Harun Rashid Laskar Vs The State of Assam

None

Court: Gauhati High Court

Date of Decision: Aug. 19, 1977

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 109, 285, 295, 295A

Citation: (1978) CriLJ 256

Hon'ble Judges: K. Lahiri, J

Bench: Single Bench

Judgement

K. Lahiri, J.
This is an appeal directed against the conviction of the appellant u/s 295 read with Section 109 I.P.C. and sentencing him to

suffer simple imprisonment for two months and to pay a fine of Rs. 200/- in default, to suffer simple imprisonment for two months more, in

Sessions Case No. 19 of 1971.

2. The accused was put upon his trial u/s 295-A of the I.P.C. read with various other Sections of the Code for trial before the Court of Session,

Cachar at Silchar, along with others. However, the learned Sessions Judge ultimately charged the accused person u/s 295 read with Section 109

I.P.C. and the other co-accused persons were charged under different provisions of the Code.

3. The prosecution story in short is that after sundown, on the 20th day of October, 1969, the present appellant abetted the commission of an

offence u/s 295 I.P.C. (injuring or defiling place of worship with intent to insult the religion of any class). The story in short is that the date of

occurrence was a ""Dassera"" day of the Durga Puja; Hindus were celebrating the immersion ceremony by the side of Barak river; there some

altercations took place due to throwing of some peels of banana; objections Were taken and the matter was not pro- perly dealt with and later on

there was confrontation between two religious groups namely, Hindus and Muslims. The only allegation that has been brought against the appellant

was that he had abetted the other accused persons to commit the offence u/s 285 I.P.C. On receipt of the first information report about the

incident, the police took up a case, investigated it and ultimately submitted a charge sheet. The committal proceeding was held and the accused

persons were committed to the Court of Session.

4. Before the Sessions Judge as many as 9 witnesses were examined on behalf of the prosecution. On behalf of the accused Dr. Mosahid Ali, a

retired Assistant Surgeon, Class I was examined to prove that the accused Sahabuddin, who was one of the most prominent figures in the whole

incident, was in fact, lying seriously ill from HS-HMS9. The nature of his illness, according to the doctor, was typhoid. The doctor said that he had

been completely bed-ridden from 18-10-1969 to 31-1069. A reference of this is all the more necessary in view of the prosecution allegation that

Sahabuddin took a prominent part in the incident. The learned Sessions Judge on conclusion of the trial convicted the present appellant alone and

acquitted the rest.

5. Mr. P. C. Kataki, the learned counsel for the appellant has very succinctly brought forward the main, essential and relevant points and did not

deal with superfluous points.

6. Mr. Kataki, the learned counsel for the appellant submits that in the instant case the prosecution was bound to prove the essential ingredients of

the offence u/s 295 I. P. C, which, according to him, have not been proved. Secondly, it is submitted that the alleged abetment in the instant case is

manifestation of certain expressions used by the accused and as such, it was essential for the Court below to consider as to the exact statements

made by the appellant. According to the learned counsel, conjoint of boiled statements of the appellant along with another, which could not be

deciphered to be exclusively that of the appellant, could not have been treated as the statements of the present appellant. Thirdly, the learned

counsel submits that the alleged statements said to have been made were of two persons including the appellant and the other accused being

acquitted, his case being inextricably mixed up with the present appellant, the conviction of the appellant is not sustainable. The next submission is

that the exact utterances made by the accused have been quoted in verbatim in the first information report and set out by P. W. 1 Ramrup, and the

said statements convey nothing to show or indicate that the accused had abetted any offence u/s 295 IPC The learned counsel submits that the

statements quoted is in Hindi and reads as under:Ã¯Â¿Â½

Tab Harun Hazi Hukum Kia ''Kooli Log Ko Marke Khatam Gira Deo''."" According to him, the meaning of the expression is ""Then Harun Hazi

ordered ""Fell the Coolies after assaulting them."" The penultimate point taken up by the learned counsel for the appellant is that the identification of

the present appellant is suspicious in view of unclear visibility and the distance. Finally, the learned counsel submits that the entire story of throwing

the image into the river has been disproved by P.W. 8 Jogesh Chandra Barman as he did not find any damage or any mark of destruction of the

image.

7. The learned Public Prosecutor has submitted that the omission made in the first information report is merely an omission. The ingredients of the

offences Under Sections 295 and 109 I.P.C. have been established; the identity of the accused-appellant has been well established and the

witnesses have proved both in regard to the damage and immersion of the deity by the accused persons and the same was done at the instance of

Harun AH, the appellant.

