

Anwarali Sarkar and ors. Vs. the State

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Court : Kolkata

Decided On : May-26-1955

Reported in : AIR1955Cal535,1955CriLJ1348

Judge : K.C. Das Gupta and ;Guha, JJ.

Acts : West Bengal Tribunals of Criminal Jurisdiction Act, 1952 - Sections 5, 8, 10 and 12; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 193, 288 and 338; ;West Bengal Special Courts Act, 1950; ;[Evidence Act, 1872](#) - Sections 80 and 145; ;[Constitution of India](#) - Article 73(2); ;Explosive Substance Act, 1908 - Sections 3, 5 and 7; ;[Government of India Act, 1935](#) - Section 124(1)

Appeal No. : Criminal Admitted Appeal No. 250 of 1953

Appellant : Anwarali Sarkar and ors.

Respondent : The State

Advocate for Def. : Sankar Banerjee, Standing Counsel and ;Jitendra Mohan Banerji, Adv.

Advocate for Pet/Ap. : Ajit Kumar Datta and ;Prasun Chandra Ghose, Adv.

Judgement :

K.C. Das Gupta, J.

1. The appellants were tried by a special Tribunal constituted under the Tribunals of Criminal Jurisdiction Act, 1952, (West Bengal Act 14 of 1952). The learned Judge who presided over the Tribunal framed charges against all the appellants of conspiracy to commit offences under Sections 302, 324, 342, and 427, Penal Code and Sections 3 and 5, Explosive Substances Act and Section 19(f), Indian Arms Act of 1878.

Seven of the appellants together with one Nepal Chandra Mazumdar who has been acquitted were also charged with specific offence under S. 802, Penal Code for having intentionally caused the death of F. G. Turnbull, a foreman of the Structural Section of Messrs, Jessop and Co. at Dum Dum. One appellant, Simon Bam was charged with a specific offence under Section 302, Penal Code for having intentionally caused the death of A. Dwyer, an employee of Messrs. Jessop and Co.

The seven appellants who were charged with the specific offence of murder of F. G. Turnbull were also charged with a specific offence under Section 201, Penal Code on the allegation that they had caused evidence of the murder to disappear by removing the dead body of Turnbull and throwing it into a burning furnace; appellant Rajkrishna Chakravarty was charged under Section 201, Penal Code for causing the evidence of the murder of A. Dwyer to disappear by removing his body and putting it inside a burning furnace.

Raj Krishna Chakravarty was further charged with a specific offence under Section 3, Explosive Substances Act for causing explosion by explosive substances and another under Section 5 of the same Act for being in possession of explosive substances, namely, bombs; the appellant Makhan Lal Bose was also charged with a specific offence under Section 302, Penal Code for intentionally causing the death of Augier, a Foreman of the Mechanical section of Jessop Factory and another offence under Section 324, Penal Code for having caused hurt to Asoke Kumar Das, an Assistant Foreman of the Company by means of iron rods.

He was also charged under Section 3, Explosive Substances Act for having caused explosion by means of explosive substances; the appellant Santosh Kumar Mitra was further charged with a specific offence under S. 435, Penal Code

for commission of mischief by fire in respect of a motor car belonging to A. E. Howell and another offence under S. 427, Penal Code for mischief by causing damage in respect of a motor car belonging to Mr. Vajda; the appellants Nepal Chandra Manna, Kartic Chandra Manna and Kartic Chandra Dhara were further charged with a specific offence under Section 342, Penal Code for wrongful confinement of Madan Mohan Sadhukhan and Durgadas Lahiri; Kartic Chandra Dhara was further charged under Section 342, Penal Code for wrongful confinement of P. C. Bose; Ramjatan Singn was further charged under Section 342, Penal Code for two offences of wrongful confinement of A. P. Thakur and of Sambhupada Banerjee,

2. All the appellants have been convicted of the conspiracy charge,' that is, under Section 120-B read with Sections 302, 324, 342 and 427, Penal Code, Sections 3 and 5, Explosive Substances Act and 19(f), Indian Arms Act. Anwarali, Balmukul, Kartio Chandra Dhara, Nepal Chandra Manna and Ramjatan Singh have afl been convicted further under Section 302, Penal Code for the murder of Turnbull.

