

(2005) 08 AHC CK 0236

In the Allahabad High Court

Case No : Government Appeal No. 2908 of 1981

The State of U.P.

APPELLANT

Vs

Sankatha, Bake Ram and Bogentar Rai

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 323, 324, 34

Citation : (2005) 08 AHC CK 0236

Hon'ble Judges : M.C. Jain, J;M. Chaudhary, J

Bench : Division Bench

Advocate : N.A. Moonis and K.C. Saxena and A.G.A, for the Appellant; V.K. Singh, G.S. Chaturvedi, P.C. Chaturvedi and S.S. Rathor, for the Respondent

Judgement

M. Chaudhary, J.—This Government appeal has been filed on behalf of the State from judgment and order dated 16th of April, 1981

passed by V Additional Sessions Judge, Azamgarh in session trial No. 76 of 1980 State v. Sanktha and Ors. acquitting accused Bankey Rai and

Yogendra Rai of the charge levelled against them u/s 302 read with Section 34 IPC.

2. By the impugned judgment the learned trial judge convicted accused Sanktha for the offence punishable u/s 304 Part II IPC and sentencing him

to three years" rigorous imprisonment thereunder. However Criminal Appeal filed by accused Sanktha numbered as 871 of 1981 Sanktha v. State

stood abated vide order dated 27th of July, 2005 as he was reported having died.

3. Since accused respondents Sanktha and Yogendra Rai have been reported having died this Government appeal against them stood abated vide

order dated 27th of July, 2005.

4. Brief facts giving rise to this appeal are that at 5:00 p.m. on 15th of January,

1980 Hari Ram lodged an FIR at police station Gambhirpur, District Azamgarh alleging that after sunrise that very morning his father Surya Bali went to his fields and started irrigating the same that in the meanwhile Sanktha also reached there and suspected that he had slashed the embankment in order to irrigate his fields and started vituperating Surya Bali which resulted in altercation between them and Sanktha went back threatening him. At about 11:00 a.m. that very day Sanktha taking lathi and his brother Bankey Ram with "gandasi" alongwith his son Yogendra Rai with gun reached there and started giving blows to Surya Bali with their respective weapons. On hearing hue and cry raised Hari Ram, Ferai, Gobri and several others reached the scene of occurrence and saw all the three assailants giving blows to Surya Bali with their respective weapons and made him fall on the ground. Sighting, the witnesses the assailants took to their heels. Immediately Hari Ram taking his injured father in a taxi went to Mohammadpur Hospital but since there was no doctor available he taking his injured father who was unconscious rushed to District Hospital, Azamgarh where he was admitted. The police registered a crime against the accused u/s 323, 324 and 304 IPC accordingly and made entry regarding registration of the crime in the GD.

5. Medical examination of injured, Surya Bali by Dr. K.G. Mauni, Medical Officer, District Hospital, Azamgarh at 3:30 p.m. the same noon

revealed below noted injuries on his person:

1. Lacerated wound 2 cm x 1.5 cm x bone deep just above eyebrow, bleeding present.
2. Lacerated wound 5 cm x 1.5 cm x bone deep on right side head 6 cm above from right eyebrow, bleeding present.
3. Traumatic swelling with contusion in the area 12 cm x 10 cm over right side forehead, right eye and right upper half of the face.
4. Two incised wounds on dorsum of palmar aspect one measuring 1.5 cm x 0.5 cm x bone deep and the other 2.5 cm x 1 cm x bone deep on left little finger, bleeding present.

The doctor opined that all the injuries except two incised wounds were caused by some blunt object and the two incised wounds by sharp object

and all the injuries were fresh in duration. The doctor also opined that injuries No. 1 & 2 were simple. Injuries No. 3 & 4 were kept under

observation. The doctor also observed that since condition of the patient was poor and he was unconscious, detailed examination could not be done.

6. The injured was admitted in the hospital and he succumbed to the injuries sustained by him the following morning at 8:45 a.m.

7. SI Shanti Prasad Rai to whom investigation of the crime was entrusted went on the spot, inspected the scene of occurrence and prepared its site

plan map (Ext ka 4). He also collected bloodstained and simple earth from the scene of occurrence and prepared its memo (Ext ka 6). He also

recorded statements of the witnesses.