8. Let me consider the questions. I find that the first information report has been quoted correctly by the learned counsel for the appellant. The

translation given by him appears to be correct, but it remains doubtful as to whether the first informant meant ""to order to fell down the deity into

the river"" or it was attributed to ""Koolis"". However, this doubt has been resolved by P.W. 3 Bis-wanath in his cross-examination, wherein he has

clearly stated that ""Harun Rashid said "Drag the coolies and fell them down" "". Therefore, it is established from the prosecution evidence that the

contention of the learned counsel appears to be more correct than that of the learned Public Prosecutor. In view of the substantive evidence, the

question of conviction of the appellant for abetting the offence u/s 295 I.P.C. does not arise.

9. Along with it, if I consider the case against Sahabuddin, a co-accused who was sought to be entangled in the instant case, it clearly cuts a very

sorry figure and is devastating for the prosecution, The Investigating Officer himself admits that he found Sahabuddin bed-ridden and suffering from

typhoid. He seized the>pre-scriptions given to Sahabuddin. A responsible doctor deposed that the accused Sahabuddin was seriously ill from 16-

10-69 and was completely bed-ridden from 18-10-69 to 31-10-69. The trial Judge has also accepted the story of the Investigating Officer and p.

W. 1 Dr. Mosahid Ali. This wrong implication of a bed-ridden person is a definite attempt of the prosecution to rope in an innocent person and

connect him with the alleged occurrence. It shakes the foundation of the prosecution case.

10. The next question is as to whether the idol was thrown and broken, as deposed to by the prosecution witnesses. Boat loads of persons came;

used force and dragged the idol and felled it in the current of the river, is the story of these witnesses. P.W. 8 Jogesh Chandra Barman, the

Investigating Officer of the case has stated that he did not find any broken piece of image at the places marked "O" or C\ The seizure list of the

idol or image does not show that the idol was the subject of wrath or attack by a hostile group of persons. Exhibit 3 is the seizure list of the image.

Excepting the fact that the ""Ashura"" was found without the neck, the entire image was found intact. There was no mark of violence. This is a fact

which emerges from the documentary evidence. If a hostile group of persons would have attacked in the manner, as alleged, we could not have

expected the image to be in that state in the river bed. The story of the prosecution is that the image was broken to pieces by so many strong

persons and then thrown into the river. The state of affairs as discovered by the Investigating Officer indicates that it was immersed in the proper

way and softly dipped into the water. That it was the day of immersion, is also the prosecution story. Under these circumstances, it becomes very

difficult to accept the prosecution case, that there was assault on the idol by the accused persons.

11. Apart from this, I find that the witnesses for the prosecution are related. The Puja was community one. The priest, P.W. 5, was examined, but

he does not support in Court the case of the prosecution. He was declared hostile by the prosecution. P.Ws. 1, 3, 4 and 6 are very closely related.

P. W. 5, Ram Kirti Tri-pathi is the priest, but has not supported the prosecution case. P. W. 2 Durga is hostile to the members of Harun''s. This is

the status of the witnesses for the prosecution,

12. P.W. 1 admits that while they ""carried the idol from the place of Kirton to the river it was then not much dark, but only a little dark"". Therefore,

the carriage of the idol from the place of Kirton to the river is admitted by P.W.I. He had definitely some land dispute with the present appellant.

P.W. 2 Durga also says that it was slightly dark at the time of the occurrence. P.W. 3 states that Harun''s nephew Matiur got a money decree

against him. P.W. 4 Jugrup says ""I have got only a little (sic) eye-sight."" P. W. 6 Motilal did not at all name the appellant in the committal Court or

about his alleged utterances. As such, I find that it was little dark and the place where the appellant was standing was said to be in between 250 to

300 yards away from the place where the witnesses were standing. Under these circumstances, after sundown, when the darkness was setting in,

the witnesses for the prosecution claimed that they could recognise Harun Rashid, the appellant along with one Kala Mia and both of them

conjointly ordered the Muslims to drag and fell the idol. Under these circumstances, the trial Judge had to give the benefit of doubt to all the

accused persons excepting the appellant. There was a test identification parade and the witnesses made a mess as to the identification of the

accused persons in the test identification parade. According to P.W. 9 Abdul Malik, Magistrate, 1st Class, who held the test identification parade,

all the suspects (accused) were in the parade and P.W.I Ramruip could identify three of the suspects; P.W. 2 Durga could identify nobody; Jagrup

could identify one Chandu Mia; Moti could identify Jainal, Sarifuddin and Chandu Mia and P.W. 3 Biswanath could identify the accused Jainal and

Mus-limuddin. In the evidence there is nothing to show that any of the witnesses could identify the present appellant in the test identification parade.

