IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1181 of 2019

GOUTAM JOARDAR — **Appellant**

VERSUS

STATE OF WEST BENGAL — **Respondent**

WITH

CRIMINAL APPEAL NO.1182 of 2019

KARTICK DAS & ANOTHER — **Appellants**

VERSUS

STATE OF WEST BENGAL — **Respondent**

WITH

CRIMINAL APPEAL NO.1762 of 2019

SHIBU KAHAR @ DODAN @ DHUMA — **Appellant**

VERSUS

STATE OF WEST BENGAL — **Respondent**

AND

CRIMINAL APPEAL NO.44 of 2020

RAJU RABIDAS @ SHERA — **Appellant**

VERSUS

STATE OF WEST BENGAL — **Respondent**

ORDER

Criminal Appeals Nos.1181, 1182, 1762 of 2019 and 44 of 2020 are preferred by accused Goutam Joardar; Kartick Das and Biltu Bhattacharya; Shibu Kahar @ Dodan @ Dhuma; and Raju Rabidas @ Shera challenging the common judgment and order dated 13.03.2019 passed by the High Court of Judicature at Calcutta dismissing the appeals preferred by said accused and confirming their conviction and sentence recorded by the Sessions Judge, Malda in Sessions Trial No.07 of 2012.

The basic facts including the case of the prosecution as are discernible from the judgment of the High Court are as under:

> "Prosecution case as alleged against the appellants is to the effect that the appellants are dangerous and desperate men who were terrorising the fish traders in the locality. Meeting was convened by the merchant association over the issue and the appellants gave an undertaking that they will not create trouble. On 29th April, 2011, the appellants came to the fish stall of one Ajoy Dey, (P.W.1) and his elder brother Paritosh Dey @ Akal, the deceased herein ransacked their fish stall and looted money and fish as therefrom. The matter was informed to the police station as well as the local traders' association. Proceeding under Section 107 of the Code of Criminal Procedure was initiated against him. Thereafter, the appellants again threatened the victim and his brother with dire consequences.
>
> Finally, on 8.5.2011 at 6.30 A.M., the appellants accosted the victim in front of R.S.P. party office and assaulted him on his neck and shoulder with sharp cutting weapons and shot at the victim. As a result, the victim died. Over this incident, his brother Ajoy Dey, P.W.1 lodged first information report resulting in registration of Balurghat P.S. Case No.218 of 2011 dated 08.05.2011 under Sections 302/120B of the Indian Penal Code read with Section 27(3) of the Arms Act.
>
> In the course of investigation, the appellants were arrested and pursuant to the statement of Goutam Joarder one revolver with cartridge was recovered. On the statement of Shibu

> Kahar @ Dodon @ Dhuma a dagger and a bhojali were also recovered. Post mortem was conducted on the body of the victim and fragment of bullet was recovered from his body. Ballistic report was obtained with regard to seized fire arms and the bullet fragment recovered from the body of the victim. In conclusion of investigation, charge sheet was filed against the appellants and others. Pursuant to direction passed by this Court in CRR No.3402 of 2011, the case was transferred to the Court of Sessions, Malda for trial and disposal. Charges were framed under Sections 302/120B IPC and under section 27(3) of the Arms Act. Co-accused Khokon Karmakar and Anay Upadhyay assailed the framing of charge before this court in CRR No.2559 of 2012 and a learned Judge of this court by order dated 06.08.2012 quashed the charges framed against the said co-accused. In the course of trial, prosecution examined 37 witnesses and exhibited number of documents. Defence of the appellants was one of innocence and false implication."

Thus, six persons were tried in Sessions Trial No.07 of 2012 on the file of the Court of Sessions Judge, Malda in respect of the offences punishable under Sections 302/120B of the Indian Penal Code, 1860 read with Section 27(3) of the Arms Act, 1959.

The Trial Court by its judgment dated 14.12.2012 accepted the case of the prosecution and convicted accused Goutam Joardar, Kartick Das and Biltu Bhattacharya, Shibu Kahar @ Dodan @ Dhuma and Raju Rabidas @ Shera, but acquitted accused Babun Sarkar. By order dated 15.12.2012, the Trial Court sentenced the accused as under:

> "That the convict Goutam Joarder is hereby sentenced to suffer imprisonment for life and pay a fine of Rs.5,000/- (five thousand), in default to pay fine to S.I. for six months more for the offence u/s 302/34 of the I.P.C.
>
> That the convict Shibhu Kahar @ Dodan @ Dhuma is hereby sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (five thousand), in default to pay fine to suffer S.I. for six months more for offence u/s 302/34 I.P.C.
>
> That the convict Kartic Das is hereby sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (five thousand), in default to suffer S.I. for six months more for the offence u/s 302/34 I.P.C.

> That the convict Raju Rabidas @ Shera is hereby sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (five thousand), in default to pay fine to suffer S.I. for six months more than the offence u/s 302/34 I.P.C.
>
> That the convict Biltu Bhattacharya is hereby sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (five thousand), in default to pay fine to suffer six months more than the offence u/s 302/34 of the I.P.C."

Being aggrieved, the convicted accused preferred Criminal Appeals Nos.539 and 627 of 2013 and Criminal Appeal Nos.112 and 153 of 2014 in the High Court. By its judgment dated 13.03.2019, which is presently under challenge, the High Court affirmed the view taken by the Trial Court and dismissed said appeals.

Mr. Raj Kumar Gupta, learned Advocate appearing for the appellants invited our attention to the testimonies of two eye witnesses, namely, PW18 and PW19 and submitted that the delay in recording their statements under Sections 161 and 164 of the Code of Criminal Procedure, 1973 respectively would be fatal to the case of the prosecution. It was submitted that no explanation was forthcoming why there was delay in recording their statements. Reliance was placed on the decisions of this Court in *Balakrushna Swain v. State of Orissa,* (1971) 3 SCC 192; *Alil Mollah & Another v. State of West Bengal,* (1996) 5 SCC 369; and, *Shahid Khan v. State of Rajasthan*, (2016) 4 SCC 96.

It was further submitted by Mr. Gupta that apart from the testimonies of said two witnesses, there was nothing on record to justify the conviction of the appellants.

Ms. Liz Mathew, learned Advocate appearing for the State on the other hand submitted that the terror unleashed by the accused was of such magnitude that the concerned witnesses had fled away in fear and that it was only after the appropriate steps were taken by the investigating machinery including the arrest of the accused that the witnesses came forward.

Ms. Mathew also submitted that apart from the eye-witness account, there were supporting pieces of material in the form of recoveries which were conclusive in nature.

It is true that there was some delay in recording the statements of the concerned eye-witnesses but mere factum of delay by itself cannot result in rejection of their testimonies.

The material on record definitely establishes the fear created by the accused. If the witnesses felt terrorised and frightened and did not come forward for some time, the delay in recording their statements stood adequately explained. Nothing has been brought on record to suggest that during the interregnum, the witnesses were carrying on their ordinary pursuits.

Thus, the eye-witness account unfolded through PW18 and PW19 cannot be discarded. We have gone through their testimonies and are convinced that their statements were cogent, consistent and trustworthy.

We, therefore, reject the submissions advanced by Mr. Raj Kumar Gupta, learned Advocate. On merits, we do not find any reason to take a different view in the matter.

Affirming the view taken by the Trial Court and the High Court, these appeals are dismissed.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(BELA M. TRIVEDI)

New Delhi,
October 7, 2021.