

Nasiruddin and Others

Vs

State of Assam

Criminal Appeal No. 285 of 1968

(C. A. Vaidilingam, A. N. Ray JJ)

07.04.1971

JUDGMENT

RAY, J. -

1. This is an appeal leave from the judgment, dated May 24, 1968 of the High Court of Assam and Nagaland convicting the appellants Nasiruddin, Abdul Rashid, Rezauddin, Baharuddin and Shulai under Section 457 of the Indian penal Code and convicting Rezauddin also under Section 323 of the Indian penal Code. The appellants were each sentenced to rigorous imprisonment for six months under Section 457 of the Indian Penal Code and Rezauddin was also sentenced to rigorous imprisonment for two months under Section 323 of the Indian Penal Code.

2. The prosecution case was that on April 30, 1962, in the early hours of the morning nine accused formed an unlawful assembly the common object of which was to abduct Jahura Bibi and being armed with deadly weapons broke into the house of P.W. 1 Samsheruddin husband of Jahura Bibi. The accused were charged under Sections 148/460/457 of the Indian Penal Code. The Sessions Court acquitted the accused of the charges under Sections 148 and 460 of the Indian Penal Code, and found them guilty under Section 457 of the Indian Penal Code. Each of them was sentenced to rigorous imprisonment for six months under the said section. The Sessions Court convicted Nasiruddin under Section 324 of the Indian Penal code and sentenced him to six months rigorous imprisonment and a fine of Rs. 200/- in default to suffer rigorous imprisonment for two months. The Sessions Court convicted Rezauddin under Section 323 of the Indian Penal Code and sentenced him to rigorous imprisonment for two months.

3. The High Court held that the appellants entered into the dwelling house of the complainant by breaking open the door for the purpose of committing an offence punishable with imprisonment. The High Court found contradictions regarding the entry into the house by Rashid, Sarabuddin, Rahuddin and Sirajuddin and therefore gave them the benefit of doubt and acquitted them. The High Court acquitted Nasiruddin of the charge under Section 324 of the Indian penal Code and set aside the sentence passed by the Sessions Court in that behalf. Rezauddin was found by the High Court to give a blow with a roller to Rahimuddin son of Samsheruddin P.W. 1 Rezauddin was found by the High Court to be guilty under Section 323 of the Indian Penal Code.

4. Counsel on behalf of the appellants contended that the conviction of all the appellants under Section 457 of the Indian Penal Code without coming into any finding that the accused entered into the house of the complainant for the purpose of committing an offence was bad. Secondly, it was said that the common object of abducting Jahura Bibi was not proved and therefore there was no offence under Section 457 of the Indian Penal Code. Thirdly, it was said that there could not be

criminal trespass under the Indian Penal Code unless it was accompanied by one or more of the three specific intentions mentioned in Section 441 of the Indian Penal Code, namely, to intimidate, insult or annoy any person. It was emphasised that to constitute the offence of criminal trespass the prosecution is to mention in the charge the intention with which the accused is alleged to have committed trespass and the prosecution could not substitute one intention for another. Fourthly, it was said that there could be no conviction without any finding that there was any intention on the part of the accused to commit criminal trespass. The Sessions Court, it was said, never applies its mind to intention. The High Court while accepting the finding of the Sessions Court presumed that it must be for the offence of criminal trespass. Fifthly, it was said that there was no finding by the Sessions Court or the High Court as to what offence, if any, the appellants committed. Sixthly, it was said that there was no specific charge against Rezauddin under Section 323 of the Indian Penal Code and therefore his conviction was bad. Finally, it was said that the ingredients of Section 457 of the Indian Penal Code were not established.

5. The contentions on behalf of the appellant as to whether there was intention of criminal trespass are irrelevant because the prosecution case is under Section 457 of the Indian Penal Code. Section 457 speaks of lurking house trespass by night or house-breaking by night in order to committing of an offence, punishable with imprisonment.

6. The prosecution evidence was that the nine accused broke open the front door of Samsheruddin's house and assaulted him and attacked his son with deadly weapons and wanted to take by force his wife Jahura Bibi by catching hold of her. The accused caused hurt to Samsheruddin and his son. The accused were charged under Sections 460 and 148 of the Indian Penal Code. We are not concerned with these charges by reason of the order of acquittal of the appellants under these charges. With regard to the charge under Section 457 of the Indian penal Code the Sessions Court found that all the accused trespassed into the house by breaking open the door of the house of Samsheruddin for the commission of an offence punishable with imprisonment. The Sessions Court convicted them under Section 457 of the Indian Penal Code.

7. The Sessions Court also found Nasiruddin guilty under Section 324 of the Indian Penal Code and Rezauddin guilty under Section 324 of the Indian Penal Code.

8. The concurrent findings of the Sessions Court and the High Court are that the appellants broke into the house at night for the purpose of committing an offence punishable with imprisonment. In order to support the conviction under Section 457 it is necessary to prove first that there was lurking house trespass by night or house-breaking by night. The second ingredient is that the house trespass or house breaking was in order to commit an offence punishable with imprisonment. "Lurking house trespass" means that the accused took some active means to conceal their presence. The accused would take some steps to escape notice.

9. In the present case, the findings are that there is house-breaking by night for the commission of the offence of abducting Jahura Bibi. The Sessions Court and the High Court found that there was no common object of abducting Jahura Bibi but the finding is that the appellants committed house-breaking by night for the purpose of committing the offence of abducting Jahura Bibi. The accused came with the object of abducting Jahura Bibi. House-breaking by night was for the purpose of committing an offence punishable with imprisonment. Both the Courts found that though there might not be common object of abduction of Jahura Bibi there was house-breaking by night for the purpose of abduction which is an offence punishable with imprisonment. The ingredients of Section 457 of the Indian Penal Code have been proved. There was no question of prejudice at the trial.

10. The High Court correctly convicted the appellants. There is no merit in this appeal. The appeal is dismissed. The bail bond is discharged. The accused will surrender to serve out the sentence.

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