

HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgement Reserved on 11.07.2025

Judgement Delivered on 14.08.2025

Court No. - 78

Case :- CRIMINAL APPEAL No. - 152 of 1984

Appellant :- Ayodhya And Barkhoo

Respondent :- State of U.P.

Counsel for Appellant :- G.P.Mathur,Vivek Prasad Mathur

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Vivek Prasad Mathur, learned counsel for the appellant, Sri S.K. Ojha, learned A.G.A. for the State.
2. The instant criminal appeal has been filed by the appellants Ayodhya and Barkhoo, being aggrieved by the judgment and order dated 12.01.1984 passed by the Sessions Judge, Basti in Session Trial No. 209 of 1983 whereby the accused appellants were convicted for the offence under Section 304-II Part I.P.C. and both the appellants were sentenced to undergo five years rigorous imprisonment.
3. During the pendency of the instant appeal, the appellant no. 1 Ayodhya had died and the appeal against him has already been abated vide order dated 09.08.2016. Therefore, instant appeal is

being heard only on behalf of the surviving appellant no. 2 Barkhoo.

4. The brief facts of the case are that a written report was submitted by the injured Charitra himself on 30.10.1981 at the Police Station Walterganj, District Basti, alleging therein that in the morning at around 10:00 A.M., he was sowing potato in his field. At that time, accused Ayodhya and Barkhoo came there and started abusing him on account of old enmity. Ayodhya was armed with a spear (ballam) and Barkhoo was armed with lathi. The incident was witnessed by Kauleshwar and Awadhoo, who had saved him. He prayed for registration of the report and to take appropriate action against the accused person.

5. On the basis of the aforesaid written report, the FIR being Case Crime No. 254 of 1981, under sections 323/324 IPC was registered at 14:15 pm on 30.10.1981 at Police Station Walterganj, District Basti. After registration of the FIR, the victim/informant was sent for medical examination and was examined at District Hospital Basti wherein seven injuries were found on the body of the victim. During treatment he had died on 31.10.1981 at 6:05 a.m. The inquest was done at 10:45 p.m. at Sadar Hospital, Basti, thereafter the post mortem was conducted. According to the post mortem report, the cause of the death was shock and hemorrhage due to injuries. After receipt of the post mortem report, the case was converted and section 304 IPC was added by the police and matter was investigated. After completion of the investigation, the charge sheet was filed against the appellants/accused persons for the offence under sections 323, 324 and 304 IPC.

6. Thereafter on 24.10.1983, charges under Section 302 readwith Section 34 I.P.C. was framed against the accused persons. The

accused persons denied the charges and claimed trial.

7. In order to prove its case, the prosecution has examined seven witnesses in all. P.W.1 Awadhoo, P.W.2 Kauleshwar, P.W.3 Gajraj, P.W.4 Dr. G.P. Agrawal, P.W.5 C.P. Rajdev, P.W.6 S.I. Rajdev Rai and P.W.7 Dr. G.M. Lal.

8. **P.W.1 Awadhoo** has not supported the prosecution story, that he has witnessed the incident and stated that he had reached on the spot after the incident, therefore, he was declared hostile. In his cross-examination, he identified the place of the incident where the victim was lying and blood was also scattered at the place and he has also stated that boundary of the field of Charitra and Ayodhya are adjoining to each other. He has denied the statement recorded under section 161 Cr.P.C. by the Investigating Officer.

9. **P.W.2 Kauleshwar** is the star witness of the instant case. In his statement, he stated that at around 10:00 A.M. on the date of the incident, he was in his house, victim was working in his field and was preparing field for sowing potatoes. He heard the screaming voice of victim, he ran towards the place of incident about 10 steps, then he saw the accused Ayodhya and Barkhoo assaulting the victim in his field. Both were carrying lathies and were assaulting the victim with lathies. Seeing this, he ran towards the village, Hearing his voice, 4-6 persons and other man and woman ran towards the place of incident. After coming back, from some distance he saw the incident, after some time he heard the noise, Awadhoo has also came on the spot. Hearing the noise, one accused left towards the east and other towards the west. After, the accused persons left the place, he went there where the victim was lying in injured condition. The victim was unconscious. The distance of the place of incident where the victim was assaulted

from his home is around 10 biswas towards south.

