

Rajesh Kumar and Another Vs State

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: May 12, 1999

Acts Referred: Penal Code, 1860 (IPC) â€” Section 307, 34

Citation: (1999) 3 ACR 2712

Hon'ble Judges: Khem Karan, J

Bench: Single Bench

Advocate: I. Murtaza, M.S. Khan and Rishad Murtaza, for the Appellant; A.G.A., for the Respondent

Judgement

Khem Karan, J.

Rajesh Kumar has been convicted u/s 307 and sentenced to R.I. for four years and Bhagwan Din has been convicted u/s

307/34 and sentenced to four years" R.I. by the IIIrd Additional Sessions Judge, Unnao, vide his judgment and order, dated 3.9.1985 delivered in

Session Trial No. 322 of 1984. It is against this judgment and order that the present appeal has been filed by the two Appellants.

2. The prosecution case was that on 8.10.1983 at about 6 p.m. while the injured Abdul Raseed was sitting at the betel shop of one Putan, in front

of the State Bank, Ganga Ghat, that these two Appellants, accompanied by Mahesh Kumar and Sariya alias Amrat Lai reached there and on the

exhortation of Bhagwan Din, Rajesh fired country-made pistol at Abdul Raseed, as a result of which he sustained injuries on his back. The incident

of firing was allegedly witnessed by Jalil Ahmad, Bashir Ahmad and Abdul Hameed. After necessary investigation, police submitted a charge-sheet

in the Court of Magistrate and the latter committed the case to the Court of Sessions.

3. The accused Rajesh Kumar was charged u/s 307 and the remaining three accused were charged u/s 307 read with Section 34 of I.P.C. They

pleaded not guilty.

4. In the support of this case, the prosecution examined Abdul Raseed as P.W. 1, Abdul Hameed as P.W. 2, Dr. Jitendra Singh as P.W. 3, Basir

Ahmad as P.W. 4, Head Constable, Jag Dev Singh, as P.W. 5 and I.O., Prithvi Pal Singh, as P.W. 6.

5. The learned Additional Sessions Judge came to the conclusion that involvement of Mahesh and Amrat Lai was not proved beyond reasonable

doubt as there was no overt act on their part, so he acquitted both of them. He, however, concluded that the charges framed against Rajesh

Kumar and Bhagwan Din were well-established from the evidence on record, so he convicted these two accused and sentenced them, as stated

above.

6. The learned Counsel for the Appellants has submitted that there was no motive on the part of the Appellants to kill or to cause hurt to Abdul

Raseed. According to him absence of motive demolishes the prosecution story and makes the evidence of Abdul Raseed and other alleged eye-

witnesses untrustworthy and unreliable. I am of the view that in such a case, where the prosecution claims to have direct evidence on the point of

actual assault, absence of motive assumes no significance. The question in such a case is whether the evidence of the victim as well as the alleged

eye-witnesses is reliable and adequate enough to establish the charges beyond all reasonable doubts. Their evidence cannot be rejected simply on

the ground that the prosecution has not proved the motive.

7. The second contention from the side of the Appellants is that the First Information Report was ante-timed and ante-dated. According to the

prosecution case and the evidence, the injured Abdul Raseed lodged First Information Report on the same day at 6.45 p.m. at police station,

Ganga Ghat. Written First Information Report has been proved as Ext. K-1. chik F.I.R. as Ext. K-3 and entries in G.D. as Ext. K-4. The basis of

the argument seems to be the statement of Abdul Raseed on page 8, where he says that he sent the written F.I.R. from the hospital at about 1.30

in the night, to the police station. It is the statement of P.W. 1 that has given material to the learned Counsel for the Appellants to say that F.I.R.

was ante-timed or ante-dated but Jagdev Singh P.W. 5, who prepared the chik report on the basis of the written F.I.R. Ext. K-A and who made

necessary entries in the General Diary, deposes that chik F.I.R. was prepared at 6.45 p.m. and at the same time necessary entries were made in

the G.D. and the injured was sent to the doctor, with a report for medical examination. He has denied the suggestion that the papers were

prepared on the next day. Dr. Jitendra Singh appearing as P.W. 3 deposes that he had medically examined Abdul Raseed on 8.10.1983 at 9.45

p.m. who was brought by the constable of police station Ganga Ghat. There is no reason to disbelieve Dr. Jitendra Singh on the point that he

examined the injuries of Abdul Raseed on 8.10.1983 at 9.45 p.m. and the victim was brought by the constable of the police station Ganga Ghat. It

appears that P.W. 1 gave the statement on page 8 about sending the report in the night under some confusion. The entries in the police record

about lodging the F.I.R. at 6.45 p.m. cannot be disbelieved merely on the basis of this statement of P.W. 1 on page 8, it is difficult to say that

F.I.R. was ante-timed or ante-dated.

