



2026:AHC:22267-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1597 of 2020

Raees Ahmad @ Raesu

.....Petitioners(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Petitioners(s)	: M J Akhtar, Sr. Advocate
Counsel for Respondent(s)	: G.A.

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE MADAN PAL SINGH, J.

1. The present Criminal Appeal has been filed against the judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station – Najibabad, District – Bijnor.

2. The case was initiated with the lodging of a First Information Report on 5.12.2016 at 14:50 hours. The first informant, namely, Ahmad Ali @ Nanhe had in the FIR stated that his Bhanji (sister's daughter) a few days earlier had fallen in love with a neighbour's son which was not liked by Rahisa the husband of the sister Fatima. Even though the case had resulted in a settlement, the husband of the sister of the first informant was very cross with his daughter and therefore, because of this incident, the first informant had brought his niece to his house at Kashipur where she stayed

for around 4 months. In the FIR, it has been stated that on 4.12.2016 at 6:00PM Rahisa the husband of the sister of the first informant came to the house of the first informant and told him that some people were coming to see his daughter in connection with her marriage at his house at Maswani and, therefore, Farheen his daughter be sent along with him. Upon this request, the first informant had taken Farheen on his motorcycle to the roadways bus stand at Kashipur and dropped her there. The next day i.e. on 5.12.2016 at around 7:00AM, he received an information from the Najibabad hospital that his niece Farheen had got acid burns and that she was found in Nanuwala village and for further treatment she had been referred to a better hospital at Bijnor. Upon getting this news, the first informant along with his brother Mubarak Ali reached the Bijnor Government Hospital and met his niece who told him that her father and one Nabi Hasan had taken her from Kasipur roadways bus stand and had made her sit in a pick up van and had proceeded for their village. On the way she had fallen asleep. Nabi Hasan the partner of the father of the niece had tried to throttle her and because of which her eyes had opened and she saw everything. Thereafter she had said she did not know as to what had happened. She had also informed that a vehicle from the Najibabad Hospital had come to take her. She had also told the first informant that she had given the telephone number of the first informant (Nanhe Mama) to the hospital authorities who had rung him up. He had, thereafter, stated in the FIR that his brother-in-law Rahees and his partner Nabi Hasan had first tried to kill his niece by throttling her and thereafter they had thrown acid on her to obliterate her identity. He had thereafter in the FIR itself stated

that the niece was admitted in the hospital and he had got the FIR lodged. The case was registered as Case Crime No. 0976 of 2016 and was lodged under Section 307, 326A, 201, 342 and 34 IPC.

3. A dying declaration of the niece of the first informant was recorded on 5.12.2016 itself. The dying declaration which was got recorded on 5.12.2016 had stated that Farheen(victim) was staying for the past 5 to 6 months with her elder mami Sayra wife of Dr. Mubarak Ali (scribe of the first informant report) at Police Station - Bhagatpur District - Kasipur. She had stated that in her village Maswani, she had fallen in love with a boy and therefore her father had left her with her elder Mami Sayra so that she may get detached from the boy she was loving. She had then stated that on 4.12.2016 at around 6:00PM her father Rahees came to her Mamiji's house at Kasipur and informed her that he wanted to take her home where for the purposes of the marriage of Farheen some people were coming to meet her. She had, thereafter, in her dying declaration stated that she did not know as to where her father Rahees took her. She had also mentioned that along with him there was one more person and that the two of them took her to a forest at around 11 and 12 in the night and they throttled her first and thereafter put something on her face and put fire on it. Upon seeing her lying there, somebody had rung at the Police at 108 and an ambulance had come and had taken her to the hospital. She had also stated that at the hospital her Mami Sayra, her mama Mubarak Ali were there but her father had not come.

4. Thereafter the clothes as were provided by the first informant Sri Ahmad Ali were also kept in the custody of the police and the memo was numbered as exhibit – ka2. A certain closed bottle and

kurta of the victim was also recovered and kept as exhibit ka-13.

