



2025:AHC:169643-DB

Reserved on 12.08.2025

Delivered on 25.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

GOVERNMENT APPEAL No. - 445 of 1985

State		Appellant
	Versus	
Awadhesh Kumar And Ors		Respondents

Counsel for Appellant	:	A.G.A.
Counsel for Respondents	:	Rajiv Kumar Tripathi

Court No. - 46

**HON'BLE RAJIV GUPTA, J.
HON'BLE HARVIR SINGH, J.**

(Delivered by Hon. Rajiv Gupta, J)

1. Heard Sri Jitendra Kumar Jaiswal, learned AGA for the appellant/State, Mr. Kumar Dhananjay, Advocate holding brief of Sri Rajiv Kumar Tripathi, learned counsel for the surviving accused-respondents Awadhesh Kumar and Mata Prasad and perused the trial court record.

2. The instant Government Appeal has been filed against the judgment and order dated 17.11.1984 passed by the 2nd Addl. Sessions Judge, Jalaun at Orai in Session Trial No. 126 of 1983 (State Vs. Awadhesh Kumar and others) arising out of Case Crime No. 220 of 1982, under Sections 302, 201 IPC, Police Station- Jalaun, District- Jalaun, by which, all the

accused-respondents have been acquitted of the charges framed against them under Section 302 read with Section 34 and 201 IPC.

3. At the very outset, learned AGA has pointed out that in the instant case accused-respondent No. 2 Pramod Kumar and accused-respondent No. 3 Kishor @ Ram Kishor had already passed away, as such, their appeal has been abated vide order dated 12.8.2025. Now the appeal survives only for accused-respondent No.1 Awadhesh Kumar and accused respondent No. 4 Mata Prasad.

4. As per the prosecution case as unfurled in the first information report lodged at the instance of one Jagdish Prasad, father of deceased Kusuma Devi, it is alleged that on 6.8.1982 at about 7 p.m., one Sri Ram Vyas, resident of Eto informed him that his daughter had died. On getting said information on 7.8.1982 at about 6 a.m., he reached Aurekhi, boarding a tractor and enquired about the death of his daughter from the inmates of her house, however, no satisfactory reply was given by them though he questioned them as to why her dead body has been set ablaze in the mid night, without informing the villagers. On collecting information from the villagers, it was disclosed that Awadhesh Kumar, Pramod Kumar, Kishor and Mata Prasad, all resident of Aurekhi together

had murdered his daughter on 2.8.1982 in the night and her dead body was also set ablaze.

5. It is further stated that since Awadhesh Kumar husband of her daughter was having illicit relation with the wife of his younger brother, as such, his daughter was murdered by aforesaid persons and without conducting of any post-mortem, set ablaze her dead body, so as to avoid any legal implication. The said incident has been witnessed by number of villagers, however, since Pramod Kumar is a highly influential person and on account of his terror, nobody had informed him, however, amongst them Shaqir Ali and Lakhan Singh later informed him about the said incident and, as such, on the basis of written report, the FIR was lodged in police station- Jalaun on 7.8.1982 in respect of an incident occurred on 2.8.1982 by Head Constable Mahesh Chandra Tiwari (P.W.-5), who prepared the chik FIR and the corresponding G.D. entry was made, which has been proved and marked as Exhibit Ka-3 and Exhibit Ka-4.

6. After registration of the said first information report, the investigation of the said case was entrusted to Investigating Officer Shyam Sundar (P.W.-6), who started the process of investigation. On 8.8.1982, he reached the place of incident and recorded the statement of Shaqir Ali (P.W.-2) and Lakhan Singh (P.W.-3) and on the next day i.e. 9.8.1982 recorded the statement of Sant Ram (P.W.-4) and on the same day, he

prepared the site-plan, which has been proved and marked as Exbt. Ka-6. He also prepared the site-plan of the place, where the victim was cremated, which has been proved and marked as Exbt. Ka-7. A letter written by deceased Kusuma Devi was also handed over to him, which was taken in possession and its fard recovery memo was prepared, which has been proved and marked as Exbt. Ka-2. The burnt ashes and bones were also collected from the place, where the dead body was burnt and its fard was prepared, which has been proved and marked as Exbt. Ka-9. The ashes were sent for chemical examination, but its report was not received.

7. After concluding the investigation, the Investigating Officer submitted charge sheet against all the accused-persons on 15.11.1983, which has been proved and marked as Exbt. Ka-5. On the said charge sheet, learned Magistrate had taken cognizance against the accused-respondents, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions for trial, where it was registered as Sessions Trial No. 126 of 1983, State Vs. Awadhesh Kumar and three others. Learned trial court thereafter framed the charges against all the accused-respondents, under Sections 302 read with 34 IPC and section 201 IPC. The said charges were read out and explained to the accused-respondents, who abjured the said charges, pleaded not guilty and claimed to be tried.

8. The prosecution, in order to prove the guilt against the accused-respondents, has examined Jagdish Prasad (P.W.-1), being the first informant and father of the deceased, Shaqir Ali (P.W.-2), eye witness of the incident, Lakhan Singh (P.W.-3), who is another eye witness of the incident and Sant Ram (P.W.-4), who is said to have seen the dead body of the deceased lying in the courtyard, Mahesh Chandra Tiwari (P.W.-5), who had drawn the chik FIR on the basis of written report and the corresponding G.D. entry and Shyam Sundar (P.W.-6) is the Investigating Officer of the said case.

