

(2006) 08 CAL CK 0062
In the Calcutta High Court
Case No : G.A. No. 3 of 2002

The State of West Bengal

APPELLANT

Vs

Sankar Sundar Dutta

RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Arms Act, 1959 — Section 25(1)
Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2006) CriLJ 4234

Hon'ble Judges : Tapas Kumar Giri, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Kazi Safiullah and Swapan Kr. Mallick, for the Appellant;Sekhar Basu, Milon Mukherjee, Rabi Sankar Chatterjee and Rudradipta Nandy, for the Respondent

Judgement

Alok Kumar Basu, J.—In connection with Sessions Trial 1(3)/1999, Sankar Sundar Dutta, Pranab Nag, Subhasish Mukherjee and Badal Mukherjee faced charges u/s 302/307/34 of the IPC and Badal Mukherjee and Subhasish Mukherjee faced charge u/s 25(1)(B)(a) of the Arms Act while Sankar Sundar Dutta and Pranab Nag faced charge u/s 3 of the Explosive Substances Act before the learned Additional Sessions Judge, 6th Court, Alipore in the district of 24-Parganas (South).

2. The learned Additional Sessions Judge by the judgment and order dated 30th August, 2001 recorded an order of acquittal u/s 302/307/34 of the IPC in favour of the accused persons and similarly, Sankar Sundar Dutta and Pranab Nag were acquitted of the charge u/s 3 of the Explosive Substances Act and Subhasish Mukherjee of the charge u/s 25(1)(B)(a) of the Arms Act, but, Badal Mukherjee was found guilty under the same charge of the Arms Act and he was sentenced to suffer simple imprisonment for three years and to pay a fine of Rs. 5000/-, in default to suffer simple imprisonment for six months more.

3. The State of West Bengal being aggrieved by and dissatisfied with the order of acquittal preferred this appeal. It is pertinent to mention that Badal Mukherjee did not prefer any appeal against his conviction u/s 25(1)(B)(a) of the Arms Act

4. For the sake of brevity and also to avoid unnecessary repetition, we propose to dispose of this appeal preferred by the State by first discussing in short the prosecution case, thereafter by recording the reasons of the learned Trial Judge on the basis of which the order of acquittal was passed, thereafter the points taken by the learned P.P. to challenge the order of acquittal and to support the prosecution case, thereafter the points taken by the learned advocate supporting the order of acquittal and finally, our observations regarding findings and reasoning of the learned Judge vis-a-vis the prosecution evidence placed during trial.

5. The prosecution case, in brief, as we find from record, was that on 6.12.1997 at, about 10 a.m. to 10.15 a.m. when Uday Singh, elder brother of de facto complainant Ranjit Singh was gossiping with his friends-cum-employees namely, Bombaiya, Naresh and Kalyan sitting on a roadside rowak at Ramkamal Street and near the office of Uday and de facto complainant, the respondents charged bombs aiming at Uday, Bombaiya, Naresh and Kalyan while Suhasish and Badal used their firearms and thereafter they fled away. The de facto complainant Ranjit Singh along with Nitai saw the entire occurrence from the opposite side of the road and, at once, both de facto complainant and Nitai raised alarm when they found both Uday and Naresh to fall down on the ground being injured by bomb blast. Gopal Das and others of the locality thereafter removed both Uday and Naresh to Calcutta Hospital. Uday and Naresh both succumbed to their injuries subsequently in the hospital.

6. Local Watgunge P.S. on receipt of an anonymous telephone call about the occurrence, came to the place of occurrence where the victims were attacked and assaulted and getting information about shifting of the victim to the hospital, officer of Watgunge P.S. rushed to the hospital and at the hospital, the statement of de facto complainant was reduced to writing to start a specific case against the respondents.

7. After making thorough investigation of the case, officer of the Detective Department of Calcutta Police submitted charge-sheet and on the basis of the said charge-sheet, the four respondents faced the trial before the learned Additional Sessions Judge u/s 302/307/34 of the IPC and, that apart, respondent Subhasish and Badal faced charge u/s 25(1)(B)(a) of the Arms Act while Sankar Sundar and Pranab faced charge u/s 3 of the Explosive Substances Act.

8. Prosecution, during trial examined in all 42 witnesses including P.W. 3 to P.W. 5 who were eye-witnesses of the occurrence, P.W. 30 who conducted post-mortem examination over the dead body of Uday Singh and Naresh Singh and P.W. 42 the Investigating Officer of Detective Department who finally submitted charge-sheet against the respondents. Prosecution examined witnesses to prove

required sanction for launching prosecution under the Arms Act and Explosive Substances Act respectively and prosecution also examined arms expert, ballistic expert, several witnesses to the seizures made during investigation and also a few witnesses of the locality who had the knowledge of bomb explosion at the place of occurrence.

9. Prosecution, apart from oral evidence, also produced the original recorded statement of P.W. 3 Uday Singh which was treated as FIR, inquest reports and post-mortem reports of both the deceased, sanction orders, report of the arms expert and ballistic expert, several seizure lists, plan and different photographs of the P.O. and the deceased as material exhibits.

