

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 12 of 1982
The State of West Bengal
Vs.
Mortaza Ali & Ors.

For the State : Mr. Debasish Roy, Adv.
Mr. Prebash Mishra, Adv.
Heard On : 21.05.2025
Judgment Delivered On : 21.05.2025

Apurba Sinha Ray, J. :-

1. The prosecution case in a nutshell is that on 26.04.1979 at about 12:45 p.m. while Selim Mia was going along the read to pray Namaz at Bara Masjit, Rishra, the accused persons surrounded him and disclosed that his son having assaulted their maternal uncle at the native village, they want to take revenge of the said incident. Thereafter, Sarafuddin hit Selim with a bamboo and Selim hurled brick to the accused persons, which however, did not hit any of them. Thereafter, the accused Mustafa stabbed Selim and accused Mortaza assaulted him with belt. As Selim fell down in front of the doorstep of a nearby hotel. The accused Murtaza caught hold of his collar and Mustafa stabbed him again when Selim's son Mustakin came to rescue Selim but the accused persons also attacked him and the accused Mustafa stabbed him also. Both the injured

persons were taken to Serampore Hospital where Selim succumbed to his injury and Mustakin as ultimately transferred to S.S.K.M. Hospital at Calcutta.

2. After receiving the information the police drew up a First Information Report and took up investigation of this case. After completion of the investigation submitted a chargesheet against the accused persons namely, Mortaza Ali, Mustafa Kamal, Sarafuddin Ansari, Anwarul Haque, Nurul Huda and ultimately the case was committed to the Court of Session. On the basis of aforesaid facts and circumstances the charges under Section 302/34 and 326/34 of Indian Penal Code were framed against the accused persons and they were put on trial. The accused pleaded not guilty and claimed to be tried. During trial the prosecution examined as many as 15 witnesses and the defence examined one witness.

3. In spite of having sufficient evidence in support of this prosecution case, the Learned Sessions Judge, Hooghly acquitted the accused persons by his judgment and order dated 31.03.1981.

4. Being aggrieved by the said judgment the instant appeal has been preferred along with a petition under Section 5 of the Limitation Act on 25.02.1982. The Hon'ble Court was pleased to grant leave to the appellant to prefer an appeal.

5. 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, the accused/respondents are unrepresented and as such, we propose to deal with the appeal on its merits.

6. 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.

7. 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.

8. 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.

9. 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.

10. Accordingly the appeal fails and is dismissed however with regard to no order of costs.

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)