



2025 INSC 409

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 550-551/2015

THE STATE OF UTTAR PRADESH APPELLANT(S)

VERSUS

SATENDRA, ETC. RESPONDENT(S)

O R D E R

1. The State of Uttar Pradesh filed the present appeals challenging the judgment dated 29.02.2012 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos. 5509/2007 and 4954/2007, accepting the appeals filed by the respondents, namely, Satendra and Neetu, and acquitting them of the charges under Sections 148, 450/149, 323/149, 307/149 and 302/149 of the Indian Penal Code, 1860.¹

2. The trial court, by judgment dated 25.07.2007, had convicted the respondents, namely, Satendra and Neetu, on the aforesaid charges, while acquitting as many as six accused, namely, Abdul Rehman; Shamsad, son of Khursheed; Shamshad, son of Farzanda;² Fateh Mohammad alias Fotu/Photu; Jabir; and Tausif.

3. The acquittal of the aforesaid accused persons was not challenged by the State and has become final.

¹ For short, 'IPC'.

² Shamshad, son of Farzanda, died during the pendency of the trial. Therefore, the case against him stood abated.

4. We have heard the learned counsel for the State of Uttar Pradesh and for the respondents, namely, Satendra and Neetu, at some length.

5. In our opinion, the High Court erred in appreciating the evidence of the three eye-witnesses, namely, Rajveer Singh (PW-1), son of Lakshman Singh, Rajpal Singh (PW-2), son of Lakshman Singh and Lakshman Singh (PW-3). Rajveer Singh (PW-1) and Rajpal Singh (PW-2) are the brothers of the deceased, Dharampal, while Lakshman Singh (PW-3) is their father.

6. The date and time of the occurrence is the night between 30th and 31st January, 2004, at about 12.00 midnight. The incident occurred at the house where Lakshman Singh (PW-3) and his family, including Rajveer Singh (PW-1) and Rajpal Singh (PW-2), were residing.

7. The three eye-witnesses, namely, Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3) have, in seriatim, deposed about the presence of the respondents, namely, Satendra and Neetu, along with three or four other persons, who had broken into the house. It is deposed that two persons came from the roof, and the others entered through the main door, carrying firearms and arms. They also testified about identifying the respondents, namely, Satendra and Neetu, because of the light available from the torch and the lantern. It is important here to state that the names and the parentage of both the respondents, namely, Satendra and Neetu,

were duly recorded and mentioned in the complaint and the First Information Report³ No. 24 of 2004 dated 31.01.2004 registered soon thereafter at 02.30 a.m. with Police Station - Budana, Muzzafarnagar, Uttar Pradesh.

8. Shish Kanwar Rana (PW-5), Constable, deposed about the registration of the said FIR at about 02.30 a.m. on 31.01.2004 by Krishan Pal Rathi, Constable, who could not be examined as he had expired in 2005. Shish Kanwar Rana (PW-5) was posted at the aforesaid police station and was present during the registration of the FIR. He identified the signatures and handwriting of Krishan Pal Rathi, Constable.

9. We will now deal with the so-called discrepancies which weighed with the High Court to upset the findings recorded by the trial court and disbelieve the eye-witness version of Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3).

10. The first ground and reason given by the High Court is that there was a discrepancy as to whether the accused had muffled up their faces when they entered the house. Reference was made to the purportedly divergent testimonies of Rajveer Singh (PW-1) and Rajpal Singh (PW-2), who had stated that the intruders did not have their faces covered, whereas Lakshman Singh (PW-3) had deposed that the intruders, including the respondents, Satendra and Neetu, had muffled up their faces. Lakshman Singh (PW-3), however, deposed that, during the scuffle, he saw their faces and was able to

3 For short, "FIR".

identify and recognize the respondents, Satendra and Neetu.

