



2026:AHC:1277-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 212 of 2025

Ram Prasad

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Nagendra Kumar Singh, Pushpendra Kumar
Counsel for Respondent(s)	:	G.A.

Court No. - 43

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

Order on Criminal Misc. Delay Condonation Application No. 01 of 2025

1. The present appeal has been filed against the judgment of acquittal dated 01.08.2025 passed by Additional Sessions Judge/Fast Track Court-II, Hathras in Sessions Trial No. 185 of 2025, arising out of Case Crime No. 890 of 2014, under Sections 364 and 308 IPC, Police Station Sikandrara, District Hathras, with the delay of 45 days.
2. The informant-appellant has filed the instant delay condonation application.
3. At the very outset, a query was made by this Court that delay has not been properly explained in the accompanying affidavit filed in support of delay condonation application.
4. Learned counsel for the appellant fairly conceded that the delay has not been properly explained as required under law, however, he argued that the delay has occasioned because of poor financial background of the appellant as he is a poor labourer, because of which, he could not manage sufficient money to file the present appeal.
5. Learned counsel for the appellant fairly conceded that inadvertently, it has not been mentioned in the affidavit that when money was arranged by the appellant and when it was handed over to his counsel for filing of the present appeal, but he requested that on the ground of poor financial background of the appellant, the delay may kindly, be condoned.
6. The delay in filing the present appeal has not been properly explained in the affidavit accompanying the delay condonation application, however, the present appeal has been filed with a delay of merely 45 days. Taking a liberal approach in the light of settled law that no meritorious case should be thrown out merely on some technicality and looking into the poor financial background of the appellant, the delay in filing the present appeal is, condoned.

7. Office shall allot regular number to the appeal.

Order on Memo of Appeal

1. Heard the learned counsel for appellant and the learned A.G.A. for State opposite party.

2. Challenge in this Criminal Appeal is to the judgment of acquittal dated 01.08.2025 passed by Additional Sessions Judge/Fast Track Court-II, Hathras in Sessions Trial No. 185 of 2025, arising out of Case Crime No. 890 of 2014, under Sections 364 and 308 IPC, Police Station Sikandrara, District Hathras, whereby accused opposite party Vinod has been acquitted by Court below of the charges framed against him.

3. Brief facts of the case are that a written report (Ext. Ka-1) dated 29.10.2014 was filed in Police Station Sikandrara by the informant-appellant stating therein that his son Arun Kumar, aged about 10 years, went out from his house to play at around 4:00 pm on 29.10.204 and has not returned yet. They have searched everywhere, but his son is still missing. On the said written report, (Ext. Ka-1) of the informant-appellant, an FIR was registered in the concerned Police Station on 29.10.2014 as Case Crime No. 890 of 2014, under Section 363 IPC and the investigation was started. Thereafter, a second written complaint (Ext. Ka-2) dated 09.12.2014 was again presented by the informant-appellant in the concerned Police Station by stating therein that his son was missing since 4:00 pm of 29.10.2014. On 30.10.2014 at about 11:00 am, people working in the fields near Syed Baba's place found his son lying in a well. They informed his neighbourhood and all the persons rushed to the spot, his son was taken out from the well, who was unconscious and seriously injured. He was taken to the Hospital. **The accused-opposite party on learning that his son regained consciousness, fled from his house and therefore, he suspects that his son was kidnapped by accused-opposite party Vinod.** His son was earlier taken by Vinod to the river on 22.10.2014 at about 6:00 pm and at that time, his wife was bringing grass from the river bank. She asked her son that what he is doing there?. On this, his son Arun informed her that accused-opposite party Vinod has brought him and asked him to cross the river. His wife asked Vinod that why he brought his son there, on which Vinod told her that his mobile had fallen, on this, his wife said that how this small child will find your mobile?. His wife told Vinod not to bring her son again there. **From that day, the informant-appellant suspected that his son was kidnapped by the accused-opposite party.** On second written complaint, (Ext. Ka-2) of the appellant, the aforesaid case crime was converted from section 363 IPC to Section 364 and 308 IPC.

4. After completion of investigation, charge-sheet was submitted against opposite party Vinod, under Sections 364 and 308 IPC. Thereafter, cognizance was taken upon same and the case was committed to the Court of Sessions. After hearing both the parties, charges under Sections 364 and 308 IPC were framed against accused Vinod. However, the accused denied the charges levelled against him and claimed trial.

5. In order to prove it's case, the prosecution adduced PW-1 the informant Ram Prasad (father of the child Arun), PW-2 Vimla Devi, (mother of the child Arun), PW-3 Arun Kumar (victim), PW-4 Dr. Sanjay Bhargav, PW-5 Ranvir Singh (Investigating Officer) and PW-6 Ranvir Singh. The witnesses

adduced by the prosecution have given their respective oral evidence and also proved 8 prosecution papers, namely, first Written Report (1st Tehrir) dated 29.10.2014 as Ext. Ka-1, second Written Report (2nd Tehrir) dated 09.12.2024 as Ext. Ka-2, Injury Report as Ext. Ka-3, Site Plain as Ext. Ka-4, place of occurrence as Ext. Ka-5, Charge-sheet as Ext. Ka-6, G.D. Entry as Ext. Ka-7 and Chik FIR as Ext. Ka-8.

