

Bashiru-dIn Alias Bashir Vs. the State

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Court : Delhi

Decided On : Dec-17-1968

Reported in : 5(1969)DLT553

Judge : I.D. Dua, C.J.

Acts : [Indian Penal code, 1860](#) - Sections 148

Appeal No. : Criminal Revision Appeal No. 489 of 1968

Appellant : Bashiru-dIn Alias Bashir

Respondent : The State

Advocate for Pet/Ap. : Mohan Singh and; V.D. Misra, Advs

Judgement :

I.D. Dua, C.J.

(1) BASHIR-UD Din and Saleman have approached this Court on revision and have challenged their conviction and sentence under section 224, 332 and 379. I. P. C. and under section 332, I. P. C respectively imposed on appeal by the learned Additional Sessions Judge, Delhi.

(2) The learned Sub-Divisional Magistrate, before whom five accused were standing trial, and the charge I. P. C., dropped title charge under section 148, I. P. C., and indeed this was done on the concession made by the prosecuting Sub-

Inspector. The learned Magistrate convicted Bashir ud-Din under sections 147/149/332/379/224. I. P. C. and Ikram, Suleman and Shaukat under sections 147/149/332 I. P. C. and Moor Jahan under section 149/332 I. P. C. Noor Jahan was given a benefit of section 4 of the Probation of Offenders Act and was required to furnish security (personal bond) of Rs. 1,000.00 with one surety in the like amount for being of good behavior for a period of one year, and in default, to undergo rigorous imprisonment for one year.

(3) On appeal by Bashir-ud Din Suleman and Shaukat, the learned Additional Sessions Judge acquitted Shaukat, but maintained the conviction and sentence of Bashir-ud-Din and Suleman. The offence under sections 147/149, I. P. C., was held nto to be made out.

(4) The prosecution story, as is apparent from the record, is that on 21st December, 1965, at about HAM. Laxmi Narain, A. S. I. Police Station Jama Masjid was on patrol duty in Suiwalan area along with Constable Jalbir Singh. As a result of secret information that Bashir-ud-Din was selling opium and charas outside his house in Kalyanpura. a raid party was organized comprising, among tohers. Prithvi Singh Bakhtawar Singh and Sardar Hussain prosecution witnesses. When this party went towards the house of Bashir ud-Din, they found him sitting on a gunny bag in the street in front of his house. On seeing the police party approach, he tried to slip away into his own house, but he was secured and his person was searched Fifty four grams of opium wrapped in a wax paper was recovered from a pocket of his shir-. Ten grams of opium was taken as sample and the opium was put into sealed parcels and taken possession vide seizure memo. A report to that effect was sent to the police station through Jalbir Singh. Bashir ud-Din was arrested and made to sit by the side of the police officer. While statements under section 161 Cr. P. C. were being recorded. Bashir-ud-Din snatched btoh the sealed parcels held by the A. S. T. and ran towards his house. He was, however, apprehended and brought back, but while coming out from the courtyard of the house, where he was apprehended, he started shouting 'Mar Gaya'. The parcels were retrieved from him. In the meantime, Bashir-ud-Din's wife NoorJahan, attracted by her husband's alaram, came out and shouted that she would nto let her husband to be taken away l)v the police and grappled with Lakshmi Narain. On

the persuasion of Prithvi Singh, however, she went back but started throwing brickbats from her house, one of which hit Lakshmi Narain A.S.I. on his head. In the meantime Shaukat, Ikram and Mohd. Suleman also came to the spto in response to Noor Jahan's call Noor Jahan then provoked and instigated these persons to help her husband. It was in these circumstances that these persons clashed with Lakshmi Narain Noor Jahan is stated to have given shoe beating to the A.S I. The uniform of the police officer was also torn and it gto besmeared with blood. Prithvi Singh was deputed to inform the police-station and a short while thereafter, two Constables on patrol duty also happend to reach the spto and it was with their help that Lakshmi Narain was able to secure Bashir-ud-Din and Suleman, though Shaukat, Ikram and Noor Jahan managed to get away.