10. In his cross-examination, he admits that the deceased and his father are real brothers. After the incident, the victim was unconscious for sometime when the villagers reached there, the victim became conscious and was speaking. He did not talk to victim. The villagers brought the victim from the agricultural field to the house of the victim and victim got him laid on a cot. After about one hour, the family members had taken the victim to the Police Station Walterganj. He further stated that his son had pulled the rickshaw to the Police Station. When he saw that the victim was being assaulted he first ran towards the village and thereafter immediately returned back to the place of incident. When he reached to the place of occurrence, 10-13 persons were present on the spot. The victim was unconscious. He is unable to tell on which part of the body of the victim, the injuries were caused.

11. **P.W.3 Gajraj**, is the person who has scribed the written report on the dictation of the victim and he has identified his hand writing in the written report. He has stated that he has written said report on the dictation of the victim himself and whatever has been stated by him it was written. It was read over to the victim and thereafter his thumb impression was taken on the said report and after writing the report, the same was handed over to the victim.

12. In his cross-examination, he stated that this report was written by him near Village Baibhora which falls between Narayanpur and Walterganj. There is a School and Book Stationery shop. He has taken the paper from the shop and he was having the pen. The stamp pad was also taken to take thumb impression of the victim. The victim was previously known to him. On the said date, he was

coming from his village on his bicycle and the victim was lying on the rickshaw. He further stated that he did not know any other family members of the victim. The victim himself had asked him to scribe the report. At that point of time, he was working as a Home Guard. He denied the suggestion that the report was written by him at the dictation of the Police Inspector at the Police Station Walterganj. He further stated that the victim was conscious and was in position to speak. He had gone to Basti and after returning from Basti, he went to the Police Station Walterganj and joined his duties. Thereafter he has taken the victim to District Hospital Basti. He was unable to tell that during which period on the date of incident he was present at the Police Station Walterganj. He was also unable to tell at what time, he reached the police station. He was also unable to tell whether he reached the police station before noon or afternoon.

13. **P.W.4 Dr. G.P. Agarwal**, who was posted as a Medical Officer at District Hospital Basti in the morning of 01.11.1981, had examined the victim and found following injuries on the body of the victim:

"(i) Contused swelling in an area of 7 cm x 7 cm on the back of right fore-arm including elbow. Colour was red.

(ii) Punctured wound 3 cm x 1 cm x 4 cm on the left upper arm back side, 5cm above elbow. Bleeding was present.

(iii) Punctured wound 1.5 cm x .5 cm x 2.5 cm on outer aspect of the right thigh 22 cm above the knee joint. Bleeding was present.

(iv) Lacerated wound 4 cm x 2 cm x bone deep on the inner aspect of right leg 15cm below knee joint. Bleeding was present.

(v) Punctured wound 3.5 cm x 2 cm x 3.8 cm- 3 cm below injury no.4. Bleeding was present.

(vi) Contused swelling in an area of 10 cm x all around the right

ankle joint including foot-- red in colour.

(vii) Contused swelling in an area of 9 cm x all around the left ankle joint--red in colour."

14. He had examined the said injuries at around 5:15 pm. All the injuries were simple in nature. The injury nos. 1, 4, 6 and 7 were caused by hard and blunt object, remaining injuries were caused by some sharp edged weapon. All the injuries were fresh. He has proved the injury report, his signature thereon and also thumb impression of the victim on the injury report. He had further submitted that there is possibility of differences in time about 2-3 hours as stated by him. The victim was admitted to the Hospital on 30.10.1981 at 6:00 pm and died on 31.10.1981 at 6:05 am.

15. In cross-examination, he has admitted that out of the aforesaid seven injuries, none of the injuries were caused on the vital part of the body. However, the injuries which were caused on the body of the victim, were sufficient to cause death as heavy bleeding was there from some of the injuries.

