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RESERVED



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1271 of 2019

Ram Prasad and Anr.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: A Kumar Srivastava, Premshankar Shukla, Rajesh Kumar Vishwakarma, Ratnesh Srivastava, Swati Agrawal Srivastava, Virendra Singh
Counsel for Respondent(s)	: G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Rajesh Kumar Vishwakarma, learned counsel for the appellants in support of the appeal, Mr. Anil Kumar Mishra, learned Additional Government Advocate on behalf of the State and perused the record.

2. This criminal appeal has been preferred by the convicts, *to wit*,

IPC, Police Station Saidnagli, District Amroha, by which appellants were convicted under Sections 302 and 201 IPC.

3. Brief facts of this case are that Gangadas (PW-1), Ex-Gram Pradhan, along with Nardev (PW-3), Chowkidar of the village, got a written report (Ex.Ka-1) scribed on 17.10.2016 by Rajpal Singh (PW-4) and lodged the same at Police Station Saidnagli. In this written report (Ex.Ka-1), Gangadas (PW-1) has stated that yesterday, on 16.10.2016, Ram Prasad S/o Thakur Singh, resident of *Sundi Mafi Khadar*, Police Station Saidnagli, was going to visit his relatives in the morning. Before leaving, over some issue, he scolded his daughters, Dayawati (aged about 13 years) and Dharmwati (aged about 11 years), and then left for his relatives' house. Following this, both of Ram Prasad's daughters went to the field to fetch fodder or straw. Near the field, inside a mango orchard, both hung themselves using their *dupattas* from the branch of a mango tree. Ram Prasad and his family members, without informing the police, took the dead bodies of the both girls to the Ganga river and buried or disposed them off. He requested to take appropriate action in this regard.

4. On the basis of the above written report (Ex.Ka-1), a first information report was registered at Police Station Saidnagli on 19.10.2016 at 00:10 A.M. as Case Crime No. 198 of 2016, under Sections 302 & 201 IPC, against unknown offenders by the Constable Clerk Atul Kumar Pandey (PW-7).

5. Upon receiving this information, the SHO Mustakim Ali (PW-10), along with a police party and the Circle Officer, Hasanpur, reached the place where the dead bodies of both girls were buried. He sent a letter to the District Magistrate and requested for the appointment of a Magistrate

under the supervision and direction of Jasveer Singh, Tehsildar, Hasanpur.

6. Under the direction of Jasveer Singh, Tehsildar, Hasanpur, S.I. Lal Singh (PW-13) prepared the *Panchayatnama* of deceased Dayawati (Ex.Ka-9), Police Papers No. 13 (Ex.Ka-10), Police Papers No. 33 (Ex.Ka-11), *Photolash* (Ex.Ka-12), Letter to C.M.O. (Ex.Ka-13), Letter to R.I. (Ex.Ka-14), and Seal of Sample (Ex.Ka-15). S.I. Lal Singh (PW-13) also prepared the *Panchayatnama* of deceased Dharmwati (Ex.Ka-16), Police Form No. 13 (Ex.Ka-17), Police Form No. 33 (Ex.Ka-18), *Photolash* (Ex.Ka-19), Letter to C.M.O. (Ex.Ka-20), Letter to R.I. (Ex.Ka-21), and Seal of Sample (Ex.Ka-22).

7. After preparing the *Panchayatnama* and other necessary police papers, the dead bodies of the deceased Dayawati and Dharmwati were handed over for postmortem examination to Lady Constable Nazma Begam, Lady Constable Chanchal, Constable Durgpal and Constable Phool Chandra. The dead bodies of the deceased Dayawati and Dharmwati were transported to the Postmortem House, Amroha, for autopsy.

8. Dr. Aadesh Kumar Singh (PW-12) examined the dead body of the deceased Dharmwati and prepared the postmortem report (Ex.Ka-9). He found the following ante-mortem injuries on the body of the deceased:-

"Injury No. 1: A bluish bruise measuring 2 cm x 1 cm with abrasion present on the front aspect of the neck.

Injury No. 2: A bluish bruise measuring 3 cm x 1 cm with abrasion present on the front aspect of the neck, situated 2 cm above Injury No. 1.

In the opinion of the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of the deceased Dharmwati was Asphyxia due to throttling.

9. Dr. Aadesh Kumar Singh (PW-12) also examined the dead body of the deceased Dayawati and prepared the postmortem report (Ex.Ka-10). He found the following ante-mortem injuries on the body of the deceased:-

"Injury No. 1: A torn wound (laceration) measuring 3.5 cm x 3 cm between the index and middle fingers of the right hand.

