

Reserved on 13.01.2026
Delivered on 05.02.2026



AFR
Neutral Citation
No. - 2026:AHC-
LKO:8946-DB



2026:AHC-LKO:8946-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1079 of 2016

Anil

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Rakesh Kumar Nayak, Anand Dubey, Arun Kumar Pandey, Jagrit Sharma, Jay Prakash Singh, Madhumita Bose, Rishad Murtaza
Counsel for Respondent(s)	: Govt. Advocate,

Along with :

1. Criminal Appeal No. 1121 of 2015:
Smt. Sheela Devi Vs. State of U.P.

2. Criminal Appeal No. 1384 of 2015:
Govardhan Vs. State of U.P.

3. Criminal Appeal No. 1388 of 2015
Nand Lal Vs. State of U.P.

4. Criminal Appeal No. 439 of 2016
Gena Vs. State of U.P.

Court No. -9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.**

(Per Pramod Kumar Srivastava, J.)

1. Heard, Shri Anand Dubey, learned counsel for the appellant, and Shri Vijay Prakash Dwivedi, learned AGA for the State.

2. The present criminal appeal has been preferred against the judgment and order dated 08.09.2015 passed by the learned Additional

Sessions Judge, Ambedkar Nagar, in Sessions Trial No. 179/2008, State Versus Anil & others, whereby the appellants namely Anil, Nand Lal, Govardhan, Gena, and Sheela were convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and a fine of ₹50,000; in default of payment of the fine, they are to undergo a further six months' imprisonment. Additionally, under Sections 201/34 of the Indian Penal Code, they were sentenced to five years' rigorous imprisonment and a fine of ₹10,000, and in default of payment of the fine, to further undergo three months' rigorous imprisonment, with all sentences running concurrently.

FACTUAL MATRIX

3. The prosecution case, in brief, is that the deceased Bhula @ Sushila wife of appellant-accused Anil, died an unnatural death inside her matrimonial home. She was married about ten years prior to her death (aged 21 at the time of death) to the accused and a year before her death, her Gauna ceremony was performed by her parents. Allegedly during the Gauna ceremony the appellants accused Anil, Nand Lal and Govardhan had demanded Hero Honda motorcycle and had refused to perform the ceremony but the informant Ram Rajbhar, father of the deceased requested the accused persons and somehow completed the vidai ceremony. When the deceased used to visit her paternal home, she had informed her parents of the cruelty and dowry demand meted to her however her parents would console her and send her back to her matrimonial home. On 11.06. 2008, the informant was informed by telephone that his daughter was killed by the accused persons Anil- husband of the deceased, Nand Lal- brother in law of the deceased, Govardhan- brother in law of the deceased, Gena- mother in law of the deceased and Sheela- sister in law of the deceased by strangulating her. When the informant and his wife along with their son reached the place of incident, the dead body of the deceased was lying on the cot. The inquest of the deceased was done on 11.06.2008 at 10:30 A.M. and the same concluded on 12:30 P.M. According to the inquest report, no injury mark was observed except a mark on the neck of the deceased.

According to the opinion of the panch, the deceased was killed by the accused persons for demand of dowry. The post mortem of the deceased was done on 11.06.2008 at about 4:00 P.M. According to the post mortem report in the internal examination a red contusion mark was observed on the side of the left eye and a post mortem horizontal ligature mark was observed on the neck of the deceased but thyroid bone and trachea were found intact. No definite opinion regarding death was given and viscera was preserved.

4. On the basis of the evidence collected by the Investigating Officer (here-in-after referred as IO) and the complaint of the informant a charge-sheet was filed under sections 498A/304B Indian Penal Code & 3/4 Dowry Prohibition Act. On 01.10.2008, the learned trial court proceeded to frame charges against the accused under section 302/201. At the trial stage, prosecution produced six witnesses to prove its case namely PW1- Shri Ram Rajbhar (father of the deceased), PW2- Sumitra (mother of the deceased), PW3 Krishan Kumar Singh, PW4 Ram Krishan Magan, PW5 Dr. Vijay Tiwari, and PW6- CM. Virendra Kumar Gautam. The defence produced one witness namely DW1 Chaituram.

