



2026:AHC:18117-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 216 of 2025

Rameshwar

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ajay Dubey
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.)

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

1. The present appeal has been filed against the judgment of acquittal dated 29.07.2025 passed by District & Sessions Judge, Agra in Sessions Trial No. 754 of 2018, arising out of Case Crime No. 543 of 2018, State vs. Banwari and another, under section 302/34 IPC, Police Station Bah, District Agra, with the delay of 49 days.
2. The informant-appellant has filed the instant delay condonation application.
3. Learned counsel for the appellant argued that the appellant is a poor person and is working as a peon (private) having a meager salary of Rs.5000/- per month. Due to financial hardship and illness of the appellant, the present criminal appeal has been filed with the delay of 49 days. The said delay is not deliberate and urged that in the financial background of the appellant, the delay in filing the present appeal be condoned.
4. The appeal in filing the present appeal has been satisfactorily explained in the affidavit accompanying the delay condonation application and the same does not seem to be deliberate one, therefore, the delay in filing the present appeal is condoned.
5. 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-parties.

2. Challenge in this Criminal Appeal is to the judgment of acquittal dated 29.07.2025 passed by District & Sessions Judge, Agra in Sessions Trial Case No. 754 of 2018, arising out of Case Crime No. 543 of 2018, (State vs. Banwari and another), under Section 302/34 IPC, Police Station Bah, District Agra, whereby accused opposite-parties Banwari and Smt. Manisha have been acquitted by Court below of the charges framed against them.

3. Brief facts of the case are that a written report (Ext. Ka-1) dated 19.10.2018 was filed in Police Station Bah by the informant-appellant stating therein that he is employed as a Collection Attendant at the office of Sub-Divisional Magistrate. On 29.08.2018, the informant-appellant was on duty at the Sub-Divisional Magistrate's residence in Agra. He usually returns home after about fifteen days. On 30.08.2018, in the morning, he received a message through Sub-Divisional Magistrate that his wife had died. Upon receiving this information, he immediately returned home from Agra and found the dead body of his wife, lying on an iron bed. Blood was there from ears and nose of his wife's dead body and some marks were also on her neck. He suspected that his wife had been murdered. However, on the advice of his neighbours, he cremated her without a post-mortem examination and without filing a report at the police station. He gradually tried to find out what had happened and came to know that on that night, two people, Banwari and Manisha, resident of his neighbourhood, had come to his house. He is fully convinced that these two people together murdered his wife. Later, he recalled that on 29.08.2018 at around 9:00 am, his wife Sunita had called him and told him that Manisha had called and asked her to prepare food for two people, as they would be having dinner at their house and that both of them had stayed at their house. He is fully convinced that these two people strangled his wife to death.

4. On the aforementioned written report (Tehrir) Ext. Ka-1 of informant-appellant, an FIR was registered on 19.10.2018 as Case Crime No. 543 of 2018, (State vs. Banwari and another), under Section 302/34 IPC, Police Station Bah, District Agra against the accused opposite parties nos. 2 and 3. Thereafter the Investigating Officer started the investigation and prepared the site plan of the place of incident and recorded the statements of the witnesses.

5. After completion of investigation, the charge-sheet was submitted against accused-opposite parties Banwari and Smt. Manisha, under Section 302/34 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 Section 302/34 IPC were framed against accused-opposite parties. 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 Rameshwar (informant), PW-2 Gaurav, PW-3 Ranveer Singh, PW-4 Constable Sanjay Kumar, PW-5 Ajay Kishore (Investigating Officer) and PW-6 Pradeep Kumar Pandey (Investigating Officer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 9 prosecution papers, namely, Written Report (Tehrir) as Ext. Ka-1, Chik FIR as Ext. Ka-2, G.D. Entry as Ext. Ka-3, Site Plain as Ext. Ka-4, I.D. of informant as Ext. Ka-5, I.D. of Banwari as Ext. Ka-6, I.D. of Manisha as Ext. Ka-7, C.D.R. as Ext. Ka-8 and Charge-sheet as Ext. Ka-9.

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 and claimed their innocence. They further stated that they have been falsely implicated.