10. The learned Additional Sessions Judge after considering submissions of both prosecution and the respondents' evidence and after considering on record did not accept the prosecution case and the learned Judge concluded firmly after analysis of prosecution evidence that prosecution miserably failed to prove beyond any shadow of doubt that the respondents threw bombs aiming at Uday and Naresh resulting their death subsequently and that respondents Subhasish and Badal also used their respective firearms at Uday and Naresh and others on 6.12.1997 near the office of Uday Singh and de facto complainant Ranjit Singh at Ramkamal Street, Khidirpore. The learned Trial Judge also came to the conclusion after considering the prosecution evidence that charge framed against Subhasish Mukherjee for illegal possession of arms was also not proved, but, the learned Judge accepted the prosecution case as regards illegal possession of arms by respondent Badal Mukherjee and on that ground Badal Mukherjee was convicted and sentenced to suffer simple imprisonment for three years.

11. In an appeal against acquittal, the reasoning of the learned trial Judge are of great importance, because, that will reflect the appreciation of evidence done by the learned trial Judge and that will be the main subject-matter of consideration while entertaining the points raised by the appellant-State against the order of acquittal.

12. The learned Judge, as it appears from the judgment impugned in this appeal, expressed her strong reservation about the credibility of the prosecution case mainly considering the evidence of P.W. 15, P.W. 25 and P.W. 33, since on going through the deposition of these witnesses, it appeared to the learned Judge that the prosecution case that the respondents came on foot and hurled bombs and used firearms was not acceptable as these witnesses in particular had mentioned that some unknown miscreants from a moving vehicle hurled bombs aiming at Uday, Naresh and others.

13. Although prosecution mainly relied on P.W. 3 and P.W. 5 Bombaiya alias All Reja who was present with deceased Uday Singh and who was also injured by splinters of the bomb, the learned Judge did not place any importance on the statement of these witnesses having regard to the statement of P.W. 15, P.W. 25 and P.W. 33. The learned Judge disbelieved the prosecution case also on the

ground that Gopal Lal Das whose name figured in the FIR and also In the bed head ticket relating to the admission of both the deceased was not examined by prosecution and this witness was the best person to narrate the real story and since that real story would be against the prosecution, the learned Judge was of the view that prosecution intentionally withheld this witness.

14. The learned Judge also did not accept the enmity theory put forward by P.W. 3 with the help of Exhibit 6 and also by the police officer with the help of earlier case and counter-case filed by some of the respondents and also by deceased Uday Singh and his brother Ranjit Singh and the learned Judge; having regard to the previous conviction of Uday and Naresh and having regard to the fact that due to business rivalry Uday and Naresh had other potential enemies expressed her firm view that unknown assailants might have hurled bombs resulting death of Uday and Naresh and this theory gets sufficient logical support from the statement of P.W. 15, P.W. 25 and P.W. 33.

15. The learned Judge also did not find any evidence worth the name to hold that all the respondents facing the trial at any point of time shares any common intention for killing deceased Uday and Naresh.

16. The learned Judge also disbelieved the prosecution case on the ground that the local witnesses namely P.W. 6, P.W. 7 and P.W. 8 did not mention the name of the accused persons and this clearly indicated that prosecution only with the help of highly interested persons like P.W. 3 to P.W. 5 concocted a totally false story to harass the respondents.

17. As regards illegal possession of arms by Subhasish Mukherjee, the learned Judge without finding any corroborative evidence declined to accept the prosecution case relying on the sole testimony of a police officer and when the learned Judge did not find convincing material to support the charge framed u/s 302/307/34 of the IPC, the learned Judge came to the conclusion that no charge u/s 3 of the Explosive Substances Act was proved against respondents Sankar Sundar Dutta and-Pranab Nag.

18. The learned Judge did not accept the prosecution case regarding involvement of Badal Mukherjee in the matter of using firearms aiming at Uday, Naresh and others, but, the learned Judge on the basis of prosecution evidence accepted the prosecution case that live cartridge was recovered from Badal at the hospital where he was admitted. The learned Judge, thus, exonerating Badal Mukherjee from the charge of murder and attempt to murder accepted the prosecution case as regards illegal possession of a live cartridge and Badal Mukherjee was convicted accordingly.

19. Mr. Safiullah, the learned P.P. appearing in support of this appeal contends that on close examination of the main witnesses of the prosecution and on close examination of the relevant documents exhibited on behalf of the prosecution during trial, it would appear that the learned Judge with a preconceived notion examined the prosecution evidence resulting a totally perverse appreciation of

the same and thereby recording an order of acquittal which was totally unwarranted in the background of prosecution evidence both oral and documentary.

