



2026:AHC:109066-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Judgment reserved on 27.04.2026

Judgment delivered on 12.05.2026

CRIMINAL APPEAL No. - 4426 of 2008

Rajnish

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Akhilesh Kumar Mishra, Birendra Singh
Khokher, Kamal Kishor Mishra, Sunil
Kumar Yadav
Counsel for Respondent(s) : Govt. Advocate

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Per : Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by accused-appellant - **Rajnish** against the judgment and order dated 21.05.2008 passed by the Additional District and Sessions Judge, Meerut, in Sessions Trial No. 702 of 2008 (State vs. Rajnish) under sections 363, 366, 376 of I.P.C. whereby the learned trial court has convicted the accused-appellant under the aforesaid sections and sentenced him to undergo seven years of rigorous imprisonment and a fine of rupees 10,000 for the offence under Section 363 IPC, to undergo ten years of rigorous imprisonment and a fine of rupees 10,000 for the offence under section 366 I.P.C and to undergo life imprisonment and a fine of rupees 10,000 for the offence under section 376 I.P.C with default clause.

FACTS OF THE CASE

2. The prosecution's narrative arc may be summarized as follows :

On 05.11.1997, the daughter of Ajab Singh, a resident of village Lalpur, had gone to answer the call of nature. When she did not return, a search was

conducted, and it was discovered that Rajnish, son of Surendra Singh, had enticed the girl away. At that time, the victim's age was approximately 15 years. A search was conducted among relatives, and on 06.11.1997, a report written by scribe Kirpal Singh was lodged. The victim's guardians received information to the effect that Rajnish's maternal grandfather had taken her to Durveshpur, where the police reached along with Richhpal and Ajab Singh. There, the accused's maternal grandmother informed them that Rajnish, Surajmal, Vikram, and Bhartu were taking the victim in a buggy to village Gavandi. On the way, the four accused were found going in the buggy with the victim; seeing the police, everyone fled from the spot, and she was recovered. It was stated by the victim to them that Rajnish had committed rape with her and she had been dishonored. Her clothes, which had bloodstains on them, were taken into possession by the police. The victim was given into the custody of Ajab Singh and she was brought to Richhpal's house. Her medical examination was to be conducted the next day, but the victim committed suicide during the night itself by hanging from a fan. The prosecution alleges that Rajnish kidnapped and raped the victim as an act of revenge. This was apparently because her family had rejected the proposal of marriage of Tejpal's son, who is a relative of the accused.

3. On the basis of written report (Ex.Ka.1), *chik* First Information Report (Ex.Ka.9) was registered at the police station concerned mentioning all details. G.D. entry was also made at the same time (Ex.Ka.10). The investigation of this case was conducted by R.K. Singh, In-charge Inspector, who after completing the investigation and the necessary formalities, submitted the chargesheet and the case being one exclusively triable by Sessions Court, was committed to Sessions Court for trial. The Charges were framed against the accused-appellant under Sections 363, 366, 376 IPC, which he denied and claimed trial.

4. On behalf of the prosecution, in order to support its case, the statements of PW-1 Kirpal Singh, PW-2 Richhpal, PW-3 Smt. Bala (mother of the deceased), PW-4 S.I. R.B. Dixit, PW-5 Head Constable Arvind Kumar, PW-6 S.I. R.K. Singh, and PW-7 N.K. Gupta were recorded. No evidence was produced by the defense.

5. In order to substantiate the ocular testimony and establish the procedural facts of the case, the prosecution has placed reliance upon and proved as documentary evidence : F.I.R.(Ex.Ka.9), Inquest Report (Ex. Ka-4), Constable's Form 13 (Ex. Ka-5), Photo of the body (Ex. Ka-6), Police Line report (Ex. Ka-7), CMO report (Ex. Ka-8), Site Plan (Ex. Ka-14), Post-mortem report (Ex. Ka-15), victim's Section 161 statement (Ex. Ka-15A), and Charge Sheets (Ex. Ka-12, Ka-13).

