

Ram Niwas Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-17-1996

Reported in : 1998CriLJ635

Judge : B.K. Sharma, J.

Acts : Uttar Pradesh First Offenders Probation Act, 1938 - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 304A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 3185 of 1979

Appellant : Ram Niwas

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Keshav Sahai, Adv.

Judgement :

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 15-11-1979 passed by Sri B. I. S. Sodhi, the then IIInd Additional Sessions Judge, Badaun in S.T. No. 462 of 1978 whereby he convicted the accused-appellant Ram Niwas of the offence

under Section 304-A, I.P.C. and sentenced him to suffer R.I. for a period of 1 year.

2. The prosecution story was that the marriage of the younger brother of the informant Ram Pal Singh was to take place on 28-5-1975 and in that connection his sister Smt. Virwati and her son Viresh aged 5-6 years had come to his house, that on 23-5-1975 evening, Viresh got fever, that HO/JO/A 1334/96/RK/CSL there was no Government doctor or Vaidh in the village, that on 24-5-1975, the informant had gone with the consolidation officer on his tour leaving behind Smt. Virwati and other house holders at the house, that in his absence, the accused-appellant Ram Niwas came to see him and offered to treat him and gave him a injection, though he was not a qualified doctor or Vaidh but used to carry on the profession of doctor, that consequent upon the administering of injection, the deceased, Viresh turned blue and his condition started worsening, that Smt. Virwati sent a message and called Ram Pal Singh and others, that they came and started for Hazaratpur for treatment of the deceased but in the way, he breathed his last near Moazampur, that then the informant Ram Pal Singh went to the police station and dictated his F.I.R. to the clerk constable at 4.30 p.m. on the basis of which a case was registered under Section 304, I.P.C.

3. The usual investigation followed and charge-sheet was submitted by the I.D. against the accused-appellant for the offence under Section 304, I.P.C.

4. After committal, the accused was charged and tried for the offence under Section 302, I.P.C. The learned Sessions Judge found that the offence under Sections 302 and 304, I.P.C. was not made out as the possibility of any foul-play of giving any poison etc. by the accused was ruled out. However, he found the accused to be guilty of the offence of causing death of the deceased by rash and negligent act and therefore, convicted and sentenced him for the offence under Section 304-A, I.P.C. as aforesaid.

5. I have heard the counsel for the parties and have also, gone through the record of the case.

6. It is an established fact on the evidence that the deceased Viresh aged about 5-6 years died in the afternoon of 24-5-1975 while he was being taken to Hazaratpur

from village Pattivija due to his having developed serious condition. There is also evidence that he had been suffering from fever for about 1 day prior to it. There is no dispute about it from the side of the defence either.

7. There is ocular evidence given by Ram Pal Singh P.W.1 (informant), Smt. Virwati P.W.2 mother of the deceased, and Smt. Mithalesh P.W.4, her cousin sister about the coming of Virwati with the deceased to the house of the informant Ram Pal Singh and the deceased developing fever. The evidence of Smt. Virwati P.W.2, Smt. Mithalesh P.W.4, further was that the accused-appellant Ram Niwas came there to see the deceased and actually administered an injection to him and after giving of that injection, the condition of the deceased started worsening. Then there is evidence of Smt. Virwati (P.W.2) that a man was sent to call the informant Ram Pal who brought him and others and then they took the deceased for Hazaratpur for treatment when he died in the way. There is evidence of Smt. Mithalesh (P.W.4) also to that effect. Then the informant Ram Pal Singh has also given evidence about his coming to the house when his brother Kalloo came to him and called him to the house. He has further testified that when he came to the house, he saw that the condition of Viresh deceased was worst and also that his sister Smt. Virwati told him that the accused-appellant had administered an injection to him. He has also testified that he proceeded with the deceased for Hazaratpur for treatment but he died in the way. Ram Pal Singh, informant has refuted the defence suggestion that Viresh deceased came to the village prior to Smt. Virwati P.W.2 and that Smt. Virwati came to the, village after receiving the news of his death. In the ordinary course, the mother would have come with her child aged 5-6 years. Further more, there is evidence of the informant that the marriage of his brother Hemendra Pal Singh was to take place and that Smt. Virwati who was their sister had come along with the deceased to join in the marriage. The coming of Smt. Virwati to join the marriage of her real brother Hemendra Pal Singh would be very natural and there is no reason to discord the prosecution evidence for her coming to the house of the informant along with the deceased as testified by the witnesses aforesaid. Smt. Mithalesh P.W.4 has testified that she also had come the house of the informant to join the aforesaid marriage of her cousin brother Hemendra Pal Singh. There was no suggestion made to her that she had not come to join the marriage or was not present at the

house during the illness of the deceased at the informant's house. There was absolutely no reason to discard the evidence of Smt. Virwati, P.W.2 and Smt. Mithalesh P.W.4, about the administering of injection by the appellant to the deceased and the consequent worsening of his condition and the death of the deceased soon after it in the way. The evidence of the informant that Smt. Virwati P.W.2 told him about the administering of injection by the accused to the deceased is also material. It goes to corroborate the ocular testimony of the two females.

