

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

CRA (DB)/307/2024
WITH
IA No: CRAN/1/2024

Sajal Maji
V.
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the appellant : Mr. Saryati Dutta, Adv.
Mr. Sanjib Kr. Dan, Adv.

For the State : Mr. Saibal Bapuli, Ld. APP
Mr. Subham Bhakat, Adv.

Judgment On : 23.04.2026

Arijit Banerjee, J.:-

1. This appeal is directed against a judgment and order dated August 27, 2024 and August 29, 2024, passed by the learned Additional Sessions Judge, 1st Court Suri at Birbhum in Sessions Trial No. 02 (5) 2023 arising out of Sessions Case No. 166 of 2010, whereby the appellant was convicted of offence punishable under Section 307 IPC read with Section 9B (2) of the Indian Explosive Act, and sentenced to suffer rigorous imprisonment for ten years. The appellant was also fined in the sum of Rs. 5000/-.

2. In short, the prosecution case is that on the day of the alleged incident, the victim Byomkesh Mondal (PW 6) was returning from his shop

along with his friend Dwarkesh Bauri (PW 2). At that time campaigning was going on for Panchayat election. Byomkesh and his friend heard the sound of a bomb blast. A few moments later, when they were crossing a lane which led to the house of the appellant, the appellant threw a bomb at Byomkesh. The bomb blast caused serious injury to his left leg from knee downwards. As a result, that leg had to be amputated.

3. The alleged incident occurred on May 17, 2008. On the same date a written complaint was filed by Byomkesh's mother Naku Bala Mandal, (PW - 1). On the basis of such complaint, formal FIR was lodged. The written complaint specifically named the appellant and 6 other accused persons. In the formal FIR, however, the appellant was not mentioned.

4. Charge was framed by the learned Trial Judge under four heads as follows:-

1. Section 148 of the Indian Penal Code- Rioting, armed with deadly weapon.

2. Section 326/149 of the Indian Penal Code- Voluntarily causing grievous hurt by dangerous weapons or means.

3. Section 307/149 of IPC- Attempt to murder.

4. Section 9B (2) of the Indian Explosive Act.

5. The appellant pleaded to be 'not guilty' and claimed to be tried.

6. The prosecution examined 12 witnesses. The defence examined none.

7. PW 1 being the de facto complainant and the mother of the victim (Byomkesh) deposed that on the relevant day she was at home. She heard a bomb blast. Soon thereafter Byomkesh was brought to her house in an injured and unconscious condition. Thereafter Byomkesh was taken to the

hospital. The injured leg was amputated. She more or less repeated in the witness box what she had said in the written complaint.

8. P.W. 2, i.e., Dwarkesh Bauri being the person with whom Byomkesh was returning from his shop, deposed that election campaigning was going on at the relevant time. He and Byomkesh heard a bomb blast. Soon thereafter the appellant came out running from an alley and threw a bomb at Byomkesh. The bomb blast injured his left leg severely which required amputation. PW 2 specifically named the appellant and the other accused persons. He also identified them on the dock in court.

9. PW 3 Kumarish Mondal is the brother of the victim. He said, *inter alia*, that the victim told him that the appellant had hurled a bomb at him which caused the injury.

10. PW 6 was the victim. He specifically named the appellant as the person who hurled the bomb at him. As regards injury, he said the same thing as the other witnesses have said.

11. PW 10 is a resident of the same locality as Byomkesh. He deposed that the date of occurrence was the day before Panchayat election and the accused persons were campaigning from door to door. He suddenly heard the sound of bomb explosion. He went out of his house and found Byomkesh lying injured and in bleeding condition in front of the Sadar gate of the appellant. He along with other village people took Byomkesh to his house and thereafter to Suri Sadar Hospital. At that time Byomkesh told him that the present appellant had hurled bomb towards him.

12. I need not dilate on the depositions of the other prosecution witnesses none of whom was an eye witness.

13. The appellant was examined under Section 313 Cr.P.C. All he said in answer to the 37 questions put to him was that he is innocent, he was at his residence when the alleged incident occurred and he does not know anything about such incident.

