



2026:AHC:174525-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3585 of 2018

Amit Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Akhilesh Chandra Shukla, Rajiv Lochan Shukla, Subhash Chandra Pandey
Counsel for Respondent(s)	: AGA

RESERVED

Court No. - 44

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

1. This Criminal Appeal had been moved against the judgment and order dated 13.6.2018/14.6.2018 passed by the Additional Sessions Judge, Saharanpur in Sessions Trial No.216 of 2014 by which the accused Nathi Ram Gurjar and Amit Kumar were convicted under sections 302/34 of Indian Penal Code and sentenced for life imprisonment with a fine of Rs.25000/- each. In addition, in the event of default in payment of fine, they had to undergo one year's additional imprisonment each.

2. The accused Nathi Ram Gurjar has died during the pendency of his appeal being Criminal Appeal No.3560 of 2018, and, therefore, the Criminal Appeal No.3560 of 2018 stood abated on 16.7.2026.

3. Upon the death of one Mahaveer Saini, his nephew Susheel Kumar lodged a First Information Report on 22.9.2013 at around 3.45 PM that Mahaveer Saini, who was his uncle and was living in Kheda Mugal in the district of Saharanpur was sleeping in the Gher of his

house. In the morning of 22.9.2013 at around 4.00 AM, Nathi Ram Gurjar and his son Amit came over to the house of the uncle of the first informant and called him by name and thereafter took him along with them somewhere. The first informant, it was stated, was a resident of Saharanpur and on the previous day, he had come over to stay on with his uncle Mahaveer Saini. It was first stated in the FIR that when till 9-10 AM the uncle did not come back then the first informant was worried and at that point of time one Brajpal informed the first informant that he had received a phone call from the police who had informed him that Mahaveer Saini, the uncle of the first informant was found in a burnt state and was admitted in a hospital at Saharnapur. Upon getting this information, the first informant along with Gaurav, Vinay and 10-15 other villagers went to the Saharanpur hospital where they found that Mahaveer Saini was lying on a bed in a burnt state. To the first informant, it was alleged, that he was informed that there was some transaction of money between Nathi Ram and the uncle Mahaveer and there was also some dispute with regard to that. He had stated in the FIR that Nathi Ram and his son Amit had burnt his uncle alive. The first informant had prayed for action on the basis of the FIR.

4. On 22.9.2013 itself, a dying declaration of the deceased was also recorded at around 1.00 PM. The dying declaration is being reproduced here as under :-

“मृत्यु पूर्व बयान

प्रारम्भ - समय 1.05 PM में महावीर पुत्र श्री मनीराम आयु 55 वर्ष नि० खेड़ा मुगल थाना देवबन्द जिला सहारनपुर शपथपूर्वक बयान देता हूँ कि मैं आज दिनांक 22.09.13 को प्रातः चार बजे घर में सो रहा था तभी मेरे मोबाइल नं० पर नाथी S/o अतर सिंह ने फोन करके मुझे खेत में बुलाया। मैं खेत पर पहुँचा तो वहाँ नाथी पुत्र अतर सिंह निवासी खेड़ा मुगल के साथ अमित S/o अतर सिंह नि० खेड़ा मुगल थाना देवबन्द जि० सहारनपुर भी उपस्थित था। मेरा उन दोनों से लेन-देन को लेकर पूर्व से ही विवाद था। उक्त दोनों ने मेरे ऊपर मिट्टी का तेल डालकर आग लगा दी। मैं वहाँ से चिल्लाकर भाग लिया तथा रास्ते पर आकर गिर पड़ा। उसके बाद गांव के लोगो ने मेरे कपड़ों में लगी आग को बुझाया तब तक मैं जल चुका था। मुझे नाथी पुत्र अतर सिंह व अमित

S/o अतर सिंह दोनों निवासी खेड़ा मुगल ने जलाया है। बयान सुनकर तस्दीक किया।

उपर्युक्त मृत्यु पूर्वक बयान मेरे द्वारा तहसीलदार सदर सहारनपुर के आदेश अनुपालन में दर्ज किया गया।

बयान समाप्त का समय= 1:20 PM”

