

Baqar Vs. Emperor

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Court : Allahabad

Decided On : Dec-02-1947

Reported in : AIR1948All239

Appellant : Baqar

Respondent : Emperor

Judgement :

Wali Ullah, J.

1. Baqar, appellant, aged about 19 years, appeals against his conviction of an offence under Section 304, Penal Code, and the sentence of three years' rigorous imprisonment passed upon him by the learned Additional Sessions Judge of Meerut.

2. Baqar and his three brothers, Sharafat, Liaqat and Latafat, were tried for an offence under Section 304 read with Section 34, Penal Code, on a charge arising out of an incident which occurred at about sunset at village Kalchina on 6-12-1945. In this incident one Ausaf Ali aged 55 years received a number of injuries with lathis. Ausaf Ali died while he was being taken to the thana on a cot. A report was made at police station Modingar, some four miles away from the village, at about 8-30 A.M. next morning by a man called Nizam Uddin a nephew of Ausaf Ali. Police investigation followed with the result that Baqar and his three brothers were put upon their trial before the learned Additional Sessions Judge. The first

information report, on the face of it, was very much delayed and there is no explanation for this offered by the prosecution. In this report Baqar as well as his three brothers were all named as the culprits and four eyewitnesses who were produced in the Court of Sessions to prove the prosecution version, viz., Asghar, Abdul Latif, Kale and Meharban, were also named as witnesses in the report. In the course of the trial, the three brothers of Baqar appellant pleaded an alibi and asserted that they had given no beating to Ausaf Ali. Further, they said that they had been implicated because they were brothers of Baqar appellant who had given beating to Ausaf Ali under the circumstances stated by him (Baqar). Baqar stated that at about 4 P.M. on 6-12-1945 he went to see his persian wheel near his own Arhar field. On reaching there he found Ausaf Ali's cattle damaging his Arhar field while Ausaf Ali was sitting there. Thereupon he wanted to drive away the cattle and then Ausaf Ali started abusing him and then began to beat him. He also gave a beating to Ausaf Ali in self defence.

3. The learned Sessions Judge, on a consideration of the evidence of the four eye-witnesses produced by the prosecution and the probabilities of the case which he has very carefully summarised in the course of the judgment, came to the conclusion that the motive alleged by the prosecution was highly improbable. He further found that there was in fact no fight at the place alleged by the prosecution. Dealing with the evidence of the four eye-witnesses, the learned Judge has expressed the view that there is reason to believe that the prosecution witnesses who purport to be eye-witnesses have come forward to support the prosecution version because they are relations of prosecution witness Nizam Uddin and the deceased Ausaf Ali. Finally, considering the nature of the evidence given by the four eye-witnesses and the probable character of the prosecution version and the various improbabilities pointed out by him in his judgment, he came to the conclusion that the prosecution version was on the face of it 'improbable.' Along with this conclusion reached by him, he also felt that there was reason to doubt that the defence version was true, at any rate in two particulars namely that the fight took place between Baqar only on one side and the deceased on the other and that the cause of this fight was the grazing of the cattle of Ausaf Ali in Baqar's Arhar field. An examination of the judgment of the learned Judge would make it clear that he would have believed the defence version with regard to the right of

the private defence as well, if, as he has put it, he had discovered any injury on the person of the appellant Baqar or if he had found, to quote 'his own words, any of the defence witnesses stating that Ausaf Ali gave the 'first' blow to Baqar appellant.

4. I have heard learned Counsel for the appellant and glanced through the evidence of the eye-witnesses. I have also heard learned Assistant Government Advocate in support of the conviction. It seems to me perfectly obvious that after rejecting the prosecution version as highly improbable and virtually discarding the statements of the prosecution witnesses as untrustworthy in respects more than one, the learned Judge could easily come to the conclusion that the charge was not brought home to the appellant and this would have resulted in the acquittal of the appellant, but inasmuch as Baqar appellant made a statement to the effect that he had inflicted some lath blows on Ausaf Ali deceased in the exercise of the right of his private defence, the learned Judge felt, and I think rightly, that he should consider the plea set up by the appellant before arriving at a final conclusion with regard to the charge levelled against the appellant. In dealing with this part of the case, however, the learned Judge seems to have lost sight of the fact that after rejecting the prosecution version as well as the prosecution evidence in support of that version, there were no materials on the record which would have justified the conviction of the appellant except what is afforded by the statement of the accused (the appellant) and his witnesses. In this case, the learned Judge seems to have accepted a part of the statement of the appellant namely that he did inflict injuries on the deceased but he has declined to place reliance on that part of the statement of the appellant which explains the circumstances in this case exculpatory, in which those blows came to be inflicted by the appellant upon Ausaf Ali deceased. Here it seems to me that the learned Judge has lost sight of the principle that when the Court acts upon the statement of an accused alone, and there is no other evidence available which disproves any portion of that statement of the accused, the whole of that statement, and not only a part of it which may go against the accused, should be taken into consideration. This principle was definitely laid down by a Full Bench of this Court while dealing with the case of a confession made by an accused person, but, to my mind, the principle is equally applicable to a case like the present where the Court has acted only on the

statement of the accused person. Even on the findings recorded by the learned Judge which in substance come to this that the prosecution version as well as the evidence led in support of it are highly improbable, that the place of occurrence as alleged by the prosecution is not proved to be the place where the incident took place and that the motive as alleged by the prosecution for the assault on Ausaf Ali is not established by reliable evidence, it must be held that the charge levelled against the appellant has not been established by cogent and convincing evidence.

5. The result is that I allow the appeal, set aside the conviction and sentence passed upon the appellant and acquit him. He is on bail. His bail bonds are cancelled. He need not surrender.

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