

State Vs. Akhtar Khan

State Vs. Akhtar Khan

SooperKanoon Citation : sooperkanoon.com/475034

Court : Allahabad

Decided On : Jul-23-1990

Reported in : 1991CriLJ1779

Judge : S.K. Mookerji and ;S.I. Jafri, JJ.

Acts : Uttar Pradesh Children Act, 1951 - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 323 and 324

Appeal No. : Government Appeal No. 2131 of 1978

Appellant : State

Respondent : Akhtar Khan

Advocate for Def. : G.S. Chaturvedi, Adv.

Advocate for Pet/Ap. : D.G.A.

Judgement :

S.I. Jafri, J.

1. State has filed this appeal impugning therein the judgment and order dated 16-3-1978 passed by Sri B. B. L. Hajeley, Ist Addl. Sessions Judge, Moradabad. By its appeal the State of U.P. has impugned the conviction of the respondent Akhtar under Section 304, I.P.C. Part II and also of the offence Under Sections 323/34,

I.P.C. and purging of the respondent of the charges Under Sections 302/34, 324/34, I.P.C.

2. Respondents Akhtar Khan, Achchan Khan and Ali Dad Khan have also filed connected Criminal Appeal No. 796 of 1978 in which they have assailed the judgment and order passed by Sri B. B. L. Hajeley, Ist Addl. Sessions Judge, Moradabad dated 16-3-1978 recording conviction and sentences in Sessions Trial No. 155 of 1976. Akhtar Khan, respondent was convicted Under Section 304, Part II, I.P.C. and sentenced to undergo R.I. for 5 years. He was also found guilty Under Section 323/34, I.P.C. and was sentenced to undergo R.I. for one year. Achchan Khan and Ali Dad Khan respondents were convicted Under Section 323/34, I.P.C. and they were sentenced to undergo R.I. for one year each.

3. We also find Criminal Revision No. 588 of 1978 connected with the present Government appeal preferred by Saddiq complainant impugning thereby the judgment and order passed by Sri B. B. L. Hajeley Ist Addl. Sessions Judge in S.T. No. 155 of 1976 thereby acquitting Mushfiq alias Muzbik and further altering the conviction of the respondents Akhtar Khan to Section 304, Part II and Section 323/34, I.P.C. and respondents Achchan Khan and Alidad Khan to Section 323/34, I.P.C.

4. The facts of the case as disclosed by the prosecution are that there was bad blood between Akhtar and deceased Shabbir alias Munna preceding the date of occurrence owing to the fact that Akhtar had been assaulted and humiliated by deceased Shabbir alias Munna. The bad blood between deceased and respondent Akhtar culminated into the present occurrence on 14th December, 1975 when complainant Siddiq along with his brother Shabbir alias Munna (deceased) and Kallu were on way to their fields to fetch Barseen and as soon as they arrived at their mango grove, accused persons Akhtar, Achchan, Muzbik Khan and Alidad Khan who were sitting in the grove, came charging towards the deceased declaring that they would teach a lesson for beating Akhtar accused. Altercation ensued. It started with grappling and then Akhtar gave a vicious jab by means of a knife in the back of deceased Munna while Alidad and Achchan accused had caught hold of the deceased and thrown him on the ground with back up. Accused

Muzbik who has been acquitted by the trial Court attacked the complainant Siddiq by means of his knife which the complainant Saddiq warded off on his hand. Meanwhile, witnesses, namely, Nasir Hussain, Syed Farooq Khan, Laddan Khan etc. were attracted to the scene of occurrence. On being challenged by the witnesses, the accused persons bolted away from the scene. It is worthwhile to mention here that in the occurrence, complainant Saddiq, Kallu also sustained injuries as a result of assault by the accused persons. Shabbir alias Munna died on the spot.

5. After the occurrence, Saddiq complainant went to the Police Station, Bilari where he dictated his oral report of occurrence to the Head Constable. The Head constable prepared a chik report on the basis of the dictation of the complainant and registered a case in the General Diary of the Police Station against the accused persons under Sections 302/34 and 324, I.P.C.

