

Abdul Razzaq Vs. the State

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Court : Allahabad

Decided On : Feb-21-2000

Reported in : 2000CriLJ3921

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : Indian Arms Act - Sections 4 and 25; Uttar Pradesh Children Act; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 2299 of 1980

Appellant : Abdul Razzaq

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.B.L. Gaur, Adv.

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. This appeal has been preferred by Abdul Razzaq against the judgment and order dated 29-9- 1980 passed by Sri M. Wahaj Uddin, the then Sessions Judge,

Agra in Sessions Trial No. 325 of 1979. He has been convicted under Section 302, I.P.C. and sentenced to life imprisonment.

2. The broad features of the prosecution case may be noted. The incident took place on 18-2-1979 at about 2 p.m. in Labour Colony, Firozabad. The accused-appellant allegedly committed murder of one Amir Ullah by causing knife injury to him. The F.I.R. was lodged by Kalloo Khan PW 1 at 9.45 p.m. on 18-2-1979. On the fateful day and time, the victim Amir Ullah was talking with Samir Ahmad PW 2 and Aslam PW 3 in front of the shop of Kalloo Khan. The accused-appellant appeared there. The victim Amir Ullah asked him to go away. The accused-appellant Abdul Razzaq hurled abuses and exchange of harsh words took place. Kalloo Khan intervened and separated them. The accused-appellant Abdul Razzaq left, holding out that he would again return and would not leave Amir Ullah alive. A short while later, he came again with a knife and stabbed Amir Ullah and escaped. Amir Ullah fell down on being so injured by the accused-appellant. Kalloo Khan PW 1 rushed Amir Ullah to S.N.M. Hospital, Firozabad and admitted him there. The condition of Amir Ullah was serious and Kalloo Khan PW 1 kept attending him. Amir Ullah died in S.N. M. Hospital, Firozabad at 9.00 p.m. Then the written F.I.R. Ext. Ka 1 was lodged by Kalloo Khan PW 1 at Police Station Firozabad which was at a distance of 2 1/2 km. A case was registered against the accused-appellant in consequence of the first information report and investigation followed which was done by Chhote Singh Rathor PW 11, Initially the victim Amir Ullah was examined in S.N.M. Hospital, Firozabad on 18-2-1979 at 2.35 pm. by Dr. Rajendra Kumar Gupta PW 12. As per injury report Ka 18 the following injury was found on his person :

1. Incised wound 1' x 1' x muscle deep (oozing of blood was there) on just above left anterior/superior iliac spine 5 3/4' outer towards left from centre of umbilicus.

3. The injury was kept under observation and X-ray was advised. According to the Doctor, it was caused by sharp edged weapon like knife or Chhuri. It was fresh.

4. After the death of the victim, the postmortem over his dead body was conducted by Dr. M.H.S.A. Khan PW 6 on the 19-2-1979 at 1.35 p.m. to whom the dead body had been sent in sealed condition by the Investigating Officer after preparation of

inquest report and other relevant papers. The deceased was about 20 years of age and the following ante-mortem injury was found on his person :

1. Stitched wound 2.5 cm in length present 0.5 cm above the left anterior superior iliac spine 14 cm below and lateral to the umbilicus.

5. On internal examination, the peritoneum was found punctured. The death had occurred due to shock and haemorrhage because of ante-mortem injury sustained by him and it was found to be sufficient in ordinary course of nature to cause death.

6. The weapon of the offence (knife Ext. 1) was also allegedly recovered by the accused-appellant on his arrest on 19-2-1979 at about 5.00 a.m. near the Railway Crossing by Head Constable Amichand Sharma PW 4. Baboo Khan PW 5 was a public witness of the alleged arrest of the accused-appellant and recovery of knife from him.

