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Rajender Kumar Vs. Rakesh and ors.

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Court : Delhi

Decided On : Oct-16-1985

Reported in : 1986(1)Crimes730; 29(1986)DLT163

Judge : G.R. Luthra, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 437 and 439; Indian Penal Code (IPC) - Sections 34

Appeal No. : Criminal Misc. (M) 752 and 937 of 1975

Appellant : Rajender Kumar

Respondent : Rakesh and ors.

Advocate for Def. : B.K. Sharma, ; O.P. Soni, ; Kamlesh Dutt and ;

Advocate for Pet/Ap. : K.K. Sud and Rajiv Chauhan, Advs

Disposition : Petition dismissed

Judgement :

G.R. Luthra, J.

1. By this order two petitions, Criminal Misc. (Main) 752 of 1985 and Criminal Misc. (Main) 937 of 1985 are being decided. Both these petitions arise out of the same case, because Criminal Misc. (Main) 937/85 is of Neelu alias Lainda for grant of

bail. The other petition No. 752/85 is of one Rajinder Kumar for cancellation of bails of Rakesh alias Chhotu and Jagdish Pershad Arya who are co-accused of Neelu in sessions case now pending before Shri S.R. Goel, Additional Sessions Judge, Shahdara, Delhi.

2. The case relates to the murder of one Bharat Bhushan and attempt to murder of Vipin by gun shots. The complainant party consists of Rajesh, Vipin, Satish Kumar, Rajinder and Ravinder.

3. The accused are Ashwani Kumar, his brother Sanjay Kumar their father Jagdish Pershad Arya, Neelu alias Lainda and Rakesh alias Chhotu.

4. The first information report No. 225 of 1985 of police station Krishna Nagar was recorded on the statement of Rajesh Kumar. The version of the prosecution, as given in report under Section 173 Cr.P.C., is as follows. Father of Rajesh Kumar was admitted in Lok Nayak Jai Prakash Narayan Hospital. The mother of Bharat Bhushan, now deceased, was admitted in Pant Hospital. On June 2, 1985 Rajesh, Satish kumar alias Babu, Bharat Bhushan and his brother Vipin were going to hospital. At about p.m. they passed near the house of Ashwani Kumar accused. At that place, Ashwani Kumar, his brother Vijay and Neelu and Rakesh were present. Ashwani Kumar asked Bharat Bhushan as to how the letter had come out from the jail and that the latter must remain in jail. Thereafter Aswani Kumar and other co-accused started abusing Bharat Bhushan and his companions and also started pelting stones. In the meanwhile Ravinder Kumar and Rajinder Kumar, brother of Bharat Bhushan came at the spot. The complainant party also started pelting stones on the accused party.

5. Neelu alias Lainda took out his country made revolver (Katta) and fired but the revolver did not work. Then Ashwani Kumar accused told Sanjay Kumar to bring gun from the house and that the adversaries would finished. Sanjay Kumar ran and brother a double barrel gun and fired. The gun shots hit the neck of Vipin. Vipin fell down. Bharat Bhushan tried to catch hold Sanjay Kumar but in the meanwhile Ashwani Kumar snatched the gun from Sanjay Kumar and fired a gun shot on Bharat Bhushan. Bharat Bhushan received gun shots in his abdomen and he fell down.

6. In the meanwhile Jagdish Pershad Arya came at the spot. He brought a belt containing cartridges. He bung that belt in the neck of Sanjay Kumar and stated that no adversary should be allowed to escape. Ashwani Kumar loaded the gun. However, as crowd started swelling, he did not fire and Ashwani Kumar and Sanjay Kumar etc. went their home.

7. Bharat Bhushan and Vipin were admitted in the hospital. They were declared unfit by the doctor for making the statement. Duty constable Dayal Chand informed the police station. An entry was recorded in the daily diary and SI Lal Singh was deputed to go to hospital. As both Bharat Bhushan and Vipin were unfit to make statement, of Rajesh was recorded and on that basis the first information report was recorded Bharat Bhushan died while Vipin remained in the hospital and was discharged after some days.

8. On June 7, 1985 Shri S.R. Goel, Additional Sessions Judge, Shahdara by separate orders directed the release of Rakesh Kumar as well as Jagdish Pershad Arya on furnishing personal bond in the sum of Rs. 5000/- with one surety in the like amount. In respect of Rakesh Kumar, Shri S.R. Goel remarked that as no role has been assigned to him, in the matter of murder, the provisions of sections of section 34 IPC were not attracted. In respect of Jagdish Pershad Arya, it was remarked that his name did not find mention in the first information report, that no role can be attributed to him as he was not present when the occurrence took place and that, thereforee, he was entitled to bail.

