

Rajendra And Another vs State Of U.P. on 1 May, 2025

Author: Saumitra Dayal Singh

Bench: Saumitra Dayal Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Neutral Citation No. - 2025:AHC:71168-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 10492 of 2024

Appellant :- Rajendra And Another

Respondent :- State of U.P.

Counsel for Appellant :- Rajrshi Gupta,Santosh Kumar Shukla

Counsel for Respondent :- Aditya Kashyap,Anshul Kumar Singhal,G.A.

With

Case :- CRIMINAL APPEAL No. - 10576 of 2024

Appellant :- Raghuraj

Respondent :- State of U.P.

Counsel for Appellant :- Rajrshi Gupta,Santosh Kumar Shukla

Counsel for Respondent :- Anshul Kumar Singhal, G.A., Mayank Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Sandeep Jain, J.

1. Heard Shri Dileep Kumar, learned Senior Advocate assisted by Shri Santosh Kumar Shukla, learned counsel for the appellants, Shri Pankaj Kumar Tripathi, learned A.G.A. for the State and Shri Vinod Kumar Tripathi, learned counsel for the informant.

2. Present appeal arises from a common judgment and order dated 10.10.2024 passed by Ms. Indu Dwivedi, learned Additional Sessions Judge, Court No. 6, Ghaziabad, in Sessions Trial No. 1148 of 2015 (State v. Raghurag, Chahatram, Bijendra and Rajendra). That sessions trial emerged from Case Crime No. 1118A of 2006, under Section 302/34 I.P.C., P.S. Loni, District Ghaziabad. The said judgment and order is also common to two other sessions trial namely Sessions Trial No. 387 of 2007 (State v. Rakesh) and Sessions Trial No. 810 of 2013 (State v. Rishi), both arising out of Case Crime No. 1118 of 2006, under Section 307 and 385 I.P.C., P.S. Loni, District Ghaziabad (against accused-Rakesh) and under Section 307, 384 and 385 I.P.C. (against accused-Rishi). Learned Court below has convicted the appellants-Raghurag, Chahatram, Bijendra and Rajendra (in S.T. No. 1148 of 2015). It has acquitted the accused persons Rakesh and Rishi in Session Trial No. 387 of 2007 (State v. Rakesh) and Sessions Trial No. 810 of 2013 (State v. Rishi), respectively.

3. The above common judgment and order has given rise to four appeal proceedings, three on behalf of the convicted accused and one on behalf of the informant in Case Crime No. 1118 of 2006 whereby the accused persons Rakesh and Rishi have been acquitted. Details of the appeal filed are as under :

S.No. Appeal No. Party Name Sessions Trial

1.

Criminal Appeal No. 10492 of 2024 (Rajendra and Chahatram v. State of U.P.) S.T. No. 1148 of 2015 (State v. Raghurag, Chahatram, Bijendra and Rajendra)

2. Criminal Appeal No. 10576 of 2024 (Raghuraj v. State of U.P.)

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3. Criminal Appeal No. 10731 of 2024 (Bijendra v. State of U.P.)

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4. Criminal Appeal u/S 372 Cr.P.C. No. 668 of 2024 (Rajendra Singh v. State of U.P., Rakesh and Rishi) S.T. No. 387 of 2007 (State v. Rakesh) and S.T. No. 810 of 2013 (State v. Rishi).

4. As to the proceedings conducted by the learned court below, undoubtedly evidence was received separately in Sessions Trial No. 1148 of 2015 (State v. Raghuraj and 3 others). On the other hand, initially, proceedings in Sessions Trial No. 387 of 2007 (State v. Rakesh) and Sessions Trial No. 810 of 2013 (State v. Rishi), both arising from Case Crime No. 1118 of 2006 were conducted independently. Later, the two sessions trial were consolidated and Sessions Trial No. 810 of 2013 was made the lead case. Evidence was received in that. To the above extent, there is nothing to doubt the proceeding. What transpired after evidence had been adduced, is of no concern in these appeals.