5. Since the police got into action, it had also taken into custody a plastic jerrycan of white colour which had a litre of kerosene oil. They had also recovered a pair of slippers and a half burnt woolen chadar. Before the dying declaration was recorded, the medical examination was done at 10.15 AM on 22.9.2013 itself and in it, it was stated that an unknown person aged about 55 years and about whose parentage nothing was known, was examined. It was also mentioned that the residence etc. was also unknown. The injured was brought by ambulance No.EMT 108 and the driver was Bheem Singh with an ID No.1268. It was specifically stated in the examination that the patient had superficial and deep burns specially from head to foot. His general condition was very poor and was admitted and referred to a surgeon. The initial medical examination was done by the EMO, SBD Hospital, Saharanpur. It was exhibited as Exhibit Ka-15. Thereafter when the patient was admitted and a bed-head ticket was prepared then also initially in front of his name 'unknown' was written and even in the column 'son of', 'unknown' was written. The address was also mentioned as 'unknown'. The document bed-head was exhibited as Exhibit Ka-16. In this document the noticeable fact was that above the word 'unknown', the name was thereafter written as patient Mahaveer in English and on the right side of the word 'unknown', in hindi it was written as Mahaveer. Also, the name of the father initially was written as 'unknown', but thereafter, above the word 'unknown', it was written 'the son of Maniram'. Similarly, the address was also given in the space immediately next to the word 'unknown'. On 22.9.2013, the patient was referred to a higher institute. Thereafter when the patient had died on 23.9.2013, post mortem was conducted and the reason of death was shock and ante-mortem burn injury. On 25.11.2013, the report of the Forensic Science Laboratory was also obtained. The pair of slippers

were marked as '1', the burnt clothes were marked as '2' and the plastic jerrycan was marked as '3' and the result with regard to the presence of kerosene oil was given. On 23.9.2013, the panchayatnama was prepared. However, in the panchayatnama, the time of commencement had not been given though time of conclusion was given as 9.45 PM on 23.9.2013. Thereafter on the evidence available on 28.5.2014, the Additional District & Sessions Judge, Court No.10, Saharanpur framed charges and Nathi Ram and appellant-Amit were charged with murder under section 302 read with section 34 of the IPC.

6. When the accused denied the charges, trial commenced. From the side of the prosecution, as many as nine witnesses were examined.

7. PW-1, the informant had in his examination-in-chief named the accused as Nathi Ram and Amit. The PW-1 had stated that though he was staying in Saharanpur for the past 10 years, the night previous to the date of incident, he had come to stay with his uncle. Then he proved the FIR and the contents therein. He had stated that after his uncle had gone with Nathi Ram and Amit early in the morning, he had gone to sleep. However, when he did not come till 9.00 AM then he started searching for his uncle. First he went to the house of Nathi Ram where he did not find anyone. He then had stated that Brajpal Saini of the village had rung him up at 10.00 or 10.30 AM and he had told him that he had received a phone call from the police chowki at Kheda Mugal that Mahaveer had been found in a burnt state and was admitted to a Government Hospital. He then stated that he along with Gaurav, the son of the deceased and Vinay, the son of another uncle along with certain other persons went to the hospital. He had then stated that the informant's father Mahendra Pal, his brother Anil, another uncle Mukesh and one Prakash of the village had proceeded for Delhi for a better treatment and he himself had come up to the village. He had thereafter lodged the FIR in the police station. The FIR was initially lodged under section 307 IPC. In the cross-examination, he had stated that he was doing a job in Haridwar. He had upon a question being asked as to who was his grand-father, then he had told that his grand-father's name was Maniram and he had property in

the village. He had died two or three years prior to the date of incident and that after his death, there had been an arrangement between his father Mahendra and his uncle Mahaveer. The house at Radha Vihar in Saharanpur was got constructed by his grand-father and it was a joint property. He had then stated that in his share, the house in the village and the house in Radha Vihar were there. Mahaveer got the new house constructed in the village. He had stated that his grand-father had purchased five bighas of land in the name of his father and uncle Mahaveer. The son of the deceased uncle was Gaurav and he used to go to the college in Haridwar everyday from the village. He had stated that it was wrong to say that the relations between the family of the informant and that of the deceased were not good. At the time of the incident, the informant had two mobiles being Mobile No.9456025682 and 9997108506. He had categorically denied that the mobile no.9997108506 was used by the deceased Mahaveer. He had stated that this number was being used by him even on the date when he was testifying before the Court. He had then given the number of his father's telephone which was 9457823745. He had stated that Brajpal had called him on Mobile No.9997108506 when he had informed him of the fact that the deceased was injured in a burnt state and was admitted in a hospital. On further cross-examination, he had stated that he did not remember the number of Brajpal from which he had called him. He had then stated that his own house in the village was 70-80 meters away from the house of the deceased. He had stated that he had reached the hospital at around 11.30 AM to 12.00 noon. The patient was referred at around 12.00 noon for a higher specialized medical care.

