

Avadhesh Kumar Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-25-1997

Reported in : 1998CriLJ4175

Judge : G.S.N. Tripathi and ;R.K. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 323 and 324; Code of Criminal Procedure (CrPC) - Sections 161, 202, 313 and 319

Appeal No. : Criminal Appeal No. 554 of 1981

Appellant : Avadhesh Kumar

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ram Prasad Singh, Adv.

Disposition : Appeal dismissed

Judgement :

1. Both these appeals arise out of judgment and order dated 24-2-1981 passed by the then VIIIth Addl. Sessions Judge, Kanpur (non-metropolitan area) in S.T. No. 567 of 1978, State v. Awadhesh Kumar. The learned trial Court has held both the accused guilty Under Section 302/34, IPC and sentenced them to undergo life imprisonment. They have further been sentenced to undergo 3 years R.I. on the

charge Under Section 324/34, IPC. Both the sentences have been ordered to run concurrently.

2. The prosecution case started on the basis of a FIR lodged by Sri Mathura Prasad, P.W. 1 at the police station Shivli on 28-8-78 at 5 a.m. The date of the occurrence is 26-8-1978 around sun set. The distance, of the police station from the place of occurrence is 13 miles. He has alleged that Rajesh Kumar Singh, P.W. 3 is his brother, who is employed in Kanpur Nagar Palika at Kanpur. He was returning home. At about 6 p.m., he reached the culvert in village Pachpr. Accused Awadhesh Kumar and Hari Babu, appellants belonging to the village of complainant, met him there. Awadhesh Kumar demanded the cycle of Rajesh Kumar, which he refused. Thereupon, Awadhesh Kumar abused him. Rajesh Kumar asked him not to abuse. Thereupon, the accused Awadhesh Kumar and Hari Babu ran towards him for assaulting. However, Rajesh Kumar could escape on his cycle and reach home safely around sun set on the same day i.e. 28-8-78. Accused Hari Babu came to the house of the complainant and said that his mother wanted to talk to the complainant's mother Smt. Phool Kumari. Therefore she was calling her for an urgent work and he, thus persuaded Smt. Phool Kumari to accompany him and, this way, she reached near the house of Hari Babu. Thereafter, Awadesh Kumar, his mother and sister Km. Meera started hurling filthy abuses towards Smt. Phool Kumari and loudly. This was resented by Smt. Phool Kumari. The mother of Awadhesh Kumar said that your son has abused my son. We shall get him murdered. Shitala Prasad (deceased) the son of Smt. Phool Kumari followed her and he too came near the house of the accused. The mother and sister of Awadhesh Kumar said that since Rajesh Kumar had abused Hari Babu and Awadhesh Kumar, they shall get Rajesh Kumar murdered. It is then, Hari Babu, accused caught hold of Shitala Prasad and Awadhesh accused, pierced his knife repeatedly in the body of Shitala Prasad. Hearing the alarm raised by Shitala Prasad and Smt. Phool Kumari, Rajesh Kumar, P.W. 3, his brother in law Hira Lal and uncle Babu Lal and Ram Dularey of the same village reached the spot and saw the incident. Shitala Prasad fell down as a result of injuries received by him. When the complainant came to his rescue, he was also assaulted with a knife by Awadhesh Kumar. However, the pressure upon the accused increased. Then all the culprits entered the house of co-accused Hari Babu. The condition of

Shitala Prasad was very serious, therefore, the complainant arranged for a buffalo cart and all were taking Shitala Prasad to Choubeypur Hospital. As soon as they reached near the road Tatiaganj, Shitala Prasad succumbed to his injuries and died. The complainant continued the journey and reached the hospital Choubeypur, where his injuries were bandaged. Thereafter, taking the dead body, the complainant reached the police station and lodged the report.

3. On the basis of written FIR, the case was registered at the police station on 29-8-1978 at 5 a.m. by Constable Sri Chandrakesh Singh, who registered the case in the G.D. As the complainant was also injured, a chitthimajrubi was prepared and he was directed to go to the local hospital for medical examination as well as treatment along with Constable Sri Bal Mukund. The case was registered in absence of Sri Siya Ram Sharma, I.O., then posted as S.I., Shivli. The investigation was entrusted to him around 10 a.m. on the same day and he started investigation in right earnest. He held an inquest upon the dead body of Shitala Prasad and prepared the panchayatnama and other relevant documents. He kept the dead body in sealed condition and sent the same for post mortem examination through Constable Sri Bal Mukund.

4. The post-mortem examination was done by Dr. Shyam Swroop, P.W. 7 on 30-8-78 at 1 p.m. He collected the following data :-

1. Incised wound 2 cm x 1 cm x bone deep on right side of head. 5 cm above right ear.
2. Incised wound 1 cm x 5 cm x bone deep on left side of bridge of nose.
3. Incised wound 1 cm x 5 cm x bone deep on left side of nose, 1 cm below injury No. 2.
4. Incised wound 2 cm x 5 cm x muscle deep on outer side of left upper arm, 13 cm below the top of left shoulder.
5. Incised wound 2 cm x 1 cm x chest cavity deep, 3 cm above and lateral to left nipple.