7. There was a controversy in the case as to the age of accused-appellant. Dr. K.K. Madgal PW 7 examined the accused-appellant medically on 28-2-1980 and submitted report Ext. Ka-6 that his age was about 18 years. Garib Hussain, Record Keeper, Municipal Board, Firozabad was examined as PW 8, who proved an entry in the birth register in the Municipal Board of the year 1962 to the effect that a male child had been born as son of Abdul Gaffur, resident of Mohalla Tila, Firozabad on 18-9-1962. Another resident of Mohalla Tila, Firozabad, namely, Badri Prasad PW 9 was also examined who testified that the accused-appellant was the seventh child of Abdul Gaffur and he was aged about 18-19 years.

8. The defence was of denial. According to the accused-appellant, he had been falsely implicated due to enmity. He maintained that he had been arrested from his house and no knife had been recovered from him. It was also claimed that he was a juvenile aged less than 16 years. Three witnesses were examined in defence also. Abdul Gaffor DW 1 was the own father of the accused-appellant who stated that the age of accused-appellant was 15 years and 2-3 months. He made this statement on 22-5-1980. According to him, the accused-appellant was probably born in 1964. Head Constable Ram Murti Dubey DW 2 was the Court Moharrir in

the Court of Chief Judicial Magistrate, Agra and was required to produce the register of the first information reports of the said Court which he could not bring because of its non availability. Mohan Lal DW 3 was a Munim in Mirza Factory in which Baboo Khan PW 5 was also employed. He deposed that on 19-2-1979 and 20-2-1979 Babu Khan had not attended his job. He was produced to contradict Baboo Khan PW 5 who stated that on 19-2-1979 at about 5 a.m. he was coming to his job when the accused-appellant was arrested by Head Constable Amichand Sharma PW 4 along with knife.

9. Kalloo Khan PW 1, Samir Ahmad PW 2 and Aslam PW 3 were examined as the eye witnesses out of whom Samir Ahmad PW 2 turned hostile. On over all consideration, the learned Sessions Judge found the guilt of the accused-appellant to be proved to the hilt. He rejected the argument that the accused-appellant was less than 16 years of age at the time of the incident. He accordingly convicted and sentenced the accused-appellant as mentioned hereinabove.

10. We have heard Sri A.B.L. Gaur, learned counsel for the accused-appellant in support of the appeal. The learned A.G.A. has been heard in opposition. We have also carefully examined the evidence on record for proper appreciation of the arguments advanced across the bar. It has first been argued for the accused-appellant that he had no motive to commit the said crime. It should be pointed out in this regard that motive is not 'sine quamon' for the commission of a crime. It is also not evidence in a case. Moreover the motive is rendered insignificant when there is direct ocular evidence regarding commission of a crime by a particular person, as is the situation here. That apart, the motive is always hidden in the bosom of the culprit and all others, including the prosecution , can only guess about it on the basis of the previous background, if any. What is expected of the prosecution is that it should be sincere and honest in disclosing the previous backdrop, if there is any. It is not incumbent upon the prosecution to search for a motive. In the case at hand, the background relating to the incident has truthfully been put forth by the prosecution that the victim was engrossed in conversation with Samir Ahmad and Aslam in front of the shop of Kalloo Khan PW 1 when the accused-appellant came and interfered. He felt annoyed when the victim asked him to go away. There was exchange of harsh words between the two, but Kalloo

Khan PW 1 intervened and separated them, averting a clash. However, the accused-appellant left the scene holding out that he would not leave the victim Amirullah alive. It was immediately thereafter that he came up with a knife and stabbed him whereafter he escaped. So, the sequence of the happening has completely been disclosed by the prosecution right from the beginning. It finds place in the earliest version of the prosecution viz. F.I.R. and was subsequently proved by the two eye witnesses, namely, Kalloo Khan PW 1 and Aslam PW 3. The crux of the matter is that the accused-appellant does not gain any point by arguing that he had no motive to commit this crime.