Injury No. 2: A bluish bruise with abrasion measuring 2 cm x 1 cm on the left side of the neck, below the lower jaw.

Injury No. 3: A bluish bruise with abrasion measuring 3 cm x 2 cm parallel to the outer angle of the left eye.

Injury No. 4: A bluish bruise with abrasion measuring 5 cm x 2 cm on the left side of the neck, 2 cm above the collarbone."

According to the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of the deceased Dayawati was also Asphyxia due to throttling.

10. Investigating Officer, Mustakim Ali (PW-10) recorded the statements of the informant and other witnesses under Section 161 Cr.P.C. He also inspected the place of occurrence and prepared a site plan as Ex.Ka-5. He also inspected the place from where the dead bodies of the deceased Dayawati and Dharmwati were exhumed from the ground and prepared a site plan as Ex.Ka-6.

11. After completing all the necessary formalities of investigation,

12. In the Trial Court, charges were framed against the appellants on 02.05.2017 under Sections 302/34 & 201 IPC. The appellants pleaded not guilty and claimed trial.

13. To substantiate the charges against the appellants, the prosecution has produced a total of 15 prosecution witnesses, namely, Gangadas as PW-1, Smt. Suman as PW-2, Nardev as PW-3, Rajpal Singh as PW-4, Pawan Kumar as PW-5, Nazma Begam as PW-6, Atul Kumar as PW-7, Rishipal as PW-8, Malwati as PW-9, Mustakim Ali as PW-10, Dharmveer as PW-11, Dr. Aadesh Kumar Singh as PW-12, Lal Singh as PW-13, Chhatrapal as PW-14, and Shishpal @ Shishram as PW-15. Apart from the above oral evidence, the prosecution also relied upon documentary evidences, marked as Exhibits Ka-1 to Ka-16.

14. After hearing the evidence of prosecution witnesses, the appellants were examined under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the appellants expressed ignorance about the questions put to them. They stated that the prosecution witnesses gave false and wrong statements against them and that they were falsely implicated in this case due to enmity. Furthermore, they stated that they are innocent and have not committed any crime. They also stated that they would not adduce any evidence in their defence.

15. After hearing arguments of the prosecution as well as the defence, the learned Trial Court found the appellants, namely, Ram Prasad and Chandra Bhan, guilty of the murder of the deceased, Dayawati and Dharmwati, and also found them guilty for causing the disappearance of evidence of the offence. Accordingly, the Trial Court has sentenced each of them for life imprisonment under Section 302/34 I.P.C. along with a fine of Rs 10,000/- each. The appellants were also convicted of the

16. Aggrieved by the impugned judgment and order of conviction and sentence dated 15.01.2019, passed by the Trial Court, the appellants have preferred this criminal appeal.

17. Learned counsel for the appellants submitted that there is no eyewitness to the incident and the entire prosecution case is based on circumstantial evidence, with no complete chain of circumstances. It is further contended that, even according to the prosecution case, there is no evidence of last seen, nor there is any witness who had seen the accused persons committing the alleged crime. All the prosecution witnesses of fact have not supported the prosecution case and stated that the police called the chowkidar, Nardev, Rajpal and Gangadas, the father and brother of the deceased, and upon being informed, they arrived. On the advice of the villagers that both the deceased were minors, their bodies were buried. It is also submitted on behalf of the appellants that all the prosecution witnesses of fact have turned hostile and have not supported the prosecution story. Thus, from the entire evidence of the prosecution witnesses, there is no material to show that the appellants had committed the offence, nor was there any motive for the appellants to commit the offence. All the circumstances are not linked together, and in the absence of a complete chain of the circumstantial evidence, it cannot be said that the appellants have committed the offence.

18. Learned counsel for the appellants also contended that the Trial Court has convicted the appellants on the basis of statements of witnesses recorded under Section 161 Cr.P.C., which is not substantive evidence under the law and can only be used for contradictions. All the witnesses of fact have denied the prosecution case before the Trial Court. As such, the conviction of the appellants is illegal and without any material on record. Thus, the prosecution has failed to prove its case

crime. Therefore, the impugned judgment and order dated 15.01.2019 is not sustainable in the eyes of law which is liable to be set aside and this criminal appeal preferred by the appellants deserves to be allowed.

