



2026:AHC:27729-DB

Reserved On :- 28.01.2026

Delivered On :- 09.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2478 of 1985

Rameshwar And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	S.K.Chaturvedi,	Shashwat	Kishore
		Chaturvedi		
Counsel for Respondent(s)	:	A.G.A.		

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri S.K.Chaturvedi, learned counsel for the appellants; Sri Prem Shanker Prasad, learned A.G.A for the State and perused the trial court record and judgment and order passed by the trial court.
2. This criminal appeal has been filed against the judgment and order dated 12.9.1985 passed by Additional Sessions Judge, Mathura, in Sessions Trial No. 360 of 1984 convicting and sentencing the appellants to undergo life imprisonment under Sections 302 and 302/34 IPC.
3. Brief facts of the case are that accused, Smt.Shanti, is mother of accused, Rameshwar. It is alleged that one, Babli alias Kamlesh, aged about 14 or 15 years, lived with her widowed, mother Smt. Surendar Kaur and two brothers in Bank Colony, Mathura. Both the accused viz., Rameshwar and Smt. Shanti lived, in house no. 1D Radha Nagar, which is not far off from the house of above mentioned Babli alias Kamlesh. It is further alleged that Smt. Surendar Kaur, mother of above mentioned Babli alias Kamlesh ran a hotel at Mathura-Agra By-pass. On 14-7-84 at about 5 p.m., above mentioned Babli alias Kamlesh had gone to Deeg Gate, Janam Bhumi to purchase

vegetables. Since she did not return to her house in the night, her mother Smt. Surendar Kaur searched her. Next morning Ishwar and Balvir Singh, told her that they had seen accused, Rameshwar, taking her daughter, Babli alias Kamlesh, previous evening in a rickshaw near Deeg gate railway crossing. Accordingly, she went to the house of above mentioned Rameshwar where she met both the accused. It is alleged that both the accused threatened Smt. Surendar Kaur and told her that Rameshwar would marry Km. Babli alias Kamlesh and she may do whatever she wants to do. Thereafter, she went to Krishna Nagar police out post to lodge a report but her report was not recorded and police asked her to go to S.P. Accordingly on 15-7-84 above mentioned Smt. Surendar Kaur went to S.P.Mathura who ordered Inspector Kotwali, Mathura to register a case and accordingly a case was registered at P.S. Kotwali, Mathura on 15-7-84 at 10:10 pm.

4. Investigation of the case was entrusted to S.I., Ram Kala Singh on 16-7-84. On that day when above mentioned S.I., Ram Kala Singh went to the house of complainant, Smt. Surendar Kaur, he did not find her there and accordingly on 18-7-84 he recorded her statement and also recorded statements of P.W.- 2 and 3, Gurdeep and Balvir Singh. On 19-7-84 at about 6-30 a.m. above mentioned S.I., Ram Kala Singh got a secret information that Km. Babli alias Kamlesh was present at the house of accused, Rameshwar and he accordingly alongwith some police force went to the house of above mentioned Rameshwar, the accused. In the way Gurdeep Singh, brother of above mentioned Babli alias Kamlesh also met S.I., Ram Kala Singh and he also accompanied the police party. When the police party reached the house of accused, Rameshwar, the main door of the house was shut. From an adjacent window S.I., Ram Kala Singh, Gurdeep Singh and other police officials saw that accused, Rameshwar, was pulling a *Safi* which was tied around the neck of Babli alias Kamlesh, while his mother viz., accused Smt. Shanti, was catching hold of above mentioned Babli alias Kamlesh by her legs. Seeing the above scene, S.I. Ram Kala Singh, asked accused, Rameshwar, either to open the door, or he would shoot him. On the above threat accused, Rameshwar, opened the main door of his house. Both the accused were apprehended. When above mentioned PWs reached near Babli alias Kamlesh, she breathed her last and died as a result of strangulation.

5. Thereafter a panchayatnama of the dead body of the deceased, Babli alias Kamlesh, was prepared. Both the accused were taken to the police station

and after necessary investigation both the accused mentioned above were challaned and a charge sheet was filed against them.

