

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. A. 02 OF 2013

Md. Abdul Khaleque,
son of Sri Manu Miah,
Vill- Bardepha, P.O. & P.S. Sonamura,
District- Sipahijala, Tripura

..... Appellant

- Vs -

The State of Tripura

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. Ratan Dutta, Advocate

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing & order : 13.08.2015

Yes	No
	√

Whether fit for reporting :

JUDGMENT & ORDER (ORAL)

Heard Mr. Ratan Dutta, learned counsel appearing for the appellant as well as Mr. A. Ghosh, learned Public Prosecutor for the state.

2. The convict, Md. Abdul Khaleque, has preferred this appeal under Section 374(2) of the Cr.P.C., questioning legality of the judgement of conviction dated 19.12.2012 delivered in case No. S.T. 08 (WT/S) of 1997 by the Addl.

Sessions Judge, West Tripura, Agartala, Court No.3 for committing offence punishable under Section 147 of the IPC. By the said conviction, the appellant has been sentenced to suffer two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to suffer further rigorous imprisonment for three months.

3. One Aktar Hossain (PW-1), by filing the written ejhar dated 12.12.1995 (Exbt.1), has stated that, on 12.12.1995 in the morning when he was cutting paddy hearing hue and cry, originating from his house, he rushed to his house from the paddy field and found that Jalil Miah was being dragged by Mukles Meah, Jalfu Meah, Kashem Meah and Manu Meah of his locality. His uncle Abdul Malek was with them. His uncle Jalil Meah and Abdul Malek raised the alarm. He alongwith his father, Abdul Sakur and the grand father, Dula Meah went to that place. In order to restrain them those persons attacked them with sharp weapon and lathi from the grandfather, Dula Meah and father Abdul Sakur sustained serious injuries. With the help of the local people they were taken to the Sonamura hospital for treatment. The informant was also given treatment in the same hospital.

4. On the basis of the said written ejahar, Sonamura P.S Case No.111/1995 under Sections 148/149/326/325 of the IPC was registered and taken up for investigation. On completion of the investigation, the final police report chargesheeting the accused persons was submitted.

Accordingly, the accused persons including appellant were charged for committing offence punishable under Sections 302, 324 and 148 of the IPC, to which, the appellant and the other accused persons, who were arrested, pleaded not guilty and claimed to face the trial.

5. In order to prove the charge, from the prosecution as many as 18(eighteen) witnesses and 11(eleven) documentary evidence were introduced.

6. After the prosecution evidence was recorded, the appellant was examined under Section 313 of the Cr.P.C. for having his response in respect of the incriminating materials which had surfaced in the evidence led by the prosecution. Since the defence did not adduce any witness or document except Exbts. D-1, D-2, D-3 and D-4, on the purported appreciation of the evidence, the judgment of conviction has been returned by the trial court. The said judgement of conviction is under challenge in this appeal.

7. Mr. Datta, learned counsel appearing for the appellant has succinctly submitted that there is no legal evidence, cogent and reliable, in the records, to convict the appellant under Section 147 of the IPC.

8. Mr. Ghosh, learned Public Prosecutor has however stoutly contended that the evidence against the appellant is adequate to hold him guilty of committing the offence punishable under Section 147 of the IPC. He has further

submitted that the appellant's name had first figured in the First Information Report, to be part of the gang which had taken part in the transaction of crime.

9. Mr. Datta, learned counsel has further submitted that the some co-accused of the appellant were convicted under Section 304 Part-II and alongwith the remaining accused, namely Muklesh Miah, Julfu Miah, Kashem Miah alias Abdul Kashem, Manu Miah, Alamgir Hossain, Alfu Miah and Abdul Sukur have been convicted under Section 147 of the IPC and sentenced to suffer rigorous imprisonment for two years with fine of Rs.1,000/- with the default sentence. It has been observed in the impugned judgement dated 19.12.2012 as under:

“On preferring appeal by the convicts Hon'ble High Court in Case No. Crl.A. NO.17 of 2001 vide judgment dated 22.08.2007 upheld the conviction, but modified the sentence and all the convicts were given the benefit of Probation of Offenders Act.”

10. Mr Dutta, learned counsel has fairly submitted that the appellant in this case was similarly situated with the other accused persons who were convicted under Section 147 of the IPC. Some witnesses in the same manner have stated that they had located the appellant in the assembly which attacked the victims. As the alternative submission, he therefore urged this court if the conviction may not interfered with, the appellant be extended with the benefit of Section 360 of the Cr.P.C. by placing him under the probation in terms of the Section 4 of the Probation of Offenders Act.

11. Mr. Ghosh, learned Public Prosecutor appearing for the respondent has strongly opposed such submission of Mr. Dutta, learned counsel appearing for the appellant and has submitted that the way the offence was executed, the petitioner should not be granted the benefit of the probation of the Offenders Act.