20. Mr. Safiullah contends that the learned Judge approached the prosecution evidence after forming an opinion which was contrary to the evidence on record and that opinion was that some unknown assailants coming in a vehicles hurled bombs at Uday and Naresh and as a result of such hurling of bombs both of them succumbed to their injuries. This opinion of the learned Judge was based on totally wrong reading of evidence of P.W. 15, P.W. 25 and P.W. 33 and also on a wrong logic that Gopal Lai Das was a vital witness and his non-examination was intentional and to suppress truth and that was done at the instance of de facto complainant and investigating officer.

21. Mr. Safiullah contends that on a plain reading of the evidence of P.W. 15, it will never appear that this witness uttered that he had seen some persons to hurl bombs from a moving vehicle. P.W. 25, the doctor recorded the history of assault as per statement of Gopal Lai Das who was not present at the time of hurling of bombs and using of firearms, but, he came after the miscreants had left the place and the injured persons were on the spot. The name of Gopal Lai Das figured in the FIR as well as in the statement of P.W. 3 and naturally, when this Gopal Lal Das gave a statement to the doctor that statement was simply a hearsay evidence, because, he had no personal knowledge how the Injured persons received bombs injuries and there was no scope for him to give the detail. Similarly P.W. 33 the brother of Uday gave a statement to the doctor without having direct knowledge of the occurrence and he also heard from a friend that unknown criminals from a vehicle hurled bombs. Mr. Safiullah contends that if we dispassionately consider the evidence of P.W. 15, RW. 25 and P.W. 33 and If we consider their evidence in the background of the evidence of P.W. 3 to P.W. 5, it will be crystal clear that the learned trial Judge to sidetrack the evidence of P.W. 3 to P.W. 5 and without application of mind misinterpreted the evidence of P.W. 15, P.W. 25 and P.W. 33 and came to the conclusion that some unknown assailants coming in a vehicle hurled bombs.

22. Mr. Safiullah submits that when ample evidence are there to prove that Gopal Lal Das was not present at the place of occurrence when bombs were hurled, he cannot be considered as a relevant witness not to speak of a vital witness as concluded by the learned Judge and this finding of the learned Judge is sufficient to show that the learned Judge totally misdirected herself in the matter of appreciation of the evidence and her view was a preconceived one.

23. Mr. Safiullah submits that P.W. 6 cannot have any importance In this case since his evidence was expunged as he was not produced for cross-examination and so far P.W. 7 and P.W. 8 are concerned, both of them supported the prosecution case regarding hurling of bombs at the place of occurrence, regarding injury of Uday and Naresh at the place of occurrence and also regarding damage of vehicles and shops at the place of occurrence, but there

witnesses had no scope to see the respondents when they hurled bombs and naturally, they did not mention the name of the respondents.

24. Mr. Safiullah submits that from the opinion of the ballistic expert, from the photograph taken during investigation, from the statement of P.W. 7 and P.W. 8 and other witnesses of the locality and above all, from the report of the autopsy Surgeon and also from the statement of the autopsy Surgeon it has been clearly proved that both the deceased received injuries due to bomb explosion and although there was no mark of bullet injury on their persons, two respondents used firearms which was evident from their possession of the firearms and cartridges.

25. Mr. Safiullah contends that P.W. 3, P.W. 4 and P.W. 5 with some minor variation and contradiction, but, in most assertive manner deposed before the trial Court about their presence at the place of occurrence and all the three witnesses clearly mentioned how the respondents approached the victims being armed with bombs and firearms and how they used bombs and firearms aiming at the victim and having regard to the statement of P.W. 7 and P.W. 8, ballistic expert and post-mortem report, there is no scope to deny that deceased suffered homicidal death due to bomb explosion and the respondents were physically present on the spot and hurled bombs and used firearms although firearms could not do any mischief.

26. Mr. Safiullah contends that enmity theory is always a double edged knife and it cuts both ways and naturally, from the evidence of the prosecution to substantiate the enmity theory it can be very well argued that out of enmity Uday and Naresh were attacked by the respondents and at the same time, respondents can very well argue that out of enmity they were chosen as the assailants without any evidence and in such a situation, the best way to appreciate the real position would be to appreciate the prosecution evidence both oral and documentary in a dispassionate manner to gather the real picture. Mr. Safiullah contends that if for that reasons already urged by him the theory of throwing of bombs by unknown rni8er,eants from a running vehicle as propounded by the learned Judge on a perverse appreciation of evidence does not stand and if from the overall evidence of prosecution witnesses supporting hurling of bombs at the place of occurrence and resultant death of the deceased is considered in the background of the statement of P.W. 3 and P.W. 5, there cannot be any doubt that prosecution through P.W. 3 to P.W. 5 along with other supporting evidence successfully established that on 6.12.1997 at about 10.15 a.m. the present respondents hurled bombs and used firearms and as a result of hurling of bombs, Uday and Naresh succumbed to their injuries. Mr. Safiullah contends that if prosecution case is accepted then there is no logic to raise eyebrow about application of Section 34 of the IPC, because, by their physical appearance on the spot and by carrying bombs and firearms all the respondents individually and separately demonstrated sharing of common intention in the matter of annihilation of Uday and Naresh.