14. The learned Trial Judge discussed and analysed the evidence of the prosecution witnesses, at length. The learned Judge, *inter alia*, dilated on the following points:-

(a) The principles to be kept in mind while appreciating or evaluating the evidence of an injured eye witnesses. In this connection the learned Judge relied on a decision of the Hon'ble Supreme Court in the case of ***Balu Sudam Khalde v. State of Maharashtra reported at AIR 2023 SC 1736.***

In the light of the said decision, the learned Judge came to the following findings:-

“(i) The presence of the injured eye witness victim was neither disputed nor doubted by the defence side either at the time of the cross-examination or at the time of advancing argument. No such suggestion was put to P.W.6. There is no material contradiction in the oral testimony of the injured witness relating to his presence in the place of occurrence at the time of the incident. Accordingly, this court holds that the injured was very much presence in the place of occurrence at the time of occurrence.

ii) The defence side failed to bring any material either by adducing evidence or from the oral testimony of the prosecution witnesses that real culprit was allowed to escape and A1 was falsely implicated in this case. The defence side has failed to establish

such proposition. Accordingly this court holds that it is to be believed that injured witness i.e P.W.6 would not allow the real culprits to escape and falsely implicate the accused.

iii) After going through the oral testimony of witnesses, medical papers, written complaint this court finds no material contradiction or any other thing which compels the court to discard his oral testimony. Accordingly, this court holds that there is no reason to discard the oral testimony of the injured witness.

iv) After perusing the oral testimony of the injured witness this court finds no material contradiction or embellishment.”

The learned Judge held that the oral testimony of injured witness being PW 6 relating to involvement of the appellant is wholly reliable.

(b) The learned Judge found that PW 2 was present at the place of occurrence and was therefore an eye-witness. He was not a chance witness. There may be certain minor discrepancies in the deposition of PW 2. However, keeping in mind that he is an illiterate person but clearly implicated the appellant, there is no reason to doubt the credibility of his evidence.

(c) The defence had raised a point that the victim did not inform the name of the assailants to the medical officer who examined him when he was taken to the hospital. In the injury report names of the assailants have not been recorded.

The learned Judge opined that when a person has suffered a bomb explosion injury in his leg which ultimately resulted in amputation of the leg, it is possible that he would not be in a position to communicate with the

examining doctor. It is not mandatory for an injured victim to divulge the names of the assailants to the examining doctor. The written complaint was lodged without any delay and the name of the appellant as the assailant was clearly stated in the complaint.

(d) The argument of the defence Counsel that nobody saw the appellant throwing the bomb at the victim has no merit since both PW 2 (eye witness) and PW 6 (injured victim), clearly stated that the appellant hurled a bomb at the victim. The credibility of the oral testimony of an injured witness remains at the highest level. A person who has lost his leg will never shield the real culprit and falsely implicate another person. The oral testimony of the injured victim is direct, clear and wholly reliable.

(e) The defence argued that although the incident took place near the house of Damodar Maji, yet, the Investigating Officer did not interrogate him nor cited him as a witness. The learned Judge held that an incident may take place beside somebody's house; however, that does not mean that the owner of the house has necessarily witnessed the incident for several reasons, e.g. he may have been absent in his house at the time of the incident.

(f) The learned Judge finally concluded that there is clear, direct and cogent evidence against the appellant to the effect that he threw a bomb at the injured victim, due to which the victim suffered severe injury in his left leg, which had to be amputated.

(g) Relying on the dicta of the Hon'ble Supreme Court in the case of **Om Prakash, v. State of Punjab, reported at AIR 1961 SC 1782 and State of M.P. v. Kashiram & ORs, reported at AIR 2009 SC 1642**, the learned Judge held that the appellant hurled a bomb at the injured victim with the

intention of committing murder and with the knowledge that the bomb explosion could cause the victim's death. The appellant was found guilty of offence punishable under Section 307 IPC and under Section 9B (2) of the Indian Explosive Act and was sentenced to suffer simple imprisonment for a term of ten years and to pay fine of Rs. 5000/- and in default of paying the fine, to suffer further imprisonment for one month, for the offence under Section 307 of IPC and to suffer simple imprisonment for 3 months for the offence under Section 9B (2) of Indian Explosive Act. Both the sentences were directed to run concurrently. The other accused persons were acquitted for lack of adequate evidence.

