

ITEM NO.101

COURT NO.8

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NOS. 1316-1317/2005

STATE OF WEST BENGAL

APPELLANT(S)

VERSUS

RABINDRA PASWAN AND ORS.ETC.

RESPONDENT(S)

(WITH APPLN. (S) FOR ISSUE OF BAILABLE WARRANT OF ARREST AND
PERMISSION TO FILE ADDITIONAL DOCUMENTS AND OFFICE REPORT)

Date : 27/10/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s)

Mr. Kabir Shankar Bose, Adv.

Mr. Parijat sinha, Adv.

For Mr. Anip Sachthey, Adv.

For Respondent(s)

Mr. Shibashish Misra, Adv. [N/P]

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order. Consequently, all pending CRL.M.Ps. are also dismissed.

[VINOD LAKHINA]
COURT MASTER[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 1316-1317/2005

STATE OF WEST BENGAL . . . APPELLANT

VERSUS

RABINDRA PASWAN AND ORS.
ETC. . . RESPONDENTS

ORDER

1. Aggrieved by the acquittal ordered by the High Court in respect of respondents Nos.1 to 3 (Rabindra Paswan, Birendra Paswan and Subhas Bhowmick respectively) and dismissal of State's appeal against the acquittal ordered by the learned trial Court in respect of respondents Nos. 4 to 6 (Balmiki Paswan, Purusattam Das Khoteta @ Tolly and Bapi Ghose) the State of West Bengal is in appeal before us.

2. The accused (respondents Nos. 1 to 3) who had been convicted of the offence under Section 302/34 of the Indian Penal Code, 1860 ("IPC" for short) as well as Section 120-B IPC by the learned trial Court have been acquitted by the High Court. The said acquittal is primarily founded on the basis of the inconsistencies in the evidence of the sole eye-witness P.W.6 - Bandana Bose.

3. We have considered the deposition of P.W.6 - Bandana Bose and the reasoning of the High Court. P.W. 6 - Bandana Bose has not been supported by P.W.7 - Rabi Bardhan, P.W.1 - Suraj Narayan Mishra and P.W.5 - Baleswar Misra which support was crucial to enable her testimony to act as a safe and sound basis to record a finding of conviction. That apart, the High Court noticed an unnatural feature in the

evidence of P.W. 6 - Bandana Bose, namely, that immediately after the incident she reached her flat where she was residing with her uncle and aunt-in-law. Though in the close confines of the flat with her uncle and aunt-in-law, she did not report the incident until the next day. Over and above the aforesaid unnatural feature in the evidence of P.W. 6, Bandana Bose, there is a serious contradiction between her evidence and the ballistic report. P.W.6 though had stated that the incident of firing on the deceased took place from a distance of 2-3 feet, the said fact is not supported by the ballistic report. It is in the aforesaid circumstances that the High Court thought it proper to disbelieve P.W.6 Bandana Bose and acquit the accused respondents 1 to 3 of the charge under Section 302/34 IPC. Insofar as the offence of criminal conspiracy under

Section 120-B IPC is concerned, the High Court has noticed that to bring home the charge under Section 120-B IPC the prosecution had not brought on record any cogent and reliable evidence at all.

4. Having considered the grounds and reasons on which the High Court thought it proper to acquit the accused (respondents Nos. 1 to 3), we find no infirmity in the said conclusion of the High Court.

5. Insofar as the order of the High Court in the State's appeal before it as against the acquittal of the respondents Nos. 4 to 6 ordered by the learned trial Court is concerned, we find that the acquittal ordered by the learned trial Court is based on a consideration of the evidence on record which demonstrates the absence of any clear and cogent evidence

so far as the culpability of the said accused respondents 4 to 6 is concerned.

6. In these circumstances, we find no merit in the present appeals. The appeals are, accordingly, dismissed and the order of the High Court is affirmed. Consequently, all pending Crl.M.Ps. are also dismissed.

.....,J.
(RANJAN GOGOI)

.....,J.
(PINAKE CHANDRA GHOSE)

NEW DELHI
OCTOBER 27, 2015