



2026:AHC:42163-DB

RESERVED ON 4.2.2026

DELIVERED ON 25.2.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 2328 of 2003**

Tilak Dhari Maurya

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|--------------------------------------------------------|
| Counsel for Appellant(s)  | : A.P. Mishra, Adarsh Shukla, Mohd Akhtar, Sufiya Bano |
| Counsel for Respondent(s) | : A.G.A.                                               |

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**Court No. - 46**

**HON'BLE SIDDHARTH, J.**  
**HON'BLE JAI KRISHNA UPADHYAY, J.**  
**(Delivered by Hon'ble Siddharth,J)**

1.. Heard Mohd. Akhtar, learned counsel for the appellant; Sri Prem Shankar Prasad, learned A.G.A. for the State and perused the trial court record as well as judgment and order passed by the trial Court.

2.This criminal appeal has been filed against the judgement and order dated 1.5.2003 passed by Additional Session Judge (Fast Track Court No.3) Varanasi in Session Trial No. 127 of 2003(State Vs. Tilak Dhari Maurya) convicting and sentencing the appellant under section 302 I.P.C. to undergo life imprisonment and Rs. 5,000/- fine and under section 376/511 I.P.C. to undergo five years rigorous imprisonment and Rs. 3,000/- fine and under section 201 I.P.C. to undergo five years rigorous imprisonment and Rs. 2,000/- fine in default of payment of fine the appellant shall undergo additional imprisonment for one year six months and three months, respectively.All the sentence shall run concurrently.

3.The prosecution case is that on 20.12.2002 at about 20-30 hours, the informant Chhedi Lal Maurya, gave a written application at the police station Kapsethi to the effect that today at 7.30 P.M. appellant, Tilak Dhari Maurya, came and informed him and other villagers that he had gone to take medicine alongwith Km. Pramila Devi aged about 12-13 years, daughter of Raj Kali Maurya, to Chaura. When he was returning and reached near Daultiya Mod three boys wearing pants and shirts aged about 20-21 years stopped them in the way and after beating him by legs, fists and bricks took away his bicycle and the girl towards Southern direction .The incident took place at 6 P.M.He had come to village running and informing about the incident.On the basis of above information given by Tilak Dhari Maurya, report was lodged against three unknown accused as case crime no. 136 of 2002 under section 364 I.P.C.

4.The investigation of this case was entrusted to Mohd. Siddiqui, who recovered dead body of the deceased, Km. Pramila Devi in grasses near the "Nala" outside the village.Inquest proceedings were conducted and the dead body of the deceased was sent for postmortem.

5.After recovery of dead body ,the case was converted under section 302 I.P.C. and G.D. entry was accordingly changed.The Appellant was arrested on 21.12.2002 on the basis of evidence collected by the investigating officer and charged under sections 302,376/511, 201 I.P.C. No spermatozoa or semen was found in vagina swab of deceased by the forensic laboratory.

6.Appellant was charged under sections 302, 376/311 and 201 I.P.C. . He denied the charges and sought trial.

7.To prove the prosecution case, prosecution examined P.W.1, Smt. Jhamna Devi wife of Rajbali; P.W.2, Jamwant Chauhan; P.W.3, Chhedi Lal; P.W.4 Smt. Raj Kumari Yadav;P.W.5 Dr. J.P. Tripathi; P.W.6 S.I.

Paramhans Ji Tiwari; P.W.7, S.I. Mohd. Siddqui; P.W.8 Constable, Phool Chnadra Yadav; P.W.9, Constable Dinesh; P.W.10 Raj Bali; P.W.11, Jawahar Maurya and P.W.12 S.I. Uday Raj Yadav.

8.The statement of accused-appellant was recorded under section 313 I.P.C. wherein he admitted that he took the deceased for getting medicine for her because she was suffering from stomach ache. Earlier also he took her along with her father to exorcist twice. He admitted that incident as alleged in the First Information Report took place and he informed the villagers, but stated that inspector had colluded with real accused and falsely implicated him in this case.

