

Reserved on 15.11.2025
Delivered on 09.01.2026



2026:AHC:5800-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1859 of 1990

Dhiraj and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: D.d. Singh, Madan Mohan, Naresh Kumar, Parmeshwar Yadav
Counsel for Respondent(s)	: D.g.a.

In Chamber

HON'BLE SIDDHARTH, J.
HON'BLE PRASHANT MISHRA-I, J.

(Delivered by Hon'ble Siddharth J.)

1. Heard Sri Rajrshi Gupta and Sri Shyam Babu, learned counsel for the appellants; Sri Prem Shanker Prasad, learned AGA-Ist for State and perused the material on record.
2. The above noted criminal appeal has been preferred by the appellants against the judgement and order dated 27.9.1990 passed by Additional Sessions Judge, Jalaun @ Orai, in Sessions

Case No.153/1988 (State Vs. Dhiraj and others), under Sections 302/34 IPC and sentencing them to undergo life imprisonment. They are also convicted under Section 201 IPC and sentenced to undergo two years rigorous imprisonment.

3. Prosecution story, in brief, is that the informant, Mahesh Chandra, had gone to village Pindari, Police Station Ait, District Jalaun to bring back his sister, Laxmi. On the 3rd day of February, 1987, around noon while the informant alongwith Kanti and Putto had gone to fetch grass from their cultivatory plot in 'Pipra -Har', the accused, Dhiraj, Kamlesh, Chandrabhan and Govind Singh, reached there and asked Putto why she had complained about them to her parents. They stated that they would not spare her and outraged her modesty. Km. Kanti intervened whereupon the accused persons abused her, threatened her with death and forcibly took away Putto towards railway line. Km. Kanti returned home and informed the informant, whereupon informant, alongwith Km. Kanti, Malkhan Singh and Narain Singh reached the spot and saw the accused persons placing the body of Putto on railway line. A train coming from Jhansi side crushed her body. After the train had passed, the informant saw the accused persons running away towards Pirona. An FIR was lodged at the Police Station. The Investigating Officer submitted final report against the accused persons. The informant moved an application to D.I.G., Jhansi, whereupon the case was re-investigated by S.P., Jhansi, who also submitted final report. Subsequently, when the

final report came up for hearing in court, the informant filed protest petition. Accused persons were summoned u/s 190(c) Cr.P.C. and committed to the Court of Sessions for trial.

4. As regards the witnesses of fact, P.W.1, Mahesh Chandra, the informant, stated that the incident had taken place about three years earlier. At the time of the incident he had come to village Pindari one day earlier to take his sister, mother of the deceased, back home. On the day of incident, around 12-12-30 in the noon, Putto and Kanti had gone to fetch grass from pipra' field. Kanti returned around 2 O'clock and informed the witness that Dhiraj, Kamlesh, Chandrabhn alias Pappu and Govind Singh alias Gunda had grappled with Putto with ulterior motives. The accused persons told her that since she had complained to her parents about what they had said to her two days earlier, they would not spare her and outraged her modesty. At that time, Malkhan Singh and Kalyan Singh were also present at the house and they rushed towards Pipra cultivatory plot. Putto was not found there and upon making a search, they saw the accused persons placing the body of Putto on railway track. A train coming from opposite direction crushed the body into two parts. The father of deceased was not at home, and thereafter the witness went to the Police Station the next day alongwith written report Ex.Ka 1. In cross-examination, this witness stated that he was confused and, therefore, did not mention the exact time of the incident in the written report. He further stated that he had moved an affidavit before D.I.G., Jhansi

regarding the incident. This witness further stated that he did not know the names of the owners of the adjoining place as he belonged to a different village. He further stated that he did not reach Police Station in the morning and remained till evening as F.I.R. was not written. The S.I. went to the village and on returning, the F.I.R. was lodged and only this witness was permitted to go back home. This witness further stated that the Investigating Officer and the A.S.P, Jhansi, both submitted final reports, and thereafter, the accused persons were summoned by court. He further stated that he knew the accused persons by name and face as he used to visit the village. This witness further stated that they rushed towards the place of occurrence when Kanti narrated the incident. He had been searching for Putto and the accused persons and saw the accused persons running towards the railway track and dragging Putto alongwith them. They did not chase the accused persons as in the meantime, a train reached there and Putto was crushed under it. This witness further stated that he narrated the entire incident to the Investigating Officer but that officer being interested in the other side, did not properly record the statements of the witnesses and submitted a final report under the influence of the accused persons. This witness also denied that Putto committed suicide and denied that the accused persons had been falsely implicated in the case due to enmity.

