

Supreme Court of India

Awdesh And Others vs State Of Uttar Pradesh on 30 August, 1994

Equivalent citations: AIR 1995 SC 375, 1994 (3) Crimes 283 SC, JT 1994 (5) SC 617, 1994 (3) SCALE 914, 1994 Supp (3) SCC 151, 1994 (2) UJ 524 SC

Bench: G Ray, N Singh

ORDER

1. This appeal has been filed on behalf of the five appellants. The five appellants, along with Ram Pyare, Ram Kishore and Raj Kumar were convicted by the Additional Sessions Judge, Banda, on 13.3.1976 in Sessions Trial No. 55A of 1975 under Sections 302 read with 149, 147 and 323 read with 149 of the Penal Code. They were sentenced to undergo imprisonment for life under Section 302 read with 149, two years R.I. under Section 147 and one year R.I. under Section 323 read with 149. The sentences were directed to run concurrently. Being aggrieved by the judgment of the Trial Court, appeals were filed on their behalf, before the High Court. It appears that P.N. Bakshi and P.N. Harkauli, JJ. heard the said appeals. According to Bakshi, J. the charges leveled against all the eight accused persons had been established beyond all reasonable doubt and on that finding he upheld their conviction and sentence. Whereas according to Harkauli, J. the prosecution had failed to prove the charges leveled against them beyond all reasonable doubt and on that finding he set aside the conviction and sentence passed against them by the Trial Court. In view of the difference of opinion between the two learned Judges, the appeal was placed for hearing before B.N. Katju, J. He agreed with the findings of Bakshi, J. but while upholding the conviction and sentence of the five appellants acquitted the other three mentioned above giving them benefit of doubt for the reasons mentioned in the judgment.

2. According to the prosecution case one Mathura Singh was the maternal grandfather of Raghubir Singh (deceased) and Atar Singh (PW1). After the death of Mathura Singh, Raghubir Singh, Atar Singh (PW1) and Ram Manohar Singh, succeeded to the properties of Mathura Singh as his legal heirs. But Ramadhin, Beni, Daduwa and Sarju got their names fictitiously recorded over the lands belonging to Mathura Singh. Appellant Awdesh is the son of Ramadhin. Appellant Kedar is the son of Daduwa. Beni is the uncle of Kedar. Revenue litigation started thereafter between the parties, which was pending on the date of occurrence. It is the case of the prosecution that in spite of the pendency of the dispute, Atar Singh (PW1) and Raghubir Singh (deceased) continued to cultivate the lands of Mathura Singh. It is said that about two and a half years before the occurrence Raghubir Singh (deceased) was assaulted by the appellant Kedar and others and in respect of that incident a case under Section 324 of the Penal Code was pending. Proceedings had also been initiated under Section 107 and was pending at the time of the occurrence. Raghubir Singh (deceased) was doing pairvi in the aforesaid cases.

3. On 16.12.1974 at about 8.00 A.M. Raghubir Singh (deceased), Atar Singh (PW1) and their servant Ram Kishun (PW3) alongwith one Bhagauta were going from their village to Banda. Near the culvert of Loghaura, the appellants were sitting on the culvert armed with lathis. Some of them shouted "Maro Salon Ko". The deceased, PW1, PW3 and Bhagauta tried to run but the accused came out from the culvert and started assaulting Raghubir Singh (deceased). When Atar Singh (PWJ), Ram Kishun (PW3) and Bhagauta tried to save Raghubir Singh (deceased), they were also assaulted; They

raised alarm and thereafter the appellants ran away. Raghubir Singh died on the spot, as a result of the injuries caused on his person.

4. The First Information Report was lodged at 9.-30 A.M. within one and half hours of the occurrence, the distance from the police station being three miles. The injuries of Atar Singh (PW1), Ram Kishan (PW3) and Bhagauta were examined by PW4 on 16.12.1974 itself, respectively at 11.00 A.M. 2.00 P.M. and 2.30 P.M. Details of those injuries have been mentioned in the different judgments of the High Court. On post mortem examination several injuries on the vital parts of the body of Raghubir Singh (deceased) were found by PWJ3. Most of the injuries were on the head causing several fractures.

5. It is an admitted position that the details of the manner of occurrence have been stated in the First Information Report including the names of the witnesses like Atar Singh (PW1), Ram Kishun (PW3). These witnesses have supported the prosecution case as disclosed in the First Information Report within one and half hours of the occurrence. There was a strong motive on the part of the accused/appellants to cause the murder of Raghubir Singh, was not disputed during the hearing of the appeal. Admittedly, the lands belonging to Mathura Singh had been inherited by Raghubir Singh and his brothers including Atar Singh (PW1) but the accused persons got the lands recorded in their names, in respect of which, cases were pending before the Revenue Courts and Criminal Courts, including a proceeding under Section 107 of the Code. Raghubir Singh (deceased) used to do pairvi in those cases. As such all the Courts have proceeded on the assumption that accused persons had strong motive in assaulting the victim and the two eye witnesses of the occurrence.

6. The learned Counsel, who appeared for the appellants, however, urged that in view of the fact that on the basis of the same evidence three accused persons have been acquitted by B.N. Katju, J, the same benefit, should have been extended even to the appellants. From a bare reference to the judgment of Katju, J it should appear that he has accepted the correctness of the version disclosed by the prosecution and the participation of the appellants. He has given benefit of doubt to three co-accused namely Ram Pyare, Ram Kishore and Raj Kumar, on the ground that Ram Pyare was about 80 years old- whereas Ram Kishore and Raj Kumar were aged about 14 years at the time of the incident. He has further observed that it was quite possible that they were also present but it was difficult to believe that they had taken part in assaulting the deceased and causing injuries on the persons of PW1 and PW3. According to us, this was a reasonable view taken for the purpose of giving benefit of doubt to three accused persons and it cannot be said that the appellants are also entitled to be acquitted. B.N. Katju, J. neither disbelieved the manner of occurrence nor the participation of the appellants for the purpose of giving benefit of doubt to the three accused persons. They were acquitted taking into consideration their age and there is no question of extending that benefit to any of the appellants.

7. According to us, the prosecution has proved the case against the appellants beyond all reasonable doubt. PW1 and PW3 were admittedly injured and had sustained several injuries, which was proved by the doctor, who examined their injuries. As such their presence cannot be disputed at the time of the occurrence. The First Information Report having been lodged within one and half hours of the occurrence, supports and corroborate to a great extent, the version disclosed by the prosecution

witnesses in Court.

8. The appeal fails and it is accordingly dismissed.