(5) The broad story of the prosecution was accepted by the two Courts below and discrepancies and contradictions relied upon on behalf of the accused were held to be of little consequence, being immaterial. The defense version was considered to be an afterthought. It may be pointed out that though the learned Sub-Divisional Magistrate had convicted the accused before him under sections 147 and 149 Indian Penal Code as well, the learned Additional Sessions Judge came to a positive conclusion that the prosecution had failed to prove the common object of the so called unlawful assembly as spelt out by the learned Magistrate According to the Court below, the intention of the persons who arrived at the spto later might have been simply to prtoest against the highhandedness of the police. In any event, their participation in the affair could nto, according to the Court of Appeal, be held to be actuated by a desire to give beating to the police officials and in the absence of such an intention, they could nto be held to constitute an unlawful assembly. Their mere presence as sympathisers of Bashir-ud-Din would nto make them members of the unlawful assembly. Every accused on this premise was to be dealt with for the offence committed by him individually. As a result, the appellants in the Court below were acquitted of the charges under sections 147/149 332, 1. P. C., but the conviction of Bashir-ud-Din was maintained under sections 224, 332 and 379 Indian Penal Code and that of Suleman under section 332, 1. P. C. Fhe sentence as awarded by the Court below of rigorous imprisonment for one year on each count was maintained, it being observed that it was nto severe.

(6) On revision in this Court Shri Mohan Singh, the learned counsel for the petitioners, has submitted that the defense version is highly probable and likely and that the learned Additional Sessions Judge has considered the defense version superficially without applying his mind to the evidence. The defense version has been deposed by the learned Additional Sessions Judge in the following words :-

'NEEDLES to say that the defense evidence is absolutely of no help to the appellants, being highly contradictory and materially discrepant. Most of the D. Ws. have propounded theories which were not even set up by the accused themselves,'

The learned trial Court, it may be pointed out, had dealt with the defense evidence at great length, though this evidence did not inspire the confidence of the Court.

(7) One circumstance which is noteworthy in this case is that Bashir-ud-Din accused, aged about 30 years, was examined by Dr. Daya Nand, Medical Officer, Jail Hospital, and as many as 20 injuries were found on his person, out of which three injuries were kept under observation. Mohd. Suleman, aged about 28 years, had also about 16 injuries on his person, out of which about six injuries were kept under observation. Lakshmi Narain, A. S. I., aged about 45 years, was also examined by the same officer and he found on the injured person seven injuries, out of which two were kept under observation and in regard to one injury, he was referred to a dental Surgeon. According to Lakshmi Narain Public Witness 1, who is vitally concerned with the incident, on 21st December, 1965 at about 11 A. M., while on patrol duty in Suiwalan, he received information about Bashir-ud-Din accused selling opium and Charas outside his house. He organized raiding party and went to the house of Bashir-ud-Din. Besides himself there was only one other police officer by name Jalbir Singh Constable. Bashir-ud-Din, on seeing them tried to slip away, but was apprehended and his person searched, as a result whereof 54 grams of opium was recovered. This witness has deposed that he arrested Bashir-ud-Din and made him sit by his side, and then sent Jalbir Singh to the police station with a rukha for registering the case. I.e. himself getting busy with the