9. I have heard the learned counsel for the parties. First of all I take up the bail application of Neelu alias Lainda. According to the prosecution version, as contained in the first information report and the statements of the eye witnesses, namely, Vipin, Satish, Ravinder and Rajinder recorded under section 161 Cr.P.C., he tried to fire a shot from his country made revolver (described in Hindi as Katta) but the same did not work. So it can be said that he had the intention to kill. It will be for the trial court to decide ultimately as to what that criminal liability is but at this state there is no circumstance justifying grant of bail to him.

10. Learned counsel for Neelu contended that the first information report No. 224/85 was recorded at the instance of the accused party, that a different version

was given in the same, that Neelu according to that first information report had not committed any offence and that, thereforee, he should be released on bail. But at this state it is not possible to rely upon that first information report and it will be for the trial court to appreciate the evidence and decide the entire matter.

11. Now I take up the application for cancellation of bail granted to Rakesh Kumar and Jagdish Pershad Arya. Learned counsel for the petitioner Shri K.K. Sud, Advocate contended that there is evidence against Jagdish Pershad Arya which fastens criminal liability on him. He summed up the evidence as follows :

(i) The gun, the fire shots of which killed Bharat Bhushan and injured Vipin belonged to Jagdish Pershad Arya.

(ii) It is true that Rajesh did not mention presence of Jagdish Pershad Arya at the spot in his statement recorded on 2nd June 1985 but he in a supplementary statement recorded on 6th June 1985 mentioned the role of Jagdish Pershad Arya. Further Satish Kumar, Ravinder, Rajinder and Vipin in their statement under Section 161 Cr. P.C. supported the version of the prosecution as far as Jagdish Pershad Arya is concerned.

(iii) Jagdish Pershad Arya placed a belt containing cartridges in the neck of Sanjay Kumar and told that all the adversaries (describing them a, Sala) be killed and no one should escape on which exhortation, gun was loaded with two bullets.

(iv) The gun was recovered from Jagdish Pershad Arya on 3rd June 1985 along with 16 cartridges in the belt.

12. Shri K.K. Sud, Advocate further contended that as far as Rakesh is concerned, it was wrong on the part of the learned Additional Sessions Judge to hold that he could not be fastened with criminal liability under Section 34 IPC relating to murder of Bharat Bhushan and attempt to murder of Vipin and that, thereforee, the bail of Rakesh should also be cancelled.

13. In my opinion there is no justification for the cancellation of bail of any of Jagdish Pershad Arya or Rakesh. Although the learned Additional Sessions Judge should not have given definite opinion that Rakesh was not liable under Section 34

IPC because that opinion is to be formed only after the entire trial is over, yet at this stage it can be said that there is possibility that ultimately Rakesh is not fastened with criminal liability under Section 34 IPC. The occurrence can be divided into three parts. The first part was of abuses by the accused party and exchange of stones by the accused on the one hand and complainant party on the other hand. According to the prosecution version, Rakesh was taking part in the first part of the occurrence.

14. The second part of the occurrence was firing by Neelu from the revolver which did not work and hen bringing the doubt barrel gun by Sanjay and firing of gun shots on Vipin by Sanjay and by Ashwani on Bharat Bhushan. This second part, as the version of prosecution is, was confined to Neelu, Sanjay and Ashwani Kumar. thereforee, Rakesh is entitled to bail.

15. The third part of the occurrence consisted of appearance of Jagdish Pershad Arya on the scene. He exhorted his sons and the accused party to finish the adversaries (words used are 'Salas') i.e. the complainant party. But no shot was fired after the appearance of Jagdish Pershad Arya. The murder of Bharat Bhushan and attempt to murder of Vipin had already taken place. So it will be seen at the trial as to with what criminal liability Jagdish Pershad Arya can be clothed. At this stage it is suffice to say that here is no justification for cancellation of his bail.

16. Before I conclude, it is made clear that whatever has been stated above, is only for deciding the applications and will not prejudice the trial on merits.

17. For the foregoing reasons I dismiss both the petitions.

18. Criminal Misc. (Main) 752 of 1985 and Criminal Misc. (Main) 937 of 1985 stand disposed of.

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