

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1895 OF 2010**

Virender Singh Rawat

... Appellant

versus

Rakesh Kumar Gupta

... Respondent

J U D G M E N T

Jagdish Singh Khehar, J.

1. Through the impugned order passed by the High Court, the charges framed against Rakesh Kumar Gupta, respondent herein, were ordered to be set aside. The order passed by the High Court dated 18.09.2009, is the subject matter of challenge, at the hands of the complainant.

2. The incident, as it emerges from the First Information Report, was of 13.02.2003. The actual occurrence is stated to have taken place at around 10.15 p.m. The factual information reflected in the First Information Report was, that the accused in the case - Mukesh Gupta, desired the deceased and his brother – the complainant Virender Singh, to vacate the shop let out to them, by him. The shop in question was located at A-690, New Ashok Nagar, Delhi.

3. Despite the aforesaid occurrence having taken place at around 10.15 p.m., it is apparent that the First Information Report came to be registered with the Police Station, New Ashok Nagar at 12.20 a.m. In the First Information Report the complainant – Virender Singh named three persons, namely,

Parmohan, Mukesh and Rakesh @ Ballu. It is therefore obvious, that the above three names were disclosed, at the very first opportunity. The complaint further indicated, that some other persons were also involved in the incident. The names of the other persons, were not disclosed.

4. In examining the prayer made at the hands of the respondent – Rakesh Kumar Gupta, the High Court recorded the following factual position, in paragraph 24 of the impugned order. The same is extracted herein below:

“24. A careful reading of the supplementary statement shows that Virender Singh had come to the police station on 23.3.2003. In the compound of the police station, he saw a person in police custody and Virender Singh informed that the person in police custody was one of the persons involved in assaulting his brother and it was only on enquiry that he came to know his name. This statement would, thus imply that Virender Singh did not know the name of the petitioner till he was told. While as per the complaint filed on 10.01.2003, Virender Singh had not only named the petitioner in the complaint but had also ascribed him a definite role. Thus, the supplementary statement of Virender Singh would have little or no value.”

5. On the basis of the narration recorded in paragraph 24, it was sought to be inferred by the High Court, that the respondent – Rakesh Kumar Gupta came to be identified for the first time on 23.03.2003, when the complainant – Virender Singh had gone to the police station, where the respondent – Rakesh Kumar Gupta was already in police custody. It is therefore, that the High Court set aside the order framing charges against the respondent – Rakesh Kumar Gupta. The High Court recorded the following observations in paragraph 28:

“28. In this case, three other family members have been named in the FIR and who are facing trial. The petitioner herein was neither named in the FIR nor was any description given therein which could connect the petitioner with the crime. In the FIR lodged by none other than Virender Singh himself, he has stated that there were two other unknown persons, who assaulted his brother (Balbir Singh). There is material on record which clearly spells out that Virender Singh (complainant) knew the petitioner beforehand, and had he seen the petitioner assaulting his brother, he would have named him in the FIR itself. I am further fortified in my view by the fact that as per the FIR itself,

both the complainant and Karan Singh were present at the spot. If the complainant had been unable to see the petitioner, then Karan Singh, who as per the State witnessed the entire incident, would have surely disclosed the name of the petitioner to Virender Singh, at the spot itself. In my considered opinion, no strong/grave suspicion is made out against the petitioner on the basis of the material on record. In view of the aforesaid reasons, I find that the order dated 02.06.2004 passed by the learned ASJ contains material irregularity and impropriety. Accordingly, the present revision petition is allowed. The order dated 02.06.2004 passed by the learned Additional District and Sessions Judge, Delhi, framing charges against Rakesh Kumar Gupta (petitioner herein), is set aside, qua the petitioner only.”

6. Learned counsel for the appellant vehemently contended, that the High Court seriously erred by not taking into consideration a fax message which was sent by one of the witnesses to the occurrence – Karan Singh, on the date of the incident itself – on 13.02.2003, at 11.25 p.m. It would be relevant to record here, that the above fax message was sent by Karan Singh to the Commissioner of Police, even before the recording of the First Information Report, at 12.20 a.m. on 14.02.2003. It is necessary for us, for the determination of the present controversy, to extract the aforesaid fax message:

“To,
The Commissioner of Police
Police Head Quarters, I.T.O.
New Delhi-110 001.

