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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

JAIL APPEAL No. - 62 of 2024

Kumari Janki (Name Changed)

.....Appellant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko.

.....Respondent(s)

Counsel for Appellant(s)	: Adnan Ahmad, Amresh Kumar, Dinesh Kumar
Counsel for Respondent(s)	: G.A.,

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

(Per Pramod Kumar Srivastava, J.)

1. Heard, Shri Arvind Saroj, Advocate holding brief of Shri Dinesh Kumar, learned counsel for the appellant and Shri Anirudh Kumar Singh, learned AGA for the State.
2. The instant appeal has been preferred against the impugned judgment and order dated 01.08.2023 passed by the learned Special Judge, Court No. 44, Barabanki, in Criminal Trial No. 51 of 2018 (State Vs. Kumari Janki), arising out of Case Crime No. 0118 of 2017, under Sections 302 and 120B IPC, Police Station Haidargarh, District Barabanki, whereby the learned Trial Court convicted the accused appellant for the offence under Section 302 IPC and awarded the sentence of 10 years imprisonment with a fine of ₹5,000/-, and under Section 120B IPC for 2 years imprisonment.

Factual Matrix

3. The facts giving rise to this case are that the complainant's daughter, Chamela, was married to Udai Raj approximately 20 years ago. However, Udai Raj kept a mistress named Kumari Janki (Name Changed). It is averred that Udai Raj, along with his mistress Kumari Janki (Name Changed), and others named Rameshwar and Bahadur, were pressuring Bhawani Prasad, the deceased's father-in-law, to dispose of land situated in Dandupur. The deceased opposed this transaction. Consequently, on April 4, 2017, at approximately 2:00 PM, the accused persons allegedly locked the deceased inside the house and set her ablaze, resulting in her death from severe burn injuries. In this regard, the complainant, Chotka (mother of the deceased), moved an application at Haidargarh police station. On that basis, a First Information Report (FIR) was lodged under Sections 302 and 120-B of the Indian Penal Code (IPC) against Udai Raj, Kumari Janki (Name Changed), Bhawani Prasad, Bahadur, and Rameshwar. The deceased was admitted to the hospital, where her statement (dying declaration) was recorded by a Magistrate. Following the victim's death, an inquest report was prepared, and the body was sent for autopsy. The Investigating Officer (I.O.) prepared the site plan, inspected the place of occurrence, and recorded the statements of the witnesses. After collecting sufficient evidence against the accused persons, the I.O. concluded the investigation and filed a charge sheet under Sections 302 and 120-B of IPC. The appellant claimed she was a juvenile at the time of the occurrence. Consequently, the Juvenile Justice Board (JJB) determined her age based on her academic documents and found that, as her date of birth is October 24, 1999, she was 17 years, 5 months, and 10 days old at the time the offense was committed. Accordingly, she was declared a juvenile.

4. In view of above and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short Act), it was observed that the appellant's age falls within the age group of 16 to 18 years at the time of the incident. Since the charges leveled were for a heinous offence under Section 302 of the IPC, the case falls under the category of heinous crimes as defined by the Act under Section 2(33) IPC.

Consequently, a preliminary assessment was conducted under Section 15 of the Act, which determined that the appellant possessed the mental and physical capacity to understand the nature and consequences of the alleged offence. Based on this assessment, and in accordance with Section 18(3) of the Act, the case was transferred to the Children's Court for trial. The proceedings were subsequently conducted by the Children's Court in a consolidated manner alongwith the other co-accused. Upon the framing of charges, the appellant and co-accused denied the allegations and claimed to be tried. To prove the charges leveled against the accused, the prosecution has produced the following evidence.

(I) Oral Evidence (Prosecution Witnesses)- The prosecution examined following seven witnesses to establish the charges under Sections 302 and 120B of the Indian Penal Code:

“P.W. 1: Smt. Chhotka – The complainant and mother of the deceased (Chamela).

