

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1324-1325 OF 2005

SUBRATA NASKAR & ORS.

Appellant (s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

(With office report )

Date: 17/03/2011 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. Pradeep K.Ghosh, Sr. Adv.  
Mr. Sanjay Sen, Adv.  
Mr. Rana S. Biswas, Adv.  
Mr. Anurag Sharma, Adv.  
Mr. Mridul Chakravarty, Adv.  
Mr. A. Narendra, Adv.  
Mrs Sarla Chandra, Adv.

For Respondent(s)

Mr. Tara Chandra Sharma, Adv.  
Ms. Neelam Sharma, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeals are allowed.

[SUMAN WADHWA]  
COURT MASTER

[VINOD KULVI]  
COURT MASTER

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1324-1325

OF 2005

SUBRATA NASKAR & ORS.

.. APPELLANT(S)

vs.

STATE OF WEST BENGAL

.. RESPONDENT(S)

O R D E R

The appellants were convicted for offences punishable under Sections 302/34 and Section 307 of the IPC and sentenced to imprisonment for life and seven years

respectively by the Additional Sessions Judge, Alipur District, 24 Paraganas by the judgment dated 28th October, 1998. An appeal was thereafter filed challenging the judgment of conviction and the High Court has dismissed the appeal and confirmed the judgment of the Additional Sessions Judge but while doing so has given a finding which we quote hereinunder:

"Therefore there is no dispute that the death of Samir and the injuries mentioned above were the outcome of the land dispute between the Amar Sardar's family and Motilal Naskar's family. We also find that Amar Sardar's family is the first aggressor and injury of the prosecution witnesses and death of one of their family members are the result of the counter attack by the appellants."

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Mr. Pradeep Ghosh, the learned senior counsel has argued that these observations clearly exonerated the appellants from the charge of murder and substantiated the plea of the appellants as they claimed the right of private defence. He has also pointed out that this argument was further buttressed by the fact that Swapan Naskar, one of the appellants, had suffered a grievous injury on his face and the prosecution had failed to explain as to how that injury had been caused.

Mr. T.C. Sharma, the learned counsel for the State of West Bengal, has however pointed out that there were five injured witnesses and one deceased on the side of the complainant party and though the observations quoted above were undoubtedly in favour of the appellants but the finding that it was the complainant party which was the aggressors had been arrived at by the High Court without referring to any piece of evidence in that regard. He has further pointed out that the two alleged daily diary entries, one recorded at 5.30 a.m. at the instance of Motilal Naskar, the father of the Swapan Naskar, and the other at 7.30 p.m. by PW.3 Parvati, the mother of the

deceased, gave counter versions and as such there appeared to be some ambivalence with regard to the story projected by the appellants that they were victims of aggression. In this connection Mr. T.C.Sharma has also drawn our attention to the following observations of the High Court:

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"On consideration of the entire materials on records, we are, thus, of the view that in this case it is clearly established that the injured witnesses sustained injuries at the instance of all the appellants as a counter blast of the attack on Swapan Naskar for which a G.D. at 5.30 a.m. was lodged by Motilal Naskar and that the appellants actively participated in such incident. We do not find any ground to disbelieve the injured eyewitnesses."

After hearing the learned counsel for the parties and going through the impugned judgment particularly the portions that quoted above, we are of the view that there appears to be some uncertainty as to what the High Court has intended to hold. We are, therefore, of the opinion that a re-appraisal of the entire evidence is called for in the first appeal before the High Court. We accordingly set aside the judgment of the High Court dated 22nd December, 2004 and remit the case to the High Court for fresh consideration on the merits of the controversy. The parties shall appear before the High Court on the 14th April, 2011. We make it clear that the observations made by us are to be read as being limited for the purpose of this order and would not be taken as a reflection on the merits of the controversy.

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We are told that the appellants are on bail. They shall continue to remain on bail till the decision of the High Court.

The appeals are allowed accordingly.

.....J.  
(HARJIT SINGH BEDI)

.....J.  
(CHANDRAMAULI KR. PRASAD)

New Delhi,  
March 17, 2011.