6. Incised wound 1.5 cm x 1 cm x chest cavity deep, 9 cm lateral to injury No. 5.
7. Incised wound 4 cm x 1.5. cm x abdominal cavity deep on upper part of abdomen, 2.5 cm below the episternum.
8. Incised wound 2 cm x 1 cm muscle deep on back of left shoulder, 14 cm above and medial to left posterior axillary fold.

In the opinion of the Doctor, the death was caused on account of shock and haemorrhage, which was the result of the aforesaid multiple injuries and that the death could have occurred on 28th of August, 1978 in between 6 to 10 p.m. The medical evidence, therefore, fully corroborates the prosecution case that Shitala died on account of incised wounds having been caused by a knife on 28th of August, 1978 around sun-set.

4A. After sending the dead body, the I.O. Sri Shiya Ram Sharma, P.W. 6, visited the spot, prepared the site plan, Ex-Ka 8 of the incident and also the place where Shitala Prasad, deceased was murdered. Further, he prepared the site-plan of the village Tatiaganj, where Shitala Prasad breathed his last. He interrogated the witnesses Sri Mathura Prasad and Smt. Phool Kumari and Rajesh. He also collected the blood-stained and sample earth from the spot. He interrogated other witnesses also. The formal submission of the charge-sheet was made by him against these two appellants. A supplementary charge-sheet 110A was also sent by him against Smt. Shyama Devi and Smt. Meera Kumari, lady accused. At a later stage, re-investigation was made by Special Investigating Squad under the orders of the S.S.P. Later on, the charge-sheet against these two ladies was withdrawn and only these two accused appellants faced the trial.

5. The prosecution has examined the following evidence to prove its case.

6. P.W. 1, Sri Mathura Prasad is the complainant. He had narrated the entire prosecution story as contained in the FIR. He is an injured also. He stated that Chaubeypur P.A.C. where his injuries were examined, is at a distance of 3 miles. But the buffalo cart had to traverse about 7-8 miles. Shivli PS. is about 12-13 miles from village Chaubeypur.

7. P.W. 2, Smt. Phool Kumari has narrated the entire prosecution story as contained in the FIR. She has deposed that her son Rajesh Kumar, P.W. 3 had informed her about the incident, which took place between him and the accused only a few minutes earlier. She has given details of the incident. Few minutes after she reached home. Hari Babu, accused took her along with him alleging that his mother (mother of Awadhesh, accused) was calling her. This way, she went. Her son Shitala Prasad, deceased followed her. When the accused started assaulting her, son Shitala Prasad, the deceased, she intervened. But she was pushed aside. Thereafter, accused retraced to their houses. Injured Shitala Prasad was taken from the spot in a buffalao cart. But on the way to Chaubeypur Hospital near the village Tatiaganj, he breathed his last.

8. P.W. 3, Rajesh Kumar has narrated both the incidents - one of culvert and the other near the house of the accused. He had followed his brother deceased Shitala Prasad and mother and saw the incident with his own eyes.

9. Other evidence is formal in nature.

10. P.W. 4, Dr. B. C. Prasad, then attached to U.H.M. Hospital, Kanpur had medically examined Sri Mathura Prasad, P.W. 1 on 29-8-78 at 5.10 p.m. He found the following injuries on his person :-

1. One stitched wound 4.5 cm x 5 cm. Stitches were present all over the medial-posterior border side of left forearm.

2. Two abrasions 5 cm x 2 cm on the back of right lumbar region, 5 cm above right illiac crest.

There was no bleeding present. Both the injuries were about one day old and caused by some blunt weapon and were simple in nature. They could have been caused on 28-8-78 around sunset.

11. P.W. 5, Dr. Laxmi Sahai Jauhari has alleged that he was posted at P.H.C., Chaubeypur. In that night at about 11-12 p.m., P.W. 1 Sri Mathura Prasad brought the dead body (of Shitala Prasad). He declared him dead. He was going to examine Sri Mathura Prasad but S.I.B.D. Singh took him away hurriedly and his

medical examination could not be completed. However, he had stitched the wounds of Mathura Prasad and had given some injections. Sri B. D. Singh, S.I. had represented that Sri Mathura Prasad had to go to Kanpur and a truck had been arranged by him for that. Thus the medical examination could not be completed by him. Thereafter, Sri Mathura Prasad never returned to him and hence the examination remained incomplete.

12. P.W. 8, Sri Chandra Kesh Singh prepared the chik and G.D. entries firstly, at the time of registration of the case on 28-8-78 and, secondly, on 30-8-78, when the report of the death of Shitala Prasad was received by him.

13. P.W. 7, Dr. Shyarn Swaroop had performed the post-mortem examination on the dead body of Shitala Prasad and collected the details as noted above.

14. C.W.I, Sri Ram Kumar Verma, S.I. was incharge, outpost Chaubeypur. This outpost is attached to P.S. Shivrajpur and not to PS. Shivli, whose jurisdiction, the murder took place.

15. C.W. 2, Sri B.D. Singh was incharge, outpost Chaubeypur on that date i.e. 28/29-8-78. He had received an oral information that a dead body had been received at the P.H.C. Chaubeypur. He went there. A buffalo cart was standing. There was an injured person and also the dead body. On an interrogation of the persons present there, he was told that the matter related to the jurisdiction of P.S. Shivli. The Doctor available there provided First Aid. He arranged for the truck for carrying the deceased to the P.S./Distt. Hospital and instructed them to go in the truck. Thereafter, he went elsewhere in connection with his duty. He did not apply any pressure upon the truck wala for carrying the dead body. PHC Shivli is about 16 Kms from PHC Chaubeypur.