9. By the impugned judgment dated 29.07.2025, the Court below has acquitted the accused-opposite parties of the charge under Section 302/34 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 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. However, an Appellate Court 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. Apex 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. The informant- appellant Rameshwar received information regarding death of his wife on 30.08.2018.

ii As per the written Tehrir (Ext. Ka01), the informant-appellant found dead-body of his wife lying on iron bed and also saw blood coming out from ear and nose of the body of the deceased. The informant-appellant also saw some marks on the neck of his wife. It is clearly mentioned in the written Tehrir (Ext. Ka-1) that he was suspicious that his wife has been murdered, however, he without getting post mortem of his wife, cremated her dead-body.

iii. The informant-appellant presented written Tehrir (Ext. Ka-1) on 19.10.2018 in the concerned police station for registration of the FIR against the accused Banwari and Manisha.

v. There is an inordinate delay in lodging of the FIR and there is no satisfactory reason and explanation regarding this delay.

iv 5. The informant-appellant has not lodged FIR promptly but the same was lodged after due deliberation belatedly.

vi. There is no eye witness of the incident of the murder and therefore, the present case rests on circumstantial evidence.

vii. In the written Tehrir (Ext. Ka-1), there is no mention that anyone has seen the deceased Sunita in the company of the accused opposite-parties on the date of the incident.

viii. In the aforesaid Tehrir, informant-appellant has mentioned that he came to know that accused opposite-parties Banwari and Manisha were seen in his house on the date of incident, however, there is no mention in the aforesaid Tehrir from whom, he came to know about this fact.

ix. The informant-appellant Rameshwar PW-1 in his deposition has stated that he came to know about accused Banwari visited his house on the date of incident from Gaurav PW-2 and he has later on informed him telephonically about accused Manisha.

x. Gaurav PW-2 in his deposition has not specifically stated that he saw the accused entering the house of the deceased Sunita on the date of incident.

xi. Prosecution has failed to prove that the deceased Sunita was lastly seen with accused opposite-parties or that anyone has seen accused opposite-parties Banwari and Manisha inside the house of deceased Sunita.

xii. Prosecution has failed to prove any motive behind the murder of the deceased Sunita.

xiii. There is nothing on record that anything regarding murder of the deceased or any article related to the deceased Sunita was recovered from the possession of accused opposite-parties.

xiv. C.D.R. of Mobile No. 9536913599 of accused Banwari was produced, but no certificate under section 65-B of Indian Evidence Act was produced, therefore, in the absence of same, C.D.R. produced in the Court was not found reliable.

xv. There was no post mortem of the deceased which indicate that when the informant-appellant visited the spot and then there was no blood oozing out from ear, nose of deceased and if there was any blood oozing out from ear and nose of the deceased and certain mark on the neck of the deceased, then brother-in-law of the informant-appellant Jahar Singh must have asked the informant-appellant to register the FIR. Said Jahar Singh has not been produced in the evidence, even nephew of the informant-appellant Gaurav PW-2 in his deposition has not stated anything regarding blood coming out from ear and nose of the deceased, therefore, prosecution has failed to prove that death of the deceased was a homicidal death.

14. After recording above findings, the trial Court has granted the benefit of doubt to the accused-opposite parties and thus, acquitted them of the charges framed against them.

15. 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 report (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 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.

16. 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."

17. As per the prosecution case, the wife of the informant-appellant died on 30.08.2018, however, the FIR regarding the incident was lodged on 19.10.2018. There is an inordinate delay of 50 days in lodging of the FIR. A perusal of the written report (Tehrir) Ext. Ka-1 reveals that the informant saw the dead-body of his wife lying on iron bed. The informant-appellant also saw blood coming out of ear, nose of the deceased. The informant-appellant also saw some marks on the neck of the body of his wife. The

informant-appellant in his own written Tehrir is admitting that he was suspicious that his wife has been murdered, in spite of observing aforesaid facts, he cremated his wife without any post mortem and even no information in the concerned police station was given by him regarding any suspicious facts so observed by him on 30.08.2018. This is a very suspicious circumstance in prosecution story.

18. The trial Court found that the informant-appellant Rameshwar PW-1 in his cross-examination has stated that when he came back to Bah after cremation of his wife, his maternal nephew Gaurav PW-2 told him that he had seen accused Banwari and Manisha entering his residence on 29.08.2018. This witness further stated that Gaurav PW-2 informed him about this on 12.10.2018. The trial Court found sharp contradictions in date when he receiving information regarding accused Banwari and Manish entering his house on 29.08.2018 from Gaurav.

19. The trial Court found that at one place the informant stated that he returned to Bah after performing last rites of his wife and at another place, this witness stated that he returned to Bah after *Terhvi* and lastly stated that he returned on 12.10.2018. Even for the sake of argument, if it is believed that the informant returned on 12.10.2018 and was informed by Gaurav PW-2 regarding accused Banwari and Manisha, still there is an inordinate delay of seven days in lodging of the FIR. No satisfactory explanation has been given regarding this delay in lodging the FIR.

