

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 3 of 1997
The State of West Bengal
-Vs-
Ayet Sk. & Ors.

For the State : Mr. Debashis Roy, Ld. PP
Mr. Bibhaswan Bhattacharya
Ms. Manasi Roy

Heard on : 14.07.2025

Delivered on : 14.07.2025

Rajarshi Bharadwaj, J.:

1. No one appears for the respondents.
2. The prosecution case, inter alia, is as follows:
3. As per written complaint dated 26.08.1990 at 9:30 a.m. the four accused persons had wrongfully restrained and assaulted Surath Sheikh at Bagmara field. However Sheikh was then ploughing his own land and Ekram Sheikh was carrying jute from the land of Jalal Khan, Ekram intervened accusing the accused persons that they were doing wrong and thereupon all the accused persons assaulted him with 'hensua' causing injury on his body on account of which he fell down and he succumbed to the injury. Harun intervened and one Jahan Sk. assaulted him with 'hensua' and caused injury on his elbow and

thereafter Harun fled away to save his life at a certain distance. Thereafter he went to the field of Jamai Master after the accused persons had left the place and found Ekram lying dead. Thereafter he went to the village at first informed the villagers of the incident and thereafter went to the P.S. submitted a written complaint and lastly he received medical treatment at the hospital.

4. In view of the written complaint aforesaid, Nakashipara P.S. Case No.230 dated 26.08.1990 was started after investigation on 03.04.1993 police submitted a charge-sheet under Sections 341/326/302 of the Indian Penal Code.

5. Documentary evidence adduced by the prosecution:

A) Written complaint (Ext.1/1)

B) Formal F.I.R. (Ext.4)

C) Seizure list (Ext. 2/1)

D) Inquest report (Ext. 3)

E) Sketch map (Ext.5)

F) Post-mortem report (Ext.6)

6. a) P.W.4 is the sister of deceased Ekram. She has supported the fact of murder of Ekram and that Harun and Farid had reported her about the incident. According to her Ekram was assaulted by all the accused persons and there was profuse bleeding where murder was committed and thereafter he had succumbed to the injuries. She has also stated that Ekram was brought to the house.

7. b) P.W.5 proved the seizure list (Ext.2). He denies the suggestion that police did not seize the blood stained earth from the place of occurrence.

8. c) P.W.6 proved the written complaint (Ext.1/1) and signature as (Ext.1/2).

9. d) P.W.7(the father of the victim) has proved his signature marked (Ext.3).

e) P.W.8 took the dead body of Ekram from the Shaktinagar morgue identified the same before the doctor hand over the relevant papers to the morgue.

f) P.W.9 collected the injury report of Harun from Bethuadahari P.H.C. and submitted the charge-sheets against them.

g) P.W.10 prove the formal F.I.R.

h) P.W.11 was attached to Nakashipara P.S. on 26.08.1990 as S.I. of police and took up investigation of the case. In course of investigation he visited the P.O. examined witnesses recorded the statement of the witnesses under Section 161 Cr.P.C. prepared rough sketch map and seized blood stained earth after preparing the seizure list. He has proved the seizure list (marked Ext.2/1). He has also collected the post-mortem report (marked Ext.6) in this case. He has arrested one accused Ayet Sk. on 27.08.1990 and the other accused persons had surrendered in the Court. It further transpires that he made over the charge of investigation to the O.C. Nakashipara, P.S. on 06.06.1991.

10. That on 28th day of November, 1996 the judgment was passed.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. Copy of this judgment along with the trial court records, if any, be sent down to the trial Court immediately.

18. 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]