16. P.W. 6, S.I. Sri Siya Ram Sharma has conducted the investigation from the beginning till end. He proved the other documents in connection therewith.

17. The accused in their statements Under Section 313, Cr.P.C. have denied the allegations against them and have alleged that on account of enmity, they have been falsely implicated.

18. D.W. Sri Ashok Dwivedi, Advocate has come to prove some affidavits allegedly filed by the witnesses of the prosecution side, who have disowned that they saw the incident with their own eyes.

19. After perusal of the entire evidence and circumstances on the record, the learned trial Court concluded that the accused had committed the crime. He found both the accused guilty and passed the order impugned.

20. Feeling aggrieved, the accused have filed these appeals.

21. We have heard the learned counsel for the parties at stretch and gone through the record. We find that there is absolutely no force in these appeals and they deserve to be dismissed.

22. The accused, as stated above, in their statements Under Section 313, Cr.P.C. have generally denied the allegations against them. But they have not stated that the murder was committed else where than what the prosecution states. Similarly, the injuries received by the deceased as well as P.W. 1 Sri Mathura Prasad have not been seriously denied. Accused Hari Babu had said that he was on inimical terms with co-accused Awadhesh, although they are 1st cousins of each other. There had been a history of litigations between the two families. Not only this, the father of co accused Awadhesh had grabbed the property belonging to him and his family after the death of his father. There was an enmity between him and Chiddu Master also and at the behest of Chiddu Master, he has been falsely implicated, vide his statement Under Section 313, Cr.P.C. in reply to question No. 18. Awadhesh, in reply to question No. 9, states that he was also inimical to Chiddu Master and in order to save his son Vinod Kumar he had falsely implicated the accused. Additionally, he has stated that his father has been serving in Kanpur for the last about 20 years. On the date of occurrence, his mother, brother Virendra and sister Meera were in Kanpur and not at the place of occurrence. His father visited his village some times, but not regularly. There was enmity between his family and the family of co-accused Hari Babu. They are not even on talking terms. There was a litigation between the two families also. In fact, Smt. Kusuma Devi was behind this incident and for the implication of the accused. This way, both the accused did not dispute the date, time and place of occurrence.

23. From the evidence of Dr. H.C. Prasad, P.W. 4, it is clear that the complainant Sri Mathura Prasad had received two injuries, which could be of the time of the incident i.e. 28-8-78 around sun set. No suggestion was given to him that the injuries were fake and fabricated by him or by somebody else. The only relevant question was that there could be a variation of 6-8 hours regarding the lime of incident given by him. Therefore, from the evidence of Dr. H.C. Prasad, it is clear that Sri Mathura Prasad had received injuries, which could be co-terminus with the injuries of the deceased Sheetal. Not only this, P.W. 5, Dr. Laxmi Sahai Jauhari has also deposed that on 28-8-78 at about 11 or 12 p.m. in the night, the complainant Sri Mathura Prasad along with the dead body came to the P.H.C. Chaubeypur, where he was posted. He pronounced him dead and was going to medically examine Sri Mathura Prasad and hardly written a line when S.I. Sri B.D. Singh took him out of the hospital. This fact is noted by him in the medico-legal register that the examination of the injured could not be completed. However, it is established that Sri Mathura Prasad was an injured person and in that state, he had been brought to Dr. Jauhari of PHC Hospital, Chaubeypur around mid night.

24. P.W. 7, Dr. Shyam Swarup conducted the post-mortem examination on 30-8-78 at about 1 p.m. and noted the injuries as done by him above. He had opined that the injuries were sufficient in the ordinary course for causing the death and these injuries could have been received by the deceased on 28-8-78 between 6 and 10 p.m. He has not been cross-examined at all. Thus the time of occurrence is fixed. It was a rainy season. The occurrence took place in the village. Dusty and muddy roads had to be covered by the buffalo cart. Nay, a lot of time was wasted by the village people in weeping and crying after the murder. Several lip sympathisers arrive there and start questioning to all the persons present there, as to how the incident occurred. Thus some valuable time was lost in this process. The villagers are rustic people. They did not know the legal value of every minute lost in that process. But one thing they know is that the injured should be removed to the hospital and it was in this process that the injured were brought to the P.H.C., Chaubeypur and the examination as well as after-death legal ceremony started. P.H.C. Chaubeypur is not in the jurisdiction of P.S. Shivli, in whose jurisdiction the murder took place. Therefore, the report could not be lodged in the night. It is also apparent that the police outpost incharge Sri B.D. Singh was not

very much faithful, towards his duty as a police officer. But he knew one thing that technically, he could be held responsible for any delay and disturbance caused. Hence he arranged for a truck and after giving some instructions to the truck owner, he left the scene and did not ensure that the companions were carried up to P.S. Shivli along with the dead body, as the truck driver was not willing to take the dead body. The reason was simple. He has admitted that since the murder did not take place in his jurisdiction, he did not talk to the truck wala for rent or hire charges. But it was a fact that truck walas are not readily prepared to carry the dead body in their trucks. He, notwithstanding told the truck wala that he could take the dead body on his truck if he so chose. But he did not apply pressure upon him to carry the dead body in his truck. This way, he is not clear as to how 16 Kms. journey from Chaubeypur to P.S. Shivli was performed. Hence, this cannot be said that this is a great legal flaw and it has caused immense delay in lodging the report. We do not agree. The reluctance on the part of Sri B.D. Singh, is not appreciable.