Anwarali, Balmukul, Kartic Chandra Dhara and Ramjatan Singh have been convicted under Section 201, Penal Code for causing the evidence of the murder of Turnbull to disappear. Simon Ram has been, convicted of the charge under Section 302, Penal Code for causing the death of A. Dwyer. Rajkrishna Chakravarty has been convicted under Section 201, Penal Code for causing disappearance of the evidence of the murder of A. Dwyer.

He has also been convicted under Sections 3 and 5, Explosive Substances Act; Makhan Lal Bose has been convicted under Section 302, Penal Code for causing the death of Augier and under Section 324, Penal Code for causing hurt to A. K. Das and under Section 3, Explosive Substances Act; Nepal Chandra Manna, Kartic Chandra Dhara, Kartic Chandra Manna and Ramjatan Singh have further been convicted of several specific offences under Section 342, Penal Code with which they had been charged; Santosh Kumar Mitra has been further convicted of specific offence under Sections 435 and 427. Penal Code With which he was charged.

The appellants convicted of the offence of murder have been sentenced to transportation for life for that offence and no separate sentence has been passed for the other offences. Those appellants who have not been convicted of any offence under Section 302, Penal Code have been sentenced to transportation for life on the conspiracy charge and no separate sentence has been passed for the other offences as against them.

3. The prosecution case is that between the 24th and 26th February 1949 these appellants who were all workmen at that time of Jessop Factory at Dum Dum entered into a conspiracy for committing several offences, the principal offence agreed upon being the murder of European officers of the Company and other offences agreed upon being the wrongful confinement of other officers of the company, the possession and use of explosive substances, the commission of mischief to property, the Causing of hurt, the possession of arms in order to facilitate the achievement of the main object of the conspiracy, namely, the murder of European officers of the Company.

It is alleged that for more than a year before these dates relations between the Company and the workmen, specially those who were paid wages every week on a daily basis, had been strained over the claim of bonus; and that matters came to a head with the discharge of 137 workmen of the Mechanical Section of the company on the 24th February.

It is said that exasperated by this last move, the leading members of the Labour Union to which most of the workmen of the Company belonged, agreed on a scheme to murder European officers of the company and that to prevent obstruction from Indian and Anglo-Indian officers they agreed further that at the time the European officers would be attacked and murdered, the Indian and Anglo-Indian officers would be kept confined in such places and in such manner as would make it impossible for them to see the actual occurrence.

4. For a proper appreciation of the evidence, it will be convenient to set out at this stage the main allegations of the prosecution as regards what happened in the Factory on 26-2-1949. These are: At about 11 a. m. on that date some of the conspirators including Rajkrishna Chakravarty, who was carrying in a haver-sack

some bombs came into the westernmost room of the office building of the Structural Section situated at a short distance from the main gate of the section which opens on the Station Road; and that Rajkrishna Chakravarty, threw several bombs inside the room. This room was being used at that time as the office room by the Works Manager of the Structural Section and W. E. Howell, Works Manager was at that time sitting in the room along with Dwyer, one Birchenough and one excise officer, Mr. Dwyer was an officer of the Mechanical Section of the-Factory which is situated north of the Structural Section.

He was also secretary of the Social Club of the Factory. Dwyer had come with Binchenough and the excise officer to discuss matters in connection with an excise licence for the Club. When the bombs were thrown, all of them ran out of the room, Howell being the last to get out. Some of the Conspirators who were waiting on the southern verandah by which all these officers tried to escape set upon Dwyer and killed him one of the things which he was struck being a bearer's stool. Birchenough and Howell managed to escape.

5. F. G. Turobull, who was at that time the Foreman of the Assembling shop was then in the Assembling Shop which is situated several hundred yards to the north of the office room. Immediately east of the office building is the Preparing Shop, running north to south for length of 420 ft., north oi that being the Drilling Shup running north to south for another 420 ft., north of the Drilling Shop being the Assembling Shop.

On hearing the sound of explosion, he ran towards the office building. Before however Turnbull could reach that building he was surrounded by a number of conspirators and beaten with from rods. He thed on the spot and then his body was dragged to one of the furnaces and thrown in there. The body of Dwyer who had thed as a result of the attack on him was also dragged to the same furnace and thrown into it.

Mr. Brennon who was the Foreman of the Press Shop situated towards the east of the Assembling Shop was also murdered by the conspirators and his body was thrown, into another furnace.

