

State of U.P. Vs. Raja and ors.

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Court : Allahabad

Decided On : Sep-17-2002

Reported in : 2003CriLJ1816

Judge : M.C. Jain and ;V.N. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Govt. Appeal No. 1474 of 2001

Appellant : State of U.P.

Respondent : Raja and ors.

Advocate for Def. : Apul Mishra and ;P.N. Mishra, Adv.

Advocate for Pet/Ap. : R.P. Dubey, Adv.

Disposition : Appeal dismissed

Judgement :

V.N. Singh, J.

1. The appeal has been filed against the judgment dated 27-1-2001 passed by VII Additional Sessions Judge, Budaun, by which, he acquitted the accused Raja, Kallu and Jahim under Section 302 read with Section 34, I.P.C.

2. Prosecution case, in brief, is that, about two years back at the time of construction of house of Nasrin, daughter of the complainant, some altercation took place with Mohd. Qasim of the Mohalla. In connection with the said house, a civil suit was pending between Sadiq, the son-in-law of the complainant, and the said Qasim. As the complainant and his family members used to do pairvi in the civil case of his son-in-law, Qasim and his sons were having grudge with the family members of the complainant, and they used to threat to kill them. On 1-6-1999, while complainant Yakub and his son Jakir alias Chhotey were coming from the market and were going to their house, in the way near the JHANDEWALI MASZID at about 10 a.m., the accused persons began to abuse Jakir, the son of the complainant Rashid and Abdul Rahim, who were present there, tried to dissuade them, but the accused began to beat Jakir. On opposition, Raja on the instigation of Kallu and Jahim fired on Jakir, due to which, he received serious injuries. The accused left the place of occurrence and extended threats that, if any body objected or lodged the report or gave evidence, he would have to suffer the same consequences. The complainant sent Jakir to the hospital and lodged the report.

3. Case was registered on 1-6-1999 at 11.10 a.m. against Raja Jahim and Kallu under Sections 307, 323 and 504, I.P.C.

4. Injured Jakir was examined in the hospital at Budaun on 1-6-1999 at 10.15 p.m. by Dr. Mahendra Kumar Verma, who prepared Exhibit Ka-13, the medical report and Bed Head Ticket Exhibit Ka-14.

5. Injured Jakir died later on, then the case was converted into Section 302, I.P.C. and an entry was made in the G.D. at serial No. 24 at 11.50a.m.

6. S.I. Surendra Singh Parihar prepared inquest report Exhibit Ka-7 and sent the dead body for post mortem in sealed cover. The said S.I. also prepared Exhibits Ka-1, K-9, Ka-10 Ka-11 and Ka-12, report photo lash and specimen of the seal.

7. Post mortem of the dead body was done by Dr. Mahendra Pal Gangwar on 2-6-1999. He prepared post mortem report Exhibit Ka-2.

8. Inspector Kirpal Singh took the accused Raja in police remand from the Court, and on his pointing out, recovered county made pistol of 315 bore containing blank cartridges. He prepared recovery memo, got a case registered under Section 25 of the Arms Act against Raja.

9. After investigation, charge sheet was submitted against accused Raja. Jahim and Kallu under Sections 302, 504 and 323, I.P.C. Exhibit Ka-4.

10. Accused Raja was charged under Section 302, I.P.C. and the other accused Jahim and Kallu were charged under Section 302 read with Section 34, I.P.C. The accused denied the allegations and claimed trial.

11. From the side of the prosecution, PW 1, complainant Yakub, PW 2, Rashid, PW 3, Ishar, PW 4, Dr. Mahendra Pal Singh Gangwar, PW 5, Inspector Kirpal Singh, PW 6, S.I. Surendra Singh Parihar, and PW 7, Dr. Mahendra Kumar Verma were examined. PW 8, Abdul Alim, filed affidavit.

12. From the side of the accused no oral evidence was given. Accused produced Exhibit Kha-1, copy of the application of the 'complainant Yakub dated 1-6-1999 and the affidavit of the complainant Exhibit Ka-2 dated 29-6-1999.

13. Heard learned A.G.A. for the appellant and Sri P.N. Mishra, learned counsel for the accused respondents.

14. It has been argued by the learned A.G.A. that, complainant Mohd. Yakub, PW. Ishar Hussain, PW 8 Abdul Alim have supported the prosecution case, and even PW Rashid has supported the prosecution case in examination-in-chief. It has also been argued by the learned A.G.A. that PW 1, complainant and PW 3, Rashid, have deposed that, the complainant was directed by the S.O. concerned that until the name of Qasim from the F.I.R. was deleted, the F.I.R. would not be registered.

