



2026:AHC:75769-DB

## HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Judgment reserved on 26.3.2026

Judgment delivered on 8.4.2026

### JAIL APPEAL No. - 188 of 2021

Baba Vishwakarma

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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Counsel for Appellant(s) : Ajay Kumar Singh, Amar Nath Vishwakarma, From Jail, Sitaram Patel, Vinod Kumar Ojha  
Counsel for Respondent(s) : A.G.A.

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**Court No. - 42**

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

**HON'BLE JAI KRISHNA UPADHYAY, J.**

**(Delivered by Jai Krishna Upadhyay, J.)**

1. This jail appeal has been preferred by accused appellant - **Baba Vishwakarma** against judgment and order dated 2.8.2019 passed by the Additional District & Sessions Judge, Court No.5, Allahabad in Session Trial No. 366 of 2014, case crime no. 421 of 2013 convicting and sentencing the appellant for the offence punishable under Section 304 IPC for imprisonment of life and a fine of Rs. 20,000/- with default clause.
2. Heard Shri Vinod Kumar Ojha and Shri Vinay Kumar Dwivedi, learned counsel for the appellant and Shri Amit Sinha, learned AGA for the State.
3. Facts of case, in nutshell, as unfolded by the informant Smt. Malti Devi in First Information Report (in short 'FIR'), are that she was married to Baba Vishwakarma, son of Hiralal, resident of Jasra Bazar, six months ago. Her first marriage was solemnized with Ramanand Vishwakarma resident of

village Badur, who died about two years ago. A daughter, named Kajal, was born from their wedlock and she was one and half years of age and was residing with her. On 12.12.2013, at 8:00 PM, her husband, Baba Vishwakarma in anger picked up Kajal and threw her on the ground and struck her with an iron rod. She was subsequently taken to hospital for treatment, where the doctors referred her to Allahabad, however, she expired on the way.

4. On the basis of written report (Ext. ka-1), chik FIR (Ext. Ka-3) was registered at Police Station concerned on 13.12.2013 at 8.15 a.m. against accused appellant for the offence under Section 304 IPC mentioning all details as had been described in Ext. Ka-1. G.D. entry Ext. Ka-4 was also made at the same time.

5. Investigation started in the matter. The Investigating Officer recorded statement of witnesses, inspected place of occurrence and prepared inquest report (Ext. ka-4) and site plan (Ext. ka-5). He also prepared other police papers, namely, photo lash (Ext. ka-10), sample seal (Ext. ka-11), letter to CMO (Ext. ka-6), letter to RI (Ext. ka-7), letter to CMO (Ext. ka-8), police paper no. 13 (Ext. ka-9). After conducting post mortem on the dead body of deceased, autopsy report (Ext. ka 13) was prepared.

6. As per post mortem report, following ante-mortem injuries were found on the body of deceased:

*"(i) Abrasion 1 x 2 cm right side face.*

*(ii) Abrasion 1 x 2 cm left side face.*

*(iii) Abrasion 1 cm on chin.*

*(iv) Contusion swelling 4 x 3 cm on right side forehead.*

*(v) Contusion swelling 3 x 4 cm on right temporal area.*

*(vi) Contusion swelling left elbow joints and elbow joints fracture."*

7. In the opinion of doctor, cause of death was due to coma as a result of ante mortem injuries to brain.

8. After completion of investigation, the Investigating Officer submitted charge-sheet (Ext. ka-12) for the offence under Section 304 IPC against appellant. Cognizance was taken on the charge-sheet. The matter, being exclusively triable by the Sessions Court, was committed to the Court of Sessions for trial. Accused appellant appeared and charge under Section 304

IPC was framed against him to which he pleaded not guilty and claimed to be tried.

**9.** Trial proceeded and on behalf of prosecution five witnesses, namely, PW-1 Malti Devi (informant-mother of deceased), PW-2 Sajan, PW-3 Raj Karan, PW-4 H.C. Ashok Kumar Rai, and PW-5 Dr. Lalji Gautam, who conducted post mortem on the dead body of deceased, were examined.

**10.** In documentary evidence, written report Ex.Ka.-1, inquest Ext. ka-2, chick FIR Ext. ka-3, G.D. entry Ext. ka-4, site plan Ext. ka-5, letter to CMO Ext. ka-6, letter to RI Ext. ka-7, letter to CMO Ext. ka-8, police paper no.13 Ext. ka-9, photo nash Ext. ka-10, sample seal Ext. ka-11, charge sheet Ext. ka-12 and post mortem report Ext. ka-13 respectively have been proved.

**11.** The incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution evidence as false and fabricated and stated that the case has been lodged due to enmity. He further stated that Malti had married him as her second husband, and after the incident, she entered into a third marriage. She had claimed that her first husband had expired, whereas he was alive and she married third time without obtaining a divorce and has falsely implicated the appellant. The accused appellant did not adduce any documentary or oral evidence in his defence.

