

Mohammad Ashraf Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-06-2004

Reported in : 2004CriLJ2690

Judge : M.C. Jain and ;Onkareshwar Bhatt, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 304; [Evidence Act, 1872](#) - Sections 3

Appeal No. : Crl. Appeal. No. 924 c/w Govt. Appeal No. 1353 of 1981

Appellant : Mohammad Ashraf

Respondent : State of U.P.

Advocate for Def. : S.K. Pal, A.G.A.

Advocate for Pet/Ap. : G.S. Chaturvedi and ;Sanjiv Ratna, Advs.

Judgement :

M.C. Jain, J.

1. These two appeals are connected with each other having arisen out of judgment dated 7-3-1981 passed by Sri V.S. Agrawal, the then II Additional Sessions Judge, Pilibhit in Sessions Trial No. 148 of 1980. Mohd. Ashraf, Mohd. Talib, Mohd. Ashfaq and Mohd. Suleman were tried before the lower Court. The charge against

Mohd. Ashraf was under Section 302 I.P.C. and that of Section 324 I.P.C. The former charge was for committing the murder of Mohd. Akhtar and the latter for causing hurt with a knife to Riaz Ahmad PW 2. The remaining three accused were charged under Section 302 read with Section 34 I.P.C. for the murder of Mohd. Akhtar.

2. Mohd. Ashraf and Mohd. Talib were real brothers and remaining two were their cousins. The trial Court convicted Mohd. Ashraf under part second of Section 304 I.P.C. and sentenced him to seven years rigorous imprisonment. He was also convicted under Section 324 I.P.C. with a sentence of two years' rigorous imprisonment and both the sentences were directed to run concurrently. The remaining three accused Mohd. Talib, Mohd. Ashfaq and Mohd. Suleman were acquitted. Resultantly, Criminal Appeal No. 924 of 1981 has been filed by Mohd. Ashraf against the conviction and sentence passed against him whereas Government Appeal No. 1353 of 1981 has come to be filed by the State against the acquittal of Mohd. Talib, Mohd. Ashfaq and Mohd. Suleman.

3. The incident took place on 10-7-1979 at about 9 p.m. in Mohalla Khera of Town Neoria, P.S. Neoria, District Pilibhit and the F.I.R. was lodged the same night at 10.45 p.m. by Maqbool Hussain PW 1, an eye-witness. The case as emerging from the F.I.R. and the evidence adduced in the Court was that the festival of Shabe-Barat was being celebrated and the deceased Mohd. Akhtar was going to his sister's house with Halwa at the fateful time. When he was passing through Mohalla Khera of Chowk Bazar of Neoria town, he found that accused Mohd. Ashraf was teasing some girls. He objected to it whereupon Mohd. Ashraf became annoyed and held out to teach him a lesson for unnecessary intervening. He allegedly called his brothers and gave a knife blow on the chest of Mohd. Akhtar. He wanted to give a second knife blow, but Riaz Ahmad PW 2 caught the knife whereby his fingers were cut. Mohd. Akhtar tried to run away but was overpowered in front of the shop of Thakuri Tailor by the four accused persons and he was given another knife blow by Mohd. Ashraf. Alarm was raised by Riaz Ahmad PW 2. Rayis and Akbar. The accused persons ran away towards northern side. They were chased but to no effect. Mohd. Akhtar died at the spot. At the time of the incident there was electric light and that of the moon. Maqbool Hussain PW 1

immediately got a report scribed by Riazuddin on the spot and lodged the same at the police station resulting in the registering of the case.

4. Riyaz Hussain PW 2 injured was sent to the hospital with constable Rajendra Prasad for medical examination and his injuries were examined by Dr. Ram Prakash Agrawal PW 3 the same night at 0.45 a.m. He had suffered an incised oblique wound 3.5 cm x 0.3 x depth kept under observation on the palmer aspect of right middle finger, 2.5 cm above the base. The second injury was Y shaped oblique incised wound 5 cm x 0.2 cm x bone deep on the palmer aspect of right index finger at the base. Both had been caused by sharp edged weapon.

