



2026:AHC:2747-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 752 of 2025

Kusuma Devi

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	: Ashok Kumar Upadhyay, Vivek Kumar Mishra
Counsel for Respondent(s)	: G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.**

(Dictated by Dr. Ajay Kumar-II, J.)

1. Heard Sri Ashok Kumar Upadhyay, learned counsel for the appellant and learned A.G.A. for the State-respondents.

2. Challenge in this Criminal Appeal is to the judgment dated 12.11.2025 passed by District and Sessions Judge, Mainpuri in Case Crime No. 177/2019, (State vs. Saurabh Dwivedi and another) in Sessions Trial No. 563 of 2023, under Sections 364, 506 IPC, Police Station Bewar, District Mainpuri, whereby accused opposite parties 2 and 3 have been acquitted by Court below of the charges framed against them.

3. Brief facts of the case are that a written report was filed by the informant-appellant in Police Station Bewar on 05.05.2019 stating therein that the daughter of the informant Prashali Mishra, aged about 22 years old, was getting the education of B.T.C. from K.P. Singh College, Firozabad. Her daughter's classmate Saurabh Dwivedi used to threaten her to kill over phone. Her daughter Prashali Mishra was coming back to her home from college on 04.01.2018 and on the way to her home, she called her mother and told that she is coming to her home. After reaching Ghiror, her daughter's phone was switched off and she did not return home. Since then, there has been no news of her. On 05.01.2018, the informant filed a missing report for her daughter at Police Station Bewar, but she has not received any information about her daughter yet. The person who is responsible for disappearance of her daughter is Saurabh Dwivedi, who has also threatened to kill her daughter. The informant has submitted several applications regarding missing of her daughter Prashali to the Police Station Bewar, but

no action has been taken. Once, the Police of the Police Station Bewar took Saurabh Dwivedi into custody, but they released him after taking money from him. The accused frequently threatened the informant to kill.

4. On the aforementioned written report (Tehrir) of informant-appellant an FIR was registered at 10:15 am on 05.05.2025 as Case Crime No. 177 of 2019, under Sections 364 and 506 IPC, Police Station Bewar, District Mainpuri against the accused opposite parties 2 and 3.

5. After completion of investigation, charge-sheet was submitted against opposite parties 2 and 3, under Sections 364 and 506 IPC. Thereafter, cognizance was taken upon same and the case was committed to the Court of Sessions.

6. After hearing both the parties, charges under Sections 364 and 506 IPC were framed against accused opposite parties namely Saurabh Dwivedi and Rishi Dwivedi. However, the accused denied the charges levelled against them and claimed trial.

7. In order to prove it's case, the prosecution adduced PW-1 informant Smt. Kusuma Devi, (mother of the victim), PW-2 Head Constable Rohitash Kumar and PW-3 S.I. Vipin Tomar (Investigating Officer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved five prosecution papers, namely, Written Report (Tehrir) dated 05.01.2018 as Ext. Ka-1, Written Report (Tehrir) dated 05.05.2025 as Ext. Ka-2, Chik FIR as Ext. Ka-3, G.D. Entry as Ext. Ka-4 and Charge Sheet as Ext. Ka-5.

8. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for their version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to them by repeatedly saying that it is false or they have been falsely implicated or the prosecution case is false or the prosecution witnesses have deposed falsely.

9. By the impugned judgment dated 12.11.2025, the Court below has acquitted the accused-opposite parties of the charge under Sections 364 and 506 IPC. Thus, feeling aggrieved by the aforementioned impugned judgment passed by the Court below, the present appeal has been preferred by the informant-appellant.

10. We have heard the learned counsel for appellant as well the learned A.G.A. for State-opposite parties and perused the record.

