(1949) 02 GAU CK 0004

Gauhati High Court

Case No: None

Govt. Advocate		APPELLANT
	Vs	
Lakhi Kanta Medhi and Others		RESPONDENT

Date of Decision: Feb. 11, 1949

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, 149, 304

Citation: AIR 1949 Guw 46 : (1949) CriLJ 779

Hon'ble Judges: T.V. Thadani, C.J; Ram Labhaya, J

Bench: Division Bench

Judgement

Thadani, C.J.

This is an appeal made by the Government Advocate of Assam on behalf of the Province of Assam u/s 417, Criminal P. C, in a ease in which 9 accused persons, viz., (l) Lakhikanta Medhi, (a) Bahiram Medhi, (3) Subharam Das, (4) Hargovinda Medhi, (6) Khili-ram Medhi, (6) Hansaram Medhi, (7) Naroram Medhi, (8) Bapuram Medhi, and (9) Panimal Medhi, were tried by the learned Assistant Sessions Judge, Assam Valley Districts, with the aid of a jury. At the conclusion of the trial, the jury brought a verdict of acquittal and the learned Judge, agreeing with the unanimous verdict of the jury, acquitted the accused. The present appeal has been brought against the acquittal of these accused persons.

2. The grounds taken in the memorandum of appeal ate these : (l) That the learned Sessions Judge misdirected the jury in not marshalling the facts and law in an intelligible way enabling the jury to come to a just verdict. (2) That the learned Judge should have placed the evidence against each of the accused in respect of each charge framed against him, By omitting to do so, the learned Judge left the jury in a confused mass of evidence compelling them to give a verdict of benefit of doubt. This omission amounts to a misdirection. (3) That the learned Judge misdirected the jury by placing before them a defence story which was not set up by any of the accused. (4) That the occurrence took place in an open field and broad day light and

as many as u eye-witnesses proved the prosecution case. Hence the verdict of the jury is not only perverse, but it is against the weight of clear and cogent evidence adduced by prosecution witnesses. (5) That from the verdict of jury it is apparent that they did not understand the charge of the learned Judge and could not apply their mind in assessing the evidence against each of the accused. Hence they returned a verdict of benefit of doubt. (6) That the charge of the learned Judge was meagre, vague and not comprehensive and the same has occasioned a failure of justice. (7) The learned Judge did not explain Section 804, Penal Code clearly. (8) In explaining the right of private defence, the learned Judge did not direct the jury to consider whether the accused Cr any of them exceeded the right of private defence. (9) That on the whole the charge to the jury in both points of law and facts were halting and misleading.

3. The facts of the case may be briefly stated. The accused Subharam, son of Tikaram, was on terms of sexual intimacy with the daughter of Lakhiram. Subharam left his father''s house some years ago and went and lived with Lakhiram, apparently to carry on his intrigue with Lakhiram''s daughter.

4. It is alleged that on Cr about 10th of August 1947, Subharam who was then standing on a road, was forcibly removed to his father''s house by his relatives. Three days later on 18th of August 1947, while the accused Bahiram and Subharam were ploughing Lakhiram''s field, Tikaram the father of Subharam was noticed coming towards the field of Lakhiram, whereupon Bahiram made an assault on Tikaram accusing Tikaram for detaining Subharam in his own house. Tikaram raised an alarm which attracted to the scene the deceased Hansaram with 3 other persons who were engaged in ploughing a field a short distance away. When the deceased Hansaram and his 3 companions-came to the rescue of Tikaram, one Noraram, another called Khili who were also ploughing a field in the neighbourhood, ran to their village and brought with them some 13 Cr 11 persona-including the accused persons in the case. They were all armed with lathis, spears, daos, and other weapons. They were joined by accused Bahiram and Subharam. Deceased Hansaram then appealed to the accused persons to refraio from fighting. The accused persons, however paid no heed to the entreaties of Hansaram: accused Lakhiram, father of the girl with whom Subharam was carrying on an intrigue, struck the deceased Hansaram with a lathi in the region of his chest: accused Bahiram struck him on the shoulder and, as Hansaram attempted to ward off further attack, he was stabbed by accused Hargovinda in the neck, and Khiliram stabbed him in the back. As a result of the injuries, Hansaram collapsed and died almost immediately. In this attack upon Hansaram,. some of the prosecution witnesses and the accused? were also injured.

5. The occurrence was reported to the police-who, on completion of the investigation, sent up the accused persons for trial and they were charged before the learned Sessions Judge for offences u/s 148, Penal Code and Section 304, Penal

Code, read with Section 149, Penal Code. Accused Hargovinda was separately charged u/s 304, Penal Code for causing the death of Hansaram.

6. Mr. Barman for the Government has contended that the learned Judge has misdirected) the jury in that he has failed to sum up the evidence of the prosecution witnesses as he was required to do by Section 297, Criminal P. C.

