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C.R.R.905 of 2021

In Re: An application under Section 482 of the Code of Criminal Procedure;

Babulal Das and others
Versus
The State of West Bengal

Mr. Prabir Majumder,
Mr. S. Majumder,
Mr. S. Chakraborty.
...for the petitioners.

Mr. Arijit Ganguly,
Mr. Sanjib Kr. Dan.
...for the State.

The subject-matter of challenge relates to the judgment and order of conviction being affirmed by the learned Sessions Judge, Nadia at Krishnagar in Criminal Appeal No.22 of 2017 by its order dated 24.02.2020. The learned Chief Judicial Magistrate, Nadia at Krishnagar in connection with G.R. Case No.1811 of 2002 arising out of Kotwali Police Station Case No.515 of 2002 dated 28.10.2002 under Sections 325/326/307/34 of the Indian Penal Code was pleased to convict four accused persons. The present petitioners before this Court are Babulal Das, Sukdeb Das @ Sudeb Das and Joydev Das. The learned Chief Judicial Magistrate on conclusion of the trial was pleased to hold these three persons guilty of the offence under Section 323 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for a term of six months each and to pay fine of Rs.1,000/- each, in default to suffer further simple imprisonment for another 15 days. Against the said

judgment and order of conviction and sentence passed by the learned CJM, Nadia at Krishnagar dated 13.09.2017, the petitioners preferred an appeal being Criminal Appeal No.22 of 2017, the learned appellate court was pleased to affirm the order of conviction and sentence by its judgment dated 24.02.2020 and dismissed the appeal.

Mr. Prabir Majumder, learned advocate appearing for the petitioners submits that the incident was of October, 2002 and more than 20 years have passed since the incident took place and the petitioners presently are aged. Additionally, it has been submitted that after the sentence was pronounced by the learned CJM, Nadia at Krishnagar and during the pendency of the appeal, the present petitioners suffered custody for about 70 days.

Mr. Arijit Ganguly, learned advocate appearing for the State supports the judgment delivered by the learned CJM, Nadia at Krishnagar as also the judgment of the appellate court. Learned advocate submits that there are concurrent findings of facts passed by both the courts below and, as such, this Court should not interfere so far as the findings are concerned as the petitioners have not been able to show any manifest error appearing in the records.

I have considered the submissions and also taken into account the period for which mental agony has been suffered by the present petitioners. Having regard to the subject-matter of the case and the concurrent findings of facts, I am not inclined to interfere with the findings of guilt so imposed by the learned trial court as well as the learned appellate court. However, having regard to the

period and the fact that the alleged offence was committed on October, 2002 and more than 20 years have passed since then, I am compelled to hold that it would be unwise to send these persons to prison after such a considerable period of time. Accordingly, the sentence so imposed by the learned trial court as also affirmed by the learned appellate court is reduced to the period which has already been undergone by them.

With the aforesaid observations, CRR 905 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

Department is directed to send back the Lower Court Records immediately.

All parties shall act on the server copy of this order 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 compliance of all requisite formalities.

(Tirthankar Ghosh, J.)