19. *Per contra*, the learned A.G.A. for the State-respondent has vehemently opposed the arguments advanced by the learned counsel for the appellants and submitted that although all witnesses of fact have turned hostile before the Trial Court during the recording of their evidence and have not supported the prosecution story, however, all incriminating circumstances are against the appellants, Ram Prasad and Chandra Bhan. They were legally duty bound to give information at the concerned police station about the incident, if they really were innocent, but the appellants have not given any information about this incident that Dharmwati and Dayawati hanged themselves by using their *dupattas* from the branch of a tree in the mango orchard. On one side, the appellants have not given any information about the unnatural death of their daughters, Dayawati and Dharmwati, and on the other side, silently buried their dead bodies in the *khadar* of river Ganga. After obtaining permission from the District Magistrate, the dead bodies of the deceased Dayawati and Dharmwati were exhumed from the burial ground, and postmortem examination was conducted by Dr. Aadesh Kumar Singh (PW-12).

20. Learned A.G.A. further submitted that according to the postmortem examination and in the opinion of the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of both the deceased girls was Asphyxia due to throttling. All the incriminating and inculpatory circumstances are totally against the appellants, Ram Prasad and Chandra Bhan. This case was a case of honor killing and the appellants have committed the murder of Dayawati and Dharmwati as a measure of

prosecution evidence in the right perspective and legal manner. There is no illegality or perversity in the impugned judgment and order passed by the Trial Court. In view of the aforesaid, there is no force and merit in the criminal appeal preferred by the appellants. Hence, the impugned judgment and order of the Trial Court deserves to be affirmed and the instant criminal appeal preferred by the appellants is liable to be dismissed.

21. In the light of the above submissions and counter submissions of the learned counsel for the parties, we have perused all evidence, including oral as well as documentary, and also gone through the impugned judgment and order of conviction and sentence dated 15.01.2019 passed by the Trial Court.

22. In the light of the above submissions of the learned counsel for the parties, from perusal of the written report (Exhibit Ka-1), it is an established fact that Gangadas (PW-1), who was an Ex-Gram Pradhan, lodged the written report (Exhibit Ka-1) at the police station, with a view to indirectly throw a curtain over the crime committed by the appellants. Gangadas (PW-1) had filed the said written report about the incident at Police Station Saidnagli. However, after receiving the written report (Exhibit Ka-1), a case was registered against unknown offenders under Sections 302 & 201 IPC and investigation into the crime commenced.

23. The Investigating Officer Mustakim Ali (PW-10) sent a letter (Exhibit Ka-8) to the District Magistrate, Amroha requesting therein for the exhumation of the dead bodies of the deceased Dayawati and Dharmwati, as the incident appeared to be doubtful as narrated in the written report (Exhibit Ka-1). Upon this, the District Magistrate, Amroha nominated the S.D.M., Hasanpur for the exhumation of the dead bodies

24. Dr. Aadesh Kumar Singh (P.W.-12) examined the dead bodies of the deceased, Dayawati and Dharmwati, and prepared the post-mortem reports as Exhibit Ka-9 and Exhibit Ka-10, respectively. On the dead body of deceased Dharmwati, four ante-mortem injuries were found, in which Injury No. 1 and Injury No. 2 were found in the front of the neck; Injury No. 3 was found on the back portion of the head; and Injury No. 4, 10 cm above the right elbow. The cause of death was found to be Asphyxia as a result of throttling. In the same way, on the dead body of the deceased Dayawati, four ante-mortem injuries were also found. Injury No. 1 was on her first and middle fingers in the right hand; Injury No. 2 on the left side of the neck, below the jaw; Injury No. 3 parallel to the left eye; and Injury No. 4 on the left side of the neck, 2 cm above the collarbone. According to Dr. Aadesh Kumar Singh (P.W.-12), the cause of death was Asphyxia due to throttling. The tongues of both girls were found protruding, and in the case of Dharmwati, fecal matter was found discharged.

25. The above injuries, in the opinion of Dr. Aadesh Kumar Singh (P.W.-12), clearly indicate and establish the fact that both girls were forcibly held by their necks and killed by throttling. According to the doctor, there were no ligature marks or injuries indicative of hanging. Thus, it is established beyond any reasonable doubt that the deceased girls, Dayawati and Dharmwati, were murdered by throttling, and their deaths were homicidal that occurred under abnormal circumstances.