9.P.W.1, Smt. Jharana Devi, stated that when her daughter did not returned in the evening she went to the house of appellant at 7.00 P.M. and he informed her that her daughter was abducted by thief after gagging her mouth and thief also took away his bicycle.

10.P.W.2, Jamwant Chauhan,, stated in his statement that he lodged the First Information Report on the dictation of Chhedi Lal. After writing the report he met appellant Tilak Dhari Maurya, who confessed his guilt before him and stated that he tried to commit offence of rape against Pramila Devi and when she resisted , he strangulated her to death and threw her dead body in "Nala". He admitted that he has given false information to the villagers that deceased was abducted by three persons.

11.P.W.3, Chhedi Lal, stated that the appellant is his cousin and when he was listening news at 7.20 p.m. on transistor, the mother of the deceased came to him and both went to the house of appellant. The appellant informed them that three persons met in the way and took away daughter of P.W.1. and his bicycle. He admitted that on his dictation First Information Report was lodged by P.W.2, Jamwant Chuhan.

12.P.W.4, Raj Kumar Yadav is witness of inquest.

13. P.W.5, Dr. J.P Tripathi, is the autopsy doctor, who found following injuries on the dead body of the deceased:-

1. Multiple nail marks 12 cm x 8 cm. on the front and outer aspect of both sides of neck.Total 10 in numbers.

2.Multiple nail marks 6 cm x 5 cm on the left side of face .Total four in numbers.

3. Lacerated wound of 0.5 cm. surrounding the entrance of vagina, hymen ruptured.

14.P.W.6, S.I. Param Hans ji Tiwari, proved that he prepared documents regarding inquest and postmortem of the deceased.

15.P.W7, S.I. Mohd, Siddiqi, proved that he recovered dead body of the deceased and conducted inquest proceedings , recorded the statements of the witnesses conducted site inspection, prepared site plan and converted the case into section 302, 376/511. 201 I.P.C.

16.P.W.8, Phool Chandra Yadav, admitted that he registered the case on the basis of application given by Chhedi Lal Maurya and made G.D. entry accordingly.

17.P.W.9, constable Dinesh, proved that inquest on the dead body was performed before him and dead body was dispatched before him for postmortem through constable Suresh.

18.P.W.10, Rajbali, proved that he is a exorcist and appellant came with deceased to him at about 2.30 P.M. and went back at 3.00 P.M.

19. P.W.11, Jawahar Maurya, proved that dead body of the deceased was recovered in the grasses near the "Nala" and accused-appellant confessed before Jaswant, P.W.2,

of committing murder of the deceased.

20, P.W.12, Uday Raj Yadav, admitted that he conducted investigation of this case after S.I. P.W.7, Mohd. Siddiqi, sent vagina swab of the victim to F.S.L. and filed charge sheet against appellant.

21. Trial court after considering the evidence on record held the appellant guilty and sentenced him to life imprisonment and fine as mentioned in the judgement of the trial court.

22. Learned counsel for the appellant has submitted that P.W.1, mother of the deceased, had not made any allegation against the appellant for committing alleged offence against her daughter; P.W.2, Jamwant Chauhan, is not a reliable witness and confession of appellant was recorded due to police atrocities; P.W.3 is cousin of the deceased and did not prove the incident but only lodging of First Information Report against appellant; the bicycle of the appellant was never recovered; autopsy doctor opined that cause of death of the deceased was asphyxia as a result of throttling and smothering; the injury suffered by the appellant was not explained by the prosecution; defence of the appellant was not considered by the trial court; in the vaginal swab report of the deceased nothing incriminating was found; it has finally been submitted that extra judicial confession of the appellant before the P.W.2 and P.W.11 is a very weak piece of evidence as held by the Apex Court in the case of **Balwinder Singh Vs. State of Punjab 1995, LawSuit (SC)1050**.

23. Learned A.G.A. has vehemently opposed the submissions made by the learned counsel for the appellant and has submitted that conviction of the appellant is not solely based on his extra judicial confession but on the basis of totality of facts and circumstances of the case proved beyond reasonable doubt by the prosecution.

