

Hafijuddi and ors. Vs. Emperor

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Court : Kolkata

Decided On : Apr-27-1934

Reported in : AIR1934Cal678

Appellant : Hafijuddi and ors.

Respondent : Emperor

Judgement :

1. The prisoners Hafijuddi (Hafijuddin) alias Bengu, Asgar Ali, Har Chandra De (Chowkidar) alias Hari Chandra De alias Hari Chowkidar, Kalai Prodhan, Syed Ali (Haji), Kadam Ali Sarkar Maharam Ali Talukdar alias Mohor Ali, Abdul, Jahar Ali and Kali Prosonna De were tried before the Sessions Judge of Tippera and a Jury, as concerned in the murder of one Hari Dutta alias Proka Chandra Dutta, on 12th March 1933. The accused Hafijuddi, Maharam Ali, and Kalai Prodhan were charged substantively with murder, Under Section 302, I.P.C.; all the accused were charged Under Section 149 read with Section 302, I.P.C., and they were further charged Under Section 120-B read with Section 302, I.P.C. In consonance with the majority verdict of the jury, the learned Sessions Judge convicted Hafijuddi, Asgar Ali, Har Chandra De Chowkidar and Kalai Prodhan Under Sub-section 120/302, 147 and 149/302, and under each of the Sub-section 120-B/302 and 149/302, I.P.C., and sentenced them to death. The prisoners Kadam Ali, Abdul, Jahar Ali, Kali Prosonno De and Maharam Ali, were in accordance with the verdict of the majority of the jurors, convicted Under Sub-section 120-B/302, I.P.C., and they were sentenced by the Judge to transportation for life. In the case

of Syed Ali the majority verdict of the jury that he was guilty Under Sub-section 147, 149/302, I.P.C., was accepted, and he was sentenced by the Judge to death. The case is before us on reference by the Sessions Judge Under Section 374, Criminal P.C., and on appeal by the prisoners. The Judge, it appears, has taken particular care in trying to determine the nature of the majority verdict of the jury, and has tried to follow the line indicated by the verdict of the jury in passing sentences on the accused persons. Those found by the Judge to have been present at the occurrence, were sentenced to death; those whose presence was not established in evidence, but who consented tacitly to a conspiracy to murder, were sentenced to transportation for life.

2. The learned Judge's charge to the jury appears to be exhaustive, and all the material points arising for consideration in the case were analysed and the evidence bearing upon them was carefully summarised. The motive for the crime in which so many persons were concerned had to be considered and the evidence of conspiracy to murder had to be carefully shifted. The reason why no names were mentioned in the First Information Report of the occurrence had to be discovered, and in that connexion the indifference shown by the President Panchayet of the Union within which the place of occurrence was situate came in for consideration. The evidence as to conspiracy; the assembling of the accused persons on different occasions before the occurrence; the occurrence itself and participation of the prisoners in the same; their flight after the occurrence, had to be separately considered. So far as the oral evidence goes there was the evidence of the approver Syed Ali; there was the evidence of eyewitnesses to the occurrence, of witnesses who saw certain of the accused running from the scene of occurrence. On the question of motive, there is a body of documentary evidence that the deceased Hari Dutta had been on litigating terms with several of the accused persons and that he had almost invariably been successful. Evidence was given to establish that there was a baithak some ten days or so before the occurrence at Kalai's house in which it was decided that Hari Dutta was to be done away with, and evidence was placed before the Court also that the accused persons assembled at Kadam Ali's house, on the evening of the occurrence. The confession of the approver, his deposition before the committing Magistrate, and his evidence before the Court of Session, was taken to be the basis of the case for

the prosecution, and evidence was led to prove the presence of the different accused persons at the conspiracy to murder, and at the occurrence.

3. The case of the individual accused received the consideration of the Judge and the jury, and the materials on the record touching each of them had to be kept in view, regard being had to the nature of the verdict of the jury, and to the Judge's own conclusions arrived at before recording an order of conviction and before passing sentences. The questions arising for consideration generally in the case, which relate to the case of all the accused persons, have to be determined on the materials on the record, before the case of individual accused can be taken into consideration. The motive for the crime has, in our judgment, been established; and it may as well be mentioned that what may be a sufficient motive for an individual or a group of individuals may or may not be sufficient motive for others, and it is therefore necessary to give importance to the occurrence itself, to the participation of the accused persons in the same, and see if they were responsible for the crime, although it may not be possible definitely to hold that the motive ascribed was not sufficient or commensurate with the nature of the crime. In the case before us, the evidence discloses facts and circumstances from which the presence of an intention to do away with the deceased Hari Dutta could be guessed.

