

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 807 OF 2019
(Arising out of SLP(Cr1) No(s).8526 OF 2018)

NAZIR MALITA & ORS.

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

Leave granted.

(2) This appeal arises out of judgment and order of the High Court at Calcutta in C.R.A. No.59 of 2016 dated 23rd July, 2018 (as corrected by 31st July, 2018) in and by which the High Court affirmed the conviction of the appellants under Sections 323, 341, 304 read with 34 IPC. However, the High Court modified the sentence of the appellants from life imprisonment to fourteen years each and directed the appellants to pay fine of Rs.10,000/- each with default clause. The High Court allowed the appeal filed by the co-accused i.e. A-1 to A-5 and A-9 and acquitted them.

(3) Briefly stated case of the prosecution is that on the morning of 12th August, 2010 at 10:00 a.m. there was an altercation between the deceased-Morshed Malita (alias Morsed Malita) and the accused-Hannan Mondal (since acquitted) over

the issue of the latter encroaching on a path which prevented the bullock cart to move down the said road. Again, on the same day i.e. 12th August, 2010 at 04:00-05:00 p.m. the deceased-Morshed Malita had an altercation with accused-Hannan Mondal over the same land dispute. On hearing the noise, Innach Malita (PW-1), Asraf Malita (PW-4) and Rajabul Malita (PW-5) rushed to the spot to the rescue their father-Morshed Malita. At that time, accused party also came there and the first appellant-Nazir Malita (A-6), second appellant-Hira Malita (A-7) hit the deceased-Morshed Malita with a *fala* on the front and back of his torso. The third appellant-Rashid Malita (A-8) is alleged to have given a blow on the hand of the deceased with *ramda*. Other accused are alleged to have assaulted the deceased-Morshed Malita with *lathi*, *ramda*, rod etc. The deceased-Morshed Malita was taken to the hospital on the same day i.e. 12th August, 2010. Initially a case was registered against the appellants and other accused under Sections 341, 325 and 326 read with 34 IPC. On the next day i.e. 13th August, 2010, the deceased-Morshed Malita succumbed to injuries and the FIR registered against the appellants was altered to under Section 302 IPC.

(4) Upon consideration of the oral evidence of eye-witness of Innach Malita (PW-1), Asraf Malita (PW-4) and Rajabul Malita (PW-5) and the injuries sustained by the deceased-Morshed Malita, the Trial Court held the appellants and other accused (A-1 to A-5 and A-9) guilty under Section 304 read with Section

34 IPC and convicted them for the said offence under Section 304 read with Section 34 and Sections 341 and 323 read with Section 34 IPC. For the Offence under Section 304 read with Section 34 IPC, the Trial Court sentenced the appellants and other accused of life imprisonment and for the offence punishable under Section 323 read with Section 34, the appellants and other accused were sentenced to rigorous imprisonment for one year.

(5) In appeal, the High Court has modified the sentence of imprisonment of the appellants from life imprisonment to fourteen years and allowed the appeal filed by the co-accused i.e. A-1 to A-5 and A-9 and acquitted them, as aforesaid in para (2).

(6) We have heard the arguments advanced by Mr. Subhasish Bhowmick, learned counsel appearing for the appellants. We have also heard the arguments of Mr. Avishkar Singhvi, learned counsel appearing for the respondent-State, who has placed reliance on the judgment of this Court in State of Punjab v. Bawa Singh, (2015) 3 SCC 441 and submitted that no leniency would be shown to the appellants. We have perused the impugned judgment and the evidence/materials on record.

(7) By order dated 12th October, 2018, this Court has issued notice only limited to the quantum of sentence.

(8) By perusal of the oral evidence and other materials on record, it is seen that the occurrence happened in the evening

in continuation of the altercation that occurred in the morning. At the time of the occurrence, the deceased-Morshed Malita had an altercation with accused-Hannan Mondal (since acquitted). On hearing the noise, both the prosecution witnesses and also the accused-parties assembled and there was a fight between both the parties. In the said fight, the appellants-accused No.6, 7 and 8 attacked the deceased-Morshed Malita with *fala* and *ramda* which are stated to be sharp-edged weapon attached to the long stick.

(9) Considering the facts and circumstance of the case, in our view, there was no premeditation or pre-plan to commit the murder of the deceased-Morshed Malita. As rightly held by the Trial Court as well as as by the High Court that there was no premeditation and, therefore, they were rightly convicted under Section 304 read with Section 34 IPC. The Trial Court as well as the High Court, however, did not point out under which "Part" of the Section 304 IPC the conviction of the appellants are to be maintained.

(10) As pointed out earlier, the appellants are said to have attacked the deceased-Morshed Malita with *fala and ramda*. The deceased-Morshed Malita suffered cut injuries on the chest, bruise on the lateral side of upper part of the left fore-arm, sharp cut penetrating back of chest and left and right lungs were punctured.

(11) Considering the facts and circumstances of the case and that there was no premeditation, the conviction of the appellants under Section 304 read with Section 34 IPC is modified to Section 304 Part II IPC and the sentence of imprisonment of fourteen years imposed upon the appellants is reduced to ten years. The sentence of imprisonment imposed upon the appellants under Sections 341, 323, 304 r/w 34 IPC shall run concurrently. However, fine and default clause shall remain intact.

(12) The appeal is partly allowed.

.....J.
(R. BANUMATHI)

.....J.
(S. ABDUL NAZEER)

NEW DELHI,
APRIL 30, 2019.