25. In this background when the complainant Sri Mathura Prasad says that from Chaubeypur Hospital, he started for the P.S. Shivli along with the dead and got the report lodged there, it cannot be easily brushed aside. He has said at page 29 of the paper book that since his hands were trembling on account of the incident, he got the FIR scribed by Sri Shivraj Bali, which took an hour. He has also said that he reached the P.S. a little earlier and wanted to lodge an oral report, but the Head Constable insisted that he should bring a written report and thus, he got the FIR scribed in the night outside the P.S. The journey was covered by a buffalo cart. The G.D., Exhibit Ka-14 shows that the deceased had been brought to the police station by the complainant on a buffalo cart. On this point, there has been no cross-examination. Therefore, simply because a truck was apparently made available by Sri B.D. Singh, it cannot be believed that in fact, the journey from Chaubeypur to Shivli was transacted in a truck. Rather, it appears that the journey was conducted by a buffalo cart. This way, it cannot be said that the FIR was lodged after delay on 29-8-78 at 5 a.m. The speed of the buffalo cart would hardly be 2 Kms. per hour. Hence the journey was completed between 4-5 hours from Chaubeypur to Shivli. Therefore, it cannot be said that there was any delay in reaching the police station. From the place of occurrence via Chaubeypur the

journey was conducted also in a buffalo cart in a hope that by providing medical aid at the earliest, the life of Shitala Prasad could be saved. But unfortunately, Shitala Prasad breathed his last near the village Tatiapur and only the dead body was carried upto Chaubeypur and thereafter, up to Shivli in a buffalo cart. That also indicates that there was no hurry for reaching the police station, Moreover, it was the dark light, therefore, the people would have thought otherwise before embarking upon the journey from Chaubeypur to Shivli.

26. Strangely enough, a large number of suggestions were given. But it was not suggested to Sri Mathura Prasad P.W.1 that the journey was conducted by him from Chaubeypur to Shivli in a very fast-moving vehicle and not in a slow moving buffalo cart.

27. Smt. Phool Kumari, P.W.2 in her Examination-in-Chief has deposed that the journey up to Chaubeypur was performed in a buffalo cart. She also said in the cross-examination that the buffalo cart was driven by Babu Lal. She further states that she remained at Shivli till the dead body was sent for post-mortem examination. It was put to her that she did not tell the I.O. that she covered the journey in a buffalo cart and the same was driven by Babu Lal. She has denied it. Thus the learned cross-examiner thought that his duty was over and he did not put any searching questions to this lady also. She has clearly stated at page 34, in the cross-examination that the journey up to P.S. was performed in a buffalo cart, then driven by Sri Kishori, but while returning from the P.S., Babu Lal drove the vehicle. She has also denied that the dead body was carried from Chaubeypur to Shivli by a truck. Emphatically she states that she reached the police station Shivli at about 4-30 or so. She has denied the suggestion that the police staff was busy in connection with some duty elsewhere. Therefore, the statement of Smt. Phool Kumari goes uncontroversied. It puts a seal of authenticity upon the statement of the complainant Sri Mathura Prasad, P.W.1.

28. This way, it is held that the FIR in this case was lodged without delay and whatsoever delay is apparent, that stands fully proved and explained. Hence, it cannot be said that the FIR is the produce of consultation and confabulation.

29. Another beauty of this FIR is that it contains everything in synopsis regarding the incident, namely, the date, time and place of incident, motive behind the crime, names of the witnesses, weapons used by the accused names of the accused and role played by them. It also contains the manner, in which the assault was committed, the place where the accused were standing and hurling abuses and so on. Therefore, it cannot be said that the prosecution has made any embellishment or improvement in its case after consultation with legal brains. This is a family of Malies, a backward community, where literacy is a dream and illiteracy and ignorance are the hall-marks. The complainant and others are residents of village. Therefore, they did not realise the legal importance of reaching the P.S. at the earliest. Even then, they have tried to explain every minute after the murder and we held that the explanation given by the prosecution, is trustworthy. The learned trial Court has come to a correct conclusion that the FIR was lodged without delay and it was a product of a virgin mind of the complainant and not a result of consultation and confabulation. The learned trial Court has also rightly concluded that no embellishment or improvement has been made during the course of trial and investigation, in the original prosecution story as given in the FIR. We put a seal of authenticity upon the conclusions drawn by the learned trial Court with regard to lodging of the FIR and we, further, hold that such a beautiful FIR is a veritable asset to the prosecution case and it can be used safely for corroborating the prosecution case.