**12.** P.W.1 Smt. Malti Devi - informant is the mother of the deceased. She is an eye witness of the occurrence. She has supported the prosecution story as narrated above. In her statement she has elaborately explained the occurrence. She has further stated that she was married to Baba Vishwakarma six months ago. Her first marriage was solemnized with Ramanand Vishwakarma resident of village Badur. A daughter, named Kajal, was born from their wedlock and she was one and half years old and was residing with them i.e. informant and her husband Baba Vishwakarma at Jasra Bazar. On 12.12.2013, at 8:00 PM, her husband, Baba Vishwakarma in anger picked up Kajal and threw her on the ground and struck her with an iron rod as a result, Kajal sustained head injuries and lost teeth. She was subsequently taken to Jasra Hospital for treatment where the doctors referred her to Allahabad, however, upon arrival at the hospital, doctors declared her dead.

**13.** PW-2 and PW-3 Sajan and Raj Karan are the witnesses of inquest. They have proved the inquest proceeding.

**14.** PW-4 H.C. Ashok Kumar Rai, stated that he was head moharrir at the police station Ghurpur. He proved chik FIR, entry GD entry. He also

appeared as a secondary witness for Mewaram Bharti, Investigating Officer, who expired. He stated that Mewaram Bharti was posted with him at the police station concerned and he recognizes his writing and signature. He proved the papers prepared by the I.O. during investigation.

**15.** PW-5 Dr. Lalji Gautam is the Medical Officer, Mortuary, Allahabad, who performed the autopsy of the dead body of the deceased on 13.12.2013 at about 4.00 p.m. He proved the autopsy report as Ext. ka-13.

**16.** The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentence against him, as mentioned here-in-above.

**17.** Assailing the impugned judgment on various grounds, learned counsel appearing for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. It has been submitted that the impugned judgement and order is not sustainable under law. The entire prosecution case rests solely on the testimony of Malti Devi (PW-1) but her conduct shows that she entered into multiple marriages and was a woman of questionable character. She married the accused-appellant without obtaining divorce from her first husband, Ramanand, and falsely had given out that he had died. Furthermore, PW-1, in her examination-in-chief, denied having contracted a third marriage, but in her cross-examination she admitted that she had in fact married again and regularly visited the Court with her third husband. It has been further submitted that she herself done to death the deceased. There are major contradictions in the statement of PW-1, the informant which shake the root of the prosecution case. The conclusion arrived at by the trial court is not based on credible evidence. The findings recorded by trial court in the impugned judgment and order are also not based on correct appreciation of evidence and the impugned judgment and order suffers from infirmity and illegality warranting interference by this Court. It has been lastly submitted that the trial court has imposed sentence upon the accused appellant for the offence under Section 304 IPC for life imprisonment. The conviction under Section 304 (Part-I) IPC does not mandate a minimum sentence and therefore the punishment of life imprisonment imposed by the trial court is excessive in the facts of the present case. The incident occurred suddenly and in the heat of passion without premeditation. Neither the accused appellant is habitual offender nor has he been convicted in any other case. Thus, the sentence awarded to the

accused appellant by the trial court vide impugned judgment and order be modified and accused appellant be released in this matter on the basis of imprisonment already undergone.

**18.** Per contra, learned A.G.A. has vehemently opposed the submissions made by the learned counsel appearing for the appellant. He submitted that P.W.1 Smt. Malti Devi, mother of the deceased, is the eye witness of the incident and she had no reason to depose falsely before the court intending false implication of the appellant. The prosecution case is also corroborated by the medical evidence. The prosecution story is proved by cogent and reliable oral and documentary evidence. Findings recorded by trial court in the impugned judgment and order are based on correct appreciation of facts and evidence and do not suffer from any infirmity or illegality warranting interference by this Court. Looking to the gravity and seriousness of the offence and also the manner in which it was committed, no lenient view in regard to sentence imposed by the trial court is warranted in the matter. Hence, the appeal is liable to be dismissed.

**19.** We have considered rival submissions made by learned counsel for parties and have gone through entire record carefully.

**20.** In the instant case, we find that the learned counsel for the appellant has made mainly two contentions i.e. PW-1, informant is a lady of bad character, and secondly, there are major contradictions in her testimony recorded before the trial Court.

**21.** So far as the allegation regarding the character of PW-1 is concerned, it is evident that the accused-appellant has not produced any evidence in support of this contention. Therefore, this argument remains unproved. Even if the allegation regarding the character of PW-1 is accepted, it would in no way affect the merits of the case.

**22.** With regard to the contradictions in the testimony of PW-1, it is important to note that the incident occurred at about 8:00 p.m. in the night, when only PW-1, her daughter (deceased) and the accused were present. In such circumstances, PW-1 is the only possible eye witness. On careful scrutiny of her testimony, we find that there are no material contradictions in her testimony which go to the root of the prosecution case and if some differences appear, they are minor in nature and same are bound to occur in criminal cases. It is a well-settled proposition of law that even if there is only one eyewitness, conviction can be based on such testimony provided it is trustworthy and reliable. Hence, after close scrutiny of entire evidence, we are of the opinion that incident took place on the date, time and place

mentioned in the FIR, deceased died due to the injuries caused by the appellant and this fact finds support from medical evidence. Thus, on the point of conviction of the appellant for the offence under Section 304 IPC, we are of the opinion that prosecution was able to establish guilt of appellant for the aforesaid offence beyond reasonable doubt. Findings recorded by trial court against the appellant in the impugned judgment and order are based on correct appreciation of fact and evidence and same do not warrant interference by this Court.

