

# Kaloo vs Statejail Appeal on 1 May, 2025

**Author: Sangeeta Chandra**

**Bench: Sangeeta Chandra**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

High Court of Judicature at Allahabad

(Lucknow)

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Neutral Citation No. - 2025:AHC-LK0:25166-DB

Judgment Reserved on 04.03.2025

Judgment Delivered on 01.05.2025

Court No.-9

Case :- CRIMINAL APPEAL No. - 450 of 2003

Appellant :- Kalloo

Respondent :- State jail Appeal

Counsel for Appellant :- In Person Jail,Anuradha Singh,Ruby Singh,Shishir Chandra,Shishi

Counsel for Respondent :- Govt.Advocate

AND

Case :- CRIMINAL APPEAL No. - 643 of 2003

Appellant :- Kalloo

Respondent :- The State Of U.P.

Counsel for Appellant :- S.C.Sinha, Ruby Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Mrs. Sangeeta Chandra, J.)

1. Heard Sri Shishir Pradhan along with Sri Rajendra Prasad Mishra, learned Amicus Curiae for the appellant, Ms. Meera Tripathi, learned A.G.A. for the State and perused the entire record.

2. Under challenge in these criminal appeals is the impugned judgment and order dated 20.02.2003 passed by the learned Additional District and Sessions Judge (FTC-V), Lucknow in Sessions Trial No.169 of 1998 arising out of Case Crime No.294 of 1997, under Sections 302/34 and 201 of the Indian Penal Code, 18601, Police Station Thakurganj, District Lucknow, whereby the appellant, Kaloo has been convicted and sentenced to undergo life imprisonment for the offence under Section 302 read with Section 34 I.P.C. with a fine of Rs.5,000/- and in default of payment of fine, he has further been directed to undergo six months' additional simple imprisonment. He has also been convicted and sentenced to undergo two years' imprisonment for the offence under Section 201/34 I.P.C. with a fine of Rs.500/- and in default of payment of fine, he has further been directed to undergo one month's additional simple imprisonment. All the sentences were directed to run concurrently.

3. Since the aforesaid two appeals have been preferred to assail the impugned judgment and order dated 20.02.2003 passed by the learned Additional District and Sessions Judge (FTC-V), Lucknow in Sessions Trial No.169 of 1998, which emanated from same Case Crime No.294 of 1997, Sections 302/34 and 201 of the I.P.C., Police Station Thakurganj, District Lucknow by the appellant, Kaloo only, therefore, they have been heard together and are being decided by a common judgment.

4. It is pertinent to mention that co-convict Uma Shanker had also filed a separate Criminal Appeal i.e. Criminal Appeal No.553 of 2003, however, he died on 11.11.2014 during pendency of aforesaid Criminal Appeal No.553 of 2003 which was dismissed as abated by a Co-ordinate Bench of this Court vide order dated 11.09.2019.

5. The case of the prosecution, in nutshell, is that on 26.09.1997, at around 3:00 P.M., the appellant/ accused Kaloo and co-convict Uma Shanker called the complainant, Ram Bharosey from his house to accompany them on a fishing trip to the house of the deceased, Pappu Yadav in village Saitha near the bank of the Gomti River. The four persons consumed liquor until around 10:00 P.M. The appellant/ accused Kaloo and co-convict Uma Shanker made Pappu Yadav consume excessive

liquor. When the deceased, Pappu Yadav turned into an inebriated condition because of consuming liquor, the accused persons dragged him to Hayat Nagar near the field of Baqar Nawab on the bank of the Gomti River with the intention to kill him. When the complainant objected, the accused persons threatened him and warned that they would kill him as well if he did not remain silent. Thereafter, at about 11:00 P.M., the appellant/ accused Kaloo and co-convict Uma Shanker strangulated Pappu Yadav to death and drowned his body in the Gomti River. Later on, they also chased the complainant to kill him but somehow he succeeded in escaping from the place of occurrence.

6. On the basis of aforesaid written report, Ext. Ka-5 submitted by the first informant, Ram Bharosey, the First Information Report, Ext. Ka-2 came to be lodged against the accused/ appellant under Sections 364, 302, 201 I.P.C.