P.W. 2: Shyam Narayan – The brother of the deceased.

P.W. 3: Patiram – The first Investigating Officer (I.O.) and Sub-Inspector.

P.W. 4: Prabhat Kumar – The second Investigating Officer.

P.W. 5: Dr. Kuldeep Maurya – The medical officer who conducted the post-mortem examination.

P.W. 6: Sushil Pratap Singh – The Tehsildar (Naib Tehsildar at the time) who recorded the dying declaration.

P.W. 7: Dr. V.C. Pandey – The Senior Surgeon who certified the fitness of the deceased to give a statement.”

(II) Documentary Evidence (Prosecution Exhibits)- The following documents were submitted and marked as exhibits to support the prosecution's case:

“Exhibit Ka-1: Written complaint (Tehreer) filed by the complainant.

Exhibit Ka-2: Panchayatnama (Inquest Report).

Exhibit Ka-3: Site Plan (Naksha Nazri) of the place of occurrence.

Exhibit Ka-4: Chik First Information Report (FIR).

Exhibit Ka-5: G.D. Entry (Kaymi G.D.) regarding the registration of the case.

Exhibit Ka-6: Challan Nash (Dead body challan).

Exhibit Ka-7: Photo Nash (Photographs of the deceased).

Exhibit Ka-8: Letter to the R.I. (Reserve Inspector).

Exhibit Ka-9: Letter to the C.M.O. (Chief Medical Officer).

Exhibit Ka-10: Specimen Seal (Namuna Mohar).

Exhibit Ka-11: Charge Sheet filed against the accused.

Exhibit Ka-12: Post-Mortem Report.

Exhibit Ka-13: Dying Declaration (Mrityukalik Bayan) of the deceased, Chamela.”

5. PW-5: Dr. Kuldeep Maurya conducted the post-mortem of the deceased, Chamela. His evidence is recorded as follows:

"On 05.04.2017, he was posted at New P.H.C. Ghazipur Dariyabad, Barabanki. On that day, he was assigned post-mortem duty. He reached the Post-Mortem House, Barabanki, where a sealed body was received along with police documents through Constable Mahendra Yadav of Police Station Kotwali Nagar, who identified the deceased. The body was of Chamela, wife of Udayraj Nishad, resident of Dandupur, Police Station Haidergarh, aged 38 years. According to the records, the deceased died during treatment in the hospital.

External Examination: The body was of medium build, height 148 cm, and identification marks were noted. There were no clothes on the body. Bangles were present on both hands. A Vego (IV cannula) was attached to the left hand. Rigor mortis was absent. The hair on the head was burnt, and

there was a smell of kerosene. The eyebrows, face, and head hair were found burnt.

Injuries before Death: *The face, neck, chest, abdomen, both hands, and the lower parts of the body were 90% burnt. Deep burn injuries were present, and a 'Line of Redness' was observed at the burnt areas. Blisters were present on the burnt portions. Soot (kalikh) from smoke was present in both eyes. In his opinion, the deceased was burnt while alive. Both soles of the feet were not burnt.*

Internal Examination: *Upon opening the body, sufficient soot from smoke was found inside the respiratory tract (trachea). The stomach contained 250 ml of semi-digested food, and gas was present in the intestines.*

Conclusion: *In his opinion, the death of the deceased occurred as a result of injuries sustained due to pre-mortem burning. He prepared the post-mortem report in his own handwriting and signature, which is Exhibit Ka-12."*

6. P.W. 7: Dr. V.C. Pandey (Senior Surgeon) certified the fitness of the deceased for recording her dying declaration. His evidence is as follows:

"On 04.04.2017, he was posted as Senior Surgeon at District Hospital, Barabanki. On that day, the then Naib Tehsildar Sushil Pratap Singh came to the hospital and expressed his intention to record the statement of the injured Chamela, wife of Udayraj. Thereafter, he went to the injured Chamela along with him and talked to her; she was in full consciousness.