8. PW-2 was the wife of the deceased. She had also stated that Nathi Ram and Amit had come to her house at 4.00 AM to call her husband. She continued with the same story with regard to the information being received by the first informant Susheel Kumar from Brajpal. In the cross-examination, she had stated that she was not aware about the money etc. which might have been taken by her husband from the

villagers. She had, however, stated that her statement under section 161 Cr.P.C. was recorded after 4-5 days.

9. PW-3 Prem Pal Singh was the Naib Tehsildar who had recorded the dying declaration. He had proven the dying declaration and had stated that what was uttered by the injured was recorded by him. He had further stated that he had got the thumb impression of the patient Mahaveer on the dying declaration. In the cross-examination he had stated that the order by which the Tehsildar had directed the PW-3 to record the dying declaration was annexed with Exhibit Ka-3 and that on it the names of "Nathi Ram s/o Atar Singh" and "Amit s/o" were written and they were written in a different ink. He stated that he did not remember as to whether the names written as "Nathi Ram s/o Atar Singh" and "Amit s/o" were there or they had been scored off. He had further stated that when he had reached the hospital to take the statement of the patient then no relative of his was around him and was also not talking to anyone. He had further stated that no statement under section 161 of his was taken by any Investigating Officer. He had categorically stated that the doctor had not given any certificate to the effect that the patient was in a fit state after the statement was recorded.

10. PW-4 was Dr. Mahesh Grover. He had stated that the dead body was recognized by Anil Kumar son of Mahendra Pal and by Mahendra Pal, the brother of the deceased. The doctor had stated that the entire body was burnt other than the sole of the foot. He had also stated that where the body was burnt, the skin had peeled off. However, he had stated emphatically that there was absolutely no smell of any kerosene oil.

11. PW-5 was Sub-Inspector Ram Pal Singh. He had stated that he had prepared the panchayatnama. He had stated that he had taken all the details of the deceased and of the accused. He had also stated that he had recorded the statement of Naib Tehsildar (this was contrary to the statement given by the Naib Tehsildar that he had never got his statement recorded under section 161 Cr.P.C.). He had in his cross-examination

stated that he had never jotted down the time as to when a particular investigation was done. Also, the date was not there below the signatures of the C.O. However, he denied the ante-dating or ante-timing of any document. He had stated that he had also not taken the statement of Bheem Singh i.e. the driver of the ambulance by which the deceased had reached the hospital. He had also stated that he had not taken the statement of Vinay and Gaurav whose names found place in the FIR. During the investigation, he had stated that he had got the mobile number of the deceased.

12. PW-6 was the chik writer. He had stated that no special report of the incident was sent the to Magistrate.

13. PW-7 was the Constable who had taken the dead body to the mortuary.

14. PW-8 was Dr. Kunal Jain who had admitted the patient in the SBD Hospital and had clearly stated in his examination-in-chief that Bheem Singh had brought the patient to the hospital and the name and other details of the patient were not known. He had stated that there was no smell of any kerosene oil. In fact emphatically he had stated that had there been any smell of kerosene oil, then he would have definitely reported in the document which he had prepared. He had stated that till such time the patient was treated he was not in a fit state to speak. Dr. Kunal was re-examined on 12.2.2018 after he had given his earlier statement on 3.4.2017. He had further stated that after the statement was recorded, he had stated that it got over at 1.20 PM and he had also stated that he was throughout there with the Magistrate.

15. PW-9 was Dr. Rajesh Dung. He had given the details as to how the bed-head ticket was filled.

16. Thereafter the statements of the accused were recorded under section 313 Cr.P.C.. The accused Nathi Ram had also given an affidavit in which he had stated that it was in fact Mahendra, the real brother of the deceased who was responsible for the death of the deceased as Mahendra always wanted to purchase the share of the deceased in his

village property and because the deceased had arranged to sell the property to Nathi Ram on the day after the day he was murdered, the entire story had been weaved and Nathi Ram had been made an accused.

