

Md.Ishaque & Ors vs State Of West Bengal And Ors on 3 May, 2013

Equivalent citations: AIRONLINE 2013 SC 311

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Bench: Dipak Misra, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1421 OF 2007

Md. Ishaque and Others	.. Appellants
Versus	
State of West Bengal and Others	.. Respondents

J U D G M E N T

K. S. RADHAKRISHNAN, J.

1. This appeal arises out of a common judgment and order dated 14.8.2006 passed by the High Court of Calcutta in CRA No. 425 of 2001 and CRA No. 463 of 2001, whereby the High Court confirmed the conviction and sentence awarded to the appellants.

2. The prosecution version is that on 5.7.1983 at about 5 AM to 5.30 AM, some 200-250 villagers, which included the accused persons as well, armed with various weapons like Lathi, Ladna, Farsa, Hasua and Ballam surrounded the village Siktahar. The accused persons forced out a number of persons from their houses, assaulted them in various ways and ultimately took four of them in tie-bound condition to a place called Hijul Pakur Field which is some distance away from village Siktahar and they assaulted them with various weapons causing serious injuries. The injured persons were admitted to Ratua Public Health Centre and later, shifted to Malda Sadar Hospital. One of the injured, namely Azad Ali, succumbed to his injuries. The remaining injured persons, viz. the informant - Md. Yasin PW1, Hasan Ali PW4 and Farjan Ali PW2 sustained serious injuries. During the course of occurrence, accused persons also assaulted Mohammed Badaruddin PW3, Mohamed Sabiruddin PW5 and Mohammed Kalimuddin PW6. However, those persons could escape from the clutches of the accused persons and flee from the place of assault.

3. Md. Yasin PW1 lodged the FIR on 8.7.1983, which was recorded by N. N. Acherjee, S.I., C.I.D. and forwarded to Ratuna P.S. and a case was registered being Crime No. 9 dated 5.7.1983 under Sections 147, 148, 149, 364, 307, 302 IPC at Ratuna P.S. and the investigation was taken up by the police. Later, investigation was handed over to the C.I.D. and, after completion of the investigation, police submitted the charge-sheet against 31 accused persons. (Of the charge-sheeted persons, accused

Ajazar Moral and Tabjul died during the course of trial and the accused No. 25 died during the pendency of the appeal before the High Court). Two other charge- sheeted persons, namely, Hafijuddin and Safijuddin, were not sent up and discharged by S.D.J.M. vide his order dated 9.12.1993. Vide order dated 27.8.1983, the S.D.J.M. committed the case to the Court of Sessions.

4. Charges were framed against 28 accused persons on 10.4.1995, which were read over and explained to accused persons, to which they pleaded not guilty and claimed to be tried. The prosecution examined 20 witnesses and produced various documents. On defence side, one witness was examined and also produced few documents. The defence took up the stand that the entire incident was stated to have taken place at Malo Para on 4.7.1983 and no occurrence, as alleged, took place either at village Siktahar or at Hajul Pakur Field on 5.7.1983. Further, it was stated that the case was falsely foisted due to political rivalry between two groups. Accused persons belong to the Congress party and the deceased and injured persons belong to CPM.

5. The trial Court, after considering the oral and documentary evidence, found that the prosecution has succeeded in proving the case and convicted 27 accused persons (out of 28 accused persons) and one Abdul Taub found not guilty and was acquitted.

6. Three appeals were filed against the order of conviction passed by the trial Court. CRA No. 425 of 2001 was filed by Md. Ishaque and another, CRA 463 of 2001 filed by Hefjur Rahaman and 24 others and CRA N. 700 of 2006 was filed by Jinnatual Haque, son of deceased, appellant no. 22, Md. Nurul Islam under Section 394 CrPC. The High Court took the view that the trial Court has rightly convicted all the accused persons, except appellants Yasin, Daud Hazi, Mannan, Islam Maulavi and Alauddin. CRA 425 of 2002 and CRA 463 of 2001 were, therefore, allowed in part. Since Islam Maulavi was acquitted, CRA 700 of 2006 was also allowed.

7. Aggrieved by the same, 21 accused persons have preferred the present appeal. This Court granted bail to 14 appellants vide its orders dated 19.8.2009 and 27.1.2012. While the appeal was pending, appellants Haji Md. Belal Hossain and Aaiyab Ali died.

8. Shri Pradip Ghosh, learned senior counsel appearing for the appellants, submitted that the prosecution has failed to establish the case beyond reasonable doubt and the appellants deserve acquittal. Learned senior counsel pointed out that the accused persons were falsely implicated due to political rivalry and the case was framed as a counter-blast to the incident that took place on 4.7.1983, a day earlier, wherein 13 persons from the village of the accused persons were brutally murdered. Learned senior counsel submitted that, on cross-examination of the material witnesses namely PW1 to PW6, with reference to the statement of the investigating officer, it would appear that there were serious omissions and contradictions in their statements, hence, the prosecution story cannot be believed. The prosecution had also failed to establish the place of occurrence, time of the alleged assault and the manner of the alleged assault and there was no corroborative medical evidence to support the various injuries alleged to have been sustained by few of the witnesses. Further, it was pointed out that the doctor who conducted the post-mortem, was not examined. Learned senior counsel also submitted that the High Court has rightly acquitted few of the accused persons and the reasoning adopted by the High Court equally applies in the case of the appellants as

well.