11. The second argument of the learned counsel for the accused-appellant is that the F.I.R. is a delayed one. It has been pointed out that the incident took place on 18-2-1979 at about 2 p.m. but the F.I.R. was lodged as late as at 9.45 pm. on 18-2-1979 by Kalloo Khan PW 1, though the distance of Police Station from the place of occurrence was only 2 1/2 kms. We wish to say that every delay in the making of the F.I.R. cannot theoretically be considered to be fatal in each and every case without reference to the relevant facts and circumstances. No doubt, in the present case the F.I.R. was made on 18-2-1979 at 9.45 p.m. regarding the incident that had taken place on that day at about 2 p.m., but the delay is found to have very well been explained by the prosecution. The informant was Kalloo Khan PW 1. The victim was the son of the brother of his wife. So, he was a close relative of the victim. On receiving the stab wound inflicted by the accused-appellant, the victim had not died instantaneously. Therefore, the concern of Kalloo Khan PW 1 was naturally to be greater to first attend the victim instead of running to the Police Station at hurricane speed to lodge the F.I.R. leaving the victim at the spot uncared for. It was natural that he first focused his attention on the victim and attempted to save his life by removing him to the hospital for medical aid. Indeed, he was to accord top priority to save the life of the victim, if possible. In our opinion, he behaved like a reasonable human being in first engaging himself in attending the victim and arranging for his medical treatment. The victim was struggling between life and death and died in the hospital in the night at about 9 p.m. All efforts to save him from the jaw of death having proved abortive, Kalloo Khan PW 1 then went to the Police Station and lodged the F.I.R. at 9.45 p.m. Judged in this background since he was busy in attending the victim in the hospital

till he breathed his last, the delay in the lodging of the F.I.R. stands satisfactorily explained. The result is that the prosecution case is not at all adversely affected on this score.

12. Learned counsel for the accused-appellant then doubted the place of incident on the ground that the Investigating Officer did not find any blood at the spot. We have scrutinized the evidence and find that no importance can be attached to this aspect of the matter. The incident had taken place in Labour Colony, a public place, which was not cordoned off after the incident. After the lodging of the F.I.R. at 9.45 p.m. on 18-2-1979, the investigating Officer Chhote Singh Rathor PW 11 had visited the spot the next day. He explained in paragraph No. 5 that it had rained before he had visited the spot. It was thus natural that no blood could be found there when he visited the spot. Non-availability of the blood at the spot does not cast any cloud as to the place of occurrence, having regard to the trustworthy evidence of the two eye witnesses, namely, Kalloo Khan PW 1 and Aslam PW 3.

In the fourth place, the learned counsel for the accused-appellant levelled criticism against the testimony of Kalloo Khan PW 1 and Aslam PW 3. He also urged that Kalloo Khan. PW 1 was a close relative of the deceased and an interested witness. To our mind, therefore, mere close relationship of Kalloo Khan PW 1 with deceased does not justify the throwing away of his testimony over board. The only requirement of law is to judge his testimonial assertions with caution. We find that Kalloo Khan PW1 as well as Aslam PW 3 had been subjected to searching and lengthy cross-examination but the central core of their testimony could not be displaced that the incident took place on the given date, time and place and in the manner alleged by the prosecution. To state this another way, it stands clinchingly proved by their testimony that the accused-appellant was the assailant of Amirullah who had stabbed him after a brief altercation. For exchange of harsh words with the victim, the accused-appellant had left the scene holding out threat and had reappeared with a knife. In the site plan prepared by the Investigating Officer, the house of the accused-appellant has been depicted by letter 'D' and the incident took place at the spot depicted by letter 'B'. The distance between B and D was only 30 paces. Thus, the accused-appellant could reappear with the knife in no time. It is further to be noted that Kalloo Khan PW 1, Aslam PW 3, victim

Amirullah and accused-appellant were all residents of the same Labour Colony where the incident took place. Therefore, Kalloo Khan PW 1 and Aslam PW 3 were the natural witnesses of the incident. Kalloo Khan PW 1 was present at his Parchuni shop at the time of the incident, nearby which place the occurrence took place. It was he who had separated the accused-appellant and the victim when they were exchanging harsh words. One of the persons with whom the victim was engrossed in conversation at the start of the incident was Aslam PW 3. He emphatically asserted in his testimony before the Court that it was Sunday and, therefore, he had not gone to his factory that day. He was working as painter in some factory. The accused-appellant could not assign any reason either against Kalloo Khan PW 1 or Aslam PW 3 which could actuate any of them to implicate him falsely while concealing the real culprit. We are of the opinion that the testimony delivered by Kalloo Khan PW 1 and Aslam PW 3 is strong like steel. The learned Sessions Judge rightly placed reliance on these witnesses. It matters not that Samir Ahmad PW 2 turned hostile and did not support the prosecution case, it is an eternal principle of criminal law that quality of the evidence is to be seen and it is not to be counted.