11. While considering the scope of interference in an appeal against

acquittal, it has been held by the Supreme Court that if two views are possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the Court below. Reference in this regard be made to the judgment of Supreme Court in **Chandrappa and Ors. vs. State of Karnataka, 2007 (4) SCC 415 : AIR 2007 SCC (SUPP) 111**, wherein Apex Court has observed as under:

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561**, has observed as under:-

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

13. It has also been observed in above-mentioned judgments that an Appellate Court, however, must bear in mind that in case of acquittal, there

is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Court below. It has also been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

14. It has also been observed in above-mentioned judgments that an Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has also been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

15. The Supreme Court in **Gamini Bala Koteswara Rao vs. State of Andhra Pradesh, (2009) 10 SCC 636**, has observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusions arrived at by the Court below. However, it is limited to those cases where the judgment of Court below was perverse. This Court went on to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another view is plausible, the Appellate Court will not be justified in interfering with the verdict of acquittal.

16. Perusal of the impugned judgment in the light of above-noted well settled legal position reveals that the trial Court, while acquitting the accused, has recorded the following findings:-

i. The informant lodged a missing report regarding her daughter Prashali Mishra on 05.01.2018. The daughter of the informant went missing since 04.01.2018. In missing report, which was recorded in G.D. as 14 A, dated 05.01.2018, time 19:52, neither the name of accused-opposite party Saurabh Dwivedi nor any role of Saurabh Dwivedi was mentioned. It was

mentioned that her daughter Prashali alias Ruchi was engaged to be married to Shul Tripathi, but the boy and his family refused to go ahead with the marriage. Her daughter was coming home from Sikohabad yesterday and has called her around 6:00 pm from her mobile and told her that she was about to reach Bewar. Her daughter has not yet reached home. If in fact, the accused opposite party Saurabh Dwivedi threatened to kill informant's daughter prior to her disappearance then, she would certainly have mentioned this fact in her missing report dated 05.01.2018.

ii. After about one year and four months, from the incident of missing of her daughter, the informant filed a written report (Tehrir Ext. Ka-1) against the accused at Police Station Bewar on 05.05.2019.

iii. Subsequently, in the written report (Tehrir Ext.Ka-2), there is no mention that the informant has lastly seen her daughter with the accused opposite parties or with anyone else.

iv. The informant as PW-1 has not stated in her examination-in-chief that she or any other person had seen her daughter going with accused.

v. There is no evidence on record that informant's daughter Prashali Mishra and the accused opposite parties were lastly seen together at the time of incident or at any time thereafter.

vi. The informant in her examination-in-chief has not stated that there was any love affair between her daughter and accused, because of which, the accused might have abducted her daughter.

vii. The informant in her examination-in-chief has stated that she firmly believes that the accused-opposite party Saurabh Dwivedi has made her daughter disappeared. Therefore, the informant has lodged FIR against the accused-opposite parties for disappearance of her daughter only on the basis of her suspicion.

vi. The informant PW-1 in her cross-examination has fairly conceded that she lodged FIR after one year and four months after the incident. She further stated in her cross-examination that during this aforesaid period of one year and four months, no evidence was found against accused Saurabh Dwivedi for taking Prashali with him.

vii. The informant PW-1 in her cross-examination has stated that neither she nor anyone else has seen Saurabh Dwivedi taking or abducting her daughter Prashali Mishra. She further stated that in the present case, there is no other witness beside her.

viii. From the evidence of the informant, it does not prove that accused opposite parties were lastly seen with the daughter of the informant or that accused opposite parties were lastly seen taking away informant's daughter.

ix. The informant in her examination-in-chief has not stated that accused Rishi Dwivedi has threatened her to kill, therefore, no offence under section 506 IPC is made out.

x. The prosecution has failed to prove that the accused opposite parties have kidnapped or threatened to kill the informant's daughter Prashali Mishra.

17. The conclusion derived by the trial Court that the prosecution has not been able to prove its case, is based upon due evaluation of allegations made

in the written Tehrir (Ext. Ka-1) in the light of the evidence on record. Upon examination by us, of the said findings and the aforementioned reasons, in the light of the deposition of the prosecution witness as noted in the impugned judgment, we could not come across any such fact on the basis of which, any of the findings qua, charging sections can be said to be perverse or erroneous.