27. Mr. Safiullah contends that in spite of best effort prosecution could not produce the corroborative evidence regarding recovery of the arms from Subhasish and there cannot be any reason to disbelieve the testimony of a responsible police officer when save and except mere denial, there was nothing from the side of Subhasish Mukherjee as regards the charge of illegal possession of arms. Mr. Safiullah submits that the learned trial Judge became a victim of her own dilemma and indecision when It appears that although she recorded an order of conviction against Badal Mukherjee under the Arms Act, she declined to accept the prosecution case that Badal Mukherjee was apprehended after bombs were hurled and firearms were used by Subhasish and Badal near the office of Uday and Ranjit.

28. Thus, Mr. Safiullah submits that on proper appreciation of prosecution evidence namely P.W. 3 to P.W. 5 along with FIR, Inquest report, post-mortem report, sanction order, report of the arms expert, report of the ballistic expert and statement of the Investigation Officer and other officers of the Watgunge P.S., there is no scope for any of the respondent to escape conviction and the learned trial Judge, under total misconception of fact and law and in utter disregard of evidence on record, delivered the impugned Judgment and recorded the order of acquittal and hence, such an order of acquittal being the result of totally perverse appreciation of evidence must be set aside in the interest of justice.

29. Mr. Sekhar Basu, appearing for the respondents, before making his detail submissions along with his written note of arguments, while challenging the appeal of the State against the order of acquittal has drawn our attention to the cardinal rules which are required to be kept while disposing of an appeal against acquittal and as highlighted in the judgment of State of Uttar Pradesh Vs. Samman Dass, . Mr. Basu contends that in para 35 of the reported judgment it was observed that the presumption of innocence in favour of the respondents flowing from the Judgment of acquittal of the trial court must get proper weightage and if two views of the matter are possible, view favourable to the accused should be taken. Mr. Basu submits that the third Rule is that the Appellate Court should also take into account the fact that the trial Judge had the advantage of looking at the demeanour of the witnesses and finally, respondents are always entitled to the benefit of doubt which, however, should be reasonable and convincing.

30. Mr. Basu contends that it has been held long before as we get from the decision of Mamfru Chowdhury and Others Vs. King-Emperor, that in a criminal trial evidence of prosecution must show that the incident alleged happened at the time. In the place and under the precise circumstances narrated on behalf of the prosecution.

31. Mr. Basu submits that the learned trial Court on appreciation of the prosecution evidence placed before it during trial and after considering the submissions of both prosecution and the defence rejected the prosecution case

mainly on the ground that prosecution witnesses failed to prove the basic Ingredients of prosecution case as reflected in the judgment of Mamfru Chowdhury (1924) Cri LJ 776 (supra) and the learned trial Judge on scanning of evidence found it more acceptable to place reliance on the defence case as available from cross-examination of prosecution witnesses that Uday and Naresh were attacked by some unknown persons who came by a vehicle.

32. Mr. Basu submits that the very basis of the prosecution case which was reflected in the first information report does not inspire confidence for the simple reason that while in the formal FIR, the time of receipt of the complaint appears to be 10.30 a.m., the presence of the statement maker Ranjit Singh at the place of occurrence is a total impossibility. Mr. Basu contends that if the registration of the first information report at the instance of Ranjit Singh P.W. 3 becomes a doubtful aspect, the insertion of the name of the respondents in the FIR must reasonably appears to be an afterthought and a product of the long standing enmity and malice.

33. Mr. Basu contends that the prosecution case mainly rested on the testimony of P.W. 3 Ranjit Singh, P.W. 4 Nitai Saha and P.W. 5 Bombaiya alias All Reja and on close examination of the statements of these three witnesses it would be noticed that none of them was present at the place of occurrence and only in a preplanned manner and as an afterthought they mentioned the name of the respondents as the assailants of Uday and Naresh and this conclusion gets additional corroboration from the fact that P.W. 5 Bombaiya who claimed himself to be an injured person due to alleged bomb explosion by the respondents did not divulge the name of any of the respondent before the doctor by whom he was examined soon after the occurrence and this is also reflected in the medical paper of the said witness as exhibited on behalf of the prosecution during trial.

34. Mr. Basu contends that P.W. 7 and P.W. 8 were residents of the locality and according to the prosecution P.W. 7 was injured within his saloon located near the place of occurrence and his saloon was also damaged, but, this witness did not mention the name of the respondents behind the explosion of the bomb. P.W.8 was, however, declared hostile since he did not support the prosecution case by mentioning the name of the respondents. Mr. Basu contends that in the backdrop of the statements of P.W. 7 and P.W. 8 if we closely examine the statements of P.W. 15 Subhas Acharya who received injury due to bomb explosion and was admitted in the hospital and the statement of the doctor P.W. 25 and also the statement of Sangram Singh another brother of deceased Uday Singh P.W. 33, we get a completely different picture and that picture was that Uday and Naresh were attacked and assaulted by some unknown miscreants by throwing of bombs from a moving vehicle.

