

**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 14 of 1982
The State of West Bengal
Vs.
Chinibas & Ors.**

For the State : Mr. S. Dutta. Adv.
: Ms. Snigdha Saha, Adv.

Heard On : 23.06.2025

Judgment Delivered On : 23.06.2025

Apurba Sinha Ray, J. :-

1. The prosecution case, in a nutshell, the accused persons together with some 30/40 other people all carrying guns and other deadly weapons committed dacoity at the house of Mannalal Hazra and Harish Hazra, situated at Tumba Jhalda, J.L. no. 157, Anchal No. VIII, Purulia, on 05.02.1980 at around 6-6:30 p.m. The accused persons stole utensils, garments, a firearm, and Rs. 2400/- in cash and also assaulted Basudeb Hazra and Maheswar Mahato and caused bombs to explode resulting in injuries to Baruni Mahato. One Mahindi Mahato died when struck by an arrow in the chest shot by the accused persons when he came out to resist the dacoits with a sword.

2. Mannalal Hazra recognised all four of the accused persons to be residents of the locality. At around 11 p.m. the same night, an F.I.R. was lodged at Arsha Police Station being Arsha Police Station Case no. 1 dated 05.02.1980 under sections 396 of I.P.C and section 6(3) of Indian Explosives Act, 1884 and section 25/27 of Indian Arms Act, 1959. After completion of investigation, Police submitted charge-sheet under section 396 of I.P.C on 23.01.1981 before Judicial Magistrate, 1st Class, Purulia and later the case was committed to Learned Additional Sessions Judge, Purulia for trial and disposal. The prosecution has examined 22 witnesses and defence has examined 1 witness.

3. The Learned Court found that there were some previously existing enmity and political rivalry between the parties and also that though Dhananjay Mahato appeared in court to give evidence as Prosecution witness, he was not produced on the witness box by the prosecution but was alleged to have become hostile by the learned assistant public prosecutor. Accordingly, he did not examine the witness. The reasoning for withholding Dhananjay Mahato is not satisfactory because he ought to have been produced by the prosecution on its side for his cross examination by the defence. Even if the prosecution thought it wise not to examine him in chief. Hence, the Court drew an adverse presumption that had Dhananjay Mahato been examined by the prosecution he would not have supported the prosecution's version regarding the recognition of one of the accused persons, namely, Sridam Mahato by himself and having learnt about the recognition of the accused persons by any of the other prosecution witnesses. The testimonies of some witnesses are inconsistent especially as to the issue whether the dacoits were really recognized by the victims as the persons accused herein or not.

4. By judgment and order dated 09.02.1982, the accused persons Chinibas @ China Mahato, Khudiram Mahato, Sridam Mahato, Sk. Atiullah were found

not guilty under section 396 of I.P.C. and they were acquitted from all the charges of the case.

5. The State has preferred this appeal on 04.05.1982, challenging the said judgment of acquittal. In spite of service, the respondents remained unrepresented, and as such, the matter is taken up for disposal on its merits.

6. The Trial Court, after compliance with necessary formalities, recorded an order of acquittal which is in challenge before this Hon'ble Court. In spite of service, the respondents are unrepresented, and hence, the matter is taken up for disposal on merits.

7. In our view, it will not prejudice the respondents even if the service is dispensed with after taking into consideration all materials available on the record and in view of the order that we propose to pass.

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 Trial Judge. He has also submitted that the Learned Additional Sessions Judge, Purulia did not follow the proper method of questioning the accused persons under section 313 of Cr.P.C.

9. This court, however, is not convinced with the arguments advanced on behalf of the State since, according to us, the order of acquittal has been recorded by the Learned Trial Judge upon consideration of all the materials placed before him.

10. In view of the law 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.

11. Accordingly, the appeal fails and is, thus, dismissed. No order as to costs.

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)