

Sunil Kumar at Ninna Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Dec-23-2010

Judge : S.C. Agarwal, J

Appeal No. : Criminal Revision No. 865 of 2010

Appellant : Sunil Kumar at Ninna

Respondent : State of U.P. and Another

Judgement :

1. This revision under Section 397/401 Cr.P.C. is directed against the order dated 14.1.2010 passed by Addl. Sessions Judge, Court No. 12, Muzaffar Nagar in S.T. No. 1255 of 2009, State v. Rajendra & others, under Section 323, 324, 506 IPC, P.S. Mansoorpur, District- Muzaffar Nagar, later registered at Criminal Case No. 1155/9 of 2010 in the Court of C.J.M. Muzaffar Nagar, whereby trial was transferred to the court of C.J.M. Muzaffar Nagar in accordance with Section 228 (1) (a) Cr.P.C.

2. The facts are that on 13.11.2004 at 12.05 p.m., an FIR was lodged by opposite party no. 2-Rajendra Kumar against Seetu @ Praveen, Buddhu @ Ashok, Pramod and Ramesh, under Section 302 IPC, P.S. Mansoorpur, District Muzaffar-Nagar, which was registered at crime no. 222 of 2004. It was alleged in the FIR that on 12.11.2004 at 9.45 p.m., Himanshu (deceased) was firing crackers in front of house of Rajendra Kumar. Accused Seetu @ Praveen took Himanshu to his

house. After sometime Rajendra heard shrieks of Himanshu. Rajendra accompanied by Raj Kumar and Vivek reached the house of Pramod and saw that Buddhu had caught hold of Himanshu and Seetu stabbed him with a gupti. Himanshu was immediately taken to the hospital where he was declared dead.

3. Subsequently, an application under Section 156 (3) Cr.P.C. was filed on 24.11.2004 by the revisionist Sunil Kumar @ Ninna against Rajendra Kumar-opposite party no. 2, Neetu, Prabhat and Vivek before C.J.M. Muzaffar Nagar stating therein that on 12.11.2004 (there is over writing in the date) at about 10 p.m., his brother Praveen @ Seetu was firing crackers in front of his house, accused Rajendra Kumar, Neetu, Prabhat and Vivek came there, armed with lathi and dandas. Vivek was armed with a country made pistol. All of them made an assault on Praveen @ Seetu. On exhortation of Rajendra Kumar, Vivek fired at Praveen @ Seetu. When revisionist tried to save his brother, he was also fired at by Vivek. The revisionist took his brother to police station and the police personnel got Praveen @ Seetu medically examined. In the meantime, accused persons also reached the police station and the FIR of the revisionist was not lodged. On the basis of application under section 156(3) Cr.P.C, crime no. 222A of 2004 was registered under Sections 323, 307, 506 IPC on 1.9.2005 but charge-sheet was filed under Sections 323, 324, 506 IPC.

4. The case under Section 302 IPC arising out crime no. 222 of 2004 as well as case arising out of crime no. 222A of 2004, under Sections 323, 324, 504 were committed to the court of sessions treating them to be cross cases and both the cases were transferred to the court of Addl. Sessions Judge, Court No. 12, Muzaffar Nagar where they were registered as S.T. No. 484 of 2006, State v. Buddhu @ Ashok & others under section 302 IPC and S.T. No. 1255 of 2009, State v. Rajendra Kumar & others, under Sections 323, 324, 506 IPC.

5. In S.T. No. 1255 of 2009, an application was moved on behalf of Rajendra Kumar & others (accused) that this case was not a cross case of S.T. No. 484 of 2006 under Section 302 IPC and therefore the case be transferred to C.J.M. Muzaffar Nagar in accordance with provision of Section 228 (1) (a) Cr.P.C. The application was opposed by complainant. After hearing learned counsel for both

the parties, learned Addl. Sessions Judge came to the conclusion that this case was not the cross case of S.T. No. 484 of 2006. The place of incident, date of incident as well as the time of incident in both the cases were different. Therefore S.T. No. 1255 of 2009 was sent back to the Magistrate for trial as it was not the case exclusively triable by the court of session. Feeling aggrieved, the complainant has filed this revision.

6. Heard Sri Rajeev Sosodia, learned counsel for the revisionist, Sri R.N. Rai, learned counsel for the opposite party no. 2 as well as learned AGA appearing on behalf of the State.

