

(2009) 05 AHC CK 0865

Allahabad High Court

Case No: Criminal Appeal No. 1206 of 1999

Awadhesh Kumar
Awasthi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 27, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 304(1), 304(11), 504
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)

Citation: (2009) 3 ACR 2646

Hon'ble Judges: R.K. Rastogi, J; Ashok Srivastava, J

Bench: Division Bench

Advocate: B.N. Singh, M.C. Chaturvedi, S.C. Dwivedi and N.L. Agarwal, for the Appellant;
A.G.A., for the Respondent

Judgement

R.K. Rastogi and Ashok Srivastava, JJ.

This is an appeal against the judgment and order dated 28.5.1999, passed by Sri Ram Kishore-I, then Second Additional Sessions Judge/Special Judge (S.C./S.T. Act), Jalaun at Orai in Session Trial No. 3 of 1996, State v. Awadhesh Kumar Awasthi Session Trial No. 3 of 1996, whereby he convicted the Appellant u/s 302, I.P.C. and 3(2)(v) of S.C./S.T. Act and imposed life imprisonment for both offences with the order that both the sentences shall run concurrently.

2. The prosecution case starts with an F.I.R. lodged by Bablu resident of Mohalla Umrarkhera, Police Station Kotwali Orai, district Jalaun on 11.6.09 at 11.45 p.m. with these allegations that his elder brother Rakesh is a meat seller and he was running a shop of meat. Prem Narayan Awasthi is also residing in the same Mohalla. He has several sons including Awadhesh (accused), Vinod and Rajesh. Awadhesh is a constable in the armed police and was posted at Hamirpur. He had come to his

father's house at Orai several days ago and he had a Government rifle and cartridges with him. Rakesh and Awadhesh had walked together on the above date in the evening. Thereafter Rakesh came to his house and found that Rs. 200 which had been kept in his pocket were not there. Then he and his mother Bhagwati went to the house of Awadhesh to demand Rs. 200 plus Rs. 25 being cost of meat purchased by Awadhesh. They reached there at about 10.45 p.m. Awadhesh, his father Prem Narayan, younger brother Rajesh and his wife Usha were present in the house. They started talking in the aangan of the house. Electricity light was there. Awadhesh abused Rakesh etc. and stated that he would not give the money at that time. Then Rakesh and his mother said to him that on the next morning, they have to go to attend a marriage and so money should be paid immediately. Then Awadhesh went inside the room and came out with the loaded rifle and opened one fire in the air. Thereafter he did second fire upon Rakesh who received firearm injury on left side of chest and fell down. Then his father Prem Narayan, Usha (wife of Rajesh) and mother of Rakesh rushed to protect Rakesh and tried to snatch the rifle from Awadhesh. Then Awadhesh did another fire and this time the bullet hit Usha and she also fell down. On hue and cry being raised, the neighbours reached there. Then Awadhesh ran away from the house. Thereafter Bablu, the complainant, with the assistance of neighbours who had reached there took both the injured persons to the police station and he also took the Government rifle of the accused alongwith 40 live cartridges and one empty cartridge to the police station. It was also stated in the last sentence of the F.I.R. that Bablu was Harijan by caste.

3. On the basis of the report, the police registered a case u/s 307/504, I.P.C. and 3(2)(v) of S.C./S.T. Act. On death of Rakesh and Usha it was converted into Section 302, I.P.C. and after completion of the investigation, the police submitted charge-sheet against the accused person u/s 302, I.P.C. and 3(2)(v) of S.C./S.T. Act.

4. The accused-Appellant was charged u/s 302, I.P.C. and 3(2)(v) of S.C./S.T. Act. He pleaded not guilty and claimed trial.

5. The learned trial court after hearing of the case came to the conclusion that both the charges were sufficiently proved against the accused-Appellant and, therefore, it convicted the accused-Appellant u/s 302, I.P.C. and 3(2)(v) of S.C./S.T. Act and sentenced to him life imprisonment for both the offences, separately. However, it was provided that both these sentences shall run concurrently. Aggrieved with the above judgment and order, the accused has filed this appeal.

6. We have heard Sri N. L. Agrawal, learned Counsel for the Appellant and the learned A.G.A. for the State and perused the lower court record.

7. Learned Counsel for the Appellant first of all submitted before us that no offence u/s 3(2)(v) of S.C./S.T. Act. is made out and the trial court has erroneously convicted the Appellant u/s 3(2)(v) of S.C./S.T. Act. It is essential to go through Section 3(2)(v) of S.C./S.T. Act which are as under:

3. Punishments for offences of atrocities--

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe--

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine ;

8. Learned Counsel for the Appellant submitted that a perusal of the above Sub-section reveals that no separate offence has been provided in this Sub-section, and whatever has been provided in the Sub-section is that the person who commits an offence punishable with imprisonment for a term of 10 years or more under the Indian Penal Code against the person of a member of Scheduled Caste and Scheduled Tribe shall be punishable with imprisonment for life and with fine. It is submitted that the only effect of the above provision is that a person committing an offence punishable under I.P.C. for imprisonment of 10 years or more shall be liable to life imprisonment under this Sub-section if the offence was committed against the member of a Scheduled Caste. It is submitted that in this view of the matter, neither any separate charge was to be framed u/s 3(2)(v) of S.C./S.T. Nor any separate punishment was to be imposed under the Act, and the only effect of the provision is that where the offence under I.P.C. as referred to in this Sub-section is committed against the member of a Scheduled Caste or Scheduled Tribe, the guilty person shall be punishable with imprisonment for life even if shorter sentence has been provided for the offence under the I.P.C.