5. Submission is, the learned court below has fallen in error in passing a common judgement and order in the three sessions trial namely Session Trial No. 1148 of 2015 (State v. Raghuraj and 3 others), arising out of Case Crime No. 1118A of 2006 against Raghuraj, Chahatram, Bijendra and Rajendra and the two other sessions trial namely Sessions Trial Nos. 387 of 2007 and 810 of 2013, arising from Case Crime No. 1118 of 2006 against the other set of accused namely Rakesh and Rishi.

6. The procedure adopted by the learned court below is described, manifestly erroneous and wholly impermissible in law. Reliance has been placed on the decision of the Supreme Court in Nathi Lal and others v. State of U.P., 1990 Supp SCC 145, as consistently followed in Sudhir and others v. State of M.P, (2001) 2 SCC 688, State of M.P. v. Mishrilal (dead) and others, (2003) 9 SCC 426, as considered and applied by a three judge bench decision of the Supreme Court in A.T. Mydeen and another v. Assistant Commissioner, Customs Department, (2022) 14 SCC 392. The principle of law invoked by in these sets of appeal is beyond shadow of doubt. It is described as an absolute proposition in criminal jurisprudence.

7. Upon opportunity granted to learned counsel for the State and learned counsel for the informant, no different principle could be pointed out.

8. Thus, it has been prayed, in view of the defects noted above, the judgment and order may be set aside and the matters remitted to the learned court below to pass appropriate orders strictly in accordance with law, in a time bound manner.

9. Having thus heard learned counsel for the parties and having perused the record, we may only record what Supreme Court had noted more than 36 years ago in Nathi Lal (supra). A short but lucid order of the Supreme Court reads as below :

"1. Special leave granted.

2. Heard both sides.

3. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases

one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments.

4. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

5. We allow this appeal partly to the aforesaid extent and direct the learned Judge to proceed with the police case and the cross case instituted by the respondent-complainant by way of a private complaint and hold the trial in both the matters in the light of the directions given hereinabove. Learned Judge will accord priority to these cross cases and dispose of both the cases expeditiously."

10. What has been stated in the later decisions noted above, is reiteration of that basic/fundamental principle in criminal jurisprudence.

11. To that extent, we are at loss to appreciate how such fundamental error has crept in the order of the learned court below. At the same time, we are left with no option but to accept the submission advanced by learned counsel for the parties. Accordingly, in face of the incurable defect that has crept in the impugned order inasmuch as learned court below has passed a common judgment and order in the two set of criminal trials, one arising from Case Crime No. 1118 of 2006 and the other arising from cross case being Case Crime No. 1118A of 2006 on a common appreciation of evidence made, the said judgment and order suffers from an incurable defect. It is accordingly set aside. Appeals Nos. 10492 of 2024 and 10576 of 2024 are allowed.

12. It is also noted that no other submission has been advanced at this stage. Both sides agree that evidence is complete. Accordingly, the matter is remitted to the learned court below to pass a fresh order strictly in accordance with law.

13. Let a copy of this order be communicated to the learned District Judge, Ghaziabad as also to the concerned learned Judge by Registrar (Compliance), at her current place of posting.

14. During pendency of the appeal, one of the appellant-Bijendra died. His appeal being Criminal Appeal No. 10731 of 2024 was declared abated on 29.04.2025. As far as the other appellants-Raghuraj, Chahatram and Rajendra are concerned, they were on bail during the trial. Post conviction they are in jail. Since the order of conviction has been set aside, they are entitled to be released on bail for reason of status that they were on bail during the trial. Thus, they are directed

to be enlarged on bail by the trial Court on the same terms on which they were on bail, pending trial before the impugned judgment and order came to be passed. That status may remain till conclusion of the trial.

15. Office is directed to send back the original trial court record.

Order Date :- 1.5.2025

SA

(Sandeep Jain, J.)

(S.D. Singh, J.)