35. Mr. Basu submits that P.W. 25 recorded the history of assault of Uday and Naresh as he derived the same from one Gopal Lal Das and from the deposition of P.W. 3 Uday Singh as well as from his recorded statement treated as FIR we get reference of Gopal Lal Das and presence of Gopal Lal Das at the P.O. also

gets corroboration from the inquest report and also from the death certificate issued from the hospital and when P.W. 25 with reference to Gopal Lal Das recorded the history of assault that demolished the prosecution story altogether which again got corroboration from P.W. 15 and also P.W. 33 who was none else than the brother of Uday Singh and Ranjit Singh.

36. Mr. Basu contends that from the deposition of autopsy Surgeon we also get the idea that deceased persons might have received injury being assaulted with lathi and iron rod and this part of the opinion of the autopsy Surgeon also goes against the basic prosecution story sought to be projected during trial.

37. Mr. Basu contends that arrest of Badal Mukherjee from a place near the place of occurrence was not supported by any independent witness and Badal Mukherjee took the specific plea that he was arrested from his house at Santoshpur and after being seriously assaulted he was taken to hospital and in that background, prosecution cannot expect that case regarding involvement of Badal in the alleged occurrence can be accepted by any man of ordinary prudence.

38. Mr. Basu submits that the recovery of the arms from the possession of Subhasish Mukherjee alias Pata was not also proved by any independent witness and merely on the uncorroborated testimony of the Investigating Officer, this part of the prosecution case cannot be accepted.

39. Mr. Basu submits that production of Exhibit 6, a letter alleged to have been written by deceased Uday six months prior to the alleged occurrence apprehending attack on him by some of the respondents cannot be accepted as a genuine document when we have reasons to hold from the deposition of P.W. 3 along with his FIR that out of long standing enmity and perhaps due to business rivalry P.W. 3 the FIR maker, had the clear motive of Implicating the respondents in a false case.

40. Mr. Basu contends that P.W. 15 was not declared hostile by prosecution and relying on the decision in the case of Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi), and Raja Ram v. The State of Rajasthan, reported in 2005 SCC 1050. Mr. Basu contends that the statement of P.W. 15 can be utilized very well by the respondents where from it was evident that this witness being injured on the spot did not notice any of the respondents and this clearly demolished the prosecution case totally.

41. Mr. Basu submits that one may not agree with the reasons of the learned Trial Court while recording the order of acquittal, but, so far prosecution evidence was concerned, the learned trial Judge rightly concluded that P.W. 3 to P.W. 5 cannot claim any credibility and at the same time, P.W. 15, P.W. 25 and P.W. 33 supported the defence case that Uday and Naresh were attacked by unknown persons who came on the spot by a vehicle and in no way prosecution succeeded to establish its case that the respondents coming on foot charged bombs aiming at Uday, Naresh and others and some of the respondents also used firearms

against Uday and Naresh. Mr. Basu contends that considering the doubtful registration of the FIR by P.W. 3, the serious contradictions in the statement of P.W. 3 to P.W. 5 and the clear statement of P.W. 15, P.W. 25 and P.W. 33 all taken together, the learned Judge was perfectly justified in holding the respondents not guilty of the charge under Sections 302/307/34 of the IPC and also holding Sankar Sundar Dutta and Pranab Nag not guilty u/s 3 of the Explosive Substance Act and respondent Subhasish Mukherjee not guilty u/s 25(1)(B)(a) of the Arms Act. Mr. Basu reiterates the cardinal rules to be followed by the Appellate Court while disposing of an appeal against an order of acquittal as mentioned already and concludes that there is no scope of any interference with the order of the trial Court which was based on proper appreciation of evidence.

42. To begin with our discussion on the merit of the present appeal, we want to bring on record that the decision rendered in the case of State of Uttar Pradesh Vs. Samman Dass, elaborating the cardinal rules to be followed in entertaining an appeal from order of acquittal still rules the field and in a recent judgment of the Hon'ble Supreme Court rendered in the case of Kallu @ Masih and Others Vs. State of Madhya Pradesh, , the principles of Samman Das's case have been reiterated. In paragraph 8 of the judgment of Kallu alias Masih (supra) it has been held as follows:

While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with by an Appellate Court, where the judgment of the trial Court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial Court merely because a different view is possible. The Appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial Court (para 8).

43. If we consider both the decisions of State of Uttar Pradesh Vs. Samman Dass, as well as Kallu @ Masih and Others Vs. State of Madhya Pradesh, together we find the legal position which is as follows: (a) That Appellate Court is empowered to review the entire evidence, (b) where judgment of trial Court is based on evidence and view taken by it is reasonable and plausible, that will not be interfered with, (c) the decision of the trial Court will not be reversed merely, because, a different view is possible, (d) it must be remembered by the Appellate Court that there is presumption of Innocence in favour of the accused, (e) and the accused is entitled to get benefit of any doubt and that doubt must be reasonable and convincing. We also get that if the Appellate Court decides to interfere with the order of acquittal, it should assign reasons for differing with the decision of the trial Court.