7. The inquest proceedings started on 27.09.1997 at 8:30 A.M. and got concluded on 27.09.1997 at 01:00 P.M. (13:00 hour). The inquest report has been duly proved by B.S. Tomar, Sub Inspector, P.W.10 as Ext. Ka-6.

8. The postmortem of the deceased has been conducted by Dr. Sunil Kumar Gupta, P.W.-8 and the report has been proved by him as Ext. Ka-3.

9. According to the postmortem report, Ex. Ka- 3, cause of death of the deceased is reported to be asphyxia as a result of ante mortem strangulation and following ante-mortem injuries were reported on the body of the deceased :

"1. Abraded contusion 4 cm x 4 cm on abdomen 7 cm below the left nipple.

2. Lacerated contused wound 2 cm x 1 cm below the left eye.

3. Continuous transverse ligature mark 32 cm x 2 cm, 5 cm below the right and left ear each. Base of groove being soft and raddish, 5 cm below the chin."

10. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973. He visited the place of occurrence and prepared site plan thereof as Ext. Ka-4.

11. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ext. Ka-5 under Sections 302/34 and 201 I.P.C. against the accused/ appellant, Kaloo. The case was committed to the court of Sessions by the then Chief Judicial Magistrate, Lucknow on 21.01.1998.

12. Charges for the offence under Sections 302/34 and 201 I.P.C. were framed against the accused/ appellant, Kaloo, who denied the charges and claimed to be tried.

13. In order to bring home guilt of the accused/ appellant, the prosecution has examined Ram Bharosey, complainant as P.W.-1, Deen Dayal as P.W.-2, Constable Munni Lal as P.W.-3, Siya Ram

as P.W.-4, Ranjeet as P.W.-5, Chhatrapal as P.W.-6, Kunwar Pal as P.W.-7, Dr. Sunil Kumar Gupta as P.W.-8, S.I. Abaad Ali as P.W.-9 and B.S. Tomar as P.W.-10.

14. The accused/ appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case. He also claimed to be innocent.

15. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

16. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 20.02.2003 whereby the accused/ appellant came to be convicted as aforesaid.

17. Aggrieved by the aforesaid impugned judgment and order dated 20.02.2003, the accused/ appellant has preferred the instant appeals.

Submissions advanced by learned counsel for the parties :-

18. Learned Amicus for the accused/ appellant has submitted that the appellant has been falsely implicated in the present case. The prosecution has failed to adduce any reliable witness to clinch the charges under Sections 302/34 and 201 I.P.C.

19. His further submission is that learned trial court has failed to appreciate material contradictions appearing in the testimonies of the witnesses of fact which rendered their testimonies unreliable. Despite this fact, learned trial court has proceeded to place reliance on their testimonies for convicting the present appellant, therefore, the impugned judgment and order is wholly unsustainable.

20. His next submission is that there is delay in lodging the F.I.R. as the alleged incident took place on 26.09.1997, at about 10-11 P.M., whereas the F.I.R. of the incident was lodged on 27.09.1997 at 8:30 A.M. The explanation so offered by the informant P.W.1-Ram Bharosey in lodging the F.I.R. has not been properly dealt with by the trial Court.

21. His further submission is that even if for the sake of argument the prosecution story is taken to be true on its face value, the chronology of events is so dramatic that rendered the entire prosecution story wholly improbable.

22. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 20.02.2003, which is well discussed and reasoned. The accused/ appellant was named in the First Information Report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses.

23. Her further submission is that minor contradictions do not demolish the entire case of the prosecution; rather presence of minor contradictions show that the prosecution witnesses are not tutored and a natural witness. She, thus, submits that the impugned judgment is a reasoned one which is based on proper analysis of prosecution evidence in its correct perspective wherein there is no illegality or irregularity, therefore, no interference by this Court is warranted. She, accordingly, prays for dismissal of the instant appeals.