11. We find that the aforesaid alleged discrepancy is not there at all. We considered the testimonies of Rajveer Singh (PW-1) and Rajpal Singh (PW-2), who stated that, at about midnight, two miscreants came down from the roof by climbing down the staircase and opened the gate. Thereupon, three or four miscreants had come inside. Lakshman Singh (PW-3), the father of the deceased, Dharampal, had raised an alarm, upon which the miscreants had started assaulting him. On hearing the noise, and after getting a torch and a gas lantern from their rooms, the brothers, namely, Rajveer Singh (PW-1), Rajpal Singh (PW-2), Dharampal (deceased), Udaiveer (not examined), Jaipal (not examined) and Vijaypal (not examined), ran towards their father, Lakshman Singh (PW-3), with lathis and sticks. The miscreants fired gunshots from country-made pistol(s) with an intent to murder them but missed. However, the deceased, Dharampal, chased the miscreants while they were running away, and the respondent, Satendra, who was a fellow villager, fired a gunshot, which hit and killed Dharampal. They also named respondent, Neetu, who belonged to the same village, as one of the miscreants who had been identified by them. The death of Dharampal, as a result of a gunshot injury, was duly proved by the postmortem report (Exhibit - Ka. 3), which was conducted by Dr. Sudhir Kumar (PW-4). It was proved that the bullet pierced and exited through the upper side of the chest of the deceased, Dharampal, causing his death.

12. We have also examined the testimony of Lakshman Singh (PW-3) and compared the version given by him with the versions of Rajveer Singh (PW-1) and Rajpal Singh (PW-2). While appreciating their testimonies before the Court, one must keep in mind that they are rustic villagers who were suddenly shaken up by the miscreants entering their house at midnight. They confronted the miscreants, and there was a scuffle between them and the miscreants. The identification of the two accused, namely, Satendra and Neetu, is specifically deposed to in their testimonies, and this factum is corroborated by the FIR (Exhibit - Ka. 4), wherein their names were duly recorded, shortly after the occurrence.

13. Another alleged discrepancy relied upon by the High Court to acquit the respondents, Satendra and Neetu, in our opinion, is more in the nature of a contradiction in the reasoning of the High Court. The High Court observed that the eye-witnesses, Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3), have deposed one and the same thing without deviating much from the stand taken in the FIR and, therefore, their version should not be accepted.

14. We not only find the above reasoning contradictory, but on reading the testimonies of Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3), we are of the opinion that they have been forthright about the facts in the versions stated by them. Although there are some minor discrepancies in their versions, the overall consistency between their statements in the

Court and their earlier statements implicating both the respondents, namely, Satendra and Neetu, and the acts on their part, has been clearly and lucidly brought out.

15. Thus, we would not treat the versions given by Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3) as improbable or unnatural. On the other hand, their versions and the facts stated by them are utmost believable and should be accepted, as held by the trial court.

16. The third reason given by the High Court, in our opinion, refers to a minor discrepancy as to how the grapple had taken place. The High Court also accepted that there was grappling, as was stated by the three eye-witnesses. As per the versions given by Rajveer Singh (PW-1) and Rajpal Singh (PW-2), at the time of the incident, on account of the light of the torch and the lantern, they were able to identify both the respondents, Satendra and Neetu, who belonged to the same village. We, therefore, reject the reasoning of the High Court that because the respondents, Satendra and Neetu, belonged to the same village, they would not have gone to commit dacoity or would have hidden their faces so as to not be identified.

17. The High Court also referred to the recovery of the pistol (Exhibit-Ka. 13/1) from Satendra and the ballistic report (Exhibit-Ka. 26). As per the ballistic report (Exhibit-Ka. 26), the two empty cartridges recovered from the spot (Exhibit-Ka. 12) could not be matched with the fired cartridge from the country-made pistol

(Exhibit-Ka. 13/1). This, in our opinion, would not, in any way, dilute the eye-witness accounts of Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3). It would only show that the police were not able to recover the cartridge/weapon of the offence. It may be noted that, as per the version given by Rajveer Singh (PW-1) and Rajpal Singh (PW-2), three bullets were fired, but only two empty cartridges were recovered from the spot. The postmortem report (Exhibit-Ka. 3), as noticed above, stated that the bullet had pierced and gone through the body of the deceased, Dharampal.

18. During the course of the hearing, our attention was drawn to some additional facts. First, the respondent, Neetu, was not even charge-sheeted; secondly, the clothes worn by Rajveer Singh (PW-1) and Rajpal Singh (PW-2) were not seized by the police. On the first aspect, the eye-witnesses, Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3) had expressed their anguish and anger at the manner in which the police had conducted the investigation. They openly claimed that the 'Darogaji', who had conducted the investigation, sided with and helped Neetu, who was specifically disclosed/named with his parentage in the FIR (Exhibit-Ka. 4). They had, in seriatim, denied having made any statements on 16.02.2004 to the effect that they had misidentified and wrongly mentioned the name of Neetu along with his parentage, whereas the person who was present at the spot belonged to a different village. On the other hand, they further deposed that they had not implicated anyone else and had stated that the six

other accused, who were acquitted by the trial Court, were falsely implicated and were never present at the spot.