7. We have carefally read the heads of charge to the Jury and it appears to us that the learned Judge''s summing up was entirely in disregard of Section 297, Criminal P. C. We propose to accept this appeal on this sole ground, The only reference to the prosecution evidence in the case is to be found at p. 3 of the heads of charge to the Jury, and it is in these terms:

As regards evidence, there is, however, no doubt that there was a marpit, as a result of which Hansa is dead. At the outset, I must tell you, there are a lot of discrepancies to which your attention has been drawn by the defence advocate. There was a big gandogol and, as such, there must be some discrepancies for every one is not likely to notice everything. You will have to consider whether these discrepancies) are due to lapse of time, loss of memory or misunderstanding, and in that case, you may disregard them; otherwise you should consider them as material. About this (1) the presence of Thaneswar, F. W. 5, who say, he saw TIkha, F. W. 4, being assaulted by Lakhi and that Khili dealt two blows on the deceased; (2) the deceased being surrounded by the accused; and (3) the various statement of contradiction made before the police, the Magistrate and now, ate some which you should give proper consideration.

The witnesses excepting P. W., S and 15, are no doubt related Cr interested. You should take their evidence with a grain of salt, There is a peculiar thing in this case that all the eye-witnesses depose to have seen the same thing and nothing else. It appears peculiar because in such a gathering, is it possible that all will see the same thing and notice nothing. How is it that cone noticed other things, i,e. presence of Tikha, assault by some one on some others. There was a big marpit and many were injured and yet none saw anyone else being assaulted by any others. Every one was restless (Tatha nani) Tikha would be Sitting all the time; the whole occurrence would take place suddenly and all at once; none had talks with the other of their own group collecting there all at once and be on and so forth are certain really unusual circumstances. Another striking thing is that none oared to lodge any information in the Thana. It is curious how, Monoranjan, P. W. 1, lodged the ejahar without knowing details. None of the P. Ws, reported the matter to anybody. Besides there is a cross-case against the P. Ws. and others instituted by the amused.

9. There were 14 witnesses examined on behalf of the prosecution and yet the charge is utterly silent as to what their evidence was. It is contended by Mr. Barman that this failure to sum up the prosecution evidence to the jury amounts to a misdirection in law, a misdirection so serious that by reason of it the verdict must tie

regarded as erroneous. A similar contention, Mr. Barman argues, was accepted by the learned Judges of the Calcutta High Court in a case reported in Queen-Empress v. Imam Ali Khan 23 Cal. 253. It is true that in that case the misdirection relied upon by the Crown was much more serious, but the principle of that case applies to the misdirection present in this case.

10. In the Calcutta case, after the examination of the witnesses for the prosecution and the accused was concluded, the accused was not called upon to enter on his defence after the Public Prosecutor had summed up his case, as required by the last paragraph of Section 289, Criminal P. C, nor bad the Sessions Judge charged he jury as required by Section 297. The jury, without tearing the charge, found the prisoner guilty, and the learned Sessions Judge convicted and sentenced the accused. In Para. 8 of the report. Banerjee J. observed:

Nor do I think that 01, (d) of Section 423, Criminal P. C. . (which corresponds to Sub-section (2) of Section 423 of the Code of 1908) stands in the way of our interfering with the verdict of the jury. In one sense no doubt, there could not have been any misdirection by the Judge, nor any misunderstanding on the part of the jury of the law laid down be him, he having given them no direction as to law Cr fact. But in effect it was a misdirection for the learned Judge to have allowed the jury to pronounce their verdict before the accused was called upon to enter on his defence. I would, therefore, set aside the conviction and sentence and Order a retrial.

11. We observe that Banerjee J. in Para. 2 of the report at p. 253, hesitated to answer the question in the affirmative whether the particular error Cr omission in that case was cured by Section 537, Criminal P. C. If it were absolutely necessary to express our view on this question, we think it is highly improbable that we would take the view that omission by a Sessions Judge to sum up the prosecution evidence to the jury in disregard of the mandatory provisions of Section 397, Criminal P. C. would be cured by Section 637, Criminal P. C. We propose, however, to dispose of this appeal on the simple ground that the failure by the learned Sessions Judge to sum up the prosecution evidence to the jury was a very serious misdirection, so serious indeed that in our opinion, the verdict of the jury must be regarded as erroneous by reason of such misdirection. We cannot see how a jury's verdict, whether one of guilty or not guilty, can be regarded as anything but erroneous if the trying Judge fails to comply with the mandatory provisions of Section 297, Criminal P. C, for, in effect, he fails to invite the jury to deliberate [on the prosecution evidence, and if the verdict of the jury is arrived at without Such invitation from the Judge and deliberation by the jury, it must be regarded as erroneous by reason of the misdirection.

12. Mr. Medhi for the respondents contended that sub.s. (2) of Section 423, Criminal P. C. is an impediment to the power of the Court to alter Cr reverse the verdict of a jury unless it is of opinion that the verdict, in fact, is erroneous, irrespective of the fact whether there has been a misdirection or not. We cannot accept this interpretation of sub.s. (2) of Section 423 of the said Code so broadly stated. Mr.

Medhi while asking us to review the evidence, was not prepared to accept the position that if on the review of the evidence, we come to the conclusion that the accused were guilty, we would sentence them according to law.. In other words, Mr. Medhi desired us to review the evidence for the purpose only of maintaining the verdict of the jury. After some discussion Mr. Medhi refrained from taking us through the evidence.

13. We are satisfied that having regard to the nature of misdirection present in this case the jury''s verdict is erroneous by reason of misdirection by the Judge. We would accordingly set aside the Order of acquittal and direct the accused to be retried according to law.

14. The record and the proceedings of this case will be sent to the learned Sessions Judge of the District, directing him to try this case himself.