

**Nathu Vs. Emperor**

**Nathu Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/461931](http://sooperkanoon.com/461931)

**Court :** Allahabad

**Decided On :** Aug-13-1940

**Reported in :** AIR1940All480

**Appellant :** Nathu

**Respondent :** Emperor

**Judgement :**

**Mohammad Ismail, J.**

1. This is an appeal by Nathu who has been convicted under Section 302, I.P.C. and sentenced to transportation for life. A learned Judge of this Court has issued a notice to the appellant calling upon him to show cause why the sentence should not be enhanced. The prosecution case is that the appellant Nathu and his father originally resided in village Sonehta in the sub-division of Orai. Many years ago, Nathu's father shifted to Hamirpur district and settled down in village Atrauli. Nathu lost his parents about 11 years ago. After the death of his parents Nathu and his sister went back to village Sonehta and began to live with Bhagirath, deceased. Bhagirath is a relation of the appellant Nathu. It is stated that Bhagirath treated the children badly and did not look after them, with the result that they ran away after staying with Bhagirath for a few months. Nathu is now about 19 or 20 years of age. On reaching the age of discretion, he demanded some ornaments belonging to his father which are said to have been deposited with Bhagirath for safe custody.

Bhagirath did not deny that he was entrusted with the ornaments but refused to return them because he had spent money on the maintenance of Nathu and his sister. Nathu repeated his demands several times at intervals but with no result. It is stated that a few hours before the occurrence there was a quarrel between Nathu and Bhagirath, deceased, on account of the ornaments. On the night between 6th and 7th March, Bhagirath and his children were sleeping in the courtyard of their house. It is stated that about midnight Nathu entered the courtyard and struck Bhagirath with a 'gandasa.' The latter succumbed to the injuries almost instantaneously. Bhagirath's children Mohna and Mt. Garhiya were sleeping close to their father. They woke up and saw the accused striking Bhagirath. They raised an alarm which attracted the neighbours who rushed to the place of occurrence. The appellant then ran away leaving the 'gandasa' and a pair of shoes behind. The mukhia of the village on being apprised of the fact sent a report to the police station.

2. The Sub-Inspector reached village Sonehta on the night between 7/8th March. He found the bloodstained gandasa with which Nathu is alleged to have struck Bhagirath in the house and also a pair of shoes. It is now proved that the 'gandasa' had human blood stains upon it. Nathu had been arrested by the villagers. At the time of the arrival of the Sub-Inspector he was wearing a blood stained dhoti. It is stated that he made over a blood-stained turban and a shirt to the Sub-Inspector. These articles were found in the house occupied by the appellant. The appellant pleaded not guilty but the learned Sessions Judge upon a consideration of evidence and circumstances convicted and sentenced the appellant as stated above. The prosecution story is satisfactorily proved by the statements of Mohan and Mt. Garhiya, who are eye-witnesses to the incident. The recovery of blood-stained clothes from the person and the house of the appellant is a strong corroboration of their evidence. The learned Sessions Judge has found that the story of the accused that Bhagirath was entrusted with the jewellery belonging to the appellant's father is probably correct. Having regard to the age of the appellant and the fact that he had a grievance against the deceased, the learned Sessions Judge sentenced the appellant to transportation for life. We are satisfied that the case against the appellant is fully established.

3. On the question of sentence it is not possible to lay down any hard and fast rule of universal application. Each case must be decided on its own merits and the punishment should be awarded suitable to each case. Section 302, Penal Code, provides two punishments. In the absence of any extenuating circumstances the sentence of death is the only appropriate sentence. The Court whose duty it is to award punishment must exercise its own discretion. The discretion is to be exercised in a judicial manner and not arbitrarily. If the case is not governed by the provisions of Section 83, Penal Code, and the accused is a young man of normal understanding and mature mind, the age by itself will not be sufficient to justify the awarding of the lesser sentence, particularly if the offence is committed in a cold-blooded manner and has been the result of a premeditated plan. On the other hand, if in consequence of inexperience and youth, the prisoner commits murder in vindication of a supposed wrong, the youth in conjunction with other circumstances may be taken into consideration in favour of the accused and the lesser of the two punishments may be awarded. This question has been considered in several cases. We proceed to notice a few of them. In *Ghunnai v. Emperor* : AIR1934 All132 a Bench of this Court held that:

However horrible the crime, a boy of his age should not be hanged, that at the age of 15 and 16 when a boy had just come to the age of puberty he may do many things then which he would never dream of doing when he was older and that sentence of death should be remitted to transportation for life.

4. The learned Judges upon a consideration of all the circumstances considered that the death sentence was not the appropriate sentence in that case. In *Mohammad Din Mehar Din v. Emperor* (38) 25 AIR 1938 Lah 200 a Bench of the Lahore High Court observed:

We disagree, however, with the learned Judge when he thought that he was bound to condemn both these boys to death. Their ages are in the heading of the judgment as 12 years. The learned Judge, however, comes to the conclusion that they are 16 and 17. We have had the advantage of seeing them here ourselves and we would put their ages in the neighbourhood of 15 Not only do we think that it would be wholly wrong to hang boys of this age, but in this case there is some

evidence contained in the confessions which is of course the real evidence against both of them, that there was provocation at the hands of Dullah, the father of Bashir, who was murdered....

5. In that case it will be noticed that the accused were very young and there was evidence of provocation. In *In re Kolanda Nayakkan* (30) 17 AIR 1930 Mad 972 a Bench of the Madras High Court held:

In cases where the murder has been deliberately planned and is essentially of a cold-blooded and contemptible nature, whatever the age of the accused might be, provided his case does not come under Section 22, Madras Children Act (4 of 1920), the capital sentence would usually be the appropriate one.

6. With these observations we respectfully agree. It may be mentioned that it is always open to the Provincial Government to remit the sentence in the exercise of their prerogative of mercy. The duty of a Court of justice is to interpret the law and not to legislate. The presiding officer however may make a recommendation for mercy in suitable cases. In the present case we find no difficulty in upholding the sentence of transportation for life imposed by the learned Sessions Judge. It has been held on evidence that Bhagirath treated Nathu, appellant, and his sister unkindly. It is also in evidence that the deceased misappropriated the ornaments belonging to the minors. Apparently the appellant brooded upon his ill treatment at the hands of the deceased and a few hours before the occurrence Bhagirath deceased had refused to return the ornaments entrusted to his care. Nathu finding that he had no means of recovering the property took the law into his own hands and killed Bhagirath at night. While the offence clearly comes within the purview of Section 302, I.P.C., we consider that there are sufficient extenuating circumstances, apart from the youth of the appellant, to justify the sentence passed upon the appellant by the learned Sessions Judge. In the result we dismiss the appeal and confirm the sentence of transportation for life passed upon Nathu, appellant. The notice for the enhancement of sentence is discharged.