17. By way of defence witness, Bheem Singh was produced in the Court as DW-1. He had stated that he had received the information while he was in Lucknow and he had only got the information that there was a person in an injured state in Kheda Mugal area and he had to be taken to the hospital. This information he had received in between 9.30 and 9.45 AM. He had stated that no one had recognized him at the relevant point of time.

18. DW-2 was one Balveer. He had also stated what Nathi Ram had stated in his affidavit that Mahaveer was going to sell his share in the property in the village and for that he had also taken two lacs rupees as advance. Mahendra the real brother of the deceased and his family never wanted the property to be sold to anyone outside the family and, therefore, they had done away with the deceased.

19. When the trial was over and the judgment was delivered and the Sessions Court had held the accused guilty of murder under section 302 read with section 34 IPC and the accused were punished with life imprisonment, the instant appeal was filed.

20. For the appellant, Sri Akhilesh Chandra Shukla appeared and made the following submissions :-

- i. After the deceased had died on 22.9.2013, the FIR which was lodged on 22.9.2013 at 3.45 PM, did not speak anything of the information which was required to be sent to the Magistrate and, therefore, if the police report under section 173(2) of Cr.P.C. is not sent within a reasonable time, then the entire investigation became a sham investigation. To bolster this argument, learned counsel relied upon a judgment of the Supreme Court in **Meharaj Singh vs. State of U.P.** reported in (1994) 5 SCC 188.
- ii. Learned counsel for the appellant further submitted that the entire case of the prosecution was falsified when the first informant was

stating that Nathi Ram and Amit had come to the house of the deceased around 4.00 AM in the morning and had taken him along with them. However, in the dying declaration it was stated by the injured that he had received a phone call and he was called by Nathi Ram and Amit to an agricultural field nearby.

- iii. Learned counsel for the appellant further states that even the PW-2, the widow of the deceased had stated that it was the accused who had come to the house and thereafter had taken the deceased but quite contrary to what was stated by PW-1 and PW-2 in the dying declaration it was recorded that at 4.00 AM in the morning while the injured Mahaveer was sleeping, he received a phone call on his mobile and Nathi Ram had called him in some agricultural field. This itself makes the case doubtful specially the case of the prosecution vis-a-vis. dying declaration.
- iv. Learned counsel for the appellant states that as per the prosecution when the FIR was lodged, before that Brajpal had informed the first informant about the deceased and it was stated that after the villagers had found the deceased in a burnt state, he was taken to the hospital by the villagers. However, the admission form showed that the injured was admitted as an unidentified person. His address was also not given on it. It was only stated that he was brought by an ambulance No.EMT 108 and the driver was Bheem Singh whose ID was 1268.
- v. Learned counsel for the appellant states that the son of the deceased had been living with the deceased but he was never produced in the witness box to state anything whatsoever.
- vi. Learned counsel for the appellant states that if the dying declaration is seen then the parentage of Nathi Ram and Amit both were given out as sons of Atar Singh. He further submits that in fact Mahaveer was not in a position to speak and fraudulently the entire dying declaration was prepared. He points out to the statement of the PW-3, Naib Tehsildar who had categorically

accepted the fact that the document by which he was directed to go and get the statement recorded of the deceased, contained on the left hand side the name of the deceased in a different ink. Learned counsel submits that in fact the deceased, who was in a burnt state while he was giving his dying declaration, had not known as to who actually **tried to kill** him but the names of Nathi Ram and his son Amit were incorporated on the directions of the Tehsildar. Learned counsel for the appellant states that this document by which the Tehsildar had directed the Naib Tehsildar to record the statement was not exhibited but the Naib Tehsildar had proved it in as much as he had found the document in the Court, annexed with Exhibit No.3 which was a dying declaration and questions were put on it and thus it would be treated as a proved document. To submit that if there are contradictions in the dying declaration then the same shall be discarded, learned counsel relied upon the judgment of the Supreme Court in **Suresh vs. State : Represented by Inspector of Police** reported in **(2025) 4 SCC 794**.

21. Learned counsel for the appellant submits that even the doctor who had admitted the injured in his hospital had stated that from the patient no smell of any kerosene oil was found. He, therefore, submits that the story about the burning of the Mahaveer by kerosene oil was a concocted one. He submits that even the recoveries which had been done of a jerrycan showed that the jerrycan had one litre of kerosene oil and he, therefore, submits that if the kerosene oil had to be used to burn the deceased Mahaveer then the entire kerosene oil would have been poured on him and one litre of kerosene oil would not have been saved in the jerrycan. He, therefore, submits that only an evidence was created by planting a jerrycan having one litre of kerosene oil by the side of the deceased.