**23.** Before proceeding to deal with the submission regarding sentence imposed upon the appellant by the trial court, it is necessary to quote the provisions of Section 304 IPC, which are as under:

***"Section 304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;***

*or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."*

**24.** From a perusal of the above-quoted provisions, it is explicitly clear that Section 304 IPC does not prescribe any minimum punishment. The discretion lies with the Court to award a sentence proportionate to the circumstances of the case. This flexibility ensures that sentencing is not rigid but responsive to the gravity of the offence, the intention behind it, and the mitigating or aggravating factors present. The philosophy behind it is to distinguish the acts committed with intention to cause death and those committed without such intention, thereby tailoring punishment to culpability.

**25.** Learned counsel for the appellant, in the course of his argument, has further requested that the sentence recorded by the learned trial court is too severe and harsh and submits that the convict / appellant had no intention to do away with the deceased and in a spur of moment, the occurrence happened. He was a young man at the time of incident and has already spent more than twelve years of incarceration and must be a repenting man.

**26.** Now it takes us to the quantum of sentence, specifically under Section 304 (Part-I) IPC, where life imprisonment has been awarded by learned trial

court. For awarding the sentence, we have to keep in mind the theories of punishment in our country.

**27.** Discouraging the retributive theory, reformatory theory of sentence has been impressed upon by the Hon'ble Apex Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**. It has been observed by the Hon'ble Supreme Court :

*"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by reculturization. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."*

**28.** On the other hand, in **Deo Narain Mandal Vs. State of UP, (2004) 7 SCC 257**, it was observed that while determining the quantum of sentence, the Court should bear in mind the 'principle of proportionality'.

**29.** If we translate the legal theories rendered by the Hon'ble Apex Court in various judgments, such as, **Ravada Sasikala vs. State of A.P., AIR 2017 SC 1166, Jameel vs State of UP, (2010) 12 SCC 532, Guru Basavraj vs. State of Karnatak, (2012) 8 SCC 734, Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, State of Punjab vs. Bawa Singh, (2015) 3 SCC 441, Raj Bala vs. State of Haryana, (2016) 1 SCC 463, Sham Sunder vs. Puran (1990) 4 SCC 731, M.P. vs. Saleem, (2005) 5 SCC 554 and Ravji vs. State of Rajasthan, (1996) 2 SCC 175**, the settled legal position, which emerges out before us, is that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the Court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large, should never be marginalised. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in

achieving the avowed object of law. Further, it is expected that the Courts would operate the sentencing system, so as to impose such sentence which reflects the conscience of the society. However, the sentencing process has to be stern where it should be. The Court will be failing in its duty, if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant, but it should conform to and be consistent with the atrocity and brutality in which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'.

**30.** In view of the above propositions of law, the paramount principle that should be the guiding laser beam is that the punishment should be proportionate to the gravity of the offence.

**31.** The Apex Court in the case of **G. V. Siddaramesh Versus of State of Karnataka, 2010 (87) AIC 43 (SC)**, where appeal was filed by convict husband in a dowry death case, while deciding the appeal of the appellant, modified the sentence. Paragraph 31 of the said judgment is reproduced below:

*"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B I. P. C. However, his sentence of life imprisonment imposed by the Courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We accordingly, while confirming the conviction of the appellant under Section 304-B, I. P. C., reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."*

**32.** Applying the principles laid down by the Hon'ble Apex Court in the aforesaid judgements and having regard to the totality of the facts and circumstances of the case, particularly, the fact that no minimum sentence has been provided for the offence under Section 304 IPC, it appears to us from a perusal of the impugned judgment that sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence. Hon'ble Apex Court, as discussed above, has held that undue harshness should be avoided taking

into account the reformatory approach underlying in criminal justice system. Adopting the same reformatory approach, we consider that no accused person is incapable of being reformed and, therefore, all measures should be applied in order to bring them in the social stream.

**33.** Keeping in view the reformatory theory of punishment and "doctrine of proportionality", it appears to us that the sentence of life imprisonment awarded under Section 304 (Part-I) IPC by learned trial Court to the appellant is too harsh and severe. The appellant is in jail for the last more than twelve years. This fact is also admitted by the learned AGA.

**34.** Hence, we are of the considered view that since the appellant has already served-out more than twelve years jail sentence, the sentence of life imprisonment under Section 304 (Part-I) IPC is converted into the sentence already undergone, which would meet the ends of justice but the fine amount imposed by the trial court in the impugned judgment order shall be deposited by the appellant within two months from the date of his release and in case he fails to deposit the same, he will serve out two months sentence in default thereof.

**35.** The jail appeal is, accordingly, **partly allowed**, subject to the above observations and modification of sentence.

**36.** The accused-appellant be freed from jail forthwith, if not wanted in any other case.

**37.** Registry is directed to transmit the record to the Trial Court for necessary compliance.

**April 8, 2026**  
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**(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)**