When the victim was sent to Jai Prakash Narayan Apex Trauma Centre (AIIMS) Delhi an admit card was prepared which is also a part of the recovery. Thereafter when the victim died on 23.12.2016 at 2:30PM after the inquest was performed, the body was sent for post mortem which was conducted on 24.12.2016 at 12:30 PM.

5. Upon the completion of the investigation, charges were framed against the appellant Rais alias Rahisa and Nabi Hasan under Sections 342 IPC, 302 read with Section 34 IPC, 326 A read with 34 IPC and under Section 201 IPC. Nabi Hasan had died during the trial and at the time of judgment he was not alive and, therefore, the trial had continued against the sole appellant Rais and when he was convicted, the present criminal appeal was filed by him.

6. During the trial as many as 13 prosecution witnesses were examined by the prosecution.

7. P.W.-1 was the first informant Ahmad Ali who has stated that on 4.12.2016 he had gone to a nearby village called Chilkiya Tanda from his own village Kashipur and while he was away the victim /deceased his niece went away somewhere. On 5.12.2016, he received a phone call that Farheen, his niece, was in Najibabad Government Hospital and, therefore, he reached that hospital along with his brother Mubarak and there he found that Farheen had burn injuries and that she was not in a position to speak as she was not in a good condition. The Doctor had recommended her to be taken to Delhi and he has stated that his brother Mubarak Ali had taken her to Delhi where she died. He has categorically denied the fact

that his brother in law Rais and his partner Nabi Hasan had taken her on the fateful day and, thereafter, had killed her. When he made such a statement, the P.W.-1 was declared hostile. However, the prosecution cross-examined him and had he stated that though the FIR was written / scribed by his brother Mubarak Ali, he had not known what was written therein and he had only put in his signatures on it. All other places where his signature were he had denied that after putting them, he had read the contents of the document.

8. Upon the statements under Section 161 Cr.P.C. being read over to him, he had stated that he had not got recorded any statement as was recorded under Section 161 Cr.P.C. He has also denied the fact that the victim was in a position to speak when he had reached the hospital. Upon a suggestion being made that he was trying to save his own brother-in-law, he had stated that this was a wrong fact. Upon a cross-examination by the defence, he had stated that he did not recognize Nabi Hasan. What he had stated in his cross-examination to the prosecution, he had also reiterated in his cross-examination done by the defence.

9. The P.W.-2 was Mubarak Ali, the brother of the P.W.-1. He had also stated that while he was working on his fields on 4.12.2016 his niece had gone away from his house without telling him. He also gets his statement-in-chief recorded by saying that on 5.12.2016 at 7:00am he got the information about the fact that Farheen was admitted in the hospital in a burnt condition and that she was burnt in such a manner that her face was also grievously burnt and she could not speak etc. and therefore she had been referred to Delhi for further treatment. He had taken her to the All

India Institute of Medical Sciences where she died on 23.12.2016. He categorically denied the fact that his brother-in-law Rais and his partner Nabi Hasan had committed the murder. He was also declared hostile. The State counsel cross-examined him and when the statement under Section 161 Cr.P.C. was shown, he had stated that he had not stated any such thing which was recorded therein. He had also denied the fact that his brother-in-law Rais had taken the victim on 4.12.2016. When the defence counsel cross-examined him, he reiterated what he had reiterated in the cross-examination to the prosecution. He had, however, categorically stated that the victim could not speak when he had reached the hospital.

10. P.W.-3, Smt. Fatima, is the mother of the deceased. She had also stated that Farheen was her daughter and that she had gone to the house of Mubarak Ali and Ahmad Ali around one week back. She had been informed on 5.12.2016 by Ahmad Ali that someone had thrown acid on her face and that the victim was at the hospital at Bijnor and, thereafter, she had stated that her brother had taken the victim to Delhi. At this stage, she was also declared hostile. In her cross-examination, she denies the story about the love affair which the deceased supposedly had with a boy in her village. She had also stated that she had, in fact, not on her own sent her daughter to her brothers house. She had also stated that her husband Rais had not gone to fetch his daughter on 4.12.2016 and, therefore, had also denied the fact that he had put acid on her face. She also denied the recorded statement under Section 161 Cr.P.C. She had also stated that she did not know Nabi Hasan who

was there in the court. She also denied the knowledge as to who had written the FIR.

