



2026:AHC:218423-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1219 of 2019

Smt. Rajeshwari and Anr.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Along with :

Criminal Appeal No. 1221 of 2019:

1. Anuj Kumar

Versus

State of U.P.

Criminal Appeal No. 1220 of 2019:

2. Vipin and Anr.

Versus

State of U.P.

Counsel for
Appellant(s) : Abhishek Mishra, Anil Kumar Dubey, Ashok
Kumar Tripathi, Dilip Kumar Yadav, Gunjan
Sharma, Harsh Dwivedi, Mahendra Pal
Singh Gaur, Pradeep Kumar Pal, Pulak
Ganguly, Suman Srivastava

Counsel for
Respondent(s) : G.A.

Court No. - 29

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.**

1. The instant criminal appeals have been filed against the judgement and order dated 30.11.2018 passed by the 6th Additional Sessions Judge, Budaun, in Sessions Trial No. 333

of 2017 (State vs. Anuj Kumar and 4 others) by which the appellants have been convicted and sentenced under Section 302 r/w 149 Cr.P.C. for life imprisonment along with fine of Rs. 10,000/- and in case of default they had to undergo further imprisonment of one month.

2. When Santosh had gained knowledge of the fact that his daughter Priti, who had been married to Anuj for about 3 years had died, then he came down from his residence at Sanjarpur Police Station - Ujhani, District - Budaun to the matrimonial home of his daughter Priti in village Asrasi, Police Station - Kadarchauk, District - Budaun and there he discovered that on 4.1.2017 itself sometime in the evening at around 4:00PM, Anuj, his son-in-law Rajeshwari, mother-in-law of the daughter, Brajpal father-in-law of his daughter and Vipin had collectively, by pouring kerosene oil over her burnt her and that she had been taken to the hospital where her treatment was being recorded. The FIR was lodged at around 23:45 hours. In the meantime, at around 4:48PM, on 4.1.2017, the dying declaration of the deceased Priti was recorded. Also, after Priti was burnt, she was taken to the District Hospital at Budaun where she was given treatment.

3. On 5.1.2017 at around 2:45AM in the morning, she died. Thereafter panchayatnama was conducted on 5.1.2017 itself and thereafter the body was sent for post mortem which was conducted on 5.1.2017 at 4:20am. The cause of death was shock and extensive ante-mortem burn injuries.

4. Upon the completion of the investigation, the Police report was submitted before the Court and on 20.1.2018, charges were framed against Anuj Kumar, Smt. Rajeshwari, Brajpal, Vipin and Madan under Sections 498-A, 304-B IPC and Section 3/4 of the Dowry Prohibition Act. An alternative charge under Section 302/149 IPC was also framed. When the charges were denied, trial commenced.

5. P.W.-1 was the mother of the deceased. She had stated that her daughter was never tortured for dowry and she had never mentioned about it to her. She had also denied of having any knowledge that kerosene oil had been poured over her and she had been put on fire. She had, in fact, sustained burn injuries when the stove on which she was cooking had burst. She was declared hostile. In her cross-examination, she had stated that the daughter was not in a position to speak. She had stated that she did not recognize the accused Vipin by face "मैं विपिन को चेहरे से नहीं पहचानती हूँ। मैंने कभी विपिन को घटना से पहले कभी नहीं देखा और न ही घटना के बाद देखा। मेरी लड़की प्रीति ने कभी भी विपिन या उसके किसी अन्य साथी का नाम नहीं बताया।"

6. P.W.-2 was the sister of the deceased and she had also denied about the occurrence of the incident. She was also declared hostile. She had, in fact, denied that the husband of the deceased was indulging in gambling. She had also not recognized either Madan or Vipin in the court. She had, in fact, stated that she had never heard the names of two

persons. The statement of P.W.-2 denying the fact that she knew Vipin and Madan is being reproduced here as under:-

"मैंने प्रीति के मुख से कभी मदन व विपिन का नाम नहीं सुना न मैंने उन्हें कभी देखा और न मैं उन्हें आज अदालत में पहचान सकती हूँ आज मैंने ईश्वर को साक्षी मानकर अदालत में सही बयान दिया है"

7. P.W.-3 was the Mausi, Smt. Phoolmati. She had also denied that the deceased had died because of burn injuries. She was also declared hostile.

