



2026:AHC:19165-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 40 of 2026

Rajkumar

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Abhinav Singh, Ajeet Dixit
Counsel for Respondent(s)	:	G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.

HON'BLE DR. AJAY KUMAR-II, J.

The present appeal under Section 413 of BNSS has been filed against the judgment of acquittal dated 20.11.2025 passed by the Additional Sessions Judge, Court No. 1 Sonbhadra in Session Case No. 98 of 2019 arising out of Case Crime No. 140 of 2019, under Sections 302/34, 201 & 120-B IPC, Police Station Robertsganj, District Sonbhadra.

At 7:20 p.m. on 17.03.2019, a first information report registering case Crime No. 140 of 2019 under Sections 302 and 201 IPC was lodged against unknown persons after a headless dead body was found on 24.02.2019. The deceased was identified as Santosh Kumar. It has been stated in the FIR that Santosh Kumar had left his home on 21.02.2019 at 5:00 p.m. The deceased did not return and at 10:00 p.m., on 24.02.2019, the first informant received a phone call from the father-in-law of the deceased that a headless and mutilated body was found near Sukrit Hanuman Ghati. The dead body was identified as that of deceased on the basis of his underwear and vest as well as by an injury mark on the right sole of the deceased. The first information report states that the dead body was identified by the first informant herself. The first information report was lodged by the mother of the deceased. The police was called and after preparing the *panchayatnama* of the dead body, the dead body was sent for post-mortem.

The post-mortem was conducted on 26.02.2019 between 3:00 p.m. to 4:30 p.m. In the post-mortem report, the doctor who conducted the autopsy suggested that death had occurred about 96 hours back. It has also been

recorded in the post-mortem report that no identification marks were noted as the body was in a decomposed state. Necessary samples for the DNA test of the deceased were also collected by the doctor and sent for examination.

After investigation, the police submitted a charge-sheet against the accused under Section 302/201/120-B IPC. The opposite party no. 4 is the widow of the deceased while the opposite party no. 3 is a relative of the deceased. The case was committed for trial before the Session Court and Session Trial No. 98 of 2019 under Sections 302/34, 201 & 120-B IPC were registered against the accused. The accused pleaded not guilty and claimed trial. The prosecution examined eight witnesses. PW-6 to PW-8 are formal witnesses. PW-1 to PW-3 are the witnesses to prove the prosecution case and PW-4 is the witness of *panchayatnama*. The doctor who conducted the autopsy was examined by the prosecution as PW-5.

The case of the prosecution in short was that the opposite party no. 4, i.e., the widow of the deceased was in illicit relationship with opposite party no. 3, i.e., Monu Patel and the accused conspired to murder the deceased whom they found to be a hurdle in their relationship. In furtherance of the said conspiracy, the accused, i.e., opposite party nos. 2 and 3, murdered the deceased. There is no eye-witness of the crime and the prosecution case was that opposite party nos. 2 and 3 were last seen with the deceased on 21.02.2019.

The prosecution examined PW-2 Lal Bahadur to prove that the deceased was last seen with the accused in the evening of 21.02.2019. The witness had stated that the deceased was seen with the opposite party nos. 2 and 3 between 6:00 to 7:00 p.m. on 21.02.2019 sitting in the Alto car near Chandi Hotel. The noticeable feature is that even though the deceased was missing since 21.02.2019 and the first information report was registered on 17.03.2019, the statement of the witness under Section 161 Cr.P.C. informing the Investigating Officer that the deceased was seen with opposite party nos. 2 and 3 in the evening of 21.02.2019 was recorded on 16.04.2019, i.e., one month after the registration of the first information report.

PW-1 Raj Kumar was examined by the prosecution to prove the illicit relationship between the widow of the deceased and the opposite party no. 3.