9. After recording the testimony of the prosecution witnesses, statement of the accused-respondents were recorded under Section 313 Cr.P.C., where they denied the prosecution story and stated that on account of enmity, they have been falsely implicated in the present case. Accused-respondent Awadhesh Kumar has further stated that his wife was ill, prior to her death for the last 15-20 days and was being treated at the Govt. Medical Dispensary at Chhiriya. The doctor advised that she should be shifted to some bigger hospital for proper treatment. There was no one to look-after her, because her parents had gone for pilgrimage. One of my brothers is a student of B.Sc. and his wife had gone to her 'maika' I was alone and preparing to take my wife to hospital for treatment, when suddenly her condition deteriorated and she expired.

Next morning all the people of the village gathered and she was consigned to flames at about 10 O'clock in the morning. In respect of letter, Exhibit Ka-2, he further denied the letter to be in her hand writing.

10. Further in their defence, the accused-respondents have produced Dr. J.C. Deo Nath as D.W.-1, Ram Lakhan as D.W.-2 and Malkhan Singh as D.W.-3..

11. After recording the entire testimony of the witnesses and hearing the accused-respondents, the trial court acquitted all the accused-respondents of all the charges framed against them by extending them the benefit of doubt vide impugned judgment and order dated 17.11.1984

12. Being aggrieved and dissatisfied by the said judgment and order, the instant government appeal has been preferred by the State with the prayer to reverse the acquittal recorded in favour of the accused-respondents and to convict them for the offences charged with.

13. Before assessing the merits of the case and legality of the impugned judgment and order passed by the trial court acquitting the accused-respondents, it would be apt to discuss in brief the testimony of the witnesses adduced during the course of trial.

14. Jagdish Prasad (P.W.-1) is the father of the deceased and the first informant. He, in his testimony, has stated that about 15-16 months back, her daughter Kusuma Devi was murdered, who was married to accused Awadhesh Kumar of Aurekhi. He was at his house when he was informed that his daughter has been done to death. On getting information in the morning, he went to her matrimonial house, however, the family members did not gave any satisfactory reply for her death. He was however informed by Lakhan Singh and Shaqir Ali that, her daughter was murdered in the night and was burnt at about 4 a.m.

15. He further stated that her daughter informed him that accused Awadhesh was having illicit relations with the wife of his younger brother, as such, her daughter was murdered. The report, in respect of the incident in question, was lodged by him, which was scribed by one Krishna Swaroop, which has been proved and marked as Exbt. Ka-1.

16. During cross examination, he stated that the factum of illicit relations was disclosed to him by her daughter, which was mentioned in the FIR, however, if it is not stated therein, then he cannot assign any reason for the same. His statement was recorded by the I.O. after 2-3 days and this factum was also disclosed to him, but if the said fact is not stated in his statement, then he cannot assign any reason for the same.

Awadhesh was married 12-13 years back and was having a male and a female child. The FIR was scribed by Krishna Swaroop and was based on the information given by the other persons. He further denied the suggestion that false report has been lodged by him and that his daughter had died on account of illness. On recall, he stated that he received a letter written by Kusuma Devi sent to him by post and he is well acquainted with her hand writing and signature, which has been proved and marked as Exbt. Ka-2.

17. He further stated during cross examination that her daughter was literate and studied upto 4th standard in a school at Newada. He had stated the factum of letter in the FIR and had also requested the Investigating Officer to mention the said fact in his report, however, if it is not mentioned there, he cannot assign any reason for the same. He had also given the letter to the Investigating Officer and also informed him about the same, however, he had not mentioned it in the FIR. He further stated that he had gone at the house of Shaqir and Lakhan and had met them in front of their house and had conversed with them at about 8 AM in the morning. After 4-5 days of the incident, he had conversation with them and thereafter left for the police station. His statement was recorded in the police station.

18. Shaqir Ali (P.W.-2) is an eye witness of the incident. He, in his testimony, has stated that about 17½ months back, he was sitting in the house of Mulupal at about 9 p.m. in the night and while he was conversing he heard shrieks, which was again repeated in a low voice 'to save'. At the relevant time Lakhan Singh was also sitting with him, who is the son of Mulupal. On hearing the shrieks, he went towards the house of Chhotey Lal Mishra and saw a lady lying inside the house under the neem tree. Pramod, present in the court was pressing her mouth. Awadhesh present in court was trying to throttle her, Kishor was holding her by her legs, Mata Prasad present in court was holding her by her hands. The said incident was witnessed by him in torch light and on witnessing the said incident, he intervened then the aforesaid accused-persons stated that, his wife is infested with ghost and efforts are being made to drive it away. Thereafter he returned back.

19. It is further stated that the lady, who was pressed down upon was the wife of Awadhesh. The dead body was burnt at about 3-4 a.m. in the night. After 3-4 days of the incident, he met with the father of the deceased when he had reached there and disclosed the entire incident to him. He further candidly stated that, he had shown the torch to the Investigating Officer, by which, he had witnessed the incident.