8. The next contention from the side of the Appellants is that the witnesses Abdul Hameed and Basir Ahmad are not independent and are the men

of the complainant Abdul Raseed and so their evidence should be discarded. Firstly, there is nothing in the statement of P.W. 1, P.W. 2 and P.W.

4 on the basis of which it can be said that they are not independent or they are interested from the side of the complainant. Moreover, evidence of

these witnesses cannot be mechanically rejected, simply on the ground that they live in Raseed Colony or they were known to the victim.

9. It has also been argued that there are various contradictions in the statement of Abdul Raseed, Abdul Hameed and Bashir Ahmad, which make

their evidence unreliable and which make the presence of P.W. 2 and P.W. 4 doubtful. The learned Counsel for the Appellants submits that while

P.W. 1 deposed that he received the injuries while running away from the bench on which he was sitting before the arrival of the accused. P.W. 2

says in para 4 that Abdul Raseed received injuries while he was sitting on the bench. I think this contradiction in the statement of Abdul Raseed

and Abdul Hameed is a minor one and is insignificant, at the time when such occurrence takes place. It is not possible for each and every witness

to exactly pinpoint as to at what time the victim received injuries. Moreover, Abdul Hameed clearly states in para 4 that Abdul Raseed has started

going to his house. Indication is that he received the gun shot wounds while moving towards his house. The learned Counsel for the Appellants has

also stated that now Abdul Raseed could know as to who of the four accused fired at him while he was running to his safety. This argument is also

not such which may make evidence of Abdul Raseed unbelievable. It was not difficult for the victim to know as to who fired at him, even if he was

running, he could see as to who had aimed at him.

10. The learned Counsel for the Appellants argues that the victim is a smuggler and he might have been assaulted by some unknown persons in

some other manner. The mere possibility as suggested by the learned Counsel for the Appellants, will not be sufficient enough to discard the direct

evidence of Abdul Raseed and two witnesses.

11. The learned Counsel for the Appellant has also said that Putan or owners of the nearby shops have not been examined. Non-examination of

Putan or other probable witnesses, will not be the ground to reject the evidence of Abdul Raseed and other two witnesses, examined in Court. The

Court is concerned with the question as to whether evidence of the witnesses so examined is trustworthy or not and not with the effect of the non

examination of the Putan and others.

12. It has also been argued that the evidence of these 3 eye-witnesses has not been believed so far as the accused Suresh Kumar and Sariya were

concerned, so there is no guarantee that they are speaking truth, as regards the implement of those two Appellants. The trial court has acquitted

Mahesh Kumar and Sariya on the ground that there was no overt act from their side, so as to indicate that they are sharing the common intention

with Rajesh Kumar and Bhagwan Din. The trial court has not disbelieved the evidence of the witnesses on the point that Mahesh Kumar and

Sariya also came along with the Appellants. The mere acquittal of other accused does not make the evidence of Abdul Raseed, Abdul Hameed

and Bashir Ahmad infirm or unreliable.

13. The learned Counsel for the Appellant has tried to say that there is conflict between oral and medical evidence. I have perused the medical

report and the evidence of Dr. Jitendra Singh and also the evidence of Abdul Raseed and I am of the view that there is no conflict between the oral

and medical evidence. The injury was allegedly caused by a fire-arm, the same was found by the doctor. It cannot be said that such injury was not

possible by a country-made pistol.

14. The trial court discussed the evidence at length and has given cogent reasons for coming to the conclusion that the charges against the two

Appellants were well proved. Presence of the victim Abdul Raseed cannot be doubted. His evidence is corroborated by medical evidence of Dr.

Jitendra Singh. I come to the conclusion that order of conviction as recorded by the trial court is well justified on the basis of the materials brought

on record.

15. The learned Counsel for the defence has argued that the sentences are too severe and excessive. He has also said that a period of about 1 2

years has elapsed to the date of the occurrence and so the lenient view should be taken. I am of the view that the sentence of imprisonment

awarded to Rajesh Kumar should be reduced to two years" R.I. and the sentence awarded to Bhagwan Din should be reduced to a period of one

year R.I.

16. In the result, the appeal against conviction is dismissed, but the sentence of imprisonment awarded to Rajesh Kumar is reduced to two years

R.I. and the sentence awarded to Bhagwan Din is reduced to one year R.I. The accused are on bail. Their bail bonds are cancelled and sureties

are discharged. They shall surrender in the trial court and be sent to serve the sentence as modified by this Court. In case, they do not surrender,

the trial court shall cause them arrested and send them to jail to serve the sentences. Let the record received from the trial court be sent back

together with the copy of this judgment.