8. P.W.-4 was a doctor. He had stated in his statement in chief that on 5.1.2017 had done the post mortem and before she had died had also treated the patient.

9. P.W.-5 was the Naib Tehsildar. He had stated that the patient was conscious at the time of getting her statement recorded and had proved the dying declaration. He had stated that the Investigating Officer had not taken any statement of his during investigation. The patient was in a very serious condition when he had reached and he did know as to when she died after getting her statement recorded. He had mentioned that it was not possible to take the finger print/impression of the deceased due to burn.

10. P.W.-6 was constable Satish Chandra who had proven the chick FIR.

11. P.W.-7 was the doctor Rajeev Kumar Gupta who was present before the dying declaration was recorded.

12. P.W.-8 was Pramod Kumar Yadav, the Investigating Officer. He had stated the manner in which the investigation was done and had also stated that during the investigation, the name of Madan had surfaced. He had also stated that none of the prosecution witnesses had mentioned the name of Madan. He has stated that it was correct to say that Vipin and Madan were not family members of Anuj. In fact, Madan was not even of the caste of Anuj and that he was not aware as to whether Madan had taken any advantage of the entire affair. The relevant portion of the statement of the Investigating Officer is being reproduced here as under:-

"यह कहना सही है कि विपिन व मदन अनुज में परिवारी नहीं है और मदन अनुज की जाति का भी नहीं है मुझे नहीं पता कि मदन प्रत्यक्ष या अप्रत्यक्ष रूप से किसी दहेज की रकम या सामान को लेकर लाभान्वित होगा या नहीं।"

13. P.W.-9 was the brother of the deceased. He was a young child of 13 years. After determining whether he would be able to give his statement, the same was recorded. He was also declared hostile when he stated that no incident of the kind which was reported had occurred.

14. P.W.-10 was the Ward Boy and had stated the manner in which the admission had taken place and the treatment had proceeded.

15. Thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded. Most of the witnesses had stated that the deceased had died on account of an accident and

there was no demand for dowry and that the deceased had not been killed. However, Vipin in his statement under Section 313 Cr.P.C. had stated that he was not of the family and also he had no hand in the entire incident.

16. Similarly, Madan had also stated that he was also not of the family and that he had nothing to do with the dowry or with the death of the deceased. However, when on the completion of the trial, the 8th Additional District Judge, Budaun, on 30.11.2018 convicted the accused under Section 302/149 IPC with life imprisonment along with a fine of Rs. 10,000/- on each of the accused and in default of payment of fine, they had to further undergo one month's imprisonment, the Appeals were filed.

17. Against the judgment and order dated 30.11.2018, the appellant Anuj Kumar filed a Criminal Appeal No. 1221 of 2019, the appellants Smt. Rajeshwari and Brajpal, mother-in-law and father-in-law respectively, filed Criminal Appeal No.1219 of 2019 and the appellants Vipin and Madan filed Criminal Appeal No. 1220 of 2019.

18. The Criminal Appeal No. 1221 of 2019 and the Criminal Appeal No. 1219 of 2019 were argued by Sri Mahendra Pal Singh Gaur, Advocate, whereas Criminal Appeal No. 1220 of 2019 was argued by Sri Sunil Kumar, Advocate.

