



2026:AHC:64603-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 185 of 2026

Brijesh Kumar

.....Appellant(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ajay Tripathi, Surya Prakash Pandey
Counsel for Respondent(s)	:	G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DEVENDRA SINGH-I, J.**

Heard the counsel for the appellant and the A.G.A. for the State.

The present appeal under Section 413 B.N.S.S. has been filed against the judgment and order dated 07.02.2026 passed by the Additional District & Sessions Judge - IV, Gautam Budh Nagar in Session Trial No. 568 of 2012 (State of U.P. vs. Narendra Kumar & Others) arising out of Case Crime No. 324 of 2012 and registered under Sections 302/149, 201 IPC, Police Station Phase-II Noida, District Gautam Budh Nagar. Through the aforesaid judgment, the trial court has acquitted the accused / opposite parties.

The prosecution case, in short, is that on 4.7.2012, the dead body of Lokesh (hereinafter referred to as, 'the deceased') was found on the banks of a canal. The deceased was missing since 2.7.2012. The case as narrated in the first information report is that the deceased had gone to his travel agency at 10:30 am on 2.7.2012 and Kuldeep and Praveen Kumar, who are the cousin of the deceased and the first informant had last seen the deceased with the accused. It is the case of the prosecution that the deceased was murdered by the accused because he had Rs.1,20,000/- in his possession which was given to him by his wife before he went to the travel agency.

The first informant report was lodged by the brother of the deceased on 8.7.2012 registering Case Crime No. 324 of 2012 under Sections 302/149, 201 IPC. In the inquest report, the opinion of the *Panch* was that the deceased was made to consume poison mixed in alcohol and was strangulated to death and the dead body was thrown in the canal. The body was sent for autopsy and the post mortem report indicated the following

injuries on the body of the deceased : -

"1. A contusion measuring 6cm x 4cm was present on the right side of the head, located 3 cm posterior to the right ear upon opening the skull, a linear fracture of the parietal bone (among other injuries) was observed; the bone had been depressed and driven into the brain tissue. The brain itself was in a liquefied state.

2. A contusion measuring 8 cm x 6 cm was present on the left temporal, situated directly above the left ear upon opening the skull, fractures of the underlying left temporal and left parietal bones were observed.

3. Contusion (14 cm x 12 cm): upon incision of upper chest and the entire neck region, a subcutaneous accumulation of blood was observed. The cervical spine was fractured, the upper rings of the trachea were broken, and the trachea itself was filled with clotted blood.

4. Contusion (4 cm x 3 cm): located on the posterior and lateral aspect of the left arm, the meninges had become liquefied; the brain tissue appeared soft and grayish in colour. The trachea was congested. Both lungs appeared pale; the pericardium and the heart itself were pale in colour and devoid of blood. The tongue was protruding from the mouth. The stomach contained 10 ml of semi-liquid, partially digested food. The liver was jaundiced and the gall bladder was half-filled. The pancreas, spleen, and the kidneys appeared pale, and the urinary bladder was half-filled."

The post mortem report notes that the cause of death was due to shock hemorrhage and asphyxia as a result of ante mortem injuries.

It has also been noted in the post mortem report that the death had occurred 2 to 3 days before the post mortem.

After investigation, a charge-sheet was filed against the accused under Sections 302, 201 IPC and the matter was committed for trial to the session court. Session Trial No. 568 of 2012 was registered before the Additional District & Sessions Judge - IV, Gautam Budh Nagar. The accused denied the charges and demanded trial.

The foundation of the prosecution case was that Kuldeep and Praveen Kumar, who were the cousin of the deceased and were examined as PW-2 and PW-3 by the prosecution, had last seen the deceased with the accused on 2.7.2012. The time of death as noted in the post mortem report correlates with the time at which the witness had last seen the deceased with the accused. The other evidence by the prosecution to support its case against the accused was the recovery of the vehicle of the deceased and his clothes

and also the stone which was allegedly used by the accused while committing the crime. The recoveries were allegedly made on the disclosure of the accused. It is the case of the prosecution that the accused had hit the deceased with the stone killing him and had thrown the body of the deceased in the canal. The motive for the offence alleged by the prosecution is robbery of Rs.1,20,000/- which was in possession of the deceased.