6. Some time before Rajkrishna threw the bombs in Howell's room, some of the conspirator had set about the task of confining Indian and Anglo-Indian officers. Two of them were confined in the strong room of the Electric Godown; two in the office of the Drilling Shop and six in the Assistant Foreman's office room. It was after the murders had been perpetrated & the bodies disposed of in the manner mentioned above, that these officers who had been confined were brought out of their places of confinement and led to the gate of the Factory on the Dingla Road and allowed to depart.

7. Before this, however, things had been happening in the Mechanical Section of the Factory also. Within, a few minutes after the attack on the officer commenced in the Structural Section, some of the conspirators attacked the office of the Works Manager in the Mechanical Section; and while they were unable to break open the door of the room in which A. E. Howell, the Works Manager and some others had shut themselves, one of the attacking party threw a bomb through an opening that had been made in the wooden panel of the door.

Two officers who were near the Machine Shop were also attacked and while one of them Mr. A. K. Das escaped with minor injuries, the other viz., Augier received serious injuries, as a result of which he died later on the same day. Some of the conspirators set fire to a motor car belonging to A. E. Howell, Works Manager of the Mechanical Section while another motor car belonging to one Vajde was also damaged.

8. The police arrived shortly after 11-30 a.m. They went to the Mechanical Section first and later in the day to the Structural Section. Sometime after it was discovered that the three officers, Turnbull, Brennon and Dwyer were missing, three skeletons were discovered in the furnaces. What remained of the bodies could not be taken out of the furnaces that day because of the extreme heat.

9. All the accused pleaded not guilty. The defence case is that some of the workmen of the Mechanical Section who had been discharged had entered the factory on the 26th February and there was some trouble between them and the European officers; and that there was no conspiracy at all of the nature as alleged to murder European officers and to commit other offences for facilitating the

commission of murder.

In any case, they pleaded that none of them were parties to any such conspiracy. From the cross-examination of the prosecution witnesses, the defence case further appears to be that the story that Turnbull or Brennan or Dwyer was murdered is not true; that the skeletons that were found in the furnaces were the remains of the bodies of workmen of the Factory whom the European officers killed that day.

The defence further is that even if it be found that Turnbull or Brennan or Dwyer was murdered, the accused persons took no part in the murder. Makhan Lal Bose's defence is that he took no part in any attack on A. K. Dass or on Augier and that he has been falsely implicated as he had had some trouble with his superior officer shortly before the date of occurrence.

10. As regards the charge of wrongful confinement of Indian, and Anglo-Indian officers, the defence case is that workmen who were loyal to these officers helped them to get inside places of safety and stood outside the doors to protect these officers from injury. The case of some of the accused further appears to be that they have been falsely implicated as they were known or suspected to be taking leading part in the activities of the Labour Union.

11. Before we can come to the consideration of the evidence for deciding whether the appellants have been rightly convicted, it is necessary to consider first several questions of law that have been raised. The first of these is that the Tribunal which was constituted under West Bengal Act 14 of 1952 was not competent to try offences committed prior to the enactment of this Statute and so the trial of the present appellants for offences committed in February 1949 was without jurisdiction. In my judgment, this contention must fail. The Tribunals of Criminal Jurisdiction Act, 1952, did not create any new offences nor did it provide for enhanced punishment for any old offences. Apart from Section 8 which provides for an appeal to the High Court by a person convicted by the Tribunal, the provisions of this Act relate to the procedure for trial of offences and consequently must be held to be retrospective in their operation.

Section 8 giving a right of appeal is no doubt a provision of substantive law, but as it gives the right of appeal to any person convicted on a trial held by a Tribunal, it applies whenever the trial itself is held after the Act was passed. I have, therefore come to the conclusion that the provisions relating to a trial by a Special Tribunal constituted Under the Act are applicable to offences committed before the Act was passed.

12. The next contention is that the Special Tribunal acted illegally in tendering pardon to Akkas AH who was one of the accused and consequently the evidence of Akkas Ali is not legal evidence that can be considered at the trial.

13. The West Bengal Act 16 of 1952 does not itself contain any provision as regards the tendering of pardon by the Tribunal. Section 10 of the Act, however, provides that the provisions of the Criminal Procedure Code in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall apply to all matters connected with, arising from, or consequent upon, a trial by a Tribunal constituted under this Act as if the Tribunal were a Court of Session exercising original criminal jurisdiction.

Section 338, Criminal P. C. empowers a Court, of Session to which a case has been committed to tender pardon to an accused after commitment On behalf of the appellants, it is argued by Mr. Datta that as there is no commitment to the Tribunal, the provisions of Section 338. Cr. P. C. which come into play only after commitment cannot apply.