4. There was evidence led for the purpose of establishing conspiracy to murder Hari Dutta. The approver, examined as a witness, speaks of a baithak at Kalai's house and there is the evidence of Abdul Hamid and Fazar Ali on this part of the case. There was further the assembling or gathering of men at Kadam Ali's house, as has already been mentioned. The approver and the witness Sahar Ali speak to that. The evidence bearing upon the baithak at Kalai's house, and upon the gathering in the evening of the occurrence at Kadam Ali's house was commented upon very severely on the ground that it came from the approver and some witnesses who are in the position of accomplices, we are invited to reject that evidence, and hold that conspiracy to murder has not been established. The position is very well settled by the authority of decisions in England and in this country that the testimony of the approver ought to be corroborated in material particulars in the matter of circumstances of the crime and also in the matter of

identifying the accused with the offence. The corroboration must be independent of the accomplice; and the evidence of one accomplice cannot corroborate the evidence of another: the evidence of either requires corroboration before it can be acted upon. It has been held in this Court that the testimony of a person who may not be an accomplice in a strict sense of the term but a person who in any way helped in the commission of the offence for which the accused are tried, or was cognizant of it, and omitted to disclose it for a time, is not a person whose testimony could justify a conviction, except where there is corroboration: see 21 Cal. 328 *Ichan Chandra v, Queen-Empress*, (1894) 21Cal 828.

5. So far as the statutory provisions are concerned, there is nothing in law to justify the proposition that evidence of a witness, who happens to be cognizant of a crime, or who made no attempt to prevent it, or who did not disclose its commission, should only be relied on to the same extent as that of an accomplice. The real question in such a case was the degree of credit to be attached to the testimony of such a witness ; and that depends on all the facts and circumstances of the particular case. As it has been said, it may not be possible to place much reliance on the evidence coming from persons falling within the description given above, but they are not accomplices, and it leads to confusion of thought to treat them as 'practically accomplices' and then apply the rule as to their credibility instead of judging their credibility by a careful consideration of all the particular facts of the case affecting the evidence: see the observations of Davies, J., in the case of 26 Mad. 1 *Emperor v. Edward, William Smithes* (1903) 26 Mad . The evidence of conspiracy, as led in the case before us, coming from the approver who has been corroborated in material particulars or circumstances arising for consideration in the case, is sufficient to establish the same. The evidence of the approver has, in our judgment, been corroborated by Abdul Hamid and Fazar Ali, whose testimony we are unable to reject, for the reason given by the learned counsel for the defence, that they were in the position of accomplices. On the same ground we hold that the approver's evidence taken along with the evidence of the witness Sahar Ali, has established the fact of the gathering on the evening of the occurrence. The approver and the witnesses mentioned above, prove the existence of a conspiracy, and as the Sessions Judge has put it, in view of what happened subsequently, those present as deposed to by the witnesses and taking

part in the discussion would be liable under the conspiracy charge.

6. In the category of persons present at the baithak at Kalai's bouse some ten days or so before the occurrence and at the rendezvous at Kadam Ali's house on the evening of the occurrence, must in our opinion be included the accused Syed Ali. In view of the above conclusion arrived at by us on the questioner of conspiracy, we do not consider it necessary to go into the other two incidents mentioned in the evidence bearing upon this part of the case: the gathering at Alauddin's house, and the decoying of Hari Dutta as spoken to by Abdul Karim, on the day of occurrence. In our opinion disbelieving the evidence relating to these incidents would not take away anything from the evidence of conspiracy to which reference has been made above. On the evidence of the approver, and on the corroborative evidence of the other three witnesses Hamid Khan, Fazar Ali and Sahar Ali, relating to the conspiracy, and on the details given by them, we hold that it has been established that all the accused persons were parties to a conspiracy to commit a murderous assault on Hari Dutta. At this stage it may be mentioned that the discrepancies in the approver's evidence do not, in our opinion, make that evidence unreliable, on material particulars, and the discrepancies do not help the accused so far as their presence at the gatherings at Kalai's house and at Kadam Ali's house and their intention to attack Hari Dutta are concerned.