After examination, he found that the patient was capable of giving a statement. He then informed the Naib Tehsildar that the victim was fit to give a statement. He

recorded his recommendation/certification on the paper on which the Naib Tehsildar was to record the statement. The Naib Tehsildar recorded the statement in his presence by asking questions.

After the victim gave her statement, he again inquired from her and observed her condition; she was in full consciousness. He also recorded a note regarding her condition, stating that the patient was in full consciousness while giving the statement. The patient was capable of giving a statement and remained fully conscious until the end of the entire statement and was aware of the time and place.

His signatures are present at the beginning and the end of the statement, which is enclosed in the file as Exhibit Ka-13, which he re-authenticated."

7. Thereafter, following the closure of prosecution evidence, the statement of the accused-appellant was recorded under Section 313 of the Cr.P.C.. In her statement, she denied all evidence and incriminating circumstances presented against her. She further stated that prior to the current case, the co-accused, Bhawani Prasad, had lodged a case against Hansa Ram (the husband of the complainant, Chotka) and his nephew, Udai Raj, for the murder of his daughter. Due to this existing enmity, the complainant lodged a false FIR against the appellant and tutored the deceased to give a statement against her before death. At the stage of defence evidence, no oral or documentary evidence was produced. After hearing the learned counsel for both parties, the learned Trial Court, vide its judgment and order dated 01.08.2023, convicted the appellant, Kumari Janki (name changed). Being aggrieved and dissatisfied from the impugned judgment and order, the appellant has filed the present criminal appeal.

Submission of learned counsel for the appellant:

8. Learned counsel appearing on behalf of the appellant submitted that the learned trial court passed the impugned judgment in a mechanical and cursory manner and failed to consider the facts, evidence, and circumstances in the correct legal perspective. He contended that the findings are perverse and that the trial court failed to consider the fact that appellant was below 18 years of age at the time of the alleged incident; therefore, trial against her should not have been proceeded as an adult. He further submitted that the learned trial court failed to correctly interpret the provisions of Sections 19 and 21 of the Juvenile Justice Act. Furthermore, there are major contradictions in the testimonies of the witnesses, and the witnesses of fact turned hostile. Despite these aspects and the lack of independent witnesses, the trial court wrongly appreciated the evidence and relied solely on the testimonies of interested witnesses.

9. Learned counsel for the appellant further submitted that according to the medical report, the deceased had sustained 90% burn injuries. Thus she was not in a physical or mental state to give a statement. Despite this fact, a dying declaration was recorded. Therefore, no reliance can be placed on such a manipulated declaration. As the evidence adduced by the prosecution is not of sterling quality, they have failed to prove the charges against the appellant beyond a reasonable doubt. Consequently, the impugned judgment and order are liable to be set aside, and the appellant is entitled to be acquitted.

Submission of learned Additional Government Advocate:

10. Per contra, the learned AGA appearing for the State submitted that while academic documents indicated the appellant was below 18 years of age at the time of the incident, her trial was properly conducted by the trial court in accordance with the provisions of the Juvenile Justice Act. Since her age was determined to be between 16 to 18 years, and the court found she possessed the mature mental faculty to understand the nature and consequences of the offence, the findings in this regard are in consonance with the law. He further submitted that the deceased was

admitted to the hospital, where her mental status was duly tested. The Magistrate subsequently recorded her statement after receiving a fitness certificate from the attending doctor. Therefore, the appellant's contention that the deceased was not in a physical or mental position to provide a statement while hospitalized, is not tenable.

11. Learned AGA further submitted that the prosecution produced sufficient evidence to prove the charges levelled against the accused. This prosecution evidence was considered in its entirety by the learned trial court, who has rightly concluded that the charges levelled against the accused are fully proved. As the trial court committed no illegality or perversity in passing the impugned judgment and order, this appeal is devoid of merit and is liable to be dismissed.