15. It has also been argued by the learned A.G.A. that, police was in favour of Qasim, the father of the accused respondents, as alleged by the complainant and the witness Ishar Hussain, therefore, fair investigation was not done by the investigating agency, due to which, discrepancy had occurred and such discrepancy should be ignored.

16. We have gone through the judgment of learned trial Court and found that the learned trial Court has acquitted the accused on the following grounds :

(1) There are two F.I.Rs. The first F.I.R. was burnt while on the basis of second F.I.R. report has been lodged. In this connection, statements of witnesses have been referred. It has been alleged by the complainant in the F.I.R. that, he dictated the report to Ishar Hussain and went to the police station along with the report. Kotawal Saheb returned the report and directed that, unless the name of Qasim was omitted, the report would not be lodged. He along with Ishar Hussain and 2-4 persons of his Mohalla went to the police station again, then Kotwal Saheb again directed him to omit the name of Qasim. Then he dictated the report to Ishar Hussain, and on the basis of the second report, F.I.R. was lodged. The previous report was burnt at the police station by Darogaji.

(2) P.W. Ishar Hussain scribe stated that first report written by him was handed over to Yokub and Yakub along with the report went to the Kotwali. Afterwards, Mohd. Yakub came back to Mohalla and told him that, report would not be lodged, unless name of Qasim was omitted, then he along with Yakub and certain persons of the Mohalla came to the police station. Kotwal Saheb again directed to omit the name of Qasim. After going through the first report, he prepared second report at the police station and omitted the name of Qasim and handed over both the reports to Yakub. The first report was taken from Yakub by Kotwal Saheb and handed over to Constable, who got it burnt.

17. It has been held by the learned trial Court that the complainant has alleged different facts in the F.I.R. Exhibit Ka-1 and in the letter dated 1-6-1999. In the letter dated 1-6-1999 addressed to Superintendent of Police, Yakub has stated that, after incident, he came to the police station, but Kotwal Saheb did not hear his request and said that, Qasim was not present there, then he came back to his house weeping. Certain persons of Mohalla, came to Kotwali along with him. Darogaji lodged the report according to his wish and did not case to his report and got his report burnt.

18. While Inspector Kirpal Singh stated that on the basis of the written report of the complainant, FIR was lodged at the police station, while PW Ishar Hussain scribe

has given different version regarding lodging of F.I.R. In this way, there are four versions regarding lodging of the F.I.R.

19. It has also been held by the learned trial Court that these facts show that the present F.I.R. is not the first version of the complainant and there is doubt whether Exhibit Ka-1, F.I.R. is according to the contention of the complainant or it has been lodged by the police against the wish of the complainant. These facts also show that the F.I.R. has been lodged on the advice of the police and the police has intervened.

20. In this connection, learned trial Court has referred the decisions reported in Acc 1996 Summary of cases 56, Roshan Singh v. State of U.P. and Shrawan Singh v. State of U.P. reported in 1994 All Cri C 216, in which, it has been held that, 'intervention by the police regarding lodging of the F.I.R. at the police station cannot be ruled out, and on this ground, the prosecution story cannot be relied upon.'

21. Learned trial Court has held that, complainant has admitted that he sent an application Exhibit Ka-1 to the S.P. Budaun on the date of the incident, in which, it has been alleged that, in the way Mohd. Qasim and his sons, while abusing caught hold of my son and fired on him. In that application it has not been alleged by the complainant that. Raja fired on his son, nor he mentioned the names of the accused Raja, Jahim and Kallu in the said application. Only the name of Qasim has been mentioned, and it has been alleged that Qasim and his sons fired on his son.

22. It has also been held by the learned trial Court that it shows that at the time of moving the application, the complainant Yakub had no knowledge regarding the names of the accused Raja. Jahim and Kallu, otherwise, he would have mentioned their names in the application.

23. It has also been held by the learned trial Court that, at the time of moving the application Exhibit Ka-1, there was no pressure of the police on the complainant, and he could have mentioned true facts and names of the accused in the application.

24. It has also been held by the learned trial Court that at the time of giving statement on oath, there was no interference of the police on the complainant, and he was free to name Qasim as accused and was also free to state the real incident, but the complainant did not name Qasim in his statement in the Court. He simply stated that Mohd. Qasim was present there.

25. It has also been held by the learned trial Court, contention of the complainant is doubt full that under the pressure of the police, he omitted to name Mohd. Qasim as accused.