5. The investigation was taken up by S.O. Gulab Singh PW 5. The dead body of Mohd. Akhtar was sent for post-mortem which was conducted on 11-7-1979 at 2 p.m. by Dr Amrendra Singh PW 6. The deceased was aged about 20 years. He had suffered three stab wounds, one on the front of left side of chest, second on the front of right side of chest and third on the abdomen 8 cm below the umbilicus. The cause of death was shock and haemorrhage due to ante-mortem injuries.

6. The defence was of denial.

7. It was the case of Mohd. Ashraf that he did not give any knife blow to Mohd. Akhtar. According to him, his house was situated in Mohalla Khera. According to his defence. Mohd. Akhtar was displaying fire works in Chowk Bazar and he forbade him from doing so. It was followed by an altercation and then Mohd. Akhtar and Riaz Hussain PW 2 assaulted him with lathis. Then he ran away when the people wanted to capture him. Later on, he learnt about the death of Mohd. Akhtar by knife. Dr. Shyam Bihari Dixit DW 1 Compounder was examined to prove the injury report of Mohd. Akhtar prepared in District Jail, Pilibhit on 11-7-1979 at 5.30 p.m. by Dr R. C. Maheshwari. The injuries on his person were one abraded contusion and one abrasion. The abraded contusion was on back of right elbow joint; the abrasion was on palmer aspect of right hand and the contusion was on the middle of right thigh.

8. Besides medical and formal evidence including that of investigation, the prosecution relied on the testimony of Maqbool Hussain informant PW 1 and Riaz

Ahmad injured PW 2 who is maternal uncle of accused Mohd. Ashraf himself as eyewitness.

The trial judge concluded that culpability of Mohd. Talib, Mohd. Ashfaq and Mohd. Suleman was not at all proved. They did not share the common intention of Mohd. Ashraf who had actually stabbed Mohd. Akhtar Mohd. Ashraf failed to give any explanation for giving knife blow to Mohd. Akhtar who had given one or two stick blows to him as per the defence case. He was, therefore, convicted and sentenced for the offence punishable under part second of Section 304 I.P.C. and under Section 324 I.P.C. for injuring Riaz Ahmad.

9. We have heard Sri S.K. Pal, learned A.G.A. from the side of State and Sri Amar Saran from the other side who has opposed the Government Appeal and argued out the appeal filed by the convicted accused Mohd. Ashraf. The record has also carefully been examined by us.

10. So far as Government Appeal challenging the acquittal of Mohd, Talib, Mohd. Ashfaq and Mohd. Suleman, is concerned, we are of the view that it has no merit at all. The reasons may be stated. There is nothing to indicate that these three accused persons shared common intention of Mohd. Ashraf who stabbed the deceased Mohd. Akhtar. The testimony of eye-witness Maqbool Hussain PW 1 is to the effect that Mohd. Ashraf had stabbed Mohd. Akhtar while calling these three accused persons. This being so, these three accused could not be deemed to have shared common intention of Mohd. Ashraf who stabbed Mohd. Akhtar. It has specifically been stated that at the time when Mohd. Ashraf gave first knife blow to Mohd. Akhtar, there was none excepting him (Mohd. Ashraf), Mohd. Akhtar (victim), Riaz Ahmad and this witness himself. Another part of the statement is that these three accused persons came only after Mohd. Akhtar had run away after receiving first knife blow. The role assigned to these three accused persons was that they had caught hold of Mohd. Akhtar in front of the shop of Thakuri to facilitate Mohd. Ashraf to give him further knife blows. These three accused persons had no weapon with them. It was not free from doubt that they would have taken risk of catching hold of Mohd. Akhtar, risking their own lives. Regard is to be had to this aspect of the matter that Mohd. Akhtar was not an immobile object. The

instinct of self preservation is strongest in all living beings. Naturally, he would have struggled (in case of being caught) to free himself from the clutches of his captors at the time of infliction of further knife blows on him. In such scenario, the possibility of any of these three accused persons sustaining injury could not be ruled out and they would not have been big fools to take such a risk. The trial Judge, in our opinion, has rightly observed that this part of the story was doubtful that these three accused persons caught hold of Mohd. Akhtar in front of the shop of Thakuri to enable Mohd. Ashraf to give him further knife blows. They neither uttered a word nor did anything else to signify that they wanted Mohd. Akhtar to be murdered by stabbing at the hands of Mohd. Ashraf. The incident had taken place all of a sudden and there was no occasion for these three persons to confer with Mohd. Ashraf before the occurrence. They had no enmity either with Mohd. Akhtar. We agree that these three accused persons deserved to be acquitted as has been ordered by the trial Judge.

