



2026:AHC:15600-DB

Reserved On :- 06.01.2026

Delivered On :- 21.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2794 of 1987

Ala Baksh And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ashish Goyal, Sudhir Agrawal
Counsel for Respondent(s)	:	A.G.A.

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE SANJIV KUMAR, J.

(Delivered By Hon'ble Siddharth, J.)

1. Heard Sri Ashish Goyal, learned counsel for the appellants; Sri Prem Shankar Prasad, learned A.G.A for State-respondents and perused the trial court record.
2. This criminal appeal has been preferred by the appellants, Ala Baksh and Rashida, against the judgment and order of IVth Additional Sessions Judge, Mathura, dated 26.11.1987 in Sessions Trial No. 80 of 1987 convicting and sentencing the appellant no. 1 under Section 323 IPC to rigorous imprisonment for two years and appellant no. 2 under Section 302 IPC to life imprisonment.
3. Appellant no. 1, Ala Baksh, has died during the pendency of this appeal and appeal has been dismissed as abated against him.
4. The brief facts of this case as per the first information report of this case was lodged by Noor Baksh at the police station- Sadabad on 10.06.1986 at 09:05 a.m. In his written report complainant, Noor Baksh, stated that the house of complainant and accused persons are adjacent. On 10.06.1986 he and his son were filling mud along with the joint wall of complainant and accused persons. He was filling this mud in his own house limits. Accused, Ala Baksh and Rashida, prevented them from filling mud. He told the accused persons that the portion of

the land from where they were taking mud belonged to them. This created a controversy between the accused persons and his son Shamsuddin. Accused, Rashida and Ala Baksh, went inside their house. Rashida brought a ballam and Ala Baksh brought a *lathi* and they assaulted them by *lathi* and *ballam* with intention to cause their death. This incident took place nearly at half past seven in this morning. He and his son sustained injuries. Several persons of the village saw this incident. On the basis of this report a case under Section 307/324 of the Indian Penal Code was registered against the accused persons and investigation ensued. Medical examination of the injured, Noor Baksh and Shamsuddin, was conducted on 10.06.1986 at S.N. Hospital, Agra. Shamsuddin, injured, died on 10.06.1986 at S.N. Medical Hospital, Agra. His post-mortem was conducted on 11.06.1986. Thereafter, the case was converted into section 302 IPC. Charge sheet against both the accused persons was submitted by the Investigating Officer after completion of investigation under Section 324/307/302 IPC. The case against the accused persons was exclusively triable by the court of sessions. It was committed to the court of sessions for trial. After the accused persons appeared in the court, they were charged for offence punishable under Sections 302/34, 307/34 and 323/34 of IPC. They denied the charge and claimed trial. Hence, they are being tried on the said charge by this court.

5. Prosecution, in support of its case, examined as many as 11 witnesses in all. P.W.-1 is Noor Baksh. He is the complainant and injured of this case. In his statement on oath he stated that this incident took place on 10.06.1986 at 07:30 a.m. He and his son, Shamsuddin, were collecting mud in their *nohra* to construct *laravani*. They were taking this mud from the lane. His *nohra* is adjacent to the house of Ala Baksh who is real brother of accused, Rashida, is his real nephew. They asked them not to collect this mud and this created controversy. Ala Baksh brought a *lathi* and Rashida brought a *ballam*. Rashida assaulted them with *ballam* and Ala Baksh with a *lathi*. He and his son received injuries and later on his son succumbed to these injuries. This incident was seen by Patali, Sahab Singh and other villagers and they saved them. He lodged a report of this incident at the police station. He got it written by someone whom he met at Sadabad Chauraha. He has forgotten the name of the scribe of the report. This report was written on his dictation. This witness has proved this report, Ex. Ka-1. Their medical examination was conducted. His son received *ballam* injuries in his chest. This injury was caused by Rashida.

