The State Through Ruppa vs Rakshpal Singh And Anr. on 19 November, 1952

Equivalent citations: AIR1953ALL520

ORDER

P.L. Bhargava, J.

1. Rakshpal Singh 'alias' Rajpal Singh and his brothers, Rampal Singh and Ram Singh, along with their father, Makrand Singh, were prosecuted for an offence punishable under Section 325, read with Section 34, Penal Code for voluntarily causing grievous hurt to Ruppa, the complainant. The accused persons were tried by an Honorary Special Magistrate of first class at Hardoi. The Magistrate found Rampal Singh and Ram Singh not guilty and acquitted them; but he came to the conclusion that Rakshpal Singh alias Rajpal Singh and Makrand Singh had committed an offence punishable under Section 323, Penal Code and as such the case against them was triable by a Panchayati Adalat. In this view of the case, he transferred it to the Panchayati Adalat for disposal.

2. Against the order of the Magistrate, Rakshpal Singh and Makrand Singh filed a revision in the Court of the Sessions Judge of Hardoi. The learned Sessions Judge was of the opinion that the order of the Magistrate directing the transfer of the case to the Panchayati Adalat was illegal and liable to be set aside. Accordingly, he made this reference.

3. The reference has been supported by the learned Counsel appearing on behalf of the complainant; but it has been opposed on behalf of the accused persons.

4. As stated above, the accused persons were being prosecuted for an offence punishable under Section 325/34, Penal Code. It is not disputed that the offence under the said section was triable by the Magistrate himself. In order to prove that the accused had caused grievous hurt to the complainant and had thereby committed an offence under Section 325/34, Penal Code, besides the oral evidence, the injury report prepared by the Medical Officer, who had examined the complainant, was also produced. The Medical Officer was not available to prove the injury report as he had proceeded to England on long leave. Consequently, to prove the injury report the compounder, in whose presence the injury report had been drawn up, was examined. He stated that, the injury report had been drawn up and signed by the Medical Officer.

The statement was made by him with reference to the original injury register, which he had brought with him and of which the injury report on the record was a carbon copy. The learned Magistrate was of the opinion that the injury report was not proved according to law and as such there was no evidence on the record to show that any of the injuries inflicted upon the complainant was a grievous hurt. In this view of the matter he rejected the injury report and held that Rakshpal Singh

and Makrand Singh were guilty of an offence under Section 323, Penal Code. Having come to this conclusion., in view of the provisions of Section 56, U. P. Panchayat Raj Act, he transferred the case to the Panchayati Adalat.

5. The learned Sessions Judge held in revision that the injury report had been duly proved and it was admissible in evidence under Section 32(2), Evidence Act and that the trial Court was wrong in recording a finding of guilty under Section 323, Penal Code and then transferring the case to the Panchayati Adalat, (6) On behalf of the complainant, it has been argued that the learned Magistrate was wrong in holding that the injury report had not been proved and as such it was inadmissible in evidence; and that, apart from the injury report, there was ample evidence on the record to show that the complainant had received grievous hurt. In support of his first contention, learned counsel for the complainant has relied upon the provisions of Section 32(2), Evidence Act; and also upon a decision of this Court in -- 'Mohan Singh v. Emperor', AIR 1925 All 413 (A), where it was held that a 'post mortem' report is admissible in evidence under Section 32(2), Evidence Act as being, a statement made by a dead person in the ordinary course of business and in the discharge of his professional duty. The Civil Surgeon in that case could not be examined to prove the report as he was dead. Section 32, Evidence Act provides that the "statements, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases (1) .....

(2) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him....."

7. In the present case, it cannot be disputed that the attendance of the Medical Officer, who had proceeded to England on long, leave, could not be procured without delay and expense, which, in the circumstances of the case, would have been unreasonable. The Medical Officer had examined the complainant when he was admitted to the hospital of which he was incharge, in the discharge of his professional duty and he had noted injuries in the injury register maintained by him. The compounder stated before the Court that the injury report had been prepared by the Medical Officer and it bore his signature; that he had brought the original injury report register, of which the injury report on the record was the carbon copy of the relevant entries; and that the injuries were examined in his presence. This statement of the compounder clearly proved the injury report on the record; and the injury report having been proved it was admissible under Section 32(2), Evidence Act. In my opinion, therefore, the learned Magistrate was wrong in holding that the injury report had not been proved in accordance with law.

8. Learned counsel for the accused persons relied upon --' Bechan Prasad v. Jhuri', AIR 1936 All 363 (B), wherein in the absence of the sworn testimony of the doctor a letter containing his opinion was held to be inadmissible. The letter stands on a different footing and it cannot stand any comparison with the injury report or the 'post mortem' report. The principle of 'Mohan Singh's case', (A), is

applicable to the present case where the question was about the admissibility of an injury report prepared in the course of business and in the discharge of professional duty.

9. In support of his next contention learned counsel for the complainant has pointed out that, apart from the injury report, there is on the record the statement of the complainant to the effect that his rib was fractured in consequence of the assault on him by the accused persons, and the statement of the compounder that the eleventh rib of the complainant had been fractured and he used to bandage the injury. The compounder produced the bed head ticket of the complainant from the hospital records. He further stated that for about three weeks the complainant was unable to move about from his bed. Under the circumstances there could be no doubt that the complainant had received a grievous hurt. The case, therefore, obviously fell within the purview of Section 325, Penal Code; and as such it was triable by the Magistrate himself.

10. The view taken by the learned Magistrate was, therefore, untenable and he was wrong in holding that the offence with which the accused persons were charged was only an offence under Section 323, Penal Code. That being so, the order of transfer of the case to the Panchayati Adalat was clearly illegal.

11. I, therefore, accept this reference and set aside the order passed by the Magistrate on 15-12-1951, so far as it directs the transfer of the case against Rakshpal Singh 'alias' Rajpal Singh and Makrand Singh to the Panchayati Adalat. The case will now go back for retrial to the District Magistrate of Hardoi who will transfer the same for disposal to any other Magistrate competent to try the same.