20. We have carefully perused the impugned judgment. The informant-appellant in his written Tehrir (Ext. Ka-1) himself has narrated several suspicious circumstances, which were sufficient for lodging an FIR. Therefore, in our considered opinion, there is an unexplained inordinate delay of about 50 days in lodging of the FIR and even if, the informant-appellant's deposition is believed that he received information regarding accused Banwari and Manisha only on 12.10.2018, still there is an inordinate delay of seven days in lodging of the FIR. There is no justifiable explanation whatsoever to the delay so caused in lodging of the FIR. This inordinate delay itself makes the prosecution story doubtful.

21. 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 50 days in lodging of the FIR against the accused-opposite parties. In our considered opinion, this unexplained inordinate delay of 50 days in lodging of the FIR, makes the prosecution story doubtful.

22. Admittedly, none of the witness of fact examined by the prosecution is the eye witness of the incident of murder and, therefore, the present case is based on circumstantial evidence. Admittedly, there is no evidence on record which indicates that the deceased was lastly seen in the company of the accused.

23. Gaurav PW-2 in his deposition has stated that he saw accused Banwari and Manisha on 29.08.2018 while talking. This witness further stated that he saw Manisha and Banwari visiting the deceased. However, PW-2 has not specifically stated that he saw accused Manisha and Banwari entering the residence of the deceased in the night of the date of the incident. Trial Court after careful analysis of deposition of this witness, found that this witness has not specifically stated that he saw the accused Banwari and Manisha entering the house of the deceased on the date of the incident. Therefore, the trial Court came to the conclusion that the prosecution has failed to prove that accused Banari and Manisha were lastly seen either with deceased Sunita or entered deceased's house.

24. The alleged motive of murder was that the deceased came to know about illicit relationship between accused Banwari and Manisha and that is why accused have committed the murder of the deceased. However, the trial Court recorded the finding that as per the deposition of informant-appellant Rameshwar PW-1 and Gaurav PW-2, it is not clear that the deceased Sunita ever told them regarding the illicit relationship of accused Banwari and Manisha and that she was apprehending her murder by accused. The prosecution has not adduced any witness to prove the illicit relationship of accused Banwari with accused Manisha. The prosecution has also not

adduced any evidence that the deceased Sunita ever opposed the alleged illicit relationship because of which, the accused might have threatened to kill. Therefore, in our considered opinion the prosecution has failed to prove the alleged motive.

25. In the present case, there is nothing on record that anything related to the murder of the deceased Sunita was recovered from any of the accused or was recovered on the pointing out of any of the accused. The alleged confession made by the accused is a confession made before the police, which is inadmissible in evidence and, therefore, cannot be relied upon.

26. In the present case, there is no last seen evidence, there is no motive behind the murder and even there is no recovery from the accused. There is an inordinate delay in lodging the FIR. Prosecution has failed to prove time and cause of death of deceased. Only evidence left is CDR. The prosecution has placed on record of trial Court CDR of Mobile No. 9536913599 of accused Banwari and Mobile No. 8392830278 of accused Manisha and Mobile No. 8954480595 of deceased Sunita. No certificate under section 65-B of the Indian Evidence Act was produced before the trial Court, therefore, trial Court rightly recorded its conclusion that the aforesaid CDRs are not reliable. The prosecution has failed to prove the important link of chain of circumstantial evidence i.e. "fact of last seen". The prosecution has also failed to prove other important links i.e. motive, cause and time of death and any recovery. In this background unexplained delay of 50 days in lodging FIR is fatal to prosecution story.

27. Apex Court in the case of "**Bhaskarrao and others Vs. State of Maharashtra**", (2018) 6 SCC 591 has observed in Paragraph Nos. 14,15, and 23 as under:-

*"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987 Cri LJ 974.***

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW 6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach conclusion different from the one recorded by the learned Sessions Judge.

This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse.

Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat, 1996 CriLJ 2867*, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

*"23. Before we proceed to analysis of the case, we must first focus on the aspect concerning the standard the High Court has to apply, while hearing a case against an acquittal order of the trial court. In the case on hand, the trial court, followed by a fullfledged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case the appellate Court is further burdened with the task of reaffirming the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is called for only when there are compelling reasons and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons (refer *Surajpal Singh & Ors. v. The State, 1952 Cri LJ 331*)".*

28. Keeping in view the above referred discussion and the law laid down by Supreme Court, it can be safely concluded that the impugned judgment of trial Court is based on sound reasons. 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. Being the last Court of fact, we have

ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has 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**.

29. 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.

30. The file be consigned to record after certifying the judgment of this Court to the trial Court.

January 27, 2026
Monika

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