6. P.W.-2, Shuba, in his statement on oath he stated that his incident took place nearly 09-10 months before in the morning at about half-past seven. He was present at his nohra. He heard some noise and rushed to the spot of incident. He saw that two brothers, Ala Baksh and Noor Baksh, were quarrelling. He did not see who was beating whom. He saw injuries on the person of Noor Baksh and Shamsuddin, his son. He saw lathi and ballam in the hands of Ala Baksh and Rashida. He could not say what weapon was in the hands of which one of them. Whole village gathered there. This quarrel took place on account of mud filling. Noor Baksh was constructing his *laravani* and accused persons were preventing him from constructing it. This was the cause of the quarrel. This incident took place before him. Ala Baksh and Rashida beat Noor Baksh and his son. Investigating Officer came in the village in this presence and prepared site-plan in his presence.
7. P.W.-3, Siddiqui, in his statement on oath he stated that nearly 09-10 months before at about 07:30 or 08:00 in the morning he was present at his house and heard some noise. He came to the spot. He saw *ballam* in the hands of Ala Baksh and *lathi* in the hands of Rashida. He found Shamsuddin fallen down on the ground. Injuries to Shamsuddin were not caused in his presence. With the permission of the court this witness was cross-examined by the ADGC (Criminal). In his cross-examination, made by the ADGC this witness stated that investigating officer recorded his statement during investigation. He told that he gave this statement that he saw that Ala Baksh armed with *lathi* and Rashida armed with *Ballam* were beating Noor Baksh and his son, Shamsuddin. They saved them. Noor Baksh and Shamsuddin received injuries. He admitted that his statement was recorded by the investigating officer under Section 161 Cr.P.C. Further in his cross-examination made by the ADGC he stated that he saw the incident with his own eyes. This quarrel took place on account of construction of *laravani*.
8. P.W.-4, Tusi, in his statement on oath he stated that nearly 10 months before Ala Baksh and Rasid beat Noor Baksh and his son, Shamsuddin. In this connection investigating officer visited the village. He took sample and blood stained mud in his presence. He sealed the same in his presence in two separate tin boxes. These tin boxes are Ex.1 and Ex.2. Its furd was prepared in his presence and he put his Lti on it. It is Ex. Ka-2. Investigating Officer took in possession two pieces of cloth of two *galef* (cover of quilt), which were blood stained. It were used by

the wife of Shamsuddin to prevent bleeding. It were torn from that *galef* in his presence by wife of Shamsuddin. Investigating Officer sealed them in his presence. He prepared specimen of the seal. These pieces of *galef* clothes are Ex. 3 and 4. Its furd was prepared in his presence, which is Ex. Ka-3.

9. P.W.-5, constable, Bhagwati Prasad, in his statement on oath stated that on 10.06.1986 he was posted at the police station Sadabad. On that date complainant, Noor Baksh and his son, Shamsuddin, came to the police station. After lodging their first information report, he was sent with them to hospital for getting their medical examination conducted. He brought them to the PHC Sadabad, but as no doctor was available there, the injureds were brought to S.N. Hospital, Agra. He got the medical examination of Noor Baksh conducted. As they reached there, Shamduddin died there.

10. P.W.-6, Dr. Anurag Yadav, Resident Surgical Officer, S.N. Hospital, Agra. In his statement on oath he stated that 10.06.1986 at 10:10 he conducted medical examination of Noor Baksh alias Noor Mohammad. He found following injuries on his person :-

(i) lacerated wound on left arm on front side 1 cm below shoulder 3 cm x 1 cm x depth not proved beyond 4 cm. Edges lacerated.

(ii) Surgical emphysema on left side of chest in front of back. Air can be expelled out of wound no. 1 by pressing over this area of emphysema.

Pulse 92/m. B.P 116/m. He was conscious not breath less. According to him this injury was caused by long slender object. Injury no. 2 was possibly due to injury no. 1. Injured was kept under observation and x-ray of chest was advised. According to him this injury could have been caused to the injured by cane (*lathi*) portion of *ballam* if it was thin or by some thin *lathi* (cane). Injury report is written and signed by him. Its carbon copy is on file, which is Ex. Ka-4. In his cross-examination, he stated that it could be caused by *ballam* if it used with blunt blade.