5. PW1 deposed before the trial court that the accused persons have killed the deceased on the pretext of not getting motorcycle as dowry however in his cross examination, he has stated that no demand for dowry was made by the accused persons and further stated that he does not remember that Nand Lal came to his house to give information regarding the death of the deceased. He further stated that when he reached the place of incident the police of P.S. Sammanpur, Akbarpur and accused persons were present there.

6. PW2 deposed that for demand of motorcycle her daughter was killed by the accused persons. When she reached the place of incident, she saw vomit under the cot, which had not been cleaned, and the deceased's body was soiled with faeces. In her Cross examination she admitted the fact that Nand Lal has a motorcycle and at the time of marriage no demand of dowry was made.

7. PW-3 stated that the Panchnama of deceased was made in his presence. In his cross examination he stated that except an injury mark on the neck of the deceased no other injury was seen by him.

8. PW-4 before the trial court stated that the reason for death of the deceased was illicit relationship and she had been married for about 10-15 years as such, he amended charges to section-302/201 I.P.C. In his cross examination he stated that he did not get any evidence to the effect that the accused persons were demanding motorcycle as a dowry. He further said that the deceased had illicit relationship with someone in her parental home and this fact was told by the family members of the deceased. He further stated that the informant has not given any statement that the deceased was beaten by the accused persons prior to her death.

9. Dr. Vijay Tiwari was examined as PW-5 before the trial court, stated that a ligature mark around the neck 25 x1 C.M. was found. A contusion mark was also found on the left eye of the deceased. He further stated that the hyoid bone was not fractured and the injury on the neck was post-mortem as such the cause of death could not be ascertained and viscera was preserved. In his cross examination, he stated that the contusion on the left eye was near the eyebrow and the same may be caused while falling on some hard object. He further stated that the death had not been caused due to any injury and the marks on the neck could not come without strangulation. The Constable Virendra Kumar Gautam was examined as PW-6 before the trial court and he proved chik FIR.

10. After the conclusion of the prosecution witnesses' testimony, the statements of the accused persons under Section 313 of the Cr.P.C. were recorded. The main question put to all the accused was whether, on June 11, 2008, at approximately 06:00 A.M., they had strangled the deceased with a rope, thereby causing her death, and subsequently attempted to hide the body.

11. The defence produced Chaitu Ram as DW-1. He stated before the trial court that the incident took place seven years ago in the month of June. He testified that Anil Kumar and Gena reside in front of his house and that, at the time of the deceased's death, they had gone to the fields for the weeding of peppermint. He further stated that appellant Nand Lal has resided in Machhali Gaon for the last twenty years and appellant Govardhan has resided in Kurri for eight years with his family; both Nand Lal and Govardhan have lived separately from appellants Anil and Gena for several years.

12. After appreciating the evidence on record, the Trial Court proceeded to convict the accused persons under Sections 302/34 and 201/34 on the basis of circumstantial evidence, including medical evidence indicating alleged poisoning and the presence of a ligature mark on the neck of the deceased. Aggrieved thereby, the appellants have preferred the present appeal.

SUBMISSIONS OF PARTIES

13. The learned counsel for the appellant argued that no evidence regarding the demand for dowry was found and, accordingly, no charges under Sections 3/4 of the Dowry Prohibition Act were framed. It was contended that PW-1 and PW-2 had lied about the demand for dowry in order to add gravity to the prosecution's case. The prosecution has failed to prove the motive of the accused. In support of this submission, the counsel referred to the judgment in **State of Orissa v. Babaji Charan Mohanti and Another (2003) 10 SCC 57**.