11, Now, we take up the merits of the represented criminal appeal filed by Mohd. Ashraf who has been convicted by the Court below under Part second of Section 304 I.P.C. and sentenced to seven years' rigorous imprisonment and further under Section 324 I.P.C. with two years' rigorous imprisonment. Learned counsel for the accused appellant has levelled criticism against the eye-witnesses Maqbool Hussain PW 1 and Riaz Ahmad PW 2. The availability of light at the spot has also been challenged. Stress has been laid on the defence theory that Mohd. Akhtar was displaying fire-works and when Mohd. Ashraf forbade him from doing so, an altercation followed and then Mohd. Akhtar and Riaz Ahmad PW 2 belaboured him with lathis. He ran away when people wanted to capture him and later on he learnt about the murder of Mohd. Akhtar by knife blows. Learned counsel for the appellant invited our attention to the injury of Mohd. Ashraf (vide Ext. Kha-1) i.e. one abraded contusion on back of right elbow joint, one abrasion on the palmar aspect of right hand and one contusion on back of right thigh, proved by Shyam Bihari Dixit DW 1 compounder of District Jail, Pilibhit where the said Mohd. Ashraf was examined on 11-7-1979 at 5.30 p.m. On bestowing our thoughtful consideration, we find the criticism against the testimony of eye-witnesses out of whom Riaz Ahmad PW 2 himself was an injured of the felony as wholly unfounded. There is no grain of truth in the case set up by the accused Mohd.

Ashraf in defence. The trial Court has rightly observed that there is no evidence on record to show that the fire-work was being displayed at the time of occurrence. It is also to be pointed out that the stand taken by Mohd. Ashraf was self defeating. According to him, the wordy altercation was followed by lathi beating to him by Mohd. Akhtar and Riaz Ahmad PW 2. However, a suggestion was given to Maqbool Hussain PW 1 in his cross-examination that Mohd. Akhtar had attacked Mohd. Ashraf with a knife and had run away whereafter he was chased and was murdered by some other persons. It was, obviously, in conflict of the stand of lathi beating stated by Mohd. Ashraf in his statement under Section 313 Cr. P.C. There was absolutely no occasion for the deceased to beat him (Mohd. Ashraf) with lathi. Moreover, no knife injury had been found at all on the person of Mohd. Ashraf when he was medically examined. The injuries reported in the medical examination report of Mohd. Ashraf were quite insignificant. It is well settled that there is no obligation on the part of prosecution to explain minor, insignificant or superficial injuries of the accused. The incident took place on 10-7-1979 and Mohd. Ashraf was examined in jail on 11-7-1979 at 5.30 p.m. and three insignificant injuries on his person were on approachable parts which could even be self suffered in an attempt to create a false defence. In view of the contrary stand taken by the accused Mohd. Ashraf, the defence theory was clearly falsified. The incident actually took place when he was eve-teasing the girls and took offence when Mohd. Ashraf protested against his misbehavior.

12. The testimony of Maqbool Hussain PW 1 and Riaz Ahmad PW 2 injured had the ring of truth. Despite being subjected to searching cross-examination, their testimonial assertions could not be shaken. Riaz Ahmad PW 2 was the own maternal uncle of the accused Mohd. Ashraf and could hardly have any reason to depose falsely against his own nephew. He had received injuries in the same transaction at the same time, hence his presence at the spot was beyond doubt. Maqbool Hussain PW 1 gave vivid account of the entire occurrence. He was also the informant of the F.I.R. His near relationship with the deceased could not be a ground to discard his testimony. He very well explained his presence at the spot that he and Mohd. Akhtar were going together to the house of his sister with Halwa on the festival of Shabe Barat.

