

SESSIONS CASE NO. 59 (K) OF 2011, KAMRUP (M), GUWAHATI

Present : Shri A. Chakravarty, A.J.S.

ORDER

30.01.2019

The convicts, namely 1. Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, 2. George Boro @ John @ B. Jwankhang, 3. Ajay Basumatary @ B. Aogi, 4. Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, 5. Rajendra Gayari @ Rajen @ Rifikhang 6. Onsai Boro @ Ajit Boro, 7. Lokhra Basumatary @ Lobo, 8. Indra Brahma, 9. Baishagi Basumatary @ B. Bithurai, 10. Jayanti Brahma @ Jugami, 11. Mathu Ram Brahma @ Mudai, 12. Prabhat Boro @ Tapa and 13. Raju Sarkar, are produced from judicial custody.

Learned Special Public Prosecutors, CBI, namely Mr. Tutumoni Deva Goswami and Mr. Dibyajyoti Das are present.

The learned counsels for the convicts are also present.

Heard the convicts on the question of sentence. They have pleaded leniency in awarding the punishment on the grounds they are in peace process with the Governments and that, they have suffered the harassment and agony of this case for several years.

As has been held in the judgment dated 28.01.2019, the prosecution has succeeded in bringing home the charges under Sections 120-B, 302, 326, 324, 435, 436 IPC, Sections 3 (b) and 4 (a)(b) (ii) of the Explosive Substances Act, 1908 and Sections 10, 13, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967 against the convicts namely, 1. Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, 2. George Boro @ John @ B. Jwankhang, 3. Ajay Basumatary @ B. Aogi, 4. Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, 5. Rajendra Gayari @ Rajen @ Rifikhang and 6. Onsai Boro @ Ajit Boro beyond all reasonable doubt.

Further, prosecution has also succeeded in bringing home the charges under Sections 326, 324, 435 IPC, Sections 3 (b) and 4 (a)(b) (ii) of the Explosive Substances Act, 1908 and Sections 10, 13, 16 and 20 of the Unlawful Activities

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(Prevention) Act, 1967 against the convicts namely, 7. Lokhra Basumatary @ Lobo, 8. Indra Brahma, 9. Baishagi Basumatary @ B. Bithurai, beyond all reasonable doubt.

Prosecution has also succeeded in bringing home the charges under Sections 302, 326, 324, 435, 436 IPC and Sections u/s 3 (b) and 4(a) (b) (ii) of the Explosive Substances Act, 1908 against the convicts namely, 10. Raju Sarkar, beyond all reasonable doubt. Hence, I hold him guilty of committing offences punishable under the said Sections of law and convict him accordingly.

The prosecution has also succeeded in bringing home the charges under Sections 10, 13, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967 against the convicts namely, 11. Jayanti Brahma @ Jugami, 12. Mathu Ram Brahma @ Mudai, and 13. Prabhat Boro @ Tapa beyond all reasonable doubt.

It is not necessary to discuss the law laid down by the Hon'ble Supreme Court to hold that the instant case is a rarest of rare case.

Therefore, normally, the convicts namely, 1. Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, 2. George Boro @ John @ B. Jwankhang, 3. Ajay Basumatary @ B. Aogi, 4. Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, 5. Rajendra Gayari @ Rajen @ Rifikhang and 6. Onsai Boro @ Ajit Boro, who had hatched the conspiracy to cause the serial bomb explosions and also caused the nine serial bomb explosions, with the active help and assistance of the other convicts, have to be condemned to death as per the rarest of rare case rule laid down by the Hon'ble Supreme Court in the case of ***Bachan Singh vs. State of Punjab, reported in (1980) 2 SCC 684, [1980] 2 SCR 864.***

There were also no mitigating circumstances for the convicts to cause the nine serial bomb explosions. Therefore, as the case is a rarest of rare case, it justifies awarding of death sentence to the convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro.

The convict Ranjan Daimari has already undergone imprisonment for about three years during trial. Further, the convict Ranjan Daimari was granted bail by my

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learned predecessor to enable him to participate in the ongoing discussion between the Government of India and the NDFB to solve their issues.

The convicts namely, Jayanti Brahma @ Jugami, Ajay Basumatary @ B. Aogi, Prabhat Boro @ Tapa and Raju Sarkar have been languishing in jail since last ten years.

The convicts namely, George Boro @ John @ B. Jwankhang, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang, Mathu Ram Brahma @ Mudai, Onsai Boro @ Ajit Boro, Lokhra Basumatary @ Lobo and Indra Brahma have been languishing in jail since last ten years. The convict Baishagi Basumatary @ B. Bithurai have been languishing in jail for about four years.

Further, the State should have tried the convicts speedily establishing the special court immediately after the bomb blast incidents. But, it did not do so. Further, though ultimately, this court was established for speedy disposal of the case, the trial could not proceed speedily due to non-appointment of a Public Prosecutor having knowledge of Assamese language as has been discussed in the judgment dated 28.01.2019. Therefore, the threat of death sentence has been hanging over the heads of all the convicts like Damocles' sword for nearly a decade.