12. For appreciating the contrasting submission of the learned counsel appearing for the parties, when this court had taken up surveying the evidence as placed by the prosecution on record, it appeared that the appellant was found as the member of the assembly which attacked Jalil Miah, Dula Miah and Abdul Sukur. Out of them Dula Miah, the informant's grandfather and Abdul Sukur, the informant's father sustained serious bleeding injuries and they were immediately transported to the Sonamura hospital for treatment.

13. From the evidence, it has surfaced that PW.1 Aktar Hossain has stated that he had seen the appellant when he and the other accused persons dragged Jalil Miah by tying his hand. When the appellant and other accused persons were sought to be resisted, they assaulted the victims by dao and lathi. He identified the First Information Report (Exbt.P-1) where he revealed the fact at the first instance.

14. PW-2, Manir Hossain had seen Manu Miah, Rashid Miah, Abdul Khaleque, Manku Miah, Alfu Miah, Julfu Miah, Alamgir Hossain, Abdul Kashem in the place of occurrence.

15. PW-3, Maidar Ali has stated that he had seen the appellant going to the house of Abdul Khaleque and dragging Jalil Miah towards their house after tying his hands.

16. PW-4, Abdul Sukur, the eye witness, without being confronted from any quarters, has also stated that the appellant was part of the unlawfully assembly which dragged Jalil Miah.

17. PW-5, Manik Ghosh has, however, stated that he was the witness of the seizure of wearing apparels of the deceased on 13.03.1996.

18. PW-6, Phul Bhanu Bibi has categorically stated that she had seen Jalil Miah was dragged but she did not name the appellant.

19. PW-7, Abdul Malek has stated that at the time of occurrence, the accused persons, namely Abdul Manu Miah, Abdul Kasem, Muklesh Miah, Alamgir Hossain, Julfu Miah, Abdul Sukur, Abdul Khalque and Alfu Miah had caught of Jalil Miah and tried to tie him by a rope. When Jalil Miah raised alarm, hearing his cry Dula Miah, Aktar Hossain and Abdul Sukkur came there for his rescue. At that time, Abdul Rashid hurled a blow by a cheni dao on the left shoulder of Dula Miah. He was also the seizure witness of the wearing apparel of Dula Miah who died out of the grave injury that he had received in the transaction of the crime.

20. PW-8, Soumitra Majumder was posted as the Medical Officer in the Sonamura hospital, where he treated Abdul Sukkur for the injuries that he received in the occurrence, which are as under:

“1. Scalp injury over left partial area 2”X 2/1”X”. The injury was simple in nature and may be caused by Sharp cutting weapon. The injury was fresh. Afterwards Sonamura Police submitted a requisition for supplying injury report of Abdul Sukkur in connexion with Sonamura P.S. Case No.111/95 and accordingly I have submitted injury report of victim Abdul Sukkur. This is the injury report on identification it is marked Ext. P.5 this is my signature it is marked Ext.P.5/1.”

But, in the cross-examination, PW-8 has stated that both Abdul Mannan and Abdul Sukkur were not known to him from before.

21. PW-9, Dipen Roy was posted as the Medical Officer in the Sonamura hospital. He examined another injured namely Aktar Hossain. On the person of Aktar Hossain, he found the following injuries at the time of his examination :

“1. Bruise over right deltoid region 3”x3”x 1/4”.

2. Diffuse swelling over left infraorbital region. Both the injuries are simple in nature cause by blunt object. After examination of the patient I have submitted my report. This is my report-it is marked Ext.P.6 this is my signature- it is marked Ext.P. 6/1.”

22. PW-10, Bijoy Lal Majumder is the witness, in whose presence one blood stained white vest, one blood stained green white check lungi, one blood stained white and green

check gamcha (napkin) were seized by preparing the appropriate seizure list.

23. PW-11, Jalil Miah, is one of the important witnesses and he has stated nothing against the appellant in particular, except that he saw that the appellant had confronted the other accused persons who dragged him to his house. He had somehow managed to escape from their clutch and tried to flee from that place. But stepping out some distance he fell on the ground. He raised alarm and in response to that alarm his sister-in-law, Phul Bhanu Bibi and his father Dula Miah rushed to that spot alongwith the informant and Aktar Hossain. They pleaded to the accused persons to leave him. He has further stated that Abdul Rashid gave blow by a cheni dao on the left shoulder of Dula Miah. The said accused persons also assaulted Abdul Sukkur and Aktar Hossain.

24. PW-12, Nripendra Narayan Das, Assistant Sub-Inspector, who was posted in the G.B. T.O.P. had given the requisition for post mortem examination of the deceased who expired during treatment in the G.B.P. hospital on 13.12.1995.

