

(1998) 08 AHC CK 0160

Allahabad High Court

**Case No:** Govt. Appeal No. 199 of 1980 and Cri Appeal No's. 1917, 2952 and 2953 of 1979

State of U.P.

APPELLANT

Vs

Smt. Aqeela and Others etc.

RESPONDENT

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**Date of Decision:** Aug. 27, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116
- Penal Code, 1860 (IPC) - Section 302, 304, 323, 326, 34

Citation: (1999) CriLJ 2754

Hon'ble Judges: N.S. Gupta, J; Giridhar Malviya, J

Bench: Division Bench

Advocate: A.G.A, for the Appellant; G.S. Chaturvedi, P.C. Srivastava, P.N. Pal and Daya Shanker Misra, for the Respondent

Final Decision: Dismissed

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### Judgement

N.S. Gupta, J.

Smt. Aqeela, her son Iqbal and Razi, who was an associate of Iqbal, were tried in. S.T. No. 723 of 1978 by Sri B. B. L. Hajela, the then Ist Additional Sessions Judge, Moradabad and were convicted under Section. 304(II) and 323/34, IPC and were sentenced to undergo imprisonment for a period of three years on the first count and one year R. I. under the second count. The sentences were ordered to run concurrently as per judgment and order dated 17-11-1979.

2. Accused appellant Aqeela & Iqbal felt aggrieved by the said judgment. They accordingly preferred criminal appeal No. 2953 of 1979, Razi preferred separate appeal being Criminal appeal No. 2952 of 79 against the order of conviction and sentence. On the other hand, the State feeling aggrieved by the said judgment preferred Government criminal appeal No. 199 of 80. The complainant Khalil also felt aggrieved by the said judgment. He, therefore, preferred criminal revision No. 1917 of 1979. Since all these matters arise out of one and the same incident, they

were heard together and are being disposed of by this common judgment.

3. It appears that Smt. Aqeela (A-1) was a widow and Iqbal (A-2) was her son. They were resident of village Pandit Nagla, P.S. Katghar District Moradabad. Accused appellant Razi (A-3) was an associate of Iqbal. He was resident of Mohalla Idgah P.S. Katghar District Moradabad. The complainant Khalil P.W. 2 was also a resident of village Pandit Nagla. Smt. Aqeela was bearing enmity with Abdul Rajaq deceased. The proceedings under Section. 107/116 Cr. P.C. were going on in between them.

4. The incident of this case took place on 8-11-1978 at 5 p.m. near a Pulliya situate in village Pandit Nagla P.S. Katghar District Moradabad. On that date, Khalil P.W. 2, Abdul Rajaq deceased were going on bicycle from Moradabad to their village Pandit Nagla. On another bicycle Shahid Hussain P.W. 3 and Wazid were going. When they came near village Pandit Nagla at about 5 p.m., accused appellant Smt. Aqeela, her son Iqbal and son's associate Razi emerged from towards north of culvert. Smt. Aqeela was holding some sulphuric acid in a Dibba. She threw away the same upon Abdul Rajaq. The acid sprinkled over Khalil P.W. 2 and Shahid P.W. 3 caused injuries to them. Razi and Iqbal assaulted Rajaq by means of knife. Giving up bicycle on the way Abdul Rajaq tried to run but was apprehended by Razi and Iqbal, who assaulted him by means of knife and killed him. The prosecution maintained that accused appellant Smt. Aqeela had caught hold of the deceased Abdul Rajaq and thereby assisted Iqbal and Razi in assaulting the deceased by means of knife. Abdul Rajaq was killed. Hearing dries, Safdar P. W. 4, Kalua reached at the spot. Iqbal and Razi ran away along with knife but Smt. Aqeela was apprehended on the spot. When the other villagers came at the spot, Khalil P.W. 2 leaving the dead body of the deceased and Smt. Aqeela went to police station, which lay at a distance of about 3 1/2 miles from the scene of occurrence and lodged an oral report Ex. Ka-3 about this occurrence, on the basis of which head constable Ved Prakash P.W. 5 prepared Chik report and G.D. report.

5. The investigation into the matter was taken up by S.I. Attar Singh P.W. 8 who immediately referred Khalil P.W. 2 and Shahid P.W. 3 for medical examination to District Hospital Moradabad where they were examined by Dr. Chandra Prakash P.W. 1, on 8-11-1979 at about 10 p.m. and 10-30 p.m. respectively and he found the following injuries on their persons.

Khalil Ahmad

(1) Multiple acid burns on whole of the back extending from scapular spine to iliac crest. Skin was blackened. No blister formation. No surrounding of hyperemic or ulceration.

(2) Acid burn (chemical burn) on It. ant. chest in an area of 7 cm. x 1.5 cm, 2 cm below left nipple. Skin blackened.

