

State v. Rakesh and others

1

In the court of Ms. Kirti Jain, Judicial Magistrate Ist Class, Rohtak.

Criminal Case No.:363of 2009.

Date of Institution: 26.11.2009/25.4.2012.

Date of Decision : 3.11.2014.

State	v.	1.	Sunil son of Raj Singh, Caste Jat, resident of Bohar, P.S. Urban Estate, Rohtak.
		2.	Rakesh son of Raj Singh, Caste Jat, resident of Bohar, P.S. Urban Estate, Rohtak.
		3.	Parveen son of Jaipal, caste Jat, resident of Bohar, P.S. Urban Estate, Rohtak.

.....Accused.

FIR No. : 242 dated 28.05.2009.

Under Sections: 323/325/506/34 of IPC.

Police Station : Urban Estate, Rohtak.

Present: Sh. Pardeep, APP for the State.
Accused are on bail represented by Sh. J.K. Nandal,
Advocate.

JUDGMENT:

The accused named above were sent to this court by the police of Police Station Urban Estate, Rohtak for the trial of the accused for committing the offence punishable under Sections 323/325/506/34 of Indian Penal Code.

2. The prosecution case was lodged on the statement of complainant Surender son of Hawa Singh recorded 18.5.2009 wherein he stated he is a Truck driver. On that day, at about 6.00 P.M., he was going to his village for putting the soil, when he reached ahead of village Bohar on the road of Makhanwala field, two boys namely Rakesh son of Ram Singh and Sunil son of Raj Singh arrived near his Truck. They got stopped the Truck. They were carrying Lathies and Jelly in their

State v. Rakesh and others

2

respective hands. They asked him to deboard the Truck upon which he deboarded the Truck. They had conversation with him regarding a dispute between Rakesh and Jai Bhagwan. They were having grudges of that dispute. Rakesh son of Raj Singh gave Jelly blow on the right side of his head and Sunil gave Lathi blow on his right hand. In the meanwhile Manish son of Ram Chander and sons of Jaipal arrived on the motorcycle. They were carrying Lathies in their respective hand. Manish gave Lathi blow on the finger of his hand. Sons of Jaipal gave Lathi blow on his hands and feet. He cried for help, whereupon they all fled from there along with their weapons. They also threatened to kill him. On this, a formal FIR was registered. Investigation was started. During the course of investigation, the accused were arrested. Site plan was prepared. After completion of the necessary investigation, the report as required under Section 173, Cr.P.C was submitted.

3. Copies of challan were supplied to the accused free of costs as envisaged under Section 207, Cr.P.C.

4. On finding a prima facie case, the accused was charge sheeted for committing the offence punishable under Sections 323, 325 and 506 read with Section 34 of Indian Penal Code, to which the accused pleaded not guilty and claimed trial. Accordingly, the case was adjourned for prosecution evidence.

5. Prosecution, in support of its case, has examined Manjit son of Ishwar who is an eye witness in this case as PW1 but did not support

State v. Rakesh and others

3

the prosecution case in any manner. He has specifically stated that he does not know anything about this case. After hearing Learned APP, this court declared the PW1 Manjit, as hostile. In his cross-examination, he has denied having made statement Ex.PW1/A to the police. Nothing incriminating against the accused could be elicited from the testimony of this witness.

6. ASI Rajender Singh No. 256, Special Staff, Rohtak was examined as PW2, who deposed that on 6.11.2009, he was posted in Police Station Urban Estate, Rohtak. On the even date, investigation of present case was handed over to him. On 19.11.2009, he collected bad head tickets of Surender. A fracture was found in his report, whereupon Section 325 of IPC was added.

7. Dr. Sheelkant Pajni was examined as PW3, who tendered his affidavit Ex.PW3/A in his evidence wherein he deposed that on 18.5.2009, he was posted as MO at CHC Kilo. On that date, he medico-legally examined Surender son of Hawa Singh and proved the MLR vide Ex.PW3/B and Ex.PW3/C.