Sub: The meaning of the submission is this that I, Ch.Karan Singh do hereby inform you that in front of me in A-690, New Ashok Nagar, Delhi-96 Balbir Singh Rawat who deals in Medical Store Shop against which a case is pending in Karkardooma Court. And temporary stay has been obtained thereon. Today, owners of shop Mukesh, Pramohan, Rakesh Kumar, Mufti, Satish etc. have attacked fatally on the proprietor of the shop. Wherein the police of the area is in collision with Gundas (Scoundrels). Who are professional scoundrels. Wherein several policemen are in collision with them and Balbir Singh is nearly at the edge of murder.

Hence it is requested to you that legal action may be taken immediately.

Your faithfully,

Ch. Karan Singh

A-700, New Ashok Nagar
Copy to
D.C.P. – East
Joint C.P. – Crime Branch,
I.T.O.”

7. In addition to the above, learned counsel for the appellant, invited our attention to the first supplementary statement made by the complainant – Virender Singh, at the police station, on 16.02.2003. In the aforesaid supplementary statement, recorded two days after the registration of the First Information Report, the complainant – Virender Singh indicated the names of two additional persons, besides those named in the First Information Report, namely, Rakesh Kumar Gupta and Satish @ Mulla. The supplementary statement dated 16.02.2003 is reproduced below:

“FIR No.42/03 U/S 323/341/506/34 IPC PS N A Nagar
Statement of Virender Singh s/o Naval Singh r/o A/127 N A Nagar Delhi U/S
161 Cr.PC.

Stated that I endorse my previous statement and further state that on 13/1/2003 at 10 PM my brother Balbir Singh was assaulted by Mukesh, Parmohan, Rakesh @ Babloo and two other persons with Dandas and Saria. Today from Tribhuvan and Karan Singh I have come to know the names of two other persons as R.K. Gupta and Satish @ Mulla whom I can identify when they come before me. You have recorded my statement which is correct.

Sd/- I.O.
16/2/2003
PS N A Nagar”

8. It is therefore apparent, that based on the information received from Tribhuvan and Karan Singh, in the aforesaid supplementary statement, the complainant – Virender Singh disclosed two further names, of persons who had allegedly participated in the occurrence of 13.02.2003. It is also not a matter of dispute, that yet another supplementary statement was recorded by the complainant – Virender

Singh on 23.03.2003. The said supplementary statement is also reproduced below:

“FIR No.42/03 U/S 323/341/506/302 IPC PS ANAND VIHAR

Supplementary Statement of Virender Singh s/o. Naval Singh r/o A-127 N A Nagar Delhi U/S 161 Cr.PC.

Stated that in connection with my case I have to day come to Police Station where in the compound of the Police Station I have seen one person in Police custody and I have told you that this person was also involved among those who had assaulted my brother Balbir Singh on 13/2/2003 and on inquiry his name has come to be known as Rakesh Kumar Gupta s/o Damodar Prasad. You have recorded my statement, heard and it is correct.

Sd/-
SHO N A Nagar
Dated:- 23/3/2003”

9. Once the name of the respondent – Rakesh Kumar Gupta, had been disclosed in a fax message dated 14.02.2003, and in the supplementary statements dated 10.02.2003 and 23.03.2003, it was not open to the High Court, at the stage when the prayer for setting aside the charges was made, to determine the veracity of the factual position. The truthfulness or otherwise of the same could only have been gone into, when sterling and uncontrovertible evidence is placed on record, to establish the falsity of the allegations. This is not such a case where the High Court was presented with such material, as would clearly exculpate the respondent – Rakesh Kumar Gupta, from the occurrence. It cannot be stated, in view of the fax message dated 13.02.2003, the supplementary statements dated 16.02.2003 and 23.03.2003, that a *prima facie* case was not made out, against the respondent - Rakesh Kumar Gupta.

10. In view of the above, we find merit in the instant criminal appeal. The same is accordingly allowed. The impugned order passed by the High Court dated 18.09.2009 is set aside.

11. The trial Court shall proceed with the matter, and frame charges against the respondent herein. The trial of the instant matter is ordered to be expedited, keeping in view the fact that the occurrence relates to February 2003, and as such, more than 13 years have already gone by. The respondent – Rakesh Kumar Gupta, would not be entitled to any relief on account of delay in the completion of the trial, as he is himself responsible for the same.

12. The Registry is directed to remit the record, to the trial Court forthwith.

.....J.
(Jagdish Singh Khehar)

.....J.
(Arun Mishra)

New Delhi;
September 22, 2016.

JUDGMENT