(3) Multiple skin burns in an area of 18 cm x 3 cm on post aspect of left upper arm elbow joint and left forearm in post aspect.

In the opinion of the doctor, the above noted injuries were caused by some chemical substance and their duration was fresh.

Shahid Hussain

(1) Chemical (Acid) burn 2.5 cm x 1.5 cm on right side of forehead just above medial end of right eye brow. Skin blackened. No blister formation and no ulceration.

(2) Multiple chemical (acid burns) on lateral aspect of left upper arm to forearm size varying from 3 cm x 1.5 cm to 4 cm x 1 cm and 4 in number. Skin blackened. No ulceration or blister formation.

(3) Multiple chemical acid burns on right forearm varying in size from 5 cm 1/2 cm to 2 cm x 1/2 cm and 2 in number. Skin blackened. No ulceration or blister formation.

In the opinion of the doctor, the above noted injuries were caused by some chemical. They were simple in nature and their duration was fresh.

6. S.I. Attar Singh along with other police officials rushed at the scene of occurrence and reached there at about 7 p.m. He arrested the accused appellant Smt. Aqeela. Smt. Aqeela was wearing Salwar and Kurta at the time of the incident, which were stained with blood. S.I. Attar Singh thereafter inspected the dead body of the deceased and after preparing the inquest report sent the dead body of the deceased for post mortem to mortuary at Moradabad where Dr. U.C. Tyagi P.W. 6 conducted autopsy on the dead body of the deceased on 9-11-1978 at about 3 p.m. and found the position as under :

7. The deceased was aged about 40 years. His body was stout. Rigor mortis had passed off and decomposition had started. Dr. U.C. Tyagi found the following ante mortem injuries on the . person of the deceased :

1. Incised wound 3 cm x 2 cm x 6 cm right side neck of the root.
2. Incised wound 3 cm x 2 cm x 6 cm on middle of anterior aspect of chest.
3. Abrasion 1 cm x 2 cm on anterior lateral aspect of left arm.
4. Lacerated wound 4 cm x 2 cm x 3 cm at lower end on post lateral aspect of left arm at the lower end.
5. Abrasion 7 cm x 3 cm in post aspect of chest left side.
6. Incised wound 3 cm x 1 cm x 5 cm on the right scapular region lower end.
7. Incised wound 4 cm x 2 cm x 3 cm on the middle of right scapula.
8. Abrasion 2 cm x 1 cm on right hip.

8. On internal examination, right lung, pericardium and heart were found burst/(perforated). Small and large intestines were full of digested food. The doctor opined that the deceased had died due to shock and hemorrhage, which resulted from the aforesaid injuries, which could be caused on 8-11 -78 at 5 p.m. by means of knife etc. and were sufficient in the ordinary course of nature to cause death. The doctor further opined that because of the injury No. 2 the deceased should have immediately died. He also opined that the injuries Nos. 1, 3, 6 and 7 could have been caused by means of knife. The injuries Nos. 3, 5 and 8 could have been caused by dragging the deceased on earth.

9. After needful investigation into the matter, S.I. Attar Singh submitted a charge sheet against the accused persons.

10. After committal, the case came up for trial before the then Ist Additional Sessions Judge, Moradabad, who framed charges under Sub section 302/ 34 and 326/34, IPC against the accused appellants.

11. Accused appellants pleaded not guilty and claimed trial. Accused Smt. Aqeela pleaded that she was arrested from her house and a pair of her clothes were taken over from there and was made stained with blood. She stated that she had no enmity with Abdul Rajaq. Her son Iqbal pleaded false implication due to enmity. Accused appellant Razi pleaded that he resided at Idgah and was having his workshop there. The witnesses did not know him since before the incident. He pleaded that one Kul Bhushan was a member of the party of Khalil P.W. 2 who bore enmity with him. He was, therefore, falsely implicated into this case because of the enmity with Kul Bhushan. He stated that the police forcibly arrested him from his house while he was sleeping. The accused appellants did not adduce any evidence in their defence.

12. After needful trial into the matter, the trial Judge found the accused appellants guilty under Sections 304(II)/324/34, I.P.C. He convicted and sentence them as aforesaid. Aggrieved by the same, the accused appellants and the State filed separate appeals whereas the complainant Khalil preferred the aforesaid criminal revision.

13. It appears that the appeal was originally heard by the Division Bench of this Court consisting of Hon"ble V.N. Mehrotra J. and Hon. Kundan Singh J. who vide their judgment and order dated 5th August, 1994 allowed the Government appeal and converted the conviction of the appellants from Section 304/(II), I.P.C. to one under Sections 302/34, I.P.C. The conviction and sentence of the accused appellants under Sections 324/34, I.P.C. was maintained. Against the said order of this Court, the accused appellants went up before Hon"ble Supreme Court. The Hon"ble Supreme Court vide order dated Feb. 20, 1997 allowed the appeal of the accused appellants and set aside the judgment of this Court. The matter was remanded back to this Court for fresh decision according to law.