7. Learned counsel for the revisionist submitted that right from the very beginning both the cases were treated as cross cases by the Court. The bail to the accused persons were also granted on the ground of both the cases being cross cases. It was further submitted that learned Addl. Sessions Judge was wrong in coming to the conclusion that incident in both the cases took place on different dates, time and places. It was contended that the date of incident in both the cases is 12.11.2004 whereas in the case under Section 302 IPC, time of incident was 9.45 p.m. whereas in the case arising out of crime no. 222A of 2004, the time of incident was 10 p.m. The contention is that both the cases being cross cases, should be heard and decided by the same court simultaneously and therefore impugned order is not sustainable in law.

8. Per contra, Sri R.N.Rai, learned counsel for the complainant submitted that the murder of Himanshu was committed on 12.11.2004 at 9.45 p.m. whereas in the application under Section 156 (3) Cr.P.C. moved by the revisionist, the date of incident was shown as 13.11.2004 and time was mentioned as 10 p.m. Learned counsel submitted that subsequently, in the application under Section 156 (3) Cr.P.C., the date was changed from 13.11.2004 to 12.11.2004 by over writing. Learned counsel placed reliance on the photo-stat copy of the chick report, which is on record and photo-stat copy of parcha no. 1 of case diary of crime no. 222A of 2004 wherein copy of FIR has been transcribed and both these documents clearly indicate the date of incident to be 13.11.2004. It was further contended that Praveen @ Seetu was medically examined on 14.11.2004 at 1.10 a.m.. Reliance

has also been placed on copy of parcha no. 2 of case diary of 14.11.2004, which shows that Praveen @ Seetu was arrested on 13.11.2004 at 23.25 p.m.

9. From the above contentions, it transpires that Praveen @ Seetu was arrested by the police on 13.11.2005 at 23.25 hours and was immediately sent for medical examination and he was medically examined immediately thereafter on 14.11.2004 at 1.10 a.m. and his injuries were found to be one day old. Therefore most probably Praveen @ Seetu received injuries on 12.11.2004. No doubt that in the application under Section 156(3) Cr.P.C., there is an over writing in the date. In chick report as well as in the copy of the first parcha no. 1 of the case diary, date of incident is mentioned as 13.11.2004 whereas in the application under section 156(3) Cr.P.C. there is an over writing in the date and 13.11.2004 is now made to appear as 12.11.2004. It is possible that the date 13 was written in the application under Section 156(3) Cr.P.C. by mistake and subsequently somebody made an interpolation same after realising the initial mistake. No definite finding can be given at this stage and this evidence is to be considered at time of trial. Despite this anomaly, both the cases prima-facie appears to be cross cases as even according to the medical examination report of Praveen @ Seetu, his injuries could not have been caused on 13.11.2004. Praveen @ Seetu was medically examined in the intervening night of 13/14.11.2004 at 1.10.a.m. and the injuries were found to be about one day old. Therefore these injuries could not have been caused on 13.11.2004 but probably caused on 12.11.2004. Simply on account of mistake in the date. In the FIR, it cannot be said with certainty that these cases are not cross cases. In my opinion, learned Addl. Sessions Judge committed illegality in holding at a pre mature stage that these are not cross cases. From the very beginning, police treated both the case as cross cases and Magistrate also on the same ground committed both the cases to the court of sessions. At the time of consideration of bail also, both the cases were treated as cross cases. Therefore impugned order passed by the learned Addl. Sessions Judge transferring the case under Section 228 Cr.P.C. to C.J.M. concerned is illegal. There was no harm if both the cases were tried by the concerned court simultaneously.

10. In view of above, the impugned order cannot be sustained and is liable to be set aside.

11. The revision is allowed. The order dated 14.1.2010 passed by the Addl. Sessions Judge, Court no. 12, Muzaffar Nagar in S.T. No. 1255 of 2009, State v. Rajendra Kumar & others, under Sections 323, 324, 506 IPC is set aside and it is directed that both the cases shall be tried by the concerned court simultaneously. C.J.M. concerned shall immediately send back the records of the Criminal case no. 1155/9 of 2010 (S.T. No. 1255 of 2009) to the aforesaid court of Addl. Sessions Judge where the case was pending earlier.

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