14. The learned counsel for the appellant has argued that PW 1 has deliberately concealed the fact that appellant Nand Lal had gone to the house of PW 1 to inform him regarding the death of the deceased so as to show the conduct of the appellants as doubtful. Whereas also no allegation has been levelled by the prosecution witnesses regarding the hiding of the body by the accused persons.

15. The learned counsel for the appellant argued that the learned Trial Court wrongly applied Section 106 of the Indian Evidence Act to convict

the appellant. The Apex Court, in **Nagendra Shah v. State of Bihar (2021) 10 SCC 725**, held that Section 106 of the Indian Evidence Act applies to cases where the prosecution has succeeded in establishing facts from which a reasonable inference can be drawn regarding the existence of certain other facts within the exclusive knowledge of the accused. The Apex Court further held that an accused cannot be convicted solely on the basis of an autopsy report. In this regard, the learned counsel for the appellant also cited the judgment in **Anil v. State of U.P., 2022 SCC OnLine All 812**.

16. It was further argued that the Trial Court did not put any questions to the appellant under Section 313 of the Code of Criminal Procedure regarding the administration of poison to the deceased, nor regarding the ligature marks on her neck. Once such questions are not put to the appellants, it cannot be expected to them to provide an explanation or a defense regarding such facts of the case. In support of his argument, the learned counsel cited the following cases: **Indira Kunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364; Nababuddin @ Mallu @ Abhimanyu v. State of Haryana, 2023 SCC OnLine SC 1534; Sujit Biswas v. State of Assam, (2013) 12 SCC 406; and Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108**.

17. It was further argued that the learned trial court convicted the appellants Nand Lal, Govardhan, and Sheela, despite the fact that they lived separately from the deceased.

18. The counsel for the respondent submitted that the trial court's judgment is a reasoned one and that no prejudice has been caused to the appellants. All incriminating material was put forth to the accused-appellants during their examination in compliance with Section 313 of the CrPC.

ANALYSIS

19. We have considered the submissions. A perusal of the appeal reveals that, among other grounds, the primary contention rests on non-compliance with Section 313 of the CrPC. At this stage, it would not be

appropriate to deliberate upon the conviction and sentence of the appellants on merits. The only question that falls for our consideration is whether the trial court has erred in its compliance with Section 313 of the CrPC during the trial procedure.

20. A fair trial is a guarantee under Article 21 of the Constitution of India. One of the non-negotiable requirements of a fair trial is the opportunity given to the accused to be heard and to prove his innocence by dispelling the claims of the prosecution raised against him, on his own and in his own words.

21. In reference to the non-compliance with Section 313 of the CrPC, the law is clear; there is a catena of judgments, apart from the ones relied upon by the appellants, that has deliberated on this issue. Even so, we may refer to certain pronouncements for the sake of completeness.

22. In *Sanatan Naskar v. State of W.B (2010) 8 SCC 249*, the Apex Court, regarding the scope of the examination under Section 313 CrPC follows:

“21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ... 22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. ...”

23. In *Raj Kumar v. State (NCT of Delhi)*, (2023) 17 SCC 95, as subsequently approved by a three-judge Bench in ***Aejaz Ahmad Sheikh v. State of U.P. and Another*, 2025 SCC OnLine SC 913**, the Apex Court laid down the following factors:

“22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313 CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”

24. In the recent case of *Sovaran Singh Prajapati v State of U.P* 2025 SCC OnLine SC 351 the Supreme Court has while summing up the law laid down in the case of ***Zahira Habibullah Sheikh v State of Gujarat* 2006 3 SCC 374** laid down the following

“30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.P.C. :

(a) The Section is divided into two parts, the first being directory with the use of the word ‘may’ and

the latter being mandatory with the use of the word 'shall'.

(b) The power of the Court is couched in the widest terms possible with no express limitation thereon.

(c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.

(d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.

(e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.

(f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.

(g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to cross-examination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.

(h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution."