30. Sri Mathura Prasad, the complainant is an injured witness. His injury report has been proved as noted above by two Doctors. One Doctor H.C. Prasad, P.W. 4 has opined that the injuries could be caused on 28-8-78 around sun set. This statement of his remains unscathed. The other Dr. L.S. Jauhari, P.W 5 has also deposed that the injured was brought before him at about 11-12 p.m. on 28-8-78 and he had just started his medical examination after pronouncing Shitala Prasad as dead, when Sri B.D. Singh, Incharge, outpost Chaubeypur intervened and did not allow him to complete the medical examination of the complainant. Hence for this idiosyncrasies of Sri B.D. Singh, the prosecution case cannot be thrown to the winds, nor it is possible for us to reject the statement of Sri Mathura Prasad or dispute his presence on the spot or dispute the fact that he was an injured person.

31. In this background, we propose to examine Sri Mathura Prasad's testimony being fully cautious of the fact that he is the real brother of the deceased and an interested-person in the success of the case. We have kept this caution in our mind throughout.

32. The first hallmark of his testimony is that the complainant is an injured witness and his injuries are proved to be co-terminus with the injuries received by the deceased. His house is not very far off from the house of accused person. In the estimation of the I.P., the distance was about 75-80 paces from the house of the complainant. It was only 30-40 paces from the house of the accused. Moreover, the background of the incident between Rajesh Kumar, P.W. 3 and the accused, near the culvert, on the point of cycle, had come to the knowledge of the complainant. Just immediately thereafter, Smt. Phool Kumari was summoned under a pretext that she was required to talk to the mother of the accused Awadhesh Kumar. Incidentally, it must be noted that the victim's family is of Malis, a backward class. The injured are Brahmins, an upper caste people. In the villages, caste considerations prevail and still Sobarnas feel that they are superior to other classes and castes in the society. Therefore, when a Mali had declined the request of the accused (Brahmins), the family of Brahmins must have felt aggrieved and very much humiliated. They were helpless in suffering and bearing the insult and humiliation caused by P.W. 3 Rajesh Kumar, to the accused. Exchanges of abuses had also taken place (between the two camps). So, it was quite natural for the mother of the accused to express her anger and anguish upon the conduct of P.W. 3, Rajesh Kumar, as she was the seniormost member of the family. Similarly, P.W. 2, Smt. Phool Kumari would also be anxious to ensure that the dispute comes to an amicable end, if at all, her son had misbehaved with a man of upper caste. Therefore, she would ensure that the matter was patched up and brought to an end without allowing the situation to further aggravate. That is why, she readily agreed to go to the accused after receiving an errand from the mother of Avadhesh Kumar, accused. Hence it cannot be said that her visit in the house of the accused on receiving the message, was unnatural. P.W. 2 being an aged lady had seen the days when upper caste people were committing torturous acts against the people of lower caste and also the consequences of any retaliation against them. Hence the moment the opportunity was received, she

tried to patch up the matter in the interest of her family and sons. Taking the totality of the circumstances into consideration, it cannot be said that the conduct of Smt. Phool Kumari was unnatural.

33. It has not been suggested to her that she did not visit the spot. Therefore, her statement becomes further fortified.

34. Not only this, the following of the mother by the P.W. 1, the complainant, was equally natural. The complainant could have easily thought that the accused side might not misbehave with his mother. That is why, he would follow her in a natural way. Similarly, P.W. 3, Rajesh Kumar would also follow her mother and so also the deceased Shitala Prasad. The distance between the place of occurrence and the house of the complainant is no more than 60-80 paces. That is visible from the house of the complainant easily. There was no natural or unnatural obstruction placed in between the two places. The incident could be easily visualised and seen from the house of the complainant. It was, in this background that Smt. Phool Kumari was followed by the deceased and also by Rajesh, P.W. 3.

35. A look at the site-plan prepared by the I.O. will further clarify that the place was surrounded by the local inhabitants of people belonging to Brahmin community. If at all, the complainant wanted to shift the place of occurrence elsewhere under consultation, he would not have chosen the place, which was in the midst of the Brahmin community. Brahmins had surrounded the place of occurrence with their houses. This way also, it appears that the place of occurrence has not been chosen as per legal requirements. But it was the only place, where the incident could take place being surrounded by all the houses belonging to the clan and caste of the accused.

36. Not only this, the I.O. recovered the blood-stained and ordinary earth from the place.

37. Numerous suggestions were put to the I.O. But it was not suggested to him that the place of incident was som where else. Hence, we agree with the learned trial Court that the place of occurrence in this case, is fully established. With the help of the site-plan, we have also found ourselves in agreement with the learned

trial Court's conclusions that the place of occurrence could be easily seen from the house of the complainant and in absence of any sort of obstruction, natural or unnatural, the complainant and his family members could see the occurrence easily even from their house. It was not necessary that the occurrence should be from a very close place only. The moment the complainant's house door was opened, the members of the family would start seeing the place of occurrence from there itself. The more they came closer, the better view of faces and physique could be available to them. It has come in the evidence of all the P.Ws. that the incident took place around sunset, i.e. about 6-45 p.m. on that date. Hence there was absolutely no difficulty in identifying the known culprits even from the house of the complainant. Hence they could see the occurrence without any difficulty. The prosecution has not come with a long standing background of enmity as a motive for commission of this offence. Only a few minutes prior to the incident, exchange of hot words, abuses and abusers between Rajesh, P.W. 3 and the accused had taken place. The accused had an audacity to return the abuses in terms of the accused themselves, which was virtually unheard of and even unimagined. But instead of taking the P.Ws. at the house of the complainant, they thought it a better device to call the mother of the accused, knowing it fully well that the other members of his family would also follow her. They wanted to trap the P.Ws. through the medium of their mother. Every body knows that no son worth the salt would tolerate the insult to his mother and father. This is what the P.Ws. did and they were assaulted. In this background of different features of the case, we find that the statement of Sri Mathura Prasad is quite natural. It finds support not only from the oral evidence on the record, but also medical evidence as noted above. He is a semi-literate person having read upto few standards. Therefore, it is difficult to expect that he will give a computerized version of the occurrence. Computerized version is virtually a denial of justice. That should not be encouraged. Some natural faults of the human beings should not be concealed in order to show that human beings do not commit offence or they do not tell lies or they do not forget things. We have to adopt a natural standard of measurement in appreciation as applicable to these persons only and not with the sophisticated version of the cities and with that of the elites of the society. The fact that this mother was called from her house by the accused, she was assaulted near the

