

@H

Crl.A.No. 120 OF 2000

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R

ITEM NO.105 COURT NO. 5 SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRL. APPEAL NO(s) 120/2000

RAHAMAT MOLLAH & ORS. Appellant (s)

Versus

STATE OF WEST BENGAL Respondent (s)

(With Office Report)

Date:13.3.2002 This/These Appeal(s) was/were called
on for hearing today.

CORAM:

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH
HON'BLE MR. JUSTICE D.M DHARMADHIKARI

For the Appellant (s)

Ms. C.K. Sucharita,Adv. (A.C.)

For the Respondent (s)

Mr. Tara Chandra Chandra Sharma,Adv.

Upon hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J

.SP2

Ms.C.K. Sucharita, the learned counsel appearing
for the appellant argued for about 45 minutes. The learned
counsel for the State argued for about 15 minutes.

The appeal is allowed. The appellants be set at
liberty forthwith if not required in any other case.

.SP1

(Vijay Kumar Sharma)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file.

.PA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 120 OF 2000

Rahamat Mollah & Ors.
Vs.
State of West Bengal

& Appellants

& Respondent

O R D E R

Heard learned counsel for the parties.

The appellants were prosecuted for having committed the murder of one Abdul Rahman Molla on or about 9th day of June, 1987 at Paschimpura within Murshidabad District. By judgment and order dated 28th February, 1992, in Sessions Serial No. 77 of 1991, the Additional Sessions Judge, Murshidabad convicted the appellants for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code for committing the murder and sentenced them to undergo life imprisonment. The High Court, on appeal, by impugned judgment dated 15th July, 1999 in Criminal Appeal No. 80 of 1992, confirmed the conviction and sentence of the appellants. Hence, this appeal.

Instead of narrating the entire discussion of the prosecution version, we would straightaway refer to the evidence led by the prosecution for convicting the accused.

The conviction of the appellants is based solely on the evidence of P.W.-2 Mohd. Murtuja, son of the deceased before whom it is alleged that the deceased made oral dying declaration and that of P.W.-9 - Alim Molla, who narrates that when he came at the scene of offence, he saw the accused fleeing and thereafter he, along with P.W.-2, chased the accused. P.W.-2 Mohd. Murtuja has stated in his evidence that at about 8.30 to 9.00 in the night, the accused Niamat Sk called his father on the plea of attending a SALISH (meeting). After an hour he heard hue and cry and he learnt from the people that his father had been killed. Getting this information, he rushed to the house of Jahura Bewa (PW-1) and found his father lying in bleeding condition. It is his say that his father informed him that all the four accused persons had inflicted injuries on his person by PASNE (cutting instrument). In cross-examination it was pointed out that before the Investigating Officer he has not stated that at about 8.30 accused called his father from the house. In further cross-examination he has admitted that FIR was pen down by him on the direction of PW-1. He reached the police station at about 11.00 or 11.30 p.m. but he wrote down the FIR at about 9.00 or 10.00 a.m. on the next day. Apart from the statement made by the witness that his father informed him about the four accused, there is nothing in his evidence to indicate that his father was in a position to speak. Nor he has narrated the names of accused in his evidence before the Court. It is the say of P.W.-2 that he entered the house first but he has not stated that he saw the accused fleeing away.

As per the doctor's evidence PW-11 deceased was having serious injuries which are extracted below:

1. One incised injury on the left side of forehead 2"x ½", no fractured bone detected.
2. Fracture of bridge of nose.
3. One incised injury just below the right eye, which was 1 ½" x ½" probe would be introduced upto 2 ½".
4. Wind-pipe completely severed.
5. One incised injury 4" x 3" over left side of neck muscles exposed.
6. One stab injury over the left lower chest 2" in length. On discussion, spleen found to be injured.
7. One stab injury over right lower abdomen 2" in length. On discussion, one injury found over the liver.
8. One stab injury just right to the middle of spine ½" in length; probe would be introduced upto 5".

The doctor has also stated that injury nos. 4 to 8, mentioned above, were sufficient to cause death. To a Court question, no doubt he adds that in his opinion even if there is severance of windpipe, a patient may talk upto one hour after such injuries. Such patient could not talk normally but in hoarse voice.

The next witness examined by the prosecution is PW-9 - Alim Molla, who stated before the Court that at about 10 p.m. on the day of incident he heard hue and cry and rushed to the house of Jahura Bewa. There he saw all