19. It is also a fact that Neetu was not charge-sheeted, but subsequently, when the statement of Rajveer Singh (PW-1) was recorded, an application under Section 319 of the Code of Criminal Procedure, 1973,⁴ was moved, and Neetu was summoned and asked to stand trial.

20. On the question of bloodstains on the clothes, we find that the witnesses deposed that they, that is, the brothers, had lifted the deceased, Dharampal, and had taken his body inside. They also stated that their clothes did not have blood stains, as they lifted the deceased together in a shoulder-leg position. The bullet injury, as per the postmortem report (Exhibit-Ka. 3), was in the chest area. The clothes worn by the deceased, Dharampal, as well as the controlled earth sample (Exhibit-Ka.11), taken during the course of the investigation, tested positive for human blood. However, the blood group could not be ascertained due to the putrefaction of the blood.

21. The contention, which was also accepted by the High Court, that the miscreants had weapons and, therefore, the two eye-witnesses, namely, Rajveer Singh (PW-1) and Rajpal Singh (PW-2), and the other brothers would not have dared to confront and grapple with the miscreants, must be rejected. We are dealing with villagers who were perturbed when they found intruders entering

4 For short, "the Code".

their house to commit dacoity and attacking their father, Lakshman Singh (PW-3). They had not come out empty-handed but with lathis/dandas/sticks to challenge the intruders/miscreants. We, therefore, do not think that the conduct of Rajveer Singh (PW-1), Rajpal Singh (PW-2) and their brothers in challenging the intruders was unnatural, so as to be discarded as unbelievable.

22. Another contention was that Rajveer Singh (PW-1), Rajpal Singh (PW-2) and Lakshman Singh (PW-3) had not given the names of the known intruders to the fellow villagers who had come to the spot after the occurrence. We do not think that this aspect dents the prosecution case, given the fact that the names of the respondents, Satendra and Neetu, were categorically mentioned in the FIR, which was recorded immediately after the occurrence. Interestingly, the Investigating Officer, Jagdish Singh (PW-7), stated that he had visited the spot at 05.00 a.m. during the same night. This corroborates the fact that the FIR was recorded immediately after the occurrence without delay.

23. In view of the above discussion, we are of the opinion that charges under Sections 323, 450, 307 and 302 read with Section 34 of the IPC are made out against the respondents, Satendra and Neetu. We would give the benefit of doubt insofar as the charge under Sections 148 and 149 of the IPC is concerned. Accordingly, the respondents, Satendra and Neetu, shall stand convicted under Sections 323, 450, 307 and 302 read with Section 34 of the IPC. The respondents, Satendra and Neetu, are sentenced as under:

- i. For the charge under Section 302 of the IPC, they shall undergo life imprisonment and pay a fine of ₹10,000/- each.
- ii. For the charge under Section 307 of the IPC, they shall undergo 5 years of rigorous imprisonment and pay a fine of ₹5,000/- each.
- iii. For the charge under Section 450 of the IPC, they shall undergo 5 years of rigorous imprisonment and pay a fine of ₹5,000/- each.
- iv. For the charge under Section 323 of the IPC, they shall undergo rigorous imprisonment for 1 year.
- v. In case of non-payment of the aforesaid fine amounts, the respondents, Satendra and Neetu, shall undergo 6 months of simple imprisonment.

All sentences will run concurrently. The benefit of Section 428 of the Code will be given to them.

24. The respondents, Satendra and Neetu, shall surrender within a period of four weeks from today to undergo their sentences, as noted above. In case the respondents, Satendra and Neetu, fail to surrender within a period of four weeks from today, the police/trial Court will take steps to detain/arrest them for undergoing their sentences.

25. The impugned judgment(s) is modified to the aforesaid extent and the appeals are partly allowed.

26. Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

NEW DELHI;
MARCH 20, 2025.

.....J.
(SANJAY KUMAR)