The witness also stated that he had identified the dead body as that of Santosh Kumar by the injury mark on the right sole of the body because he had taken care of the deceased from his childhood and was also the uncle of the deceased. In his evidence, the witness also stated that he had informed the investigating officer that the witness as well as the first informant, i.e., the mother of the deceased had identified the dead body as that of the deceased. The noticeable feature in the evidence of the witness is that his claim that the dead body was also identified by the mother of the deceased has not been corroborated by the other witnesses who were present while the body was being identified. The evidence of PW-1 that the dead body was identified by the mother of the deceased is not corroborated by other witnesses who were present on the spot, i.e., PW-2, PW-3 and PW-4 who is also a witness of the *panchayatnama*. The other noticeable feature in the evidence of PW-1 that comes out from the judgment of the trial court is that the witness was an interested witness and inimical to the interests of the heirs of the deceased. It comes out from the judgment of the trial court that the mother of the deceased had executed a Will in favour of her grand-son, i.e., the son of the deceased, to which the witness was an attesting witness, but when the Will was submitted in mutation proceedings, the witness filed his objections opposing the mutation in favour of the grand-son of the deceased. The defence had examined as DW-3, the elder sister of PW-1 who impeached the credit of the witness by stating that the witness was greedy and was in habit of usurping the property of others. In her testimony, DW-3 had stated that the witness did not have cordial relations with the deceased.

The allegation that the widow of the deceased was in illicit relation with opposite party no. 3 was also found to be based on hearsay. In his cross-examination, PW-1 had stated that he was giving the statement regarding illicit relations of the widow of the deceased on the basis of what he had heard from other villagers. PW-1 and PW-2 were the major witnesses examined by the prosecution. It is apparent from the evidence of PW-1 and PW-2 as noted above that the claim of illicit relations between widow of the deceased and the opposite party no. 3 has not been proved. The prosecution failed to prove the motive for the opposite parties to murder the deceased. It is settled law that motive is an important factor to be considered in case of circumstantial evidence.

So far as the claim of the prosecution that the deceased was last seen with opposite party nos. 2 and 3 is concerned, the same has been rejected by the trial court on the ground that the call detail records of the opposite party nos. 2 and 3 produced before the trial court did not prove that on 21.02.2019 or 22.02.2019, the opposite party nos. 2 and 3 were near the place where the crime was allegedly committed and the dead body was found.

Even the identification of the dead body as that of the deceased is not proved. The DNA analysis of the deceased sent by the forensic laboratory does not confirm that the DNA of the deceased matched with the DNA of his son. The prosecution claimed that the body was identified by the injury marks on the right sole of the deceased which is also doubtful inasmuch as PW-5, i.e., doctor who conducted the autopsy, in his evidence, stated that body was in a decomposed state and no injury mark or other identity marks could be noted on the dead body. The claim of PW-1 that the dead body was also identified by the mother of the deceased has also been found by the trial court as false as it was found that the mother and the widow of the deceased had not gone to the place where the dead body was found. It also comes out from the judgment of the trial court that the prosecution could not produce any evidence to prove any conspiracy between the widow of the deceased and the other accused to murder the deceased. The call detail records that were produced by the prosecution were not certified as required under Section 65 B of the Indian Evidence Act, therefore, they have not been relied upon by the trial court while considering the case of the prosecution.

We have also noted that the last seen evidence allegedly given by PW-2 states that the opposite party nos. 2 and 3 were seen with the deceased at 6:00 p.m. on 21.02.2019. The autopsy on the dead body was done on 26.02.2019 between 3:00 to 4:30 p.m. The report notes that death had occurred about 96 hours back. Apparently, from the medical evidence, the time of death is the afternoon of 22.02.2019. Even if the claim of the prosecution that the deceased was seen with the opposite party nos. 2 and 3 on 21.02.2019 at around 6:00 p.m. is accepted, the same would not be sufficient to implicate the accused or to hold them guilty. The evidence that the accused were seen with the deceased on 21.02.2019 cannot be considered as a circumstantial evidence sufficient to incriminate the opposite party nos. 2 and 3.

We have also taken note of the fact that the dead body was found on 24.02.2019. The first information report should have been registered on the same date. However, the first information report was registered on 17.03.2019. The first information report does not name any person as accused in the case. The first information report has been registered at the instance of the mother of the deceased. In case, the claim of PW-1 and PW-2 that opposite party nos.2 and 3 were last seen with the accused on 21.02.2019 and further the motive for the crime was illicit relations between the widow of the deceased and one of the accused, the conduct of the witness in not informing the said fact to the mother of the deceased and the mother of the deceased not naming the accused in the first information report also raises doubt regarding the prosecution case.

The aforesaid shortcomings have also been noted by the trial court. We find no reason to differ with the findings of the trial court that the prosecution failed to prove beyond doubt its case against the accused.

The appeal lacks merit and is ***dismissed***.

Let the file be consigned to records after certifying a copy of the present judgment to the trial court.

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)

January 28, 2026

Vipasha