

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Appeal No.1 of 2014

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Md. Abdul Rahaman,
S/o Late Ershad Ali,
Resident of Yubarajnagar,
P.S & P.O Kailashahar,
Dist. Unakoti, Tripura.

..... *Appellant.*

Advocates : Sri S Chakraborty, Advocate,
Sri P Saha, Advocate.
Sri R Sinha, Advocate.

– *Versus* –

The State of Tripura.

..... *Respondent.*

Advocate : Sri R C Debnath, Addl. Public Prosecuroor.

_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR DEEPAK GUPTA
HON'BLE JUSTICE MR S TALAPATRA

Date of hearing : 12.6.2015.

Date of Judgment : 07.9.2015.

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

(*Deepak Gupta. CJ*)

This appeal by the accused is directed against the judgment dated 11th November, 2013 passed by the learned Sessions Judge, North Tripura, Kailashahar in Case No.ST.37(NT/K) of 2007 whereby the accused has been convicted of having committed offences punishable under Section 148, Section 341 r/w Section 149,

Section 323 r/w Section 149 and Section 307 r/w Section 149 of I.P.C.
and sentenced as follows :

*“.....
The convict is sentenced to suffer SI for 6(six) months for commission of offence punishable under section 148 IPC. The convict is sentenced to pay a fine of Rs.500/-(rupee five hundred) i.d. to suffer SI for 15(fifteen) days for commission of offence punishable under section 323 read with section 149 IPC. The convict is also sentenced to pay a fine of Rs.200/-(rupees two hundred) i.d., to suffer SI for 15(fifteen) days u/s 341 I.P.C. The convict is further sentenced to suffer SI for two years six months and also to pay a fine of Rs.2,000/-(rupees two thousand), i.d. to suffer SI for 3(three) months for commission of offence punishable under section 307 read with section 149 IPC. However, all the sentences shall run concurrently. The period of detention already undergone shall be set off.”*

2. The prosecution story briefly stated is that on 20th July, 2004 bye-election to one ward of the North Tripura Zilla Parishad was being held. According to the prosecution, Birajit Sinha sent a vehicle and this vehicle was stopped by the accused Abdul Rahaman. Thereafter, the informant Birajit Sinha along with Md. Badrujjaman, Chandra Sekhar Sinha and his police guards namely, Anil Chandra Das, Promode Ranjan Majumder, Ram Krishna Sinha, Nikhil Deb went to Babur Bazar in two vehicles. When they reached Babur Bazar tri-junction, accused Abdul Rahaman with a large number of workers including the other accused stopped their vehicles. Birajit Sinha and his associates got down from their vehicles. The allegation is that

immediately Abdul Rahaman and his accomplices started brickbatting on Birajit Sinha and his associates and ultimately the police guards accompanying Birajit Sinha who is a member of the Tripura Legislative Assembly had to open fire. The supporters of Abdul Rahaman were armed and Birajit Sinha and some of his associates boarded one auto rickshaw and his police guards boarded another autorickshaw and one police guard died in the second autorickshaw. It would be pertinent to mention that during this occurrence the son of the appellant was killed due to firing and a case was also lodged against Birajit Sinha and others for murder of the Abdul Hannan son of the appellant accused herein. Birajit Sinha and others were acquitted of the charge of murder and vide separate judgment of date we have upheld the judgment whereby Birajit Sinha was acquitted of the charge of murder but have upheld his conviction under the Arms Act, 1959.

3. The main evidence in this case is of PWs.1, 2 and 3, Birajit Sinha, Badrujjaman and Chandra Sekhar Sinha. According to Birajit Sinha, he got down from his vehicle and found Abdul Rahaman the Upa-pradhan of Yubarajnagar. Before Abdul Rahaman could give a reply some members of the assembled public became furious and started using filthy language and also started brickbatting and throwing firewood towards Birajit Sinha. According to Birajit Sinha, he received a hit of a brickbat on his left chest and left leg. He also stated that Abdul Rahaman, Biswarup Goswami and Abdul Mannan

opened fire from their pistols but neither he nor any of his police guards received any bullet injuries at that time though subsequently, one of his police guards Nikhil Chandra Deb died but Sri Birajit Sinha did not know how he died.

4. As far as PW.2 Md. Badrujjaman is concerned, according to him, when they reached Babur Bazar, about 100/150 numbers of public stopped their vehicles and when Birajit Sinha asked the accused Abdul Rahaman why their vehicles were prevented from moving forward, Abdul Rahaman replied that none had prevented the vehicles from proceeding forward. Thereafter Mr. Birajit Sinha got down from his vehicle and some people in the public started shouting “*Maro Dharo*” and throwing brickbats. His version is also that the accused started firing but none was hit by the bullets.

5. Similar is the version of PW.3 Chandra Sekhar Sinha but there are many contradictions. According to Birajit Sinha, when he got down at Babur Bazar and questioned the accused Abdul Rahaman as to what had happened, even before Abdul Rahaman could give any reply, the assembled public became furious and started brickbatting. The version of PW.2 Badrujjaman is that when Abdul Rahaman was asked why the vehicle was stopped then Abdul Rahaman replied that none had stopped the vehicles. The version of Chandra Sekhar Sinha is that when Birajit Sinha asked Abdul Rahaman why the vehicle was

stopped, before any reply could be given, the members of the public started shouting “*kill kill*”.