16. **P.W.5 C.P. Rajdev** is the Constable who was posted at Police Station Walterganj as Moharrir. He admitted that he has lodged the FIR at 14:15 pm on 30.10.1981 on the written report submitted by the victim. He has identified his hand writing and signature on the back of the same which was endorsed by him at that time. The aforesaid report was immediately entered in the General Diary at Serial No. 20. Both the accused persons were named in the FIR and the case was registered for the offence under section 323 and 324 IPC. He has identified and affirmed the G.D. Entries. On 02.11.1981, the post mortem report was received from the Police Station Purani Basti at 12:10 pm which was recorded in the G.D. and section 304 IPC was added. At the time of the

registration of F.I.R., the injured was sent for medical examination alongwith Home Guard Gajraj. In the cross-examination, he stated that on 30.10.1981, the victim came to the Police Station Walterganj. On 30.10.1981 the Home Guard Gajraj had reported his presence at the police station Walterganj at 11:00 A.M. He remained in the Police Station till he took the victim for medical examination.

17. **P.W.6 S.I. Rajdev Rai**, is the Investigating Officer, who has investigated the case. He admitted the registration of the FIR on 30.10.1981 at P.S. Walterganj in his presence. The case was kept without investigation and on receipt of the post mortem report of the victim, section 304 I.P.C. was added and investigation was handed over to him. First of all, he has copied the G.D. Entry in the Case Diary and also the injury report and postmortem report and on the same date, around 5:39 P.M. he went to Village Narayanpur alongwith two Constables. After reaching there, he recorded the statement of the witnesses, Kauleswhar and Awadhoo. At their indication he has prepared the site-plan, he has affirmed the site-plan. He has also collected the plain as well as blood stained soil from the field. On 03.11.1981, while he was trying to search out the accused persons, he came to know that they had already gone to surrender before the Court. He tried to search out the scribe of the written report but he could not be found. From the statement of the Constable, Moharrir, he came to know that the written report was scribed by Home Guard Gajraj. Thereafter his statement was recorded by him. After taking due permission of the Court, he went to the jail and recorded the statement of the accused/appellant herein. On 09.11.1981 he received the original post mortem report, inquest report from the office of the Police Station from which he came to know that inquest was prepared by

S.I, Police Station Kotwali. On 11.11.1981, the investigation of the case was completed and charge sheet was prepared. He has stated that he has recorded the statement of Awadhoo on 02.11.1981. In his statement he has stated to be a witness of the said incident. Awadhoo has stated that he had seen the accused Ayodhya assaulting the deceased with spear (Ballam) and accused Barkhoo assaulting the deceased with lathi in a potato field. He denied the suggestion that Awadhoo has not made any statement with regard to the incident. The statement of Awadhoo was recorded by him as stated by him. The site-plan was prepared on the indication of the witnesses. Sample of plain and blood stained soil recovered from the place of the incident was sent for chemical examination by him and he has not sent the clothes of the deceased for chemical examination. He has identified the sealed box, blood stained and plain soil, which were recovered and sealed by him. None of the witnesses had told him that dispute between the accused and victim had taken due to the drainage. He has not recorded the statement of the persons who were in the field.

18. **P.W.7 Dr. G. M. Lal**, has conducted the post mortem. He had found following eight injuries on the body of the deceased:

(i) Contusion 2 1/2" x 2 of 1/2" on the posterior aspect of right fore-arm.

(ii) Punctured wound 1 2/10 " x 1/2 "x 1 3/10" deep on the left upper arm.

(iii) Punctured wound 1/2" x 2" x 1" on the outer aspect of the right thigh.

(iv) Lacerated wound 2 "x11" x bone deed on the inner aspect of right leg.

(v) Punctured wound 1 2/10' x 1" x 1" x 1/2" deep below injure

no.4.

(vi) Contusion 4" x 4" alround the right ankle. On opening fracture of malleoles (Medial) found.

(vii) Traumatic swelling 4 "x 4" all around the left ankle.

(viii) Contusion 1 1/2" x 2" on the right hypochondrium.

19. During postmortem, he has found that gallbladder and liver were lacerated. This injury was on the abdominal surface of liver. In the opinion of the doctor, the cause of death was the injuries caused to victim, shock and excess bleeding. He has affirmed the postmortem report and also stated that injury nos.2, 3, 5 are possible to have been caused by spear (Ballam) and the remaining injuries are possible to have been caused by lathi. Injury no. 6 is grievous injury which was fatal.

20. The prosecution has also tendered the evidence by way of affidavit of Constable Heera Singh, who had escorted the dead body of the deceased to mortuary for the postmortem.

