

Abdul Based Vs. Derestulla Mandal and ors.

Abdul Based Vs. Derestulla Mandal and ors.

SooperKanoon Citation : sooperkanoon.com/851755

Court : Kolkata

Decided On : Jun-06-1956

Reported in : AIR1957Cal18,1957CriLJ51

Judge : J.P. Mitter and ;Sen, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297, 323, 324, 326, 423(2), 439 and 537; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 96, 97 and 148

Appeal No. : Criminal Revn. No. 1014 of 1955

Appellant : Abdul Based

Respondent : Derestulla Mandal and ors.

Advocate for Def. : S.S. Mukherjee and ;Pankaj Kumar Ghose, Advs.

Advocate for Pet/Ap. : Jagannath Gangopadhyaya, Adv.

Disposition : Revision partly allowed

Judgement :

Sen, J.

1. This revisional application is directed against the acquittal of Derestulla Mandal and 6 other accused by Sri B. K. Panda, Assistant Sessions Judge, Murshidabad. All the 7 accused were charged under Section 148, I. P. C. for rioting in

prosecution of the common object of assaulting Jahiruddin and being armed with deadly weapons when rioting. The accused Abdul Latif was charged under Section 326 for voluntarily causing grievous hurt to Samiruddin. Hafezuddin was charged under Section 324, I. P. C. for voluntarily causing hurt to Anes with a spear or Farsa, and Niajuddin was charged under Section 323, I. P. C. for voluntarily causing hurt to Anes.

2. The prosecution case was briefly as follows:

3. On 9-12-54 there was a theft of some jute sticks belonging to Kulsam Bewa, a woman of the household of Jahiruddin and the accused Sham-suddin was suspected. Next morning i.e. on 10-12-54, just after sunrise Kulsam abused the thief without mentioning the name. Gulnair, a granddaughter of Jahiruddin, told Kulsam that Sam-suddin had stolen jute sticks. Kulsam then charged Samsuddin, who was working nearby alone with accused Hafizuddin. Samsuddin became furious when charged with theft of jute sticks & he along with Hafizuddin chased Gulnair who ran towards her house and took shelter in the house. Her grandfather Jahiruddin intervened and thereupon Samsuddin and Hafizuddin cried for help whereupon the other accused persons viz., Derestulla, Niajuddin, Abdul Latif. Umed Mandal and Khoda Bux came up. They were armed with lathis and spears, Samiruddin, cousin of Jahiruddin, happened to come and protested against the conduct of the accused party. Derestulla and Hafizuddin then gave order and Abdul Latif struck Samiruddin with a Fala in the abdomen. Niazuddin struck him with a lathi. Samiruddin fell down. At that time Aaes intervened and Niazuddin struck him with a lathi and Hafizuddin assaulted him with a spear. Thereafter the accused left the place. The assault took place in the Khalian or threshing yard of Saju and Maju, the yard being contiguous to the house of Jahiruddin. Basir, a nephew of Jahiruddin, arranged for the medical treatment of the two injured men viz., Samiruddin and Anes, and he then went to the thana viz. Sagardighi P. C., and lodged the ejahar at 9 a.m. on the same day 10-12-54. In the Ejahar only Abdul Latif, Hafiz and Derestulla were mentioned as the accused. The Police Officer of Sagardighi P. S. commenced investigation on the same day. He sent Samiruddin to Hospital and arranged for the recording of the dying declaration of Samiruddin. Samiruddin died in Jangipur Hospital on 19-12-54. Thereafter the

Investigating Officer submitted charge-sheet against the 7 accused persons and they were placed on trial in due course.

4. At the trial all the accused pleaded not guilty. The defence admitted that there was a quarrel between the parties over Kulsam Bewa accusing Samsudain of the theft of her jute sticks, but the defence case was that thereafter the complainant and his men took the aggressive part and attacked Hafizuddin at his house and caused severe injuries to three men of the accused's party viz., Hafezuddin, Abdul Latif and Niajuddin, and that if the accused caused injuries to Samiruddin and Anes, they were protected in the lawful exercise of the right of private defence.

5. The Jury returned a unanimous verdict of not guilty in respect of all the charges and the learned Judge agreeing with the verdict acquitted all the accused,

6. In this revisional application Mr. Jagan-nath Gangopadhyaya for the complainant petitioner has urged that the charge of the learned Judge contained many serious misdirections and that the verdict of the Jury was affected by the misdirections and cannot be sustained. It must be conceded that the charge of the learned Judge does contain a number of serious misdirections. After stating the prosecution case, the learned Judge referred to the first information report lodged by Baser and after placing the first information report before the Jury he told the Jury.

'You would find from the F.I.R. lodged by him that it gives a death blow to the prosecution case.'