26. It has also been held by the learned trial Court that, from perusal of Exhibit Ka-1 , the application sent to the S.P. it is clear that, at the time of moving the application Exhibit Ka-1 F.I.R. was not lodged at the police station. Had the report been lodged at the police station and the complainant would have received its copy, then he would have mentioned the names of all the accused in the application. It also show that, at the time of moving of the application, the complainant, was not in a position to decide the name of the sons of Mohd. Qasim, who have been implicated as accused.

27. It has also been held by the learned trial Court that, it also shows that the F.I.R. is anti-timed and had been lodged at the police station sometime in the evening.

28. It has also been held by the learned trial Court that there has been delay in preparation of the inquest report and the post mortem report.

29. It has also been held by the learned trial Court that there is overwriting regarding pages of the F.I.R. and the pages of the G.D. mentioned at the end of the inquest report while giving details of the papers.

30. It has also been held by the learned trial Court that there was entry of one page regarding F.I.R., later on it was made two page by overwriting. In the same way two pages regarding G.D. were mentioned, later on entry was made regarding one page.

31. It has also held been by the learned trial Court that, at the time of preparation of the inquest report, PW 6, S.I. Surendra Singh Parihar had no copies of the F.I.R. and G.D. otherwise he would not have made overwriting in connection with the number of the pages of F.I.R. and G.D.

32. It has also been held by the learned trial Court that generally F.I.R. is written in one page, therefore, while giving details of page F.I.R. previously one page was mentioned and later on, by overwriting it was made two page, and in the same way, overwriting was made in the G.D.

33. It has also been held by the learned trial Court that, according to S.I. Surendra Singh Parihar, he started preparation of inquest report at 12.35 p.m. which took two hours and it was ready at 2.30 p.m. Later on by overwriting 2.30 was made 3.30 p.m.

34. It has also been held by the learned trial Court that, generally one hour time is taken in preparation of the inquest report, but according to S.I. Surendra Singh Parihar it took about three hours in the present case.

35. It has also been held by the learned trial Court that, over writing has been made in the time of preparation of the inquest report to justify the post mortem on the next day and that is why 2.30 p.m. has been made 3.30 pm. If the inquest report would have been prepared at 12.30 pm. then there would have been no justification for conducting the post mortem on the next day.

36. In this connection, it has also been held by the learned trial Court that, on the memo prepared by the R.I. time regarding close of the inquest report was mentioned 2.30 p.m. Later on by overwriting the figure 2 has been replaced by '3'.

37. It has also been held by the learned trial Court that, from the overwriting, it is clear, that these papers were not present at the time of preparation of the inquest report and post mortem report.

38. It has also been held by the learned trial Court that, omission of crime number, sections in the papers prepared at the time of preparation of the inquest report shows that F.I.R. was not in existence at that time.

39. In this connection, the learned trial Court has referred the decision of Hon'ble Supreme Court in *Omwati v. Mahendra Singh* reported in 1996 Cri App R 55 : 1998 All LJ 82), in which prosecution story was held to be doubtful on the ground of overwriting and cutting in the inquest report. Learned trial Court has also relied on another decision of this Court reported in 1999 All Cri R 1022 (sic), wherein the prosecution story was held doubtful on the ground that, there was delay in post mortem and doubt regarding time of lodging the F.I.R. and on ground, that F.I.R. was not sent along with the dead body, and acquitted the accused.

40. It has also been held by the learned trial Court that, had inquest report been complete till 2.00 p.m. then as there is distance of only 1 and 1/2 Km. between the police station and mortuary and C.M.O. office, then the post mortem would have been on the same day, but it was not done, which also shows that till that time, F.I.R. was not in existence.

41. It has also been held by the learned trial Court that, in the inquest report-Exhibit Ka-7, injury has been shown on the upper portion of right thigh, while according to the medical report and the post mortem report, it is on the left thigh. It also shows that, inquest report was not prepared at the place, where the dead body was present. Had the inquest report been prepared after inspection of the dead body, then such anomaly would not have appeared. It shows that inquest report was prepared in the police station and this fact finds support from the statement of S.I. Surendra Singh Parihar, who deposed that Investing Officer did not meet him in the hospital at the time of preparation of the inquest report, while Inspector Kripal Singh has stated, that he met S.I. Surendra Singh Parihar in the hospital.

42. It has also been held by the learned trial Court that, there is contradiction between the medical report and post mortem report. According to medical report blackening was not present, while according to Dr. Mahendra Pal Gangwar, who conducted the post mortem, blackening and tattooing was present on the dead body.