15. Hence this appeal.

Court's view

16. We see no apparent infirmity in the judgment and order under appeal. We say so for the following reasons.

17. The prosecution was required to establish that the accused persons hurled a bomb at the victim. The bomb blast caused grievous injury to the victim's left leg. Consequently, his left leg had to be amputated. The presence of the appellant at the place of occurrence and that he hurled the bomb at the victim has been clearly established by the evidence of eye witness PW 2 who was with the victim at the relevant time and the evidence of the injured victim himself (PW 6). The learned Trial Judge rightly concluded that in the facts of the case, there is no reason to doubt the credibility of the evidence of the injured victim. We agree with the learned Judge. It is not in dispute that the victim suffered bomb blast injury and lost a major portion of his left leg. It is also not anybody's case that the

bomb blast was an accident. It is fairly established that the bomb was thrown at the victim by somebody. There is no reason for the victim or PW 2 to shield the real culprit and falsely implicate the appellant. That is not normal human conduct.

18. The defence did not examine any witness. The entire evidence of the prosecution witnesses was put to the appellant in his examination under Section 313 Cr.P.C. The appellant did not even suggest that there was any reason for falsely implicating him.

19. We also bear in mind that PW 1 (de facto complainant) being the mother of the victim and PW 3 being the brother of the victim have also deposed that the victim told them before being taken to the hospital that the appellant had hurled a bomb at him. Although PW 1 deposed in cross examination that when the victim was brought home he was in senseless condition and that she could not say when the victim regained his sense and therefore even if we discount that the victim divulged the appellant's name to his mother, there is no such shortcoming in PW 3's evidence to the effect that his elder brother, the victim, told him the name of the appellant as the assailant. We may recount that PW 3 deposed that on hearing the sound of bomb explosion he rushed out from his house. He found that his brother, the victim, was lying injured near the house of the appellant. Upon inquiry, the victim told him that the appellant had hurled a bomb at him.

20. We also are in agreement with the learned Trial Judge that minor discrepancies in the deposition of PW 2, not touching upon the substance of his evidence, would not detract from the credibility of his evidence.

21. We may also recall that PW 10, a local person has also deposed that upon hearing the sound of bomb explosion, he went out of his house and found the victim lying injured and in bleeding condition in front of the main gate of the appellant. At that time the victim told him that it was the appellant who charged a bomb at him.

22. It is therefore established beyond reasonable doubt that it was the appellant who hurled a bomb at the victim. The bomb blast caused such grievous injury to the left leg of the victim that the same required amputation. The only question is whether the ingredients of Section 307 of the IPC have been made out by the prosecution. The relevant portion of section 307 of the IPC reads as follows:-

“307. Attempt to murder-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death. ”

23. In this connection, one may refer to the decisions of the Hon'ble Supreme Court in the cases of *Om Prakash v. State of Punjab, (supra)* and *State of M.P. v. Kashiram & ORs, (supra)*, adverted to by the learned Trial Judge. Any person of reasonable intelligence hurling a bomb at another person would be deemed to have knowledge that such an act is likely to kill that other person. This would be sufficient to attract to Section 307 of IPC. Actual intention to commit murder is not a necessary ingredient of the offence of attempt to murder.

24. In this connection one may note the definition of murder in Section 300 of IPC:-

“300. Murder-

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

Therefore, if an act is done with the intention of causing such injury to the victim as the offender knows may or is likely to cause death of that person, it would amount to murder if the person dies and attempt to murder if the persons survives with injuries.

25. In the present case the appellant clearly intended to cause bodily injury to the victim. Otherwise he would not have hurled the bomb at the victim. The intended injury was sufficient to cause death of the victim in the ordinary course of nature. Hence, the appellant attempted to murder the victim going by the definition of murder and it was providential that the victim did not die. The appellant would also fall foul of the 4th limb of the definition of murder in Section 300 and on that ground also he would be guilty of attempt to murder.

26. Hence we are of the considered opinion that the learned Trial Court rightly convicted the appellant under Section 307 IPC. There is also no error in the conviction of the appellant under Section 9B (2) of the Indian Explosive Act. The evidence in record clearly establishes that the appellant hurled a bomb at the victim.

27. In view of the aforesaid, we see no reason to interfere with the judgement and order sought to be assailed before us. We unhesitatingly confirm the judgement and order of conviction of the appellant and the sentence pronounced by the learned Trial Court. The sentence is neither disproportionate to the offence in question nor otherwise unreasonable in the facts and circumstances of the case.

28. In the result the appeal and the connected application are dismissed. There will be no order as to costs.

29. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)