



2026:AHC:57774-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 47 of 2026

Rampal

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Anil Kumar Mishra
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 2026)

The present appeal under Section 413 B.N.S.S. has been filed challenging the order of acquittal dated 29.9.2025 passed by the Additional Session Judge, Court No. 12, Meerut in Session Trial No. 1211 of 2010 arising out of Case Crime No. 281 of 2003, under Sections 302, 201 IPC, Police Station Inchauli, District Meerut as well as Session Trial No. 141 of 2025 and Session Trial No. 284 of 2025 arising out of Case Crime No. 104 of 2004, under Section 4/25 Arms Act, Police Station Inchauli, District Meerut .

The appeal has been filed beyond time by 58 days.

The delay has been satisfactorily explained in the affidavit filed in support of the delay condonation application.

The delay condonation application is allowed.

The delay in filing the appeal is, hereby, condoned.

Office to allot regular number to the appeal.

Order on appeal

The prosecution case as narrated in the first information report was that at about 08:00 a.m. on 09.11.2003, Rakesh, i.e., the deceased had gone to Tohfapur village to bring bottle gourd. However, when he did not return till 13.11.2003, a missing person report was lodged on 13.11.2003. On

14.11.2003, the dead body of the deceased was found in the field of Dharam Pal Yadav. The first information report registering Case Crime No. 281 of 2003 was lodged by the first informant under Sections 302, 201 IPC on 14.11.2003 against Harishchand s/o Nunnu, Savitri Devi w/o Harishchand and Hukmi s/o Nunnu by the first informant. The aforesaid persons were named as suspect and it was stated in the first information report that the aforesaid persons had demanded Rs.2,500/- from the deceased to get the brother-in-law of Harishchand released from jail but the deceased had refused, therefore, the aforesaid persons had killed the deceased. The first information report was lodged by Ram Pal, the brother of the deceased. Subsequently, the prosecution claims that the weapon of crime, i.e., a knife, was recovered on the disclosure of Kirni @ Kiran Pal, i.e., opposite party no. 2 and subsequently, Case Crime No. 104 of 2004, under Section 4/25 Arms Act was also registered against the opposite party no. 2.

The inquest was prepared and the body was sent for autopsy. The post mortem conducted on 15.11.2003 noted that there were lacerated wounds of 15x10 cm bone deep on the neck of the deceased. The body was also in a decomposed state and the opinion of the concerned doctor was that the death had occurred 3 to 5 days before the post mortem. The post mortem report was proved by the doctor who was examined by the prosecution as PW-4.

A charge-sheet was filed against the opposite parties and the matter was committed for trial to the session court whereupon Session Trial No. 141 of 2025 under Sections 302/201 IPC and Session Trial No. 284 of 2025 under Sections 4/25 Arms Act were registered against the opposite parties. Hukmi and Savitri Devi were excluded from the charge-sheet. The opposite parties denied the charges and elected for trial.

The prosecution case, in short, was based on the evidence that the accused were last seen with the deceased on 9.11.2003 by the prosecution witnesses, there was an extra judicial confession of the accused before PW-6 and PW-5, the weapon of crime was recovered on the disclosure of opposite party no. 2 and the accused had a motive to murder the deceased.

The trial court after disbelieving the evidence of the prosecution held that the prosecution had failed to prove its case beyond doubt, therefore, acquitted the accused / opposite parties. Hence, the present appeal under

Section 413 B.N.S.S. by the first informant who is also the brother of the deceased.

So far as the claim of the prosecution that the accused were last seen with the deceased on 9.11.2003 is concerned, the prosecution examined PW-7, PW-10 and PW-2 to prove the aforesaid fact. The trial court has rejected the testimony of PW-7 and PW-10 on the ground that there were many major contradictions in their testimony and further, there appears to be embellishments and improvements in the testimony of PW-7 and PW-10. PW-7 is the brother-in-law of the deceased. In his testimony, the witness stated that he had seen the deceased in the company of Hukmi, Harishchand, Kiran Pal and Savitri Devi (wife of Harishchand) on 9.11.2003 at around 10:00 am. It has been stated by the witness that he had disclosed the fact to Bhure four days after having seen the accused with the deceased. Bhure is the brother of the deceased and was examined as PW-2 during the trial. It has also been stated by the witness that he along with Bhure had gone to the house of the accused and Savitri Devi as well as Hukmi but the aforesaid persons were not found at their home. In her testimony, PW-10, who is the sister of the deceased, stated that she had seen the deceased in the company of the accused as well as Hukmi and Savitri Devi at about 08:00 am on 9.11.2003. The witness has also stated that she informed Ram Pal about the said fact on the next day.