6. A charge u/s 366 and 302/34 IPC was framed against accused, Rameshwar, while a charge u/s 302/34 IPC was framed against accused, Smt. Shanti to which they pleaded not guilty and claimed to be tried.

7. In support of case of prosecution, PW-1, Surendra Kaur; PW-2, Balveer Singh; PW-3, Gurdeep Singh; PW-4, Dr. Arbind Kumar; PW-5, Naresh Chandra; PW-6, Ramkala Singh; PW-7 Om Prakash and PW-8, Kamal Kishore Mishra, were examined.

8. PW1 is Smt. Surendar Kaur, mother of deceased Babli alias Kamlesh gave detailed prosecution version of the case. She explained that when her daughter did not return in the night of 14-7-1984, she searched her and next morning she came to know from Ishwar and Balvir Singh that they had seen Babli alias Kamlesh and accused, Rameshwar, going in a rickshaw near the Deeg Gate railway crossing. She also explained that when she went to the house of the accused, they threatened her and told her that accused, Rameshwar, would marry her daughter. She also explained as to how, thereafter, she approached police out post Krishna Nagar and when her case was not registered, she went to S.P., Mathura with written report Ex. Ka-1, who ordered registration of the case.

9. PW-2, Balvir Singh, has stated that he had seen at about 5 p.m. accused, Rameshwar and Km. Babli alias Kamlesh going in a rickshaw near the Deeg Gate railway crossing.

10. PW3, Gurdeep Singh, is son of complainant, Smt. Surendar Kaur and he stated that when he alongwith police party went to the house of both the accused, he saw accused, Rameshwar, pulling a *Safi* which was tied around the neck of his sister, while other accused viz., Smt. Shanti was catching hold of the legs of his sister. He also stated that when the police officer threatened accused, Rameshwar, that if he would not open the main door, he would shoot him then accused, Kameshwar, opened the main door of his house, and when he reached near his sister, she died in his presence.

11. P.W.4, Dr. Arbind Kumar, who stated that on 19-7-84 he conducted post mortem examination on the dead body of Babli alias Kamlesh and found on

her neck a ligature mark 28 cm x 2 cm below the thyroid cartilage and circulating the neck horizontally and completely. He also stated that an abrasion 1 cm x 2 cm was also found on the left side of cheek. He proved his post mortem examination report Ex. Ka-2 and stated that injury no.1 could be caused if some cloth was tied around the neck of the deceased and pulled from both sides and the above injury was sufficient in ordinary course of nature to cause her death.

12. P.W.5, Naresh Chandra, is the owner of the house in which both the accused lived. He stated that he signed panchayatnama Ex. Ka-3 and Km. Babli alias Kamlesh was living in the house of the accused for about one week prior to her murder.

13. PW6 is S.I Ram Kala Singh who is the I.O. of the case. He stated that on 19-7-84 in the morning at about 6-30 a.m. he got secret information that Km. Babli alias Kamlesh was at the house of accused, Rameshwar and he alongwith some police force left for his house on the receipt of that information. In the way Gurdeep singh also met him, and all of them went to the house of accused, Rameshwar and from a window they saw accused, Rameshwar, pulling a Safi which was tied around the neck of Km. Babli alias Kamlesh. While at that time the other accused viz., Smt. Shanti was catching hold of the legs of the deceased. He further stated that Km. Babli alias Kamlesh died in his presence and he prepared her panchayatnama Ex. Ka-3. He also stated that a *fard* of the Safi which was tied around the neck of the deceased was prepared which is Ex. Ka-6. He also proved papers Ex. Ka-7 to Ka-12 prepared alongwith Panchayatnama and site plan Ex. Ka-13. He also proved charge sheet Ex. Ka-14 filed later on by S.I., V.P. Sharma. He further proved chik report Ex. Ka-15, written by constable RadheyShyam.

14. PW-7 is constable Om Prakash and he stated that he took the dead body of deceased for post mortem examination.

15. PW8 is Kamal Kishore Mishra who proved G.D.entry, copies of which are marked as Ex. Ka-4, Ka-5 and Ka-16. 5. He took the dead body of deceased for post mortem

16. When the accused-persons were examined u/s 313 Cr.P.C. they denied the allegations against them and stated that they have been falsely implicated in the present case. The accused, Rameshwar, also stated that mother of Km. Babli alias Kamlesh used Km. Babli alias Kamlesh for immoral purposes.

