

Hari Bag and ors. Vs. the State

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Court : Kolkata

Decided On : Jul-23-1957

Reported in : AIR1958Cal118,1958CriLJ362

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 288, 297 and 367; ;
[Evidence Act, 1872](#) - Section 8; ;[Indian Penal Code \(IPC\), 1860](#) - Section 40

Appeal No. : Criminal Admitted Appeal No. 31 of 1955

Appellant : Hari Bag and ors.

Respondent : The State

Advocate for Def. : Amaresh Ch Roy, Adv.

Advocate for Pet/Ap. : S.S. Mukherji and ;Sukumar Mitra, Advs.

Disposition : Appeal allowed

Judgement :

K.C. Das Gupta, J.

1. These eleven appellants along with eleven other persons were tried by the learned Sessions Judge of Hooghly on charges under Sections 148 and 458 of the Indian Penal Code. The first appellant Hari Bag was tried in the same trial on a

charge under Section 302 of the Indian Penal Code. The jury returned a unanimous verdict of not guilty as regards this charge under Section 302 and in accordance therewith the learned Judge acquitted him of the offence. As regards the charge under Section 148 of the Indian penal Code, a majority of the jury -- the majority not being the same in all cases -- returned a verdict of guilty against these eleven appellants. Against six of them, the jury returned a verdict of guilty under Section 452 of the Indian Penal Code. In accordance with the majority verdict, the learned Judge sentenced the appellant Madan Das alias Madan Chandra Das to rigorous imprisonment for one year under Section 148 of the Indian Penal Code and the rest to rigorous imprisonment for two years for the same offence. Appellants Nos. 1 to 6 were sentenced by him to rigorous imprisonment for two years for the offence under Section 452 of the Indian Penal Code. These sentences were directed to run concurrently.

2. The prosecution case, as far as one can understand the prosecution case from the confused and confusing statements given by the witnesses as regards what happened, is that on the 6th January 1954 following an altercation that started from some abusive words used by one Hrishikesh, a large number of persons assembled outside the house of Siddhewar Das from about nightfall. The number of persons is estimated by the prosecution to be about 200 to 250 and it is said that they assembled there with burning lights, hurricane lanterns, gas lights and Hassag lamps and demanded that Hrishikesh should come out of the house. After waiting in vain for about three hours for Hrishikesh who had in the meantime slipped from the house by a lane towards the west, these men entered into the house by breaking open the sadar door, ransacked the house in search of Siddheswar and Hrishikesh and ultimately returned without being able to do anything to any of these persons, as Siddheswar had successfully concealed himself either under or behind a stack of straw. Two old women, one aged about 80 and another about 65, were however mercilessly assaulted and Annadamoye, the 65 years old stepmother of Siddheswar died almost instantaneously, of her injuries. Information was lodged at the thana that very night within a few hours.

3. The defence of the accused, who pleaded not guilty, was that no occurrence of the nature, as alleged, took place; that it was Siddeswar and Hrishikesh who

assaulted and killed Annadamoyee under influence of drink when Annadamoyee remonstrated with them for using bad language when quarrelling with Gadai, Jiten and Mahadeb and that Siddeswar and his advisers have turned that unfortunate incident to their own advantage by bringing a false case against these appellants, with whom they had long standing enmity, with the intention of covering up their own guilt in the same process.

4. It is necessary to remember that, in the charge under Section 148 of the Indian Penal Code, the common object was mentioned to be to beat Siddheswar and Hrishikesh. In the charge under Section 458 of the Indian Penal Code also, it was stated that preparation had been made for causing hurt to Siddheswar and Hrishikesh.