11. P.W.-4, Smt. Sayra, is the wife of Mubarak Ali (brother of the P.W.-3). After having introduced her relationship with P.W.-3 and her husband, she states that she had no knowledge that Rais was angry with his daughter. She however states that he had come to her house earlier and on that very date he had taken his daughter along with him and, thereafter, she along with her husband and brother-in-law (Nanhe) had gone to Najibabad hospital and had also stated that the victim could not speak on that day and had also not given any information to them. She was also declared hostile. In her cross-examination, she denied her statement under Section 161 Cr.P.C. and reiterated the fact that the victim was not in a position to speak.

12. P.W.-6 is Dr. Suraj Ohal, Senior Consultant Forensic Department, AIIMS, Delhi. He had conducted the post mortem of the deceased on 24.12.2016 on 12:45 PM. He had, thereafter, proved the post – mortem report.

13. P.W.-7 is Dr. Sheel Kumar Gautam, who was the doctor at CHC Najibabad District – Bijnor, and he had stated that he had taken care of the person who was brought by the Ambulance 108. He had stated that he had referred her to the hospital at Bijnor. He had stated in his cross-examination that it was not known to him as to which place the victim belonged to. The face, the chest and the neck was burnt. She was not in a position to speak and, therefore, she could not inform as to from where she had come. Who had brought her was also not known. How her name was written on the dying declaration was not known to him. He had

stated that he had given the details of the injuries in the accident register.

14. P.W.-8 was Ramesh Chandra, the Naib Tehsildar, Tehsil – Sadar, District – Bijnor, in whose presence on 5.12.2016 the dying declaration of the victim Kumari Farheen was got recorded. He had stated that he had reached the burn ward of the hospital where the doctors attending to emergency were present and they had given their certificate about the fact that the victim was healthy enough to get her statement recorded. At 2:15 PM, he had started off with the recording of the statement and at 2:30PM the recording of the statement was completed. The dying declaration was numbered as exhibit ka-8.

15. However, in his cross-examination, the Naib Tehsildar, P.W.-8, had stated that when the statement was being recorded there was one lady and a man sitting beside the victim who had told him that they were the relatives of the victim. When the recording of the statement had commenced, he had asked them to go out of the room. However, because the face and the mouth of the victim was absolutely burnt she could not be recognized. Also when it was certain that she could not speak then the lady who was sitting beside her was summoned by him. He had also stated that there was one more reason for calling the lady inside as whatever little the victim was stating was not understandable/audible.

16. Thereafter the lady who entered the room heard the victim speak and she told the P.W.-8 as to what she was speaking. What the lady who came inside told the P.W.-8 was got recorded as dying declaration and the same was numbered as exhibit ka-8. He has categorically stated that exhibit ka-8 was prepared on the

statement made by the relative who had been permitted to come inside the room.

17. P.W.-9 is Ram Saran who was the Ambulance driver of Ambulance 108. He had categorically stated that the girl could not speak. She had not even told her name. She had definitely not told the names of her father and that of his associate. She was referred to the Bijnor Hospital because of her bad state of health. The driver was also declared hostile. In the cross-examination, the driver P.W.-9 stuck to the statement which he had made in the examination in chief.

18. P.W.-10 was the Investigating Officer. He had stated that on 28.12.2016 he was posted at Police Station Najibabad and had taken over the responsibility of investigating the case. He had stated that after having recorded the statement of the driver Ram Saran, he had gone, on his pointing, to the place where the incident had taken place and with the assistance provided to him he had prepared the site plan. He had on 9.1.2017 taken the accused on remand.

19. On 24.1.2017, he had recorded the statement of P.W.-1 Ahmad Ali and the statement of P.W.-3 Fatima was recorded by him on 25.1.2017. He had taken the telephone numbers of the accused persons for the preparation of the call detail report. This report was received by him on 3.2.2017. Also, he had stated that the presence of the accused on the basis of the call detail reports was found at the place of incident. He had stated that the telephone numbers 9756428205 and 9719696796 were the telephones of the accused Rais and that they were used at the time of the incident. He stood firm in his cross-examination.