19. Learned counsel for the appellants argued that the case was a brought up case and that the appellants were innocent. Learned counsel for the appellants submitted that if the

statement of the doctor, the statement of the Naib Tehsildar and the dying declaration along with the bed-head tickets and the papers relating to the treatment were seen, then it became certain that the deceased was not in a position to speak. In fact, learned counsel for the appellants submitted that some of the pages of the bed-head ticket were made to disappear so that the gravity of the illness of the patient could not be deciphered. From the paper-book, the bed-head ticket, Exhibit Ka-15, was shown to the Court. Learned counsel for the appellants tried to show that after page 3, page 4 was missing and that after page 5 came page 10 of the bed-head ticket. He, therefore, submitted that the prosecution had played a fraud by removing quite a few pages which would have shown that the deceased was not in a condition to even speak.

20. Learned counsel for the appellants further submitted that even the hands of the deceased were burnt to such an extent that she could not put her thumb impression of the hands and, therefore, on the dying declaration, the thumb impression of her foot was taken. Learned counsel for the appellants stated that under law the person recording the dying declaration himself had to state that the person was in a fit condition to give the statement and, when the Naib Tehsildar did not say so, the prosecution case became doubtful.

21. Thereafter, he submitted that there was no smell of kerosene oil and that the smell of kerosene oil was also not mentioned in the post-mortem report. Still further, learned counsel for the appellants submitted that if the statements of the prosecution witnesses are seen, then it becomes certain that all the witnesses of fact had turned hostile and they had categorically stated that they had never alleged that the deceased had died because she had been burnt to death. In fact, they had stated that throughout it was the case of the prosecution that the in-laws loved the deceased a lot and that she had died because of an accident. They had also stated that they did not know Madan and Vipin.

22. Lastly, learned counsel for the appellants submitted that if the documents on the basis of which the charges were framed by the Court are seen, then it becomes certain that there was no description of Vipin and Madan given in the charges. Absolutely no details of their parentage etc were given. Since learned counsel for the appellants depended heavily upon the charges framed by the Sessions Judge, Badaun, on 20th January, 2018, the entire page is being reproduced hereunder.:

1

न्यायालय सत्र न्यायाधीश, बदायूँ
सत्रवाद संख्या 333 सन् 2017
राज्य प्रति अनुज कुमार आदि
अन्तर्गत धारा 498ए, 304बी, 302 भा0दं0सं0
एवं धारा 3/4 दहेज प्रतिषेध अधिनियम
थाना - कादरचौक, जिला- बदायूँ
आरोप

मैं, नसीर अहमद द्वितीय, सत्र न्यायाधीश, बदायूँ आप अभियुक्तगण 1. अनुज कुमार, 2. राजेश्वरी, 3. बृजपाल, 4. विपीन व 5. मदन को निम्न आरोपो से आरोपित करता हूँ:

प्रथमतः यह कि दिनांक 04.01.17 को समय 4.00 बजे शाम स्थान ग्राम असरासी अंतर्गत थाना कादरचौक जिला बदायूँ में आप लोगो ने वादी संतोष कुमार की पुत्री प्रीति जिसकी शादी को आप अभियुक्त अनुज कुमार के साथ हुए सात वर्ष का समय व्यतीत नहीं हुआ था, से शादी के बाद से दहेज की मांग करके उसके साथ निर्दयता पूर्ण व्यवहार कर उत्पीड़न करके उसकी दहेज हत्या कर दी। इस प्रकार आपने ऐसा अपराध कारित किया जो भा0 दं0 सं0 की धारा 302 के अन्तर्गत दण्डनीय है और मेरे प्रसंज्ञान में है।

विकल्पतः

यह कि उक्त दिनांक, समय एवं स्थान पर आप लोगो ने एक राग होकर वादी संतोष कुमार की पुत्री प्रीति की मृत्युकारित कर हत्या कर दी। इस प्रकार आपने ऐसा अपराधकारित किया जो भा0 दं0 सं0 की धारा 302 के अन्तर्गत दण्डनीय है और मेरे प्रसंज्ञान में है।