While Section 193, Criminal P. C. provides that a Court of Session will take cognizance of cases on commitment, Section 5, Tribunals of Criminal Jurisdiction Act, 1952 provides that a, Tribunal may take cognizance of scheduled offences without the accused being committed to it for trial. If there had been any provision in this Act saying that even in the absence of an actual commitment, the case would be deemed to have been committed for trial the provisions of Section 338, Criminal P. C. would have become applicable.

It is contended on behalf of the State that the words 'as if the Tribunal were a Court of Session exercising original Criminal jurisdiction' necessarily produce the

consequence that the case of which cognizance is taken would be deemed to have been committed to the Tribunal even though, in fact, there has been no commitment.

If there was nothing else, I would have been inclined to accept this argument and to hold that the words 'as if the Tribunal were a Court of Session exercising original - criminal jurisdiction' should be read as, 'as if the Tribunal were a Court of Session exercising original criminal jurisdiction in accordance with the Criminal Procedure Code, after commitment.'

The words used by the Legislature cannot, however, be said to put the matter beyond doubt. It is necessary and proper, therefore, to examine the previous state of the law. The Tribunals of Criminal Jurisdiction Act, 1952, was enacted in place of the West Bengal Special Courts Act, 1950, which is repealed by Section 12 of the present Act.

In West Bengal Special Courts Act, 1950, we find it provided in Sub-section (3) of Section 6 that a Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence, tender a pardon to such person, it being further provided that any pardon so tendered shall, for the purposes of Sections 339 and 339A of the Code, be deemed to have been tendered, under Section 338 of the Code.

It is well to remember that in the preceding sub-section of Section 6, it had been provided that in matters not coming within the scope of Sub-section (1) - that is, as regards cognizance being taken without commitment and the procedure of warrant cases being followed and English being deemed to be the language of the Court the provisions of the Criminal Procedure Code, so far as they are not inconsistent with this Act, shall apply to the proceedings of a Special Court and for the purposes of the said provisions a Special Court shall be deemed to be a Court of Session.

There was also in Section 17, Special Courts Act. 1950, provisions similar to what we find in Section 10 or the Act 14 of 1952, that the provisions of the Code in so far as they may be applicable and in so far as they are not inconsistent with the

provisions of this Act shall apply to all matters connected with, arising from or consequent upon, a trial by a Special Court.

It is true that Section 17 of the 1950 Act did not say, 'as if the Tribunal were a Court of Session exercising original criminal jurisdiction', but that can hardly be considered to be a real distinction as the words 'a Special Court shall be deemed to be a Court of Session,' appeared in Sub-section (2) of Section 6.

It is obvious, therefore, that the Legislature was of opinion that the provisions of Sub-section (2) of Section 8 and the provisions of Section 17 were not sufficient to empower a Special Court to tender pardon to an accused and in that view made special provisions therefor in Sub-section (3) of Section 6. When in 1952, the Legislature repealed the 1950 Act and enacted :ⁿ its place this new Act, the Tribunals of Criminal. Jurisdiction Act, .1952, the Legislature in its wisdom] has omitted any provision similar to what had been enacted in Sub-section (3) of Section 6.

I find it impossible, in view of this, to escape the conclusion that the Legislature decided to take away the power and jurisdiction of tendering pardon from the Special Tribunals. The conclusion that necessarily follows from this is that the learned Special Judge presiding over the Special Tribunal has acted without jurisdiction in tendering pardon to Akkas Ali and mat consequently the evidence as recorded by him of Akkas Ali cannot be taken into consideration for the purpose of this case.

14. A question as regards the admissibility of the evidence of statements of some of the witnesses at the previous trial has been raised by the learned Standing Counsel. Some of these accused persons were tried by Mr. S.N. Guha Ray as a Special Judge presiding over a Special Court under the West Bengal Special Courts Act, 1950.

As, however, the sections of the Act which empower a Special Court to 'try such offences or classes of offences or cases or classes of cases, as the State Government may, by general or special order in writing, direct,' was held by this Court and ultimately by the Supreme Court to be ultra vires the trial by Mr. Guha

Ray was held to be invalid and there has been a fresh trial by the Special Judge constituted under the 1952 Act.