12. We have heard the submissions of the learned counsel for the parties and perused the material available on record.

13. The material available on record reveals that the appellant had claimed to be a juvenile at the time of the alleged incident. Consequently, her age was determined by the Juvenile Justice Board (JJ Board) in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act. After providing a full opportunity to adduce evidence in this regard, the learned JJ Board found, based on her academic records, that the appellant's date of birth made her 17 years, 5 months, and 10 days old at the time of the offence. The Board, under Section 2(33) of the Act, determined that the offence committed by the appellant under Section 302 of the IPC falls within the category of 'heinous offences'.

14. It is further observed that for being the age group between (16-18) the preliminary assessment conducted under Section 15 of the JJ Act revealed that she possessed the mental and physical capacity to understand the nature and consequences of the offence. Considering her maturity and cognitive ability at the time, the JJ Board directed that her case be transferred for trial as an adult before the Children's Court,

pursuant to Section 18(3) of the Act. Therefore, the contention raised by the appellant regarding her status as a juvenile could be tried only by JJ Board is not tenable.

15. Insofar as the oral testimony of the prosecution witnesses is concerned, Chotka, the mother of the deceased was examined as P.W. 1. In her statement, she testified that her daughter, Chamela, was married to Udai Raj. However, Udai Raj was in a relationship with Kumari Janki (name changed). Consequently, the appellant, along with other co-accused persons, mounted pressure over the father-in-law, Bhawani Prasad, to dispose of the property in question. When the deceased opposed this, the appellant and the co-accused allegedly set her ablaze. It is noteworthy that the cross-examination of this witness took place eighteen months after the examination-in-chief. During her cross-examination, the witness turned hostile, stating that the incident actually occurred due to the deceased's own negligence while she was cooking food.

16. Among the other witnesses of fact, PW-2, Shyam Narain, the brother of the deceased, stated that the deceased was his real sister. He further stated that the deceased sustained burn injuries from a stove while she was preparing food. However, the witness subsequently turned hostile. On the basis of above, the learned counsel for the appellant submitted that the trial court failed to consider the evidence of the witnesses in the right perspective. Nevertheless, it is pertinent to mention that it is a settled principle of law that even if the testimony of a witness becomes partially deficient, it does not necessarily invalidate the entire case if the charges are otherwise proved. In India, the doctrine of 'Falsus in uno, falsus in omnibus' (false in one thing, false in everything) is not applicable. Therefore, despite a major portion of the evidence being deficient, if the remaining evidence is sufficient to prove the charges, the testimony of the witnesses cannot be discarded entirely.

17. In this case, the dying declaration of the deceased was recorded by Magistrate Sushil Singh, who was examined as PW-6. He testified that,

acting upon the recommendation of the doctor, he recorded the statement of the deceased at the hospital. He stated that during the course of recording the evidence, she was fully conscious, a fact which was certified by the doctor. This witness proved the statement as Exhibit Ka-13. During his cross-examination, he stated that the doctor was present while the statement was being recorded and that the patient was in their complete senses. Consequently, nothing adverse emerged from the cross-examination.

18. The learned trial court cited numerous rulings concerning dying declarations. According to the law laid down by the Hon'ble Apex Court in this regard, it may safely be concluded that if the court is satisfied that a declaration inspires confidence regarding truthfulness, a conviction can be based upon it without further corroboration. This principle was upheld in **State of U.P. vs. Ram Sagar Yadav (1985) 1 SCC 553**. However, it has also been observed in other cases that it is the duty of the court to scrutinize a dying declaration carefully to ensure it is not the result of tutoring, prompting, or imagination.

19. The deceased had an opportunity to observe and identify the assailant and was in a fit state to make the declaration. Normally, in order to satisfy itself as to whether the deceased was in a fit mental state to make a dying declaration, the court looks to medical opinion. Generally, dying declarations should be recorded in a question-and-answer format. However, if a declaration is not elaborate, consisting of only two sentences in the actual words of the maker, the mere fact that it is not in a question-and-answer format cannot be a ground for challenging its acceptability or reliability.