44. We have already recorded the reasonings and grounds of the learned trial

Court which prompted to record an order of acquittal and we have also recorded contention of the prosecution challenging the said reasonings and grounds of acquittal and also the contention of the respondents supporting the said reasonings and grounds of acquittal.

45. From the reasonings of the learned trial Judge as well as from the contention of Mr. Basu, we find that the registration of the FIR was subject matter of challenge mainly on the ground that the time mentioned on the formal FIR leads one to believe that P.W. 3 Ranjit Singh was physically present at the P.S. and he was not present at the place of occurrence so as to witness the respondents and to mention their names in the FIR, in other words. It was the observation of the trial Court and also the contention of Mr. Basu that the FIR was a fabricated document and it was a result of conspiracy of P.W. 3 to harass the respondents by falsely inserting their names in the FIR.

46. We have examined the formal FIR, the recorded statement of Ranjit Singh which was part of the formal FIR, the statement of Ranjit Singh given during trial and also the statement of P.W. 40 S.I.J.N. Barik who recorded the FIR along with General Diary No. 494, exhibit 39.

47. We find that S.I. Barik on receipt of an anonymous telephone call regarding throwing of bombs on Uday Singh and another at Ramkamal Street rushed to the place of occurrence with force and thereafter he went to the CMRI hospital where he met P.W. 3 when Uday was already dead and Naresh was fighting for life and at that Juncture, he recorded the statement of P.W. 3 wherefrom the name of the respondents transpired and the formal FIR was completed only at 4.45 p.m. on 6.12.1997 when P.W. 3 came to the P.S. for the first time on that date and signed on it. It is true that in so many words it was not mentioned in the recorded statement of P.W. 3 that the statement was recorded at hospital, but, when we take into account the statement of P.W. 3 and P.W. 40 together, we find no scope to disbelieve that the statement was recorded at the hospital after death of Uday Singh and in that statement, name of all the respondents and the manner of their attack Including the time and place of attack was mentioned without any reservation.

48. Thus, having regard to the statement of P.W. 3 and P.W. 40 together with the written FIR, formal FIR and exhibit 39, we do not share either the view of the learned Judge or the contention of Mr. Basu that FIR was doubtful and result of any conspiracy.

49. In a criminal trial FIR is a vital document and prosecution Is bound to stick to the basic features of the prosecution case as divulged through FIR during trial and any deviation from the FIR is always viewed with suspicion and benefit in that regard would go to the accused persons and at the same time, accused persons in our criminal trial are entitled to attack the basic feature of the prosecution case by way of cross-examination of the prosecution witnesses and here in this context we can profitably recollect the observation reported in the

case *Mamfru Chowdhury v. King Emperor* (1924) Cri LJ 776 (supra).

50. In the FIR, we find that P.W. 3 mentioned the name of Uday and Naresh, Nitai, Bombaiya and others who were present at the place of occurrence and it was further disclosed in the FIR that while Uday, Naresh and others were taking tea sitting on the roadside rowak near their office, P.W. 3 and Nitai were on the other side of the road and they noticed the arrival of the respondents being armed with bombs and firearms and in the FIR it was specifically mentioned, that Sankar Sundar Dutta and Pranab Nag charged bombs while Subhasish and Badal used their respective firearms. It was also disclosed in the FIR that after throwing of bombs on Uday and Naresh, they fell on the ground and Gopal and Nitai removed both of them to the CMRI hospital.

51. P.W. 3, P.W. 4 and P.W. 5 were disbelieved by the learned Judge and Mr. Basu during his oral submission and also through his written note Justified the stand of the learned Judge on the ground that there are serious contradictions and discrepancies in the statement of those three witnesses and, that apart, P.W. 4 could not show any paper in support of his claim that he was an employee of Uday Singh and P.W. 5 did not disclose the name of the respondents before the doctor by whom he was examined being injured due to bomb explosion.

52. We have carefully examined the statement of all the three witnesses and in our considered view having regard to the mode of attack on Uday and Naresh by exploding bomb, it was not possible for any of those three witnesses to give In detail the post occurrence scenario, but, in their examination-in-chief they clearly stated the name of the respondents and also stated how they approached the victims and how they attacked the victims and on this material point, we do not notice any major discrepancy so as to throw away completely the statement of those three witnesses along with the contents of the FIR.

53. P.W. 7 was an injured person and both P.W. 7 and P.W. 8 being local residents did not mention name of respondents and in our view P.W. 7 and also P.W. 8 gave a true account of the occurrence and they acted in a non-partisan manner, because, at the time when the respondents approached the victims and threw bombs none of the witnesses were present and they were affected only after the explosion afterwards and naturally, at that point of time it was not expected that the respondents would wait at the spot and enjoy a cup of tea.

54. Mr. Basu getting inspiration from the judgment of the learned Trial Court contends that a new story emerged from the prosecution witnesses and that has destroyed the prosecution case and the learned Judge rightly concluded that prosecution case was not proved. Mr. Basu with reference to P.W. 15 contends that this witness was not declared hostile and respondents can very well take benefit of the deposition of this witness and this witness being injured due to bomb explosion and being present near the place of occurrence, did not notice any of the respondents and this witness clearly stated that bomb was thrown from a moving vehicle.

