

CRR 2434 of 2006

In the matter of : Sanjoy Ray @ Sarkar & Ors.

Ms. Devipriya Mitra ... for the petitioners

Ms. Pushpita Saha ... for the State

Assailing the order and judgement passed by the learned Additional Sessions Judge, 2nd F.T.C, Alipurduar, Jalpaiguri passed in Criminal Appeal No. 11 of 2001 affirming the order of conviction and sentence dated 5.12.2001 passed the learned Judicial Magistrate, 3rd Court, Alipurduar, the petitioner has preferred this application.

Ms. Devipriya Mitra, learned counsel for the petitioners submits that the proceeding had a chequered history. Over the boundary dispute the neighbours got entangled in a fight way back in 1989. The mother of the victim Smt. Pushpalata Saha set the criminal administration of justice into motion by informing the local police administration that on 21.12.1989 at about 9 AM her son Netai Saha went to the spot where the accused persons were installing fencing, encroaching upon their land. Netail voiced his protest but was overpowered and he fled away from the place of occurrence. Sambhu the brother of Netai thereafter went there. Sambhu was assaulted by Sanjay Roy @ Sarkar with a Bhojali resulting into cut injury on the middle finger of left hand of Sambhu. Goutam Ray @ Sarkar assaulted him with a bamboo stick causing bleeding injury on head.

Having found cognizable offence being disclosed by the information police registered a case and took up investigation which culminated into submission a charge sheet against the accused persons. The accused persons stood trial and learned Judicial Magistrate, 3rd Court after considering the evidence adduced by prosecution witnesses recorded an order of conviction under Section 326/34 of the Indian Penal Code but enlarged to the convict after admonition. The said judgement of the learned Trial Court was challenged unsuccessfully before the Court of appeal followed by an application for revision before this Hon'ble Court. After considering the merit of the criminal revision the co-ordinate Bench of this Court was pleased to set aside the judgement passed by the learned Trial Court as well as by the learned Appellate Court and the matter was remanded back with direction to re-write the judgement. Subsequently the learned Trial Court on 5.12.2021 pronounced judgement afresh and the convicts were sentence to suffer imprisonment for two years and to pay fine of Rs. 4,000/- each with a default clause. The judgement of conviction and sentence was again challenged before the learned appellate Court in Criminal Appeal No. 11 of 2001 and the learned appellate Court on 28.03.2006 was pleased to dismiss the said appeal thereby affirm the conviction and sentence imposed upon the convicts by the learned Trial Judge. The said judgement of the learned Appellate Court is the judgement impugned.

Ms. Mitra fairly submits that petitioner nos. 1 & 2 namely, Sanjoy Ray @ Sarkar and Goutam Ray @ Sarkar died on 11.5.2010 and 02.10.2008 respectively. The petitioner no. 3 Sri

Bhutta Debasish Roy @ Sarkar though has been convicted for committing offence under Section 326/34 of the Indian Penal Code. There is no evidence whatsoever transpiring from the judgement passed by the learned Trial Court to indicate any overt act on the part of Sri Bhutta Debasish Roy @ Sarkar.

Upon perusal of the judgment impugned as well as the judgement pronounced by the learned Trial Court, I find that Sanjoy Ray @ Sarkar assaulted the victim with Bhojali and Goutam Ray @ Sarkar was responsible for head injury of the victim. Sanjoy used Bhojali as weapon for assault where Goutam used a bamboo stick. Sri Bhutta Debasish Roy @ Sarkar, petitioner no. 3 appears to be one of the onlookers.

Under such circumstances, when learned appellate court as well as learned Trial Court found that he was present with the assailants which was sufficient to hold that he shared common intention with his brothers to assault the victims. Therefore, I do not find any reason to interfere with the order of conviction passed by the learned Trial Court but taking into consideration the role played by petitioner no. 3, I modify the sentence. In my view that ends of justice would be met if the petitioner no. 3 is directed to pay compensation to the victim instead of fine.

Ms. Mitra further submits that this petitioner is a very poor person and she is extending her legal service to the petitioner pro bono

Considering his financial condition, the petitioner is directed to pay a sum of Rs.5,000/- as compensation to the victim within thirty days from date.

With this observation, the criminal revision is disposed of.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

The parties shall act the server copy duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)