if realized, were directed to be paid to the informant, as compensation, Gouranga was sentenced to rigorous imprisonment for life under Section 302 only, other four accused acquitted on benefit of doubt.

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 learned Trial Judge.

9. The Trial Court after compliance of necessary formalities, recorded an order of acquittal of Jibon Nandi and three (03) others which is in challenge before this Hon'ble Court. In spite of service, the accused/respondents are unrepresented and as such, we propose to deal with the appeal on its merits.

10. 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.

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.

14. Copy of this judgment along with the trial court records, if any, shall be sent back to the trial court at once for necessary compliance.

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]