द्वितीयतः

यह कि शादी के बाद से दि० 04.01.17 से पूर्व से किसी समय स्थान ग्राम असरासी अन्तर्गत थाना कादरचौक जिला बदायूँ में आप लोगो ने वादी की पुत्री को दहेज न मिलने के कारण उसे संवेच्छापूर्वक मारपीटकर भागसिक व शारीरिक रूप से प्रताड़ित किया इस प्रकार आपने ऐसा अपराधकारित किया जो भा0 दं0 सं0 की धारा 498ए के अन्तर्गत दण्डनीय है और मेरे प्रसंज्ञान में है।

तृतीयतः

यह कि उक्त दिनांक से लगभग तीन वर्ष पूर्व से शादी के समय के बाद से आपने वादी की उक्त पुत्री से दहेज की मांग की तथा दहेज न मिलने के कारण उसका उत्पीड़न किया तथा उसकी हत्या कर दी। इस प्रकार आपने ऐसा अपराधकारित किया जो धारा 3/4 दहेज प्रतिषेध अधिनियम के अन्तर्गत दण्डनीय है और मेरे प्रसंज्ञान में है।

एतद्वारा मैं निर्देश देता हूँ कि उक्त आरोपो हेतु आपका परीक्षण इस

न्यायालय द्वारा किया जायेगा।

। नसीर अहमद द्वितीय ।

सत्र न्यायाधीश, बदायूँ

दि० 20.01.2018

अभियुक्तो को उक्त आरोप पढ़कर सुनाये व समझाये गये। अभियुक्तो ने आरोपो

से इंकार किया तथा परीक्षण चाहा।

। नसीर अहमद द्वितीय ।

सत्र न्यायाधीश, बदायूँ

दिनांक 20.01.2018

23. Learned counsel for the appellants stated that the accused Vipin and Madan were such persons who were not known to the informant. In fact, the name of Madan was not even to be found in the FIR. Though the names of Madan and Vipin were mentioned in the dying declaration, the accused Madan and Vipin were never identified either by way of a test identification parade or by any of the prosecution witnesses in Court. He submitted that when all the prosecution witnesses of fact had turned hostile in Court, then, no question arose for them to recognize Madan and Vipin in the dark also. However, since their identity had to be fixed by the court, the cross-examination of the prosecution witnesses were done and in the court they had denied having recognised them. In the statements under Section 313 Cr.P.C. also, Vipin and Madan both had said that they were not family members and had been roped in for no reason whatsoever.

24. Learned counsel for the appellants also relied upon a judgment of the Supreme Court reported in **AIR 2025 SC 2666 (Tukesh Singh & Ors. v. State of Chhattisgarh)** and submitted that in a case where there are eyewitnesses, there could be two situations: one where the eyewitnesses had never seen the accused before the incident and the other where the eyewitnesses had known the accused from before and were recognizing the accused at the time of incident. If in the event the eyewitnesses were not knowing the accused from before, then the eyewitnesses must identify the accused sitting in the dock as they had seen them while they were

committing the crime or they were suspecting that they had committed the crime. If the prosecution witnesses were not knowing the accused from before, then, in the normal course of events, a test identification parade also ought to have been conducted. However, if that is not held and the evidence of the eyewitnesses was recorded after a passage of some time, then definitely the identification becomes vulnerable and also the identification in Court becomes of utmost importance and it has to be seen as to in what manner the identification was done in the dock.

25. In the instant case, learned counsel for the appellants relied heavily upon paragraph No. 21 of the judgment reported in **AIR 2025 SC 2666 (Tukesh Singh & Ors. v. State of Chhattisgarh)**, to state that none of the prosecution witnesses who were eyewitnesses ever knew as to who were Madan and Vipin. He, therefore, submitted that the appellants Madan and Vipin could not have been tried and punished when their identities themselves were not fixed. Since learned counsel for the appellants heavily relied upon paragraph No. 21 of the aforesaid judgment, the same is being reproduced hereunder.