14. After remand of the case, we afforded full opportunity of being heard to the State as well as to accused appellants. Sri Gopal Chaturvedi, learned Senior Advocate made submissions on behalf of the accused appellants. Sri A.R.I. Gaur has made submissions on behalf of Aqeela whereas Sri Jagdish Tiwari Government advocate made submissions on behalf of the State.

15. With the help of the learned counsel for the parties, we have gone through the entire record of the case and proceed to decide the matter afresh as under.

16. The prosecution in support of its case had examined 8 witnesses in all, out of whom Khalil P.W. 2, Shahid PW 3 and Sefdar PW 4 were witnesses of fact, who had fully supported the prosecution version as stated above. PW 1 Dr. Chandra Prakash proved injuries of Khalil and Shahid and stated that these injuries could have been caused to these persons by means of acid on the date and time suggested by the prosecution, viz. 8-11-1978 at about 5 p.m. PW 8 head constable Ved Prakash proved Chik report and G.D. report. PW 6, Dr. U. C. Tyagi conducted autopsy on the dead body of the deceased. PW 7 constable Babu Lal was a formal witness who took injured for medical examination to District Hospital. PW 8 S.I. Attar Singh was the investigating Officer of the case.

17. Khalil PW 2 and Shahid PW 3 are injured eye witnesses of the occurrence, who had sustained injuries by means of sulphuric acid, which was thrown by the accused appellant Smt. Aqeela on them. The acid injuries on their person clearly speak about their presence on the spot. It has come in the cross-examination of Khalil PW 2 that the date of the occurrence was Wednesday. On that date, he had gone to Moradabad at about 12 noon for purchasing some house hold goods and clothes etc. He stated that Shahid PW 3 and Wazid did not accompany him to Moradabad. He stated that he purchased some clothes and vegetable etc. for celebrating festival of Baqreed. He stated that he purchased clothes worth Rs. 200/- as also vegetable like potato etc. and kept them in two separate bags on his cycle. He stated that Shahid PW 3 and Wajid met him near the double Fattak because the railway crossing was closed. He further stated that since the Wednesday was the marketing day, a number of villagers go to Moradabad on that day and there was festival of Baqreed nearby. He stated that the accused appellant Razi was the resident of Idgah District Moradabad but at the time of the occurrence he used to reside at the house of accused appellant Smt. Aqeela. He maintained that the proceedings under Sections 107/116, Cr. P.C. were going on in between the accused appellant Smt. Aqeela and Abdul Rajaq deceased. He further stated that earlier Smt. Aqeela's husband was the head man of the village and was known as Mukhiya and the accused appellant Smt. Aqeela was known as Mukhiyani. The name of Smt. Aqeela husband was Altaf. Smt. Aqeela was having a lot of property in the village. He stated that Smt. Aqeela's house was situated at a distance of 40-45 paces away from the culvert where the occurrence had taken place Iqbal used to reside with Smt. Aqeela. He had no enmity either with Smt. Aqeela, Iqbal or Razi. He had no love lost with the deceased either.

It means he was thoroughly an independent witness. When he had no enmity with any of the accused persons and that when he had no love lost with the deceased his testimony which is supported by acid injuries found on his person cannot be discarded. He specifically stated in his statement on oath before the Court below that when he started for police station and when a number of villagers had come, Smt. Aqeela was very much present on the spot. He along with Shahid went to police station and giving the version of actual incident, he stated that after sustaining knife injuries, the deceased Abdul Rajaq had fallen down. A lot of blood had fallen there. The entire incident was finished within two three minutes. He stated that acid was contained in a Dibba like bucket. Smt. Aqeela was holding the said Dibba. He did not notice as to whether some acid had fallen on the fingers of the accused. When cross-examined on the point of clothes. Smt. Aqeela was wearing at the time of the incident, he stated that Smt. Aqeela was wearing Phooldar Salwar and Kurta and was having a Dupatta. She was not wearing Burqa. He stated that Smt. Aqeela caught hold the left hand of the deceased. He stated that Smt. Aqeela was a fat and heavy lady. He strongly denied the suggestion of the defence on the point that Smt. Aqeela was not present at the spot and that her clothes were not stained with blood or that she did not take part in the occurrence in question.