8. The fact that the Autopsy Surgeon Dr. V.K. Chopra P.W.3 found in the post-mortem a contusion .25 cm x .25 cm in left upper arm back side outer portion also goes to corroborate the ocular evidence about the administering of injection by the accused-appellant to the deceased. After the death of the child, and after the passage of time upto the conducting of post-mortem on the dead body of deceased (25-3-1975 at 3.30 p.m.) it would involve decomposition, the point on the arm where the injection was given could have looked like a contusion. The statement of the informant Ram Pal Singh found ample corroboration from the F.I.R. lodged by him.

9. The plea of false implication of the accused-appellant cannot be sustained. It was suggested to Ram Pal Singh, informant in his cross-examination that the villagers had moved an application before the consolidation officer 20 to 25 days before the date of occurrence that a Rasta be taken out from the chak of his informant elder paternal uncle Dular Singh and that Niwas accused-appellant was a witness on such an application and that consequent upon same, the villagers got Rasta through the chak of Dular Singh. The informant has pleaded ignorance about any such application and any such making of Rasta through the chak of Dular Singh. No documentary evidence has been filed from the side of the accused-appellant in this regard. Further more, if anyone was to be falsely implicated on account of the alleged application the choice would fall on the villagers who were the signatories to the application rather than on its witness Ram Niwas accused-appellant. Then it was elicited from the informant that Ram Niwas accused-appellant had stood as a candidate for the office of Sarpanch and that Nawab Singh was the rival candidate for the office. The informant denied the

suggestion that the said Nawab Singh was his relation. The informant was suggested that a litigation had taken place between Sardar Lal, father of the accused-appellant and his (informant's) elder paternal aunt Smt. Patin Devi. He made a categorical denial of such litigation at any time since his age of discretion. No document was filed from the side of the accused-appellant about the alleged litigation. He denied the suggestion that an enmity was going on between his house-holders and the accused-appellant. Smt. Virwati P.W.2 was suggested that an enmity was going on between her paternal side and the accused-appellant. She refuted the suggestion. Smt. Mithalesh P.W.4 denied the defence suggestion that the accused-appellant and his house holders had given an application for taking out Rasta from the chak of Dular Singh. In his statement under Section 313, Cr.P.C., the accused-appellant stated that Dular elder paternal uncle of Ram Pal Singh informant had enmity with him and so falsely implicated him. He further stated, that a litigation had taken place between him and Dular in consolidation when he had got a chak road made across his agricultural land as there was no Rasta for going to his field and due to it, Dular felt enmity towards him. This claim is an improvement on the suggestion made to the informant in as much as he now claimed a straight litigation between him and Dular and claimed that it was he who got the chak road made across the field of Dular because there was no Rasta for his field. As noted earlier, no documents, were filed by him in this regard which showed that the plea of enmity had no substance and that it had only been taken to escape the charge. So there is no question of false implication of the accused-appellant in this case due to any enmity. As a matter of fact, even if there has been any litigation in consolidation, of giving of a chak road through the plot of Dular, it cannot be believed that in the matter of death of his sister's son an effort will be made by the informant to falsely implicate the accused-appellant. It is immaterial that Natthu Lal and Bankey eye-witnesses named in the F.I.R. have not been examined at the trial. It may also be that the informant and two lady witnesses belong to the same family but that not make their testimony tainted. They had no reason to concoct a false case or to falsely implicate the accused appellant.