20. In view of the above, a perusal of the material available on record, specifically the dying declaration of the deceased, reveals the facts which are reproduced hereunder:-

"बयान - मृत्यु पूर्व

मैं चमेला पत्नी उदयराज उम्र लगभग 38 वर्ष निवासी ग्राम दादूपुर, थाना- हैदराबाद, जिला बाराबंकी पूरे होशोहवास में सशपथपूर्वक बयान करती हूँ कि आज दिनांक 04-

04-2017 को सांय 4:00 बजे मेरे ससुर भवानी, मेरी सौत जनका व सौत की भतीजी आरती ने मेरे ऊपर मिट्टी का तेल डालकर आग लगा दिया। आज दोपहर में मेरे पति उदयरज घर पर नहीं थे, तब मेरे ससुर ने मुझे गाली देना शुरू किया तो मैंने कहा कि मैं अपनी ननद के घर जा रही हूँ तो मेरे ससुर ने कहा कि गेट में ताला बन्द कर इसे जला दो। मेरे ससुर ने गेट में ताला बन्द कर दिया और मेरी सौत की भतीजी ने मेरे ऊपर मिट्टी का तेल डाल दिया और मेरी सौत ने आग लगा दी। उस समय मेरे पति घर से बाहर कहीं गए हुए थे। आग लगाने का कारण ससुर द्वारा गाली देने के दौरान ननद के घर चली जाने की बात कहने पर की गयी। इस घटना में अन्य किसी व्यक्ति की भूमिका नहीं थी। मेरी शादी के 19 वर्ष हो गये हैं। मेरी एक दो साल की पुत्री है।

बयान सुनकर तस्दीक किया।"

21. Thus, in light of the above statement, it is pertinent to mention the legal provisions contained under Section 32(1) of the Indian Evidence Act, 1872. The relevant portion of Section 32, which deals with statements made by persons who cannot be called as witnesses (Dying Declaration), is reproduced below:

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When it relates to cause of death. — When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

22. In view of the deceased's statement, recorded as a dying declaration, she categorically stated that the nephew of the appellant's step-mother (or co-wife) poured kerosene over her body and set her ablaze. The medical officer further certified that the deceased was in a fit mental condition during the recording of the statement and remained conscious throughout. Furthermore, the appellant has not contended that the deceased was tutored by her parents. In the examination-in-chief, the complainant fully corroborated the prosecution's case. While the complainant may have turned hostile during cross-examination, the core of the testimony remains: the deceased was set on fire. Regarding the

identity of the perpetrators, the deceased's own statement substantiates that the appellant, along with other accused persons, poured kerosene over her and set her ablaze.

23. Applying the aforesaid principles to the present case, it is evident from the dying declaration that the appellant, Kumari Janki (name changed), played a direct role in the incident. However, this Court cannot overlook the undisputed fact that the appellant was a juvenile at the time of the commission of the offence. While the dying declaration satisfies the requirements of Section 32(1) of the Evidence Act for conviction under Section 302 IPC, the quantum of punishment is strictly governed by the Juvenile Justice (Care and Protection of Children) Act, 2015. Specifically, Section 18(1)(g) of the Act mandates that a child in conflict with law can be sent to a special home for a period not exceeding three years. In the instant case, the appellant has been in continuous custody since April 7, 2017, totaling more than seven years. This period of incarceration significantly exceeds the maximum three-year reformatory sentence permissible under the law. Consequently, even if the conviction based on the dying declaration is sustained, the appellant's further detention is unsustainable and contrary to the legislative intent of the Juvenile Justice Act.

24. Consequently, it is fully established that the incident was neither accidental nor suicidal, but homicidal. The evidence adduced by the prosecution successfully proves the charges levelled against the appellant beyond a reasonable doubt. The learned Trial Court thoroughly perused the facts, evidence, and circumstances of the case in its entirety and arrived at the correct conclusion that the evidence clearly demonstrates that the appellant, actively participated in the commission of the offence.