6. Complainant Saddiq was examined for the injuries at P.H.C., Bilari on 14-12-1975 at 18 hrs. and Dr. A. K. Garg, found the following injuries on his person.

1. Contusion 7.0 x 3.0 c.m. reddish, obliquely placed on the outer side of right upper arm at about middle of it.

2. Incised wound 0.8 x 0.5 cm x skin deep bleeding present on the outer side of middle front of right index finger.

3. Contusion 3.0 x 2.5 c.m. on the back of left side, reddish transversely placed 4.0 c.m. below the lower angleshoulder bone.

4. Contusion 3.0 x 2.0 c.m. reddish, transversely placed on the back of right leg over the calf muscle.

7. Kalia was also examined for his injuries at P.H.C., Bilari on 14-12-75 at 18.30 hrs. and Dr. A. K. Garg found the following injuries on his person.

1. Contusion 4.0 x 3.0 cm reddish transversely placed on the outer and back surface of left

upper arm 10.9 cm above the elbow joint.

2. Contusion 6.0 x 4.0 cm reddish transversely placed on the back of left fore arm 11.0 cm below the elbow joint.
3. Two long abrasions 5.0 cm and 3.5 cm x 2.5 cm apart from each other reddish, obliquely placed, on the left side of chest 12.0 cm below the left nipple.
4. Contusion 3.5 x 2.5 cm transversely placed reddish on the back of right thigh 13.0 cm above the knee joint.
8. Investigation of the case was taken up by Bhagwan Swarup Verma P.W. 11 and after completing investigation he submitted charge sheet against the accused persons.
9. Accused persons pleaded not guilty to the charge and attributed their false implication in the case to enmity. The defence ' examined in support of its case two witnesses namely, Chhotey Khan D. W. 1 and Chandan Singh Negi D.W. 2.
10. In support of its case, the prosecution examined in all 13 witnesses, out of them Saddiq, P.W. 4, Kalian P.W. 6, Farooq Khan P.W. 7 and Laddan Khan P.W. 10 were examined as ocular witnesses of the occurrence.
11. We have carefully examined the statement of complainant Saddiq P. W. 4 from all possible angle. He has dwelt in detail about the occurrence. We have also scanned the finding arrived at by the trial Court with regard to the deposition of this witness. The learned trial Court has elaborately dealt with his evidence. The witness has also been subjected to gruelling cross-examination and in the entire conspectus of his evidence and cross-examination the defence has not been able to spin out any infirmity or discrepancy which may render him unworthy of reliance. Under the circumstances, we hold Saddiq thoroughly reliable and natural witness who has given a truthful and graphic version of the occurrence.
12. The evidence of Saddiq has been lent full corroboration by Kalian. Kalian is also an injured witness. The occurrence took place in broad day light and defence has not been able to prove any motive for the witness to have falsely implicated the accused in this case. We have also gone through his evidence and examined the same in the light of the facts and circumstances on record. Upon a

consideration of the facts and circumstances on record, we hold him reliable and disinterested witness. We are also in complete agreement with the findings arrived at by the trial Court.

13. We have also gone through the evidence adduced by defence in support of its case. The evidence examined by the defence is of formal nature and does not help the defence in any way.

14. As to the offence proved against the respondents as also held by the trial Court, We are of the view that the accused were rightly convicted inasmuch as that the deceased had sustained one injury following scuffle between the accused and the deceased. The trial Court has given cogent reasons in acquitting the accused of the charge of murder. Under the circumstances, we uphold the conviction of accused Akhtar under Section 304, Part II, I.P.C. and also under Section 323/34, I.P.C. Likewise, the conviction recorded against accused Alidad Khan, Achchan Khan under Section 323/34, I.P.C. is also upheld. Consequently the appeal preferred by the State against the respondent carries no force and is dismissed. The connected revision filed by the complainant against respondents and Muzabik Khan (since acquitted) is also dismissed.

15. At this stage, the learned counsel for the respondent Akhtar, contended that the trial Court has fallen in error in sentencing accused Akhtar to jail imprisonment as he was minor on the date of the commission of the offence. This contention of the learned counsel is borne out from the evidence on record which goes to show that Akhtar was about 14 years and 10 months' old on the day when the occurrence had taken place.