25. PW-13, Abdul Haque did not disclose anything of material importance, but he had identified the report, to which he was a witness.

26. Krishna Dhan Saha, PW-14 is a constable, who escorted the dead body of Dula Miah for post-mortem

examination. He has also stated nothing of material importance.

27. Following the same line, Dilip Debbarma, PW-15 has also stated that he witnessed the post-mortem from a very close quarter and he delivered the dead body to the relatives for last rites.

28. PW-16, Khitish Debnath was the Officer-in-Charge of the Sonamura Police Station, who after receiving the written ejahar, registered the Sonamura P.S. Case No.111/95 and thereafter endorsed the investigation to Manindra Debnath (PW-18). He has also stated that a counter case, being Sonamura P.S. Case No.112/95 was also registered.

29. From the impugned judgment of conviction, it is not very clear whether the said counter case, being Sonamura P.S. Case No.112/95 was investigated the chargesheet was filed separately or whether both the cases were dealt together.

30. PW-17, Dr. Ashim Dutta, who conducted the post-mortem examination, has stated that he found a big sharp cutting wound measuring 6"x6"x4" in the left shoulder with dislocation of the shoulder of Dula Miah. After holding the post-mortem he came to the conclusion that the cause of death of Dula Miah was due to shock and haemorrhage as a result of sharp cutting injury received by him on his shoulder. No detailed cross-examination was carried out to confront any

of the information it revealed in the said post mortem examination report (Exbt.10).

31. PW-18, Manindra Debnath, a Sub-Inspector of police, investigated the case. He has briefly stated in the trial how he conducted the investigation by preparing site map, recording the statements of the witnesses and also by collecting various reports including injury reports, surathal report and the post mortem report. When he found that a strong prima facie case had surfaced in the evidence, he submitted the chargesheet against the accused persons against whom the charge was framed on 30.07.1997. He has also stated that there had been endeavour to get confessional statement of one of the accused persons recorded, but ultimately the said accused person declined to confess. He arrested almost all the accused persons on various dates and produced them in the court following the due process of law. Further he has stated that he investigated both the case and the counter case and submitted the chargesheet in both the case. During his cross-examination, he has surprisingly stated that he cannot say whether any counter case was lodged in connection with the same incident. He has further stated that he cannot say who had investigated the counter case, if any. That statement was in complete contrast to his statement that "I have investigated both this case and counter case and submitted charge sheet in both the cases." This goes without any further observation

that such statement from such a senior police officer is wholly irresponsible and subvertive to the process of justice. Since there is no dispute about the murder of Dula Miah this court will not appreciate the surathal report, post-mortem report etc. in detail.

32. Having travelled through the sheafs of record, this court finds that the evidence against the present appellant is of “fleeting sight”. However, based on such evidence the appellant has been convicted under Section 147 of the IPC for committing offence of rioting. The offence called rioting has been defined under Section 146 of the IPC, as under :

“Whenever force or violence is used by unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.”

33. As Mr. Dutta, learned counsel has indicated that the other accused persons have been convicted under Section 147 of the IPC. In the event of non-interference with the judgment of conviction, the appellant may be provided with the same disposition under Section 360 of the Cr.P.C. Before attending to that aspect of the matter, this court is persuaded by one decision of the apex court in **Baladin and others v. State of Uttar Pradesh**, reported in **AIR 1956 SC 181**, where it has been held that:

“If members of the family of the appellants and other residents of village assembled, all such persons could not be condemned 'ipso facto' as being members of that unlawful assembly. It is necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing

some overt act in prosecution of the common object of the unlawful assembly.

The omnibus evidence in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharses, axes, lathis etc. naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication.”

34. The principles as laid down in **Baladin and others v. State of Uttar Pradesh** is one of the golden scales to be applied for appreciation of the evidence when offence of rioting is charged. In this case, there is an element of fleeting sight in the evidence and nothing more than that is in the record of evidence. Even it is very difficult to visualise how 6/7 persons can drag one person. These pieces of evidence, which have been placed and relied by the trial court for returning the finding of conviction not generate confidence of the court to rely on for sustaining the finding of conviction. No specific statement has been made how and in what manner the appellant participated “in the dragging of Jalil Miah”. The benefit must go to the appellant.

35. Having held so, this court is persuaded to interfere with the impugned judgment of conviction and accordingly the same is set aside. The appellant is acquitted from the charge under 147 of the IPC on benefit of doubt.

36. In the result, the appeal stands allowed.

As a corollary, the alternative submission as made by Mr. R. Dutta, learned counsel appearing for the appellant has become inconsequential.

Send down the LCRs forthwith.

JUDGE

Moumita