22. Learned counsel for the appellant, therefore, submits that it was an extreme case of circumstantial evidence where the links did not get connected so as to complete the chain of evidence which would lead the

Court to believe that the accused and the accused alone had committed the crime.

23. Sri Muni Raj Mehrotra, learned AGA submitted that it was an open and shut case because all the chain in the entire event were getting connected. The first informant who was the nephew of the deceased was named Susheel Kumar and he was staying in the house of the deceased and, therefore, when he had stated that when the accused had come to call the deceased at 4.00 AM then there could be no other conclusion drawn other than the one that the accused had taken the deceased with them and thereafter had burnt him to death and, therefore, he submits that the entire link of the story was getting connected and rightly the Court below convicted the accused person. He further submitted that it mattered little that the dying declaration had described Nathi Ram and Amit as being sons of Atar Singh. Such mistakes quite often happen and, therefore, no advantage could be drawn by accused because of the mistakes so committed. Learned AGA further submitted that the document upon which questions were asked from the PW-3 was not an exhibited document and, therefore, any question asked vis.-a-vis. that document, could not be relied upon. He further submitted that even if the police report was not sent then it would not in any manner prejudice the case of the prosecution.

24. Having heard Sri Akhilesh Chandra Shukla, learned counsel for the appellant and Sri Muni Raj Mehrotra, learned AGA, we find that the prosecution story was that while the deceased Mahaveer was sleeping in his house on 22.9.2013 at around 4.00 AM, the deceased was taken by the accused persons from his house personally. Thereafter when the deceased did not come back after the passage of 4-5 hours and when an information was received by the first informant from one Brajpal that he had received a phone call that Mahaveer Saini had been found in a hospital then the first informant had rushed to the hospital and thereafter had got the FIR lodged. We also find that the doctor who had attended the injured patient Mahaveer had not mentioned anything about his name or his residence. We, therefore, fail to understand as to how the police

had come to know that it was Mahaveer who had got burnt and how the police had informed Brajpal about this fact.

25. What is more, we find it strange that Brajpal thereafter had informed the first informant about the fact that Mahaveer was in an injured state lying in a hospital. The natural reaction of Brajpal ought to have been that he should have informed the sons of the deceased about the incident. We also find that the police report was definitely never sent and, therefore, this definitely jeopardizes the case of the prosecution. Also, we find that in the dying declaration, despite the fact that the patient had 95% burns and he was not in a position to talk, yet a dying declaration was recorded and even a thumb impression was taken of the burnt patient. We also find that if the patient had got the dying declaration recorded in the manner he had got so recorded then definitely he would have been in his senses and he since was knowing about the parentage of Nathi Ram and Amit then he would have definitely given the parentage of Amit correctly. The document upon which questions were asked from the Naib Tehsildar was a document which was a communication sent by the Tehsildar to the Naib Tehsildar and on the left hand corner of it, the Naib Tehsildar had found the names of Nathi Ram and Amit scribbled in a different ink. A definite conclusion thus can be arrived at that while the burnt patient was unable to speak, a dying declaration was drawn in the handwriting of Naib Tehsildar and the names of the accused were incorporated in the dying declaration. However, since the scribbled names of Nathi Ram and Amit were there in the communication sent by the Tehsildar to the Naib Tehsildar, the names were incorporated. Since the name of the father of Amit was not mentioned in the document, then we can conveniently presume that the Naib Tehsildar had presumed that Amit might also have been the son of Atar Singh. All these create a grave doubt in the minds of the Court and it thus has no other option but to conclude that since the prosecution had so many lacuna, the case becomes absolutely doubtful and thus, the judgment and order dated 13.6.2018/14.6.2018 passed by the Additional

Sessions Judge, Saharanpur in Sessions Trial No.216 of 2014 cannot be sustained in the eyes of law.

26. For all the reasons mentioned above, The appeal stands allowed. The judgment and order dated 13.6.2018/14.6.2018 passed by the Additional Sessions Judge, Saharanpur in Sessions Trial No.216 of 2014 is set aside. The appellant Amit, if is not required in any other criminal case, be released forthwith.

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

August 19, 2026

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