Prosecution evidence at a glance :-

24. We would first like to examine testimony of P.W.1- Ram Bharosey, who is first informant of the case. What transpires from the testimony of P.W.1- Ram Bharosey is that, on the date of incident, this witness was called by the accused/ appellant Kalloo for fishing. This witness and accused/ appellant Kalloo went to Shankar Ji's temple which is situated at a distance of 1 km where they met with another co-convict Uma Shanker, who had a bicycle. According to this witness, he alongwith accused/ appellant Kalloo and co-convict Uma Shanker went to Pappu's hut which is about 3 km away from village Saitha on the bicycle of co-convict Uma Shanker. After consuming the liquor in the Pappu's hut they remained there for sometime and thereafter accused/ appellant Kalloo told this witness and co-convict Uma Shanker to go to Allu Nagar to have some more liquor. For doing so, they crossed the river in Kalloo's boat and bought five pouches of liquor from Allu Nagar. They drank three pouches of liquor at some distance from the shop and thereafter came to Ghaila Ghat and again cross the river by boat. After crossing the river, accused/ appellant Kalloo and Pappu started abusing each other while they were walking. According to P.W.1- Ram Bharosey, the accused/ appellant Kalloo asked this witness to give him a beedi to smoke. After smoking beedi accused/ appellant Kalloo and co-convict Uma Shanker started assaulting Pappu, the deceased with fist. This witness tried to intervene, however, he was warned to keep silent. According to this witness, the deceased Pappu was strangulated by accused/ appellant Kalloo and co-convict Uma Shanker to death in the field. Accused/ appellant Kalloo and co-convict Uma Shanker then threw corpse of deceased Pappu in the river. This witness was also chased by the accused/ appellant and co-convict Uma Shanker to a distance of about 3 km in order to kill him so that this witness may not inform the police about this incident. P.W.1- Ram Bharosey in order to save him hid himself in a pigeon pea field and remained there for whole night. He went home at 4 A.M. and inform about this incident to his brother Ram Ratan. Though this witness has proved written report as Ext. Ka- 5, however, it is noteworthy that according to this witness, written report was scribed by someone near his house, however, he did not know name of the scribe. He is also stated that content of written report was not read out to him though he has admitted to have marked his thumb impression on the written report. When in the trial court, the written report paper No. A-5/2 was showed to this witness, he stated that the paper on which he had put signature was a small piece of paper and was not such a large paper.

25. In his cross-examination, though P.W.1- Ram Bharosey has stated that on the date of the incident the accused/ appellant killed the deceased. However, we have been able to notice that admittedly, this witness had also consumed liquor and was in an inebriated condition. He has also stated that the father of the deceased had threatened him to give such a statement as made in the examination-in-chief, otherwise he would be killed by the father of the deceased, Shatruhan. It is

also noteworthy that this witness, though has identified his thumb impression on the written report. However he has unequivocally stated that the written report, after being written by the scribe, was not read over to him. He has further stated that the paper on which he had placed his thumb impression, after the report was written, was smaller in size than the one shown to him in the trial court as Paper No. A-5/2. He has also stated that he had not seen any of the accused killing the deceased.

26. P.W.2- Deen Dayal, was the then Pradhan of the concerned village. In his examination-in-chief, he deposed that the deceased Pappu lived in a hut. He stated that two bottles and a bundle of beedi No. 201 were recovered in his presence. He identified his signature on Paper No. 6/1 and thus proved the recovery memo as Ext. Ka-1.

27. P.W.3- Munni Lal, Constable, in his examination-in-chief has deposed that he was posted as Constable Mohrir in Police Station Thakurganj. According to this witness, on 27.09.1997, the first informant, Ram Bharosey brought a written report with thumb impression of the scribe, i.e. Manoj Kumar Shukla. On the basis of it, Case Crime No. Nil/97, Sections 364, 302, 201 I.P.C. against Kalloo S/o Natha and Uma Shanker S/o Gaya Prasad Chik No.247/97 was written at 8:30 P.M. and registered in the concerned police station Kakori by H.C. Gulab Chand Sharma as Rapat No.19 at 8:30 P.M. The above documents were given to Contable Devendra Kumar and he was sent to Police Station Kakori. This witness has, thus, proved chik report as Ext. Ka-2.

28. P.W.4- Siyaram, is a witness produced by the prosecution, has been declared hostile as he did not support the prosecution's case. This witness stated on oath that his statement was never recorded by the Investigating Officer. He expressed complete unawareness of Pappu's hut on the river bank and also stated that he did not know the accused and deceased Pappu.