He also stated that when he developed an acquaintance with Km. Babli alias Kamlesh they married before the Marriage Officer. He also stated that when mother of Km. Babli alias Kamlesh and her relatives came to take her. Babli alias Kamlesh refused to accompany them. He also stated that on 18-7-84 at about 11:30 p.m., the relatives of Babli alias Kamlesh came to his house with the police and tried to force Babli alias Kamlesh to go with them, but she again refused. Thereafter he and his mother were taken to the police station and in the night they were kept the next morning they came to know that Babli alias Kamlesh had been killed and they were falsely implicated in the present case. In their defence, they summoned Marriage Officer, Mathura but when he appeared in court, he was not examined and given up. No other evidence was given in defence by any of the accused.

17. The accused, Rameshwar, has also been charged under Section 366 IPC. There is no conclusive proof on record to establish that Km. Babli alias Kamlesh was in fact minor at the time of alleged occurrence. It is positive case of the prosecution that she left her house to purchase vegetables and from Deeg Gate railway crossing she accompanied accused, Rameshwar in a rickshaw. According to P.W.1, Smt. Surendar Kaur, mother of above mentioned Km. Babli alias Kamlesh when she visited the house of the two accused after knowing that her daughter was there, both the accused threatened her. If Km. Babli alias Kamlesh was a unwilling party, in the ordinary course she should have insisted to go with her mother, but she did not do so. It is also admitted in the case of the prosecution that from 14th evening to 19th morning above mentioned Km. Babli alias Kamlesh lived at the house of accused and this fact also shows that she was a willing party to go to the house of the accused. However, Naresh Chandra, P.W.5, the owner of the house, in which both the accused lived as tenants, stated that Km. Babli alias Kamlesh had stayed at the house of the accused for nearly a week. All these facts show that, perhaps Km. Babli alias Kamlesh accompanied accused Rameshwar from Deeg Gate railway crossing on her own accord and thus accused Rameshwar was not held guilty of kidnapping aforementioned Km. Babli alias Kamlesh and was acquitted of the charge under section 366 IPC framed against him. However the appellants were tried, convicted and sentenced under Section 366 and 302/34 IPC by trial court. Hence, this appeal.

18. After hearing the rival submissions, going through the judgment of the trial court and the material on record, we find that as per the prosecution

case the mother of the victim, P.W.-1, Smt. Surendar Kaur, runs a hotel in Mathura. She has admitted that she visited the house of accused, Rameshwar, on 15th, 16th, 17th & 18th July, 1984 where her daughter, Babli, was detained by accused, Rameshwar and his mother, Shanti. The accused persons did not let Babli go with her mother since they claimed that Rameshwar had married Babli. The conduct of P.W.-1 does not appears to be normal since she did not raised any alarm or cried for help from neighbours of accused when she came to know that they are not permitting her daughter to go with her. She did not wanted Babli to marry Rameshwar. The offence took place on 14.07.1984 in the evening and F.I.R was lodged on 15.07.1984 under Section 366 IPC against the accused yet she made no effort to take the police at the house of accused and free her daughter from captivity of the accused person, therefore, her conduct does not seems to be natural and normal, keeping in view the ordinary human course of conduct, expected from mother of an abducted daughter.

19. The second important witness in this case is P.W.-3, Gurudeep, brother of the victim. His presence is not shown in any of the documents prepared by the police but he claims that he was present at the time of inquest and put his signatures over various documents. He stated that he met the Inspector in the way when he was going in the jeep but when the Investigating Officer, P.W.-6 was examined before the court. He stated that he came to the scene of incident on bicycle with other police personnels.

20. P.W.-6, Ramkala Singh, Investigating Officer of this case, has claimed that he was present along with several police personnels and independent witnesses at the scene of occurrence but only Gurudeep, P.W.-3 was examined regarding incident dated 19.07.1984 which took place at 07:00 a.m. P.W.-6 claimed that he is eye-witness of the incident and therefore as per the single learned Judge / judgment of this court in the case of ***Bhagwan Dayal Piarey Lal vs. State (Allahabad) reported in 1968 AIR Allahabad 290***, the police officer who is a eye-witness of the case should not investigate the case. Testimony of such eye-witness should be looked with great caution.