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

7. By the impugned judgment dated 01.08.2025, the Court below has acquitted the accused-opposite party of the charge under Sections 364 and 308 IPC. Thus, feeling aggrieved by the aforementioned impugned judgment passed by the Court below, the present appeal has been preferred by the informant-appellant.

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

9. 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."

10. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagoada 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.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

11. 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.

12. 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.

13. 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. Informant's son Arun went missing since 4:00 pm of 29.10.2014.

ii. Informant-appellant lodged first information report under section 363 IPC in the concerned Police Station regarding missing of his son on 29.10.2014 by presenting the first written information/Tehrir (Ext. Ka-1).

iii. When the first written information/Tehrir (Ext. Ka-1) was moved by the informant, he had no suspicion on accused-opposite party Vinod. Informant's son Arun was found lying in a well at about 11:00 am on 30.10.2014.

iv. Informant-appellant moved second written information/Tehrir (Ext.Ka-2) dated 09.12.2014, naming accused-opposite party on the basis of suspicion regarding the incident dated 22.10.2014, wherein his son Arun was taken by the accused-opposite party Vinod to the river. Informant's wife objected to accused-opposite party Vinod and told Vinod not to bring her son again there.

v. The second information/Tehrir (Ext. Ka-2) was moved after one month and ten days of presenting the first information/Tehrir (Ext.Ka-1).

vi. As per the depositions of Ram Prasad the informant-appellant as PW-1 and Dr. Sanjay Bhargav as PW-4, the son of informant was discharged from the Hospital on 20.11.2014.

vii. In second information/Tehrir (Ext. Ka-2), the informant-appellant has mentioned that his wife informed him regarding his son being taken by the accused opposite party to the river on 22.10.2014, where his wife had specifically asked accused-opposite party Vinod not to bring her son again there and that is why he was suspicious of involvement of accused-opposite party Vinod in kidnapping of his son. The relationship of informant PW-1 and his wife Vimla Devi PW-2 as husband and wife is based on trust. If the informant's wife had suspected the involvement of accused-opposite party, then she should have informed to her husband on 29.10.2014 and name of accused-opposite party could have been included in the first Tehrir (Ext. Ka-1).

viii. Moreover, even in second Tehrir (Ext. Ka-2), the informant has mentioned his suspicion only on the basis of incident dated 22.10.2014, which incident was witnessed by his wife.

ix. PW-1 Ram Prasad and PW-2 Vimla Devi are not the eye-witnesses of either the incident of kidnapping or of last seen.

x. Informant's son Arun was discharged from the Hospital on 20.11.2014, but there is nothing on record that when Arun actually regained consciousness. As he has been discharged from the Hospital on 20.11.2014, therefore, he must have informed his parents about the name of the person, who committed the alleged act with him, either on regaining

consciousness or on his discharge, but second Tehrir (Ext. Ka-2) is clear that Arun did not disclose so to either of his parents.

xi. Trial Court found that the second Tehrir (Ext. Ka-2) was not written with free mind but was written on legal advice.

xii. The prosecution has failed to prove any motive on the part of the accused for committing the alleged crime.

xiii. As per prosecution story, there were two incidents, first of 20.10.2014 and second of 29.10.2014. However, as per deposition of Arun PW-3, both the incidents, which had happened with him, i.e., incident happened near the river and the incident of throwing him in a well after returning back from the river, were of the same day. If deposition of PW-3 Arun is to be believed then, both the incidents happened on the same day and if it was so, the informant/appellant must have lodged the named FIR against accused-opposite party promptly on 29.10.2014. As no one was named in the FIR, therefore, two alleged incidents cannot happen on the same day.

xiv. On the aforesaid background, PW-2 Vimla Devi told accused-opposite party Vinod for not taking his son with him ever again on 22.10.2024, but she did not take her minor son from the spot, rather left her son with opposite party Vinod, which is a suspicious circumstance.

xv. Information as disclosed in first and second Tehrirs (i.e. Ext. Ka-1 and Ext. Ka-2), is contrary to each other.

xvi. The Prosecution has miserably failed to explain the inordinate delay in naming accused opposite party in second Tehrir, i.e. Ext. Ka-2. Moreover, there is an inordinate delay in naming the accused even after discharge of the injured Arun from the Hospital on 20.11.2014 and this delay has also not been explained by the prosecution.

xvii. As per the prosecution story and the depositions of PW-1 Ram Prasad and PW-2 Vimla Devi, their son was taken out from well in their presence and prior to this, they were informed that their son Arun has been found lying in a well. Arun PW-3 in his deposition has stated that he was put in sack and thrown in a well. PW-3 Arun further stated that he was unconscious at that time. In this background, it was impossible for anyone to identify someone, who is placed in sack in an unconscious state that too in a well.

xviii. Name of person, who had informed the appellant regarding his son being found lying in a well has not come in prosecution evidence.

xix. Above facts raises serious question mark on the prosecution story and it actually destroyed the same.

xx. The prosecution has not been able to prove that accused Vinod abducted informant's son with intention to cause his death and he was put in a sack after causing injuries and thereafter thrown into well.

