

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 876 OF 2012
(Arising out of S.L.P (Crl.) No.546 OF 2011)

Bishnupada Sarkar & Anr.

...Appellants

Versus

State of West Bengal

...Respondent

J U D G M E N T**T.S. THAKUR, J.**

1. Leave granted.
2. This appeal arises out of a judgment and order dated 15th July, 2010 passed by the High Court of judicature at Calcutta whereby Criminal Appeal No.641 of 2006 filed by the appellants has been dismissed and their conviction for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I read with Section 34

IPC and sentence of rigorous imprisonment for a period of 10 years and fine upheld.

3. Facts giving rise to the commission of the offence by the appellants and their eventual conviction have been set out in the judgment under appeal which need not be recounted again especially because notice in this appeal was issued by us limited to the question of quantum of sentence to be awarded to the appellants. Suffice it to say that the unfortunate incident in which the deceased-Shyamalendu who was then working as Income Tax Inspector did no more than object to the commission of the nuisance in front of his house escalated into an uncalled for assault on him that culminated in his death. The prosecution case is that on 21st May, 2001 at about 7.00 p.m. Sudhir who was also a resident of the same locality was found committing nuisance in an open drain in front of the house of the deceased. The deceased appears to have objected to the nuisance leading to a verbal altercation between the two. On the following day at about 11.30 a.m. the appellant Bishnu Sarkar who happens to be the nephew of Sudhir came to the house of the deceased and

threatened him. The deceased tried to reason with the appellant Bishnu Sarkar that he had done nothing wrong in protesting against the nuisance. At about 6.00 p.m. in the evening on the same day Madhav Sarkar, appellant No.2 and brother of Bishnu Sarkar is alleged to have called PW-1 Debabrato Mazumder son of the deceased and the complainant in the case to the slab near the drain and started beating him. The deceased who was leaving for the market intervened to save Debabrato Mazumder. Madhav Sarkar left the complainant and started beating the deceased with fists and blows. Appellant Bishnu Sarkar was allegedly standing nearby and instigating him. The complainant cried for help that attracted some local people who rushed to the place and took the deceased to the hospital in an injured condition where he succumbed to the injuries inflicted by Madhav Sarkar-appellant no.2 with the help of a brick.

4. The police filed a charge-sheet against the appellants after completing the investigation for commission of offences punishable under Section 304 read with Section 34 IPC. At the trial the prosecution examined as many as 13

witnesses including the Investigating Officer to prove the charge while the defence examined Parvat Kumar Paria besides placing reliance on certain documents. By its order dated 30th August, 2006 the Trial Court came to the conclusion that the deceased had died a homicidal death because of the injuries inflicted by Madhab Sarkar-appellant no.2 at the exhortation of appellant no.1-Bishnu Sarkar. Both of them were accordingly convicted under Section 304 Part I read with Section 34 IPC and sentenced to undergo rigorous imprisonment for ten years besides a fine of Rs.5,000/- each and in default to suffer further imprisonment for a period of one year. The High Court by the order impugned before us affirmed the said conviction and sentence while dismissing the appeal filed by the appellants.

5. Appearing for the appellants Mr. Ranjan Mukherjee submitted that the appellant-Bishnu Sarkar had not inflicted any injury on the deceased and that all that was alleged against him was that he exhorted appellant no.2-Madhab to assault the deceased and teach him a lesson. It was further submitted that the appellant-Bishnu Sarkar is more than 65

years of age and had already undergone 1½ years sentence in jail. He is also afflicted with various age related ailments that call for a lenient view in his case.

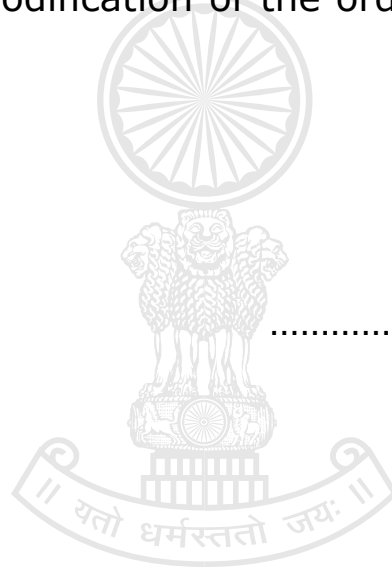
6. In so far as appellant no.2 was concerned, Mr. Mukherjee argued that the incident was more than 12 years old and that a drawn long trial and proceedings in appeal have already put the said appellant to tremendous financial and physical hardship. Being the only earning member of the family even appellant no.2, argued Mr. Mukherjee, deserves a reduction in the sentence especially when there was no intention to kill the deceased and the whole incident had taken place in the heat of passion on account of a sudden quarrel unfortunately culminating in the demise of the deceased.

7. Learned counsel appearing for the respondent, on the other hand, argued that the nature of injuries sustained by the deceased and the manner in which the incident had taken place did not justify the reduction in the sentence awarded to the appellants.

8. There is no evidence to suggest any pre-meditation on the part of the appellants to assault the deceased leave

alone evidence to show that assailants intended to kill the deceased. There was no previous enmity between the parties who were residents of the same locality except that there was a minor incident in which some hot words were exchanged between the deceased and Sudhir. Even on the following day i.e. on 22nd May, 2001 the incident near the drain involved the appellant-Bishnu Sarkar and the complainant- Debabrato Mazumder son of the deceased. It was only when the deceased noticed the incident and intervened to save the complainant, that Madhab Sarkar started assaulting the deceased and inflicted injuries on his body that resulted in his death. Both the Courts below have no doubt believed the prosecution case that appellant-Bishnu Sarkar was exhorting appellant-Madhab Sarkar to assault the deceased and, therefore, convicted him under Section 304 Part I with the help of Section 34 IPC. A distinction has, however, to be made in the facts and circumstances of the case between the sentence awarded to the appellant-Bishnu Sarkar who is over sixty five years old and that to be awarded to appellant-Madhab Sarkar. In the totality of the circumstances to which we have referred

above, we are of the view that a rigorous sentence of three years to appellant no.1-Bishnu Sarkar and seven years to appellant no.2-Madhab Sarkar would meet the ends of justice. The sentence of fine and imprisonment in default of payment thereof will, however, remain unaltered. We accordingly allow the appeal in part and to the extent indicated above in modification of the orders passed by the Courts below.



.....J.
(T.S. THAKUR)

.....J.
(GYAN SUDHA MISRA)

New Delhi
July 2, 2012

JUDGMENT