“21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal

course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that “he had seen A, B and C killing X and he knew A, B and C”. Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that “he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased.”

In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.”

26. Learned A.G.A., Sri Amit Sinha, vehemently opposed the appeals and submitted that, in view of the judgment in **AIR 1958 SC 22 (Khushal Rao v. State of Bombay)**, a dying

declaration had to be given a lot of sanctity. In the instant case, the statement of the doctor that the patient was in a fit condition to give her statement could not be disbelieved. Also, the statement of the Naib Tehsildar stating as to how he had recorded the statement of the deceased could not be disbelieved. Since the paragraph nos. 16 and 17 of the judgment are being relied upon, they are being reproduced here as under:-

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human

character; and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that

that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.

27. Having heard learned counsel for the appellants Sri Mahendra Pal Singh Gaur, Sri Sunil Kumar and learned A.G.A. Sri Amit Sinha for the State, we find that the deceased Priti had died due to burn injuries. Thereafter, she was rushed to the hospital by the father of the deceased who had come to the place of incident upon gaining knowledge that his daughter had been burnt. Thereafter, we find that a definite dying declaration was also got recorded.

28. We are of the view that the dying declaration, despite the fact that all the prosecution witnesses of fact had turned hostile, cannot be disbelieved in toto. There are circumstances in which prosecution witnesses are won over, either emotionally or by material benefits. In the present case winning over the prosecution witnesses cannot be ruled out, particularly in view of the fact that the dying declaration was piously recorded by the Tehsildar after the doctor had declared the injured fit enough to give the statement.

29. However, we find that, vis-a-vis Vipin and Madan, there was no identification done. Vipin was named in the FIR and both Vipin and Madan were named in the dying declaration. However, none of the prosecution witnesses knew Madan and Vipin from before. Which Madan and Vipin of the country having crores of people were involved in the incident had to be marked out and trial had to be done vis-a-

vis the marked out accused who had been conclusively identified as Madan and Vipin.

30. In the instant case, we find that Vipin had simply been mentioned in the FIR and the names of both Vipin and Madan had been mentioned by the deceased in the dying declaration. Thereafter, no efforts were made to establish the identity of Madan and Vipin. Even in Court, none of the prosecution witnesses who were cross-examined, after having been declared hostile, recognised Madan and Vipin. Further, before the trial commenced, no test identification parade was conducted. Madan and Vipin were not known from before either to the first informant or to any of the prosecution witnesses of fact. We also find that in the charges which were framed only thumb impressions were taken that could not have identified them to be the very Madan and Vipin about whom the deceased had mentioned or pointed out.

31. In view of the lack of identification, we are, thus, of the view that Vipin and Madan cannot be held guilty in the instant case. However, since Smt. Rajeshwari, Brajpal and Anuj Kumar were known to the first informant and also to the other prosecution witnesses and definitely the three of them were known to the deceased from before the dying declaration was recorded, we are, therefore, of the view that their identities were definitely fixed and, since they had been named by a person who knew that she was going to die they

were definitely guilty of the offences for which they were charged.

32. Under the circumstances, the judgment and order, insofar as it holds Rajeshwari, Brajpal and Anush Kumar guilty, calls for no interference and the appeal vis-a-vis Rajeshwari, Brajpal and Anuj Kumar are dismissed. The Appeal No. 1219 of 2019 and the Appeal No. 1221 of 2019 are dismissed.

33. Since the identities of Madan and Vipin, had not been fixed, they are acquitted of the charges levelled against them. The appeal vis-a-vis Madan and Vipin is allowed. The judgment and order dated 30.11.2018 passed by the 8th Additional District Judge, Budaun, is set aside vis-a-vis Madan and Vipin. The Appeal No. 1220 of 2019 is allowed. If the appellants Madan and Vipin are not wanted in any other case, they may be released forthwith.

(Jai Krishna Upadhyay,J.)

(Siddhartha Varma,J.)

October 16, 2026

PK