6. PW.4 Ram Krishna Sinha who was one of the police guards in his statement has stated that after the MLA Sri Birajit Sinha got down from the vehicle, he tried to ascertain from certain members of the public what had happened. At that time some members of the crowd started shouting “*Marore Dharore*”. He also stated that when Sri Sinha got down from the vehicle, all his armed security guards also got down from the vehicle. They tried to prevent the public but could not proceed further. Some members of the mob started brickbatting towards Sri Sinha and the police guards and then they started open fire. He does not make any mention that Abdul Rahaman had either instigated the mob or was instrumental in taking any active part. He has not named Abdul Rahaman in his examination-in-chief.

7. PW.5 states that Abdul Rahaman stopped the vehicle and then Birajit Sinha got down from the vehicle along with the police guards. Then Birajit Sinha asked the Abdul Rahaman why the vehicle had been stopped and there was some conversation between Mr. Sinha and Abdul Rahaman. Suddenly some members of the mob started shouting “*Marore Dharore*” etc. This clearly indicates that there was no pre-planning and it was on the spur of the moment that some members of the group started shouting “*Marore Dharore*”. He

has also not in any manner indicated that Abdul Rahaman was the leader of the mob or was instigating the mob.

8. The statements of the other witnesses PWs.7, 8, 9 and 10 clearly show that after Birajit Sinha got down from the vehicle and confronted Abdul Rahaman there was an altercation between them and then some members of the mob started throwing brickbats and in retaliation the police guards opened fire.

9. We may add that we have decided another appeal today. In that case Birajit Sinha, Chandra Sekhar Sinha and Badrujjaman were accused. They have been acquitted in that case. Therefore, their statements cannot be accepted as a gospel truth because they are the complainants in one case and the accused in another murder case. From the evidence on record it is obvious that after Sri Birajit Sinha and his accomplices got down from the two vehicles at Babur Bazar, there was an altercation between both sides and thereafter some members of the public got agitated.

10. The admitted case is that Abdul Rahaman had no inkling that Birajit Sinha and his associates would come to the spot. Therefore, there was no planning by Abdul Rahaman and his group. The occurrence took place in the heat of the moment and there is no clear cut evidence to indicate that the alleged injuries on the person of Birajit Sinha and his associates were caused by Abdul Rahaman. It is alleged that Abdul Rahaman was carrying a pistol but none of the

injured persons has received any bullet injury. It would be pertinent to mention that in the FIR filed by Sri Birajit Sinha who is a member of the Legislative Assembly it is not even stated that he suffered any injury on his person. However, during evidence he stated that he had suffered minor injuries because of pelting of stones. Except Abdul Rahaman the names of other co-accused were not mentioned. Though in the statement in Court it is stated that Abdul Rahaman was carrying a pistol and fired from the same, there is no mention of the same in the FIR.

11. The learned trial Court rightly acquitted 9 of the accused persons on the ground that PW.1 Birajit Sinha being an MLA of the area had not named any one of them in the FIR. Similarly, PW.2 Badrujjaman who is also a local politician did not name any of them in the FIR. No appeal has been filed against the acquittal of other 9 co-accused. Though brickbatting by the mob may have been proved, it is not proved at all that accused Abdul Rahaman was the leader of the mob or that he instigated the mob or that he himself threw any brickbats.

12. We are constrained to observe that the reasoning given by the learned Sessions Judge while holding the accused Abdul Rahaman guilty is totally fallacious. There is not an iota of evidence on the record of the case to show that Abdul Rahaman had either

gathered the mob or had instigated the mob or had done any such overt act.

13. Section 148 of the Indian Penal Code reads as follows :

“148. Rioting, armed with deadly weapon — Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

One of the most important ingredients of Section 148 is that the person who is accused of rioting should be armed with a deadly weapon or with some object which when used as a weapon of offence is likely to cause death. As far as the present case is concerned, the only allegation is that the mob used brickbats which cannot be said to be deadly weapons of offence. The learned trial Court has himself found the prosecution story that Abdul Rahaman was armed or used a ‘pistol’ was false. Therefore, Abdul Rahaman could not have been convicted under Section 148 of IPC.

14. Coming to Section 149 IPC, the same reads as follows :

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object — If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

For an offence under Section 149 IPC, the prosecution must prove that there was any prosecution of the common object of an unlawful assembly and some injuries have been caused. It is more than apparent from the evidence on record that it was Birajit Sinha and his associates who came to the spot. It is they who first picked up a fight with Abdul Rahaman. The crowd only responded to the actions of Birajit Sinha. It is also apparent from the record that the police guards of Birajit Sinha opened fire. There was no injury on the person of Birajit Sinha. No doctor has been examined to prove any injury. All that has been proved is that brickbatting took place. It is not even proved that Abdul Rahaman was engaged in brickbatting. Even the investigating officer of the case was not examined by the prosecution. It is Abdul Rahaman who lost his son in this unfortunate incident and we fail to understand how he could have been convicted by the trial Court.

15. In view of the above discussion, the appeal is allowed. The impugned judgment of the trial Court is set aside and the accused person Abdul Rahaman is acquitted.

The appeal is disposed of in the aforesaid terms. Send down the LCRs forthwith.

JUDGE

CHIEF JUSTICE

Sukhendu