During the cross-examination of several of the witnesses, attention of the witnesses was drawn to what they were alleged to have deposed at the previous trial before Mr. Guha Ray for the purpose of contradiction of their present evidence under Section 145, Evidence, Act. It appears to have been contended before the learned Judge presiding over the Special Tribunal that as the Special Court presided over by Mr. Guha Ray was not a competent Court, there was no presumption of correctness of the record of the statements and consequently what had been produced to show what statements were made by these witnesses at the previous trial was not sufficient to show that such statements were actually made.

The learned Judge while agreeing that no correctness of presumption under the Evidence Act attached to these records, was of opinion that the correctness of the record was proved by the fact that the witnesses themselves admitted their signatures appended to their previous depositions:

15. It is now contended by the learned Standing Counsel that the mere presence of signatures of the witnesses does not show the correctness of the record.

16. In reply to this, Mr. Dutt tried to convince us that even though the Special Court over which Mr. Guha Ray presided was not a competent Court to try the offences, he was competent to record the evidence and consequently the presumption of correctness of the record under Section 80, Evidence Act applied. In my judgment, the presumption of correctness cannot attach to the record of a Court which was not competent to try the case. When the Court was not competent to try the case, it was really not functioning as a Court at all and we must proceed on the basis that Mr. Guha Ray was recording statements of witnesses not as a Court, the functions of which he could not, in law, perform. Consequently, it must be held as was held in the case of -- 'Emperor v. Ajit Kumar Ghose : AIR1945 Cal159 , that the presumption of correctness of the record under Section 80, Evidence Act does not attach to these records.

Obviously, that, however, does not mean that there was no other means of proving that such statements were made. In every case where a statement is said to have been made on a previous occasion, we have therefore to look to the evidence that has been given to see whether this previous statement is proved to have been made. In the different documents said to contain the depositions of witnesses we find signatures purporting to be of Mr. S. N. Guha Ray, which signatures have been proved by the evidence to be of Mr. S. N. Guha Ray. We also find above the signatures which have been proved to be of Mr. Guha Ray the words 'Read over and explained to the witness in the presence of the accused and admitted by him to be correct'. It appears, however, from the evidence that has been given, that what was recorded in those sheets of paper was not recorded by Mr. Guha Ray himself but was typewritten by a stenographer at his dictation. What appears to have happened is that after a witness made his statement, Mr. Guha Ray dictated in English what was to be typed and then and there the stenographer printed those words with his typewriting machine. There is, of course, the chance that some statement made by the witness would be missed by Mr. Guha Ray and there is again the chance that something dictated by Mr. Guha Ray may be omitted by the stenographer. In view of this it is necessary in each particular case to examine what is the nature of the statement said to have been made.' For example, if the statement said to have been made is 'I saw two persons there, X and Y' and we find such a statement recorded, it is hardly probable that any mistake has been made and we ought to hold that it has been proved even without the presumption of correctness under Section 80, Evidence Act that such, a statement was, in fact, made on the previous occasion.

If, however, the statement is 'I recognised X, Y, Z and W', it may very well be that in addition to X, Y, Z and W some other name was mentioned which either the learned Judge omitted to dictate or though the learned Judge dictated the stenographer omitted to print. In the absence of presumption of correctness, under Section 80, Evidence Act it will in such a case not be proper in my opinion, to hold that on the previous occasion the statement was exactly as we find recorded -- viz. 'I recognised X, Y, Z and W' and no other names were mentioned. Where the defence wants to use the entire record of the evidence of a witness at the former trial to show that a certain statement was not made, the probability that the

statement said not to have been made, may have actually been made but omitted from the record, remains even greater, in the absence of the presumption of correctness of the record under Section 80, Evidence Act.

In such cases, consequently, I am of opinion that the record that has been produced purporting to be the evidence as recorded by Mr. Guha Ray at the previous trial, will not be sufficient to show that the statement alleged not to have been made was not made. (His Lordship then proceeded to discuss evidence in the case. He considered the, various things which were proved to have happened in the Jessop Factory on the morning of the 26th February and concluded from the proved circumstances that there was a conspiracy between several persons--workers of Jessop Factory--to murder European officers of the company and to wrongfully confine other officers during the murderous attack, but he was not satisfied that the commission of offences under the Explosive Substances Act or the Arms Act or of mischief was agreed upon, and held that whoever was a party to the conspiracy committed an offence punishable under Section 120-B, read with Sections 302 and 342, Penal Code.