21. On the basis of the aforesaid evidence, the trial court came to the conclusion that the appellants herein have caused the injuries with a spear and lathi on the deceased and the said injuries were likely to cause death of the deceased. Therefore, the appellants herein were held guilty of the offence under Section 302 Part II I.P.C. Thus, they were sentenced for the aforesaid offence to undergo five years rigorous imprisonment.

22. Learned counsel for the appellants submits that the accused appellants herein as well as the deceased, both were the family members. The prosecution case was not supported by the witness Awadhoo (PW1) and was declared hostile in the instant case. It is further submitted by learned counsel for the appellants that PW2,

who claims himself to be an eyewitness of the incident, is not a reliable witness and his conduct itself makes him an unreliable witness because after hearing the noise, first he ran towards the village and then he came back to the place of incident, and by the time he reached the place of the incident, according to him, 12-13 persons had already gathered there. None of them has been examined by the prosecution. Since this witness is also a family member and there was a property/boundary dispute, he has wrongly deposed against the appellants. He has also failed to identify the weapons used by the appellants in the said incident. He further submitted that the evidence of PW3, Gajraj, also does not inspire confidence. He claims to be a Home Guard, who met the victim while the victim was going to the police station. He states that he scribed the written report, on the dictation of the victim, which was known to him, and his conduct also does not inspire confidence. He states that after scribing the report, he went to Basti and thereafter came back to the police station, however, he has failed to depose at what time he reported to the police station and till what time he remained in the police station and what were the timings of his duties.

23. Learned counsel for the appellants further submits that, as per the medical examination report, the victim's medical examination was conducted at 5:15 P.M., whereas the incident, according to the prosecution, took place at about 10:00 A.M. In his injury report, Dr. G. P. Agrawal (PW4) has mentioned that all the injuries were fresh, and he also stated in his deposition that there could be difference of maximum two to three hours on the injuries caused to the victim. Therefore, as per the medical examination report, the injuries were caused maximum of three hours prior to the medical examination conducted by Dr. G.P. Agrawal. However, according

to the prosecution, the injuries were caused at around 10:00 A.M. in the morning. Thus, there is about four hours' difference with regard to the timing of injuries as per the prosecution case and as per the medical examination by the doctor. Therefore, learned counsel for the appellants submits that the prosecution has failed to prove its case beyond reasonable doubt, and the benefit of doubt should be given to the appellants. Thus, they are entitled for acquittal in the instant case.

24. Per contra, the learned A.G.A. for the State submits that the written report was scribed by PW3, Gajraj, on the dictation of the victim himself immediately after the incident, while he was going to the police station, therefore there was no reason for him to falsely implicate the appellants herein, leaving behind the actual culprits in the instant case. In this regard, the evidence of PW3 is firm. It has categorically come on record during the prosecution evidence that the appellants herein and the victim are the family members and there was a property dispute between them with regard to boundaries of their field and they were having some inimical relations due to such disputes, therefore, there was sufficient motive for the appellants to cause the said incident. PW2, Kauleshwar, has firmly deposed against the appellants that it was the appellants only who had caused the injuries on the victim. The victim himself had named the appellants, which is corroborated by the evidence of PW2, Kauleshwar. The injuries are also corroborated by the medical examination report and subsequently the postmortem report. Thus, there is no illegality in the conviction of the appellants in the instant case for the offence under Section 304 Part II I.P.C., and while awarding the sentence, the trial court has taken a very lenient view sentencing them only for five years rigorous imprisonment.

25. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record of the case, it is apparent that it is sufficiently proved that the victim himself submitted a written report before the police station, on the basis of which the F.I.R. was lodged by PW5, C.P. Rajdev. In the said written report, the victim has categorically stated that the appellants had assaulted him with a ballam and lathi and he sustained the injuries. After registration of the F.I.R., the victim was sent for medical examination on the same date. The medical examination of the victim was conducted by Dr. G.P. Agrawal (PW4) at around 5:15 P.M. and seven injuries were found on the body of the victim, however, those injuries were not on any vital part of the body. Injuries no.1, 4, 6 and 7 were caused by some hard and blunt object, and the remaining injuries, namely injuries no. 2, 3, and 5 were caused by a sharp-edged and pointed weapon. Thus, the medical opinion corroborates the prosecution's story with regard to the weapons used in the crime. Therefore, the injury report of Dr. G.P. Agrawal corroborates the prosecution case. PW2 Kauleshwar, who is also a family member of both the appellants as well as the victim, has categorically deposed before the court that it were only the appellants herein who had caused the injuries on the body of the victim at the place of the incident, as narrated by the prosecution. So far as the place of incident is concerned, that is also identified and proved by the hostile witness P.W. 1 (Awadhoo). Thus, the prosecution has categorically proved the place of incident in the instant case, wherefrom P.W.6 has recovered the blood stained and plain soil. Thus, the only question remains whether it were the appellants who had caused the incident, or some other persons. From the depositions of P.W.1 and

P.W.2. it is apparently clear that there was a property/boundary dispute between the appellants and the victim. PW2 has categorically supported the prosecution's case with regard to the involvement of the appellants herein in causing injuries to victim. Though, the PW2 attributes the injuries being caused by lathi on the victim, but he saw the accused persons assaulting the victim from some distance. The weapons, ballam and lathi, if were seen from a distance both look like a lathi only. Therefore, there may be some mistake on the part of the PW2 Kauleshwar with regard to the identification of the weapons and he has attributed lathis only to both the accused persons. The accused were family members, therefore, there is no doubt with regard to the identification of the accused persons. The victim himself has scribed in his written report that appellant no. 1, Ayodhya, was having a Ballam, and Barkhoo was having a lathi and there were injuries on the victim's body corresponding to aforesaid two weapons, therefore, the identification of the appellants herein has categorically been done by PW2, Kauleshwar. Thus, it were the appellants only and none else who caused the injuries on the victim's body and as per the opinion of Dr. G.P. Agrawal, the victim had died due to shock and excessive bleeding from the said injuries.

26. Therefore, in the considered opinion of this Court, the prosecution has proved its case beyond reasonable doubt against the appellants herein. Therefore, the conviction of the appellant no.2 for the offences under Section 304-II I.P.C. is hereby affirmed.

27. So far as the sentence awarded to the appellant is concerned, learned counsel for the appellants submits that the incident occurred on 30.10.1981. At the time of recording of the statements under Section 313 Cr.P.C., the appellant no.2, Barkhoo, was 24

years of age, and the appellant had already surrendered before the court on 02.11.1981 and was released on bail on 16.11.1981 and after their conviction on 12.01.1984, they again surrendered and were released on bail on 16.01.1984 by this Court. Learned counsel for the appellants, therefore, submits that the appeal is pending for about 41 years and appellant no. 2 is presently aged about 65 years of age. During the aforesaid period of 41 years, the appellant herein has not been found involved in any other criminal case. Thus, facing of trial for a period of around 41 years is sufficient punishment in itself. Therefore, sending him to jail at this stage would not be justified. Instead, an appropriate fine should be imposed upon the appellant herein, which would serve the interest of justice.

28. Looking at the aforementioned circumstances and looking at the age of appellant no.2, who is currently around 65 years, and that he has not been found involved in any other criminal cases, learned A.G.A. submits that an appropriate sentence should be awarded. In similar circumstances the Apex Court has modified the sentence already undergone with fine of Rs. 1,00,000/- in a case where the appeal was pending for 27 years.

29. Accordingly, though the appellant no.2 Barkhoo is held guilty of the offence under Section 304 Part II I.P.C. but so far as sentence is concerned, the same is modified and he is sentenced for the period already undergone by him with a fine of Rs. 1,00,000/- which shall be deposited by the appellant no.2, Barkhoo within one month from today, failing which, the sentence awarded by the trial court shall be restored, and the appellant no.2, Barkhoo, in that case, would be required to surrender before the trial court to serve out the remaining part of sentence.

30. With the aforesaid observation and modification in the

sentence, the instant appeal is partly allowed.

31. Office is directed to send a copy of this order to the court concerned within a week for compliance. The compliance report shall be sent by the court concerned to this court within a further period of fifteen days.

32. The record of the trial court shall be returned forthwith.

Date: 14.08.2025

Monika Kesarwani/Shubham Arya

(Anish Kumar Gupta,J.)