



2026:AHC:174860-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5067 of 2018

Jagan

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Lav Srivastava, Neeja Srivastava, Prarabdh Jain, Rajan Srivastava, Rajeev Nayan Singh, Santosh Kumar Gupta, Sr. Advocate
Counsel for Respondent(s)	: G.A.

Court No. - 44

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE ACHAL SACHDEV, J.**

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Prarabdh Jain learned counsel for the appellant and Sri Amit Sinha, learned A.G.A. for the State.
2. The instant Criminal Appeal has been filed against the judgement and order dated 08.08.2018 passed by the Additional District & Sessions Judge, Fast Track Court No. 3, Moradabad, in Session Trial No. 566 of 2016, convicting the appellant Jagan under Section 304 of the Indian Penal Code (*hereinafter referred to as "I.P.C."*) with a fine of Rs. 50,000/-. In default of payment of fine he had to undergo 6 months additional simple imprisonment.

3. When the deceased, Triveni, allegedly had died on account of the fact that the accused Jagan had burnt her then a First Information Report (*hereinafter referred to as "F.I.R."*) was lodged by the brother of Triveni namely Durgadas. He had stated in the F.I.R. that Triveni and the accused Jagan had been married for 18 years and her sister had no child and, therefore, there used to be quite often discussions amongst his *behnoi* (brother-in-law) the accused and his sister. On 23.12.2015, it was stated in the F.I.R., he had got information that her sister at around 08:15 PM had been burnt by her husband by pouring kerosene oil on her and that she had been admitted in the Government Hospital at Moradabad. The scribe of the F.I.R. was Raj Kumar son of Durgadas the first informant. Upon getting this information, an F.I.R. was lodged under Section 326 of I.P.C. Thereafter, since the deceased was in a position to give her statement, dying declaration was sought to be recorded. After getting all the certificate from the doctors etc., dying declaration was recorded in a question-answer form. The dying declaration has been reproduced here as under:

“23/12/15 - 9.50PM

Certified that I examined Patient Triveni W/O Jagan & in My Opinion She is fit to give a statement.

ह० अप०
आकस्मिक चिकित्सा अधिकारी
जिला चिकित्सालय
मुरादाबाद

प्र० क्या नाम है?

उ० त्रिवेणी

प्र० कैसे जल गई?

उ० औलाद नहीं है।

मेरे पति ने जलाया। मिट्टी का तेल छिड़क के आग लगाई।

प्र० क्या नाम है, पति का?

उ० जागन

(अन्य किसी प्रश्न का उत्तर नहीं दिया)
दाहिने हाथ के अंगूठे का निशान

उक्त बयान श्रीमती त्रिवेणी द्वारा मेरे समक्ष दिया गया तथा मेरे द्वारा लिखा गया।

ह० अप०

23/12/15

(M.MOIN UL ISLAM)

A.C.M.-2

MORADABAD

23/12/15 - 10.00PM

Certified that the above statement was recorded in my presence & the admitted Triveni W/O Jagan Remained LUCID through out the recording at statement.

प्रदर्श क-8

ह० अप०

आकस्मिक चिकित्सा अधिकारी

जिला चिकित्सालय

मुरादाबाद"

4. Upon the death of Triveni, a panchayatnama was conducted on 24.12.2015. Thereafter, the postmortem was done on 24.12.2015 and in the postmortem it was stated that there was superficial to deep burn injuries all over the body and there was also smell of kerosene oil present. The cause of death was shock and ante-mortem burn injuries. The police had submitted its report under Section 304 read with Section 326 of I.P.C. Thereafter, the Court of Additional District & Sessions Judge took cognizance of the matter and framed charges under the same sections on 08.07.2016. From the side of the prosecution as many as eight prosecution witnesses appeared in the Court.

5. PW-1 was the brother of the deceased Durgadas. He had narrated the manner in which the incident had happened and had also stated that the couple i.e. the accused, Jagan, and the deceased, Triveni, had been married for 18 years and they had no children from their marriage and that used to be the reason for occasional disputes and that was also the reason why his brother-in-law had poured kerosene oil on his sister.