5. P.W.2, Smt. Kanti, another eye witness of the incident and sister of the deceased, narrated the entire incident and supported the prosecution version. She stated that on reaching the cultivatory plot, they were collecting grass when all the accused persons reached there and questioned the deceased as to why she had complained to her parents about them. They threatened her with dire consequences, outraged her modesty, and misbehaved with her. Upon intervention, the witness was also threatened with dire consequences. Feeling helpless she rushed to her house and informed her mother, her maternal uncle, brother of Malkhan Singh and one Kalyan Singh, who rushed towards the spot. Putto was not found at the cultivatory plot and upon making a search, they saw the accused persons carrying Putto by the hands and legs, and placing her on the railway track. At the same time a train coming from Jhansi side crushed her body, and the accused persons made good their escape. In Cross-examination, this witness stated that the dead-body remained lying on the railway track till the next day. She further stated that the Investigating Officer did not visit her village, nor did he record her statement at all and that the A.S.P., Jhansi, also did not interrogate her and denied her statement u/s 161 Cr.P.C. recorded in her name. She further stated that she moved an affidavit before D.I.G., Jhansi, as well as in Court. On further cross-examination, this witness stated that she does not know the owners of the adjoining plots and that it is incorrect to say that the accused

persons have been falsely implicated. This witness denied the defence version that Km. Putto committed suicide and that the accused persons have been falsely implicated in the case due to enmity.

6. P.W.3, Kalyan Singh, is another witness to the incident, who also supported the prosecution version. During Cross-examination, this witness stated that he was not related to informant, Mahesh Chandra. He further pleaded ignorance as to whether one Om Prakash of his village was murdered and Ram Das was accused in that case. He also stated that the Investigating Officer did not record his statement at all and instead wrote his statement without making any inquiry from him regarding the incident. This witness denied that Km. Putto had committed suicide and stated that the accused persons had been falsely implicated in the case due to enmity.

7. P.W.4, Head Constable, Ram Asrey Varma, was posted as Head Moharrir at Police Station Ait on 4.2.1987, who wrote chik F.I.R. on the basis of written report and made entry in the G.D.

8. P.W.5, Dr. S.K.Upadhya, was posted as Medical Officer, District Hospital, Orai on 5.2.1987. On that day, at 2.00 p.m., he conducted the autopsy on the body of the deceased, Km. Putto, whose dead-body was brought in sealed cover and was identified by constable Bishambhar Dayal and home-guard Ram Sewak.

Rigor mortis had passed off from both extremities on the eyes were closed.

9. Accused persons pleaded not guilty and stated that they had been falsely implicated in the case due to enmity. Accused persons also examined D.W.1, Hari Shanker, who stated that at the time of the incident he was working in his cultivatory plot near railway track and saw Km. Putto committing suicide by jumping before the incoming train and getting crushed. The witness informed Putto's mother about the incident. He further stated that the accused persons did not forcibly put Putto on the railway track with the intention to kill her. During cross-examination, this witness stated that Prabhu Dayal was not his real uncle and that he did not know whether Pahalwal or Lalman was his grand father. He also stated that he did not know about his uncle Ram Nath and son Prabhu Dayal. This witness denied the suggestion that he was not present at the time of the incident and had deposed before the court merely to save the accused persons.

10. After hearing the rival submissions, we find that the incident in dispute took place on 3.2.1987 at around 3:00 p.m. FIR was lodged on the next day at 9:30 p.m., without any cogent explanation for the delay, except that the father of the deceased lodged the FIR after returning to his house. It also appears from the record that the final report was submitted twice in this case, but the accused were summoned to face trial on a protest petition.

The Investigating Officer of this case was not produced before the court and, therefore, the relevant documents and the record of the investigation conducted by the Investigating Officer were not proved before the trial court at all. Consequently, the defence had no opportunity to contradict the statements of the witnesses recorded under Sections 161 Cr.P.C. which caused prejudice to the rights of the defence. The trial court also did not summon the Investigating Officer during trial. It also appears that this is a case based on circumstantial evidence and there is no eye-witness to the incident. No witness residing near the place of the incident has been examined. The witnesses examined are related to the deceased.