20. During cross examination, he stated that Babu Ram is the father of accused Pramod and there has been some altercation with him and Babu Ram had lodged a criminal case against his brothers and Awadhesh is the nephew of Babu Ram and son of Choteylal. Ramadhar is brother in-law of Choteylal. He further denied any litigation between Ramadhar and Krishna Prasad. It is further stated that he had informed the I.O. that the lady, who was lying, was the wife of Awadhesh, however, if the said fact is not mentioned in his statement, he cannot assign any reason for the same. The torch has not been lost/ misplaced, but was lying at his house. The factum of witnessing the incident in torch light was disclosed to the Investigating Officer, however, if he has not recorded this fact he cannot assign any reason for the same. The torch was shown to the Investigating Officer, however, he had not taken it in his possession. In the cattle shed, door has been placed made of iron rods. He had not gone inside the cattle shed as it was locked. At about 20 paces from the door, the lady was lying down, where it was complete dark and if he had no torch, nothing was visible. At the relevant time Awadhesh had informed him that the victim is infested with ghost and he was throttling her sitting beside her. On the west of the girl, Ayodhya was sitting. Mata Prasad was sitting on the right side of the lady and was holding her hand while Kishor was on the left side holding her legs and knee. At the relevant time, when they had seen the accused persons pressing the

lady, they suspected that the lady was being murdered. Prior to meeting Jagdish, he had not disclosed this incident to anyone nor even at the police station nor to the Sarpanch. The place of incident is at a distance of 30 paces from the house of Mulu, where he was sitting and heard the shrieks. In between the house of Mulu and the place of incident, no house is built, but there is only an open plot. Beside the hata, there are houses of Saliq and Lalaram and in front are the houses of Raghuvar and Dhaniram, however, no one came out from the said houses, cause of which, could not be explained. He further stated that as soon as Jagdish reached his village, he informed him about the incident. His statement was recorded after 4-5 days. The dead body was burnt after carrying it away in front of him. The dead body was carried away by the accused in front of his house at 4 a.m. in the morning and was burnt. At the relevant time when he woke up to urinate, he had seen accused persons taking away the dead body. He had seen the aforesaid 4-5 accused persons carrying away the dead body and none else was seen there. He had gone to the house of Mulu for borrowing bricks (gumma). He further denied the suggestion that he is falsely deposing and that the incident had not occurred in his presence.

21. Lakhan Singh (P.W.-3) is another eye witness of the incident and he, in his examination in chief, states that the wife

of Awadhesh Kumar was murdered seventeen and a half months back. At the relevant time, it was 9 p.m. when he was at his house alongwith Shaqir Ali, however, her father was not there and had gone out. At the relevant time, he heard a shriek 'to save' then he alongwith Shaqir Ali came out and moved in the direction from where the sound was heard. He was carrying a torch. On reaching the cattle shed of Awadhesh, he in the light of torch, saw a lady lying down, who was being throttled by Awadhesh Kumar while Pramod present in Court, was pressing her mouth, Mata Prasad present in Court, was holding her hands while Kishor present in Court, was holding her legs and the accused-persons were in "sitting posture". On questioning the accused-persons, they stated that the lady is infested with ghost and they are trying to drive it out. At the relevant time, Shaqir was also with him and was having a torch. After questioning them, they returned back after sometime. Shaqir Ali returned to his house, while he also retrieved to his house. On his return, he found that Sant Ram, Ram Mohan, Krishna Swaroop came and asked him about the noise/shrieks then he disclosed entire incident to them and again reached the phatak/ Gate alongwith them and found a lady lying there and then he identified her to be the wife of Awadhesh, thereafter all persons returned to their house and he also came back and slept in his house, however, in the morning he came to know that wife of Awadhesh has been burnt.

22. During cross examination, he stated that he had not lodged the report, because of the terror of the accused-persons. The torch, which he was having at the time of incident, is kept in his house and he had shown the said torch to the Investigating Officer, however, he did not took it in his possession and it was lying with him. Through the phatak/Gate things are quite visible, as it is fixed with iron rods. The victim was lying at a distance of 15-20 paces from the gate. Awadhesh was sitting on the left side of the lady and was pressing her neck, Mata Prasad was on the right side facing east holding her hands and the palms, Kishor was on the northern side holding her foot.

23. He further candidly stated that below the Gate/phatak upto 3 feet, a tin was fixed, however, upper portion was empty through which it can be seen. At the relevant time, they were standing near the gate and witnessing the incident through the sariya (iron rods). He did not try to rescue the victim as phatak was closed. At a distance of 4-6 yards to the north of the neem tree, the lady was lying, where her ghost was being driven out. Even on his second visit, she was found lying there. Accused Pramod was gagging the victim by her mouth with a hand on her forehead, while Awadhesh was pressing her neck with both hands. The lady was fair colour aged about 25-26 years. Shariq had reached there at about 7.30 or 8 a.m. and they had been

conversing for the last one and a half hours, when the shrieks were heard.

24. He further stated that in the absence of torch nothing could have been visible. Ramadhar is the uncle of Awadhesh and he has no knowledge, if his father had deposed against Ramadhar before Munsif Magistrate. After 3-4 days of the incident, Jagdish had reached the village. When he was returning back, then there was a conversation with him, while he was searching him. He further denied the suggestion that no incident took place in his presence and on account of enmity, he is falsely deposing.

25. Sant Ram (P.W.-4) is an another eye witness. He stated that about 18 months back at about 9.30. p.m., he was returning back to his house and when he reached near the house of Lakhan Singh, he was conversing with others in respect of ghost, he then took him to the cattle shed of the Awadhesh Kumar, where Krishna Swaroop Master and Ram Mohan were also present in the cattle shed. He had seen the dead body of a lady in the torch light of Lakhan and found that the wife of Awadhesh was lying dead. In the morning, it was revealed that the dead body of wife of Awadhesh has been burnt.