9. Shri Bijan Ghosh, learned counsel appearing for the State, on the other hand, submitted that the High Court, after examining the evidence of the eye witnesses and other corroborative evidence, has rightly come to the conclusion that the appellants are guilty and deserve the sentence awarded by the trial Court. Learned counsel submitted that there is nothing on record, wherefrom, it can be gathered that the place of occurrence was not the village Siktahar and, thereafter, at Hijul Pakur Field, where the injured persons and the deceased were assaulted. Learned counsel submitted that the prosecution has succeeded in proving the place of occurrence, the time of occurrence and also the assault on injured persons and the cause of death of the deceased Azad Ali.

10. We heard the parties at length and have also gone through the evidence, especially the evidence of PW1 to PW6 and also minutely and meticulously examined the entire gamut of the prosecution case. PW1, in his statement, has categorically stated that the incident had occurred on 5.7.1983 at Siktahar and that his evidence finds full support from the evidence adduced by the Investigating Officer PW20. Facts indicate that an incident had taken place on 4.7.1983 at village Malopara coming under the same P.S. Ratua, which resulted in the death of 13 persons and due to that occurrence, there was an atmosphere of terror over the surrounding villages and also as a sequel of that massacre of Malopara, Siktahar village was attacked. PWs1 and 6 were directly affected by the incident that had occurred at Siktahar, in which the involvement of the appellants was clearly established. PWs 1 to 6, particularly PW1 to PW4, who had deposed, narrating both the occurrences of Siktahar and Hizul Pakur Field, was subjected to lengthy cross-examination, but nothing significant was brought out to discredit their evidence. Further, there is nothing in the statement of PW18 to indicate that he found the injured persons of this case at Malopara village, on the contrary, if the statement of PWs 18 and 19 are considered together, it would indicate that the injured persons were found at a field, but not certainly at Malopara. Injured persons, including the deceased Azad Ali, were treated at Ratua Primary Health Centre and, subsequently, at Malda Sadar Hospital. PW14 to 16 attended those injured persons and from the reports prepared by the doctors, it would be clear that on 5.7.1983 all the persons, including the deceased Azad Ali, who were injured, were treated at Ratua Primary Health Centre and thereafter at Malda Sadar Hospital. Ex.14, the post-mortem report of the deceased indicates that the deceased suffered homicidal death and the injuries sustained by him were all ante-mortem in nature and that was the result of assault by several persons with sharp cutting weapons as well as the blunt weapons like Lathi.

11. We also fully endorse the view of the High Court that the mere fact that some of the witnesses are interested witnesses, that by itself is not a ground to discard their evidence, the evidence taken as a whole supports the case of the prosecution.

In Hari Obula Reddy and Ors. v. The State of Andhra Pradesh (1981) 3 SCC 675, this Court laid down certain broad guidelines to be borne in mind, while scrutinising the evidence of the eye-witnesses, in para 13 of the judgement, this Court held as follows:

“But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn

testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron- cased rules uniformly applicable in all situations.”

12. PW1, PW2, PW4 in case sustained serious injuries, their evidence was believed by the court. It is trite law that the testimony of injured witnesses entitled to great weight and it is unlikely that they would spare the real culprit and implicate an innocent person. Of course, there is no immutable rule of appreciation of evidence that the evidence of injured witnesses should be mechanically accepted, it also be in consonance with probabilities (Refs: *Makan Jivan and Ors. v. The State of Gujarat* (1971) 3 SCC 297; *Machhi Singh and Ors. v. State of Punjab* (1983) 3 SCC 470; *Jangir Singh and Chet Singh and Ors. v. State of Punjab* (2000) 10 SCC

261.

13. In this respect, reference may be made to the judgment of this Court in *Jaishree v. State of U.P.* (2005) 9 SCC 788, wherein this Court held that whether witnesses are interested persons and whether they had deposed out of some motive cannot be the sole criterion for judging credibility of a witness, but the main criterion would be whether their physical presence at the place of occurrence was possible and probable.

14. We are of the view that the prosecution has succeeded in proving the place of occurrence, the time of occurrence as well as the manner of assault made on injured persons who are all examined by the Court and their evidence fully corroborates the prosecution case. We notice, in this case, that there is sufficient evidence to show that the incident had happened on 5.7.1983, as projected by the prosecution. The prosecution has successfully proved that it was the appellants and others who had committed the crime, so found by the trial Court as well as the High Court.

15. Large number of persons were involved in the incident that occurred on 5.7.1983. Several injuries were caused by the appellants on the vital parts of the deceased and the injured persons, with dangerous weapons and the injuries are sufficient, as certified by the doctor, in the ordinary course of nature to cause death and the accused persons intended to inflict the injuries that were found on the person of the deceased and injured persons. Appellants caused the injuries with deadly weapons, therefore, intention can be presumed regarding causing injuries as are likely to cause death, which falls under Section 304 Part I IPC and hence the conviction ordered by the trial court under Section 302 IPC is converted to Section 304 Part I IPC.

16. Consequently, the appellants are found guilty under Section 304 Part I IPC and are sentenced to undergo rigorous imprisonment of 10 years with a fine of Rs.5,000/-each. On default of payment of fine, they will undergo rigorous imprisonment for another six months. 50% of the money recovered as fine has to be paid to the wife of the deceased as compensation. We further order that if any of the appellants had already undergone sentence of 10 years, they would be let free, on payment of fine and the remaining accused appellants would serve the balance period of sentence and bail granted to them would, therefore, stand cancelled and they will surrender within a week. Appeal is disposed of accordingly.

.....J. (K.S. Radhakrishnan)J. (Dipak Misra) New Delhi, May 3,
2013