10. The learned counsel for the accused-appellant has argued that even if it is taken that the accused-appellant had given an injection to deceased, the death of

the deceased cannot be said to be a direct consequence of the same. He has placed reliance on the statement of Autopsy Surgeon that he could not ascertain the cause of death of the deceased. The doctor might have said that he could not ascertain the cause of death of the deceased, but his opinion in the post mortem report was based only on the observation in the post mortem on the body of the deceased. The Court has to form its opinion about the cause of death considering the total circumstances (including, of course, the post-mortem report, there was the ocular evidence that the deceased was suffering from fever. Then there was the ocular evidence that after the administering of injection by the accused-appellant to the deceased, his condition immediately became serious. It has come in the ocular evidence that no other medicine was given to the deceased either before or after the giving of the injection by the accused-appellant. The defence suggestion of treatment of Dr. Laxmi Narain of village Gariya was refuted by the prosecution witnesses and there is no material whatsoever from the side of the defence to support its suggestion. I have no doubt that from the fact of administration of injection by the accused-appellant, the worsening of the condition of the deceased thereafter and his death soon after it while being taken for treatment showed that the deceased died as a result of this injection given by the accused-appellant. The surgeon has stated that he could not tell whether the death was caused due to coagulation of blood or extreme allergy. He testified that by allergic reaction, death could be caused by shock and in that case no symptom will be found in the dead body in post-mortem. He further testified that in case of an injection from which there is possibility of allergic reaction first a test dose is injected and after watching the reaction, the full dose of injection is administered, that some times death takes place due to failure to observe such a precaution. He stated in reply to a Court question that there will be no indication found even in viscera in case of death by allergic reaction and shock. It is correct that the doctor did not find any symptom of poisoning but the accused-appellant has already got its benefit at the hands of the trial Court who exonerated him of the charge of murder due to this absence.

11. In this case, the ocular evidence shows that before administering the injection the accused-appellant did not give any test dose to the deceased before administering the full dose of the injection. He did not claim that the injection was

such that in all probability it could not have caused allergic reaction and so the giving of test dose of the injection was not necessary. On the contrary, he denies the very giving of injection by him which has been proved beyond shadow of doubt by the prosecution evidence.

12. Another circumstance which is material is that the accused-appellant was not a qualified doctor or even a qualified compounder. The ocular evidence that he is not a qualified person in the medical science is admitted to the accused-appellant. There is ocular evidence given by all the three prosecution witnesses aforesaid (P.W. 1 to P.W.3) that even though, he was not a qualified person, he was practicing a doctor. He has denied this in his statement under Section 313, Cr.P.C. but before that in the cross-examination of the prosecution witnesses, it has not been suggested that he does not practice as doctor.

13. It was of course elicited from the informant in his cross-examination that now for the last one year, the accused-appellant is running a shop of gold-smith in town Dataganj. But this statement was given on 14-5-1977 and the occurrence related to 24-5-1975. So the fact remains that he was not a qualified doctor or compounder and yet was practicing as a doctor in the days of occurrence. It goes to corroborate the prosecution case against him. He being not a qualified person, the giving of injection by him and that too without giving the test dose to the deceased and the consequent death of the deceased soon after shows not only that the death of the deceased was the direct consequence of administering of injection by him to the deceased but also that he acted with rashness, recklessness and negligence and with indifference to the consequences. It amounted to taking hazard of such degree that the injury was most likely to be occasioned thereby. So it is amply established that this accused-appellant caused the death of the deceased by doing the said rash and negligent act which did not amount to culpable homicide.

14. Now coming to the question of sentence, the trial Court has awarded a sentence of 1 year R.I. on 15-11-1979. The occurrence related to May, 1975. The learned counsel for the accused-appellant has prayed that he be given the benefit of the Probation Act keeping in view the long gap of time which intervenes

between the date of occurrence and today during which the accused-appellant has been on bail, there being no allegation of any misuse of bail by him.

15. In our view, considering all the circumstances, the prayer of the learned counsel for the accused-appellant can be properly accepted.

16. The appeal is dismissed and the conviction of the accused-appellant for the offence under Section 304, I.P.C. is upheld. However, if the accused-appellant enters into a bond for a sum of Rs. 4,000/- with two sureties each in the like amount before the Sessions concerned within a month from today, to appear and receive sentence when called upon to do so within a period of 1 year from the date of execution of the bonds, and in the meantime to keep the peace and be of good behaviour, the benefit of Section 4 of the U.P. First Offenders Probation Act, 1938 shall stand extended to him. In case these bonds are furnished as aforesaid, the security bonds furnished by the accused-appellant in pursuance of the bail granted to him in this appeal by this Court, shall stand discharged. However, in case the bonds are not furnished by the accused-appellant within the time aforesaid, his bail bonds shall stand cancelled and the learned C.J.M. Badaun shall get him arrested and sent to the District Jail to serve out the sentence of R.I. for a period of 1 year for the offence as aforesaid.

17. Let a copy of this judgment be certified to the Sessions Judge concerned for information and compliance. A compliance report shall be submitted by him to this Court within 2 months from today.