



2026:AHC:6191-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 164 of 2025

Samsu

.....Appellant(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Appellant(s)	:	J.B. Singh
Counsel for Respondent(s)	:	Rajesh Kumar Dubey, G.A.

Court No. - 43

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

One counter affidavit and two rejoinder affidavits filed today in the Court, are taken on record.

The present appeal under Section 413 BNSS, 2023 has been filed against the judgement and order of acquittal of accused-respondents dated 8.5.2018 passed in Special Sessions Trial No. 199 of 2013 (State of U.P. Vs. Khursheed and others), Sessions Trial No. 527 of 2013 (State of U.P. vs. Ratiya) Sessions Trial No. 670 of 2013 (State vs. Iqbal), Sessions Trial No. 932 of 2014 (State vs. Muddin) arising out of Case Crime Nos. 190 of 2012, under sections 147, 148, 149, 307, 302, 506 IPC, P.S. Shergarh, District Mathura and Sessions Trial No. 200 of 2013 (State vs. Hakku @ Hakmu) arising out of Case Crime No. 198 of 2012, under Section 25 Arms Act, P.S. Shergarh, District Mathura.

The office report dated 6.1.2026 states that opposite party no. 2 died on 15.7.2018.

The appeal is barred by 2621 days. The appellant is first informant.

Learned counsel for the appellant was questioned regarding maintainability of appeal on the ground as to whether the appellant can be considered as a *victim* under the proviso to Section 413 BNSS read with definition of the word as given in Section 2(w a) Cr.P.C.

Learned counsel for the appellant states that the appellant is brother of the deceased. Learned counsel for the appellant was not able to convince the Court that the appellant is a victim as defined under Section 2(w a) Cr.P.C.

No arguments could be advanced by learned counsel for appellant on the aforesaid issue.

In the affidavit filed in support of delay condonation application, it has been stated that the appeal could not be filed within time because appellant and deponent of the affidavit had been arrested on 15.7.2020 in Case Crime No. 287 of 2014 and the deponent was released on bail by this Court on 12.8.2025 in Criminal Appeal No. 403 of 2017, which arises from sessions trial instituted from Case Crime No. 287 of 2014. It has been stated that for the aforesaid reason, the present appeal could not be filed within time.

Even if the facts stated in the affidavit filed in support of delay condonation application are accepted, the delay between 8.5.2018 and 15.7.2020 has not been explained. Judgment of acquittal was passed on 8.5.2018. During course of argument, learned counsel for the appellant states that after institution of Case Crime No. 287 of 2014, the appellant absconded in order to evade his arrest in the aforesaid case, therefore, the appeal could not be filed.

The appellant cannot be given benefit of his having absconded and having evaded his arrest in Case Crime No. 287 of 2014.

The delay in filing the appeal has not been satisfactorily explained in the affidavit filed in support of delay condonation application.

In view of the aforesaid, the delay condonation application is liable to be dismissed and is dismissed.

Consequently, the appeal also stands **rejected**.

Consign to record.

January 9, 2026
Dhirendra/

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