18. Undisputedly, the present case rests on circumstantial evidence. Law with regard to evaluation of a case based on circumstantial evidence stands crystallized in the judgment of Apex Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**. Paragraphs 153 to 154 of the report are relevant and accordingly, the same are reproduced herein below:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established

*It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra** where the following observations were made: (SCC para 19, p. 807)*

19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

19. In the present case, there is no direct evidence. The prosecution has examined only informant-appellant as PW-1, being witness of fact. PW-1 in her deposition, has not stated that she had seen the accused-opposite parties with her daughter. There is no evidence on record suggesting that informant's daughter Prashali @ Rishi was lastly seen in the company of accused-opposite parties either by the informant or by any other witness. PW-1 has lodged a simple missing report on 05.01.2018 without raising any suspicion either on accused-opposite party Saurabh Dwivedi or anyone else.

The whole deposition of PW-1 is based on her firm belief that accused-opposite party Saurabh Dwivedi has made her daughter disappeared. The said firm belief of PW-1 without there being any other evidence, can be simply termed as strong suspicion. Moreover, there is an inordinate delay about one year and four months in lodging the FIR. The delay has not been explained by the prosecution.

20. Apex Court in **(i). P. Ramchandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, (ii). P. Rajagopal and others Vs. The State of Tamil Nadu, AIR 2019 SC 2866 (paragraph 8), (iii). Hasmukhlal D. Vora and Another Vs. The State of Tamil Nadu, 2022 SCC OnLine 1732, (iv). Sekaran Vs. State of Tamil Nadu, (2024) 2 SCC 176 and (v) Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and Others, 2024 SCC OnLine SC 938**, has clearly observed that if the FIR has been lodged with delay but no plausible explanation has come forward explaining the delay in lodging the FIR, then the criminal prosecution of an accused on the basis of such a delayed FIR cannot be sustained. In the present case, there is unexplained delay of one year and four months in lodging of the FIR against the accused-opposite parties. In our considered opinion, this unexplained inordinate delay of about one year and four months in lodging of the FIR, makes the prosecution story doubtful.

21. There is no evidence on record, suggesting complicity of accused in disappearance of informant's daughter. There is no evidence on record suggesting that informant's daughter Prashali alias Ruchi was lastly seen by anyone else before the incident or even thereafter, till the date of registration of the FIR. The prosecution has not able to prove any motive behind this alleged crime. There is an inordinate delay about one year and four months, which has not been explained by the prosecution. Resultantly, we are of the considered opinion that prosecution has not able to prove its case against the accused opposite parties. The prosecution has not been able to prove very first link of 'last seen' in the present case, which is wholly based on circumstantial evidence.

22. Having heard the learned counsel for the appellant, learned A.G.A. for the State-opposite parties and upon perusal of the impugned judgment, we raised a pointed query to the learned counsel for the appellant as to how the impugned judgment is wrong or perverse, inasmuch as the solitary witness of fact, i.e. PW-1 adduced by the prosecution, has not seen her daughter in the company of accused-opposite parties and there is no evidence of last seen available on record. Moreover, as no conviction can be passed merely on suspicion, howsoever strong it may be, therefore, what illegality had been committed by the trial Court in passing the impugned judgment.

23. In answer to the above query, learned counsel for the appellant stated that a Habeas Corpus Writ Petition has been filed in December, 2025, which is likely to be listed soon and there is every possibility that the daughter of the informant-appellant will be traced out. However, the learned counsel for the appellant could not dislodge the above facts so pointed by us.

24. In view of the discussion made above, we do not find any perversity in the judgment so as to interfere with the findings returned by trial Court. The conclusion drawn by trial Court is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. The trial Court has not misconstrued any material evidence. However, we could not gather any such fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed**.

January 7, 2026
Monika

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