After discussing the evidence on the charge of murder of Dwyer and Turnbull against some of the appellants, his Lordship considered the question as to how--far the evidence proved the appellants to have been parties to that conspiracy and discussed the evidence against each of the appellants. On the charge under Section 201, Penal Code against Rajkrishna Chakravarty, his Lordship held, on consideration of the evidence, that the prosecution had failed to prove the charge. The judgment then proceeded:

17. As regards the charges, under Sections 3 and 5, Explosive Substances Act against Rajkrishna Chakravarty, Mr. Datta raised a point that there has been no legal consent to Rajkrishna's trial for offences under Sections 3 and 5, Explosive Substances Act. Consent to the 'Second Tribunal at Alipore constituted by the judicial Department Notification No. 4633-J, dated 22-8-1952, proceeding to the trial' of Rajkrishna under Sections 3 and 5 of the offences under this Act was given by the Government of West Bengal by an order which is marked Ex. 53. The function of giving such consent was entrusted by the Explosive Substances Act to

the Central Government. The Central Government in exercise of the powers conferred by Sub-section (1) of Section 124, [Government of India Act, 1935](#), delegated these functions to the Provincial Governments. Mr. Datta contends that after the Constitution came into force this delegation under the [Government of India Act, 1935](#), has no longer any legal validity.

The objection might have been substantial but for Art. 73(2) of the Constitution which is in these words:

'Until otherwise provided by Parliament, a State and any officer Or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or function as the State or officer or authority thereof 'could exercise immediately before the commencement of this Constitution.'

In my judgment, the effect of this provision is that the power the State of West Bengal had to give, consent to a prosecution under the Explosive Substances- Act before the commencement of the Constitution continued upto the time of the trial and was a legal and valid consent. (His Lordship then discussed the evidence on those charges and the evidence on charges under Sections 201, 342, 302, ' 435 and 427 against the appellants and concluded:)

18. I would, therefore, allow the appeals of Anwarali Sarkar, Balmukul, Kartic Chandra Dhara, Nepal Chandra Manna, and Ramjatan Singh against their conviction and sentence under Section 302, Penal Code and the appeals of Anwarali, Balmukul, Kartic Chandra Dhara, Hamjatan Singh and Rajkrishna Chakravarty against their conviction under 8. 201, Penal Code and acquit them of these charges.

19. In the appeals of Anwarali, Balmukul, Kartic Chandra Dhara, Ramjatan Singh, Rajkrishna Chakravarty, Makhan Lal Bose and Baraswati Prosad Tewary against the conviction on the conspiracy charge, I would alter the conviction to one under Section 120-B, read with Sections 302 and 342, Penal Code: For this offence, I would sentence Anwarali Sarkar, Balmukul, Kartic Chandra Dhara, Ramjatan Singh and Makhan Lal Bose to transportation for life, and maintain the sentences

of transportation for life passed by the Tribunal against Rajkrishna Chakravarty and Saraswati Prosad Tewary.

20. I would allow the appeals of Kartic Chandra Manna, Nepal Chandra Manna and Santosh Kumar Mitra against their conviction under the conspiracy charge and acquit them of that charge,

21. I would dismiss the appeals of Kartic Chandra Manna, Nepal Chandra Manna and Kartic Chandxa Dhara against their conviction under Section 342, Penal Code and while passing no sentence against Kartic Chandra Dhara for these offences, would sentence Kartic Chandra Manna and Nepal Chandra Manna each to rigorous imprisonment for one year for each charge, the sentences to run concurrently.

22. I would also dismiss the appeal of Santosh Kumar Mitra against his conviction under Section 435, Penal Code and sentence him thereunder to rigorous imprisonment for five years.

23. I would allow the appeal of Santosh Kumar Mitra against the conviction under Section 427, Penal Code and acquit him of that charge.

24. I would dismiss the appeal of Rajkrishna Chakravarty against the conviction under Sections 3 and 5, Explosive Substances Act,

25. I would allow the appeal of Makhan Lal Bose against the conviction and sentence uader Section 302/34, Penal Code and acquit him of that charge.

26. I would dismiss the appeal of Makhan Lal Bose against the conviction under Section 324 of the Indian Penal Code.

27. I would allow the appeal of Simon Ram against his conviction on the conspiracy charge as well as his conviction under Section 302, Penal Code and order that he be acquitted of these charges. He should be set at liberty at once.

28. As Kartic Chaodra Manna and Nepal Chandra Manna have already served out the sentence now imposed on them, let them be set at liberty at once.

Guha, J.

29. I agree.

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