16. We have given our considered thought to this aspect of the matter and delved into the findings arrived at by the trial Court. We find that the trial Court has not adverted itself to this aspect. From a scrutiny of the facts on record, we find that admittedly the accused, namely, Akhtar was aged about 14 years and in this view of the matter he was minor by all reckoning on the date of occurrence. Once he is found to be minor on the date of the occurrence, it militates against the requirements of law that a minor be sentenced to undergo imprisonment. We are fortified in our views by Section 27, Chapter IV of U. P. Children Act, 1951 which

stipulates that no Court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. The trial Court without advertent to this facet, awarded sentence of 5 years' R.I. to the respondent. At the same time, we are not oblivious to the outrageous nature of the offence in which a young lad, namely, deceased Shabbir alias Munna, who was aged about 18 years only, lost his life. Notwithstanding the fact that Akhtar respondent was minor and by requirements of law, he cannot be sentenced to undergo imprisonment as an alternative, we deem it just and proper to sentence the respondent Akhtar to pay fine. Taking into account all the facts and circumstances and brutal nature of the offence committed by Akhtar, we propose to sentence the respondent Akhtar to pay a fine of Rs. 6000/-. However, it is made clear that in default of payment of fine as imposed by this Court, the respondent Akhtar who has been held to be minor on the day of occurrence cannot be subjected to undergo imprisonment. However, the Court below shall be at liberty to use all coercive measures to realise the amount of fine from the property owned by respondent Akhtar.

17. Coming down to the conviction of the respondent Alidad Khan and Achchan Khan, the conviction recorded against them under Section 323/34, I.P.C. by the trial Court, is affirmed. As to the sentences recorded against the respondents aforesaid, the learned counsel submitted that more than 15 years have rolled by since the date of occurrence and no useful purpose will come to be served by committing the respondent to Jail for serving out the sentences after this long lapse of time. It is not contended by the learned counsel that hostility has become a matter of past and both the parties are living with love and affection. It is next submitted by the learned counsel that it would meet the ends of justice if the respondents are sentenced to pay fine instead of being sent to jail to serve out the sentences awarded by the trial Court. We also feel that ends of justice would be met if the respondents are sentenced to pay fine.

18. In the result, appeal preferred by respondents Alidad Khan and Achchan is partly allowed. The conviction recorded against both the respondents namely Ali Dad Khan and Achchan under Section 323/34, I.P.C. is affirmed. However both the respondents are sentenced to pay a fine of Rs. 500/- each, which shall be

payable by them within 3 months from the date of the receipt of the record from this Court in the trial Court. In their failure to pay the fine within 3 months, the respondents Alidad Khan and Achchan shall undergo R.I. for three months.

19. Appeal preferred by Akhtar respondent is also partly allowed. The conviction recorded against Akhtar under Section 304, Part II, I.P.C. is affirmed. However the sentence of 5 years R.I. awarded to him by the trial Court is set aside. Instead, the respondent Akhtar is sentenced to pay a fine of Rs. 6000/- which shall be payable within 3 months in the trial Court. In default of payment of fine, the trial Court shall be at liberty to use all coercive measures except to send the respondent to jail. Out of the amount of fine of Rs. 6000/-, a sum of Rs. 5000/- shall be disbursed to the heirs or legal representative of deceased Shabbir and the remaining sum of Rs. 1000/- shall go to the State exchequer. Likewise, out of the amount of fine realised from respondent Ali Dad Khan and Achchan, which works out to Rs. 1000/-, a sum of Rs. 400/- each shall be disbursed to Saddiq P. W. 4 and Kalia P. W. 6 and the remaining sum of Rs. 200/- shall go to the State exchequer.

20. Revision petition preferred by Saddiq complainant is accordingly dismissed. Government Appeal No. 2131 of 1978 preferred by the State of U.P. is also dismissed accordingly.

21. Office is directed to send a copy of this judgment to the trial Court along with record within one month of the receipt of the judgment at its end.