

Raghubir Vs. State

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Court : Allahabad

Decided On : Oct-25-1994

Reported in : 1996CriLJ364

Judge : G.S.N. Tripathi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 2190 of 1979

Appellant : Raghubir

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.P. Tewari, Adv.

Disposition : Appeal allowed

Judgement :

G.S.N. Tripathi, J.

1. The then Illrd Addl. Sessions Judge, Mainpuri, vide his judgment and order dated 28-7-79, convicted the accused Raghubir on a charge under Section 324, I.P.C. He acquitted him and others accused under others heads of charges in S.T.

No. 94 of 77, State v. Raghubir and five Ors., of District Mainpuri.

2. The prosecution case started on the basis of a written FIR, Exhibit Ka-4, lodged by Amar Singh at P. S. Kotwali, Mainpuri on 28-4-74 at 11.15 a.m. The incident is of the same date of about 9 a.m. The distance of the police station is 7 miles. It has been alleged that the complainant along with Smt. Ram Kunwar, Karan Singh, Bhim Sen and Mewa Ram was cutting sugarcane in the field of Shcovati, widow of Ram Kishan. Sewa Ram was a Sajhidar, Then all of a sudden accused Behari, Shiv Charan, Raghuvir (appellant), Jhabbu, Ram Kishore, Bidu and Lakhan arrived there. Raghuvir had a gun and others had lathies. At the behest of Behari, Raghuvir fired at Sewa Ram. Behari injured Smt. Ram Kunwar with Jathi. and Smt., Sonkali bite Smt. Ram Kunwar with her teeth. Lakhan and Bidu set the sugarcane at the fire. The sugarcane crops started burning. The injured was brought to Dr. Multan, who advised for removal of Sewa Ram to Mainpuri and thus Sewa Ram was brought to Mainpuri.

3. The medical examination took place on 28-4-74 at about 1.40 p.m. As many as fire gunshot wounds were found on the person of the injured Sewa Ram.

4. Smt. Ram Kunwar had one lacerated wound and one contusion.

5. After usual investigation, a challan was laid before the Court.

6. The prosecution examined Amar Singh, P.W. i, complainant. He has narrated the story as contained in the F.I.R. but he has said that except Raghubir, he did not see any other accused firing. He was declared hostile by the prosecution.

7. Sewa Ram P.W. 2 injured has said that Raghuvir came there and asked him not to cut the sugarcane crops. But he insisted. Thereafter Raghuvir fired at him. He became unconscious and fell down. He regained consciousness in the Mainpuri Hospital on the following day. He too was declared hostile by the prosecution. In the cross-examination in paragraph 7, he stated that he did not see anybody firing at him. He saw Raghuvir in his field but he did not see him firing at him.

8. P.W. 3 Smt. Ram Kunwar said that Raghuvir accused fired at Sewa Ram but in the cross-examination, she said that she did not see Raghuvir firing at him.

9. Other evidence was formal in nature.

10. Accused denied the allegations in his statement under Section 313, Cr. P.C.

11. The learned Addl. Sessions Judge disbelieved the entire prosecution story viz-a-viz other co-accused and acquitted them. However, he believed the prosecution case as regards accused Raghuvir and convicted him on the charge under Section 324, I.P.C. and sentenced him as noted above.

12. Feeling aggrieved, the accused Raghuvir has preferred this appeal.

13. I have heard learned counsel for the appellant and Sri Jitendra Singh, learned A.G. A. at stretch and gone through the record. I find that there is much force in this appeal and it deserves to be allowed.

14. The most important feature of the case is that there were two injured persons including Sewa Ram and Smt. Ram Kunwar. Sewa Ram was declared hostile and Smt. Ram Kunwar did not appear in the witness box. There was evidence of Amar Singh, P.W. I, who disowned the entire story, including the lodging of the FIR except that he said that he did it at the behest and information of others. The FIR contained the version which he saw with his own eyes and as said by Sewa Ram and other witnesses. Sewa Ram became unconscious soon thereafter. He regained conscious on the following day according to him. So, he could not instruct this witness to lodge this report. This way intrinsically the F.I.R. becomes a suspicious document and no reliance can be placed upon it.

15. Sewa Ram PW 2 has clearly stated that he did not see anybody including Raghuvir firing at him. Thus he exonerates the appellant totally.

16. Smt. Ram Kunwar, P.W. 3 also does not say that Raghuvir fired at Sewa Ram. She saw Raghuvir concealing himself in the sugarcane crops. Thus her evidence is also not conclusive.

17. The entire prosecution story had been disbelieved by the learned Addl. Sessions Judge. He called out few sentences from the statements of Smt. Ram Kunwar and Sewa Ram and put a distorted interpretation making out a flimsy case

against the accused Raghuvir. Unfortunately, the entire approach of the learned Addl. Sessions Judge is perverse. The order passed by him cannot be sustained.

18. The appeal is allowed. The judgment and order dated 28-6-79 passed by the learned Addl. Sessions Judge, Mainpuri convicting the accused Raghuvir on the charge under Section 324, I.P.C, is set aside. The accused Raghuvir is acquitted of the said charge. The accused is on bail. He need not surrender.

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