26. The prosecution witness, Smt. Suman (PW-2), who is the wife of appellant no. 2, Chandra Bhan, did not support the prosecution story and turned hostile. She resiled from her previous statement given to the Investigating Officer, recorded under Section 161 Cr.P.C., wherein she had stated that on 16.10.2016 at about 5:00 to 6:00 A.M. her husband

law (nanands), Dayawati and Dharmwati with Pawan in an objectionable condition. She further stated that she had not given any statement to the Investigating Officer that on 16.10.2016, early in the morning at about 5:00 to 6:00 A.M., her husband and father-in-law had gone to collect fodder (straw) with both of her sisters-in-law.

27. From a perusal of the evidence of Nardev (PW-3), it emerges that on the date of the incident i.e., 16.10.2016, he was posted as the Chowkidar of Village *Sundi Mafi khadar*. He stated that on that day he received information that two daughters of Ram Prasad had allegedly hanged themselves from the branch of a tree in the mango orchard using their *dupattas*. He further stated that the family members had taken the bodies to *khadar* of the Ganga River and buried them there. This witness also admitted during his deposition that, along with the Gram Pradhan, Gangadas, he had conveyed the said information to the police station.

28. Rajpal Singh (PW-4), who wrote the written report (Ex. Ka-1) on the dictation of Gangadas (PW-1), turned hostile and did not support the prosecution case. He stated in his testimony that the *Daroga Ji* dictated the *tahreer* to him, and he wrote it at the police station.

29. Pawan Kumar (PW-6) also turned hostile and stated that he was not present in the village on 16.10.2016. Therefore, he did not witness who killed and hanged the deceased, Dayawati and Dharmwati, in the mango orchard of Ram Prasad.

30. From a perusal of the evidence of Rishipal (PW-8), it is revealed that the dead bodies of the deceased, Dharmwati and Dayawati, were exhumed from the *khadar* of the Ganga River in his presence. He further stated that the police and the Magistrate prepared the *Panchayatnama* of

from the *khadar* of the Ganga River by the police and the Magistrate and that the *Panchayatnama* of the deceased was prepared in her presence.

32. Prosecution witnesses Chhatrapal (PW-14) and Shishpal @ Shishram (PW-15) also did not support the prosecution's case and turned hostile.

33. Thus, from a perusal of the entire evidence of the prosecution witnesses, it is clear that although they did not support the prosecution story and resiled from their statements given to the Investigating Officer under Section 161 Cr.P.C., their evidence nevertheless clearly establishes that the deceased, Dayawati and Dharmwati, were not found hanging. This claim was set up by these witnesses merely to divert the attention of the police and create a false impression of suicide by hanging.

34. It is further revealed that Dayawati and Dharmwati did not die under normal circumstances. Their death was abnormal and their father and brother (the appellants herein) buried their bodies in haste in the *khadar* of the Ganga river without giving any information to the police. It is also apparent that the appellants managed the prosecution witnesses, causing them to turn hostile and fail to support the prosecution case before the Trial Court.

35. From the record and the evidence of witnesses, it is also revealed that appellants, namely, Ram Prasad and Chandra Bhan (father and brother of the deceased girls), have not given any information about this incident at Police Station Saidnagli. If, according to the defence version, both the deceased, Dayawati and Dharmwati, had hanged themselves using their *dupattas* from the branch of a tree in the mango orchard and if the appellants were truly innocent, they would have surely given information about this incident at the concerned police station. However,

the deceased, Dayawati and Dharmwati, in the *khadar* of the Ganga River and went to their relatives' places. Thus, the conduct of the appellants, both before and after the commission of the crime, is highly relevant under Section 8 of the Indian Evidence Act, 1872. In the present case, the conduct of the appellants after the commission of the crime becomes relevant and goes against them.

37. The Supreme Court in *Vivek Kalra v. State of Rajasthan, (2014) 12 SCC 439*, has held:

"9. It is true that PW-5 has stated that the appellant had a good behaviour and had no bad habit. Section 8 of the Indian Evidence Act, 1872, however, provides that the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to it. Hence, any behaviour or conduct of the appellant would be relevant if it had nexus with the offence under Section 302 alleged to have been committed by him. This Court has held in Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306 at page 314:

"17. ...Conduct of an accused must have nexus with the crime committed. It must form part of the evidence as regards his conduct either preceding, during or after the commission of the offence as envisaged under Section 8 of the Evidence Act."