13. Another argument of the learned counsel for the accused-appellant is based on a document brought on record at the appellate stage. It is the copy of judgment dated 1-10-1992 passed by the Judicial Magistrate, Ferozabad in Criminal Case No. 756 of 1991 under Section 4/25 of the Indian Arms Act. It relates to the alleged recovery of knife from the accused-appellant (weapons of this offence) on 19-2-1989 at about 5 a.m. It has been argued by the learned counsel for the accused-appellant that he was acquitted in the said case and, therefore, the alleged recovery of knife by the accused-appellant cannot be relied upon. The perusal of the judgment in question passed by the Magistrate shows that the prosecution could not adduce any evidence in the said case and it resulted in the acquittal of the accused-appellant under Section 4/25 of the Indian Arms Act. We are of the definite opinion that the fact of the acquittal of the accused-appellant in the case of recovery of knife under Section 4/25 of the Indian Arms Act does not and cannot create any dent in the present case of murder. Really speaking, the said recovery of knife from the possession of the accused-appellant was not even relied upon by the learned Sessions Judge as a piece of incriminating evidence against him. We

also ignore the same. The point of the matter is that even excluding the alleged recovery of knife from the accused-appellant it stands proved clinchingly by trustworthy evidence of two eye witnesses, namely, Kalloo Khan PW 1 and Aslam PW 3 that the accused-appellant was the assailant of the victim Amirullah and it was he who had stabbed him in the abdomen.

13A. We are now taken to the last argument of the learned counsel for the accused-appellant that he was a child or a juvenile under 16 years of age at the time of the commission of the crime. On this premise, it has been argued that he was entitled to be dealt with under the provisions of the U.P. Children Act which was then in operation and could not be convicted and sentenced for life imprisonment as has been done by the learned Sessions Judge. We proceed to examine the worth of this argument.

14. It should be recalled that the present incident took place on 18-2-1979. The statement of the accused-appellant under Section 313, Cr.P.C. was recorded on 27-8-1980 wherein he disclosed his age as 16 years. However, the learned Sessions Judge made a note to this effect; he is about 18 years old as per appearance. May be about 18 1/2 years old. There is medical evidence also as regards his age. He was medically examined on 28-2-1980 by Dr. K.K. Madgal PW 7 who found him to be aged about 18 years basing his conclusion on the X-ray taken on 27-2-1980. The epiphysis around both the elbows of the accused-appellant had been found fused; epiphysis of lower end of both ulna bones had not fused ; epiphysis of lower end of both radius bones had just started fusing. Referring to Modi's medical jurisprudence, the learned counsel for the accused-appellant submitted that two years' margin of error on either side should be allowed in the ascertainment of age based by radiological examination. He also cited the decision of the Apex Court in the case of *Jaya Mala v. Home Secretary, Government of J. and K.* AIR 1982 SC 1297 wherein also their Lordships held that the margin of error in the age ascertained by radiological examination is two years on either side. The learned counsel for the accused-appellant has urged that when two conclusions are possible from the facts and evidence, one favourable to the accused should be preferred. Thus, he reasoned that when the accused-appellant was estimated to be aged about 18 years on 28-2-1980, he could actually be

about 16 years of age, meaning thereby that he was about 15 years only at the time of commission of this crime on 18-2-1979. To our mind, the matter is not so simple as has been tried to be projected by the learned Counsel for the accused-appellant. There can be no quarrel with the proposition that the margin of error in ascertainment of age on the basis of radiological examination may be two years on either side. But we are of the opinion that the occasion may arise for making such a margin only when one has to speculate and make estimate regarding the age of a particular person merely on the basis of radiological examination. There would be no question of giving the margin of two years when there is otherwise conclusive and decisive evidence that actually the accused-appellant was over 16 years of age when he committed this offence.