26. During cross examination, he stated that the Investigating Officer has recorded his statement 4-5 days after the incident

and he had informed him that the incident was witnessed by him in the torch light possessed by Lakhan and he had seen the dead body, however, if the said fact is not mentioned in his statement recorded under Section 161 Cr.P.C., he cannot assign any reason for the same. At about 7-8 p.m. he had gone for the kirtan and was returning back at about 9-9.30 p.m. and he was accompanied with Master Sahab. He had seen the lady lying down from a distance of 5-7 paces, but had not seen anyone assaulting her and the lady was lying dead. Neither he nor his friends touched her nor made any call. Lakhan had informed him that the dead body is that of the wife of Awadhesh, who was lying under the *neem tree*. He further denied the suggestion that he is falsely deposing.

27. Mahesh Chandra Tiwari (P.W.-5) is the head constable and at the relevant time, the written report (Exbt. Ka-1) was handed over to him, on the basis of which, he had drawn the chik FIR, which has been proved and marked as Exbt. Ka-3 and the corresponding G.D. entry, which has been proved and marked as Exbt.Ka-4. The investigation of the said case was entrusted to S.I. Shyam Sundar.

28. During cross examination, he stated that the witness Jagdish Prasad, in his statement recorded under Section 161 Cr.P.C. had not made any mention of the letter to the Investigating Officer. Shaqir Ali, in his statement recorded under

Section 161 Cr.P.C. has also not stated that the lady, who was lying there, was the wife of Awadhesh. Shaqir Ali, in his statement recorded under Section 161 Cr.P.C., has further not stated that the dead body was not burnt in his presence, he did not mention in his statement that the conversation was regarding purchase of bricks. Santram in his statement has also not mentioned that the incident was witnessed in torch light possessed by Lakhan and that the dead body was of the wife of Awadhesh.

29. Shyam Sundar (P.W.-6) is the Investigating Officer of this case and in his examination in chief states that on the relevant date 7.8.1982, he was S.O. P.S. Jalaun and the report of the instant case was not lodged in his presence. He initiated the investigation in the present case on 7.8.1982 and on the same day reached the place of incident. He recorded the statement of witnesses Jagdish Prasad, Shaqir Ali and Lakhan Singh on 8.8.1982 and that of Sant Ram (P.W.-4) on 9.8.1982. He prepared the site-plan and other relevant documents, which has also been proved and exhibited as Exhibit Ka-6 to Ka-8. The ashes and burnt bones were collected from the place of incident and sealed in a box, which is marked as Material Exhibit-1. The recovery memo was also prepared, which is misplaced, but copied in the case diary marked as Exhibit Ka-9. The ashes were sent for chemical analysis but no report is

available and the charge sheet was submitted marked as Exhibit Ka-5.

30. During cross examination, he stated that the ashes and bones were brought tied in a cloth, which was sent to the chemical examiner. He did not mention in the statement of Jagdish that Kusuma had told him about the illicit relations of her husband with the wife of his younger brother, though the factum that her husband was having relations with the wife of his younger brother, was mentioned in his statement, but it was not mentioned that this fact was disclosed by Kusuma. In the statement of Shaqir, he has not stated that at the time of incident, he was having a torch, however, it is stated therein that he had seen the incident in torch light, however, he has not mentioned that torch was in his hand or in the hand of some other person. In his statement, it is not recorded that the dead body was burnt in his presence. In the statement of Sant Ram, he has not mentioned that in the torch light of Lakhan, he had seen the dead body lying. In the statement of Shaqir, he has not mentioned that the dead body lying there was of Kusuma. He denied the suggestion that investigation was not done by him.

31. Thereafter, the statement of the accused persons were recorded under Section 313 Cr.P.C. and thereafter the accused

had entered in their defence and has produced as many as three defence witnesses.

32. Dr. J.C. Devnath has been examined as D.W.-1. He, in his testimony, has stated that in July, 1982, he was posted in Primary Health Centre, Chhiriya, Salempur as Medical Officer. On 15.7.1982, Kusuma wife of Awadhesh resident of Aurekhi had come for her treatment as an out door patient. The said lady also came at his dispensary on 19.7.1982, 22.7.1982, 26.7.1982, 30.7.1982 and 31.7.1982. On 31.7.1982, she was in a precarious condition and was referred to Medical College. Her Out Door Ticket has been proved and marked as Exbt. Kha-1. He had also issued a certificate dated 30.8.1982, which is in his hand writing and signed by him, which has been proved and marked as Exbt. Kha-2.

33. During cross examination, he stated that the lady was a heart patient and was having blood deficiency, however, he had not performed any ECG, as the said facility was not available there, nor had he referred her for ECG in between 15.7.1982 to 30.7.1982. He further denied the suggestion that Exbt. Kha-1 and Kha-2 are forged documents.

34. Ram Lakhan (D.W.-2) is the Post Master and at the relevant time he was posted in Head Post Office, Orai and on Exbt. Ka-2, the seal of post office is present, which is of Eton Post Office. On the letter, two seals are stamped, one of the

place from where the letter is sent and the other is of the place, where it is to be distributed. During cross examination, he stated that the seal of the post-office is dated 13.7.1982. The seal cannot be placed before or after the relevant date.