place of occurrence and the witnesses saw the incident, the complainant received the injuries and so on. These are the hall-marks of the case. On this point, the complainant's statement has gone unscathed. Minor tit-bits do not make any dent in the prosecution case. Right upto the state of reaching Chaubeypur and then to Shivli for lodging the report, he has practically given a logical answer to all the questions put to him and on these natural points, he has faced the challenge veritably.

38. At page 2 of the paper book he has stated that Babu Lal, Housla and Ram Dularey had also seen the incident with their own eyes. All these persons are Malies, belonging to his own caste and virtually related to him. Even Smt. Kusuma Devi and Sena Lal had also seen the incident. It was said that on account of Smt. Kusuma Devi, this case has been launched at the behest of Chidda Master. It is difficult to believe. Much sound was made against the statement of this person, which has been virtually obtained in the cross-examination or which has been written wrongly, may be at the dictation of the police officer or at the level of the record keeper of the statement that instead of Hari Babu, his father Prem Narain has been said to be the person who had caused injury. There may be a slip of tongue or slip of pen. When the statement is read in the entire context, it is apparent that it is clerical error of the same nature. He has denied the suggestion at page 27 that his injuries were forged and fabricated. At this very stage, we may refer to the statement of PW 4, Dr. H.C. Prasad. It has not been suggested to him that the injuries of the complainant were forged. The date, time and place of the occurrence or the nature of injuries too have not been disputed before the Doctor. Therefore, a bald suggestion made to this witness that his injuries were forged, cannot be entertained. Moreover, it finds support from the evidence, on the record. Hence, this suggestion has been rejected by this witness. He has said that he reached the police station at about 4.30 a.m. and stated the matter to the Head Constable, who insisted upon him to bring a written F.I.R., which he had to comply with. It was urged that normally the police officer would not have insisted for a written F.I.R. We have come across cases in which blatant allegations are made that the F.I.R. was not correctly written for some consideration or the other. The police officer finds themselves helpless in meeting this situation. Therefore, they have thought of a better device to obtain a written F.I.R., so that personal

allegations against them may not be made. We find that it was this feeling in the mind of the police personnel to insist for a written F.I.R.

39. At page 29, he says that all along his mother was apologising for the conduct of her son Rajesh, even then the accused and others did not relent. The poor lady tried to save her son Shitala Prasad from the onslaught of the accused by going closer to him. But she was pushed aside by the accused. Her age was 58 years on the date of occurrence. Hence the lady could not do anything further and in her sight, her son Shitala Prasad was murdered by the accused, of course she did not receive any injury while being pushed aside by the accused. She clearly states that within one and a half minutes, the marpit concluded and accused escaped. The blood had spread at the place where Shitala Prasad had fallen down. At that time, there was no darkness. Burning of lights, have not been started. In fact, after arrival at the house of the complainant, Chimnies were giving the light. It means that the incident was of the time when everything was visible due to sun light itself and the allegations of the accused that it was very dark by that time, cannot be entertained. Much ado was raised on the ground that the accused inter-se had disputes for a very long time, therefore, they would not have joined at one platform to assault the complainant and his family members. Therefore, the allegations that they joined in the marpit together, against the prosecution side, cannot be said to be probable. This argument has been properly met by the learned trial Court in these words :- vide para 24 in the middle of the page

It has been urged on behalf of the accused that though inter se they are at daggers drawn as there was protracted litigation with their fathers and in this regard, the accused have filed Ext. Kha-13, copy of charge sheet of a case under Sections 323 and 324 of the I.P.C., the complainant of which is the father of accused Avdhesh Kumar and the accused were brother of accused Hari Babu. It was a case of the year 1971 and decided on 5th of April, 1971, vide Ext. Kha-14. Yet another report lodged by a brother of accused Hari Babu against the father of accused Avdesh Kumar, Ext. Kha-15, has been filed, which is of the year 1968, Ext. Kha-18 is the copy of a judgment in consolidation courts in Babu and father of accused Avdesh Kumar. This case was decided on 4th of October 1969. There is yet another copy Ext. Kha-19, which shows that in the year 1971, there was a

case in between a brother of accused Hari Babu and mother of accused Avadesh Kumar and this was dismissed in default on 28th of July, 1971. These papers date back to period of 7 years prior to the incident in question. It cannot be said that the enmity, if any, in between Prem Narain, father of accused Avdesh Kumar and Deo Narain, father of accused Hari Babu, continued to exist for all these 7 years as well vis a vis the property of their father. These papers do not go to show that there was enmity in between accused Avadesh Kumar and Hari Babu at the time of this incident. May be, there might have been some bad blood in between the fathers of the two accused, but it has got absolutely no bearing in the case before me. I have earlier observed that the two accused were present at Pachaur culvert where the altercation between them and Rajesh PW 3 had taken place. Both the accused belong to one caste and there is every probability of their having been on good terms with each other irrespective of these being a litigation between their fathers. In the circumstances, the papers filed by the defence do not go to show that the two accused could not have formed a common intention for killing the deceased and causing injury to PW 1 Sri Mathura Prasad.

