

28.11.2022
Item No. 08
BR

CRR 2457 of 2005

In the matter of : Sk. Safiraj @Safiar Rahaman

Mr. Milon Mukherjee, Senior Advocate
Mr. Rahul Ganguly
.... For the petitioner

Mr. N.P.Agarwal,
Mr. Pratick Bose For the State

This revisional application assails the judgment passed by learned Additional Sessions Judge Hooghly Criminal Appeal case No. 10 of 2004. Learned Appellate Court while considering the appeal challenging the judgement and order of conviction under Section 147/148/323/325/307 of the Indian Penal Code was pleased to hold that charges under Section 147/148/323/325/307 were not proved against any of the accused persons except the appellant Sk. Safiraj @Safiar Rahaman who, according to learned appellate Court was found to have committed offense under Section 323 of the Indian Penal Code .

Mr. Milon Mukherjee, learned senior counsel submits that the observation of learned appellate Court is self contradictory. Having found the appellants /convicts not guilty to the charges under Sections 147/148/323/325/307 , learned appellate Court could not have affirmed the order of conviction under Section 323 of the IPC against one of the appellants. Upon perusal of the judgment impugned I find that Sk. Rajjak Ali was examined as PW 1 and it is his specific evidence that Safar and others assaulted him and Kader Ali with

lathi and iron rod. But learned appellate Court held that Sk. Rajjak Ali sustained minor injury for which Sk. Safiraj would be convicted. Such finding is absolutely without the foundation of fact and the impugned judgment should not be allowed to remain in force based on such finding of fact made by learned appellate Court. In my view, it is a fit case to invoke the provision of Section 482 of the Cr P C to quash the judgment of learned appellate Court passed in Criminal Appeal No. 10 of 2004 to avert miscarriage of justice.

With this observation the criminal revision is disposed of. Application, if any, is disposed of. Interim order, if any stand vacated.

Let a copy of order be sent to the learned trial Court for information and necessary action. Applications are also disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)