8. SI Om Parkash No. 147 was examined as PW4, who deposed that on 18.5.2009, he was posted in Police Station Urban Estate, Rohtak. On the even date, Surender son of Hawa Singh registered a Rapat No. 53 dated 18.5.2009 Ex.PW4/A. On 28.5.2009, he went to the spot for investigation. He sent tehrir Ex.PW4/B in the police station through Constable Pawan Kumar, whereupon formal FIR Ex.PW4/C was

State v. Rakesh and others

4

registered and endorsement Ex.PW4/B was made on the Tehrir. He prepared site plan of occurrence Ex.PW4/E and recorded statements of witnesses. On 6.6.2009, he arrested Sunil, Rakesh and Parveen. Manish and Harish were found innocent during interrogation. On 19.11.2009, he collected bad head tickets and X-ray report through ASI Rajender. Further, he identified accused present in Court.

9. MHC Pardeep was examined as PW5 who stated that he has brought the DD no. 53 dated 18.5.2009. Register No.2 Rojnamcha is temporary record and as per PPR 2245 the said record had been destroyed after two years.

10. Dr. Kriti Raj was examined as PW6, who tendered his affidavit Ex.PW6/A in his evidence wherein he deposed that on 18.5.2009, he was posted as Junior Resident in department of Radiology, PGIMS, Rohtak. On that day, he radiologically examined Surender son of Hawa Singh. He has also brought original record of X-ray No. 2388 as per the record Ex.PW4/F which is correct and true.

11. Thereafter, evidence of the prosecution was closed vide Court order dated 31.10.2014 as prosecution has already availed several opportunities to conclude its evidence.

12. Statement of the accused as required under Section 313, Cr.P.C. was recorded separately, wherein they have denied all the allegations and pleaded innocence and false implication. However, no evidence in defence was led by the accused.

State v. Rakesh and others

5

13. I have heard the Learned Assistant Public Prosecutor for the State and Learned Counsel for the accused and have gone through the case file carefully.

14. What culled out from the evidence led by the prosecution is that PW1 Manjit was material and concerned witnesses of the prosecution, being eye witness, and has failed to depose anything incriminating against the accused and to connect the accused with the commission of alleged offence. His hostility towards the prosecution left the prosecution in dilemma. Even the cross-examination by Learned APP of this witness has failed to impeach the credit to this witness. Thus, there is no iota of evidence to prove the charges levelled against the accused.

15. Further, complainant Surender, who is the star witness of the prosecution, on whose statement Ex.PW4/A, the present case was registered and has not been examined by the prosecution as he has expired during the trial. He was the best witness to depose about causing injuries by accused persons. Due to non-examination of complainant, as well as hostility of PW1 prosecution has failed to prove its case. The other witnesses examined by the prosecution are formal witnesses PW3, Dr. Sheelkant, who only medico-legally examined Surender and proved the MLRs vide Ex.PW3/B and Ex.PW3/C, PW6 Dr. Kriti Raj, who only radio logically examined Surender and proved the X-ray report vide Ex.PW4/A. PW5 MHC Pardeep Kumar, who only proved the DD No.53.

State v. Rakesh and others

6

PW2 ASI Rajender and PW4 SI Om Parkash the Investigating Officer of this case but their testimonies are not sufficient to connect the accused with the commission of offence as they are not the eye witnesses of the present case.

16. Keeping in view the statement of the prosecution witnesses and also the evidence on record, there is no evidence to link the accused with the commission of the offence punishable under Sections 323, 325 and 506 read with Section 34 of IPC, of which the accused have been charge sheeted. Accordingly, the accused are, hereby, acquitted of the charges levelled against them. The accused and their sureties are discharged from the liability undertaken by them under the bail bonds. Case property, if any, be disposed of as per rules. File be consigned to the record room after due compliance.

Pronounced in Open Court.
Dated: 3.11.2014

(Kirti Jain)
Judicial Magistrate Ist Class
Rohtak.

Note: All the pages of the judgment have been checked and signed by me.

Dated: 3.11.2014

(Kirti Jain)
Judicial Magistrate Ist Class
Rohtak.

State v. Rakesh and others

7

State Versus Rakesh and others

Present: Sh. Pardeep, APP for the State.

Accused are on bail represented by Shri J.K. Nandal,
Advocate.

No evidence is present in defence. The accused also does not want to lead any evidence in his defence and as such, arguments heard. Order Pronounced, vide my separate detailed judgment of the even date, the accused has been acquitted of the charges levelled against him. The accused and his surety are discharged from the liability undertaken by them. Case property, if any, be disposed of as per rules. File be consigned to the record room after due compliance.

Pronounced in Open Court.

Dated: 07.10.2014.

(Kirti Jain)

Judicial Magistrate Ist Class

Rohtak.