5. To establish its case, the prosecution relied mainly on the testimony of seven persons, --Siddheswar and Hrishikesh who, it is said, were the men whom the raiders really wanted and Adhir Malik, Panchanan Das, Gourhari Das, Kristo Chandra Das and Gobinda Pada Patra. The evidence disclosed some peculiar circumstances. One was that a pair of bantts stained with human blood were recovered by the investigating officer on the morning after the night of the occurrence from near the stack under or behind which Siddheswar had concealed himself. Another disturbing feature which demanded the attention of the judge of facts was that while according to the evidence in court the raiders started assembling even before 7 p. m., and were really there outside Siddheswar's house with their lights and lanterns, the Hassag lamps and various arms, calling for Hrishikesh and making pandemonium there, the information that was lodged at the thana on behalf of the complainant by Adhir's uncle Manmatha Malik, P. W. 14, makes no mention of any such assemblage or any such demands, even though it is abundantly clear that he could not have left the place earlier than 8 p. m. No less surprising was the fact that though these 200 to 250 persons had assembled, determined to cause hurt to Siddheswar and Hrishikesh, they singularly failed in that attempt, but some of them made a murderous assault instead on an old woman against whom they appear to have had no grudge whatsoever, but none made even an attempt to go to Hrishikesh's house, which was nearby, in search of him. Not so surprising perhaps but still deserving consideration was the rather

unusual story of men of three villages gathering in this manner with lights and arms, over what people in the countryside would ordinarily consider a very slight affair namely, the use of one abusive word 'bokachoda' by one person to another, even though the person against whom the word was used did not take much notice of the same. One other circumstance which might be mentioned at this stage is that it appears from the evidence of Tuku Bala Dasi, P. W. 2, who, after stating before the committing court and other places that an occurrence took place in the manner alleged by the prosecution, stated in the Sessions Court that she had made those statements falsely because she had been threatened with dire consequences and that even on the date she had given evidence in the Sessions Court one witness Gouranga, apparently meaning Gourhari, had threatened her with dire consequences.

6. For a proper decision of the case. It was necessary for the jury to have before their minds' eye a complete picture of the prosecution and defence case with the light and shade properly delineated and it is here that the assistance of the learned Judge was most necessary and here the learned Judge has completely failed. If summing up the evidence meant nothing more than giving the jury a precis of what the witnesses have said, the learned Judge did that admirably. Bearing in mind, however, the Importance of jury trial, the Courts have insisted that proper assistance should be given to the jury by the learned Judge presenting a complete picture of the evidence in the case, impartially displaying the lights and shades so that the jury may do their duty properly. The learned Judge has done nothing in this case to draw the jury's attention to the different circumstances I have mentioned above. In giving his precis of the evidence, he has undoubtedly referred to all that the witnesses have said or at least the material portion of that, but he has not tried to draw any connection between the different parts of the evidence. Thus, while he has told the jury, in summing up the evidence of one of the witnesses, that Manmatha laid information at the thana at 9-45 p. m., he has not pointed out that that meant that Manmatha must have left the village at about 8 O'clock at the earliest and ought to have then known all about the persons assembled outside Siddheswar's house with lights and arms and demanding Hrishikesh's return. He has mentioned the find of bantis by the investigating officer but has not said anything as to the significance of their find near the place where

Siddheswar was hiding. In this respect, he has failed even to make a proper summary of the evidence inasmuch as he has entirely omitted to point out that the Serologist's report shows that these bantis bore marks of human blood. The importance of the presence of human blood on these can well be imagined. The presence of human blood would make it highly probable that these bantis had been used in inflicting some of the injuries on Annadamoyee and the probability of the raiding party concealing the bantis at the place where Siddheswar was hiding would be very little. It was also obvious that if they had gone to hide the bantis in haste in the stack, they would have discovered Siddheswar and then Siddheswar would have met the full force of their wrath. Indeed, when the case was first opened and we asked Mr. Roy, the learned Deputy Legal Remembrancer, 3s to what explanation he could suggest for the bantis being in that place, he said that it might very well be that the blood found was blood of fish that might-have been prepared for the table with bantis. It is fair to say that Mr. Roy himself drew our attention a little later to the fact that the record showed that the blood on the bantis had been tested and found to be human blood. That, of course, took away all force from the argument that the blood might be of fish and made probable the defence suggestion that the blood there was the blood of Annadamoyee. As the learned Judge apparently himself forgot that there was evidence that the blood was human blood, he failed to give the jury any assistance in this matter.

7. These defects in the learned Judge's direction to the jury were, in my opinion, serious defects and I find it impossible to escape the conclusion that they were serious misdirections in the learned Judge's charge to the jury.