35. Malkhan Singh (D.W.-3) is another defence witness, who in his testimony has stated that Awadhesh is living in his village and his wife died in his presence about 2 years and three months back and at the relevant time, parents of Awadhesh were not present and had gone for pilgrimage and younger brother of Awadhesh was also not present in the house nor his wife was present there, as she had gone to her parents house and was staying there for the last two months. Awadhesh's wife was ill and on account of illness she died. She was being treated in Government Hospital at Chhiriya. His wife died at about 9-10 p.m. in his presence. Her dead body was burnt at about 9-10 a.m. and he had attended the funeral alongwith number of other villagers. His attention was drawn to his application Nos. Kha-103 and Kha-104, which was stated to have been given by him on 15.10.1982 in the court of C.J.M., which is marked as Exbt. Kha-6 and has also given a vakalatnama and also an affidavit of a counsel marked as Exhibit Kha-7, which was duly notarised by Oath Commissioner and signed and marked as Exhibit Ka-8.

36. During cross examination, he states that Kusuma was resident of Navada and was married about 15-16 years back. The information about the death of Kusuma was sent to Jagdish Prasad through Hubbey Nai in the night itself. Navada is situate at a distance of 8-9 miles from his village. Hubbey Nai went there on a bicycle and returned back at about 8 a.m. in the morning and informed that he had given information about the death to Jagdish, however, when the dead body was taken for cremation, father of Kusuma could not reach there. After 5-6 days, Jagdish came in the village and he informed him as to how Kusuma died. He further corrected himself and stated that Hubbey Nai on his return informed that he did not met Jagdish, as he was not available in his house and had gone to purchase a buffalo, however, his family members had stated that on his return they will inform him. Hubbey Nai is still alive and is living in the village. Wife of Awadhesh had gone to her parents house 2-3 months back and this factum was revealed to him in the village. Parents of Awadhesh had gone for pilgrimage. In the affidavit marked as Exbt. Kha-5, the factum that Hubbey Nai was sent to inform Jagdish about the incident is not mentioned. At the time when she died, he alongwith Atmaram, Ram Tewari, Bal Mukund, Raghubar Dayal were present in the house, however, no doctor was present.

37. He has further denied the suggestion that on account of animosity with Awadhesh, he is falsely deposing. He further denied the suggestion that on account of friendship with Awadhesh, he is falsely deposing. He further denied the suggestion that accused killed Kusuma and without sending any information to her 'maika' she was burnt before it dawned.

38. On the basis of said evidence led before the trial court, the trial court came to the conclusion that, from the evidence adduced by the prosecution, the case could not be proved beyond reasonable doubt against the accused-respondents, as such, by extending benefit of doubt to all the accused persons, they have been acquitted of all the charges framed against them, against which, the instant Govt. Appeal has been preferred.

39. Learned AGA for the State/appellant has submitted that the trial court has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of acquittal against the accused-respondents, which is bad in law and is, therefore, liable to be set aside.

40. Learned AGA has further submitted that the trial court on the basis of surmises and conjectures has illegally recorded the finding of acquittal against the accused-respondents though there was ample evidence to prove the charge against the accused-respondents.

41. Learned AGA has further submitted that the trial court upon misappreciation and misrepresentation of the evidence, has illegally recorded the finding of acquittal against the appellant.

42. Learned AGA has further submitted that Shaqir (P.W.-2) and Lakhan (P.W.-3), who admittedly were present at the place of incident and had witnessed it and they in their testimony have given vivid description of their eye witness account, however, the trial court on the basis of surmises and conjectures has held them to be unreliable witnesses and illegally recorded the finding of acquittal against the accused-respondents, which is absolutely perverse, illegal and liable to be set aside.

43. Learned AGA has further submitted that from the evidence adduced during the course of trial, it is evident that the victim Kusuma died on the alleged date, time and place of incident, however, the accused persons with an intention to screen themselves from legal punishment hurriedly performed the funeral rites in the night itself without informing her parents about the incident. Even the factum of death was not reported to the police, as such, neither the inquest nor the post-mortem could be done to ascertain the actual cause of death, which circumstance clinchingly and cogently suggests that, they were the accused-respondents, who were responsible for causing

the death of the deceased and who in a very hurried and haste manner have disposed of the dead body without informing the police or her parents. The factum of sending the information about the death of Kusuma to her father on the date of incident through Hubbey Nai has also not been cogently and firmly established by the defence.

44. Learned AGA has further argued that Hubbey Nai would have been the best witness to have deposed about the factum of informing the first informant Jagdish about the death of his daughter Kusuma, however, the said witness has been deliberately withheld by the defence though it has been candidly stated by Malkhan Singh (D.W.-3) in his statement that Hubbey Nai is still alive and lives in the village. Non examination of the said material witness clearly casts a doubt that infact no information was sent to the parents of the deceased regarding her death and in their absence, the dead body of the deceased was burnt in the night itself and false attempt has been made to depose that she was cremated in the morning, which in the light of the evidence adduced by the eye witness P.W.-2 Shaqir stands falsified.

45. Learned AGA has further submitted that on absolutely non existing ground by illegally extending benefit of doubt, the trial court has recorded the finding of acquittal against the accused-respondents and, as such, the impugned order is not only bad

in law but patently perverse and illegal and, therefore, is liable to be set aside.