8. SI Balikaran posted at police station Azamgarh Kotwali went to the District Hospital and drew inquest proceedings on the dead body of Surya

Bali, prepared the inquest report (Ext ka 9) and other necessary papers (Ext ka 10 to ka 12) and handed over the dead body in a sealed cover

alongwith necessary papers to Constables Nembu Lal and Rama Shanker for its post mortem.

9. Autopsy conducted on the dead body of Surya Bali by Dr. G.M. Lal, Medical Officer, District Hospital, Azamgarh on 16th of January, 1980 at

8:45 a.m. revealed below noted ante mortem injuries on the dead body.

1. Lacerated wound 1 1/2" x 1/2" x bone deep on right side frontal region 2" above the right eye.

2. Contusion 2 3/4" x 2" on frontal region right side forehead with black eye on right side.

3. Lacerated wound 1 3/4" x 1/2" x bone deep at palmar surface of left little finger

On internal examination frontal bone on right side was found fractured. Base of skull was also found fractured.

The doctor opined that the death was caused due to coma as a result of ante mortem injuries.

10. After completing investigation the police submitted chargesheet against the accused accordingly.

11. After framing of charge against the accused prosecution examined Hari Ram (PW 1), Ferai (PW 3) and Gobri (PW 4) as eye witnesses of the

occurrence. Testimony of rest of the witnesses is more or less of formal nature. PW 5 Dr. K.G. Mauni who medically examined injured Surya Bali

has proved the injury report (Ext ka 3). PW 2 Dr. G.M. Lal who conducted autopsy on the dead body has proved the post mortem report (Ext ka 2). PW 7 SI Balikaran who drew inquest proceedings on the dead body of Surya Bali has proved inquest report. PW 6 Shanti Prasad Rai who investigated the crime and after completing the investigation submitted chargesheet against the accused has proved the police papers.

12. The accused denied the alleged occurrence altogether stating that they were got implicated in the case falsely. Accused Sanktha also stated that Surya Bali asked him to divert the water of the water channel to his fields but he told him that he may divert the water for irrigating his fields next day and not at that time, that immediately he gave him lathi blows and then he also gave him lathi blows. However, the accused did not adduce any evidence in their defence.

13. On an appraisal of the evidence and other material on the record learned trial judge held accused Sanktha guilty of offence punishable u/s 304

Part II IPC and convicting him thereunder sentenced him as stated above. However he acquitted accused Bankey Rai and Yogendra Rai.

14. Feeling dissatisfied with the impugned judgment the State preferred this appeal assailing acquittal of the accused respondents u/s 302 read with Section 34 IPC.

15. We have heard learned AGA for State, the appellant and Sri V.K. Singh learned counsel for accused Bankey Rai and gone through the record.

16. The learned trial judge held that since there was no evidence to support the defence plea nor there was evidence that accused Sanktha received any injury there was no merit in the defence plea.

17. Believing the testimony of three eye witnesses examined by the prosecution the learned trial judge held accused Sanktha guilty for assaulting

Surya Bali with lathi causing him fatal injuries. Since the doctor conducting autopsy on the dead body on Surya Bali deposed that all the ante mortem injuries were caused by blunt object and the wound on the dorsum of palmar aspect was lacerated one and there was no incised wound

and that there was nothing on the record to show that accused Yogendra Rai fired with gun on the spot the learned trial judge held that possibility

could not be ruled out that the two accused who were brother and nephew of

Sanktha were implicated falsely. Learned trial judge has given cogent and convincing reasons for acquitting accused Bankey Rai and Yogendra Rai and we find no good reason to interfere therewith. Since the findings recorded by the learned trial court can not be said to be perverse or based on faulty appreciation of evidence the same cannot be interfered with. The appeal against Bankey Rai has got no merit and is liable to be dismissed:

18. The appeal against accused respondents Sanktha and Yogendra Rai stood abated as stated above. The appeal against accused respondent

Bankey Rai is dismissed. Accused respondent Bankey Rai is on bail. His bail bonds are hereby discharged.

19. Judgment be certified to the Court below.