



2026:AHC:64998-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 181 of 2026

Bhura Sahu

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Devi Dayal
Counsel for Respondent(s)	:	G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.

HON'BLE DEVENDRA SINGH-I, J.

The present appeal under Section 413 BNSS has been filed by the father of the person allegedly murdered and against the judgment and order dated 04.02.2026 passed by Session Judge, Hamirpur acquitting the accused in Session Trial No.43 of 2019 (State of U.P. vs. Ajay Tiwari and Anr.) under Sections 302, 34, 201 I.P.C., P.S. Sumerpur, District Hamirpur acquitting the accused/opposite party nos.2 & 3 arising out of Case Crime No.0482 of 2018 P.S. Sumerpur, District Hamirpur.

The opposite party no. 3 in the present appeal is the daughter-in-law of the appellant and the wife of the person allegedly murdered.

On 03.11.2018, an application was filed by one Aditya Kumar Sahu to the Station House Officer, Police Station Sumerpur, informing that Dev Narayan Sahu (hereinafter referred to as 'the deceased') was found dead at 9:00 a.m. in a room at his home. The dead body was found hanging by *saree* from the roof and the legs of the deceased were bent and resting on the charpoy. The application was marked in the trial court as Exhibit Ka-6.

The inquest was done by the Sub-Inspector Narendra Yadav on the same date at 5:40 p.m. The dead body remained hanging from the roof and in the position narrated in the application dated 03.11.2018, till 5:40 p.m., when the inquest was done as noted above. After the inquest, the body was sent for post-mortem and the post-mortem report noted that a ligature mark of 8 cm x 2 cm was found on the right side of the neck, 4 cm below the right ear and 5 cm below the chin. There was a gap of 22 cm in the neck. The Groove was

light and ecchymosis was present when the ligature mark was cut. The opinion of the doctor who conducted the autopsy was that death had occurred due to asphyxia caused by strangulation and death had occurred two days before the autopsy.

On 16.11.2018, the appellant filed another application before the Superintendent of Police, Hamirpur, alleging that at 10 p.m. on 02.11.2018, the opposite party nos. 2 and 3, accompanied by Rajesh, threatened the appellant that he and his son, i.e., the deceased, shall be killed if they try to take over or appropriate the house where the opposite party no. 3 was living. The appellant pleaded with the aforesaid persons to spare them. The tiff allegedly happened when the appellant was returning from his rented accommodation along with his son. After the accused and Rajesh left, the appellant dropped his son at his home and went back to sleep in his rented house. It was further stated in the application that when at 7 a.m. on 03.11.2018, the wife of the appellant, i.e., the mother of the deceased, went to wake up the deceased, she saw the dead body of the deceased hanging from the roof of his room. The appellant alleged in the application that the opposite party no. 3, who was the wife of the deceased, was a woman of loose character and was having extramarital affair with the opposite party no. 2. In the application dated 16.11.2018, the appellant suspected that the accused along with Rajesh had murdered the deceased in a pre-planned manner.

On the application of the appellant, Case Crime No. 482 of 2018 under Sections 302 read with Section 34 and 201 IPC was registered against opposite party nos. 2 and 3. Subsequently, a charge sheet was filed in the case under the aforesaid sections. The charge sheet did not include Rajesh as accused because the call detail records of Rajesh collected by the Investigating Officer showed that Rajesh was not present at the place alleged by the appellant in his application dated 16.11.2018. The opposite party nos. 2 and 3 were accused in the charge sheet. The matter was committed for trial before the session court and Session Trial No. 43 of 2019 was registered before the Session Judge, Hamirpur under Sections 302 read with Section 34 and 201 IPC. The accused denied the charges and demanded trial.