21. Learned Single Judge of this court relied upon a Division Bench judgment of this court in the case of ***Chandrabhal vs. The State passed in Criminal Appeal No. 400 of 1955 (All.)*** wherein the Division Bench of this court held as follows :-

" The whole investigation becomes suspect, for no reliance can be placed upon the words of the investigating officer when he stoops to such methods for attaining his purpose. It is, therefore, not possible to rely upon the statements of the investigating officer or the witnesses who support the version given by the station officer. With these observations the Hon'ble Judges, who were hearing the said appeal, had placed no reliance upon the evidence of the investigating officer as well as upon the witnesses of the public who sought to corroborate his testimony. The said observations are equally applicable to the instant case. Linked up with the said circumstance, is the fact that the very police officer who claimed to have effected the recovery of the aforesaid articles from the possession of the petitioner, was himself the person who investigated this case. The practice of investigation being conducted by the same officer, who happens to be an ocular witness, has been looked with disfavour by this Court. When the same officer, who claims to have witnessed the incident, investigates, then his evidence has got to be looked with great caution and when we further find that he had resorted to methods which could not be approved at all in seeking to substantiate his version of the occurrence, then no reliance can be placed upon his testimony and if the witnesses of the public came forth to substantiate his evidence, then their evidence also sails in the same boat as that of the police officer concerned. The said circumstance, coupled with the aforesaid medical evidence, would be enough to cast grave doubt about the authenticity of the prosecution version of the occurrence."

22. The argument of learned counsel for the appellants that it is a case of honour killing of the deceased by her own family members finds support from the statement of P.W.-8, Constable Kamal Kishore Mishra, who stated that he has not brought the G.D dated 18.07.1984 to the court when the defence case was that on 18.07.1984 the accused persons were taken to the police station and kept under arrest on the night on 18.07.1984 and the murder of Babli was committed in their house by family members of Babli. In order to conceal the arrest of the accused-appellants on the night on 18.07.1984, the general diary dated 18.07.1984 was not produced before the court.

23. P.W.-5, Naresh Chandra, the owner of house where the accused were residing as tenants stated that Babli was living in the house with appellant, Rameshwar, for last one week. It has come in evidence that she has solemnized the marriage with Rameshwar on 11.07.1984.

24. P.W.-5, was not cross-examined on this issue. Their marriage certificate

was brought on record and to prove the same, the Marriage Officer was present before the court on 04.09.1985 but the prosecution did not permitted him to be examined. There was no motive for the appellant to murder Babli after 8 days of marriage with her. We also find that P.W.-3, Gurdeep, is real brother of deceased who was living in the same house with his mother, P.W.-1 and his sister, Babli, but he stated before the court that he came to know only on 19.05.1984 that his sister is living at the residence of Rameshwar, therefore, the presence of P.W.-3 appears to be doubtful.

25. P.W.-4, Dr. Arvind Kumar, in his statement stated that the murder of Babli could have taken place between 2-3 a.m in the night of 18/19th July, 1984 and if it read with the argument of counsel for the appellants, that the appellants were arrested on the night of 18.07.1984, the murder of Babli could have taken place in the night of 18/19th July, 1984 at 2-3 a.m. The site plan showing arrest of Rameshwar is outside his house when the investigating officer, P.W.-6, stated that he was arrested inside the house.

26. Considering the totality of facts and circumstances of this case we are of the view that the prosecution case is not reliable and the prosecution has failed to prove his case against the appellants beyond reasonable doubt.

27. The appellants deserved to be granted benefit of doubt.

28. Hence, the judgment and order passed by the trial court is hereby set aside.

29. The criminal appeal is ***allowed***.

30. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

31. Let the lower court record be sent to the trial court along with a copy of judgment.

February 9, 2026
Rohit

(Jai Krishna Upadhyay,J.) (Siddharth,J.)