20. P.W.-11 was Dr. K.K. Singh and he had stated that he was the emergency medical officer on the relevant date i.e. on 5.12.2016 and he had stated that to record the dying declaration of Kumari Farheen, Ramesh Chandra, the Naib Tehsildar, Bijnor, had come at 2:15 PM and he had also stated that he had given the certificate that the victim was in a position to get her statement recorded. Thereafter, the statement of the victim was got recorded by the Naib Tehsildar. He has stated that at 2:30 PM after the recording of the statement was over, he had seen Farheen and had found that she was in a proper state of mind. He had then, upon being asked as to whether he was present at the time of the statement being recorded, he had stated that he was not present at that point of time. He had stated that, in his certificate, he had not even mentioned as to whether the victim was a male or a female. He had also not stated the time and place on the certificate. On what basis he had stated that she was in a fit mental state, he replied that he had no idea how he had given that certificate.

21. P.W. -12 was one Rohtas Singh Chaudhary and he had stated that on 5.12.2016 he was the Sub Inspector posted at Najibabad. He had also stated that the dying declaration was got recorded by the Naib Tehsildar Ramesh Chandra. He had stated that he had recorded the statements of all the relevant persons in the case diary. When the accused had told him about the manner of disposal of the clothes of the victim and the bottle of acid then he had gone to get them recovered on the pointing of the accused. He had, thereafter, stated the manner in which he had continued the investigation till such time he had the investigation in his hands.

22. P.W.-13 was Dr. Antariksha Kumar. He had stated that he was on the relevant date at the AIIMS Hospital Delhi where the victim had been admitted by her uncle Mubarak Ali. He had stated that the injured was in a fit condition to speak and, thereafter, had mentioned about the injuries. He had confirmed the death of Nabi Hasan on 7.12.2017. The statement of Rais, the accused appellant, under Section 313 Cr.P.C. was got recorded on 7.3.2019 and, thereafter, on 18.11.2019.

23. Upon the completion of the trial, the judgment and order was passed by the Additional Sessions Judge Court No. 3, Bijnor, by which he had on 18.2.2020 convicted Rais Ahmad the accused appellant under Sections 302/34, 326A/34, 342 and 201 IPC .

24. By the order dated 19.2.2020 sentence was pronounced. Under Section 302 read with Section 326A IPC. The appellant was punished with life imprisonment and he was also fined with Rs. 40,000/-. It was provided that if he did not deposit the fine then he would have to undergo further imprisonment of two months. Under Section 342 IPC, 1 year of imprisonment was awarded. Rais Ahmad was also punished under Section 201 IPC for 7 years and a fine of Rs. 10,000/- was imposed upon him. On the non-deposit of the fine a month of further incarceration was provided. Half of the fine was to go to the mother of the deceased.

25. When the appeal was argued, the learned counsel for the appellant submitted that:-

I. The P.W.-1, the first informant, P.W.-2 the brother of the first informant, P.W.-3 Smt. Fatima the wife of Mubarak Ali P.W.-2 and Smt. Sayra mother of the victim had not supported the prosecution in the trial and, therefore, there

was very little evidence available for the trial court to punish the appellant.

II. Learned counsel for the appellant further submitted that there was no eyewitness account and only on the basis of the circumstantial evidence punishment was awarded. Learned counsel for the appellant states that when the prosecution witnesses 1, 2, 3, 4 and also the driver P.W.- 9, Ram Saran, had gone hostile then the only evidence, i.e. the dying declaration, ought to have been properly assessed.