46. Per contra, counsel for the accused-respondents has submitted that the impugned Judgment and Order passed by the trial court does not suffer from any apparent perversity or illegality, which is based on correct appreciation of evidence adduced and material on record and, as such, the impugned judgment and order cannot be reversed in view of the settled proposition of law laid down by the Hon'ble Apex Court and this Court in several of its decisions.

47. Learned counsel for the accused-respondents has further submitted that it is well settled principle of law that in a Government Appeal as laid down by the Apex Court, if two views of the evidence are reasonably possible, one supporting an acquittal and the other indicating conviction, the High Court, should not in such a situation reverse the order of acquittal recorded by the trial court.

48. He has further submitted that a cardinal principle in criminal jurisprudence is the presumption of innocence of the accused, which is further reinforced by an order of acquittal and, therefore, very substantial and compelling reasons must exist to interfere with the order of acquittal, however, in the instant case, once a possible view has been taken by the court, which reinforces presumption of innocence, the impugned

Judgment should not be reversed and the Government Appeal is liable to be dismissed.

49. He has further submitted the trial court after considering each and every aspect of the matter has passed well reasoned and detailed order holding that the prosecution has miserably failed to prove its case beyond reasonable doubt and has thus extended the benefit of doubt to the accused-respondents. The said finding is just, proper and legal and do not suffer from any perversity and illegality and as such, the Govt. Appeal is liable to be dismissed.

50. Having considered the rival submissions made by learned counsel for the parties, it would be apt to first discuss the scope of reversal of acquittal in a Govt. Appeal and the principle of law laid down by the Hon'ble Apex Court in this regard.

51. It would be germane to point out here that the Hon'ble Apex Court in several of its decisions has laid down the principles governing the scope of interference by the High court in an appeal filed by that state for challenging the acquittal of the accused recorded by the trial court. This Court in the case of **Rajesh Prasad v. State of Bihar and Another** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers

of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

52. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka*** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

53. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of

acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- a) That the judgment of acquittal suffers from patent perversity;
- b) That the same is based on a misreading/omission to consider material evidence on record;
- c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

54. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors, if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

55. In the light of the aforesaid principle of law laid down by the Hon'ble Apex Court, we may now recapitulate the factum of the present case in the light of the evidence adduced. According to the prosecution case, on 6.8.1982 at about 7 p.m. in the evening P.W.-1 Jagdish Prasad, father of the deceased received an information that his daughter living in Aurekhi has died. On getting information, on the very next day he reached her daughter's marital house at Aurekhi and enquired from the inmates of the house, however, no satisfactory reply was given by them and her dead body was burnt in a hurried manner. On collecting information, two of the residents of the village, namely, Shaqir Ali (P.W.-2) and Lakhan (P.W.-3) informed him that on 2.8.1982 in the night his daughter has been done to

death and on that very night her dead body was burnt without giving any information and even the post-mortem could not be conducted.

56. On the basis of said information, the first information report was lodged and in support of the prosecution story, Shaqir (P.W.-2) and Lakhan (P.W.-3), who had informed Jagdish about unnatural death of his daughter and disposal of her dead body has been examined during the course of trial. As per their testimony, both the said witnesses at the relevant time i.e. 9 p.m. were present at the house of Mulu. P.W.-3- Lakhan is the son of Mulu. At the relevant time, P.W.-2 Shaqir and P.W.-3 Lakhan were conversing amongst them when they heard the shrieks and on said shrieks their attention was drawn, consequent to which, they reached the place of incident, which was the cattle shed of the accused-respondent Awadhesh, where they saw all the four accused-respondents Awadhesh Kumar, Pramod Kumar, Kishor and Mata Prasad present there while Pramod Kumar, Kishor and Mata Prasad were holding the victim while Awadhesh was trying to press her neck. The said incident is said to have been witnessed in torch light, in respect of which, specific statement has been made by them in their testimony.

57. It is germane to point out here that on witnessing the said incident, they questioned the accused assailants, who stated

that the victim is infested with ghost and they are trying to drive it out. Consequent to the said fact, the said witnesses returned back to their house and it has been further candidly stated by P.W.-2 that in the night when he got up to urinate, he saw 4-5 accused persons taking away the dead body of victim and hurriedly burnt the same. Both these witnesses in their testimony, corroborated the prosecution case in all material particulars and though they have been cross examined at length but except minor contradictions here and there, we find that they corroborated the prosecution story in all material particulars, however, the trial court on absolutely flimsy and non existing grounds has discarded their testimony by holding that they are not reliable witnesses at all, primarily, on the ground that though, it is the specific case of the prosecution that both the witnesses have witnessed the incident in torch light, however, the said torch has not been taken in possession by the Investigating Officer and its fard recovery memo has not been prepared, however, when we go through, the testimony of the said witnesses regarding the said factum, we find that both the witnesses P.W.-2 and P.W.-3, in their testimony, has candidly stated that the said incident was witnessed by them in torch light and the said torch is still available at his house.