25. The object of Section 313 Cr.P.C. is to enable the accused to explain any circumstance appearing in the evidence against him and to ensure compliance with the principle of natural justice (audi alteram partem). Any circumstance not put to the accused cannot be used against him.

26. The Hon'ble Supreme Court has consistently held that failure to put material incriminating circumstances to the accused amounts to a serious irregularity and causes prejudice, particularly in cases based on circumstantial evidence.

27. Having duly considered the position of law and principles as above, on a careful scrutiny of the record, we may now examine the statements of the appellants recorded under section 313 CrPC. The statements recorded under section 313 of the accused persons is as below:

Appellant no. 1

Name - Anil Kumar Age - 26 years Father's name - Late Bhagirathi

1. Question - According to the prosecution story, on 11.06.2008 at around 6:00 AM at village Tandwa Gopalpur, Police Station Sammanpur, District Ambedkar Nagar, you, along with other co-accused, murdered the complainant's daughter, Bhuila @ Sushila, who was married to the accused Anil, by strangling her with a rope, and after committing the murder, you concealed the deceased's body with the intention of destroying evidence. What do you have to say in this regard?

Answer - This is false.

2. Question - You have heard the statement of prosecution witness PW-1 Shriram Rajbhar, who has proved the complaint Exhibit K-1 and his signature on the inquest report Exhibit K-2. What do you have to say in this regard?

Answer - He has falsely testified.

3. Question - Have you heard the statement of witness PW-2 Sumitra? What do you have to say in this regard?

Answer - She has given false testimony due to enmity.

4. Question - Have you heard the statement of witness PW-3 Krishna Kumar Singh, Naib Tehsildar, who has proved police documents Exhibit K-3 to Exhibit K-6?

Answer - He is a formal witness. He has given false evidence.

5. Question - Have you heard the statement of witness PW-4 Ram Krishna Magan, who has proved the site plan Exhibit K-7 and the charge sheet Exhibit K-8?

Answer - He is a formal witness. He has falsely testified.

6. Question - Have you heard the statement of witness P.W. 5 Dr. Vijay Tiwari, who conducted the post-mortem examination of the deceased Sushila @ Bhuila, whose post-mortem report has been proved as Exhibit K-9? What do you have to say in this regard?

Answer - I don't know.

7. Question - Have you heard the statement of witness P.W. 6 Constable No. 582 Virendra Kumar, who has certified the carbon copy of the Chik GD report No. 10, which is in the handwriting and bears the signature of Constable Jamuna Prasad, as Exhibit K-11? What do you have to say in this regard?

Answer - I don't know.

8. Question - Have you heard the statement of witness P.W. 6 Inspector Ram Kumar Chaudhary, who has proved the charge sheet Exhibit K-6 and the site plan of the incident Exhibit K-7? What do you have to say in this regard?

Answer - He is a formal witness. He has given a false statement.

9. Question - Why did the above witnesses give their testimonies? What do you have to say in this regard?

Answer - Due to enmity.

10. Question - Why was this case filed against you?

Answer - Due to enmity.

11. Question - Do you want to produce any defense evidence?

Answer - Yes.

12. Question - Do you have anything else to say in your defense?

Answer - The deceased had an illicit relationship with someone in her village, due to which she wanted to stay at her parents' house. Even before this, she had consumed poison at her parents' house before her Gauna ceremony. The complainants forcibly sent her with the appellant, and being upset by this, she committed suicide. The complainants have falsely implicated me under pressure from the patidar.

28. The appellant no. 2 Nandlal, appellant no. 3 Govardhan, appellant no. 4 Gena Devi and appellant no. 5 Sheela have been asked the same questions as appellant no. 1 Anil to which their replies are identical except question 12, which has been answered by the appellants as follows:

Appellant no. 2

Name - Nandlal Age - 38 years Father's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defence?

Answer - I have been living in Sammanpur market with my wife in a house I built since 1994. When I went to the complainant's house after receiving information about the incident, I was beaten up. My motorcycle was snatched away. I have been falsely implicated because I am the brother-in-law of the deceased.