III. Learned counsel for the appellant still further submitted that Dr. Sheel Kumar Gautam P.W.-7 who had initially attended on the victim had categorically stated that the victim was not in a position to speak. He has, in fact, gone to the extent of saying that she was not even in a position to inform as to which place she belonged to. Who had brought her was also not told by her. He has stated that how the name of the victim was recorded on the dying declaration was a mystery to him. Learned counsel for the appellant further pointed to the statement of P.W.-8 who in his examination-in-chief, though had stated, that the emergency Medical Officer who was present, namely, P.W. - 11 Dr. K.K. Singh had stated that the victim was in a position to give her statement and her mental state was all right, he had in the cross-examination very categorically stated that it was very difficult to decipher as to what she was speaking, therefore he had to take the assistance of a lady who was a relative of the victim in getting the statement recorded. Since the victim was not speaking clearly and what she was

speaking was incomprehensible , therefore, it was essential that the lady be summoned inside the room. What she stated was recorded by the P.W.-8 the Naib Tehsildar Sri Ramesh Chandra.

Learned counsel for the appellant states that in view of the fact that the statement as was got recorded by the P.W.-8 was not directly stated by the victim but was so stated by the relative of the victim it could not be treated as a dying declaration at all.

Learned counsel for the appellant states that as per the judgment in **1996 SCC Cri 31 (Kanchy Komuramma v. State of A.P)** and **2010 (6) SCC 566 (Puran Chand v. State of Haryana)**, a dying declaration even if it is recorded by magistrate is only a piece of evidence and it is not a proof of truthfulness. Even the dying declaration has to go through the scrutiny of the court. While relying upon **2010(6) SCC 566 (Puran Chand v. State of Haryana)**, learned counsel for the appellant relied upon paragraph no. 15 of the judgment and stated that the evidence at hand had to be considered by the court in its right perspective. Since the learned counsel for the appellant relied upon paragraph no. 15 of the judgement, it is being reproduced here as under:-

15. *The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because*

it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.

For explaining as to how a dying declaration has to be assessed, learned counsel for the appellant relied upon **AIR 1958 SC 22 (Khushal Rao v. State of Bombay)**. He relied upon paragraph nos. 16-17 of the judgment and they are being reproduced here as under:-

16. *On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and*

answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. *Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.*

Another judgment which the learned counsel for the appellant relied upon for the purposes of stating as to how a dying declaration has to be assessed as an evidence was **2003 (11) SCC 527 (Suchand Pal v. Phani Pal and anr.)** and from this judgment learned counsel for the appellant relied upon paragraph no. 9 which is being reproduced here as under:-

9. The trial court appears to have discarded the defence version highlighting the unacceptability of the prosecution version and came to a conclusion that the shot was made from a close range on the courtyard. This plea was taken at the argument stage by the prosecution, trying to read the prosecution evidence in a manner so that the ocular evidence and medical evidence do not appear to be irreconcilable. The High Court was right in disapproving the course adopted by the trial court. It is an established position in law that the prosecution can succeed by substantially proving the version it alleges. It must stand on its own legs and cannot take advantage of the weakness in the defence case. The court cannot on its own make out a new case for the prosecution and convict the accused on that basis. Only when a conclusion is arrived at on the evidence and the substratum of the case is not changed, such a course is permissible. The High Court noticed the medical evidence to be consistent with the defence version that the deceased was hit by the gunshot from a close range and that she was accidentally shot in the scuffle between the informant party and the accused. Coming to the acceptability of the dying declaration, the High Court has rightly discarded it. The declaration made by the deceased was not voluntary and in fact, the answers were not given by her and it was her husband who was answering. Such nature and manner of response from the injured who ultimately succumbed to injuries can by no means be elevated to the level of her "dying declaration", even when it is found to sound "the voice of Jacob". Stand of the prosecution that he tried to

clarify by stating that it was the accused who had fired the gun does not improve the situation. In the true sense of the term or in legal parlance the statement made by the deceased cannot be called a dying declaration. In view of the admitted hostility and strained relations, the natural effort was to rope in the accused. The High Court, therefore, discarded the evidence as not worthy of acceptance.

Learned counsel for the appellant also relied upon **(2024) 3 SCC 481 (Raja Naykar v. State of Chhattisgarh)** and submitted as to how a circumstantial evidence had to be looked into.

