

# **The State Of Uttar Pradesh vs Ram Autar And Ors. on 23 February, 1971**

**Equivalent citations: (1971)3SCC774, 1971(III)UJ406(SC), AIR ONLINE 1971 SC 3**

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**Bench: A.N. Ray, C.A. Vaidialingam**

## **JUDGMENT**

A.N. Ray, J.

1. This is an appeal by special leave from the judgment dated 16 October, 1967 of the High Court of Allahabad (Lucknow Bench) acquitting eight respondents on appeal against the judgment dated 21 July, 1967 of the Sessions Judge, Sitapur and rejecting the reference dated 21 July, 1967 made by the Sessions Judge to the High Court on the capital sentence passed on Ram Gopal the remaining respondent.

2. The Sessions Judge found Ram Autar, Raghunath, Basdeo, Nand Ram, Chandra Bhal, Asharfi, Lallu and Balram guilty of an offence Under Section 302/149 of the Indian Penal Code and sentenced each of them to undergo imprisonment for life. The Sessions Judge also found Chandra Bhal, Asharfi and Basdeo guilty of an offence Under Section 148 of the Indian Penal Code and convicted and sentenced each one of them to undergo rigorous imprisonment for two years. Ram Autar, Raghunath, Nand Ram, Lallu and Balram were convicted of offence Under Section 147 of the Indian Penal Code and each was sentenced to one year's rigorous imprisonment, on that count. The Sessions Judge found that Ram Gopal was guilty of an offence Under Section 302 for committing the murder and passed death sentence upon him.

3. The High Court found that the relations between the nine respondents and Chhatrapal were strained and there were several litigations between them. On 18 September, 1966 Chhatrapal along with his servant, Sukkhi proceeded to Sitapur for consulting his lawyer. A proceeding was pending against Chhatrapal and others Under Section 107 of the CrPC. 21 September, 1966 was the date fixed for the hearing of the case. 18 September, 1966 was Sunday. Chhatrapal lived very near the houses of the respondents. Among the respondents Ram Gopal, Basdeo and Nandram are brothers. Ram Autar is the father of Raghunath.

4. Two of the respondents Asharfi and Lalla on the date of occurrence took their seats in a lane by which it was expected that Chhatrapal would pass. Lallu was armed with lathi. Asharfi was armed

with a spear of the other four Chandra Bhal had a kanta, Basdeo a spear, Ram Gopal a banka and Nandram a lathi. They all took position inside the field of one Gaya Arakh. It was not far from the field of Chunnu Chamar which was towards north-west of the lane where Asharfi and Lallu took their position. Ram Autar, Raghunath and Bal-ram were each armed with lathis and they took their position inside the sugar-cane field of Pushpu Devi towards the south of the lane where Asharfi and Lallu were.

5. Sometime between 4 and 5 p.m. Chhatrapal and his servant Sukkhi came along from Selumau side. They were said to be coming on a bicycle which was pedalled by Sukkhi and Chhatrapal was taking his seat on the rod. When they reached the lane they got off the bicycle. Asharfi and Lallu came and challenged them. Sukkhi dropped his bicycle in the lane and ran for his life towards north. Chhatrapal also ran in that direction. Lallu gave a lathi blow on his head. The other respondents who were hiding in the fields rushed out and surrounded Chhatrapal. They used various weapons. Chhatrapal fell on the ground. Ram Autar exhorted Ram Gopal to cut the head of Chhatrapal. Ram Gopal was armed with Kanta. He gave 5 or 6 blows on the neck of Chhatrapal and severed his head. Raghunath put it in a piece of cloth and along with others rushed away.

6. Of the prosecution witnesses Ram Manohar, Sukkhi, Jagdish and Chandra Bhal were eye-witnesses. The Court examined three witnesses Moha-mmad Ayub, Ram Bilas and T.N. Saxena. Ram Bilas was an eye-witness. The High Court found that there were litigations between the parties from the year 1959 to the year 1966. In 1959 Chhatrapal and Ram Manohar were said to have been beaten and a criminal case was started against Basdeo, Nandram, Hazari brother of Ram Gopal, Rikhnath, brother of Chandra Bhal, Lalta father of Asharfi and Jadunath, Asharfi's brother and Bishun Dayal, uncle of Asharfi. The accused in that case were sentenced in the year 1961 to various terms of imprisonment. Ram Autar was a prosecution witness in that case. The accused in that case bore a grudge against Chhatrapal.

