

Jainul Haque

Vs

State of Bihar

Criminal Appeal No. 82 of 1970

(H. R.Khanna, R. S. Sarkaria JJ)

15.10.1973

JUDGMENT

KHANNA, J. -

1. Jainul Haque and 12 others were convicted by learned Assistant Sessions Judge, Muzaffarpur, under Sections 147, 323, and 447 Indian Penal Code and were sentenced to undergo on that account various terms of imprisonment. Jainul Haque and two others were also convicted under Section 304 read with Section 34 Indian Penal Code and each one of them was sentenced to undergo rigorous imprisonment for a period of seven years on that account. Ainul Haque, who too was an accused, was convicted under Section 304 Indian Penal Code. Charge was also framed against Jainul Haque under Section 379 Indian Penal Code but he was acquitted in respect of that charge. On appeal the Patna High Court acquitted 10 of the accused. The conviction of two of the accused, namely, Mainul Haque and Abdul Majid, was maintained under Section 323 Indian Penal Code. The conviction of Jainul Haque was altered to that under Section 323 read with Section 114 Indian Penal Code and he was sentenced to undergo rigorous imprisonment for a period of six months. The conviction of Jainul Haque as well as of Mainul Haque and Abdul Majid for the other offences made set aside. Jainul Haque thereafter came up in appeal to this Court by special leave.

2. The case for the prosecution is that Ainul Haque, who was accused No. 3 at the trial, as well as Abdul Hakim (PW 5) and Sirajul (PW 10) are brothers of Smt. Hasina (PW 4). Hasina along with her cousin Shakina purchased a plot of land situated in village Bahera Zahidpur Tole Jadupatti within the area of police station Pupri in district Muzaffarpur as per sale deed, dated March 21, 1946.

3. On August 31, 1965 at about 8 a.m., it is stated, Mainul Haque and Ainul Haque accused were uprooting paddy seedlings from the above mentioned plot. Abdul Hakim and Sirajul PWs went there and opposed the uprooting of paddy seedlings. Mainul and Ainul accused resented the act of Abdul Hakim and Sirajul PWs and called their supporters and the other accused. The other accused then arrived there and assaulted Abdul Hakim and Sirajul PWs. On hearing noise Shah Layaquat Hussain deceased, who was aged about 80 or 90 at the time of the present occurrence, arrived there. Layaquat protested against the high handedness of the accused when the accused did not pay any heed to the protest of Layaquat had hardly gone for a distance of 400 yards towards the police station when Ainul Haque, Mainul Haque and Abdul Majid assaulted Layaquat on the exhortation of Jainul Haque appellant. Layaquat fell down on the ground. The appellant then took out currency notes of the value of Rs. 500 from the pocket of Layaquat.

4. Sirajul PW, accompanied by Abdul Hakim (PW 5) and Layaquat deceased, then went to police

station Pupri, at a distance of half a mile from the place of occurrence, and lodged there report Ex. 6 at 8.30 a.m. Sirajul, Abdul Hakim and Leyaquat were then sent to Puri State Dispensary where their injuries were examined. The doctor, after examining the injured persons, sent them to Durbhanga hospital. Leyaquat was found to have sustained head and thigh injuries. On September 17, 1965 an operation was performed on the thigh of Leyaquat. His condition deteriorated and he died on September 19, 1965.

5. The accused in their statements denied the prosecution allegations against them.

6. The trial Court convicted all the 13 accused. On appeal the High Court, as mentioned earlier, acquitted 10 of the accused. The conviction of the two of the accused was maintained under Section 323 Indian Penal Code, while that of the appellant was altered to that under Section 323 read with Section 114 Indian Penal Code.

7. Mr. B. P. Singh on behalf of the appellant has argued that the prosecution evidence having been found by the High Court to be not reliable, the conviction of the appellant upon the basis of the evidence cannot be sustained. As against that, Mr. Prasad on behalf of the State has urged that there was no sufficient ground to interfere with the judgment of the High Court. In our opinion, there is considerable force in the contention advanced by the learned counsel for the appellant.

8. The prosecution examined Maqbool (PW 1), Saddique (PW 2), Abdul Hakim (PW 5), Yasin (PW 8) and Sirajul (PW 10) as eye-witnesses of the occurrence. The High Court discussed the evidence of these witnesses and found that their version of the assault on Abdul Hakim (PW 5) and Sirajul (PW 10) was not consistent. It was also observed that the said witnesses were anxious to exaggerate things and wanted to implicate as many persons as possible. The High Court further came to the conclusion that it was not safe to convict the accused for the assault on Abdul Hakim (PW 5) and Sirajul (PW 10) upon the basis of that evidence. The conviction of the various accused in respect of the assault on Abdul Hakim and Sirajul PWs was consequently set aside. As regards the assault on Leyaquat, the High Court found that according to the evidence adduced at the trial, he was assaulted by Ainul Haque, Mainul Haque and Abdul Majid. As there were two accused of the name of Ainul Haque and the evidence was not very clear on the point as to which one of the two accused bearing the name of Ainul Haque had joined in the assault of Leyaquat, Ainul Haque accused was given the benefit of the doubt and was acquitted. So far as Mainul Haque appellant was concerned, the High Court found that according to the evidence of the eyewitnesses, he had also joined in the assault on Leyaquat Hussain, while according to the first information report lodged at the police station, the part played by Mainul Haque in the assault on Leyaquat consisted merely of exhortation. The High Court in the circumstances convicted the appellant for the offence under Section 323 read with Section 114 Indian Penal Code for having abetted the assault on Leyaquat.

It would appear from the above that there is a clear discrepancy between the evidence of the witnesses given at the trial and the version given in the first information report regarding the part played by the appellant. The part attributed to the appellant according to the first information report is that he had exhorted the other accused to assault Leyaquat, while according to the evidence adduced at the trial the appellant actually joined in the assault on Leyaquat. The High Court did not accept the prosecution evidence on the point that the appellant had joined in the assault on Leyaquat. All the same, the High Court convicted the appellant because it was of the view that the appellant had exhorted the other accused to assault Leyaquat. In the absence of any substantive and cogent evidence adduced at the trial that the appellant had exhorted the other accused to assault Leyaquat, the High Court, in our opinion, should not have convicted the appellant for the offence under

Section 323 read with Section 114 Indian Penal Code. The High Court has found the evidence of the eye-witnesses to be unsatisfactory. It has also found that the eye-witnesses was prone to exaggerate things and to involve as many accused as possible. In the circumstances it was, in our opinion, may accused as possible. In the circumstances it was, in our opinion, not safe to base the conviction of the appellant on the aforesaid evidence. The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant, by attributing to that person an exhortation to the assailant assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing. We would, therefore, accept the appeal, set aside the conviction of the appellant and acquit him.

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