6. PW-1 Kirpal Singh, son of Shri Raghbir Singh, aged 63 years, resident of Lalpur, P.S. Bhavanpur, District Meerut, stated that the deceased was his granddaughter by village relation. He stated that the incident occurred on 05.11.1997 at approximately 06:00 AM when victim went to attend the call of nature but did not return. He stated that they searched for her in various places and among relatives. He further stated that on the following day, Ajab Singh informed him that the accused Rajnish had enticed his daughter and taken her away. Ajab Singh called him to his house and dictated a written complaint (tehrir), which the witness wrote down and Ajab Singh signed it in his presence, and the witness also signed it; the witness identified both signatures, and the document was marked as Ext. Ka-1. He stated that he and Ajab Singh together submitted this report at the police station. Further, the Sub-Inspector took him, Richhpal, and Ajab Singh to village Durveshpur to the house of Rajnish's maternal grandfather where accused's maternal grandmother informed them that Rajnish, Surajmal, Vikram, and Bhartu had taken victim in a buggy toward village Gavandi. He stated that they, along with the police, proceeded toward village Gavandi and spotted the buggy on the way, in which all four aforementioned accused persons and the victim were present. He stated that upon seeing them and the police, the four accused persons jumped off and fled, and only victim was recovered. He stated that the girl was then brought to Bhavanpur police station, where she informed them that when she had gone to attend the call of nature, the accused Rajnish raped her in a sugarcane field. He deposed that she stated she had been deeply disgraced. He further stated that the salwar and kurti of the victim, which were soiled and blood-stained during the rape, were taken into possession in his presence, and he identified his signatures on the recovery memo (fard), marked as Ext. Ka-2. He stated that the girl was handed over to the custody of Ajab Singh, marked as Ext. Ka-3. The witness deposed that they then brought victim to Richhpal's house in Meerut to stay until her medical examination was conducted the next morning. He stated that in the morning, it was learned that victim had committed suicide by hanging herself from a fan after locking the door.

7. PW-2 Richhpal Singh, son of Shri Tareef Singh, aged 50 years, resident of Phool Bagh Colony, Meerut, stated that he knew Ajab Singh, who was murdered about a year prior on 23.05.1999, and that victim was Ajab Singh's daughter. He stated that on 05.11.1997, at about 06:00 AM, she went to attend the call of nature but did not return. He stated they waited and searched for her. He also stated that she was about 16 years old at the time. He deposed that on 06.11.1997, the report was written by Kirpal Singh and after that he, Kirpal Singh, and Ajab Singh went with the police to search for her and learned that she was at the place of Surajmal and Bhartu in

Durveshpur. He stated that upon reaching Durveshpur, it was found that the accused had taken her in a buggy toward Gavandi. He further stated that while traveling towards Gavandi, they saw four people taking the victim in a buggy; however, upon seeing the police, the four persons left the victim and fled. They brought the girl to the police station where her clothes were sealed and she was given to Ajab Singh's custody. He stated they then went to his house in Phool Bagh Colony. He deposed that in the presence of Ajab Singh, Kirpal Singh, and himself, the girl told the police that Rajnish and a bearded boy named Vikram had forcibly kidnapped her to a sugarcane field where rajnish tied her mouth, showed a knife, and raped her. The next morning, after having breakfast, the girl entered a room and committed suicide by hanging from a fan. He stated that victim had stated that since she had been raped, she was no longer able to show her face to the villagers.

7.1 In his cross-examination, he stated that on 5.11.1997, Ajab Singh informed him about the disappearance of victim. He further stated that, on 12.7.2000 it was the first time when he had given the statement in the court and before that he had not told these facts to anyone. His statement in court was recorded after three and a half years and he told everything on the basis of his memory.

8. PW-3, Smt. Bala, wife of Ajab Singh, aged 48 years, resident of Jagatpur, Delhi, stated, the incident occurred about 4 years and 11 months ago and that victim was approximately 15-16 years old at that point of time. She stated that on the day of the incident, at about 06:00 AM, victim went to the fields to attend the call of nature and did not return. She stated her husband and family searched for her but found nothing that day. She deposed that the next day, her husband found out that Rajnish and Vikram had abducted the girl and kept her at the house of Surajmal in village Durveshpur. She stated her husband mentioned Bhartu was also involved. She further stated that the girl was recovered by the police while the accused fled. She stated the police handed the girl over to the custody of her husband and Kirpal Singh, who took her to Richhpal's house. She stated that Manju committed suicide due to the loss of her honor because of what Rajnish had done.

8.1 In her cross examination, she stated investigating officer recorded her statement after 12-13 days of the incident.

9. PW-4, SI R.V. Dixit stated that on November 7, 1997, he was posted at Police Station Nauchandi. At 11:10 AM that day, a report was filed by Richhpal regarding the suicide of victim. Following this report, he proceeded to Richhpal's residence to conduct the inquest. He prepared the inquest

report (Panchayatnama), which he identified as being in his handwriting and signature (Exhibit Ka-4). He then sealed the body and sent it for a post-mortem examination. He also confirmed preparing related documents, including Form-13 and letters to the RI and CMO (Exhibits Ka-5 to Ka-8).

