

Raghubar Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-13-2003

Reported in : 2004CriLJ1866

Judge : Mukteshwar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324; [Evidence Act, 1872](#) - Sections 9

Appeal No. : Crl. A. No. 1128 of 1981

Appellant : Raghubar Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.P. Srivastava, ;M.P. Sinha and ;C.P. Misra, Advs.

Disposition : Appeal allowed

Judgement :

Mukteshwar Prasad, J.

1. This criminal appeal, at the instance of the accused, is directed against the judgment and order dated 6-5-1981 passed by Sri Ram Singh, the then Additional Sessions Judge, Ballia in S.T. No. A-60 of 1977 whereby he convicted the

accused Raghubar Singh under Sections 147 and 324 read with Section 149, I.P.C. and sentenced him to undergo Rigorous Imprisonment for a period of six months and one year respectively thereunder. Both the sentences were ordered to run concurrently.

2. In brief, the prosecution story was as under:--

In the night intervening 26/27th November, 1976 at about 1.45 a.m. three constables were patrolling in Mohalla Loha Patti, Gudari Bazar and Isratganj of Ballia city. Constables Sheo Lakhan and two others reached there and told the aforesaid patrolling party that 5-6 miscreants were running in the lane and were being followed by Head Constable and others. They asked their colleagues to surround them towards east of the Tiraha at Isratganj. Chaukidar Sultan and a witness Chhote Lal accompanied them and all of them reached the lane, which is situated towards east of chauraha of Isratganj. As soon as they entered into the lane and made an attempt to apprehend the miscreants, one of them challenged and fired on the police party with a country made pistol. Constables Vijay Shanker Singh, Ajodhaya Singh and the servant Hari Shanker sustained firearm injuries. The miscreants ran away towards east south of lane and could not be apprehended. However, one Joga Singh, who died during pendency of the case in the trial Court, and another miscreants were seen and recognized in the light of the electric bulbs.

3. A F.I.R. was lodged on 27-11-1976 at 2.30 a.m. The case was investigated as usual and charge-sheet was submitted in the Court. During investigation, all injured were medically examined by P.W.6 Dr. S. N. Pandey of the District Hospital, Ballia.

4. After committal of the case to the Court of Session, the accused Raghubar and Chhangur Yadav were charged under Section 147/148 and 307 read with Section 149, I.P.C. on 31-8-1979. Both pleaded not guilty of charges and claimed trial.

5. The prosecution in support of its case examined P.W.1 Constable Mohammad Israil, P.W.2 Constable Vijay Shanker Singh, P.W.3 Constable Badruddin, P.W.4 S.I. Ram Nath Singh, P.W.5 Tirath Raj Upadhyay, P.W.6 Dr. S. N. Pandey and

P.W.7 Deo Nath Singh Yadav. Inspector Bhulan Ram posted at P.S. Kotwali, Ballia in the year 1976-77 was examined as Court witness.

6. The accused examined one Baij Nath Singh in his defence.

7. After having heard learned counsel for the parties and considering entire evidence on record, learned Judge found accused Raghubar Singh guilty of the offences punishable under Sections 147/324/149, I.P.C. and convicted and sentenced him, as mentioned above. He was acquitted of the charges framed under Sections 148 and 307, I.P.C. Co-accused Chhangur Yadav was given benefit of doubt and was acquitted of all the charges.

8. Aggrieved by his conviction and sentence, the accused has come up in appeal.

9. I have heard learned counsel for the appellant, learned A.G.A. and perused the record carefully.

10. Learned counsel for the appellant has assailed the judgment under appeal mainly on the grounds that the appellant was not named in the F.I.R. and entire case of the prosecution was based on the evidence of identification. Admittedly, the appellant was not apprehended by the constables on the spot and he was put up for test identification wherein Head Constable Kailash Ram and Constable Mohammed Israil correctly identified Raghubar and Chhangun Yadav and committed no mistake. Constable Vijay Shanker and Constable Badruddin Khan correctly identified Raghubar Singh but they committed mistake in identifying Chhangur Yadav and thus, their performance was 50%. Head Constable Kailash Ram was not examined in the Court below. It was urged that no conviction could be recorded on the basis of 100% performance of one witness and 50% performance of two witnesses. Moreover, the prosecution led no evidence to show as to who took the appellant Baparda from the police lock up to the Court for obtaining remand and who took him to District Jail from the District Court in Baparda condition and entire link evidence is missing. It was further contended that the appellant was arrested by the police on 22-12-1976 and his identification was held on 9-2-1977 and this delay in holding identification parade was not explained by the prosecution. Lastly, it was submitted that one of the miscreants

fired once from his country made pistol but as many as five persons Sustained gun shot injuries in the course of incident and this theory makes the prosecution case highly doubtful.

11. Reliance was placed by the learned counsel for appellant on the following decisions :--

1. Shiv Ram v. State, 1967 ACC 344

2. Sultan v. State, 1967 AWR 332

3. Mahendra Singh v. State, 1990 All Cr R 405 : (1991 Cri LJ 138 : 1991 All LJ 384)

4. Bundu v. State of U.P., (1992) 29 All Cri C 663.

12. On the other hand, learned A.G.A. contended that the appellant nowhere claimed that he was shown to the prosecution witnesses before his identification in parade.

13. After having considered the respective contentions of learned counsel for the parties and material on record and perused the decisions relied upon by the appellant's learned counsel, I find that the Court below was not justified in convicting the appellant and in my opinion, the prosecution could not establish its case against the accused beyond all reasonable doubts.

14. Admittedly, the accused was not named in the F.I.R. After being arrested by the police on 22-12-1976, he was put up for identification in District Jail Ballia which was held on 9-2-1977. Two witnesses, namely. Head Constable Kailash Ram and Constable Mohammad Israil (P.W.I) had correctly identified the appellant and committed no mistake. Head Constable Kailash Ram was not examined in the Court below for the reasons best known to the prosecution. The other two witnesses namely, Vijay Shanker and Badruddin committed one mistake in identifying the co-accused Chhangun Yadav. Therefore, in view of the decision in Sultan's case (supra), the evidence of identification is not sufficient for the conviction of the appellant. Besides, I find other infirmities also in the prosecution

evidence. No evidence was led on behalf of the prosecution as to who actually took the appellant to the Court for obtaining remand from police lock up and who took him to District Jail after remand. In other words, the entire link evidence is missing. The appellant must have been produced before the Magistrate after every 15 days for remand before holding his identification but no evidence was led. I further find that delay took place in holding identification, which was held on 49th day from the date of arrest.

15. The Apex Court in *Nirmal v. State of Bihar* reported in (2002) 2 JIC 630 held that evidence of identification was not reliable in absence of satisfactory explanation for the delay in holding the test identification parade. The identification of two accused was held after a lapse of about one month and ten days from the date of arrest. The conviction was set aside by the Supreme Court.

16. There is yet another circumstance, which has not been explained by the prosecution. According to the F.I.R. one of the miscreants had fired a shot from the pistol but five persons had sustained gun shot wounds. I am unable to understand how five persons sustained firearm injury. It is needless to mention that in a criminal case, burden lies on the prosecution to prove its case beyond all reasonable doubt by reliable and convincing evidence. The accused was not required to prove affirmatively that he was actually shown to the prosecution witnesses.

17. In view of the aforesaid discussion, I hold that the prosecution could not establish its allegations against the appellant beyond all shadow of doubt. Consequently, it is found that this appeal has merit and it must succeed.

18. In the result, the appeal is allowed. The conviction and sentence of the appellant are set aside and he is acquitted of all the charges. He is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.