40. In this context we are reminded of an episode in Mahabharat. Yaksh, the friend of Arjun (Pandav) badly humiliated Duryodhan, the real enemy and cousin of Pandavas. He had put him in custody. All the efforts of Kauravas to extricate Duryodhan from the clutches of Yaksh failed. The news somehow or the other reached Yudhishthir, who called upon his brothers, Arjun and Bhim to go and extricate Duryodhan from the custody of Yaksh and bring him to him (Yudhishthir), Draupadi and all the Pandavas except Yudhishthir did not relish this idea. But Yudhishthir insisted and Arjun and Bhim went and fought the battle with Yaksh and brought Duryodhan as well as Yaksh before Dharamraj Yudhishthir. The first question, which was put to Yudhishthir by Yaksh was that this is Duryodhan on whose account you have been thrown into the forest and made beggars. So you should not help him at that juncture. The sovereign reply of Yudhishthir is like this, when we fight with each other, then the battle between Kauravas and Pandavas i.e. five. v. 100. But when an outsider comes in the battlefield, we pose as if we are one five + hundred = 105. Yaksh was sadly mistaken and went away. This is what has happened in this case. Although, inter se disputes between the parties was there about 5-7 years prior to the incident. Even if it is assumed that they had not

come very closer to each other as their intra-party disputes were still there but when a man of lower caste had abused the brother of the accused or both of them, not only these two families, but also the entire Brahmin community will take retaliatory steps and they will ensure that deterrent punishment was inflicted upon the accused so that not only they but others too like them could never dare to challenge the onslaught of Brahmins and never dream of insulting and abusing them. When the case is viewed in this background and perspective, all the imaginary arguments of the learned counsel must fail. Thus after a thread-bare analysis of the statement of the complainant Sri Mathura Prasad combined with the statements of Doctors as noted above, we find that Shri Mathura Prasad has given a substantially correct version of the occurrence and he is a totally reliable witness. Taking these things into consideration, we find that the solitary statement of Sri Mathura Prasad is sufficient to record a conviction against the accused and his testimony needs no other corroboration at all.

41. In this background, we view the statement of PW 2, Smt. Phool Kumari, the mother of the deceased. She has stuck to the version given in the F.I.R. We have already recorded a finding that her presence on the spot was very natural. The unsuspecting lady, who had seen 58 years in the world was aware of the fact unless the fire of anger of the accused was extinguished at the earliest, the havoc may be created by the and the fire will go totally out of control. Under these circumstances, she had tried to reach the spot and save the situation by apologising before the accused and other family members. But they did not relent and had the object achieved by murdering Shilala on the spot. On other material aspects she has corroborated the prosecution story regarding the date, time and place the manner of assault etc. She has clearly admitted that she was not injured by the knife but only pushed aside and fell down and received minor injury, but it was not bandaged at all. Not only this in her presence, her son was murdered. The mother must have forgotten all her personal agonies and troubles. But she has strictly stated that it was the time when the sun had not set and the light had not been burnt as natural light was available. Shitala Prasad's body was lodged in the buffalo cart and brought to the P.S. via Chaubeypur. She has admitted the presence of the other persons also near the spot. But they have not been produced. It has been urged that the natural witnesses have not been examined

and only interested persons have been examined.

42. As observed earlier, the incident took place at the place surrounded by Brahmins. So she did not expect the PWs of locality would depose in her favour. Smt. Kusuma also could not dare to come there. The fear with which these persons of the village were afflicted, is clearly evident from the fact that the accused had tried to obtain the affidavits of some of the PWs who initially lent under Section 161, Cr.P.C. supports to the prosecution case. Even during the course of trial, the accused tried to interfere in the trial by tampering with the evidence and threatening the witnesses. She has also denied that Shitala Prasad was murdered on account of Smt. Kusuma Devi. Shitala's dead body was brought to the P.S. in a buffalo cart.

43. It is important to note that various types of questions were put to Smt. Phool Kumari no doubt, in the cross-examination but not even a single question regarding the fact i.e. happening of the, incident was put to her. Virtually, on the facts deposed by her, there is no cross-examination at all i.e. who were the assailants, what was the weapon and what was the role played by accused etc. So we find that her evidence is singly sufficient to record a conviction against the accused without the aid of any other evidence on the record. But when her statement is read in combination and in support of the statement of PW 1 Sri Mathura Prasad, it becomes an impregnating rock of integrity and truth. It does not suffer from any fundamental error or improbability. Hence, we endorse the finding of the learned lower court that Smt. Phool Kumari, PW 2 has given a truthful version. Shorn of minor tit-bits and unnecessary details, she has spoken the whole truth in synopsis. That is why, perhaps, the learned cross-examiner could not dare and muster courage to cross-examine her on facts.