The general good behaviour of the appellant and the fact that he had no bad habit have no nexus with the offence alleged against the appellant and are not relevant when other circumstances have established beyond reasonable doubt that it is the appellant and the appellant alone who has committed the murder of the deceased."

himself made a false report of commission of suicide by his wife and admitted in his examination under Section 313 Criminal Procedure Code that he was present in the house at the time of incident. His case was that he heard some sound in the adjoining room and when went inside, found his wife hanging by neck with a sari tied on the rafter of the roof of the house. He then untied the sari, brought down the dead body, first reported the matter to the villagers and then to the police. The post-mortem report prepared on autopsy conducted by Dr. PC Jain (PW-8) shows that there was ligature mark on the neck of the deceased which was anti-mortem. The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsifies the case of the appellant that on his return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by neck he neither raised any hue and cry nor called any villagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately. When villagers collected he took a plea that she had committed suicide. He also did not report the matter on his own but, as is deposed by Dilboodh (PW-2), Kotwar, it is on his insistence and of the Sarpanch that he reported the matter to the Police. These witnesses also stated that the wife had complained in the past to the Panchayat that the appellant was ill-treating her and was not providing her food.

5. After hearing learned counsel appearing and on going through the record we find no ground to take a different view of the evidence. The accused in his examination under Section 313

marital life, the unnatural conduct of the accused subsequent to the incident; the spot map (Ex.7) showing that the rafter of the roof to be at such height as was unapproachable for committing suicide - cumulatively lead only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself."

39. In the light of the principles laid down by the Supreme Court in the case of *Vivek Kalra (supra)* and *Mandhari (supra)*, the conduct of the appellants in the present case is highly relevant. According to the prosecution story and the written report (Exhibit Ka-1), the deceased girls, Dayawati and Dharmwati, were throttled to death. Conversely, as per the defence version, both deceased allegedly hanged themselves using their *dupattas* from the branch of a tree in the appellants' mango orchard. However, the fact that the appellants, namely, Ram Prasad, father of the deceased, and Chandra Bhan, elder brother of the deceased, remained silent, failed to inform any villager, and did not prepare a formal *panchnama*, points strongly to their involvement. Furthermore, in the absence of villagers, the appellants carried the dead bodies near the Ganga River and buried them in the *khadar* with the clear intention of destroying evidence.

40. Thus, it is clear that the appellants are directly and closely related to the crime. The conduct and behaviour of the appellants surely and certainly, without any doubt, indicate their guilty minds. Therefore, in light of the law as laid down by the Hon'ble Supreme Court in the case of *Vivek Kalra (supra)* and *Mandhari (supra)*, the appellants are undoubtedly found guilty of committing the alleged crime. Consequently, it is established beyond reasonable doubt by

"17. ...It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

42. Thus, a perusal of the entire evidence and circumstances on record unequivocally establishes that the appellants, Ram Prasad, the father of the deceased girls, and Chandra Bhan, their elder brother, committed the murder of Dayawati and Dharmwati by throttling. This act was committed for the sake of honor and dignity of the family by applying high pressure while throttling them, as a result of which, the tongues of both deceased girls protruded out of their mouth and Dharmwati also discharged fecal matter. The complete chain of incriminating circumstantial evidence points exclusively toward the guilt of the appellants. Consequently, it is conclusively proved beyond reasonable doubt that no one other than the appellants committed the offence.

43. We have also gone through the impugned judgment and order of conviction and sentence dated 15.01.2019, passed by the learned Trial Court. We find that the findings and reasoning of the Trial Court are based on unimpeachable circumstantial evidence. The Trial Court has thoroughly evaluated the entire prosecution evidence, both oral and documentary. After proper consideration, it successfully linked every chain of circumstantial evidence to find guilt of the appellants in the crime.

44. The Trial Court has evaluated the evidence and circumstances in the proper perspective and lawful manner. The impugned judgment and order have been passed in accordance with settled principles of law and

45. Accordingly, the judgment and order of conviction and sentence dated 15.01.2019, passed by the Additional District and Sessions Judge (Fast Track Court-II), Amroha (Jyotiba Phule Nagar) in Sessions Trial (S.T.) No. 22 of 2017 (*State v. Ram Prasad and Another*), arising out of Case Crime No. 198 of 2016, under Sections 302 & 201 IPC, Police Station- Saidnagli, District- Amroha, is hereby ***affirmed***.

46. Consequently, the present criminal appeal, being devoid of merit, stands ***dismissed***.

47. The appellants are in jail. They shall remain in jail to serve out the sentence awarded by the Trial Court *vide* order dated 15.01.2019.

48. Let a copy of this judgment and order, along with the Lower Court record, be sent to the Trial Court ***forthwith*** for necessary compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 30, 2026

Aditya