11. On the same day he conducted medical examination of Shamduddin and found following injuries on his person :-

(i) penetrating wound in the upper part of right side of chest 6 cm below middle 1/3 of clarrick edges are lacerated. 2.5 x 1 cm deep

causing blood.

(ii) Surgical emphysema (subcutaneous) all over the body.

(iii) Bleeding from mouth.

Patient is very breathless, drowsy, pulse feeble. In his opinion, this injury was caused by some long slender object. Its duration was fresh. Injuries 2 and 3 were presumably due to injury no. 1. Patient was advised to be kept under observation. Resuscitation was advised and x-ray of chest was advised. This injury might have been caused by a weapon which should be long, thin and pointed. It could have been caused by some thin lathi (cane) or by the back portion of *ballam*. He prepared injury report of this medical examination. It bears thumb-impression of injured. Its original report was before the witness at the time of recording his statement. Its copy is Ex. Ka-5. According to him, injuries to both the injureds might have been caused on 10.06.1986 at about 07:30 a.m. Injury of Shamsuddin was dangerous to life. In cross-examination, states that injury was possible by *ballam* if its blade was blunt.

12. P.W.-7, Dr. Y.K. Sharma, in his statement on oath stated that on 11.06.1986 he was posted in PAC Battalion, Agra. On that date, he conducted post-mortem examination of Shamsuddin. This body was sent by police station Madan Mohan Gate, Agra. He conducted this post-mortem on 11.06.1986 at 03:00 p.m. Identification of deceased was made by constable, Ram Din Singh of P.S. Madan Mohan Gate, Agra, Age of deceased was nearly 20 years. Deceased died on 10.06.1986 at about 10:25 a.m in S.N. Hospital, Agra. According to the external examination, deceased was well built. Rigor mortis was present. Decomposition was present. Emaciation not seen. Both the eyes were closed. Blood stains were present on natural orifices such as ear, nostrils. Teeth were also blood stained. Following ante-mortem injuries were found :-

(i) penetrating wound 3 cm x 1 cm on right of chest 10 cm above right nipple. 8 cm from mid line. Wound has reached chest cavity.

(ii) penetrating wound 2 cm x 1 cm on anterior aspect of right arm 10 cm below top of shoulder.

(iii) lacerated wound 2 cm x 1 cm on left side of head 6 cm above

eyebrow.

Right lung was punctured. Blood was present in throne cavity. Deceased died due to shock and haemorrhage as a result of ante-mortem injuries. Report of this post mortem examination was prepared by him. It is written and signed by him. It is Ex. Ka-6. Injuries 1 and 2 might have been caused by *ballam* and no. 3 might have been caused by *lathi*.

13. P.W.-8, S.I. Prahlad Singh, who was investigating officer of this case. In his statement on oath he stated that after getting investigation of this case, he obtained copy of chik report and G.D entry. He recorded statements of head-mohrir, complainant, injured, Shamsuddin, witnesses, Biddiq, Suba and Patali. On 11.06.1986 he visited the spot and prepared site-plan, which is Ex. Ka-7. He collected simple and blood-stained mud and prepared its furd. It is signed by him. It is Ex. Ka-2. He also took blood stained clothes and sealed them on the spot and prepared its memo, which is also signed by him. It is Ex. Ka-3. He arrested the accused persons on 12.06.1986 and recorded their statements. On 13.06.1986 he collected medical examination reports and copied it in the G.D. On 15.06.1986 case was converted into section 302 IPC. Its entry is in GD at Sl. No. 8 of 16.06.1986. He filed true copy of this G.D. entry which is signed by him, it is Ex. Ka-8. He got *panchnama* and post-mortem report of deceased, Shamsuddin. He copied this papers in case diary. On 02.07.1986 he recorded statements of witnesses of *panchanama* and on 03.07.1986 he submitted charge sheet against the accused persons after completing investigation, which is Ex. Ka-9.
14. P.W.-9, Head Constable, Krishan Pal Singh, in his statement on oath has stated that on 10.06.1986 he was posted at police station Sadabad as Head Mohrir. On that date complainant filed a written report, whereof he wrote chik of this case. It is written and signed by him. It is Ex. Ka-10. Carbon copy of this chik was given to the complainant. He made its entry in GD at serial no. 21. Its true copy is Ex. Ka-11. Chithi majrubi is written by him, which is Ex. Ka-12.
15. P.W.-10 is constable, Ram Din Singh, who in his statement on oath stated that on 10.06.1986 was posted at police station Madan Mohan Gate, Agra. On that date panchayatnama of deceased, Shamsuddin was prepared in his presence. He brought the dead body for post-mortem

examination and after post-mortem dead body was given to him and he gave it to the family members of the deceased.