29. P.W.5- Ranjeet, in his examination-in-chief, has deposed that the incident occurred about five years ago. This witness, along with P.W.4- Siya Ram, and Amit, were grazing the buffaloes in the field. He saw the accused/ appellant Kalloo and the deceased Pappu passing through the field, who went into the hut of Pappu. However, this witness was unable to state as to whether the deceased and the accused/ appellant ate or drank anything there in the hut. He further stated that he did not see these persons coming out of the hut.

30. P.W.6- Chhatrapal, appears to be a witness who had not seen the incident of killing of deceased Pappu Yadav by accused/ appellant because it is apparent from his testimony that on the next date of the incident P.W.1- Ram Bharosey and a police inspector told him that accused/ appellant Kalloo and co-convict Uma Shanker had killed Pappu, the deceased, who was real nephew of this witness. It, thus, clearly transpires that his testimony regarding alleged killing of deceased by accused/ appellant can at best be placed in the category of hear say evidence.

31. P.W.7- Kunwar Pal, in his examination-in-chief, has deposed that the incident happened about five years ago. The deceased, Pappu was his nephew. He was murdered. Pappu's hut was on the bank of the river. He used to grow gourd, pumpkin etc. Kalloo, Rama Kant and Ram Bharosey used to visit Pappu's hut. Pappu used to make rotis and the appellant used to eat. On the day of incident,

Pappu, Kalloo, Ram Bharosey and Rama Kant went in the hut. All four were friends. His son Ranjit had told that on the day of incident, all four were in the hut. From a bare perusal of testimony of this witness, it appears that he has not seen the alleged killing of deceased by the appellant rather he was informed about this incident by P.W.1- Ram Bharosey and some police personnel.

32. P.W.8- Dr. Sunil Kumar Gupta, Medical Officer, Bhau Rao Devas Joint Hospital, Lucknow, in his examination-in-chief, deposed that on 28.09.1997, he was posted for autopsy in K.G.M.C. Mortuary. On that day, at 1 P.M., the autopsy of the deceased Pappu Yadav was done, who was identified by Constable No.1675 CP Devenra Dixit and Constable No.670 CP Daya Shankar Police Station Thakurganj. Eight police documents came with them. He further deposed that all the internal organs of the deceased were congested. The deceased had died about two days ago and his tongue was blue and protruded. In his opinion, death was due to suffocation caused by antemortem strangulation. This witness has, thus, proved postmortem report as Ext. Ka-3. According to this witness, the deceased could have died on 26.09.1997 at about 10-11 P.M.

33. P.W.9- S.I. Abaad Ali is the Investigating Officer of this case. The investigation of this case was handed over to this witness on 27.09.1997. This witness, during the course of investigation, recorded statement of prosecution witnesses. He has also recorded statement of witnesses under Section 161 Cr.P.C. He had prepared site place in his own handwriting which he has proved as Ext. Ka-4.

34. P.W.10- Sri B.S. Tomar, Sub Inspector, Laharpur Police Station, District Sitapur, has proved chargesheet as Ext. Ka-5. He has also proved Panchayatnama paper No.A 7/1, photo lash A 7/3, Chalan lash A 7/4, sample seal A 7/5 and A 12/1 the letter sent to C.M.O. and post-mortem report are signed by Ashok Kumar Shukla. All are proved as Ext. Ka-6, Ka-7, Ka-8, Ka-9 and Ka-10 respectively.

