

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.59 OF 2008

JAKIR HUSSAIN . . . APPELLANT (s)

VERSUS

STATE OF ASSAM . . . RESPONDENT (s)

O R D E R

This appeal is directed against a conviction upheld by the Gauhati High Court by a judgment and order dated 28<sup>th</sup> April, 2005 in Criminal Appeal No.383 of 2001.

The case of the prosecution is that on 30<sup>th</sup> November, 1997, the appellant had committed the murder of one Sirajuddin Ahmed. According to the prosecution, sometime in 1992, the appellant had molested the niece of Sirajuddin who made this incident public thereby humiliating the appellant. Since then, the appellant had been bearing a grudge against Sirajuddin. Sometime in 1992, the appellant had sought the assistance of PW-7 - Dilip Hussain and in fact offered him an amount of Rs.10,000/- to murder Sirajuddin, but PW-7 declined the offer. Thereafter, the appellant approached one Manan Mistry in 1994 with the same offer, but even that was declined. Accordingly, the appellant decided to murder Sirajuddin all by himself.

According to the prosecution, at about 6.30 in the evening of 30<sup>th</sup> November, 1997, Sirajuddin had gone to the paddy fields with one Abdul Kalam to pick up some paddy. When they did not return for quite some time, PW-2 - Rafiquddin, who is the brother of Sirajuddin, went to look for him and he found the dead body of Sirajuddin. Abdul Kalam was not found anywhere.

On these facts, an FIR was lodged with the Dergaon Police Station and investigations progressed.

The Investigating Officer (PW-10) - Rupeswar Bora examined PW-2 - Rafiquddin who stated that he had gone to look for his brother in the paddy fields since he did not return for quite some time. Later on, he discovered the dead body of his brother. Sirajuddin's wife (PW-1), Nazma was also examined by the investigating officer and she too stated that Sirajuddin had not returned from the paddy fields and later on his dead body was found. Neither Rafiquddin nor Nazma named the appellant or anyone else as accused or as a suspect. This was neither in the FIR nor in the statement given under Section 161 of the Criminal Procedure Code, 1973 on 3<sup>rd</sup> December, 1997.

According to the prosecution, on the night of 4/5<sup>th</sup> December, 1997, the appellant came to Dergaon Police

Station and confessed to having murdered Sirajuddin. He was taken to his house by the police and three persons were called to the house of the appellant. These three persons were Rafiquddin (PW-2), who was the complainant and brother of Sirajuddin, Kamaluddin Ahmed (PW-3), who was the cousin brother of Sirajuddin and Moinul Haque (PW-8). At that point of time, it was stated by Kamaluddin Ahmed (PW-3) that the appellant was in handcuffs (although this is denied by the investigating officer, Rupeswar Bora) and the appellant produced a dhoti and shirt as well as a dao, which carried blood-stains. It was stated by the appellant, by way of an extra-judicial confession, that he was wearing that lungi and shirt when he committed the murder of Sirajuddin with the dao, which was handed over to the investigating officer.

It is not very clear why but the police launched a prosecution not only against the appellant but also against three other persons, viz., Abdul Hussain, who is said to have destroyed evidence by concealing the dao that is said to have been found at the place of occurrence and Mohd. Hanifuddain Ahmed who was instrumental in killing Sirajuddin. The 4<sup>th</sup> accused was Abdul Kalam, who went missing and has been declared a proclaimed offender.

In the witness box, for the first time, Nazma stated that she witnessed the killing of Sirajuddin and the persons who were cutting Sirajuddin with daos were the appellant, Mohd. Hanifuddin Ahmed and Abdul Kalam. This was not mentioned by Nazma at any time prior to her testimony in the Court. It is for this reason that the trial court as well as the High Court have not given much credence to her statement since she claimed to be an eye-witness but there was nothing to indicate that she had in fact witnessed the crime.

Reliance was placed upon the extra-judicial confession said to have been made by the appellant in the presence of Rafiquddin (PW-2), Kamaluddin Ahmed (PW-3) and Moinul Haque (PW-8). However, as mentioned above, the extra-judicial confession was made by the appellant in the presence of these three persons as well as the police party and at a time when apparently the appellant was in handcuffs. This being the position, it is difficult to accept the extra-judicial confession as a genuine confession having been made by the appellant.

There is no other evidence on record to link the appellant with the crime. It is submitted by learned counsel for the State that the appellant had a motive to kill Sirajuddin and it was in furtherance of that motive

that the crime was committed. We find it difficult to accept this argument for the reason that the molestation incident is said to have occurred five years earlier and it is not clear to what extent Sirajuddin has gone to make the incident public. That apart, the girl's father, that is, Rafiquddin, does not seem to have taken any action against the appellant for molesting his daughter.

It is also difficult to accept the story put up by Dilip Hussain (PW-7) that he was offered an amount of Rs.10,000/- to murder Sirajuddin way back in 1992. No complaint was made by this witness to the police and it appears from the evidence on record that this witness is himself a person of doubtful character.

Having examined the record with the assistance of learned counsel for the parties, we are of the opinion that there is no basis to conclude positively on the basis of circumstantial evidence that the murder of Sirajuddin was committed by the appellant.

Accordingly, we set aside the judgments of the trial court as well as the High Court and acquit the appellant of the offence alleged against him.

The appellant may be set at liberty unless he is required to be kept in custody in connection with any other case.

The appeal is accordingly allowed.

.....J.  
(MADAN B. LOKUR)

.....J.  
(R.K. AGRAWAL)

NEW DELHI  
JULY 23, 2015

ITEM NO.106

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).59/2008

JAKIR HUSSAIN

Appellant(s)

VERSUS

STATE OF ASSAM  
(with office report)

Respondent(s)

Date : 23/07/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. Mukesh K. Sharma, Adv.  
Mr. Chatanya S., Adv  
for Mr. Debasis Misra, AOR

For Respondent(s) Ms. Apeksha Sharan, Adv.  
for M/s Corporate Law Group

UPON hearing the counsel the Court made the following  
O R D E R

We set aside the judgments of the trial court as well as the High Court and acquit the appellant of the offence alleged against him.

The appellant may be set at liberty unless he is required to be kept in custody in connection with any other case.

The appeal is accordingly allowed in terms of the signed order.

(SANJAY KUMAR-I)  
COURT MASTER

(JASWINDER KAUR)  
COURT MASTER

(Signed order is placed on the file)