In the cross-examination, PW-1 had stated that the information was received from a neighbour of his sister on the telephone but he did not remember the telephone number and the name of the neighbour. He denied the fact that the news was given by his brother-in-law. He had categorically stated that the Magistrate had got her dying declaration recorded in the presence of all the family members i.e. his son Raj Kumar, his wife Ashawati and his bua. He had again tried to answer as to why the dispute between the couple used to be there. The relevant portion of the cross-examination showing that the dying declaration was recorded in the presence of family members is being reproduced here as under:

“मजिस्ट्रेट साहब ने मेरी बहन का बयान हम सब परिवारजन की मौजूदगी में लिया था उस समय मैं और मेरा लड़का राजकुमार व मेरी पत्नि आशावती व मेरी बुआ बयान के समय मौजूद थी। इस बयान से पूर्व हम सबकी बात मृतका से हुई थी। त्रिवेणी मुझसे 5-6 साल छोटी थी। त्रिवेणी अपनी ससुराल में मरने तक रही। हमारे यहाँ आती थी चली जाती थी अकेली भी आती थी जागन के साथ भी हमारे यहां आती थी इस घटना से पूर्व कोई शिकायत या रिपोर्ट किसी की तरफ से या किसी के खिलाफ नहीं की हम लोग सदैव इनसे बच्चा गोद लेने के लिए कहते थे तो जागन मना कर देता था। बहन भी बच्चा गोद लेने के लिए कहती थी तो जागन मना कर देते थे। मेरी बहन ने कभी जागन

से दूसरी शादी की बात नहीं कही और ना ही जागन में दूसरी शादी की बात कही।”

6. PW-2, Raj Kumar, was the scribe of the F.I.R. and he had also narrated somewhat the same facts as were narrated by his father Durgadas, PW-1.
7. PW-3, Chandra Pal Singh, had claimed the deceased to be his sister and was a witness in the panchayatnama.
8. PW-4 was the lady Constable Lokesh Tyagi who had prepared the papers and had taken the dead-body to the postmortem house.
9. PW-5, Ajay Kumar, was the computer operator at Thana Civil Lines, Moradabad and he had proven the chik.
10. PW-6, Love Sirohi, was the Investigating Officer. He had stated the manner in which he had investigated the case.
11. PW-7 was the S.D.M. by the name of Mohammad Moinul Islam in whose presence the dying declaration was got recorded.
12. PW-8 was Dr. S.K. Chaudhari who had conducted the postmortem.
13. Thereafter, the statement of the accused, Jagan, was got recorded under Section 313 of Cr.P.C. He had categorically stated that Triveni was his wife and that people of her mayka wanted to adopt some child from her mayka whereas he wanted his brother's child to be adopted and this had resulted in a lot of arguments between both of them and, therefore, Triveni had put herself on fire and he had stated that he was innocent.
14. DW-1, Dr. Pawan Kumar, had testified in favour of the defence and had stated that there were many injuries on the accused and had

stated that these injuries could have occurred only when a person had tried to douse the fire on a person who had got burnt.

15. DW-2 was Dr. Praveen Shah and he had stated that the deceased, who was an injured at that point of time, had been brought by the mother of Jagan Singh. Her name was Omwati.

16. DW-3, Manvendra Kumar Sharma, was the record keeper of the District Hospital, Moradabad. He had stated that the injured died while she was being brought to the hospital on 25.12.2015 at 08:45 PM.

17. DW-4, Gajendra Singh, was the elder brother of the accused. He had also stated that the couple had been married for 18-20 years and had no children from their marriage and quite often they used to have arguments in connection with the adoption of a child. On 23.12.2015, Jagan and his wife had fought amongst themselves and Jagan had gone out of the house. While he and Jagan were talking to each other, a screaming sound came and then he along with Jagan and his parents went and saw that Triveni had put herself on fire after pouring kerosene oil on herself. Jagan had tried to douse the fire by wrapping Triveni by a sack. After the fire had got extinguished, Triveni was in a state of shock and was not speaking and thereafter his parents and Jagan had rushed her to the hospital. Jagan's hands had also got burnt and doctors had referred Triveni for a better treatment to Delhi and thereafter the family had started off for Delhi in a car. However Triveni died in Ghaziabad.

In the cross-examination, he had stated that he was speaking the correct facts and he had not appeared just only to save his brother.

18. DW-5 Kalua was the father of Jagan. He had also testified in favour of his son and had stated the same facts as were stated by the other witnesses.

19. However, when the trial court convicted the accused on 08.08.2018 and sentenced the accused under Section 304 of I.P.C. for life imprisonment with a fine of Rs. 50,000/-, the instant appeal was filed.

20. Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Prarabadh Jain, learned counsel for the appellant has submitted that if the statement of PW-1 is seen then it would become evident that in fact there used to be quite often verbal altercations between the husband and wife and thereafter he himself had stated that the Magistrate had got recorded the statement of his sister in the presence of all the family members. Learned counsel for the appellant relying upon the judgment of Supreme Court in **Sanjay Kumar Sharma versus State of Bihar** reported in **2026 SCC OnLine SC 357** and in **Mohan Lal and Others versus State of Haryana** reported in **(2007) 9 SCC 151** submitted that a dying declaration in the presence of relatives made the dying declaration doubtful. He specifically relied upon the paragraph no. 11 of the judgment in **Mohan Lal and Others (Supra)** and therefore the same is being reproduced here as under:

