



2026:AHC:59046-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 50 of 2026

Sonu

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Anand Pati Tiwari
Counsel for Respondent(s)	:	G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DEVENDRA SINGH-I, 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 09.12.2025 passed by Additional Sessions Judge/F.T.C.2, Auraiya, in Session Trial No.149 of 2014, arising out of Case Crime No.277 of 2013, Under Section 302 I.P.C., Police Station-Dibiyapur, District-Auraiya.

The appeal has been filed beyond time by 7 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, in short, is that the accused was the tenant of Malika (the deceased) and was demanding money and jewellery from the deceased. When the deceased did not accede to the demands of the accused, the accused killed her by poisoning her. The incident happened on 18.08.2013. The first information report was registered on 27.09.2013 by the son of the deceased. It is noticeable that the first information report does not refer to

poisoning of the deceased by the accused. The first information report states that the accused, along with certain other persons, was forcibly taking the deceased somewhere, which act of the accused was witnessed by Naresh Chandra and Hukum Singh Yadav and other persons.

After the first information report was registered, Inquest report was prepared and the dead body was sent for post-mortem. Autopsy on the body of deceased was conducted on 19.08.2013 and Viscera was preserved. The Viscera report was received on 21.02.2014 disclosing that the deceased had consumed Aluminium Phosphate.

On the first information report, a charge sheet was filed against the accused under Section 302 IPC and the case was committed for trial to the sessions court. The sessions court charged the accused under Section 302 IPC. The accused denied the charges and demanded trial.

The prosecution examined eleven witnesses to prove its case.

The first informant, who is the son of the deceased, was examined as PW-1. The daughter of the deceased was examined as PW-3 and a distant relative, Mamta Devi, was examined as PW-2. The sister-in-law of the deceased was examined as PW-5. One Sanjay, who claims to be an eye-witness to the accused taking the deceased in his vehicle, was examined as PW-4. The doctor who conducted the autopsy was examined as PW-6. Different investigating officers were examined as PW-7, PW-8, PW-9, and PW-11. The Head Constable, who is a witness to the inquest, was examined as PW-10.

It is the admitted case of the prosecution that PW-1 who is the son of the deceased and the first informant and PW-3 who is the daughter of the deceased were in Mumbai on the date of incident.

In his testimony, PW-1 stated that he was informed about the death of his mother by his maternal uncle Patiram by phone on 18.08.2013 itself. PW-1 stated that Patiram told the witness that the accused had poisoned the deceased and killed her. The witness as well as PW-3 reached Auraiya, i.e., the place of crime on 19.08.2013 and were told by Hukum Singh and Naresh Chandra Shukla, the neighbours of the deceased that the accused had beaten the deceased two to three days before the incident. On being brought to the hospital, the deceased was declared dead by the doctors.

PW-2, who claims herself to be the distant relative of the deceased stated in her testimony that on 18.08.2013, she had gone to meet the deceased at her house where the witness saw that the accused and some other persons were forcing the deceased to drink what they claimed was a medicine prescribed by the doctor. It has been stated by the witness that Geeta, who is also a relative of the deceased, accompanied the witness on the said date and was also a witness to the said incident. It has been further stated by the witness that she had given an affidavit to the Investigating Officer on 18.08.2013 itself stating that the accused had poisoned the deceased. In her cross-examination, the witness stated that the affidavit was prepared by an advocate. It has been further stated by the witness that she did not disclose the aforesaid incident to the first informant and the daughter of the deceased.

PW-3, who is the daughter of the deceased, stated in her testimony stated that the accused had forced the deceased to sell a plot owned by the deceased and was continuously demanding money and jewelries from the deceased. It has been stated by the witness that the said fact was disclosed to her by the deceased. In her testimony, the witness also stated that Naresh Chandra and Hukum Singh had informed the witness that the accused had assaulted the deceased two to three days before the incident.

In her testimony, PW-4 who was a neighbor of the deceased, stated that the accused used to harass the deceased for money and jewelries and wanted to grab the property of the deceased. It has also been stated by the witness that the accused was not vacating the premises despite the deceased, asking him to vacate the premises and wanted to grab the premises in which he was a tenant. The witness further stated that at 12 p.m. on 18.08.2013, he was talking to Naresh Chandra Shukla when he saw that the accused along with his friends was forcibly taking the deceased in a Bolero car and when they chased the accused, the accused stopped the vehicle at a Government Hospital where the doctor declared the deceased dead. The testimony of PW-5, who is the sister-in-law of the deceased is also the same as other witnesses.