This was putting it much too strongly and the Jury was bound to form the impression that the prosecution case was false in view of the discrepancy between the first information report and the case in the Court. The learned Judge has told the Jury that it was quite possible that the F.I.R. did not give a complete and accurate account of the prosecution case. In some respects clearly the P.I.R. is inaccurate or at least incomplete. Thus, the F.I.R. does not give any account of the genesis of the trouble; it does not mention that the trouble started over Kulsam Bewa accusing Samsuddin of theft of her jute sticks, though at the trial it was the case of both the prosecution and the defence that the trouble started with Kulsam

Bewa accusing samsuddin of the theft of her jute sticks Again, in respect of the charge under s. 148, I. P. C., the learned Judge gave a definite direction to the Jury to return a verdict of not guilty in view of the facts that the first information report named only three persons as the assailants and that four of the eye-witnesses viz., Gulnair, Dar-besh Jharu and Soleman had not, when examined by the Police, named three of the accused persons, viz., Samsuddin, Umed and Khoda Bux as having taken part in the occurrence, The fact that these four eye-witnesses had not mentioned Samsuddin, Umed and Khoda Bux when examined by the Police as having participated in the occurrence that was no doubt an important circumstance which had to be placed before the Jury and it was for the Jury to form their own opinion as to the number of persons actually concerned in the attack on the complainant and men of his party. The Jury might have chosen to believe the evidence in Court given by the eye-witnesses in spite of the contradictions just mentioned. The giving of the specific direction to the Jury that they would have to return a verdict of not guilty against the accused persons so far as the charge under Section 143, I. P. C., was concerned, was clearly a misdirection.

7. Mr. S. S. Mukherjee appearing for the accused opposite party has urged that the learned Judge did tell the Jury in several places e.g. at the beginning of his charge and also when beginning to discuss the evidence after placing the prosecution and defence versions, that the Jury were not bound by any opinion given by the learned Judge and that they would have to decide the question of facts themselves. It is no doubt true that such a direction was given by the learned Judge at the two places indicated by Mr. Mukherjee, but when the learned Judge gave the direction that the Jury would have to return a verdict of not guilty against the accused persons so far as the charge under Section 148 was concerned, it cannot be said that this was merely an expression of opinion; the Jury must have understood it as a clear direction which they had to follow. This was clearly a misdirection.

8. In dealing with the right of private defence the learned Judge told the Jury that if the complainant and his men chased Hafizuddin up to his house, Hafizuddin, Latif and others would in self- defence be entitled to cause hurt to Jahiruddin and other

men of the complainant's party, even if they chased him up to Jahiruddin's own house in doing so. This was also a misdirection, because the right of private defence extends only so long as criminal trespass continues or only so long as there is reasonable apprehension of hurt being caused, but the accused party would not be justified in chasing Jahiruddin up to his own house and assaulting him there in the exercise of the right of private defence.

9. In the next place the learned Judge told the Jury that if the occurrence had not taken place in the Khalian or threshing yard next to the house of Jahiruddin but had taken place near the house of Hafizuddin, the prosecution case might be thrown out, because change of place of occurrence is fatal to the prosecution case. This was also an unwarranted direction. It would appear from the evidence and circumstances that there was some mutual fight after Kulsum Bewa had accused Samsuddin of the theft of her jute sticks and the fight might well have swayed to and fro between the houses of Jahiruddin and Hafizuddin. If the assault had taken place near the house of Hafizuddin, it could not be said that the prosecution case must necessarily fail. The Jury had still to decide whether the assault alleged by the prosecution had been committed by the accused and whether the accused were protected by the lawful exercise of the right of private defence,

10. In view of the misdirections pointed out it is clear that the verdict of the Jury cannot be sustained. Mr. S. S. Mukherjee has urged that merely because there are serious misdirections the entire case should not go back for retrial, because even when there are misdirections, this Court would not interfere with the verdict of the Jury unless there has been a failure of justice. In respect, of the charge under Section 148, I. P. C., Mr. Mukherjee has urged that there has in fact been no failure of justice, because on the evidence before the Court even if there had been the proper charge, the Court would be bound to return a verdict of not guilty. In this connection Mr. Mukherjee has referred to the first information report which mentions three names as already pointed out, and he has also referred to the fact that four out of seven eye-witnesses mentioned only four persons as concerned in the occurrence when examined by the Police, and did not mention Samsuddin, Umed and Khoda Bux as having participated in the attack on Jahiruddin,

Samiruddin and Anesh. Further, it has already been pointed out that it is the common case, that the trouble started after the accusation by Kulsam Bewa against Samsuddin of a theft of jute sticks, and it would appear that after, a quarrel there was a mutual fight between the members of the two parties and it would be difficult to hold that all the accused persons had the common object of assaulting Jahiruddin. In the circumstances we agree with Mr. Mukherjee that we would not be justified in directing retrial in respect of the charge under Section 148, I. P. C. But in respect of the charge under Section 326, I. P. C. against Abdul Latif there appears to be overwhelming evidence on the record. Similarly there is sufficient evidence in respect of the specific charge against Hafizuddin under Section 324, I. P. C., and against Niajuddin under Section 323, I. P. C. Regarding Naijuddin Mr. Mukherjee has urged that he also sustained certain injuries; but if Niajuddin was assaulted by Anesh or any member of the complainant party, the latter might be suitably dealt with in the counter case which has already been started by the accused party. That is no reason for not directing a retrial in respect of Niajuddin also as there is sufficient evidence on the record against him.

11. Accordingly this revisional application succeeds in part. The verdict of the Jury in respect of the charges under Sections 326, 324 and 323 respectively against Abdul Latif, Hafizuddin and Niajuddin and their acquittal in respect of those charges are set aside and a retrial of these three accused in respect of these charges is directed. The verdict of the Jury in respect of the charge under Section 148, I. P. C., is however upheld.

Mitter, J.

12. I agree.