#### Discussion :-

35. Having heard learned Amicus for the appellant, learned A.G.A. for the State and upon perusal of record when we scrutinize the testimonies of prosecution witnesses of facts, we find that the finding of guilt has been recorded by learned trial court against the accused/ appellant Kalloo mainly on the basis of testimonies of P.W.1- Ram Bharosey, P.W.2- Deen Dayal and P.W.5- Ranjeet. It appears from the testimony of P.W.1- Ram Bharosey, who is the first informant and eye witness of the alleged incident, that at about 12-1 P.M., when the accused/ appellant Kalloo called him for fishing, he went with accused/ appellant Kalloo to Shankar Ji's Temple which is 1 km. away and where they met the accused/ co-convict Uma Shanker. Thereafter all of them went to the hut of the Pappu, which is situated at about 3 km away from village Saitha where they ate rotis with vegetables and drank liquor. Thereafter, they again drank at Allu Nagar. After crossing the river, accused/ appellant Kalloo and Pappu started abusing each other. They were abusing each other while walking. Sitting in a field, accused/ appellant Kalloo asked this witness to give him a beedi to smoke. After smoking beedi, accused/ appellant Kalloo and co-convict Uma Shanker started hitting Pappu with fists. Thereafter, accused/ appellant Kalloo and co-convict Uma Shanker strangled Pappu to death in the same field. Accused/ appellant Kalloo and co-convict, Uma Shanker also tried to kill this witness but he somehow escaped and saved his life. However, the said witness has turned hostile and in his

37. P.W.-4- Siyaram, who is a milkman, has stated that he is not aware about this incident. This witness has also been declared hostile. In our considered opinion, no part of his testimony appears to be of any assistance to the prosecution or the defence.

39. Even the testimony of prosecution witnesses i.e. P.W.3- Constable Munnil Lal, P.W.6- Chhatrapal, P.W.7- Kunwar Pal, P.W.8- Dr. Sunil Kumar Gupta, P.W.9- SI Abaad Ali, P.W.10- B.S. Tomar once we scrutinize their testimonies do not go to prove beyond reasonable doubt that accused/ appellant killed the deceased Pappu Yadav.

"14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognised as a human right by this Court. In *Narendra Singh v. State of M.P.*, [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893], this Court has recognised presumption of innocence as a human right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33) "30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

(emphasis supplied)



41. Thus a close survey of the testimony of the aforesaid prosecution witnesses reveals that P.W.1- Ram Bharosey, though projected as an eyewitness, has himself denied having seen the incident-in-question. He even stated that while getting the First Information Report lodged he had placed his thumb impression on a paper which was smaller in size, whereas, Paper No. A2/5, which has been proved as Ext. Ka-1, is comparatively a larger piece of paper. Siya Ram, P.W.4 has been declared hostile. Admittedly, P.W.1- Ram Bharosey, had consumed liquor and was thus in an inebriated condition. Therefore, keeping in view the statements of the witnesses of fact in their entirety, it can safely be concluded that the prosecution has bitterly failed to establish its case to the effect that on 26.09.1997, the appellant/ accused killed the deceased Pappu Yadav in presence of P.W.1- Ram Bharosey, therefore, we have no hesitation in holding that learned trial court, while convicting the accused/ appellant on the basis of aforesaid witnesses of facts, fell in error in holding accused/ appellant guilty. The impugned judgment dated 20.02.2003, thus, being unsustainable, deserves to be set aside.

Conclusion :-

42. In the result, Criminal Appeal No.450 of 2003 is allowed. As a sequel, the Criminal Appeal No.643 of 2003 also stands disposed of. Consequently, the impugned judgment and order dated 20.02.2003 passed by the learned Additional District & Sessions Judge (FTC-V), Lucknow in Sessions Trial No.169 of 1998 convicting and sentencing the accused/ appellant Kaloo, to undergo imprisonment for life under Section 302 read with Section 34 I.P.C. is hereby set-aside. Appellant Kaloo is acquitted on that count.

43. We are informed that appellant- Kaloo is in jail. Therefore, he shall be released from jail forthwith unless he is wanted in any other case.

44. The appellant is directed to file a personal bond and two sureties in the like amount to the satisfaction of the court concerned in compliance of Section 437-A Cr.P.C. within six weeks from today.

45. Before we part with the case, we express our appreciation for the distinguished assistance rendered by Sri Shishir Pradhan, learned Amicus for the appellant. He shall be entitled to Rs.15,000/- (Rupees Fifteen Thousand) from the High Court as fee for his services.

46. Let a copy of this judgment be also placed on the records of connected Criminal Appeal No.643 of 2003.

47. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ E-mail forthwith.

(Ajai Kumar Srivastava-I, J.)      (Sangeeta Chandra, J.)

Order Date :- 01.05.2025

Mahesh/Shubhankar