A perusal of the testimonies of the prosecution witnesses would show that the case of the prosecution is that the accused wanted to grab the property of the deceased and was also demanding money and jewelries from the deceased and when the deceased did not accede to the demands of the accused, the accused poisoned and killed the deceased.

It is noticeable that the case of the prosecution that the accused had poisoned the deceased was not stated in the first information report, even though the first informant, in his testimony as PW-1 stated that Patiram, the maternal uncle of the first informant, had disclosed to the first informant on 18.08.2013 itself that the accused had poisoned the deceased.

At this stage, it would be relevant to consider the post-mortem report of the deceased. The report does not show any external injuries on the body of the deceased. In his testimony, PW4, i.e., the doctor who conducted the autopsy on the dead body, has stated in case of forcible poisoning, there can be injuries on the lips and other parts of the body of the person. The post-mortem report apparently does not corroborate the claim of the prosecution witness that the deceased was assaulted by the accused and was forced to consume poison. There is a high probability that the testimony of the prosecution witnesses regarding forcible poisoning of the deceased by the accused was taken during the trial after the Viscera report was available to the investigating officers, which showed that the deceased had consumed poison. In the circumstance, the testimony of the prosecution witnesses, so far as forcible poisoning of the deceased by the accused is concerned, could be improvements. The testimony of PW-2 that she was an eyewitness to the fact that the accused were making the deceased drink something suspicious is controverted by the testimony of DW-1, who is also a relative of the deceased and who, according to PW-2, accompanied PW-2 when she had gone to meet the deceased and was also present when the accused was allegedly forcing the deceased to consume some liquid.

In her testimony, DW-1 has denied that she was a witness to the incident as narrated by PW-2 and has stated that her signatures on the affidavit stating the aforesaid facts were obtained without reading over the affidavit to the witness. DW-1 has also testified before the trial court that the amount received by the deceased after selling her plot was distributed amongst her children. Apart from PW-2, no other witness of the prosecution claims to be an eyewitness to the fact that the accused had forced the deceased to drink something which PW-2 suspected to be poison. The claim of the prosecution that the accused made the deceased drink poison is hearsay, and could not have been relied upon to convict the accused. It is also noticeable that Patiram has not been examined by the prosecution even though in his testimony, PW-1 claims that Patiram told him that the accused had forced the deceased to consume poison.

A reading of the judgment of the trial court also discloses that there are major unexplained contradictions between the testimony of PW-1 and PW-3 as to the reason why they were staying in Mumbai. In his testimony, PW-1 states that he had gone to Mumbai for business purposes, but PW-3, who is the sister of PW-1, states that they had gone to Mumbai to study. The testimony of PW-3 has not been relied upon by the trial court on the ground that in her cross-examination, PW-3 could not disclose the class in which either she or her brother, i.e. the PW-1, were studying.

It is also noticeable that PW-11, who was one of the investigating officers of the case, has denied that in their statements recorded under Section 161 Cr.P.C., any of the witnesses had stated that the accused had forced the deceased to consume poison. The witness had also stated that the affidavit given by PW-3 to the investigating officer did not state that the accused had poisoned the deceased. The witness also denied that the first informant had told the investigating officer that the accused was demanding jewellery and money from the deceased. The fact that no prosecution witness had informed the investigating officers that the accused had poisoned the deceased is also testified by PW-8, who had also investigated the case.

The first information report has been registered 40 days after the incident even though it is the case of the prosecution that the first informant was told about the role of the accused by phone when he was informed about the incident on 18.08.2013 itself and by his neighbours on 19.08.2013. In the circumstances, the delay in lodging the first information report raises doubt on the prosecution case. Similarly, the motive imputed to the accused for committing the crime has also not been proved. The claim of the prosecution that the accused had compelled the deceased to sell a plot which he owned and also demanded money and jewelries from the deceased has not been proved. The details of the jewelries owned by the deceased or the amount in possession of the deceased has also not been brought on record by the prosecution.

It is also noticeable that in his testimony, PW-1 stated that he saw injuries on the body of his mother. It has been stated by the witness that there were injuries on the shoulders of the deceased. However, the said claim of the witness is not corroborated by the post-mortem report which discloses that there were no external injuries on the body of the deceased.

After considering the aforesaid shortcomings in the prosecution evidence, the trial court has held that the prosecution had not been able to prove its case beyond doubt and acquitted the accused.

We do not find any perversity or any other illegality in the assessment of evidence by the trial court. No question either of law or fact or regarding assessment of evidence arises in the present appeal so as to persuade us to admit the appeal and reassess the evidence at the instance of the appellant. 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.

For all the aforesaid reasons, 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 23, 2026
Vipasha

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