IV. Learned counsel for the appellant thereafter submitted that as per the judgment of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **AIR 1984 SC 1622** that if a particular circumstance is not put to the accused while putting questions under Section 313 Cr.P.C. then that circumstance ought to be completely excluded from the zone of consideration. He submits that the Supreme Court has said so as the accused would have no opportunity to explain the circumstance.

Learned counsel for the appellant specifically relied upon paragraphs n. 142 and 144 of the judgment reported in **AIR 1984 SC 1622**.

142. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code they must be completely excluded from consideration because the

appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Bharat AIR 1953 SC 468 this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 or Section 313 of the Criminal Procedure Code, the same cannot be used against him. In Shamu Balu Chaugule v. State of Maharashtra, (1976) 1 SCC 438: (AIR 1976 SC 557) this Court held thus :

"The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him."

144. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code have to be completely excluded from consideration.

Learned counsel for the appellant still further relied upon **2013 (12) SCC 406 (Sujit Biswas vs. State of Assam)** and submitted that the very purpose of examining the accused persons under Section 313 Cr.P.C. was to meet the requirement of principles of natural justice. Since the learned counsel for the appellant relied upon the contents of provisions of Section 313 Cr.P.C., the section 313 Cr.P.C. the section 313 Cr.P.C. is being reproduced here as under :

313. Power to examine the accused.—*(1) In every inquiry or trial, for the purpose of enabling the*

accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his

defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

2[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]

V. In the instant case, learned counsel for the appellant states that if the statement under Section 313 Cr.P.C. is perused then it becomes clear that the circumstance that the

statement was, in fact, got record on the basis of what the relative had stated was never put before the accused and, therefore, whatever the relative had mentioned in the dying declaration could not be read by the prosecution. He still further submitted relying upon **AIR 2015 SC 310 (Nar Singh vs. State of Haryana)** that not putting material evidence to accused in course of examination amounts to non-compliance of the mandates of Section 313 Cr.P.C. by the Trial court. In this regard, learned counsel for the petitioner also relied upon **AIR Online 2023 SC 766 (Sunil vs. State of NCT of Delhi)** and **AIR 2025 SC 308 (Ashok v. State of Uttar Pradesh)**, **AIR 2023 SC 5221 (Indrakunwar vs State of Chhattisgarh)** and **AIR 2024 SC (Cri.) 437 (Naresh Kumar v. State of Delhi)**.

VI. In the instant case, the learned counsel for the appellant states that if the dying declaration is perused then it becomes abundantly clear that the Naib Tehsildar who was recording the statement had categorically mentioned that the victim was not in a position to speak and also the statements as were recorded was so recorded on the basis of what was spoken by the relative of the deceased. The dying declaration dated 5.12.2016 is also being reproduced:-

"मृत्यु पूर्व बयान दर्ज करने का समय दिनांक 05-12-2016 मृत्यु पूर्व बयान कु० फरहीन कु० फरहीन पुत्री रहीस उम्र लगभग 17 साल निवासी ग्राम कच्छवासी, जिला रामपुर, थाना स्वार, निवासी नई बस्ती विजयनगर, काशीपुर, उत्तराखण्ड ने बहलफ बयान दिया कि- मैं पाँच छः महीने से अपनी बड़ी मामी सायरा पत्नी डा० मुबारक अली थाना भगतपुर काशीपुर में रह रही थी। मेरा कच्छवासी में एक लड़के से प्यार का चक्कर चल रहा था, इस कारण मेरे अब्बा ने मुझे चार-पाँच महीने पहले मुझे मेरी बड़ी मामी सायरा के घर छोड़ दिया था, जिससे कि मेरा उस लड़के से प्यार का चक्कर छूट जायें। कल दिनांक 04-12-16 को शाम 6:00 बजे मेरे पिता रहीस मेरे