investigation. While he was recording the statement of P. W. Prithvi Singh under section 161, Cr. P. C. Bashir-ud-Din snatched the two parcels from the left hand of the witness and ran inside his house, but was chased by Lakshmi Narain and Prithvi Singh. They secured the accused in the court-yard of his house and brought him out. During this process, the accused got hold of the door leaves and raised an alarm 'Mar Gaye Mar Gaye'. The wife of the accused thereupon arrived there from inside the house and also grappled with Lakshmi Narain P. W 1. Prithvi Singh persuaded her to go back, but after going back, she threw brickbats on Public Witness 1 which hurt the witness on his head, as a result whereof he started bleeding. Shaukat, Ikram and Mohd. Suleman arrived there in the meantime, Suleman being armed with a danda. Suleman gave to the witness a danda blow on his head and his two companions gave to the witness fist blows. Noor Jahan is also stated to have given to the witness shoe beating. A little later, two police constables of police post Turkman Gate reached the spot, while on patrol in the area, and those constables and the witness secured Bashir-ud-Din and Suleman accused on the spot, Shaukat, Ikram and Noor Jahan having slipped away. Fifteen minutes thereafter. Inspector Sham Lal accompanied by Krishan Gopal Sub-Inspector and other police officials also reached the spot. The witness gave his statement to Inspector Sham Lal and this statement has been exhibited as Exhibit P. A. It is not clear how this statement was admitted in evidence. According to this witness, Bashir-ud-Din and Suleman accused sustained injuries when they were being secured by him and the two Constables of the Police Post Turkman Gate because they had resisted their arrest and laid themselves flat on the ground and also had struck their heads against a near by electric pole and the ground which was puce floor. This witness was cross-examined when recalled and in his cross-examination he admitted that he knew Bashir-ud-Din accused prior to the incident because he was registered as a had character of Police Station Jama Masjid. He also admitted to have seen the house of the accused, though he had never gone inside prior to the incident. Bakhtawar Singh and Prithvi Singh were known to the witness for the previous three months or so, being respectable persons of the Illaka Bakhtawar Singh is stated to be a landlord and Prithvi Singh a shopkeeper and a Zimindu. Previously, Prithvi Singh was stated, to be running a ghee shop at Kamra Bangash, but the witness expressed his ignorance about his

present avocation in life. Baktawar Singh's two sons had shops. The witness admittedly did not care to get the assistance of any person from the houses nearby for becoming witnesses to the raid. According to him, he asked the accused Bashir-ud-Din to search the witness before the witness searched Bashir-ud-Din and this search was witnessed by Prithvi Singh. A suggestion was put to the witness which he denied that Bashir-ud-Din was inside the house when he wanted to go in, but was stopped by Noor Jahan and that at that time, three or four women were present in the house Sardar Hussain, Bakhtawar Singh and Prithvi Singh, it was elicited from the witness, were the only persons present on the spot. Sardar Hussain lives at the back of Bashir-ud-Din in Gali Suiwalan and the witness had met him just by chance, Ikram and Shaukat were also known to the witness because of their being had characters and none came to the spot except these persons when Noor Jahan shouted from her house. When the accused started beating the witness, the latter did not see any man, though he did see some women near about. When the witness was confronted with Exhibit P. A., he was constrained to admit that he had not mentioned therein the fact that the accused laid themselves on the ground and injured themselves by striking against an electric pole. He, however, volunteered that he had mentioned in the report that the accused, while being apprehended, had suffered certain injuries in that process. The accused were apprehended by the witness and two constables who also sustain injuries in this process, Curiously enough, the witness expressed ignorance about the names of the two constables. He also did not see anyone from the Mohalla during the scuffle though it took place in a public place where people ordinarily move about. The witness also admitted that the first information report did not contain the assertion that Mst. Noor Jahan had a shoe in her hand and she inflicted injuries on the witness's nose therewith. He also denied that about 100 persons had collected at the spot at the time of the incident.

(8) The statement of this witness does not seem to inspire confidence in regard to the circumstances in which the accused sustained injuries. The story as given by him seems to me to be exaggerated and he has tried to shield his and his companions aggression against the accused persons. May be, that the persons whom he describes to be had character are really so, but even had characters are entitled to be tried in accordance with law. and if the prosecution evidence is not

straight forward and the investigation suggests unreasonable padding, the Courts may well discard the prosecution story and give to the accused the benefit of doubt. The learned Sub Divisional Magistrate trying the case has of course recorded a very lengthy order but the manner in which he has dealt with the testimony of Lakshmi Narain P. W 1, is far from satisfactory. The learned trial Magistrate is, in my opinion, taking a highly superficial view of the evidence when he observes in his order that in spite of lengthy cross-examination of the prosecution witnesses, nothing has shaken their testimony. The statement and the cross-examination of P. W. 1, in my opinion, clearly bring out the highly unsatisfactory character of this testimony.

