

Supreme Court, Division Bench

Hon. Justice Meera Khadka

Hon. Justice Tanka Bahadur Moktan

Decision

076-CR-0051

Case: Homicide

Appellant/Defendant: Rajmle Rokaya, resident of Kailali District, Ghodaghadi Municipality, Ward No. 10 currently in detention at Kailali Prison Office

Vs.

Respondent/Plaintiff: Nepal Government through the FIR of Saile Rokaya:

Court of First Instance: Honorable Justice Bishnu Prasad Aryal
Kailali District Court

Date of Decision: 2074/11/23 (corresponding to 7 March, 2018)

Decision at Appellate Level: Honorable Justice Yagya Prasad Basyal
Honorable Justice Nasruallah Ansari
High Court, Deepayal

Date of Decision: 2075/09/15 (corresponding to 30 December, 2018)

Date of Registration of Appeal before this Court: 2076/04/09 (corresponding to 12 July, 2019)

This judgment, having been registered in accordance with Section 9 of the Administration of Justice Act, 2073, and Section 137(a) of the Muluki Faujdari Karyabidhi Sanhita, 2074, and entered on the daily cause list for decision, has been presented to this Bench. It has been prepared in the format prescribed under Rule 91(4) and Schedule 12 of the Supreme Court Rules, 2074.

Since, the initial FIR, the on-site crime scene memo, the statement of the accused, the charge sheet, the deposition, the decision of the Kailali District Court, the appeal petition filed by the defendant Rajmal Rokaya at the High Court, Deepayal, the order for the presence of the respondent and the contents of the decision are all reflected in the judgment of the High Court, Dipayal, dated 2075/09/15, and therefore, those matters have not been reiterated herein.

Decision of this Court

A dispute arose between the defendant, Rajmal Rokaya, and his son, the deceased Karn Bahadur Rokaya, regarding the partition of land. On the evening of 2073/10/24 (corresponding to 6 February 2017), during the course of this dispute at the deceased's residence, the defendant, Rajmale Rokaya, struck the deceased on the head with a sickle found in the house. The deceased,

Karn Bahadur Rokaya, sustained grievous injuries and subsequently died while undergoing medical treatment as a result of those injuries. Accordingly, it is alleged that the defendant, Rajmale Rokaya, committed an offense under Section 1 of the Homicide Chapter of the *Muluki Ain* (Country Code), contrary to the provisions of Section 13(1) of the same Chapter. The prosecution has therefore filed a charge-sheet seeking punishment under Section 13(1) of the Homicide Chapter. In the present case, it has been conclusively established and proven beyond doubt that the accused committed the offense as alleged in the charge-sheet. Accordingly, the defendant has been sentenced to life imprisonment with confiscation of property under Section 13 (1) of the Homicide Chapter of the *Muluki Ain*. However, taking into account the defendant's physical condition and the surrounding circumstances, the court found it justifiable to impose a sentence of five (5) years under Section 188 of the Court Proceedings (*Adalati Bandobasta*) wherein, an opinion to that effect and a decision had been rendered by the Kailali District Court on 2074/11/23 (corresponding to 7 March 2018).

Dissatisfied with the said judgment, the defendant, Rajmale Rokaya, filed an appeal petition. The High Court, Deepayal, issued an order for the appearance of the defendant and, on 2075/09/15 (corresponding to 30 December 2018), upheld the decision of the Kailali District Court and forwarded its judgment for sanction. Not satisfied with the decision of the High Court, an appeal petition on behalf of the defendant, Rajmale Rokaya, was subsequently filed before this Court.

It appears from the record that the appellant, the defendant Rajmale Rokaya, while in custody at the Central Prison under the Prison Office, Kathmandu, passed away during medical treatment on 2077/06/26 (corresponding to 12 October, 2020). A copy of the letter to this effect sent by the Prison Office, Kathmandu, to the Metropolitan Police Circle, Janasewa, Kathmandu, dated 2077/06/26, has been annexed to the case file. Furthermore, it is evident from the record that the appellant, the defendant Rajmale Rokaya, passed away on 2077/06/26. This fact is established based on a copy of the death certificate issued by Bir Hospital on the same date, as well as a letter from the Prison Administration, Kathmandu, dated 2077/09/07, addressed to this Court, stating that "it is hereby informed that the defendant Rajmale Rokaya died on 2077/06/26 while undergoing medical treatment at the Central Prison."

Upon examining the legal provisions regarding the death of a defendant while a case is sub-judice, it is noted that Section 133 (1) of the National Criminal Procedure Code, 2074, provides that: "Notwithstanding anything contained elsewhere in this Act, if the accused or defendant of any case dies, the court shall dismiss such case." This legal provision reflects the principle of criminal law that the crime dies with the death of an offender. It is the principle of criminal jurisprudence that the death of the person committing the crime results in immunity from the offence and the punishment.

Accordingly, in view of the fact that the appellant, the defendant Rajmale Rokaya had already passed away on 2077/06/26, prior to the delivery of the judgment in the present case, the case pursuant to Section 133 (1) of the National Criminal Procedure Code, 2074 is hereby dismissed and it is hereby ordered to do as per the particulars.

Particulars

- (a) As noted above in the decision section, in view of the fact that the defendant Rajmale Rokaya has passed away, the record of the life sentence along with the confiscation of property need

not be maintained. It is hereby directed that the Record Section of the Kailali District Court be informed to expunge the life sentence and the confiscation of property from its registry.

- (b) It is hereby directed to upload the decision in the electronic system and to remove the case from the case registry and accordingly submit the case file to the Record Section.

Justice

Concurring with the above Opinion

Justice

Bench Officer: Dhurba Bahadur Kunwar

Computer Operator: Sami Nepali

Dated: Year 2077 of the Month of Paush Date 14 Day 3

(Corresponding to Year 2020 of the Month December Date 29 Day 3)