9. We agree with this contention and hold that no separate conviction order could be passed u/s 3(2)(v) of S.C./S.T. Act and the trial court erred by framing separate charge u/s 3(2)(v) of the S.C./S.T. Act and in passing separate conviction and sentence under the above Act.

10. Learned Counsel for the Appellant further submitted that one of the essential ingredients of Section 3(2)(v) of S.C./S.T. Act is that the offence must have been committed against the person or property of a member of Scheduled Caste or Scheduled Tribe on the ground that such person is a member of Scheduled Caste or Scheduled Tribe. It is submitted that there is no allegation to this effect in the present case that accused-Appellant committed the offence against Rakesh on this ground that he was a member of Scheduled Caste. There is neither any allegation to this effect in the F.I.R. nor there is any evidence to this effect. Whatever has been stated in the F.I.R.. in this regard is that at the fag end of the F.I.R. a sentence has been written that the informant is Harijan and poor person, but there is no allegation to this effect that the offence was committed against Rakesh on the ground that he was a member of the Scheduled Caste. Hence, no offence u/s 3(2)(v) of S.C./S.T. Act is made out and the Appellant could not be convicted for the offence,

u/s 3(2)(v) of S.C./S.T. Act, and his conviction and imposition of sentence of life imprisonment under this section are liable to be set aside.

11. Now we come to the offence punishable u/s 302, I.P.C. It was submitted by learned Counsel for the Appellant that there was no previous enmity between the parties. Even on the date of incident both Rakesh (deceased) and Awadhesh, the Appellant, walked together in the evening and the quarrel took place between them in the night when Rakesh came to the house of the accused-Appellant with this allegation that the accused-Appellant had taken Rs. 200 from his pocket and the accused-Appellant felt aggrieved with this allegation and he refused to pay money and when Rakesh stated that he would go only after taking the money, the accused-Appellant on account of sudden provocation went inside the room of his house and came out with the loaded Government rifle and fired at Rakesh resulting into his death. It is submitted that there was no pre-meditation to commit the crime and the incident had taken place all of a sudden due to allegation of theft levelled against the Appellant and so no case u/s 302, I.P.C. is made out and the offence falls under Exception 1 to Section 300 of I.P.C. so far as the incident of death of Rakesh is concerned. We agree with his contention.

12. As regards the death of Usha, it was contended that she was the wife of real brother of the accused-Appellant and the accused had no intention to kill her and as per prosecution case, after the accused had fired on Rakesh, Prem Narayan, father of accused-Appellant, Usha and mother of Rakesh rushed towards Rakesh to rescue him and they also tried to snatch the rifle from the accused. At that time, another fire was done by the accused which hit Usha resulting into her death in the hospital.

13. It is submitted by learned Counsel for the Appellant that since the accused-Appellant had no intention to commit the murder of Usha, his case is not covered u/s 302, I.P.C and at the most it falls u/s 304, I.P.C.

14. Section 304 of Indian Penal Code runs as under:

304. Punishment for culpable homicide not amounting to murder. -- Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

15. We have held above that the accused-Appellant fired on Rakesh with intent to kill him but it was done on grave and sudden provocation. There was no enmity between the parties and there was no premeditation. Since the act was done on grave and sudden provocation, the accused-Appellant cannot be held guilty u/s 302,

I.P.C. but he committed the offence punishable u/s 304 Part I, I.P.C. So far as the case of Usha is concerned, the accused had no intention to kill her and the firing was done with the knowledge that it is likely to cause death or fatal injury to Usha, so the offence in respect of death of Usha is covered under Part II of Section 304, I.P.C. The offence under Part I of Section 304, I.P.C. is punishable with imprisonment for life or with imprisonment of either description which may extend to 10 years. The offence under Part II of Section 304, I.P.C. is punishable with imprisonment upto 10 years. In view of the discussion attempted above, the position is that the appeal of the Appellant deserves to be partly allowed.

16. His conviction u/s 3(2)(v) of S.C./S.T. Act and sentence of life imprisonment imposed for offence are hereby set aside and he is acquitted of the charge under the above Act. He is also acquitted of the charge of Section 302, I.P.C. as his act of causing death of Rakesh is punishable u/s 304(I), I.P.C. and of causing death of Usha is punishable u/s 304(11), I.P.C. The accused-Appellant has been in custody since 23.6.1995. He remained under trial from 23.6.1995 and from 28.5.1999 he has been in prison to undergo the sentences awarded to him. Thus, he has undergone imprisonment for almost 14 years since 23.6.1995 we are of the view that this imprisonment is sufficient to meet the ends of justice for the offences under Sections 304(1) and 304(11), I.P.C. Hence, while setting aside the sentence of life imprisonment awarded to the Appellant u/s 302, I.P.C. we hereby order that the term of imprisonment already undergone by him from 23.6.1995 is sufficient punishment for the offence under Sections 304(1) and 304(11), I.P.C. We therefore order that the accused-Appellant be released forthwith if he is not wanted in any other case.