24. After hearing the rival submissions and going through the record, we find that the allegations were made in the First Information Report against three unknown accused. There was allegation that the deceased girl was abducted by three unknown accused wearing pants and shirts and the bicycle of the appellant, whereon he was returning to the village alongwith the deceased, was snatched away. It is a case of circumstantial evidence. There is also a evidence of last seen against the appellant. The trial court has recorded the findings that after the deceased was taken away by the unknown accused, they must have beaten the appellant also and naturally he should have first informed the mother of the deceased and the villagers, but he did nothing. His conduct shows that he did not informed anyone and only after P.W.1 and P.W.3 went to his house to inquire about the girl, he informed them about the incident, therefore, his conduct as per section 8 of the Evidence Act proves the prosecution case against him. The trial court has held that there is no direct evidence regarding commission of offence of murder of the deceased by the appellant but there is direct evidence of abduction of the deceased by him. The medical evidence proves that there were multiple nail marks on the front and outer aspect of both sides of neck of the deceased, total 10 in numbers and multiple nail marks on the left side of her face, four in numbers, and lacerated wound 0.5 cm. surrounding the entrance of vagina and rupture of hymen. The injuries suffered by the deceased could have been caused by a single person or number of persons too, which is not clear. It also appears from her vaginal smears report that attempt to commit the offence of rape was also made on her. The incident took place in a deserted place and there is no eyewitness of the incident. Non recovery of bicycle of the appellant proved that police made no efforts to work out the case and simply implicated the appellant. P.W.2 has stated that appellant came to him

and made confession before him of his guilt. Confession of appellant before P.W.2 is further corroborated from the statement of P.W.11.

25.The argument of learned counsel for the appellant that extra judicial confession is a very weak type of evidence requires consideration. P.W.2 and P.W.11 are neither the Pradhan of the village nor Sarpanch nor any public authority, who could have saved the appellant from conviction, in case, appellant had confessed before them about the incident. They are also common villagers and why the appellant made extra judicial confession before them is difficult to understand.

26.We further find that there are two possible views of the same incident. (1) the appellant and no other person committed the alleged offence and (2) unknown accused committed alleged offence. The basis of conviction of the appellant is extra judicial confession before P.W.2 and P.W.11 and the motive to commit offence of rape against the victim and the recovery of dead body from the grasses near a "nala" has been accepted as an corroborative circumstantial evidence. The incident took place in an open place and therefore, it can not be said that only appellant had special knowledge of the same.The Apex Court in the case of **C.K. Raveendran Vs. State of Kerala,AIR, 2000, S.C. 369**, held that before placing reliance upon the extra judicial confession of an accused court must be convinced as regards the exact words or even words uttered as nearly as possible. If aforesaid words are not reproduced statement cannot be said to be a voluntary and in such cases such circumstances may be excluded from the consideration. In the case of **Balvinder Singh (Supra)** the Apex Court held that extra judicial confession is a weak type of evidence and requires appreciation with great deal of care and caution. Where it is surrounded by suspicious circumstances its credibility become doubtful

and it loses its importance.

27. We found that in the statement of P.W.1 and P.W.7 the exact words used by the appellant in making confession were not reproduced. Further in a case of circumstantial evidence; the circumstances relied upon should not only be established by the prosecution beyond reasonable doubt but all of them taken together should form complete chain pointing clearly to guilt of the accused and exclude any other view inconsistent with his innocence.

28. We are of the view that the prosecution has failed to prove case against the appellant beyond reasonable doubt.

29. As per report of the Senior Superintendent of Central jail, Varanasi dated 13.12.2025, the prayer of the appellant for granting remission of sentence to him has been turned down by the State Government. He has completed 23 years and 23 days of sentence without remission as on 13.12.2025 and sentence of 31 years 2 months and 23 days with remission as on 13.12.2025. Appellant is aged about 47 years now.

30. In view of the above consideration and taking in view of totality of the facts and circumstances of the case, we set aside judgement and order of the trial court and direct that appellant should be set at liberty forthwith.

31. The appeal is allowed.

32. Let the trial court record be returned to the trial court alongwith copy of judgement and order of this court.

(Jai Krishna Upadhyay, J.) (Siddharth, J.)

**February 25, 2026**

Atul kr. sri.