8. Mention, I think, should also be made of the mistake made by the learned Judge in asking the Jury to treat as substantive evidence the evidence of Tuku Bala even though it had not been put in evidence under Section 288 of the Code of Criminal Procedure. Quite apart from that, however, I would be bound to hold that the learned Judge's charge was vitiated by serious misdirections.

9. In view of this, it has been necessary for us to go into the entire evidence to ascertain if the misdirections in the learned Judge's charge to the jury have resulted in an erroneous verdict and have, in fact, caused any failure of justice.

10. As I have indicated, in mentioning the circumstances which required the Jury's consideration, there were some very peculiar features in this case and before the judge of facts could be expected to accept the testimony of the persona who claimed to be the eye-witnesses he would expect some explanation of the apparent improbability of things happening in a particular way. We have looked in vain for any such explanation. We are unable to understand why the report by Manmatha mentions nothing about the assemblage, but speaks only of apprehension of trouble. We are unable to understand how a crowd of 200 to 250 people could have remained for 2, 3 or 4 hours in that manner outside Siddheswar's house without entering the house when his evidence shows that the walls on three sides had fallen down. We are equally unable to understand how this crowd was unable to discover Siddheswar from his place of hiding under or behind the haystack and also why they did not move to Hrishikesh's house which is only a short distance, specially when Hrishikesh was the main person who had offended them most. Equally incomprehensible is the episode as regards the bantis. The bantis as I have mentioned, bore marks of human blood. The only explanation of human blood coming on these was that they had been used on Annadamoyee. None of the prosecution witnesses, however, say that the bantis were used by anybody on Annadamoyee. Again, if these raiders had used the bantis in that way, would they have gone further into the house to conceal them in the haystack? It would be unreasonable, in my opinion, to think that they would act in such a manner. The total silence of the prosecution to explain the presence of the bloodstained bantis in that manner cannot be lightly overlooked. Along with this, we have to take into consideration the position that while the prosecution is not bound to prove the motive of an occurrence. It is necessary for the court to consider the matter carefully when, in fact, the prosecution suggests a motive. Here it is said that what moved this large assemblage of persons to attack the house of Siddheswar was the use of one abusive word to Gadai, cousin of Siddheswar. Abuse always annoys and often angers, but it is, I think, very unusual that the use of one such word would bring in its train 200 to 250 persons complete with lights and arms and that such a number of persons assembled from three different villages would continue for search of a (sic) house demanding Hrishikesh and Siddheswar without however being able to do anything to them.

11. Along with this must be taken into consideration the fact that the witnesses, while quite competent and likely witnesses of any occurrence that took place, are by no means disinterested. Siddheswar and Hrishikesh are almost in the position of complainants in this case. Panchanan is a close relation of Siddheswar. So is Kristo. It appears also that Panchanan, Kristo and Siddheswar live in the same house. Adhir also appears to be a relation. As regards Gourhari, one has to remember the evidence of Tuku Bala that Gourhari threatened her even on the date of her deposition at the sessions trial. The fact remains that when Taku Bala made this statement in the sessions court the prosecution did not ask for any permission of the court to cross-examine her and as far as I can see, there is no challenge by the prosecution of the correctness of the statement that she had been tutored. The evidence of Kanai Lal Polen P. W. 9, also suggests that all was not fair in this case. In the committing court, Kanai gave evidence in favour of the prosecution and in the Sessions Court he turned round on his evidence and said that the place was dark and he could not recognise anybody. We have not overlooked the possibility that this may be the result of the defence trying to win over witnesses but in view of the circumstances already mentioned, I find no escape from the conclusion that a properly directed jury could not have come to the conclusion that the version of the occurrence as given by the prosecution witnesses about the attack on the house is true.

12. I have, therefore, come to the conclusion that the misdirections in the learned Judges charge to the jury have, in this case, resulted in an erroneous verdict and have, in fact, caused a failure of justice.

13. I would, therefore, allow the appeal, set aside the convictions and sentences of the appellants and order that they be acquitted.

14. The accused appellants are discharged from their bail bonds.

Debabrata Mookerjee, J.

15. I agree.