16. P.W.-11, S.I. Bachu Lal Verma, in his statement on oath he stated that on 10.06.1986 he was posted at police station- Madan Mohan Gate, Agra. Panchayatnama of deceased Shamsuddin was prepared by him. It is written and signed by him. It was prepared on 10.06.1986. Challan furd is written and signed by him. It is Ex. Ka-14. Foto Laash is prepared by him and it is Ex. Ka-15. He prepared a report of C.M.O. It is written and signed by him. It is Ex. Ka-16. Prosecution has failed duplicate x-ray report of Noor Baksh. Its genuineness has been admitted by the counsel for the accused persons. It is Ex. Ka-18.
17. Accused persons in their statements recorded under Section 313 of the Code of Criminal Procedure denied to prosecution allegations and alleged false implication. Ala Baksh in his statement stated that they did not beat Noor Baksh or Shamsuddin. Complainant made a false report. They have been falsely implicated due to enmity. He could not say how the complainant and deceased received injuries. Witnesses are giving false evidence. He further stated that they came to their house from tube-well about 6 in the morning and they found that Noor Baksh and his son were quarrelling. Out of fraternity he tried to convince them not to fight. When he was interfering, he was hit by lathi. According to this witness, he received lathi injuries and Rashida received injuries of lathi and pharsa. He came to Sadabad with Rashida to lodge a report by the sub-inspector did not lodge there report instead confined them and the police station. In the evening they were put in hawalat. Their medical examination was conducted in District Jail, Mathura. Accused, Rashida, in his statement under Section 313 Cr.P.C that they did not beat the complainant and his son. Complainant made a false report at the police station and wrong charge sheet has been submitted against them. They could not say how complainant and deceased had received these injuries. According to him they have been falsely implicated due to enmity and witnesses are giving false evidence. He further stated that he came to his house from the tube-well in the morning. There he found Noor Baksh and his son Shamsuddin quarreling with each other. He tried to interfere, then he received lathi and pharsa injuries. He became unconscious. His medical examination was conducted in District Jail, Mathura. Accused persons filed following documents in their defence :-

(i) a copy of order passed by S.D.M., Sadabad in Revenue Case No. 29, Umani vs. Ganga decided on 07.08.1965.

(ii) copy of order dated 07.08.1965/04.12.1965 passed by S.D.M., Sadabad in Revenue Case No. 29.

18. Accused persons in their defence examined, one witness as D.W.-1. D.W.-1, Dr. S.C. Katiyar, A.M.O., District Jail, Mathura. In his statement on oath he stated that on 14.06.1986 he was posted as Medical Officer in District Jail, Mathura. On that date he conducted medical examination of accused, Rashida in District Jail, Mathura and found following injuries on his person :-

(i) incised wound on anterior aspect of left wrist 2.5 cm x 0.3 cm x skin deep with puss in wound.

(ii) abrasion on anterior aspect of right wrist 2 cm above injury no. 1, 1.5 cm x 1.5 cm in area,

(iii) lacerated wound on posterior aspect of scalp 2 cm x 1.5 cm x muscle deep with irregular margin. Blood clots in wound present.

(iv) abraded contusion on posterior aspect of right upper arm 3 cm x 2 cm in area with yellow dis-colourisation.

In his opinion all the injuries were simple in nature. Injury no. 1 appears to have been inflicted by sharp cutting object. Others by any hard and blunt object. Duration of all the injuries is approximately five days.