The right to speedy trial is a fundamental right of every person accused of a crime. But, as can be seen from the discussion made above, in the instant case, the CBI, i.e., the Central Government and the Government of Assam have violated the fundamental right to speedy trial of the convicts.

In the case of **Abdul Rehman Antulay & Ors vs R.S. Nayak & Anr., reported in (2005) SCC**, the Hon'ble Supreme Court has held as follows:-

"Right to speedy trial is not enumerated as one of the fundamental rights in the Constitution of India, unlike the Sixth Amendment to the U.S. Constitution which expressly recognizes this right. The Sixth Amendment declares inter alia that 'in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial'. This is in addition to the Fifth Amendment which inter alia declares that 'no person shall....be deprived of life', which corresponds broadly to Article 21

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(and Clause 1 of Article 31, since deleted). This omission and the holding in A.K. Gopalan v. State of Madras: 1950 Cri L J 1383 probably explains why this right was not claimed or recognised as a fundamental right flowing from Article 21 so long as Gopalan held the field. Once Gopalan was over-ruled in R.C. Cooper (1970 S.C. 564) and its principle extended to Article 21 in Maneka Gandhi (1978 S.C. 597) Article 21 got unshackled from the restrictive meaning placed upon it in Gopalan. It came to acquire a force and vitality hitherto unimagined. A burst of creative decisions of this Court fast on the heels of Maneka Gandhi gave a new meaning to the Article and expanded its content and connotation. While this is not the place to enumerate all those decisions, it is sufficient to say that the opinions of this Court in Hussainara Khatoon cases decided in the year 1979, declaring that right to speedy trial is implicit in Article 21 and thus constitutes a fundamental right of every person accused of a crime, is one among them.

The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial."

In view of the above, I do not think it proper to let the Damocles' sword fall upon the convicts, which has been hanging over their head for nearly a decade, now. The State has no right to take away the lives of the convicts now as the State has failed miserably in its duty to provide speedy trial to them by establishing the special court immediately after the bomb blasts incidents. It is a shame that the State could not establish the special court to try the convicts immediately after the bomb blasts incidents. Further, it is disgusting that the CBI (the Central Government) and the

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Government of Assam, could not appoint a public prosecutor to conduct the trial of this rarest of rare case in the history of Assam and that too, in spite of repeated orders passed by this court and requests made by the Hon'ble Gauhati High Court.

But, the Court cannot be a mute spectator to the State's apathy towards the convicts and condemn them to death now, as during the trial and investigation, they have spent the best part of their life, which is their youth, in jail. If the convicts are condemned to death now, the same, in my considered opinion, will amount to causing gross injustice to them, which no court of law can do.

In view of above, considering the entire facts and circumstances of the case, I sentence the convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro to undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/- (Rupees ten thousand) only, each, on each count, in default to undergo rigorous imprisonment for six months each, on each count, for committing the offences punishable under Sections 120-B and 302 IPC, Section 3 (b) of the Explosives Substances Act, 1908 and Sections 10 (b) (i) and 16 (1) (a) of the Unlawful Activities (Prevention) Act, 1967, which, in my considered opinion, will meet the ends of justice in this case.

The convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro are also sentenced to undergo rigorous imprisonment for seven years each, and to pay fine of Rs. 5,000/- (Rupees five thousand) only, each, in default to undergo rigorous imprisonment for three months each, for committing the offence punishable under Section 326 IPC which, in my considered opinion, will meet the ends of justice in this case.

The convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro are also sentenced to undergo rigorous

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imprisonment for one years each, and to pay fine of Rs. 1,000/- (Rupees one thousand) only, each, in default to undergo rigorous imprisonment for one month each, for committing the offence punishable under Section 324 IPC which, in my considered opinion, will meet the ends of justice in this case.

The convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro are also sentenced to undergo rigorous imprisonment for three years each, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, in default to undergo rigorous imprisonment for two months each, for committing the offence punishable under Section 4(a)(b) (ii) of the Explosive Substances Act, 1908 which, in my considered opinion, will meet the ends of justice in this case.

The convicts namely, Ranjan Daimari @ D.R. Nabla @ Lasdum @ Loudum, George Boro @ John @ B. Jwankhang, Ajay Basumatary @ B. Aogi, Khargeswar Basumatary @ Rahul Brahma @ Kharamswar, Rajendra Gayari @ Rajen @ Rifikhang and Onsai Boro @ Ajit Boro are also sentenced to undergo rigorous imprisonment for three years each, on each count, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, on each count, in default to undergo rigorous imprisonment for two months each, on each count, for committing the offences punishable under Sections 13 and 20 of the Unlawful Activities (Prevention) Act, 1967, which, in my considered opinion, will meet the ends of justice in this case.