(9) The learned Additional Sessions Judge has, as he pointed out, quite rightly observed that the explanation given by Lakshmi Narain is false and it does not stand to reason that both Suleman and Bashir-ud-Din would have sustained injuries in the manner described by him. This explanation refers to Suleman and Bashir-ud-Din lying prostrate on the ground and hitting their heads against an electric pole and the ground. The Court below is also right in observing that it is futile to argue that the police officials would have remained absolutely non-violent when they saw Bashir-ud-Din slipping away after snatching the opium packets from the Assistant Sub Inspector and the Court below did not consider it reasonable to hold that the police officials did not retaliate even when Suleman and Noor Jahan gave injuries to the Sub-Inspector by a danda blow and brickbats. The Court also felt inclined to accept the contention of the accused that the prosecution had failed to prove the common object of the so called unlawful assembly as spelt out by the trial Magistrate. On this view, the lower Appellate Court proceeded to consider the case of every accused person individually as to how far he has himself involved in the charges tried by the Court. The lower Appellate Court further felt that possibly Bashir-ud-Din had not been formally arrested and that he was merely made to sit by the Assistant Sub-Inspector when investigation was being conducted and that in these circumstances, he may well be deemed to be under arrest for all intents and purposes. After making the observations mentioned above and also some other observations against the prosecution evidence, in my view, on the peculiar facts and circumstances of this case, the lower Appellate Court rightly well have held the accused to be entitled to

benefit of doubt. Investigation of offences must be straight forward and , free from padding. I his Court certainly condemns unequivocally any illegal interference with the discharge of 'official duties by public servants, and particularly in the investigation of offences by the investigating agency. At the same time, this Court expects the police officials to investigate the offences in a fair and legal manner and to refrain from falsely either concealing or exaggerating relevant circumstances which may throw light on the true nature of the incident under investigation and trial. Granting that some or more of the accused persons in the case in hand are had characters, does nto justify either more than the absolute necessary use of violence against them or the highly exaggerating version of the incident by deposing to what gives the impression of afterthought, as is obvious btoh from the testimony of P. W. I and from the order of the learned Additional Sessions Judge. Incidentally, it may be pointed out that in the order of the learned Additional Sessions Judge, there is a reference to the acquittal of Bashir-ud-Din of the offence under the Opium Act. Though that acquittal cannto by itself prejudially affect the merits of the present prosecution case, it may appropriately be borne in mind that it was the secret information about the sale of opium and its attempted recovery which is stated to have led to the entire incident. The prosecution evidence in this case does nto portray a clear picture of what the truth is and the truth and untruth in material particulars is so mixed up that it is difficult to hold the accused petitioners guilty of the offences charged beyound reasonable doubt. This seems to me to be mainly due to the padding by the investigating and the prosecuting agency. It is a matter for dissatisfaction and regret for this Court that the state of the record in this case should be what it is.

(10) Considering all the circumstances of the case, in my view, this Court cannto help giving to the accused petitioners benefit of doubt and while doing so, I acquit them. Even if I had upheld the conviction of the petitioners, I would certainly have felt inclined on this record to reduce their sentence to that already undergone because of the extremely unsatisfactory nature of the evidence of how the trouble began.

(11) Before concluding, it may be pointed out that from the order of the learned Sub-Divisional Magistrate, who convicted the present petitioners, I find that his

predecessor Shri S. K. Chauhan who had recorded the statement of Lakshmi Narain, Mohd. Yusuf and Wazir Chand, did not sign those statements. These witnesses were accordingly again called and examined by Shri V. N. Chaturvedi, Sub-Divisional Magistrate, and it appears that Lakshmi Narain was also examined as a Court witness. It is also discernible from the order of the learned Magistrate that at the time of arguments, it was discovered that by oversight charges had not been framed against Shaukat and the same were therefore framed on 26th July, 1967. Shaukat was asked whether he wanted to summon any witness for cross-examination but he only wanted Sardar Hussain to be summoned for this purpose. This state of affairs is self-explanatory and this Court need say nothing more on its uncomplimentary nature. It is, however, hoped that more serious attention is paid to the criminal Administration of justice in Delhi without undue delay because its efficiency would be conducive to orderly society and its defective character would tend to worsen law and order situation by tending to breed discontentment with the judicial process.

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