मामी के घर काशीपुर आये तथा मुझे मेरी मामी के घर से यह कहकर लेकर आये कि मैं इसे अपने घर ले जा रहा हूँ। इसका निकाह करेंगे। इसे लड़के वाले देखने आ रहे हैं। इसके बाद मुझे पता नहीं कि मेरा पिता रहीस मुझे कहाँ लेकर गया, उसके साथ एक अन्य आदमी भी था। मेरे पिता ने जंगल में ले जाकर रात्रि 11-12 बजे के लगभग मेरा गला घोंटा तथा मुझे मरा हुआ समझकर आग लगा दी, जिससे मैं जल गयी। उसके बाद किसी ने पुलिस को सूचना की। पुलिस ने 108 एम्बुलेंस मंगाकर मुझे समीपुर अस्पताल भिजवाया वहाँ मुझे जिला चिकित्सालय बिजनौर में रेफर कर दिया है। यहाँ अस्पताल में मेरी बड़ी मामी सायरा व मेरे मामा डा० मुबारक अली आ गये हैं। मेरा पिता नहीं आया है। बयान सुनकर तस्दीक किया। बयान समाप्त करने का समय 2:30 पी०एम०।

नि० अं०

अपठित

नि० अं० दाया

कु० फरहीन पुत्री रहीस

सत्य-प्रतिलिपि"

Learned counsel for the appellant stated that if one looked at the dying declaration as was recorded by the Naib Tehsildar it cannot be believed in view of the cross-examination of the Naib Tehsildar wherein he has categorically stated that the victim could not speak and, therefore, to understand what she was speaking the relative of the victim was summoned inside the room and what the relative stated was thereafter recorded. The relevant portion of the cross-examination of the Naib Tehsildar is being reproduced here as under:-

"जब मैं बयान लेने गया वहाँ पर लड़की उर्फ फरहीन के पास एक महिला व एक पुरुष बैठे थे. जो फरहीन को अपना रिश्तेदार बता रहे थे। मैंने जब बयान लिखना शुरू किया था तब उन्हें कक्ष से बाहर कर दिया था। कु० फरहीन का चेहरा व सीना पूरी तरह से जला हुआ था। पहचान में भी नहीं आ रही थी, करहा रही थी, बोल रही थी स्पष्ट नहीं बोल रही थी जो बोलं रही थी वह स्पष्ट समझ में नहीं आ रहा था। फिर मैंने उस महिला को बुलवाया जो उसकी रिश्तेदार थी, उसके साथ थी और उस महिला से पूछा कि यह क्या कह रही है, जो उस महिला ने बताया था, वह मैंने प्रदर्श क-8 में लिख दिया था। प्रदर्श क-8 मैंने

फरहीन की रिश्तेदार के बताने व बोलने पर लिखा था क्योंकि फरहीन ठीक से नहीं बोल पा रही थी

He, therefore, submits that the dying declaration was a useless document in view of the fact that firstly it was not recorded directly by the Naib Tehsildar when the victim spoke and secondly the name of the relative was also not disclosed to enable the prosecution to bring her into witness box.

VII. Learned counsel for the appellant submits that the case further becomes doubtful on the account of the fact that in the FIR P.W.-1 the victim categorically had stated that it was her father and Nabi Hasan who had taken her from her Mama's place but in the dying declaration the name of the appellant was mentioned but the name of Nabi Hasan was not mentioned.

VIII. The appellant further states that there was one more circumstance which would go to show that the appellant was falsely implicated and that was that the dying declaration was got record on 5.12.2016. However, the deceased died on 23.12.2016 and the doctor of AIIMS had also given statement that she was later on able to speak. However, no dying declaration was subsequently recorded despite the fact that the deceased remained alive for almost 18 days.

IX. Learned counsel further stated that when the recording of the victims' statement was being done on the basis of the statement made by the relative then it should have been mentioned by the P.W.-8 as to who was the relative and what exactly was her name. In the absence of this information no

relative could be produced before the trial court and no statement of hers could be recorded in the Court for proving the statements as were recorded on her dictation.

26. Learned AGA, however, has opposed the appeal and has submitted that the dying declaration should be considered as a recorded statement which was sacrosanct and no court could lightly ignore the same. He has submitted that it was a substantive piece of evidence which had to be read as such and there was no reason to disbelieve the same and he had, in fact, gone to the extent of saying that even if the dying declaration was recorded on the basis of the statement of the near relative of the victim then also the dying declaration was sacrosanct and should have been believed.