The convicts namely, Jayanti Brahma @ Jugami, Mathu Ram Brahma @ Mudai and Prabhat Boro @ Tapa are sentenced to undergo rigorous imprisonment for five years each, on each count, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, on each count, in default to undergo rigorous imprisonment for two months each, on each count, for committing the offences punishable under Sections 10, 13, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967, as they have not committed the offences punishable with death under Sections 10, and 16 of the said Act, which, in my considered opinion, will meet the ends of justice in this case.

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As the convicts namely, Lokhra Basumatary @ Lobo, Indra Brahma, Baishagi Basumatary @ B. Bithurai, have been held guilty of being members of the banned terrorist organization NDFB and for taking part in the terrorist activities of the said organization, and also held guilty of committing offences punishable under Sections 326, 324, 435 IPC, Sections 3 (b) and 4 (a) (b) (ii) of the Explosive Substances Act, 1908 and Sections 10, 13, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967. Therefore, they are sentenced to undergo rigorous imprisonment for three years each, on each count, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, on each count, in default to undergo rigorous imprisonment for two months each, on each count, for committing the offences punishable Sections 326 and 324 IPC; to undergo rigorous imprisonment for life each, and to pay fine of Rs. 10,000/- (Rupees ten thousand) only, each, in default to undergo rigorous imprisonment for six months each, for committing the offence punishable under Section 3 (b) of the Explosive Substances Act, 1908; to undergo rigorous imprisonment for three years each, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, in default to undergo rigorous imprisonment for two months each, for committing the offence punishable under Section 4 (a) (b) (ii) of the Explosive Substances Act, 1908; and to undergo rigorous imprisonment for five years each, on each count, and to pay fine of Rs. 3,000/- (Rupees three thousand) only, each, on each count, in default to undergo rigorous imprisonment for two months each, on each count, for committing the offences punishable Sections 10, 13, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967, as they have not committed the offences punishable with death under Sections 10, and 16 of the said Act, which, in my considered opinion, will meet the ends of justice in this case.

The convict Raju Sarkar is sentenced to undergo rigorous imprisonment for life for committing the offences punishable under Section 302 IPC and Section 3 (b) of the Explosives Substances Act, 1908, on each count, and to pay a fine of Rs. 10,000/- (Rupees ten thousand) only, on each count, in default to undergo rigorous imprisonment for six months, on each count; to undergo rigorous imprisonment for seven years, and to pay a fine of Rs. 5,000/- (Rupees five thousand) only, in default to undergo rigorous imprisonment for three months, for committing the offence punishable Sections 326 IPC; to undergo rigorous imprisonment for one year and to

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pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default to undergo rigorous imprisonment for one month, for committing the offence punishable under Section 324 IPC; to undergo rigorous imprisonment for three years and to pay a fine of Rs. 3,000/- (Rupees three thousand) only, in default to undergo rigorous imprisonment for two months, for committing the offence punishable under Section 4(a) (b) (ii) of the Explosive Substances Act, 1908, which, in my considered opinion, will meet the ends of justice in this case.

There is no necessity of sentencing the convicts for committing the offences punishable under Sections 435 and 436 IPC as they were not charged with committing the offences under the said sections of law though, the same would not have caused any prejudice to them as has been discussed in the judgment dated 28.01.2019.

Let us now consider whether the sentences should concurrently or consecutively?

In the case of **Mohd. Akhtar Hussain Alias vs. Assistant Collector Of Customs, reported in AIR 1988 SC 2143, (1988) 4 SCC 183**, the Hon'ble Supreme Court held as follows:-

"The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different. In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under the two enactments in respect of seizure of 7,000 tolas of gold. On this basis, reference is also made to Section 428 Cr. P.C. claiming set off in regard to the period of imprisonment already undergone by the appellant."

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In the instant case, all the offences were committed pursuant to one and the same conspiracy. Therefore, as the Hon'ble Supreme Court has held that the sentences for single transaction shall run concurrently, all the sentences will concurrently.

The period of detention already undergone by the convicts during investigation and trial shall be set-off from the sentence of imprisonment.

Issue jail warrant accordingly.

Furnish copy of the order to the convicts free of cost, immediately.

Send a copy of this order to the learned District Magistrate, Kamrup (Metro), Guwahati, for information.

Send the entire case record to the learned Sessions Judge, Kamrup (Metro), Guwahati, as the case belonged to the file of that said Court and was transferred to this court only for disposal.

Send a copy of this order to the Sessions Judge, Kamrup (Metro), Guwahati,

Send a copy of this order to the Registrar General, Guwahati High court, for information.

Pronounced in the open court, written in separate sheets of paper and is tagged with judgment dated 28.01.2019 and the case record on this the 30th day January, 2019, in Guwahati.

Judge, Special Court for Trial of
Sessions Case No. 59 (K) of 2011,
Kamrup (Metro), Guwahati.