18. P.W. 3 Shahid, who too is an injured eye witness of the occurrence has fully corroborated the statement of the complainant Khalil and has given an eye witness account of the occurrence. He stated that the acid was also sprinkled upon him and because of the acid he had sustained injuries which were found on his person by Dr. Chandra Prakash PW 1. During the course of his cross-examination he stated that Razi had caught hold of the right hand of the deceased and that Iqbal by means of his left hand had caught hold of the collar of the deceased, while assaulting the deceased by means of knife. He stated that Rajaq was running hither and thither but he could not get escape from the clutches of the accused appellants. He stated that he caught Smt. Aqeela at a distance of 2-3 paces when 10-12 villagers had come. She was not having any knife. When Razi and Iqbal run away then he apprehended Smt. Aqeela,

19. Similarly PW 4 Safdar while giving an eye witness account of the incident in question specifically stated that Smt. Aqeela sprinkled sulphuric acid and thereby caused injuries to Khalil and Shahid. He was resident of village Pandit Nagla and maintained that when the accused Appellants Razi and Iqbal ran away Smt. Aqeela was apprehended. He stated that at the time of apprehension, Smt. Aqeela was wearing red Salwar and Kamij and that she was not wearing Burqa. This witness is having his fields at a distance of 100- 150 yards from the scene of occurrence. His presence therefore, on the scene of occurrence was probable one. He stated that when for the first time he heard the cries he was in the back side of the house of Smt. Aqeela at a distance about 5 paces. He challenged the accused appellants from a distance of 10-12 paces but in spite of his children challenged the accused appellants had assaults the deceased. He stated that he remained present at the

spot till arrival of the police and till the body of the deceased was despatched. When cross examined about the role of Smt. Aqeela, he stated that Smt. Aqeela had caught hold the hands of the deceased and by another she was holding the back of the deceased.

20. The circumstances that Smt. Aqeela was fat and heavy lady, the circumstances that she bore enmity with the deceased in as much as that she was fighting a case under Sections 107/116, Cr.P.C. and the circumstances that she along with her son and son's associate attacked the deceased first by throwing acid, which unfortunately had fallen upon Khalil and Shahid and yet she assisted her son Iqbal and Razi in assaulting the deceased by means of knife by catching hold of the deceased, fully go to prove that all three accused appellants shared the common intention for committing the murder of the deceased.

21. Sri Chaturvedi, learned counsel for the appellants has vehemently argued before us that Smt. Aqeela was now an old woman aged about 65 years her role in the occurrence in question was simply of throwing the acid, which too did not cause injury to the deceased, rather it caused simple injury to Khalil and Shahid PWs 2 and 3, it was argued that on the basis of the overt act of Smt. Aqeela it cannot be concluded that Smt. Aqeela had guilty intention of committing the murder of the deceased.

22. We should state here that the real enmity of the deceased was with Smt. Aqeela. She was a strong and stout lady having enough properties in the village and holding the title of Mukhiyani of the village. It is, therefore, obvious that Smt. Aqeela was not an ordinary lady. She was a strong and stout lady capable of taking her revenge and that she did take revenge of her grievances as against the deceased Abdul Rajaq by getting him killed. We are, therefore, of the opinion that Smt. Aqeela deserves no leniency.

23. As regards Razi and Iqbal, specific role of assaulting the deceased by means of knife blows which injuries proved fatal to the deceased, has been assigned by all the witness of fact. It is, therefore, obvious that the accused appellants were responsible for causing such bodily injuries to the deceased which were sufficient in the ordinary course of nature to cause death, and because of which the deceased had, in fact died soon after sustaining the injuries.

24. Thus the view taken by the learned Sessions Judge that the act of the accused appellants constituted only an offence of culpable homicide not amounting to murder punishable u/s 304(II), I.P.C. was obviously perverse and cannot be sustained.

25. In the result we allow the appeal of the State and modify the conviction of the accused appellants from Section 304(II), I.P.C, to one punishable under Sections 302/34, I.P.C. The conviction and sentence inflicted by the Court below under Sections 324/34, I.P.C. is sustained.

26. Coming on the point of sentence we find that the present case was not one of the rarest of the rare cases, therefore, the sentence of life imprisonment u/s 302/34, I.P.C. and the sentence of one year" R.I. u/s 324/34, I.P.C. appears proper. We accordingly convict and sentence the accused appellants. Smt. Aqeela, Iqbal and Razi. Their sentences shall run concurrently.

27. Thus Government Appeal No. 199 of 80 stands allowed. The appeal of accused appellants being criminal appeal No. 2952 of 79 and 2953 of 1979 are hereby dismissed.

28. Since the appeal of the State has been allowed by us, criminal revision filed by the complainant being criminal revision No. 1917 of 1979 has become in fructuous. It is accordingly dismissed as having become in fructuous.

29. It appears that the accused appellants Smt. Aqeela, Iqbal and Razi are on bail. Their bail bonds are cancelled. The Chief Judicial Magistrate concerned will issue non bail processes to arrest and will commit them to prison to serve out their sentence according to law.

30. Let a copy of this judgment along with the record of the case be sent to the Court below for needful compliance within three months.