A perusal of the judgment of the trial court shows that in the first information report, the first informant has stated that Kuldeep had last seen the deceased with the accused on 2.7.2012 at 10:30 am. However, in their testimony, Kuldeep who was examined as PW-2 and Praveen who was examined as PW-3, have stated that they had not disclosed the said fact to the first informant, i.e., PW-1 by the time the first information report was registered. PW-2 and PW-3 in their testimony before the trial court have stated that they disclosed the aforesaid fact to the first informant after the first information report was registered. The first informant who was examined as PW-1 has also admitted before the trial court that the first information report was registered after due deliberations and considerations with the relatives regarding the manner in which death had occurred or the crime was committed. Apparently, there are major contradictions between the testimony of PW-1, PW-2 and PW-3 and the testimony of PW-1 itself raises doubt on the prosecution case. It is also noted that the first information report was lodged four days after the dead body was found. The first information report has not been promptly lodged and there is no plausible explanation from PW-1 regarding the delay in registering the first information report.

The motive alleged by the prosecution to implicate the accused was a robbery of Rs.1,20,000/- in the possession of the deceased. No evidence has been produced to prove that the deceased had Rs.1,20,000/- with him at the time the crime was committed. It comes in the evidence of the prosecution witness that the said amount was given to the deceased by his wife. However, the wife of the deceased was not examined as a witness though PW-1 has stated that the said amount was given to the deceased by his wife in his presence. However, the best evidence to prove the said fact was not produced by the prosecution.

So far as the evidence regarding recovery of allegedly incriminating materials is concerned, the same is also not beyond doubt. The clothes of the

deceased recovered from the vehicle of the deceased and at the instance of Narendra Kumar, i.e., opposite party no. 1 do not contain any human blood. The clothes were not sent for forensic examination. The stone which was also recovered allegedly on the disclosure of the accused was also not sent for forensic examination to ascertain as to whether it contained human blood. The physical description of the stone as narrated in the testimony of the Investigating Officer, i.e., PW-6 also does not inspire confidence that the stone had human blood on it. Further, the recovery has been made from a public place. The aforesaid again raises doubt regarding the evidence produced by the prosecution to implicate the accused.

The concerned doctor who had proved the autopsy report, admitted in his evidence before the trial court that the injuries on the body of the deceased could also be caused because if any person with an intention to swim or bathe, jumps in the canal from a height of 5 to 10 ft. In that view of the matter, the injuries on the body of the deceased do not without any other evidence be relied upon to hold that the death was homicidal in nature or to convict the accused.

It is also in evidence that there was some bitterness between the parties regarding partition of ancestral property relating to which the ancestors of the deceased were in litigation though the litigation had ended almost 15 to 16 years before the incident. However, the said fact has been brought on record by the prosecution to prove motive in the accused to commit the crime. The said motive can also be a reason for false implication of the accused. Suspicion by itself would not be sufficient to convict the accused.

The aforesaid shows that the last seen fact has not been proved by the prosecution. The prosecution could not beyond doubt prove that the death was homicidal in nature. The prosecution has not been able to prove the motive for the accused to commit the crime. There is a probability that the first information report was registered only on suspicion after due deliberations and considerations. The recovery allegedly made by the police on the disclosure of the accused is suspect and not reliable. The case against the accused as set up by the prosecution is based on circumstantial evidence. The prosecution has not been able to prove a single circumstance conclusively against the accused.

The trial court after considering the aforesaid shortcomings in the

prosecution case held that the prosecution had not been able to prove beyond doubt its case against the accused and has rejected the prosecution case and acquitted the accused.

We do not find any perversity or any other illegality in the assessment of evidence by the trial court. The view taken by the trial court is a plausible view and is based on evidence. 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, we do not consider it a case to re-assess the evidence at the instance of the appellant after summoning the records of the case.

The appeal is ***dismissed*** summarily.

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

March 28, 2026
Satyam

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