19. After hearing the rival contentions, perusal of record and judgment of the trial court, we find that according to the prosecution case, Ala Baksh used *lathi* and accused, Rashida, used *ballam* in this incident and they caused injuries to Noor Baksh and Shamsuddin, in which Shamsuddin died of these injuries. He received a lacerated wound on anterior aspect of left arm in front side. In the opinion of Dr. Anurag Yadav, P.W.-6, who conducted this medical examination, this injury could have been caused to Noor Baksh by some long slender object. Shamsuddin received a penetrating wound on right side of chest. According to P.W.-6, Dr. Anurag Yadav, it could have been caused by some long slender object. In this statement on oath he stated that these injuries could have been caused by thin *lathi* or *lathi* portion of the

ballam if that is quite thin. He stated that these injuries could have been caused by a *ballam*, if blade thereof has gone blunt or blade penetrated inside the body upto portion from where rod portion starts. According to the prosecution case and according to the statement of P.Ws. 1, 2 and 3, accused, Rashida, assaulted by *ballam* and accused, Ala Baksh, used a *lathi*. It is argued on behalf of the accused persons that these injuries could not have been caused by *ballam*, but as stated by P.W.-6, Dr. Anurag Yadav, who conducted medical examination, if *ballam* was having a blade which had become blunt or blade of *ballam* penetrated to that extent from where the rod portion of the blade started, then these injuries could have been caused by *ballam*. P.W.-1, Noor Baksh, who is an injured, unequivocally stated that they were beaten by Rashida and Ala Baksh. Rashida beat them by *ballam* and Ala Baksh, beat them by *lathi* and his son suffered *ballam* injuries caused by Rashida. P.W.-2, Suba, also stated on oath that Ala Baksh and Rashida, caused injuries to Shamsuddin and Noor Baksh by *lathi* and *ballam*. He proved that accused persons beat Noor Baksh and his son with *lathi* and *ballam*. Statement of P.W.-3, who was declared hostile, also supports the prosecution case. Hence when there is cogent prosecution evidence that proves the prosecution case, despite there being some minor discrepancies in the medical evidence it can be believed.

20. P.W.-7, Dr. Y.K. Sharma, who conducted post-mortem examination, in his statement on oath stated that deceased, Shamsuddin, died of injuries received by him before death. According to him injury nos. 1 and 2 might have been caused by *ballam* and injury no. 3 might have been caused by *lathi*. From this evidence, we are of the view that deceased, Shamsuddin died of the injuries received by him by *ballam* caused by of Rashida. Clearly accused, Ala Baksh and Rashida, caused injuries to Noor Baksh and Shamsuddin. Shamsuddin received *ballam* injuries at the hands of Rashida and *lathi* injury were caused to him by accused, Ala Baksh. Injured, Noor Baksh received one lacerated wound caused to him by accused, Ala Baksh. The nature of injuries of Noor Baksh are such that they could have been caused by Ala Baksh as proved by the witnesses. Injuries found on the body of Shamsuddin in post-mortem report at serial no. 3 was caused by *lathi* used by accused, Ala Baksh. The injuries of Shamsuddin received on chest was a penetration wound, which in the light of evidence of the witnesses of fact and Dr. Anurag Yadav, P.W.-6 and Dr. Y.K. Sharma, P.W.-7 is proved to be an injury of *ballam* and caused by accused, Rashida. Deceased, Shamsuddin, died of these injuries.

21. Accused, Rashida, has rightly been held guilty of offence punishable under Section 302 IPC. Accused, Ala Baksh has also been right held to be guilty for committing the offence punishable under Section 323 IPC. However, appellant no. 1, Ala Baksh, has already died and appeal has already been dismissed as abated against him.
22. The judgment and order passed by the trial court do not suffer from any illegality and is hereby confirmed, with regard to appellant no. 2, Rashida only.
23. Appellant no. 2 is on bail. His bail bond is cancelled and sureties are discharged. He shall surrender forthwith and carry out the remaining sentence.
24. Let the trial court record be returned to the trial court along with copy of the judgment.

January 21, 2026

Rohit

(Sanjiv Kumar,J.) (Siddharth,J.)