In his testimony, PW-2 stated that he was told by Ami Chand that Ami Chand had seen the deceased with the accused as well as Hukmi and Savitri Devi.

It be noted that Ami Chand was not produced as witness in the case. It be also noted that Harishchand and Hukmi were not charged by the trial court and no charge-sheet was filed against Hukmi and Savitri Devi. The trial court has disbelieved the testimony of PW-7 and PW-10 on the ground that both the witnesses have given different times when they last saw the deceased with the accused on 9.11.2003. Further, the testimony of the witnesses also shows that they had told the brothers of the deceased, i.e, the first informant and PW-2 that the deceased was last seen by them with the accused on 9.11.2003. The information was given before the missing person report or the FIR was lodged. However, the missing person report lodged on 13.11.2003 and the first information report registered on 14.11.2003 do not state the aforesaid fact even though, according to the testimony of PW-7, the first informant had on the information of PW-7, gone to the house of the accused while searching

for the deceased. Further, PW-10, who is the sister of the deceased, had not disclosed the aforesaid information to the Investigating Officer in her statement recorded under Section 161 Cr.P.C. The trial court after noting the aforesaid fact and also the fact that the first information report and the missing person report does not state the aforesaid fact has disbelieved the evidence of the witness regarding their claim that they had last seen the deceased in the company of the accused on 9.11.2003. Apart from the aforesaid, the trial court has rejected the '*last seen*' evidence on the ground that the post mortem report disclosed that death had occurred 3 to 5 days before the date of post mortem. The autopsy was conducted on 15.11.2003. It is claimed by the prosecution witness that the deceased was last seen by them in the company of the accused on 9.11.2003. According to the autopsy report, the death must have occurred at the earliest by 10.11.2003 which is at least 24 hours after the prosecution witness claimed to have seen the deceased with the accused. The aforesaid makes the claim of the last seen by the prosecution suspicious and the trial court has rightly not relied on the same to convict the accused.

So far as the claim of the prosecution that the accused had confessed their crime before PW-6 is concerned, the same can also not be relied to implicate the accused. In his testimony, PW-6 stated that the accused had confessed their crime before PW-6 and has also stated that PW-5 was present when the accused confessed their crime before PW-6. In his testimony, PW-5 has not proved the alleged confession by the accused and has denied that he had accepted before the Investigating Officer the said fact while his statement under Section 161 Cr.P.C. was being recorded by the Investigating Officer. The trial court has rightly refused to rely on the testimony of PW-6 to believe the prosecution case.

So far as the recovery of the weapon of crime is concerned, it is evident from the judgment of the trial court that the alleged recovery was made four months after the incident. The recovery has been proved by PW-8 but has not been corroborated by PW-2 who is also a witness to the recovery memo. In his testimony, PW-8 has stated that PW-2 was located on the spot when he was coming on a bicycle and had not gone to the place of recovery in the jeep of the witness who is a police officer. The said fact is inconsistent with the testimony of PW-2 who states that he had gone on the spot in the vehicle of PW-8. The recovered weapon was not sent for examination to FSL and apart from the disclosure statement of the accused / opposite party no. 2, there is nothing else on record to show that the weapon recovered by the police was used in the crime. PW-2 also

pleads ignorance as to whether the weapon recovered was made of iron or brass. PW-2 has also stated in his testimony that he had signed the recovery memo without the recovery memo having been read over to him. It is also noticeable that specimen seal was not prepared after the weapon was allegedly recovered on the disclosure of opposite party no. 2 which was sealed by the Investigating Officer. No specimen seal was available on the records of the case.

So far as motive is concerned, the trial court has also disbelieved the testimony of the witness on the aforesaid ground. As noted earlier, Savitri Devi has not been charged and no charge-sheet was filed in the aforesaid case.

The shortcomings in the prosecution case as noted above clearly show that it was not safe to convict the accused on the basis of the evidence examined by the prosecution. We do not find any perversity or any other illegality 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, 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 allotting regular number to the appeal and after certifying a copy of the present judgment to the trial court.

March 20, 2026
Satyam

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