25. Insofar as contention regarding the quantum of sentence is concerned, we find that it must be made clear that where a juvenile covered within the law falls within the category of age group of 16 to 18 years and their trial has been conducted by a Children's Court for a

heinous offence, the sentence must be balanced against the reformatory spirit of the law. In the present case, the trial court has awarded a sentence of ten years.

26. In the instant case, the appellant, Kumari Janki (name changed), has been in jail since April 7, 2017. As of April 7, 2024, she has already undergone incarceration for a period of more than seven years. This continued detention is de hors the provisions under Section 21 and Section 18(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which read as under:—

“Section 21: Order that may not be passed against a child in conflict with law— No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.”

Section 18(1)(g): direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home.”

27. A perusal of the aforementioned provisions makes it clear that the maximum period for which a juvenile can be detained is three years. Considering that the appellant has already spent more than seven years in custody, her continued incarceration is not only in violation of the statutory mandate of the Juvenile Justice Act but also infringes upon her fundamental rights. Consequently, the sentence awarded by the learned Trial Court, insofar as it exceeds the maximum permissible limit under the Act, is unsustainable in the eyes of law.

28. Having considered the evidence on record, this Court finds no reason to interfere with the finding of guilt recorded by the learned Trial Court. However, as regards the sentence, it is pertinent to note that the appellant was a 'child in conflict with law' on the date of the incident. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015, mandates a 'non-obstante' clause, providing that no child shall be sentenced to death or life imprisonment. While the Trial Court awarded a

sentence of 10 years and a fine of Rs. 5000/- , the statutory framework of the Act, particularly Section 18, limits the period of stay in a Special Home to a maximum of three years.

29. In the present case, the record reveals that the appellant has already undergone approximately seven years and two months of incarceration, having been in jail since April 7, 2017. While the conviction under Section 302 IPC is upheld, the sentence is modified in light of the mandate of the Juvenile Justice Act and the principles laid down by the Hon'ble Apex Court in **Kamlendra Singh @ Pappu Singh Vs. State of M.P. (2013) 12 SCC 239**. Since the appellant has already served a period far exceeding the maximum three-year term prescribed under the Act, the sentence already undergone is deemed sufficient to meet the ends of justice.

30. It is evident that by enacting Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the legislature, in its wisdom, intended to grant specific benefits to individuals declared as children on the date of the incident. This benefit applies specifically to the sentencing portion of a judgment, ensuring that they are not awarded death or life imprisonment—whereas in the instant case, the appellant was sentenced to 10 years of imprisonment with a fine under Section 302/120-B IPC. The Hon'ble Apex Court has categorized four distinct approaches for such cases: (i) Where the conviction is upheld, but the sentence is quashed; (ii) Where the conviction is upheld, but the sentence is modified to the period already undergone; (iii) Where both the conviction and sentence are set aside; (iv) Where the conviction is upheld, and the matter is referred to the Juvenile Justice Board for awarding a suitable sentence.

31. Applying these parameters to the present case, while the appellant's involvement is noted in the trial court's findings, the fact remains that she has already undergone over seven years and two months of incarceration, having been in jail since 07.04.2017. Therefore, we are of the considered view that, without disturbing the conviction, the

appellant, Kumari Janki (name changed), should be released as she has already served a period exceeding the maximum three-years term permissible for a juvenile delinquent under the Act.

32. The judgment and order dated August 1, 2023, passed by the Additional District and Sessions Judge, Barabanki, in Criminal Trial No. 51 of 2018 (arising out of Case Crime No. 0118/2017), is modified to the extent mentioned above.

33. Accordingly, the present appeal is hereby **allowed** with the aforementioned modifications.

(Pramod Kumar Srivastava,J.) (Rajesh Singh Chauhan,J.)

February 5, 2026

HaseenU.