10. PW-5: HC Arvind Kumar stated that on November 6, 1997, he was posted as a Constable Clerk at Police Station Bhavanpur. He recorded the *Chick* FIR (Exhibit Ka-9) based on the written complaint submitted by Ajab Singh. He entered this report into General Diary (GD) No. 37 at 21:30 hours on the same day. He identified a carbon copy of the GD (Exhibit Ka-10) because the original GD had been destroyed. A report from record keeper S.K. Sharma confirming the destruction of the original GD was also submitted (Exhibit Ka-11).

10.1 In his cross examination, he admitted that the *Chick* FIR was "ante-timed". He further admitted that Exhibit Ka-10 contained entries in different ink and lacked the author's signature. He also stated he could not remember or verify exactly when the FIR was sent to the court.

11. PW-6, SI R.K. Singh testified that he took over the investigation on December 2, 1997, following the death of the previous investigator, SI Suraj Pal Singh. SI R.K. Singh then recorded the statement of the accused Rajnish and initiated proceedings against other accused persons. He subsequently filed the charge sheet against Rajnish (Exhibit Ka-12). He also recorded statements of accused persons Bhartu, Surajmal, and Vikram, and filed charge sheets against them (Exhibit Ka-13). He proved the site map (Exhibit Ka-14) and recovery memos for the victim's clothes (Exhibits Ka-2 and Ka-3) as being in the handwriting of the late SI Suraj Pal Singh. He submitted a photocopy of the victim's statement under Section 161 CrPC (Exhibit Ka-15).

12. PW-7, Dr. N.K. Gupta testified that he was a physician at P.L. Sharma Hospital, Meerut. On November 7, 1997, at 5:00 PM, he performed the post-mortem on the body of deceased. He stated that her age was of approximately 15 years. He found following ante-mortem injuries on the body:

"A rope mark 30cm long and 1-1/2 cm wide which was obliquely on the neck, and this mark was between the chin and the windpipe. Upon cutting below this mark, the area was hard and glistening."

12.1 On External examination, he found -

- Build and stature were normal.
- Post-mortem stiffness was present all over the body.
- There were no signs of putrefaction on the body.
- Cyanosis was present on the face.

12.2 On Internal examination, he found -

- The windpipe was congested; both lungs were congested.
- The liver, spleen, and kidneys were also congested.
- The C-2 bone of the neck was displaced from its position.
- The uterus was normal.
- There was 100 ML of water-like substance inside the stomach.
- Prepared 2 slides (Vaginal) of the deceased, sealed them, and handed them over to the accompanying constable so that he could get them tested.

12.3 He opined that the cause of death of the deceased was asphyxia as a result of hanging. He testified the report to be in his handwriting and signature, proved as Exhibit Ka-15 A.

13. After closure of prosecution evidence the incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution evidence / case as false and fabricated and stated that he had been implicated in the matter falsely due to enmity.

14. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentenced him, as mentioned here-in-above. Hence, this appeal.

15. Heard Shri Y.S. Tyagi, Advocate holding brief of Shri Kamal Kishor Mishra, learned counsel for the appellant and Sri Ajay Sharma, learned A.G.A. for the state at length.

SUBMISSIONS

16. Learned Counsel for the appellant has submitted that :

16.1 There is an unexplained delay of several hours in lodging the F.I.R.,

suggesting it was filed after due deliberation to concoct a false and fabricated story.

16.2 There are material contradictions in the statements of the witnesses of fact, specifically PW-1, PW-2, and PW-3.

16.3 There is an unexplained delay in recording the statements of witnesses under Section 161 Cr.P.C..

16.4 The statement of Ajab Singh, father of the victim, was never recorded.

16.5 No medical examination of the prosecutrix was conducted despite allegation of rape and the post-mortem report does not support the allegation of sexual assault.

16.6 The victim's clothes, alleged by the prosecution to be blood-stained, were never sent for chemical analysis (FSL).

16.7 The "cause of death" of the victim has not been connected with the alleged rape; therefore, the statement of the victim recorded under section 161 C.r.P.C. cannot be treated as a dying declaration.

16.8 There is no eyewitness to the alleged suicide, and no documentary evidence has been produced to substantiate the occurrence of the suicide.

