

SUPREME COURT OF INDIA

Kirender Sarkar

Vs.

State of Assam

Crl.A.No.845 of 2009

(Dr. Arijit Pasayat J.)

27.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Guwahati High Court, dismissing the appeals so far as appellants are concerned while directing acquittal of some of the co-accused persons. Eighteen persons faced trial out of which nine were acquitted by the trial Court and the High Court. One of the accused persons died during the trial and seven accused persons, the present appellants were convicted for offence punishable under Sections 147, 448 and 323 of *Indian Penal Code, 1860* (in short the `IPC') and were sentenced to undergo rigorous imprisonment for one year, six months and 3 months respectively.

3. Prosecution version in a nutshell is as follows:

On 30.7.1990 Md. Nazir Ahmed, Assistant Teacher of Ambari H.E. School lodged an Ejahar, Ext. 1, with the Officer-in-charge, Murajhar Police Station, on the allegations that on the same day at about 10 a.m. in the forenoon, the accused persons committed criminal trespass into the school and tried to give lesson in the classes and some outsider accused persons being armed with iron-rod, spear, lathi and fire-arm gheraoed the school and when the accused teachers entered into the school, the outsider antisocial elements committed criminal trespass into the school and started assaulting the clerk of the school and alongwith them students also started assaulting the clerk. The clerk was taken away after assaulting him and he was kept confined. The names of the following accused persons were stated in the Ejahar: i.e. 1. Fakaruddin S/o Kuti Mia, 2. Fakaruddin, 3. Kirendra Namsudra, 4. Botir Ali, 5. Abdul Gafur 6. Rezan Ali, 7. Abdul Sattar Hazi, 8. Kuti Mia, 9. Mslim Ali and 10. Abdul Karim. There is also mention in the FIR that he could identify the other accused persons if they are shown to him. On the strength of the Ejahar, a case was

registered by the OIC being Murajhar Police Station case No. 73/90 under Sections 147/148/447/323/506 IPC. After few days, the injured Azizur Rahman died and therefore, section 302 IPC was added. The case was endorsed to Sri B. Kalita S.L of Police to investigate the case. The I.O. visited the place of occurrence, recorded the statements of the witnesses, collected the post- mortem report. After completion of the investigation, OIC Murajhar Police Station submitted charge sheet against the accused persons under Sections 147/148/447/323/506/302 IPC.

On appearance of the accused persons in the court of learned S.D.J.M. Hojai, Sankardev Nagar, copies of police papers were furnished to them and as the offence under section 302 IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The learned Sessions Judge, transferred the case to the Additional Sessions Judge who framed charges against the accused persons. Since the accused persons pleaded innocence, they were put on trial.

Ten witnesses were examined to further the prosecution version. Two witnesses were examined by the accused persons to prove their innocence. The trial Court found the accused guilty and convicted them. An appeal was filed before the High Court. The High Court noticed that the accused persons were convicted on the basis of dying declaration (Ex.P-8). The High Court noted that on a combined reading of the FIR by PW-1 and dying declaration there was enough material against accused appellants Nos. 1, 3, 6, 7, 8, 9, 11 and 12 and inadequate so far as rest of the accused persons who were convicted by the trial Court. Accordingly, the appeal so far as present appellants are concerned was dismissed.

4. Learned counsel appearing for the appellants submitted that the deceased was suspended from school. The Inspector of School wrote to the officer incharge of the local Police Station that the deceased was creating trouble and was causing obstruction in smooth running of the school. PW-2 was appointed as Head Master. His evidence is to the effect that guardians and students of the school drove away the deceases and closed the door. Even after suspension he came and created problems in the functioning of the school and, therefore, the Inspector of School was informed by PW-2. It is pointed out that names of some of the appellants are not mentioned in the FIR or the dying declaration and names of some appellants are there in the FIR and, therefore, there is conflict between the FIR and dying declaration and the appellants are entitled to the benefit. It is submitted that the defence version that the deceased was creating problems in the school after his suspension for which the Inspector of School was asked to give protection to the teachers has not been duly considered. There was also no external or internal injury.

5. Learned counsel for the State on the other hand supported the judgments of the trial Court and the High Court.

6. The law is fairly well settled that FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minutest details of the events. When essentially material facts are disclosed in the FIR that is sufficient. FIR is not substantive evidence and cannot be used

for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. Though the importance of naming the accused persons in the FIR cannot be ignored, but names of the accused persons have to be named at the earliest possible opportunity. The question is whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case. Therefore, non naming of one or few of the accused persons in the FIR is no reason to disbelieve the testimony of crucial witnesses. The evidence of PW-1 is clear and cogent. That being so, we find no merit in this appeal which is accordingly dismissed.