The defence of the accused, as given in their explanation under section 313

Cr.P.C., was that so far as the opposite party no. 2 was concerned, he did not have any extramarital affair with the opposite party no. 3 and was being implicated only because he helped the opposite party no. 3 because of his friendship with Rajesh, the suspect who was not included in the charge sheet by the Investigating Officer. In her statement under section 313 Cr.P.C., the opposite party no. 3, who is the widow of the deceased, denied the allegations of extramarital affair and also stated that the appellant had implicated her only to deprive her and her sons from their share in the property of the deceased. In her statement under section 313 Cr.P.C., the accused stated that the appellant had sold many properties in which the deceased had a share and appropriated the whole sale amount to himself, which led to litigations between the family of the accused and the appellant. It was also stated that Case Crime No. 85 of 2019 under Section 399/504/506 IPC was registered against the appellant and his son-in-law as well as the wife of the appellant at the instance of father of the accused. It has also been stated in her explanation under Section 313 Cr.P.C., that the sale dated 19.07.2019 executed by the appellant has also been challenged by the accused before the civil court and further the minor children of the accused and the deceased have filed a suit against the appellant under Section 18 of the Hindu Adoption and Maintenance Act in the family court, which is pending before the Principal Judge. It has been stated that the appellant had implicated the accused because of the bitterness and enmity caused by the aforesaid litigations.

The prosecution examined the appellant as PW-1 and one Santosh, who claimed himself to be the maternal uncle of the deceased, as PW-2. The doctor who conducted the autopsy was examined as PW-3. The FIR writer was examined as PW-4 and the Sub-Inspector posted at the police station on 03.11.2018 was examined as PW-5. The Sub-Inspector posted at police station on 20.11.2018 was examined as PW-6.

The trial court rejected the prosecution case after noting major contradictions in the testimony of PW-1 and PW-2 and held the aforesaid witnesses as unreliable.

The noticeable features of the prosecution evidence which prevailed on the trial court to acquit the accused are as follows:-

- The first information report was registered on 16.11.2018. The incident happened in the night of 02.11.2018 and the dead body was allegedly found in the morning of 03.11.2018. The trial court has held that the delay in lodging the first information report had not been satisfactorily explained. The claim of the appellant, who is the first informant, that he had gone to lodge first information report on 03.11.2018 itself but the same was not registered by the police personnel posted at the concerned police station has not been accepted by the trial court after noticing that the application dated 03.11.2018 filed by one Aditya Kumar Sahu and marked as Exhibit Ka-6 in the trial court does not contain the facts stated in the application dated 16.11.2018.
- The application dated 03.11.2018 does not name the accused as suspect and the application also does not contain any recital regarding the tiff that allegedly took place in the night of 02.11.2018 between the appellant and the accused accompanied by Rajesh.
- In his testimony PW-1, the appellant stated that he had gone to the police station at 10 a.m. on 03.11.2018 itself after his son was found dead and Exhibit Ka-6 was filed at his instance by one Aditya Kumar Sahu but still, the application does not contain the facts stated in the first information report dated 16.11.2018. The trial court has also taken note of the fact that in their testimony, the FIR writer and the Investigating Officer of the case who were examined as prosecution witnesses denied that the appellant had met them between 03.11.2018 and 21.11.2018.
- In his testimony, PW-2 stated that he saw the accused and Ajay Tiwari going towards the house where the deceased was found dead while the witness was returning from the home of the appellant. The trial court has held PW-2 to be a chance witness and PW-2 could not prove his presence on the spot.
- The trial court has also taken note of the contradictions in the statements of PW-2 and PW-1. In his testimony, PW-1 stated that the witness along with the deceased was returning from his rented accommodation towards the home of the deceased at 10 p.m. in the night of 02.11.2018. On the other hand, PW-2 has stated in his cross-examination that he was at the home of his sister, i.e., the mother of the deceased and had taken dinner with the appellant and the mother of the

deceased. In his cross-examination, the witness has further stated that at that time the deceased was not at the home of the appellant. In his cross-examination, the witness has further stated that he remained at the home of the appellant in the night till 11:00 p.m. The aforesaid statement of PW-2, apparently, contradicts the testimony of PW-1 that the deceased had taken dinner with the appellant at his home in the night on 02.11.2018 and an altercation took place between the accused and the appellant while the appellant accompanied the deceased when the deceased was returning to his home after taking dinner with the appellant. The trial court has also held PW-2 to be an unreliable witness because the witness avoided to answer many important and relevant questions. PW-2 claimed himself to be the maternal uncle of the deceased but at the same time failed to recognize Satya Narayan who was the son-in-law of the appellant. It also comes out from the judgment of the trial court that a case of dacoity was registered by the father of the opposite party no. 3, against the appellant, the mother of the deceased, son-in-law of the appellant and the son of PW-2 who had got his son released on bail.