55. We find that the learned Judge also came to the same conclusion like Mr. Basu from reading of the statement of P.W. 15. but, we are unable to accept either the interpretation of the learned Judge or the interpretation of Mr. Basu sought to be given regarding the plain meaning of the statement of P.W. 15.

56. P.W. 15 stated in examination-in-chief that a vehicle crossed him when he was moving at Ramkamal Street and thereafter he heard a sound of explosion and he was hit by something and he fell down being unconscious. By no stretch of our Imagination, we can gather from the evidence of P.W. 15 that he ever uttered that bomb was thrown from a running vehicle and this statement of P.W. 15 was further clarified from the content of exhibit 23 as prepared by P.W. 19, Dr. Sidharta Purakayastha who examined P.W. 15 soon after the occurrence. P.W. 15 did not tell anything as Indicated by the learned Judge and Mr. Basu, on the contrary. P.W. 15 stated before the doctor that while walking through Ramkamal Street there was bomb blast and he was injured by a splinter. It is pertinent to mention that doctor observed in his report that P.W. 15 was conscious and he was co-operative. Naturally P.W. 15 like P.W. 7 and P.W. 8 became aware of the bomb explosion after the mischief was done and after the mischief mongers were no longer at the place of occurrence, so it was quite natural for him like P.W. 7 and P.W. 8 not to utter the name of any respondents and the respondents are all known to him being local residents and P.W. 15 like P.W. 7 and P.W. 8 acted in a non-partisan manner and gave statement according to his own knowledge and perception.

57. The learned Judge as well as Mr. Basu put much importance on the report prepared by P.W. 25, a doctor of the hospital, who with reference to one Gopal Lal Das recorded history of assault to the effect that unknown assailants attacked with bomb and firearms. Gopal Lal Das brought both Uday and Naresh to the hospital and there is no denying of this factual position as we consider the report of the doctor, the inquest report and also the death certificate issued from the hospital. We also find reference of Gopal in the recorded statement of P.W. 3 as well as in the deposition of P.W. 3, P.W. 4 and P.W. 5. Now, the crucial question is whether Gopal was present when the respondents approached the victims or Gopal came at the place of occurrence after the victims fell on the ground being injured due to explosion of bomb and to this question, we get the uniform answer from the deposition of P.W. 3 to P.W. 5 that Gopal came forward when the victims fell on the ground and naturally, Gopal rushed to the hospital with the victims and he gave a statement according to his own perception without getting any direct knowledge about the assailants. Similar is the statement of P.W. 33, brother of P.W. 3, who also reported to the doctor that he came to learn from his friend that some unknown persons from a car threw bombs at Uday and Naresh and this witness also had no direct knowledge since he was not present near the place of occurrence.

58. From the FIR, from the seizure lists, from the opinion of the ballistic expert, from the statement of P.W. 7, P.W. 8, P.W. 15 along with P.W. 3 to P.W. 5, we get

one basic point undisputed that there was bomb explosion near the office of deceased Uday between 10.15 a.m. to 10-30 a.m. and Uday and Naresh were seriously injured due to bomb explosion and after bomb explosion, both of them were removed to the nearby hospital by Gopal along with Nitai.

59. From the statement of P.W. 3 to P.W. 5 we find that respondents coming on foot threw bombs at Uday and Naresh and although there is allegation of using firearms by Subhasish and Badal, we do not find any corroborative evidence in this regard from the side of prosecution since no used cartridge or bullet head was recovered from the P.O.

60. It has been argued on behalf of the respondents that since the autopsy surgeon opined that from the nature of injuries suffered by Uday and Naresh a possibility cannot be ruled out that they might be assaulted by lathi and iron rod, the prosecution story of bomb explosion lost much of its credibility. We have examined the inquest report as well as the post-mortem report and also the entire medical papers relating to the admission and treatment of both the deceased till their death and we get only one conclusion that both the victims died due to injuries received through bomb explosion.

61. The learned Judge opined that out of 42 witnesses only three witnesses supported the prosecution case. This numerical assessment of prosecution case was not factually correct, because, although prosecution examined 42 witnesses, the material witnesses relating to the actual occurrence were P.W. 3 to P.W. 5, P.W. 7, P.W. 8 and P.W. 15. We have discussed that P.W. 7, P.W. 8 and P.W. 15 were of present when the bombs were actually thrown and naturally, they were not in a position to support the prosecution case by mentioning the name of the respondents and only P.W. 3 to P.W. 5 were the persons present when the respondents approached the victims and we have already discussed that having regard to the contents of the FIR and after overall consideration of prosecution evidence both oral and documentary, we find no reason to disbelieve the statements of P.W. 3 to P.W. 5 and at the same time, we do not get any material to lend support to the finding of the learned Judge regarding alternative theory about the attack on the victims, rather, having regard to the evidence of P.W. 15, P.W. 25 and P.W. 33, we are of the firm opinion that there was no possibility of any second alternative to the prosecution case and prosecution witnesses and documents of the prosecution unerringly established that on 6.12.1997 the respondents with common intention attacked Uday and Naresh by exploding bombs and Uday and Naresh ultimately died due to bomb explosion only.