27. The learned AGA has also submitted that even if the witnesses had turned hostile then also the circumstances were such, which went to indicate that the appellant Raees Ahmad with the help of his associates had throttled the victim and, thereafter, had thrown acid on her and the circumstances were such which could not be lightly ignored.

28. Having heard Sri V.M. Zaidi, learned Senior Advocate, assisted by Sri M.J. Akhtar, learned counsel for the appellant and Sri Amit Sinha learned AGA for the State, we find that the prosecution witnesses who had initiated the case and on whose written as well as oral statement the police had submitted the charge sheet had turned hostile. The cross-examination as was done in the Court by the prosecution as also by the defence of these hostile witnesses also did not bear much fruit. Thus, we find that the sole basis on which the conviction could have been done

was that there was a dying declaration of the victim/deceased. However, upon consideration of the arguments of the learned counsel for the appellant, we find that the dying declaration was recorded on 5.12.2016 after, P.W.-11, Dr. K.K. Singh had given a statement that the victim was in a position to speak.

29. However, if we peruse the statement recorded of P.W.11 on the dying declaration, we find that he had mechanically stated that the victim was in a position to give her statement. He had not stated as to whose statement was to be recorded and also he had not cared to record as to whether the victim was a male or female. The time and place was also not mentioned in the dying declaration. On what basis he had given his statement with regard to the fact that the victim was in a position to give her statement was also not record. All these facts could have been considered as omissions and the dying declaration could still have been believed. However, when we were taken through the statement of P.W.-8 we found that P.W.-8 had categorically stated that the victim was not able to speak at all and, therefore, a relative of hers was called from the outside the room and the relative first listened to what the victim was saying and thereafter she used to speak on behalf of the victim and those statements were recorded by the Naib Tehsildar. In his statement, he had categorically given out that he had not recorded the name of the relative and what was the relationship of the victim with the relative. We find that this circumstance was also not put to the accused at the time of the recording of the statement under Section 313 Cr.P.C. That the dying declaration was recorded on the basis of what was spoken by a relative of the victim was not informed to the accused while

putting questions to him under Section 313 Cr.P.C. We are thus of the definite view that when this circumstance was not put to the accused then the dying declaration could not also be used as an evidence to come to a conclusion against the accused.

30. Thus when the statement itself was not recorded of the victim but was recorded on the basis of what relative of the victim was saying, we are of the view that the dying declaration could not be relied upon for convicting the appellant. Simultaneously, we are also of the view that had the P.W.-8 the Naib Tehsildar stated in the dying declaration as to how was the relative related to the victim and as to what her name was then also she could have been produced in the Court to get the relevant information. But in the absence of these facts/informations when neither the relationship nor the name of the relative was known, the prosecution could not call her to the witness box. Even the court was clueless as to who had helped in getting the victim's statements recorded. We are also of the view that when the victim was taken to AIIMS where she died after 18 days of treatment no statement of her was got recorded, subsequent to the dying declaration as was got recorded on 5.12.2026. All these facts definitely go to indicate that the dying declaration on the basis of which the prosecution depended much, was not a reliable piece of evidence. In fact, since the relevant question about the circumstance that the relative had got the statement of the victim recorded was not put to the accused, we are of the view that all that had been stated in the dying declaration ought to be ignored and should not be considered as a piece of evidence at all.

31. Thus, we are of the view that there was absolutely no evidence on the basis which the appellant could have been convicted. The judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station – Najibabad, District – Bijnor cannot, therefore, be sustained in the eyes of law. The judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station – Najibabad, District – Bijnor is quashed and set aside. The appellant is acquitted of the charges as were levelled against him. The appeal stands allowed. The appellant if is not required in any other case be released forthwith.

32. Before parting with the judgment, I would like to put in a word of appreciation for my Research Associate Mr. Abhishek Verma for his dexterity in research and superlative assistance in drafting of this judgment.

(MADAN PAL SINGH, J.) (SIDDHARTHA VARMA,J.)

February 02, 2026

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