Appellant no. 3

Name - Govardhan Age - 45 years Father's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defense?

Answer - I had been living separately from my parents in my own house for 8 years before the incident. I have no connection with the incident. He was falsely implicated simply because he was the eldest brother.

Appellant no. 4

Name - Gena Devi Age - 70 years Husband's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defense?

Answer - Both my elder sons lived separately. I lived with the deceased. The deceased committed suicide herself. I sent the information to her parents' house through my son Nandlal. Upon receiving the information, her family members came to our house and, instigated by our relatives, falsely implicated me because I was her mother-in-law.

Appellant no. 5

Name - Sheela, Age - 43 years, Husband's name – Govardhan

12. Question - Do you have anything else to say in your defense?

Answer - I have been living separately from my in-laws for 8 years before the incident. I have been falsely implicated because I am the sister-in-law.

29. The statements extracted above reveal that all the accused persons were asked general questions and all appellants have given an omnibus denial to allegations made against them in the questions put forth by the learned trial court. Question no. 12 where all the appellants have been

asked to speak anything in their defense, all have given their respective statements. However in reference to the grounds that were undertaken by the prosecution for the conviction of the appellants no questions have been put forth. In reference to question no. 12 all the appellants cannot be expected to make any statement of defense against the grounds they are unaware of.

30. Therefore, It is evident that the learned trial court failed to put specific and material incriminating circumstances to the accused, particularly:

- i.** The allegation relating to administration of poison to the deceased; and
- ii.** The post-mortem finding of ligature mark on the neck of the deceased.

31. These circumstances form the foundation of the prosecution case. Once the prosecution relied upon them to establish homicidal death, it was mandatory for the trial court to confront the accused with the same while recording their statements under Section 313 Cr.P.C.

32. In the present case, despite the omission, the learned trial court relied upon the aforesaid circumstances to record conviction, which has resulted in prejudice to the appellants.

33. Though the prosecution sought to rely upon Section 106 of the Indian Evidence Act on the ground that the incident occurred inside the house, such burden on the accused can arise only after the prosecution discharges its primary burden and the incriminating circumstances are properly put to the accused under Section 313 Cr.P.C.

34. Considering the nature of the defect, this Court is of the view that the same is curable and the ends of justice would be served by remanding the matter to the trial court for compliance of Section 313 Cr.P.C.

35. Accordingly, the appeals are **allowed** to the limited extent indicated herein. The judgment and order dated 08.09.2015 passed by the learned trial court are set aside.

36. The matter is remanded back to the Trial Court with the following directions:

- i.** The Trial Court shall record fresh statements of the accused under Section 313 Cr.P.C., specifically putting all incriminating circumstances appearing in the evidence, including those relating to alleged poisoning and post-mortem ligature mark.
- ii.** The accused shall be afforded an opportunity to lead defence evidence, if they so choose.
- iii.** Thereafter, the trial court shall decide the matter afresh in accordance with law, uninfluenced by the earlier judgment.

37. Considering the pendency of the appeals, we direct the concerned trial court to expedite the proceedings and do the needful within three months from the date of communication of this judgment. The appellants namely **Anil-** the present appellant, **Nand Lal-** appellant in Criminal Appeal No.1388 of 2015, **Govardhan-** appellant in Criminal Appeal No.1384 of 2015, **Gena-** appellant in Criminal Appeal No.439 of 2016 **and Smt. Sheela-** appellant in Criminal Appeal No.1121 of 2015 be released on bail unless they are required to be detained in connection with any other case and they will appear before the trial court in person and will participate in the proceedings on the date fixed by the trial court, failing which the trial court shall be at liberty to cancel their bail and take them into custody.

(Pramod Kumar Srivastava,J.) (Rajesh Singh Chauhan,J.)

February 5, 2026

HaseenU.