58. P.W.-2 has further categorically stated that “मैंने दरोगा जी को टार्च दिखा दी थी। दरोगा जी ने टार्च नहीं ली थी।”

59. Similarly, P.W.-3 has categorically stated that “वो टार्च जो घटना के समय मेरे पास थी आज घर पर है वो टार्च मैंने दरोगा जी को दिखाई थी आज घर पर है वो टार्च मैंने दरोगा जी को दिखाई थी दरोगा जी ने वो टार्च ली नहीं थी मेरे पास ही रही थी।”

60. Even Investigating Officer, in his testimony, has candidly stated that, though in his statement he has not written that at the relevant time of incident, the witnesses were having a torch, but they had reiterated in their statement to have witnessed the incident in torch light. The factum of witnessing the incident in torch light have been specifically pointed out to the Investigating Officer, however, in case the Investigating Officer do not take in his possession the torch and prepare its fard recovery memo, the defence cannot gain any benefit out of it. Moreover the torch was used by the witness and not by the accused, whereas witness has stated the use and possession of the torch. It has been repeatedly held by this Court as well as by the Hon'ble Apex Court that lapse on part of Investigating Officer cannot be a ground for acquittal of the accused. Thus, on this ground, the finding recorded by the trial court acquitting the accused respondents is patently perverse, illegal and liable to be set aside.

61. Further, the trial court on the basis of testimony of P.W.-2 and P.W.-3 has recorded a perverse finding on the ground that though, it is specific case of the prosecution that both Shaqir (P.W.-2) and Lakhan (P.W.-3) had witnessed the incident and

had seen them causing the death of victim, but they did not lodge any report, therefore, their entire testimony stands falsified and they cannot held to be a reliable witnesses. It is not necessary that every person, who has seen a crime, must take the law to recourse, it is the aggrieved party, that brings law into motion, and a witness can adduce the evidence and can testify the testimony. Even the said finding recorded by the trial court is patently perverse and illegal.

62. It is well known fact that, many a times people though witness the incident but for several reasons on their part do not take decision for approaching the police and lodge the report, however, only on this ground that they have not approached the police to lodge the report, their testimony which otherwise inspires confidence cannot be thrown overboard and they cannot be held to be unreliable witnesses as held by the trial court.

63. Thus, in backdrop of said fact and circumstance the finding recorded by the trial court is palpably perverse and illegal, and therefore, is liable to be set aside, there is no reason for disbelieving the testimony of P.W.-2- Shaqir Ali, who in his testimony, has stated that at the relevant time of incident, he was present at the house of Mulu and Lakhan was also present there. At the relevant time, while he was conversing with him the shrieks were heard and they were attracted to the

place of incident, however, the trial court while discussing the said evidence has come to the conclusion that from the testimony of Shaqir, the presence of Mulu is also found at the relevant time of incident, however, Lakhan (P.W.-3), in his testimony, has categorically stated that, at the relevant time, his father Mulu was not present in the house and on this minor inconsistency, the trial court has held that the said two witnesses are not reliable witnesses, however, in our opinion the factum of presence or non presence of Mulu at the relevant time is not of much significance and moreover, if we carefully go through the testimony of P.W.-2 in this regard, we find that even P.W.-2 specifically stated that, at the relevant time Mulu was not present, however, the trial court misreading the said evidence has held that on account of such inconsistencies in the statement of P.W.-2 and P.W.-3, they cannot be held to be reliable witnesses and discarded their entire testimony by holding them to be unreliable witnesses. In our opinion, even said finding returned by the trial court holding P.W.-2 Shaqir and P.W.-3 Lakhan as unreliable witnesses, is patently perverse, illegal and liable to be set aside.

64. The trial court has also held that there are some inconsistencies between the statement of the two witnesses Shaqir and Lakhan regarding the time of incident, however, if we carefully go through the testimony of both these witnesses,

we find that both of them have stated the time of incident to be 9 p.m. when they heard the shrieks and were attracted to the place of incident, where they saw accused-respondents holding the victim and Awadhesh pressing her neck, while she was laid down on the ground.

65. In the backdrop of the said circumstance, returning a finding of acquittal by extending benefit of doubt on the ground that the prosecution has failed to establish the time of incident is against the material on record, hence cannot be sustained in the eyes of law. There is one more glaring circumstance, which clearly establishes the prosecution case against the accused-respondents i.e. with regard to the fact that both the witnesses on being attracted by the shrieks of the victim had reached the place of incident and saw the accused-respondents holding the victim and Awadhesh pressing her neck, then they questioned the accused-respondents regarding their act to which, they replied that since the victim is infested with ghost, they are trying to drive it out. This particular circumstance clinchingly establishes the presence of accused-persons at the time of incident and their participation in the said crime and the witnesses witnessing the said incident as stated, however, the trial court completely over-looked this vital aspect of the matter and, illegally returned the finding of acquittal against the

accused-respondents, which on the face of it is wholly perverse and illegal and, therefore, liable to be set aside.

66. Recently, the Hon'ble Apex Court in the case of **Sushil Kumar Tiwari Vs. Hare Ram Sah and others** reported in **2025 SCC OnLine SC 1878:-**

"36. Before closing, we deem it fit to observe that noticeably, the principle of beyond reasonable doubt has been misunderstood to mean any and every doubt in the case of the prosecution. Often, we come across cases wherein loose acquittals are recorded on the basis of minor inconsistencies, contradictions and deficiencies, by elevating them to the standard of reasonable doubts. A reasonable doubt is one that renders the version of the prosecution as improbable, and leads the Court to believe in the existence and probability of an alternate version of the facts. It is a serious doubt which must be backed by reason. The underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious, is that at times, owing to a mis-application of this principle, actual culprits manage to find their way out of the clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the society. Every instance of acquittal of an actual culprit revolt against the sense of security of the society and acts as a blot on the criminal justice system. Therefore, not only should no innocent face punishment for something that he has not done, but equally, no culprit should manage an acquittal on the basis of unreasonable doubts and misapplication of procedure."