7. In the year 1964 one Kandhai was arrested for theft at the house of Ram Manohar, the prosecution witness by Chhatrapal, Ram Gopal and Jadunath and other prosecution witness, and a case Under Section 457 of the Indian Penal Code was commenced against Kandhai, Kandhai also brought a counter case for an offence Under Section 307 of the Indian Penal Code.

8. In the year 1965 Chhatrapal filed a suit for specific performance of a contract of sale against Ram Saran and Ram Autar. The contract of sale was made by Ram Saran in favour of Chhatrapal, but Ram Saran sold the property to Ram Autar. In connection with that case Chhatrapal engaged a lawyer Saxena at Sitapur. Another case was filed by Rampal brother of Chhatrapal against Ram Autar for demolition of a certain wall.

9. In the year 1966 there were proceedings Under Section 107 of the CrPC between Ram Autar, Raghunath, Chandra Bhal, Lallu and others on one side and Chhatrapal, Rampal and Sukkhi and others on the other.

10. There was a further case of abduction of Pushpa Devi, sister of Ravindra Singh. Chhatrapal, Sukhi and another person were prosecuted in that case Ram Autar was said to be trying to make

Chhatrapal agree to restore the woman whom he had abducted, but Ram Autar could not persuade Chhatrapal to do so. There was a search at the house of Chhatrapal and Bal-ram was a search witness.

11. Ram Manohar had a chari field in the vicinity & therefore it was likely that he was in the field at the time of occurrence. Jagdish had also a field near about and was likely to be there. Chandrabhal and Ram Bilas did not belong to the locality. But there was no reason for holding that they might not have been present.

12. The High Court however held that Sukkhi the servant was not likely to be present at the occurrence. Sitapur was about 11 miles from the village. It is unlikely that Chhatrapal and Sukkhi would ride the same bicycle and Chhatrapal would be seated on the rod of the cycle. The High Court rightly found that it was utterly unnatural that Sukkhi would not proceed to the police station to lodge the first information report. The evidence was that Sukkhi travelled about 10 miles to inform Chhatrapal's wife. That would be a strange thing and Sukkhi's presence is rightly doubted by the High Court.

13. Sukkhi said that all of a sudden all the assailants assaulted Chhatrapal with lathis, kantas and ballams. Sukkhi's evidence was that Ram Gopal cut Chhatrapal's head with the banka & all the respondents surrounded Chhatrapal and assaulted him. Sukkhi further said that spears, ballam and bhala were pierced in the face of Chhatrapal. The High Court found that if assault was made by all the nine persons and out of nine two had spears there was no reason why the spears would have been used in a manner as not to cause any injury on the body below the neck. That is why Sukkhi's evidence is significant that though Bhalla and Ballam were used as piercing weapons they were used on the face and neck and not on the stomach or the chest. The High Court found it difficult to accept the version of Sukkhi and said that if some of the assailants did have spears with them there was no reason why they did not make full use of them specially when the victim for whom they had been waiting for quite long had been surrounded by them and was at their mercy. The number of injuries on the lower portion of the body belied that there were as many as 9 armed assailants. If the assailants had spears they would have used those weapons particularly when Chhatrapal was encircled by them. The High Court rightly found that the injuries on the lower portion of the body were so few that the prosecution case was belied by the consideration that the 9 assailants armed with dangerous weapons did not use the weapons on the body.

14. On the facts the High Court held that Basdeo and Asharfi were falsely implicated on the allegation that they used spears in assaulting the deceased. Therefore if the witnesses who spoke about the presence of Basdeo and Asharfi could not be believed. It would be wrong to hold that they were eyewitnesses and to accept their evidence that the respondents were there. The circumstances of the case were found by the High Court to point out that no spears were used and that is why Basdeo and Asharfi were introduced by the witnesses for the version of use of spears.

15. The High Court held that Sukkhi stated at the trial that he and Chhatrapal got off from the bicycle near the lane where Asharfi and Lallu were seated. Before the Investigating Officer, Sukkhi said that when the cycle reached the lane, Asharfi and Lallu were scrapping grass. Lallu was armed

with a lathi and Asharfi with a Bhala and they stood up and thereupon Chhatrapal and Sukkhi left the cycle and in a hurry left. It was strange that Sukkhi did not receive any injury and further that there was no work of any of me instruments having struck the bicycle at the time of the assault. It is unbelievable that Chhatrapal and Sukkhi would get down from the bicycle, leave it there and they both would run. The evidence of Sukkhi was rightly not accepted. The High Court was correct in acquitting the accused.

16. The appeal therefore fails and is dismissed.