

Sheikh Hafeez

Vs

The State of Bihar

Criminal Appeal No. 37 of 1967

(CJI J. C. Shah, S. M. Sikri, G. K. Mitter, K. S. Hegde JJ)

30.07.1969

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Judicature at Patna dismissing the appeal of Sheikh Hafeez, appellant before us, and confirming his conviction under Section 307 read with Section 109, I.P.C. The High Court, however, reduced the sentence from seven year's rigorous imprisonment to five years' rigorous imprisonment.

2. The story of the prosecution was that at about 10-30 p.m. on December 2, 1963, Ramdeo Sharma, P.W. 2, was stabbed with a dagger in his abdomen near the Paan shop of Yar Ali, P. W. 4; a quarrel had taken place between Ramdeo Sharma and Mohd. Ramzan; the appellant, Sheikh Hafeez, had caught hold of Ramdeo Sharma thus enabling Mohd. Ramzan to stab him with a dagger. This story has been accepted by the learned first Additional Judicial Commissioner of Chotanagpur, Ranchi, and the High Court.

3. We have gone through the evidence led in the case and we find that neither the Additional judicial Commissioner nor the High Court have looked at the evidence carefully and they believed the witnesses who should not have been believed. They failed to notice material contradictions between the story as told by various alleged eye-witnesses. This has led to serious miscarriage of justice.

4. The first information report was lodged by Bhagirath Singh, uncle of Ramdeo Sharma. He wrote a Chit in the hospital where Ramdeo Sharma had been taken and gave it to P.W. 5, A.S.I. Shievadayal Singh, and this Chit was the basis of investigation. Bhagirath Singh has not appeared in this case.

5. Ramdeo Sharma says in his evidence that on December 2, 1963, at about 10-30 p.m. He went to bring Paan from the Paan shop of Yar Ali and his uncle Bhagirath Singh had sent him to bring Paan. He further states :

"Two people were standing in front of the Paan shop and a private car No. BBN 236 was standing there on the road. One of these persons said to me." How is your face ? I said "my face is very good". Then that man said, "If you speak more, your face will be made ugly." Thereupon I replied that he could not do that. Just then one of them caught hold of me and the stabbed me on my stomach. The man who stabbed me, stabbed me on the front side of my stomach .... The accused who had stabbed me entered in the house of accused Hafiz where as accused Hafiz remained standing

there even after I was stabbed by the accused Ramzan."

In cross-examination he stated that there were eight male members, including his uncle, Bhagirath Singh, who were living in his house and he had come to the Paan shop that night after taking his night meal in his house. He further stated that the other seven male members were in the house at the time he had come to the Paan shop, including his uncles, Bhagirath Singh and Ram Chandra Singh, P.W. 8.

6. On reading this evidence it will be clear that the alone went to the Paan shop and his uncle and others remained in the house. But in the next passage he gives slightly different story he states :

"Besides them Laldeo Sharma was standing at a distance of 4 yards from the Pan Shop. He is my cousin. Raja Rana Singh was with Laldeo Sharma. Raja Rana Rama Singh is not related to me but lives with us in that house. Ram Chandra Singh was standing at a distance of about 4 feet Laldeo Sharma."

7. He further states that Bhuneshwar Singh and Laldeo Sharma had chased the assailant and he came to know that they caught the assailant near taxi stand immediately after the occurrence. It was suggested to him in cross-examination that there was a Marpit between two groups of persons and that his uncle had gone to the spot armed Lathi. It was further suggested to him that he had some enmity with the accused Hafeez. The story he tells sounds very improbable on the face of it. First, the reason for picking up quarrel seems rather strange, and secondly it seems quite strange that the appellat Hafeez remained standing there even after Ramdeo had been stabbed, and Mohd. Ramzan had run away. If he had taken the part ascribed to him we would have expected him to have run away and be chased or arrested by the bystanders.

8. The story that Ramzan ran away and was chased is supported by P.W. 3. Turam Bari, a Havidar of Police who was on night duty in the locality at about 11 p.m. He states that both Bhuneshwar Singh and Laldeo Sharma had pointed out to him Ramzan who was sitting in a rickshaw near the taxi stand and told him that he had stabbed one man and was escaping. Turam Bari thereupon arrested him and took him to the Thana.

9. Now Yar Ali, who is the Paan shopkeeper, tells a different story. He says that four of five bus conductors, including Ramdeo Sharma, had come to take Paan and they began to quarrel among themselves. A car drove up to the shop and the driver of the car got down and the man Ramdeo Sharma, but he could not say who stabbed Ramdeo Sharma. In cross-examination he states that there was scuffling between the driver of the car and Ramdeo and then there was exchange of blows between them, the conductor Ramdeo Sharma went to his house and called many persons from his house; many persons began to brandish Lathis and many people had assembled there. He further states that there was Marpit between the parties.

10. The main point in his story is that there was a quarrel, exchange of blows and Marpit between two parties. There is no explanation why the public prosecutor did not choose to ask for permission to cross-examine this witness.

11. Laldeo Sharma, P.W. 6, who is alleged to be an eye-witness described the incident thus :

"Near a Paan shop close to Lalpur Chock 2 persons were scuffling. A third man came and caught hold of one of the 2 who were scuffling. This accused Hafiz had caught hold Ramdeo Sharma(points to the accused Hafiz). The other man gave a knife blow

to Ramdeo Sharma and went to a house by the side of the Pan shop and closed the door from inside."

12. Even if his story is accepted his would only support the case of the defence that Hafiz had actually intervened to stop the two person from scuffling with each other. It was put to him, and it is proved by Sub-Inspector B. D. Sahay, P.W. 11, that P.W. 6 had not named the accused Ramzan and Hafeez before the police. P.W. 6, however, says that Ramchandra Singh and Raja Rana Ram Singh were present there but they had come on hearing the Hulla.

13. It is extraordinary that although the police Havildar, P.W. 3, says that Laldeo Sharma came to him and pointed out Ramzan, in his evidence not a word is said about the chase.

The version of Ramchandra Singh, P.W. 3, is this :

"I saw Ramdeo who had gone to bring Pan from the Pan shop. He was caught be accused Hafiz and accused Ramzan stabbed him with Chhura in his stomach. I took Ramdeo to the Sadar Hospital along with Bhagirath and others on some private Taxi ...

In cross-examination it was brought out that he had neither named Hafeez not Ramzan before the police. He contradicts Ramdeo, P.W. 2, by stating that he was not in the house before the occurrence but was in some hotel with Ramdeo and that he and Ramdeo both came out of the hotel together. It is difficult to say which version is correct. It seems to us that he was in the house and it is only after the incident was over that he came and made up the whole story.

14. Similarly Rana Raja Singh, P.W. 10, contradicts Ramdeo, P.W. 2, by stating that he did not know Ramdeo Sharma from before the date of the occurrence. It will be recalled that Ramdeo says that Rana Raja Singh was staying with them in the house. His evidence must be discarded.

15. It seems to us that the prosecution has not come up with the true story. The reason given for the start of the quarrel seems strange and nobody support that reason except P.W. 2. On this evidence it cannot be said that the suggestion of the appellant that he intervened in order to separate Ramdeo and Ramzan from fighting with each other is not probable. At any rate it seems to us that the prosecution has not given a true version of the origin of the fight or the fight itself and the appellant must be given the benefit of doubt.

16. In the result the appeal is allowed and the appellant acquitted. He was ordered to be released on bail to the satisfaction of the District magistrate, Ranchi. If he has been released his bail bond shall be cancelled, otherwise he shall be released forthwith.

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