- The trial court has also taken note of the fact that in his testimony, PW-2 stated that his statement under Section 161 Cr.P.C. was recorded by the Investigating Officer four to five days after the incident even though, the records disclosed that the statement of the witness under Section 161 Cr.P.C. was recorded on 19.11.2018.
- The trial court has also noted other inconsistencies and apparent falsities in the testimony of PW-2 to hold that the witness was not reliable and could not be depended upon to convict the accused.
- While rejecting the prosecution case, the trial court noted that in the first information report registered at the instance of the appellant, Rajesh has been named as an active participant in the threat given to the appellant and his son, i.e., the deceased. During investigation, the Investigating Officer, on the basis of the call detail records of Rajesh, found that he was not present at the place referred by the appellant in the first information report.
- It is the admitted case of the prosecution that the dead body was found hanging from the roof in the morning of 03.11.2018. It is the case of the prosecution that the inquest was done at 5:40 p.m. on 03.11.2018.

The trial court has found it to be improbable that the dead body would have remained hanging and the family members would not have taken it down for such a long time. The trial court has also taken note of the fact that the deceased was being treated for mental problems and that no recovery memo was prepared of the *saree*, i.e., the cloth used for hanging.

- The other noticeable feature in the prosecution evidence which has been considered by the trial court while rejecting the prosecution case is that Sahodara Devi, the mother of the deceased was stated to have first seen the dead body of the deceased. In his testimony, PW-1 stated that when Sahodara Devi, i.e., the mother of the deceased went into the room of the deceased to wake him up at 7:00 a.m. on 03.11.2018, she found the dead body of the deceased. Sahodara Devi was a material witness in the case, but was not examined by the prosecution. The failure of the prosecution to examine Sahodara Devi as a witness also gives rise to an adverse presumption that Sahodara Devi would not have supported the prosecution case if she had been examined as a prosecution witness.
- The motive attributed by the prosecution to the accused for killing the deceased was that the accused, i.e., the opposite party nos. 2 and 3 were in illicit relationship and the opposite party no. 3 was a woman of loose character. The prosecution failed to produce any evidence in support of the aforesaid claim. The motive propounded by the prosecution as well as the reported tiff between the parties wherein the opposite parties accompanied by Rajesh had allegedly threatened the appellant and his son were not proved. The only evidence regarding the character and the affair of the opposite party no. 3 is the testimony of PW-1 which is also a hearsay evidence and was inadmissible inasmuch as in his testimony, PW-1 had stated that he had come to know that the opposite party no. 2 was the lover of opposite party no. 3. In any case, the aforesaid testimony, by itself, would not be sufficient to accept the motive imputed by the prosecution to the accused for committing the crime.
- The trial court has also rejected the testimony of the doctor who

conducted the autopsy and has refused to accept the opinion of the doctor that death had taken place due to asphyxia caused by strangulation. We do not make any observations on the aforesaid findings of the trial court. Even if the findings of the trial court on the aforesaid ground are not accepted, the same would not be sufficient to convict the accused as there is no evidence to connect the accused with the crime. The mere fact that the death was homicidal in nature would not be sufficient to implicate the accused and the accused cannot be convicted on mere suspicion.

- The evidence referred above would show that there is no evidence of the accused being last seen with the deceased or near the deceased, at the house of the deceased or either entering or going out from the home of the deceased.

The above-mentioned shortcomings in the prosecution evidence prevailed upon the trial court to reject the prosecution case. The judgment of the trial court is based on evidence on record and the view taken by the trial court is a reasonable view which does not require any interference.

We do not find any illegality or perversity in the assessment of evidence by the trial court. No grounds either of fact or law or regarding assessment of evidence by the trial court arise in the present appeal.

For all the aforesaid reasons, the appeal is ***dismissed*** summarily.

Let the file be consigned to records after certifying a copy of the present judgment to the trial court.

(Devendra Singh-I,J.) (Salil Kumar Rai,J.)

March 26, 2026

Vipasha