14. The above conclusion derived by the trial Court that the prosecution has not been able to prove it's case, is based upon due evaluation of allegations made in the first Tehrir (Ext. Ka-1) and second Tehrir (Ext. Ka-2), 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 depositions of the

prosecution witnesses 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.

15. First Tehrir (Ext. Ka-1) regarding missing of Arun, son of the informant-appellant since 4:00 pm of 29.10.2014, was registered by informant-appellant on the same day and in the said FIR, no accused was named. Informant-appellant moved second Tehrir (Ext. Ka-2) on 17.12.2014, whereby case registered under section 363 IPC was converted to under sections 364 and 308 IPC. In second Tehrir (Ext. Ka-2) the informant-appellant named accused-opposite party Vinod as an accused on the suspicion of an earlier incident, which had happened on 22.10.2014 as well as on the suspicion when accused-opposite party fled from his house after learning that Arun regained consciousness. As per the prosecution story, son of informant-appellant Arun was found with accused-opposite party Vinod on 22.10.2014 at about 6:00 pm near the river by the wife of the informant. She on the spot had specifically told accused-opposite party Vinod not to bring her son ever again. It has been specifically mentioned in second Tehrir (Ext. Ka-2) that because of this incident, the informant-appellant has suspicion from that day that his son Arun was kidnapped by accused-opposite party Vinod.

16. It is very surprising that even after the alleged incident of 22.10.2014, the informant-appellant did not name accused in first Tehrir (Ext. Ka-1), when his son Arun went missing, since 29.10.2014. It is quite probable and natural that his wife must have told about the incident of 22.10.2014 to him and in that eventuality, there was every possibility of naming of accused in first Tehrir (Ext. Ka-1), soon after getting this information from his wife. In the meanwhile, the informant's son Arun was recovered on 30.10.2014 and was taken to the Hospital. It is the case of prosecution that Arun (son of the informant) was unconscious, who was discharged from the Hospital admittedly, on 20.11.2014. It has not come on record that abductee Arun actually, when regained consciousness, but he must have been discharged from the Hospital after getting full treatment and after regaining full consciousness. Whenever Arun regained his consciousness either prior to his discharge from the Hospital or even on the date of discharge, it is quite natural and probable that he must have informed his parents about the person who had kidnapped him. But in the present case, it is not the case of prosecution that victim Arun has informed about accused-opposite party Vinod to his parents, that is why the trial Court has rightly found force in the arguments of defence that second Tehrir naming the accused-opposite party has not been written with free mind but written on legal advice, which has been aptly recorded in paragraph-25 of the impugned judgment.

17. Moreover, the trial Court has specifically recorded in paragraph-39 of the impugned judgment that if the prosecution story is to be believed, then, Arun PW-3 was thrown in a well and before throwing him in a well, he was put in a sack. It is admitted case that he was unconscious and was taken out in presence of his parents. In this background, how the informant-appellant got information prior to his son was taken out from well that his son has been recovered is a suspicious circumstance. Because a person, who is unconscious and put in sack and thereafter thrown in a well, cannot be identified by the person standing outside the well before opening of the sack. The findings so recorded by the trial Court in paragraph-39, are lawful and

are recorded after due appreciation of evidence on record.

18. Surprisingly, second Tehrir (Ext.Ka-2), which has been moved on 17.12.2014, does not find mention regarding any information received from Arun. In this background, there is an inordinate delay of 50 days in naming the accused-opposite party Vinod. Even if it is presumed that alleged abductee Arun PW-3 might have informed his parents regarding person who had committed the alleged offence with him on the date of his discharge from the Hospital, i.e. 20.11.2014, even then, there is an inordinate delay of 27 days in naming accused-opposite party. Prosecution has failed to explain the delay in naming the accused-opposite party Vinod, which raises a serious question mark on the prosecution story.

19. As per the deposition of victim Arun PW-3, the whole incident had happened on 22.10.2014, whereas as per the depositions of PW-1 Ram Prasad and PW-2 Vimla Devi, i.e. father and mother of the victim, there were two different incidents, first incident was of 22.10.2014 and second incident was of 29.10.2014. Therefore, there is a sharp contrast in the depositions of these witnesses, which raises a serious question mark on the prosecution story, therefore, the trial Court has rightly recorded in paragraph-37 of the impugned judgment that if both the above incidents have occurred on the same day, in that eventuality, the informant should have lodged the named FIR against the accused. However, the informant's failure to name accused in the FIR, proves that aforesaid two incidents did not occur in the same sequence on the same day. There is thus no perversity in the findings so recorded by the trial Court.

20. 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 Court below. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Court has not misconstrued any material evidence. 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**.

21. The present criminal appeal has been dismissed at the stage of admission after condoning the delay in filing the present criminal appeal and office has already been directed to allot regular number to this criminal appeal, which shall be so allotted for the purpose of record.

22. Consigned to record.

January 6, 2026

Monika

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