67. Thus, in light of the said principle laid down by the Hon'ble Apex Court, the finding of acquittal recorded by the trial court is patently perverse, illegal and liable to be overturned.

68. There is another glaring circumstance, which further establishes the prosecution case beyond reasonable doubt i.e.

the circumstance that immediately after the death of the victim in the night itself, they were seen taking the dead body of the victim at about 4-5 a.m. in the morning and thereafter burnt it without even informing the police and the relatives of the deceased, so much so, that even the inquest and the post-mortem report could not be conducted, so as to ascertain the actual cause of her death. This disposal of the dead body in a most hurried and hasty manner with an intention to screen themselves from legal punishment speaks much of their unusual conduct pointing towards their guilt. Even the factum of death was not reported to the police, as such, neither the inquest nor the post-mortem could be conducted to ascertain the actual cause of death, which further raises a strong presumption against the conduct of the accused-respondents, which they have not been able to discharge by leading any evidence worth the name. Even the defence evidence produced by the accused-respondents does not inspire much confidence. D.W.-1 Dr. J.C.Devnath, who stated to have treated the victim in between 15.7.1982 to 31.7.1982 and according to whose statement, the victim died on account of illness alleged to be heart disease, however, when we go through the testimony of D.W.1, we find that even his testimony does not inspire much confidence to the extent that the victim, who was a young lady and was married to accused respondent Awadhash only about

12-13 years back, was suffering from such serious heart disease, which may result in her sudden natural death.

69. The defence witness D.W.-1 in his statement has candidly stated that the victim was suffering from acute heart disease resulting in her sudden death, but the fact remains that he himself in his statement admitted that no ECG was done nor she was ever referred for any ECG and, therefore, by no stretch of imagination on the basis of the testimony of DW.-1, it can be held that the victim, who was a young lady, died of heart disease. Thus, when we go through his entire testimony as a whole, he cannot be said to be a reliable witness on the basis of which it can be held that the victim died a natural death. Even when we go through the testimony of D.W.-3, we find that he too is not a very reliable witness. In his testimony, it has been candidly stated that they in order to inform the parents of the deceased about her death, had sent one Hubbey Nai, however, Hubbey Nai, who would have been the best witness to corroborate the factum of sending information to the parents of the deceased, has not been produced at all by the defence, though it has been categorically stated that he is still alive and is living in the village. This circumstance further makes the testimony of said defence witness doubtful.

70. Had the factum as narrated by D.W.-3 regarding sending the information to Hubbey Nai been true, then he certainly

would have been produced as a witness, being the most material witness. However, for non production of the said witness, for which no explanation has come forth by the defence, adverse inference can always be drawn against it and in the circumstance, it would not be very safe to rely upon the testimony of D.W.-3 and to hold that the victim died natural death and was cremated in the next morning though contrary to the said circumstance, P.W.-2, in his testimony, has categorically stated that infact in the night on the day of incident, when he got up to urinate at about 4-5 a.m., he saw 4-5 accused persons taking away the dead body of victim, who thereafter burnt her, which factum has not been seriously confronted by the defence. Even this clinching circumstance has not been appreciated in the right perspective by the trial court and by recording a contrary finding based on surmises and conjectures, which are patently perverse and illegal, the finding of acquittal has been illegally recorded by the trial court, which in our opinion cannot be sustained in the eyes of law and is liable to be reversed.

71. Moreover, the instant case is a classic case of blind faith and unfortunate realities of our times still prevalent in remote areas in different culture based on superstition and belief just to bring good fortune and to appease the Gods, which in our

opinion, shocks the conscience of the civilized society and is to be condemned by one and all, to curb such social evils.

72. Thus, in the backdrop of the said circumstance, we may safely say that the judgment of acquittal recorded by the trial court suffers from patent perversity and the same is based on misleading/ omission to consider the material evidence on record and the fact that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record. Thus, on the said premises, we are of the opinion that the impugned judgment and order passed by the trial court is patently perverse and illegal and, therefore, liable to be set aside by allowing the present government appeal.

73. Consequently, the Govt. Appeal is **allowed**. The impugned judgment and order passed by the trial court recording the finding of acquittal against the accused-respondents is set aside and both the surviving accused-respondents Awadhesh Kumar and Mata Prasad are liable to be convicted for the offence under Section 302 read with 34 IPC and also under Section 201 IPC and are sentenced for life imprisonment with fine of Rs. 20,000/- each under Section 302/34 IPC and for a period of three years with fine of Rs. 5000/- each under Section 201 IPC, however, both the sentences to run concurrently.

74. The accused-respondents No. 1 and 4, who are on bail, shall surrender before the trial court within two weeks from the date of this order to serve out the remaining sentence.

75. In case accused respondent Nos. 1 and 4 Awadhesh Kumar and Mata Prasad do not surrender within the stipulated period, the trial court shall take appropriate recourse to take them into custody for serving remaining part of the sentence.

76. Registrar (Compliance) is directed to suitably communicate this judgment to the C.J.M. concerned to ensure its due compliance.

77. Let a certified copy of this judgment and order be forwarded to the court concerned for information and necessary compliance alongwith the trial court record.

(Harvir Singh, J.) (Rajiv Gupta, J.)

September 25, 2025

KU/-