44. P.W. 3, Sri Rakesh Kumar is a person on whose cause PWs 1 and 2 had been humiliated and assaulted. He was the last person to reach the spot probably under a fear that as the plate was hot as the culvert incident was quite recent, the accused might choose him to kill. That is why, he was the last person to reach there, meaning thereby that he took every precaution to save himself from the attack of the accused. He has narrated the culvert incident in detail and the story

of the prosecution has been supported by him right from the place of occurrence to the P.S. culminating in lodging of the F.I.R. at 5 a.m. Regarding the time of the incident, being before sun set, he has proved the fact stoutly. He has clearly stated at page 27 that the place of occurrence was clearly visible from the place where he was sitting at his door front. He did not state before the I.O. that he received knife injuries. In para 18, states that he started from Kanpur after doing his duty at Kanpur Moti Jheel and arrived at about 6 p.m. on the culvert. It is wrong to say that he had started at 6 p.m. from Kanpur. His statement under Section 202, Cr.P.C. has been wrongly put to him. Even then, this witness has given a correct reply. In fact, the entire ire of the lady accused was towards him. They were exhorting the accused to kill him (Rajesh). That is why, he kept himself at little distance from the reach of the accused. Thus on all material points, he has supported the prosecution, story. He clearly stated that there was no prior enmity between the parties nor any motive for false implication or assault. Despite several efforts to bring minor differences and contradictions to the fore, the witness has cautiously proceeded in the cross-examination and have the truth.

45. Whether Mathura Prasad was present at the time of preparation of panchayatnama, was also a point raised by the learned counsel for the accused. That simply shows the difference of 1 or 2 hours either way. Even if Mathura Prasad remained upto.10 p.m. upto the conclusion of the panchayatnama, it does not make any difference because everything was over when the dead body was despatched. An hour before or an hour later makes no difference. The I.O. has very elaborately stated on oath regarding the interrogation done by him. In para 9, he states that he did not send Mathura to Shivli for medical examination to that dispensary only, medico legal cases are not dealt with there and also for some reason he did not refer him back to PHC, Chaubeypur, rather, directed him to go to the Kanpur Hospital. This is what he did. Since the entire family of the complainant was going to Kanpur along with the dead body of Shitala Prasad, therefore, it was convenient for Mathura Pd. also to get him medically examined there. As observed earlier, to the Doctor, nothing was suggested regarding the nature of the injuries or the time of assault. Therefore, the statement of the I.O. is also substantially correct.

46. It was lastly urged by the learned counsel that Km. Meera, the sister of Awadhesh Kumar, accused and his mother, although arrayed as accused, have been let off by the police. Therefore, the prosecution story should be treated as false. The reply is certainly 'no'. In fact, if the trial court has committed any error, this is that he did not exercise his power under Section 319 of the Cr.P.C. by summoning the female accused himself, but since the chapter is closed and those persons are not before us, therefore, we do not want to make any further comments. But we can say only this much that from the evidence on the record, even these two ladies, prima facie appear to be guilty of charges under Section 302, read with Section 34, I.P.C.

47. It is wrong to say that there was an in ordinate delay in lodging the report between 12 p.m. and 5 a.m. We do not agree. It was a rainy season. People as well as the buffalo must have gone tired and unfed during the day in jungle. Hence the buffaloes too could not be ploughed like a machine and taken to the P.S. at the earliest without taking any rest. These persons do not know the value of time in lodging the report in the same right. They think the report at 3 a.m. and 5 a.m. means the same. The S.I.B.D. Singh, has played a dubious and suspicious role in dis turbing the medical examination of the complainant at PHC Chaubeypur. His action must be con-demned. We do so. But it is wrong to say that the investigation was unfair.

48. After concluding that all the three P.Ws., who appeared for proving the fact of the case, have given truthful version and their presence on the spot cannot be disputed, we ignore the argument that being relation witnesses, they should not be believed. This argument has been settled by a catena of decisions of Hon'ble Supreme Court and several High Courts in India that it is not the relation or partisannness of witnesses that should enable the Court to discard them, rather, the Court has to see as to whether they are telling the truth and their presence on the spot is natural. Once this acid test is fulfilled, nothing more is needed.

49. Not only this, corroboration is not legal requirement, rather, it is, requirement of prudence. Hence the worth of the witnesses examined by the prosecution, cannot be condemned simply because others equally truthful and independent witnesses

were not produced. In the village nobody wants to poke his finger in others' dispute. That is why a sense of indifference and neutrality is suspected amongst the village people.

50. Thus, after a threadbare analysis of the entire evidence and circumstances on the record, we find that there is no force in these appeals and they deserve to be dismissed.

51. The appeals are dismissed accordingly. The impugned judgment and order of the learned VIIIth Addl. Sessions Judge Kanpur are upheld. The appellants are on bail. They shall surrender their bail bonds and surety bonds are, hereby cancelled. They shall be immediately taken into custody by the C.J.M. concerned by issuing a non-bailable warrant against them. Thereafter the C.J.M. shall send a compliance report within a month, to this Court.

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