

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 20 of 1981
The State of West Bengal
Vs.
Babu @ Saroj Mitra

For the State : Mr. Debasish Roy, Adv.
Ms. Rituparna De Ghosh, Adv.
Ms. Suruchi Saha, Adv.
Heard On : 21.05.2025
Judgment Delivered On : 21.05.2025

Apurba Sinha Ray, J. :-

1. This is an appeal against the order of acquittal recorded in favour of the respondents passed by the Learned Additional Sessions Judge, 10th Court Alipore under Section 302 of the Indian Penal Code in Sessions Trial No. 4(1) of 1981 acquitting thereby the accused- respondent of the charge framed against him under Section 302 of Indian Penal Code.

2. The factual matrix of the prosecution case is that on 22nd October, 1977, on the day of Vijaya Dashami, Nemai who was married and an employee of Koley Iron and Steel Factory, gave cash money to his sister (PW 2) to bring the sweetmeats to celebrate the occasion with his two companions. After taking

sweetmeats, the deceased with his two companions went out of the house. After a short while, one unknown man came to the house and reported that Nemai had died.

3. The prosecution case, in short, is that on 22.10.1977 Nikhil @ Nemai Roy Chowdhury was murdered at Khub Lal Show's bazar within PS Jagatdal District – 24 Parganas by the accused Babu @ Saroj Mitra. The deceased was shot at close range from a pistol at Khub Lal Show's bazar within PS Jagatdal District – 24 Parganas. The inquest over the dead body which was identified by the sister of the deceased was held at the said market and it was noticed that there were bullet injuries on the dead body. The respondent Babu @ Saroj Mitra was charged under Section 302 of the IPC and the charge so framed was read over and explained to him. He had pleaded not guilty and claimed to be tried. Thereafter the prosecution adduced as many as 18 witnesses. The defence of the respondent was one of innocence and of false implication.

4. The Learned Judge after examining the accused/respondent under Section 313 of the Code of Criminal Procedure and after hearing the arguments advanced on behalf of the respective parties, was pleased by his judgment and order dated 23.03.1981 to acquit the accused/respondent of the charges framed against them.

5. Challenging the aforesaid order, the State moved this Court and after obtaining leave, the present appeal has been preferred.

6. After admission of the appeal, inspite of repeated notices being issued, the respondent remains unrepresented, but in view of the order proposed to be passed in this appeal, we are of the opinion that service of such notice can be dispensed with.

7. The Learned Public Prosecutor appearing for the State argues in favour of the appeal and seeks for remand of the matter for retrial.

8. We have gone through the evidence on record and the materials placed before the Learned Trial Judge during the course of the appeal. The grounds recorded by the Learned Trial Judge for recording the order of acquittal can neither be said to be perverse nor without considering the materials placed before him.

9. It is a well settled proposition of law that an appellate court while dealing with an order of acquittal cannot interfere with the same only on the ground that a second view is possible. The reasoning of the Trial Judge while recording the order of acquittal in our opinion is a plausible view and as such, requires no interference.

10. Reliance in this context may be placed on the judgment of the Hon'ble Supreme Court in the case of Constable 907 Surendra Singh & Anr. Vs. State of Uttarakhand, reported in 2025 SCC Online, SC 176.

11. In view of the discussion made hereinbefore, the appeal fails and is dismissed accordingly, however, with no order as to costs.

12. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.....

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)