7. In regard to the First Information Report in the case, no assailants were named in the same. The evidence indicates that Jonab Ali met some of the witnesses before he went to the police station for lodging the first information report there. According to the defence the absence of names in the First Information Report indicated that there was no recognition of the assailants, but only subsequent accusations on suspicion. There is however ample ground for holding upon the materials before us, that the absence of names was occasioned by fear, and in this connexion mention may be made of the circumstance, made reasonably clear by evidence on the record, that the local President Panchayet Gafar Ali was biased against the prosecution or hostile to the investigation. The neighbouring President, Jagadis Pal, had to lend his support to the police, and there was some defect manifest on the first report of the crime, and in the investigation by the police.

8. After the evidence to the conspiracy to murder, the question of real importance that arises for consideration is the evidence of the eyewitnesses to the occurrence. There are some divergent statements in the deposition of some of these witnesses to a horrible attack at the dead of night, who could hardly realise what was happening before them. In spite of the inconsistencies, discrepancies and divergences, we are not in a position to discard the evidence given by the witnesses to the occurrence as 'we were asked to do so far as the material facts deposed to by them are concerned. The evidence as to the recognition of the accused persons as men taking part in the occurrence is, in our judgment, sufficient and has to be acted upon.

9. There were then the witnesses who saw the flight of the accused persons, and there were two witnesses, who stated that they were prevented from leaving their houses by some of the assailants. It was sought to be made out, on the side of the defence, that regard being had to the spots from which some of the witnesses are said to have seen the accused persons individually, the evidence of those witnesses could not be accepted as true. Reference was made to the Settlement Map in this connexion; but on the materials before us, no conclusion of any value can be arrived at on the data placed before us. On the evidence of the witnesses to the flight of the accused after the occurrence, taking that evidence along with the evidence of the eyewitnesses, we have arrived at the conclusion that the accused persons took part in the occurrence, and fled from the scene as spoken to by the witnesses examined on the side of the prosecution. On this part of the case the approver's evidence had to be made the basis of the case for the prosecution, and that evidence has been in our opinion corroborated in material particulars and circumstances by the other evidence of which mention has been made above, on the question of recognition of the accused persons, as persons who took part in the occurrence.

10. The evidence against each of the individual accused has been summarised by the Sessions Judge in his charge to the jury; and no useful purpose will be served by our adverting to that evidence in any detail. It is moreover unnecessary for us to do so, in view of the definite conclusion we have arrived at on the materials before us. In our judgment a case of conspiracy to commit a murderous assault on Hari

Dutta, the deceased, has been satisfactorily established, by evidence relating to the baithak in Kalai's house some days before the occurrence, and to the gathering in the evening of the occurrence at Kadam Ali's house, taking into consideration the materials placed on record for the purpose of proving motive for the crime so far as the accused persons, are concerned. The accused persons were present as assailants at the scene of occurrence, armed with weapons of different description, meant for attacking Hari Dutta, with the intention of causing wounds on him that might result in his death. On the evidence as it stands, we have no hesitation in coming to the decision that the accused persons were members of a criminal conspiracy to compass that intention. It is not possible on that evidence to hold definitely who amongst the ten prisoners, dealt the fatal blow or blows, or who took what actual part in the murderous assault committed in pursuance of the agreement. In consonance with the decision we have arrived at we hold that the prisoners, all the ten, are guilty of the offence of conspiracy to commit the offence punishable Under Section 304 (Part 1), I.P.C.

11. On a careful consideration of the facts and circumstances of the cases, regard being had to the evidence relating to the origin of the criminal conspiracy, and to the evidence connecting the individual accused with the murder, the sentence we propose to pass on the prisoners is that each of them should undergo rigorous imprisonment for seven years. The result of our decision as mentioned above, is that the conviction of the prisoners Hafijuddi, Asgar Ali, Hari Chandra De, Kalai Prodhan for the offences of which they have been convicted as also the sentence of death passed on them by the learned Sessions Judge are set aside, and they are convicted Under Sub-section 120-B/304 part 1, and sentenced each of them to seven years' rigorous imprisonment. The conviction of the prisoner Syed Ali Under Sub-section 149/ 302, I.P.C., and the sentence of death passed on him are set aside; Syed Ali is convicted Under Sub-section 120-B/304 I.P.C., and sentenced to seven years' rigorous imprisonment. The conviction of the prisoners Kadam Ali, Abdul, Jahar Ali, Kali Prosonna De and Mabaram Ali Under Sub-section 120-B/302, I. P.C., is set aside; they are convicted Under Sub-section 120-B/304, part 1, I.P.C., and are each of them sentenced to undergo rigorous imprisonment for seven years.