There is also no evidence that he was not put in the test identification parade. Under these circumstances, it becomes difficult for me to hold that

the appellant was properly identified to be the person standing on the other side of the river Barak and the witness could identify him or place him

properly. In any view of the matter, in view of the time of the day, prevailing darkness, short-sightedness of at least one witness and the departure

of the prosecution story as made in the ejahar and that made out in Court, as to the utterances shake the prosecution story. The allegation in the

first information report has been quoted. The author of the utterance was said to be the present appellant. In Court, the witnesses came forward

and attributed other utterances and stated that derogatory expressions exciting the persons assembled there were made by the appellant and

another accused Kala Mia. This departure, I am afraid, is very fatal to the prosecution. We are not sure as to who was the real author. In my

opinion, when the incident had happened after 5 P.M., in view of the distance it was not possible for them to recognise the accused persons

properly or at least the appellant is entitled to get the benefit of doubt.

13. Apart from it, I find that the expressions amounting to abetment were said to have been made by two persons. The co-authors of the

statements, according to the prosecution, are the appellant and accused Kala Mia. Admittedly, the accused Kala Mia has been acquitted. How is

it possible to decipher the statements uttered by Kala Mia and the present appellant? In my opinion, it is not possible to decipher the utterances of

the appellant independently in the absence of substantive evidence to that effect. In Onkar Nath v. Delhi Administration reported in AIR 1977 SC

1103 : 1977 Cri LJ 047 , J. speakmg for the Supreme Court observed as follows (at p. 1110 of AIR):Ã¯Â¿Â½

But even that evidence, in our opinion, is inadequate for proving the charge levelled against the appellants. Jasbir Singh claims to have attended a

meeting addressed by the appellants but he has not stated as to what exactly the appellants said in the meeting. He has given his own gist of

summary of what the appellants meant to convey to the audience stating that they incited the workers to go on strike and threatened them with dire

consequences if they did not respond to the call. Such a broad resume'' is not safe to rely upon for holding the charge proved. In view of the total

absence of evidence showing what the appellants in fact said in the meeting, the summary coined by Jasbir Singh of the happenings in the meeting

cannot form the basis of conviction ... A summary of a speech may broadly and generally not be inaccurate and yet it may not faithfully reflect what

the speaker actually said and in what context. Therefore, we would prefer not to rely on the gist given by the witness without knowing the data on

the basis of which the gist was given. The charge must therefore fail.

(Emphasis supplied)

14. In the instant case, I find that the witnesses have given not only a gist of the statement, but joint and boiled statements of two persons. Under

these circumstances, in my opinion, the principles of law enunciated by Their Lordships in Onkar Nath and Others Vs. The Delhi Administration,

are directly applicable. It is difficult to rely on such a statement. It is not possible on my part to bifurcate the statement of Kala Mia from the

statement said to have been made by the appellant. On the top of it, Kala Mia, the co-author has been acquitted. His case was inextricably mixed

up with the case of the present appellant. In Balaka Singh and Others Vs. The State of Punjab, Fazal AH, J. speaking for the Supreme Court

observed as follows (at p. 1966 of AIR):Ã¯Â¿Â½.

All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court,

equally with the appellants making absolutely no distinction between one and the other. A perusal of the evidence of the prosecution witnesses

would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one

from the other.

15. In my opinion, in the instant case the grain cannot be separated from the chaff in view of the fact that they are inextricably mixed up and in the

process of separation I shall have to reconstruct an absolutely new case for the prosecution by divorcing the essential details put forward by the

prosecution completely from the context and the back-drop against which they were made. Under these circumstances, in view of the acquittal of

Kala Mia and the construction of the prosecution case, I have no alternative but give the benefit of doubt to the appellant.

16. Under these circumstances, I hold that the witnesses are not disinterested, reliable and unimpeachable. The story presented as to the manner of

attack on the deity or idol is not corroborated. There is enough room for holding that it was not possible to identify the appellant from the other

bank of the river Barak when the darkness was setting in. I further hold that in the instant case, the prosecution must fail in view of the acquittal of

Kala Mia and the construction of the prosecution case as to the authors of the alleged expression. Further the witness No. 3 for the prosecution

has clearly demolished the prosecution case when he admitted in his cross-examination that the appellant stated ""Drag the Coolies and fell them

down"".

17. Under these circumstances, it is hardly possible to convict the appellant either u/s 295 or u/s 109 of the I.P.C. Accordingly, I hold that the

accused is entitled to get the benefit of doubt.

18. In the result, I set aside the conviction and sentences and allow the appeal.