11. The first information report was lodged on the next day, after a delay of more than 17 hours and no plausible explanation has been offered for such inordinate delay. The explanation for the delay has been given in the testimony of PW-1 by stating that they were waiting for the father of the deceased to return; however the father of the deceased has not been examined by the prosecution. This explanation does not appeal to the principle of common prudence, particularly as the first informant, PW-1, is an adult and claims to be an eye witness to incident. No satisfactory explanation has been furnished for such inordinate delay. This factum further becomes relevant in light of the fact that the prosecution has neither proved the inquest report nor produced the Investigating Officer to record his testimony for proving other

relevant documents of the investigation like the site plan etc. and as such, the prosecution's delay in lodging the first information report, is in fact fatal to its own case.

12. The prosecution witness, PW-1, admittedly is not the resident of the village, where, the incident took place and his explanation that he was visiting his sister is not corroborated by any other evidence and the fact that the parents of the deceased have not been examined, coupled with the delay in lodging the First Information Report on the next day, gives rise to a reasonable inference that PW-1 was not present at the place of incident and had reached there only on the following day. After due deliberation, with a view to suppress the actual genesis of the incident and to falsely implicate the accused persons on account of previous enmity, the impugned first information report appears to have been falsely lodged.

13. Similarly, PW-2 is also a married lady and not a resident of the same village and no proper explanation has been given on her part also as to what she was doing in her parental house on the day of the incident, particularly when the first information report was delayed and the parents of the deceased have not been examined to corroborate the veracity of the testimonies of PW-1 and PW-2.

14. PW-3 is a highly interested and partisan witness in as much as he is closely related to PW-1 and PW-2 and there has been a

long standing litigation going on between his family and that of the accused persons and in his testimony, he has given evasive answers to specific queries put to him. As such, the learned trial court committed a gross illegality in placing reliance on the testimony of such an interested and partisan witness.

15. The prosecution had utterly failed to establish the genesis of the incident, in as much as neither the site plan nor the inquest report nor any other relevant prosecution documents have been proved by the prosecution. This factum further becomes highly contentious in light of the fact that the Investigating Officer was deliberately withheld by the prosecution to prove all these documents. In this regard, special mention may be made of the fact that during investigation, it had emerged that the deceased had committed suicide on account of a dispute that had taken place with her family. In a spur of the moment and in a fit of rage she went to on the railway track and was fatally injured by an incoming train and this factum was witnessed by the villagers present there. After a thorough investigation, final report was filed in the present case, as the allegations made in the first information report were not found to be true. The non examination of the Investigation Officer, and other relevant formal witnesses who would have explained the circumstances, under which the final report was submitted, and the with-holding of relevant prosecution documents such as the inquest report, site plan etc., leaves no evidence of the prosecution to corroborate the oral

version of highly interested and partisan witnesses who were examined subsequently. In the light of the fact that first information report was delayed without any proper explanation, the trial court ought to have taken adverse inference regarding the non-examination of the Investigating Officer and other important witnesses and non-proving of relevant documents like the inquest report, site plan etc. Instead it placed reliance on the uncorroborated testimonies of highly interested and partisan witnesses, who are not the residents of the same village, and thus most erroneously and illegally recorded the judgment of conviction of the accused persons.

16. The appellants were below 18 years of age at the time of the incident and, as such, were juveniles under the law at the relevant time for which they had their High School mark-sheets and other documents to prove their age, but no such claim was made before the trial court. Furthermore, the trial court while recording their statements under Section 313 Cr.P.C., also noted their ages, which establishes that they were juvenile on the date of the incident. Despite this, the trial court did not pay heed to the same and continued to prosecute and convict them without extending to them the benefit of juvenility under the relevant law.

17. From the above consideration, it is clear that prosecution has failed to prove its case beyond reasonable doubt. Hence, the appellants are entitled to benefit of doubt and are hereby

acquitted of all charges. The findings recorded by the trial court are hereby set aside alongwith its judgment and order of conviction.

18. The above noted criminal appeal is **allowed**.

19. The bail bonds and sureties of appellants are discharged.

20. Office is directed to return the trial court record and notify this judgment to the trial court, within a week.

(Prashant Mishra-I,J.) (Siddharth,J.)

January 9, 2026
Ruchi Agrahari