17. *Per Contra*, learned AGA argued that in view of the incriminating evidence against the appellant, learned trial court had rightly convicted the appellant. He submitted that the testimony of PW-1, PW-2, and PW-3 is consistent on the core facts of the incident and that minor contradictions do not erode their fundamental credibility. He further contented that the brief delay in lodging the F.I.R. and recording statements of witnesses under Section 161 Cr.P.C. was natural and same was without any deliberation. Furthermore, he contended that failure to send blood-stained clothes for FSL analysis is a mere investigative lapse and benefit of the same should not be given to the accused, keeping in view the gravity of the offence.

APPRECIATION AND ANALYSIS OF EVIDENCE :

18. From the careful scrutiny of the prosecution evidence, rival submissions and perusal of learned trial court judgment, we are of the view that the cornerstone of the prosecution's case rests upon the statement of the deceased which has been recorded by the police officer under section 161 Cr.P.C. and the same has been relied upon as dying declaration of the deceased. It has been argued that the statement of deceased cannot be held to be admissible as dying declaration as it was given to police officer and that too after due tutoring.

19. Before proceeding to deal with the submissions, we need to evaluate Section 32(1) of the Indian Evidence Act, 1872. It states :

Section 32(1) of the Indian Evidence Act, 1872; When it relates to cause of death-

"When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

20. The above-quoted provision implies that a statement, written or oral, made by a person who is dead as to the **cause of his death** or as to any of the **circumstances of the transaction which resulted in his death**, in cases in which the cause of that person's death comes into question, becomes admissible under Section 32(1) of the Evidence Act. Such statement made by the deceased is commonly termed as 'dying declaration'. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the said case.

21. In **Sudhakar v. State of Maharashtra, (2000) 6 SCC 497**, Hon'ble Apex Court reiterated that:

"8. In Rattan Singh v. State of H.P. [(1997) 4 SCC 161: 1997 SCC (Cri) 525] this Court held that the expression "circumstances of transaction which resulted in his death" means that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon Sharad Birdhichand Sarda case [(1984) 4 SCC 116: 1984 SCC (Cri) 487] the Court held that: (SCC pp. 166-67, para 15)

"It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstance can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death."

22. In the light of the aforesaid legal position, let us examine the statement of the deceased prosecutrix. The victim explicitly stated that;

"रजनीश ने मेरे साथ चार बार गन्ने के खेतों में ही अब तक जबर (

अस्पष्ट) बलात्कार किया है। मैं अब इस दुनिया में मुंह दिखाने लायक भी नहीं हूँ। मेरा भविष्य अब सभी बर्बाद हो गया है।"

23. The words spoken by the prosecutrix are not merely expressions of personal grief but they serve as a vital link in the chain of events leading to her demise. The victim's statement that she had lost all dignity and could not continue to live in society under such shame clearly shows the mental trauma which directly led her to commit suicide. The Court finds that this declaration establishes a proximate and unbroken link between her state of mind and her death.

24. Further, the Hon'ble Supreme Court has, in a catena of authoritative pronouncements, settled the proposition of law that a statement made by the victim to the police under Section 161 of the Code of Criminal Procedure may, in appropriate circumstances, be treated as a dying declaration. In **Pradeep Bisoi v. State of Odisha, (2019) 11 SCC 500**, Hon'ble Apex Court reiterated that:

"12. A similar view has been expressed by this Court in Sri Bhagwan [Sri Bhagwan v. State of U.P., (2013) 12 SCC 137], wherein this Court had the occasion to consider Section 161 CrPC and Section 32 of the Evidence Act.

"20. While keeping the above prescription in mind, when we test the submission of the learned counsel for the appellant in the case on hand at the time when Section 161 CrPC statement of the deceased was recorded, the offence registered was under Section 326 IPC having regard to the grievous injuries sustained by the victim. PW 4 was not contemplating to record the dying declaration of the victim inasmuch as the victim was seriously injured and immediately needed medical aid. Before sending him to the hospital for proper treatment PW 4 thought it fit to get the version about the occurrence recorded from the victim himself that had taken place and that is how Ext. Ka-2 came to be recorded. Undoubtedly, the statement was recorded as one under Section 161 CrPC. Subsequent development resulted in the death of the victim on the next day and the law empowered the prosecution to rely on the said statement by treating it as a dying declaration, the question for consideration is whether the submission put forth on behalf of the respondent counsel merits acceptance."

25. Thus, it is clear that the statement given by the deceased to the police officer in the case in hand is admissible as a dying declaration. Now, the question arises as to whether this statement can form the sole basis for conviction of the accused, and what will be the evidentiary value of the same and upto what extent such statement may be relied upon.

26. In order to analyze these issues, we may refer the relevant judicial precedents on the point.

27. In **Dharmendra Kumar v. State of M.P. (2024) 8 SCC 6**, Hon'ble Supreme Court held that:

"65. Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1) CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub-section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon....."