62. From the prosecution witnesses namely P.W. 3 to P.W. 5 we find that Sankar Sundar Dutta and Pranab Nag were carrying bombs and naturally, apart from the charge u/s 302/34 of the IPC both of them are liable to be convicted u/s 3 of the Explosive Substance Act.

63. The charge under Arms Act as framed against Subhasish Mukherjee was disbelieved by the learned trial Court since there was no corroborative evidence

through any independent witness and since we do not find any contemporaneous document in the form of seizure list regarding used cartridge or bullet head recovered from the place of occurrence, we do not want to disturb the finding of the learned Judge in this regard.

64. Respondents were also charged u/s 307/34 of the IPC for the injury of Bombaiya alias Ali Reja, but, we do not find any medical evidence to substantiate this charge against the respondents and for this reason, we do not want to hold the respondents guilty for the offence u/s 307/34 of the IPC.

65. The learned Judge while convicting Badal Mukherjee u/s 25(1)(B)(a) of the Arms Act did not accept the prosecution case that he was also a party sharing the common intention with other respondents in the matter of attacking and assaulting Uday and Naresh and ultimately causing their death. We have examined the medical report of Badal Mukherjee wherefrom we find Badal Mukherjee himself disclosed before the doctor that he was assaulted by some persons and arrest of Badal Mukherjee near the place of occurrence and his admission in the hospital along with recovery of live cartridge from his possession on the date of occurrence clearly support the prosecution charge against him that he was also present at Ramkamal Street with the other respondents when bombs were thrown at Uday and Naresh.

66. Thus, after analysis of the prosecution evidence which we are duty bound to perform being the Appellate Court and after hearing submissions of both Mr. Safiullah and Mr. Basu in the backdrop of the judgment and order impugned in this appeal, we hold keeping in mind the cardinal rules laid down in the case of State of Uttar Pradesh Vs. Samman Dass, and reiterated in the case of Kallu @ Masih and Others Vs. State of Madhya Pradesh, that the learned Judge totally misdirected herself in the matter of appreciation of prosecution evidence and we believe it will not be unfair on our part if we bring on record that appreciation of evidence done by the learned Judge was, in fact, perverse and in a preconceived manner. We find from scanning of evidence that there was no possibility to lend any support to the proposition that some unknown persons from a moving vehicle threw bombs targeting Uday and Naresh and at the same time, on scanning of evidence we find that FIR lodged by P.W. 3 was a genuine and an authentic document and P.W. 3 to P.W. 5 supported the prosecution case satisfactorily and prosecution case was also supported by medical I report, by seizure of different articles from the place of occurrence and by report of the I ballistic expert.

67. In the conclusion, we are inclined to allow this Government appeal in part and we set aside the order of acquittal as recorded against the respondents u/s 302/34 of the IPC. We hold after scanning of evidence and after hearing both the sides that all the four respondents are guilty of the offence u/s 302/34 of the IPC since all of them sharing a common intention assaulted Uday and Naresh by throwing of bombs resulting their death. We, at the same time, hold that respondents Sankar Sundar Dutta and Pranab Nag were carrying bombs and they

charged bombs at Uday and Naresh and for that reason they are found guilty u/s 3 of the Explosive Substance Act. We do not find any material on record to hold the respondents guilty u/s 307/34 of the IPC for attempting to murder Bombaia alias All Reja and Kalyan Biswas and at the same time, we do not get material to hold respondent Subhasish Mukherjee guilty u/s 25(1)(B)(a) of the Arms Act.

68. We, therefore, record an order of conviction against all the four respondents u/s 302/34 of the IPC and having regard to the fact and evidence on record, we sentence each of the respondents to suffer imprisonment for life and also to pay a fine of Rs. 5,000/- each in default to suffer rigorous imprisonment for six months each, Respondents Sankar Sundar Dutta and Pranab Nag being convicted u/s 3 of the Explosive Substance Act are sentenced to suffer rigorous imprisonment for two years each and to pay a fine of Rs. 500 each in default rigorous imprisonment for three months each.

69. As regards Sankar Sundar Dutta and Pranab Nag, sentences imposed against them shall run concurrently.

70. As all the respondents are on bail, we cancel their bail bond with immediate effect and they are directed to surrender before the trial Court within 15 days from this order failing which the trial Court shall take necessary steps for their apprehension and for sending them to prison to suffer the imprisonment.

71. Send LCR along with copy of this judgment forthwith to the trial Court for information and for taking appropriate action in the light of directions contained in this judgment.

72. Urgent xerox certified copy of this judgment be supplied to the parties on making application within three days on priority basis free of cost.

Tapas Kumar Giri, J.

73. I agree.