Natabar Haldar Vs. Emperor

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Court : Kolkata

Decided On : Jul-30-1929

Reported in : AIR1930Cal136

Appellant : Natabar Haldar

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. The accused Natabar Haldar alias Natak was tried before the learned Sessions Judge at Barisal with a jury under Section 302, I.P.C. for causing the death of one Karim Shah. Along with the accused his brother Nandabashi was also tried under Section 302 read with Section 114, I.P.C. for abetting him. He was acquitted. The case of the prosecution was that the two accused brothers, Nandabashi and Natabar, lived together and were tenants of Abdul Kader Talukdar of Chatra. Narendra Nath Bose was the landlord's Tahsildar and Karim Shah was his Mridha. In the afternoon of Tuesday 27th March 1928 Narendra (with Karim) had gone to the Bari of the two brothers where he found them and also Mahommad Shah and Abdul Karim Rari.

2. There was some conversation and Narendra demanded the rent due from the brothers. Nandabasi said that they were unable to pay them and the Tahsildar and Karim were about to depart when Nandabasi invited them, to the inner hut at the

north Viti of the Bari to say something to them. Thereupon they went to the north Viti hut, Natabar also accompanying them and there they sat down. An altercation then arose between the two brothers and Karim Shah with regard to a Jaisudi Bari which apparently the latter had taken possession of, but the possession of which was claimed by the brothers. They complained that he did not pay any rent for this Bari. His answer was that various people held mortgages on the property and he did not know to whom to pay the rent. When the altercation had been going on for about 20 minutes, Natabar who had gone inside the hut suddenly appeared with a leja and speared Karim as he sat on the verandah. He attempted to get up and Nandabasi then got up and helped Natabar to press the leja home. Karim rolled over and died within a few minutes. Narendra got up and ran out of the Bari for help. Mohammad Shah who had been left at the Baithak-khana heard his brother Karim cry out and ran to the north Vita hut and saw his brother lying in front of the door of the hut and Natabar standing on the verandah with a leja in his hand. He tried to drag the body away but Nandabasi cried to his brother to kill him if he persisted in the attempt. Mohammad then ran away from the Bari. On his way he passed a number of people who had been called as witnesses and lie told them all that his brother had been killed by Natabar. Various witnesses came to the Bari and were threatened by Natabar who said that he would kill anybody who came near or tried to take the body away. Some of the witnesses alleged that he had said that he would kill them as he had killed Karim. The wound upon Karim when examined afterwards by the doctor were found to be consistent with having been done with a leja. The chest was slashed open and the wound perforated the upper lobe of the left lung, the left varticle of the heart in two places and the stomach in two places. It is obvious therefore that considerable force must have been used.

3. Natabar's defence was that he had had a quarrel with a neighbour on account of the neighbour's son interfering with his Panbaroj, that somebody suggested that he should go to his landlord to have the matter decided, and that the landlord instead of helping him had fined him Rs. 25 apparently on three separate occasions making. the fine Rs. 75 in all. He also sentenced him to be slapped with a shoe but this part of the sentence was remitted. He says further that in consequence of his inability to pay the fine imposed the landlord-had sent his servants for the purpose of collecting the fine and that they with a number of other

persons had attacked him when he was attending to his Panbaroj and that he bad ran away towards his Bari when a leja had been thrown at him but missed him. He managed to get into his Bari and when he tried to shut the door another leja was thrown at him which grazed him on the thigh and in turn he picked up the leja which had been thrown on him and either threw it back or used it in his defence with the result that, during the fight which ensued, Karim was struck. These shortly are the facts.

4. The sole witness of actual striking of Karim was Narendra but Mahomed saw the body almost immediately afterwards, and as I have said certain witnesses deposed that Natabar threatened them that he would kill them as he had killed Karim. It will be observed that a considerable part of the evidence of the persons who say that they saw Mahomed running and heard this news is as consistent with the case for the defence as it is with that of the prosecution. It would fit in with either story. Udoy Chandra Roy, prosecution witness 11, said in his cross-examination that the men he had seen were running with something like lathis in their hands and that from within the Basabari he heard Natabar cry out that ho was being murdered.

5. Mr. Taluqdar on behalf of the appellant has comjjlainod first of all that the learned Judge lias not properly put the case of the defence to the jury. He has also raised a point of law with regard to the learned Judge's direction upon Section 304, I.P.C. In view of the opinion which we have formed as to the learned Judge's direction in law it is not necessary to deal at length with the first point taken on behalf of the accused. SBut reading the charge as a whole I am iof opinion that it does not sufficiently jdraw the attention of the jury to the defence raised, nor does it show the importance of the evidence of Udoy Roy in his cross-examination. The learned jJudge, as so many learned Judges in the Imofussil seem to do, simply detailed jchronologically the evidence given by the witnesses for the prosecution without sifting or analysing it and without directing the jury in any way jupon the value or weight which ought ito be or might be attached to it, and by so doing has really failed to give that help to the jury which he ought to have given. As I have already pointed out in a recent case the spirit of the Code demands that there shall be more than a bare statement of facts in the learned Judge's charge. Otherwise

ho can be of little assistance to the jury.

6. The point raised in the learned Judge's direction in law refers to the following passage in his charge. He had explained Sections 302 and 304 and eventually said this:

If, however, you find he had neither the intention nor the knowledge requisite under Section 302 consider his liability under Section 304, I.P.C.

7. He then read and explained that section and continued

If you hold that he intended to cause Karim Shah such bodily injury that death would be a possible but not the most probable result you will find him guilty under Section 304 part 1 or if you hold that he had no such, intention but knew as a reasonable man that Karim's death would be a likely consequence of his act you will find him guilty under Sectopm 804 part 2.

8. In our opinion this direction would have been quite correct if he had not used the word 'possible,' but had adhered to the words of the section and had used the word 'likely.'

9. It becomes clear, that the Judge's direction is wrong, if you apply it to a concrete instance. I may repeat here the example which I suggested during, the discussion - If Natabar had struck a blow with the leja on Karim's skin it is clear that Karim might have died, from septic poisoning arising fiom the wound. His death would be a possible result of what Natabar had done but nob the most possible result. According to the learned Judge's direction such an act would come within Section 304 part I. We are clearly of opinion that it would not. It might possibly come within Section 304 part 2. But it is more than likely that such an act would not come within the purview of Section 304 at all. In view of the fact that the jury have convicted the accused of an offences under Section 304, part I, it cannot be said that this misdirection may not have misled the jury.

10. In these circumstances we are of opinion that the conviction and sentence must be set aside and the appellant retried.

Cuming, J.

11. I agree.