43. It has been held by the learned trial Court that, according to the prosecution, the deceased was wearing pant, shirt and baniyan. As such blackening and

tattooing was not possible on the body of the injured due to clothes rather blackening and tattooing should have been present on the clothes. In this connection, decision in Balak Ram v. State of U.P. reported in 1998 All Cri R 528 (sic), has been referred.

44. It has been held by the trial Court according to prosecution story, accused and deceased were in front of each other and accused fired on the deceased, without changing the direction of the barrel, while according to Dr. Mahendra Pal Gangwar, this injury is possible only, if the fire is made keeping the direction of the barrel upward. In this connection, decision in case of Adya Prasad reported in 1993 Lucknow Criminal Rule 53, has been referred in which, it has been held that, in view of contradiction in medical report, oral evidence and post mortem report, prosecution story is doubtful.

45. It has also been held by the learned trial Court, that, PW 2 Rashid in beginning supported the prosecution story, but later on, he submitted an affidavit to the effect that, he gave statement due to threat. When the witness was summoned in Court, in this cross examination, he deposed that, he gave statement due to threat. He also affirmed the statement made in the affidavit.

46. It has also been held by the learned trial Court that conduct of the complainant, after the incident creates doubt regarding his presence on place of occurrence. In this connection, statement of PW 1, complainant has been referred, who deposed that, he did know that the name of the person through whom, his son was sent to the hospital. Besides it, the complainant himself did not go to the hospital along with his injured son. PW 3, Ishar Hussain and PW 8 Abdul Alim are relations of the complainant. According to them, they were present at the time of incident, but they too did not go to the hospital along with the injured, nor the complainant sent them along with his injured son to the hospital. It also creates doubt.

47. Besides it, it has also been held by the learned trial Court that according to PW. 8 Abdul Alim, Satiq, son-in-law , of the complainant reached on the spot and he carried the injured to the hospital. According to medical report injured was carried to hospital by Sadiq (Son-in-law) of complainant. Had the complainant been present at the time of incident, then this fact would have been in his

knowledge that his son-in-law, Sadiq carried his son to the hospital.

48. It has also been held by the learned trial Court that complainant admitted that, after incident the injured remained there for 20 to 25 minutes. Had the complainant been present on the spot, he would have sent the injured to the hospital with help of his relatives immediately.

49. It has been held by the learned trial Court that, according to the application of the complainant Yakub Exhibit Kha-1, the incident had taken place in the market of Khandtari Mohalla, while according to prosecution story, the incident, had taken place in front of JHANDEWALI MASZID. It has also been held by the learned trial Court that if the complainant would have been present on the spot, then this contradiction would not have occurred.

50. The motive according to prosecution, is the civil litigation between Sadiq, the son-in-law of the complainant, and Qasim, in which the complainant does pairvi on behalf of his son-in-law. It has been held by learned trial Court that if the accused would have been annoyed with the pairvi, then he would have attacked the complainant and not his son. No injury was caused to the complainant by the accused.

51. It has also been held by the trial Court that, after incident, PW 8, Abdul Alim, did not go to the hospital along with the deceased nor did he go to the police station, although he is near relative. That is not the normal conduct of human being, and in this connection. Supreme Court decision in case of Din Dayal v. Raj Kumar reported in 1998 SCC (Cri) 892 : (AIR 1998 SC 537) has been referred, in which, it has been held that if an eye witness being near relation of the deceased does not go to the hospital nor does he give information to the police, then his conduct is unnatural and doubtful and his statement cannot be relied on.

52. It has also been held by the learned trial Court that while sending the report to the Judicial Magistrate sufficient delay has been caused, and it was sent on 14-6-1999, while the incident had taken place on 1-6-1999. In this connection reference of a decision of the Hon'ble Supreme Court reported in 1994 SCC (Cri) 1551 has been given, in which, it has been held that, if delay has been caused in sending

the report, then it will be presumed that the report is ante-timed.

53. We have gone through the statements of the witnesses, F.I.R. and other papers and records of case to check whether finding of learned trial Court is correct and found that there is no mistake in finding and finding is according to records.

54. The learned counsel for the appellant could not explain or give any satisfactory reason for setting aside the judgment and order of the trial Court, nor could point out mistakes in judgment.

55. Considering the total circumstances of the case, we are of the opinion that appeal lacks merit and is liable to be dismissed.

56. Accordingly, the appeal is dismissed.

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