

Rampal and Others Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Mar-12-2014

Judge : Servesch Kumar Gupta

Appeal No. : Criminal Appeal No. 163 of 2002

Appellant : Rampal and Others

Respondent : State of Uttarakhand

Judgement :

1. Appellants Rampal, Moni Sharma, Satis and Somdutt have assailed the judgment and order of conviction dated 2.7.2002 rendered against them by the Additional Sessions Judge/1st F.T.C., Roorkee in Sessions Trial No. 284/95, State v. Rampal and 3 Others. The said trial pertains to Police Station Gangnagar, Crime No. 113/95. All these accused persons were tried for the offences of Section 452, 307, 323, 324, 504 IPC. Trial culminated into their conviction for the offences of Section 452 and 307/34 IPC. They have been appropriately sentenced by the Trial Judge.

2. The backdrop of the prosecution version as disclosed in the FIR is that Rampal Kashyap, resident of Nayi Basti, Shyam Nagar, Roorkee intruded in the house of injured Mulkraj along with his some companions. They started to beat Mulkraj. Seeing the occurrence, his daughter Ms. Geeta Saini (informant) and his father raised alarm. Meanwhile, Rampal Kashyap stabbed the knife blow in the abdomen

of her father while his other companions gave the blows of iron rods in their hands. When the hue and cry was raised there, the assailants escaped from the spot to see the victim sometime again in the future. The informant Ms. Geeta Saini has also mentioned the presence of her maternal uncle in the house at the time of incident. She with the assistance of her maternal uncle, shifted his injured father to the Government Hospital and got this FIR Ex. Ka-1 drafted by one Raj Kumar Saini and presented it at the police station on the same day after two and half hours of the incident. The police station was one and half kilometre away from the place of incident. It is also pertinent to mention that the injured/victim, informant as well as all intruders are the residents of the same Mohalla Nayi Basti, Shyamnagar.

3. Following injuries were found on the body of Mulkraj Saini on being medically examined on 3.7.1995 at 2.10 PM in the Government Hospital:

œ(1) Incised wound 2.5 cm x 1 cm x depth not probed, on left side abdomen 17 cm from umbilicus at about 4 Oclock position, fresh bleeding present, kept under observation, advised x-ray.

(2) Multiple abrasions in area of 9 cm x 4 cm on midline and right side chest. 9 cm from right nipple biggest is 4.5 cm x 1 cm, smallest is 1/2 cm x 1/4 cm.

(3) Multiple abrasions in area of 15 cm x 12 cm on front of left shoulder, front and outer of left upper arm upper part, biggest is 7 cm x 1/4 cm, smallest is 1/2 cm x 1/3 cm.

(4) Multiple abraided contusions on whole of both sides upper part and middle part of back right side, biggest is 17 cm x 3 cm, smallest is 1 cm x 1/2 cm.

In the opinion of the doctor, injury no. (1) was kept under observation. Injury no. (1) was caused by sharp-edged object. Remaining injuries were simple in nature and caused by friction, hard and blunt object. All the injuries were fresh in duration.?

4. Mulkraj injured was operated on 4.7.1995 by a private surgeon Dr. Karan Singh. His report is Ex. Ka-4. He has mentioned the injuries and the treatment extended

to the injured as follows:

œIncised wound 2.5 cm x 1 cm depth probed during surgery on left side of abdomen 17 cm from umbilicus at about 4 O'clock position with fresh bleeding.

Operative Findings “ Above mentioned wound was peritoneum deep, cutting peritoneum of lateral grow of descending colon about 2 cm x .5 cm size.

Perforation (injury) to descending colon at antero lateral aspect of descending colon 2 cm x 1 cm in size sharp cut injury to muscle of lumber region (above mentioned side).

All above injuries are related to each other and seem to be due to single stab.

Rest injuries same as noted by Dr. A.K. Mittal of civil hospital.?

5. Having heard learned Counsel on behalf of the appellants as well as State Counsel, the Court feels that Ms. Geeta Saini, informant and the daughter of the injured, has been examined almost after five and half years of the incident, while the charge was levelled on 3.4.1996 against the accused persons. It is strange that she has neither named all the accused persons either in her FIR or in her statement before the Court except the specific name of the assailant Rampal, who stabbed the knife in the abdomen of her father.

6. Learned State Counsel has argued that FIR is not the embodiment of entire facts. This argument is true by itself, but the mentioning of the names was the minimum requirement in the backdrop of the version and facts that all the assailants were the residents of the same locality and mohalla. So, a grown up lady who has attained the marriageable age was still unaware about the names of the youths of that mohalla is quite unacceptable. The names of the rest of the assailants besides Rampal have been stated by a so-called ocular witness Brahmpal Singh, PW3. This witness has stated that hearing the noise in the house of Mulkraj, he rushed to the spot where he was working in the factory of Tilak Raj. This factory of Tilak Raj has been shown by the Investigation Officer in the spot map within the same premises where the spot of occurrence is situated. It can significantly be noted that he is simply a labourer and originally resident of District

Muzzafarnagar, Village Tigri and at the time of deposition in March, 2001 i.e. after almost six years of the incident, he was residing in Delhi. So, it is quite unacceptable that Ms. Geeta, who has been born and brought up in the same mohalla was unaware about the names of the assailants, who were residents of the same locality, while PW3 Brahmpal Singh, resident of District Muzzafarnagar and simply a labourer in the factory albeit in the same premises was quite aware about the names of the grown up youths of that mohalla and he deposed their names even after six years of the incident while living in Delhi. So, it is quite clear that the names of rest of the accused persons have been exposed by this witness at the instance of legal advice when it was noticed that the same has been neither mentioned in the FIR nor has been stated by PW1.

7. Mulkraj, the injured has not been produced because he died almost in mid 1998. It is pertinent to mention that the charge was levelled on 3.4.1996. So, still there was two years the prosecution has availed and such span of time was sufficient to examine the main witness Mulkraj, but he has not been examined. 8. The maternal uncle of PW1 was also present as an ocular witness of the incident in the house, but no reason has been offered by the prosecution as to why it remained failed to examine that material witness, particularly in the circumstances when the main injured witness has died and for some reason he could not be examined. So, it was all the more necessary for the prosecution to corroborate the evidence of PW3 with another ocular remaining witness.

9. The Court is not inclined to spare Rampal Kashyap as the culprit in the incident because his role has categorically been stated in the FIR as well as proved in the statement of PW1. But as regards the remaining accused persons, the prosecution has not sufficiently proved the charges levelled against them.

10. As discussed above, the appeal is partly allowed. The conviction and sentence of Rampal are sustained, while the conviction of accused appellants Moni Sharma, Satish and Somdutt is hereby set aside. Appellants Moni Sharma, Satish and Somdutt are on bail. Their bail bonds and sureties are discharged. They need not surrender. Appellant Rampal, who is also on bail, shall be taken into custody forthwith to serve out the sentence awarded by the trial court.