13. The availability of light of electricity at the spot was spoken by both the witnesses which could not at all be doubted. The light was available on electric pole besides at nearby shops. It was the night of Shabe Barat. Therefore, there must have been sufficient light at the spot.

14. We are in agreement with the learned trial Judge that the guilt of the accused respondent Mohd. Ashraf was proved to the hilt by convincing and trustworthy evidence adduced by the prosecution even on accepting the contradictory defence stand. The prosecution had fully discharged its burden.

15. The learned counsel for the accused appellant Mohd. Ashraf alternatively argued that he was a raw and misguided youth and, therefore, he should be treated with leniency on the aspect of sentence. We find that the deceased himself was aged about 20 years while accused person was of 25 years as per his statement under Section 313 Cr. P.C. recorded on 10-11-1979. Despite married and having two children, he was indulging in eve-teasing of ladies passing by the way and pulling veil of one of them. His such misbehaviour was objected to by the deceased. Instead of being ashamed of his misbehaviour towards passing ladies, he took offence and stabbed the victim Mohd. Akhtar. Even then, the trial Judge took the most lenient view against him by taking it to be an offence under Part second of Section 304 I.P.C. (instead of murder). He observed that even on accepting the defence plea, the position would be that Mohd. Akhtar gave one or two stick blows to Mohd. Ashraf whereupon the latter gave knife blows to the former. Thus, the theory of self-defence put up by the accused could be probable and he could be deemed to have exceeded the right of self-defence by giving a number of knife blows to Mohd. Akhtar which caused his death. His case was, thus, found to be covered by Exception 2 of Section 300 I.P.C. He was deemed to have had the knowledge that his act was likely to cause death even if he had no intention to cause death.

16. The matter may be considered from another angle that the incident occurred all of a sudden without any premeditation in a sudden fight. When Mohd. Akhtar objected to the eve teasing of girls, in the heat of passion the accused appellant gave knife blows to the deceased. Judged in this light, the matter would be

covered by Exception 4 of Section 300 I.P.C. The State has not appealed for enhancement against the conviction and sentence passed in respect of Mohd. Ashraf. We, therefore, maintain his conviction under Part second of Section 304 I.P.C. for committing offence of culpable homicide not amounting to murder. The conviction of Mohd. Ashraf under Section 324 I.P.C. for the injuries caused to Riaz Ahmad PW 2 with sentence of two years' rigorous imprisonment is also justified. However, as regard the sentence for former offence under Part second of Section 304 I.P.C., we are of the opinion that on consideration of the totality of the facts and circumstances, the ends of justice would be met by reducing the sentence of seven years' rigorous imprisonment to that of three years' rigorous imprisonment with a fine of Rs. 25,000/-. We would also direct that in default of payment of fine, further two years' rigorous imprisonment shall be suffered by him. The fine would be directed to be paid as compensation to the father or mother, or failing them to other next immediate heir of the deceased Mohd. Akhtar.

17. In conclusion, we finally order as under :

Govt. Appeal No. 1353 of 1981 State v. Mohd. Talib is hereby dismissed.

In Criminal Appeal No, 924 of 1981 Mohd. Ashraf v. State of U.P., dismissing the appeal with modification we maintain the conviction of accused appellant Mohd. Ashraf under Part second of Section 304 I.P.C. as well as under Section 324 I.P.C. However, the sentences passed against him are modified in this way that he shall undergo three years' rigorous imprisonment and shall pay a fine of Rs. 25,000/- within three months from today for the offence under Part second of Section 304 I.P.C. and shall undergo two years' rigorous imprisonment for the offence punishable under Section 324 I.P.C. In default of payment of fine imposed for the offence under Part second of Section 304 I.P.C., he shall undergo two years' further rigorous Imprisonment. In case the fine is realised, the same (Rs. 25,000/-) shall be paid as compensation to the father or mother of the deceased Mohd. Akhtar, or failing them to his next immediate heir. The substantive sentences of rigorous imprisonment for the two offences shall run concurrently. The bail of Mohd. Ashraf is cancelled. The Chief Judicial Magistrate, Pilibhit shall cause him to be arrested and lodged in jail to serve out the sentences imposed on

him. He shall report the compliance within two months.

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