28. Similar view has been reiterated by the Courts in the case of **Neeraj Kumar v State of UP 2025 SCC OnLineSC 2639, Shampoo Alias Surendra Pratap singh vs. State of U.P. 1981 Supreme (all) 475 Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517, Panipuri Naresh v. State of A.P., (2012) 12 SCC 495, and Sunil Kashyap v. State of Bihar, (2020) 18 SCC 725.**

29. From the above judicial precedents, it is clear that while a statement under Section 161 CrPC given to a police officer is admissible as a dying declaration, its reliability must be tested against the rule of prudence. Although a conviction can legally be based on such a statement alone, yet the courts emphasize the importance of corroboration from other circumstances to ensure that the declaration is truthful, voluntary, and not a result of tutoring or imagination. Therefore, the evidentiary value of such a statement is significantly strengthened when it is supported by medical evidence, independent witness testimony etc., ensuring that it is safe to rely upon it as a ground for conviction.

30. Now the Court proceeds to analyze as to whether the dying declaration given by the victim is corroborated from other circumstances to ensure that the same was truthful and voluntary. In the instant case, there are several glaring procedural lapses and substantive inconsistencies critically undermining the prosecution's case. Primarily, the unexplained delay in lodging the First Information Report (FIR) and the subsequent delay in recording the statements of key witnesses cast a shadow of doubt over the truthfulness of the allegations. Such unexplained delays are fatal to the prosecution's narrative, as they introduce the distinct and dangerous possibility of afterthought, embellishment, and tutoring. When the initial

reporting and the recording of statements of witnesses are delayed without a plausible explanation, the foundational narrative becomes suspicious, suggesting that the version of events may have been deliberately concocted rather than being a natural and immediate reaction to the alleged incident.

31. Further, it is a matter of record that no medical examination of the victim was conducted, nor does the post-mortem report establish any act of sexual violence. It is a settled principle that while the testimony of the victim in a sexual offence is vital, the total absence of a medical examination, creates a significant gap in the prosecution's case. In **Baleshwar Mahto and another Vs. State of Bihar and another, (2017) 3 SCC 152**, the Hon'ble Supreme Court observed that where medical evidence is completely missing or contradicts the ocular version, it would be turned as serious contradiction and the court must exercise extreme caution. Moreover, in **Pankaj Rana Vs. State of Punjab, 2013 SCC OnLine P&H 15686**, it was held that while corroboration is not a rule of law, it is a rule of prudence; the lack of medical findings to support the allegation of force or sexual intercourse can, in specific factual matrices, lead to a cloud of doubt regarding the occurrence.

CONCLUSION

32. Thus, it is evident that while evaluating the dying declaration, the rule of prudence must be strictly applied. A dying declaration can only form the sole basis for conviction if (i) it inspires absolute confidence, (ii) is wholly unblemished, and (iii) fits into the surrounding circumstances. In the present matter, the cumulative effect of the delayed FIR, delayed recording of statements of witnesses, failure to record the statement of father of the victim, investigative lapse to send the bloodstained clothes of the victim for chemical analysis (FSL) and a glaring lack of medical corroboration severely vitiates the dying declaration of its indisputable character. In light of these substantive evidentiary gaps and contradictions, it becomes exceedingly difficult and legally unsafe to rely solely on the uncorroborated dying declaration (recorded by the police officer under section 161 Cr.P.C.) to sustain the conviction of the appellant, as the prosecution has manifestly failed to establish the guilt of the accused beyond a reasonable doubt.

33. Hence, upon careful analysis and consideration of the settled legal position in the backdrop of the facts and circumstances of the present case, we are of the opinion that the conclusion taken by the Trial Court in the impugned judgment and order is not in accordance with law and the evidence available on record. Thus, this Court is of the view that the prosecution has not been able to establish the guilt of the accused appellant beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of

doubt to the accused appellant on the ground of rule of caution.

34. The impugned judgment and order of conviction and sentence dated 21.05.2008, which has been sought to be assailed, call for and deserves, interference and instant criminal appeal is liable to be allowed.

35. Accordingly, the Criminal Appeal is **allowed** and the impugned judgment and order is set aside. The accused appellant is acquitted of all the charges framed against him. He be set at liberty. He is in jail. He shall be released forthwith, if not wanted in any other case.

36. Office is directed to communicate this order to the court concerned forthwith for compliance and also send back the trial court record.

37. We are thankful to Ms. Anjali Singh, Research Associate for ably assisting the Court.

May 12, 2026
safi

(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)