***“11.** In the instant case, it is to be noted that the evidence of PW 3 and the doctor clearly show that before the dying declaration was recorded the relatives of the deceased including PWs 7 and 8 were present with her and were subsequently asked to leave the room where the dying declaration was recorded. Though much*

was made of the dowry demand by the courts below there is only a vague reference to it in the dying declaration. The statements of PWs 7 and 8 that they had told the investigating officer about the dowry demand is not correct. They had not said so before the investigating officer. It is also significant that prior to the death, neither the deceased nor her parents had complained to the police or told anyone else about any alleged dowry demand. In the circumstances, the dying declaration itself was clearly the result of tutoring and was not a free and voluntary one. The courts below were therefore not justified in placing reliance on the same. Additionally, there was only a vague reference of dowry demand to the police which in any event has not been established and also was not told during investigation. Once the dying declaration is excluded, there is nothing to implicate the accused-appellants with the death.”

21. So far as the question which related to the aspect that the accused would have to explain the reason as to how the death had occurred as it had happened in his house, learned counsel for the appellant submitted that the accused in his statement recorded under Section 313 of Cr.P.C. had very categorically stated that the incident had occurred on account of the fact that there was a tussle between the couple as to child of which side had to be adopted. The wife was under the pressure of her relatives (matrimonial side) that a child from her mayka be adopted whereas the appellant was always of the view that his brother's son be adopted. This had resulted in some kind of verbal altercation and his wife had thereafter put herself on fire after pouring kerosene oil on herself. He therefore submitted that the appellant was innocent and could not be punished. Learned counsel for the appellant further submitted that when

the incident had occurred he had tried to save his wife from being burnt and had also himself got burnt. This definitely shows that every effort was made on his part to save his wife. Learned counsel for the appellant further referred to the various defence witnesses and had submitted that in fact after the doctors had referred the patient to be taken to more advanced centre then all efforts were also made to take her to some hospital in Delhi while she passed away at Ghaziabad itself. Learned counsel for the appellant further submitted that the conviction was under Section 304 of I.P.C. and Section 304 Part-I provided that the accused could be punished with ten years of imprisonment which could be punished with anything between ten years imprisonment to life imprisonment. In the instant case, he submitted that as per Section 354(3) of Cr.P.C., if a punishment of life imprisonment had to be given in view of the fact that the very same offence could have been punished with a lesser sentence, then special reasons for such sentence ought to have been given after having heard the convicted person under Section 235(2) of Cr.P.C. on the question of sentence. This having not been done, learned counsel for the appellant stated that the judgment became erroneous and deserved to be set-aside.

22. Sri Amit Sinha, learned A.G.A. for the State, however, opposed the appeal and submitted that there were sufficient grounds to believe that the appellant was guilty of having committed culpable homicide not amounting to murder intentionally. He had submitted that the husband had poured kerosene oil and put his wife on fire and, therefore, no lenient view be taken by this Court.

23. Having heard the learned counsel for the parties, we are of the view that first of all the incident when had occurred there were sufficient evidence to the fact that the husband had tried to save his wife and in the process he had also got burnt. We also find that the marriage had been of 18 years and, therefore, it could not in any manner be presumed that there was any kind of demand etc. of dowry from the side of the first informant. The incident had occurred on account of there being a tussle in the family as to which child of which family had to be adopted. The wife's side was insisting on the adoption of a child from the wife's family whereas the husband's side was insisting upon the adoption of a child of the husband's side. This had been the admitted case even of the prosecution and when in that tussle when the deceased had got burnt, then it had to be seen whether she had burned herself or it was the misdeed of the accused. In the instant case, we find that the husband had definitely got burnt in the process to save her from further getting burnt and also we find that the mother-in-law of the deceased had taken her to the hospital for giving treatment. What is more, we also find that DW-1 and DW-2 had testified that the husband had got burnt in the process of saving his wife and had also been given the treatment in the hospital. In view of the fact that the dying declaration was got recorded in the presence of all the family members, no importance could be attached to it. We are thus of the view that it could not with any certainty be said that the deceased was put on fire after pouring kerosene oil by the accused. Having held thus, we are of the view that definitely the husband could not be outrightly blamed for the incident.

24. Thus for all the reasons which have been stated above, we are of the view that the appeal deserves to be allowed and the judgment and order of the trial Court dated 08.08.2018 passed by the Additional District & Sessions Judge, Fast Track Court No. 3, Moradabad, in Session Trial No. 566 of 2016 deserves to be set-aside.

25. The Appeal thus stands **allowed**.

26. The appellant, Jagan, is honourably acquitted of the charges as were levelled against him in the instant case. If the appellant is on bail, he need not surrender and his sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

(Achal Sachdev,J.) (Siddhartha Varma,J.)

August 19, 2026

M.S. Ansari