

Umesh Rai alias Gora Rai Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Sept. 5, 2006

Acts Referred: Criminal Law (Amendment) Act, 1932 â€” Section 7

Criminal Procedure Code, 1973 (CrPC) â€” Section 161

Penal Code, 1860 (IPC) â€” Section 302, 307

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(2)(5)

Citation: (2007) 1 ACR 873

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: Irfan U. Huda, G.S. Chaturvedi and Kamleshwar Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Ravindra Singh, J.

This application has been filed by the applicant Umesh Rai alias Gora Rai with a prayer that he may be released on bail

in Case Crime No. 360 of 2004, under Sections 302 and 307, I.P.C. and u/s 7 of the CrL. Law Amendment Act and Section 3(2)(5) of S.C. and

S.T. (P.A.) Act, P.S. Bhawarkol, district Ghazipur.

2. The prosecution story, in brief, is that the F.I.R. of this case has been lodged by Sumit Kumar Rai on 23.9.2004 at 2.45 p.m. in respect of the

incident which had occurred on 23.9.2004 at about 1.30 p.m. The distance of the police station was about 116 kl. mts. from the alleged place of

the occurrence. The F.I.R. has been lodged against the applicant and three other co-accused persons alleging therein that on 23.9.2004, the

deceased Amit Kumar Rai alias Kallu Rai and deceased Bhola Harijan were coming on a Tractor after ploughing the field and in the way they

were accompanied by the Tractor of Anand Kumar at about 1.30 p.m. The applicant and three other co-accused persons came out from bazra

crop, the applicant and co-accused Santu Rai armed with country made pistols, Aangad Rai was armed with 12 bore S.B.B.L. gun and co-

accused Vishwanath Rai was armed with 12 bore S.B.B.L. gun. They discharged the shots, consequently the deceased Amit Kumar Rai and

Bhola Harijan sustained injuries. The alleged occurrence was witnessed by Prashant Kumar Rai, Anand Kumar Rai, Akachay Kumar Rai and

Rajeshwar Rai. The witnesses shouted then the miscreants fired towards them also and ran away towards the east side of the village. The

deceased Amit Kumar Rai and Bhola Harijan died instantaneously on the spot. Due to above act, of the applicant and other co-accused persons,

the atmosphere of fear and terror was created in the village. According to the post-mortem examination report, the deceased Amit Kumar Rai had

sustained eight injuries in which four injuries are fire arm wound of entries and three injuries are fire arm wound of exit and one injury is lacerated

wound and the deceased Bhola alias Budh Ram has sustained only one fire arm wound of entry on the head in which yellow metallic bullet was

recovered.

3. Heard Sri G. S. Chaturvedi, senior advocate, assisted by S/Sri Irfan U. Huda and Kamleshwar Singh, learned Counsel for the applicant and

learned A.G.A. for the State of U.P.

4. It is contended by the learned Counsel for the applicant:

(i) That no motive and intention has been shown in the F.I.R. to commit the alleged offence, the applicant is innocent, he has not committed the

alleged offence, he has been falsely implicated due to village partybandi and being relative of co-accused Angad Rai ;

(ii) That in the present case, the F.I.R. is ante-timed, it was not in existence at the time of the preparation of the inquest report. The inquest report

was prepared on 23.9.2004, in which the distance of the Police Station from the place of the occurrence was mentioned as 12 kl. mts. whereas in

Chik F.I.R. this distance is mentioned as 16 kl. mts., it shows that the Investigating Officer recorded the statements of Sumit Kumar Rai, Prashant

Kumar Rai, Anand Kumar Rai, Rajeshwar and Akashya Kumar u/s 161, Cr. P.C. There are material contradictions in their statements which

show that they had not seen the alleged incident. The alleged occurrence had taken place in an isolated place which was not seen by any person.

When dead bodies were found, thereafter the F.I.R. was lodged ;

(iii) That the prosecution story is not corroborated by the post-mortem examination report because the stomach of both the deceased was empty,

small intestines were having gases and liquid and large intestines were having faecal matter and gases. It shows that the deceased was murdered in

the early hours of the day ;

(iv) That the Investigating Officer prepared the site plan and spot inspection note which also shows that the deceased were murdered at lonely

place and there was no abadi ;

(v) That the applicant is not having any criminal antecedents, therefore he may be released on bail.

5. In reply of the above contentions, it is submitted by the learned A.G.A. that the alleged occurrence had taken place in broad day light at about

1.30 p.m., its F.I.R. was promptly lodged on the same day at 2.45 p.m., the distance of the Police Station was 16 kl. mts., the role of firing is

assigned to the applicant and three other co-accused persons and both the deceased have received injuries caused by the fire arm. The alleged

occurrence had been witnessed by the persons whose names are mentioned in the F.I.R. In this case two persons have been done to death. The

prosecution story is fully corroborated by the medical evidence and from the contents of the stomach, small intestines and large intestines no

inference can be drawn that the deceased were murdered in early hours of day and if there is difference in the distance of the Police Station

mentioned in the F.I.R. and inquest report, it cannot be said that the F.I.R. is ante-timed because in inquest report itself crime number, time of the

F.I.R. and the relevant sections of F.I.R. have been clearly mentioned. It is a case of heinous in nature. In case the applicant is released on bail, he

shall tamper with the offence. So the applicant may not be released on bail.

6. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the applicant and learned A.G.A. and

considering the gravity of the offence in which two persons have been done to death, the role of firing is assigned to the applicant and other co-

accused persons and the deceased have received gun shot injuries and the F.I.R. was promptly lodged, the presence of the witnesses have been

shown in the F.I.R. and without expressing any opinion on the merits of the case, the applicant is not entitled for bail. Therefore, the prayer for bail

is refused.

Accordingly, this application is dismissed.