15. In the present case, the prosecution examined Garib Hussain PW 8, Record Keeper of Municipal Board, Ferozabad also who proved an entry in the birth register of the years 1962 to the effect that male child had been born fathered by Abdul Gaffur, resident of Mohalla Tila Bazar, Ferozabad on 18-9-1962 Abdul Gaffur is the father of accused-appellant. According to this entry, the age of the accused-appellant was 16 years and 5 months on 18-2-1979 when he committed this offence. There is another witness Badri Prasad PW 9 who also resided in Mohalla Tila. Making his statement on 21-5-1980, he stated that the accused-appellant was aged about 18-19 years and further that in 1962 his father Gaffur resided in Mohalla Tila and that no other person named as Gaffur was resident of Mohalla Tila in 1962. According to his witness, the accused-appellant was the seventh son of Gaffur. As a matter of fact, it is admitted to Abdul Gafoor DW 1 (father of the accused-appellant) also that he resided in Mohalla Tila and no other person of his name was residing there when the accused-appellant Abdul Razzaq was born. He however, testified that he had ten children and the accused-appellant was his 8th child. He gave his age as 15 years and 2 or 3 months while deposing in the Court on 22-5-1980. Obviously, his endeavour was to show that the accused-appellant was less than 16 years of age at the time of the commission of this crime on 18-2-1979. But his such attempt came to be aborted during his cross-examination which surfaced the truth. He admitted that he had sent the information of the birth of the accused-appellant to the Municipal Board. On being cornered, he stated that perhaps the accused-appellant was born in 1964. It is an indicator that he could

not say with certainty that actually the accused-appellant was born in 1964. He further revealed that another son had been born to him in 1962 whose name was Gaffur. He admitted that Gaffur had studied in Islamia School. He, however, did not produce any evidence as to what date of birth of Gaffur had been mentioned in his school record. We have no hesitation to hold that being interested to save his son, Abdul Gaffor DW 1 hesitatingly made a false statement that the accused appellant was probably born in 1964. To come to the point, his interested testimony on the point of the age of the accused-appellant cannot overshadow the conclusive evidence adduced from the side of the prosecution that the accused-appellant was actually born on 18-9-1962 and was aged 16 years and 5 months when he committed this crime on 18-2-1979. The medical evidence adduced by the prosecution regarding his age is also in tune with other evidence produced in this behalf as discussed hereinabove. Thus, there is no room for making any speculation or giving any margin in the estimation of his age on the strength of what has been argued by his learned counsel as also keeping in view the evidence of Abdul Gafoor DW 1. Indeed the accused-appellant cannot be held to be juvenile on an apologetic approach. The judicial instrument has public accountability. It would tantamount to exaggerated devotion to the theory of benefit of doubt to ignore the sterling evidence of definite tendency unerringly proving that the accused was over 16 years of age (of 16 years and 5 months) when he committed this crime of murder on 18-2-1979.

16. Terminating the discussion, we do not locate any merit in any of the arguments advanced by the learned counsel for the accused appellant in support of this appeal. Accused-appellant Abdul Razzaq committed murder of unarmed Amirullah by stabbing him on the given time, date and place. He had no justification whatsoever to assault the victim and to cause fatal stab injury to him. He did commit the offence of murder punishable under Section 302, I.P.C. and has rightly been convicted for the same. The sentence of life imprisonment awarded to him is lessor of the two alternative punishments prescribed for the said offence. The appeal has no merit and we hereby dismiss it, affirming the judgment and order passed by the learned Sessions Judge. Accused-appellant Abdul Razzaq is on bail. His bail is cancelled. The Chief Judicial Magistrate, Ferozabad is directed to get the accused-appellant arrested and to commit him to prison to serve out the

sentence.

17. Let a copy of this judgment along with the record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within two months positively.

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