

SUPREME COURT OF INDIA

Baij Nath

Vs.

State of Uttar Pradesh

CrI.A.No.....of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

10.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the conviction of the appellant for offence punishable under Section 304 Part I of the *Indian Penal Code, 1860* (in short the `IPC') and the sentence of imprisonment for 7 years as awarded by the trial Court and confirmed by the Allahabad High Court, Lucknow Bench, Lucknow.
3. Background facts in a nutshell are as follows:

“Accused appellant Baijnath and deceased Kalika Prasad were real cousin. The father of the accused Beche Lal and Khargi father of Kalika (hereinafter referred to as the `deceased') who was the informant, were real brothers and they lived separately in two adjoining houses. There was some dispute in between the two families regarding `nabdan' and fixing of `kuntas' (pegs), which were used for tying the cattle. On the date of the occurrence that is 13.7.1993 at about 7.00 p.m., a Panchayat had been called to settle the dispute in between the two families. The village Pradhan and many others were also present in the Panchayat. Claims and counter claims were made by accused and deceased. When accused Baij Nath declared that the disputed land belonged to him and will not be given to the deceased who made a counter-claim.

Accused-Baijnath gave a lathi blow on the head of the deceased Kali Prasad, who sustained head injury, and on account of this Lathi blow, fell down. Accused Baijnath ran inside his house. Khargi, the father of the deceased along with other villagers took his injured son Kali Prasad to the police station but on the way to the police station Kali Prasad succumbed to his injuries. So the dead body was taken to the police station and a written F.I.R. Ext. Ka-1 was lodged in the police station. One Ganga Prasad had scribed this report. The occurrence was witnessed by Ganga Prasad,

Thakur Prasad, Brijesh and many others, who were present in the Panchayat. On the basis of this F.I.R. report, Ext. Ka-12 was prepared and a case was registered against the accused, now the appellant. Investigation was entrusted to S.O. Rajinder Singh (PW.5) S.I S.M. Tewari was directed to conduct the inquest of the dead body. The inquest report is Ext. Ka. The dead body was sent for post mortem examination, which was conducted by Dr. Lalit Kumar (P.W.6.) The post mortem report is Ext. Ka-10. The investigating officer prepared the site map Ext.Ka-6 and also recovered the lathi Ext.1 at the instance of the accused. Recovery memo Ext. A-7 was also prepared. After completing the investigation, charge sheet Ext. Ka-9 was submitted against the accused under Section 302 IPC.

Charge under Section 302 IPC was framed against the accused.

The trial Court on consideration of the materials on record, more particularly, the evidence of eye-witnesses came to hold that the proper conviction would be under Section 304 Part I, IPC. The conviction and the sentence were challenged before the High Court which by the impugned order dismissed the appeal.”

4. Learned counsel for the appellant took the stand that the proper conviction would be in terms of Section 325 IPC and not under Section 304 Part I, IPC.

5. Learned counsel for the respondent-State supported the order passed by the trial Court as affirmed by the High Court.

6. We find that Dr. Lalit Kumar (PW-6) who examined the dead body of the deceased for the purpose of post mortem found the following anti mortem injury:

“Lacerated wound 1 cm x 0.5 cm front on interior part of right side scalp, 10cm. above middle right eye-brow, wound in muscle deep.”

7. Doctor's evidence clearly shows that there were fractures of both parital and frontal bone. He opined that the cause of death was due to coma as a result of head injury. According to the appellant doctor admitted that the injury in question could have been sustained due to fall on the iron rod embedded in the earth. The evidence clearly established that the accused had given lathi blow on the head of the deceased which resulted in the death of the deceased. As rightly noted by the High Court the case is clearly covered under Section 304 Part I, IPC. Considering the nature of the injury and the weapon used clearly shows the guilt of the accused. That being so, custodial sentence of 7 years as imposed does not suffer from any infirmity.

8. The appeal is dismissed.