

AFR

Neutral Citation No. - 2025:AHC:135111-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2999 of 1984

Appellant :- Radhey Shyam And Another

Respondent :- State of U.P.

Counsel for Appellant :- Bhaskar Bhadra, Subodh Kumar

Counsel for Respondent :- D.G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Anil Kumar-X, J.

(Per Hon'ble Anil Kumar-X, J.)

1. Heard Shri Bhaskar Bhadra, learned counsel for the appellants and Shri Vikas Goswami, learned AGA-I for the State.
2. By earlier order, living status report was called to ascertain the living status of the appellant no. 2 Dharam Pal.
3. The appeal in respect of appellant no. 2 has abated vide order dated 9.7.2018.
4. Appellants have preferred this criminal appeal against the judgment dated 15.10.1984 passed by VIIth Additional District and Sessions Judge, Bareilly in Sessions Trial No. 646 of 1983 wherein they have been convicted under Section 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life.
5. Prosecution story, in nutshell, is that informant Rampal along with Krishna Kumar and Dhanpati (mother of Roop Kishore) went to watch Ramleela at 9:00 pm on 13.10.1983. They stayed there till 01:00 am. In the meantime, they also met Roop Kishore, who was also roaming along with Dharam Pal and Radhey Shyam. At about 01:00 am, they asked Roop Kishore to return home. Dharam Pal and Radhey Shyam said that they will visit their fields and guava orchard with Roop Kishore. Roop Kishore was not willing, but they took him along with them. When informant and his family members woke up in the morning, Roop Kishore was not present in

home. The informant in search of Roop Kishore went at appellant's home, but they were not present at home. Subsequently he went to guava orchard where dead body of Roop Kishore was lying and, his neck and hands were tied. Some times later, Shiv Shankar told him that he had met Dharam Pal and Radhey Shyam in the morning at about 4:00 a.m who were coming from orchard side and were nervous. Informant firmly believed that his nephew Roop Kishore had been murdered by the appellants. Radhey Shyam and Dharam Pal are fast friends. Certain quarrel between Radhey Shyam and Roop Kishore arose over Radhey Shyam's sister. But their relations became normal from past 4-5 days .

6. Written Report (Ex. Ka. 1 at the trial) was submitted by informant Rampal on 14.10.1983 and F.I.R (Ex. Ka. 3 at the trial) was registered at Case Crime No. 178 of 1983, P.S. Aonla, District Bareilly on 14.10.1983 at 9:15 am. After conclusion of investigation, charge sheet under Section 302 IPC was submitted against the accused namely Dharam Pal and Radhey Shyam. Case was committed to Sessions Court for trial and charges against accused were framed under Section 302 IPC read with Section 34 IPC. Accused denied charges and claimed trial.

7. Eight witnesses were examined by the prosecution. Informant-Rampal was examined as P.W.-1 and he has proved his Written Report which is Ex. Ka.1. He has supported the version of FIR. PW-2 Krishna Kumar, who is cousin of deceased-Roop Kishore, has also corroborated the prosecution version. P.W.-3 Devidas, father of deceased, has stated that he was posted as Cabin Man at Aonla Railway Station. On the alleged day of murder, he was on duty from 8:00 p.m to 8:00 a.m. He reached at Railway Station at about 7:30 p.m. and there he saw Roop Kishore wandering around with Radhey Shyam and Dharam Pal. When he inquired them, they told that they have come there for walk. On next morning when he returned, he came to know about murder. PW-4 Kali Charan has

stated that at about 4:00 a.m., when he was on his way towards his fields, he met Dharam Pal and Radhey Shyam near tube well of Devi Das. When he inquired them as to where from they are coming, Dharam Pal said that they are coming from the fields. Later, at about 11:00 in the morning, he came to know that the dead body of Roop Kishore was found in orchard. PW-5 Constable Jakir Ali, has stated that sealed dead body of Roop Kishore was handed over to him by the Investigating Officer and he along with Constable Ram Dayal produced it before the doctor who conducted the postmortem. Dead body was delivered to family members after postmortem was over. PW-6 Shiv Shankar Lal has stated that on the date of incident, he was going towards his fields at about 4:00 am in the morning. He met the accused near the tube-well of Devi Das. When he inquired them as to where they are coming from, they said that they are coming from their fields. Later in the day, at about 10:00 am in the morning, when he came to know about the incident, he told Rampal that he had met with the accused, who were coming from tube-well. PW-7 Dr. Adarsh Sanghi has conducted postmortem of deceased Roop Kishore and has found following ante-mortem injuries:

"1. Contusion 3 cm x 2 Cm over right temporal region of scalp extending up to right eye brow.

2. Multiple abrasion 2 cm x 2 cm over the left side neck.

3. Multiple abrasion 1 1/2 cm x 1 cm over right side neck.

4. Abraded contusion on 1 cm x 1 cm over right side face over zygomatic bone."

On internal examination the right temporal and frontal bones were found fractured and clotted blood was found in the right temporal region in an area of 5 cm x 3 cm. Semi digested food was found in the stomach. According to PW-8 the death was caused due to shock and hemorrhage as a result of injury no. 1.

8. PW-8 S.O. Mohd. Anis has proved Ex. chick Ka.3 which was prepared by H.M. Rajesh Singh and a case was registered in the G.D. marked as Ext. Ka-4. The rope and the nara of the dead body was taken into police custody by S.I. Ram Chandra Singh vide fard

Ex. Ka-5. He has also proved inquest report as Ex. Ka-6. Along with it, he has proved nakal report G.D., report R.I. photo nash, site plan marked as Ex. Ka. 7. He has also recorded statements of Devi Das, Smt. Dhanpati, Kali Charan, Krishna Kumar, Sri Jagpal etc. He arrested Dharam Pal on 17.10.1983 and Radhey Shyam on 21.10.1983 and after completing the investigation, submitted charge sheet against the accused persons.

9. After prosecution evidence was over, statements of the accused were recorded under Section 313 Cr.P.C. Accused Dharam Pal has denied all the allegations levelled against him and has stated that he was working under Ram Pal, but when he left there, Rampal became inimical and has falsely implicated him. Radhey Shyam stated that litigation pertaining to partition of land was pending between Nemchand and his father Sundar Lal. His father has mortgaged his land to Devi Das, who paid its rent. Nemchand was inimical towards him and got him falsely implicated through Devi Das. The accused have produced DW-1 Fakirchand in their defence.

Finding of learned trial court

10. Learned trial court, on the premise that case is based entirely on circumstantial evidence, has held that three sets of witnesses have proved that deceased Roop Kishore was last seen alive in the company of two accused who were seen going with them towards the orchard. Firstly it has relied upon the testimony of PW-3 Devi Das, father of deceased, who has stated that he saw Roop Kishore roaming along with accused Dharam Pal and Radhey Shyam at the Railway Station. Secondly, it has referred to testimony of PW-1 Rampal Singh and PW-2 Krishna Kumar, who have stated that they had seen the deceased in the company of accused at about 1:00 on the night of the alleged incident. The third set of witnesses relied upon are PW-4 Kali Charan and PW-6 Shiv Shankar Lal, who have seen the accused returning from the side of the orchard

at about 4:00 am. It was concluded by learned trial court that above witnesses have proved this fact that the deceased Roop Kishore was last seen with the accused soon before his dead body was recovered from the orchard.

11. The motive for the murder of Roop Kishore was discussed. The prosecution presented evidence from PW-1 Rampal, PW-2 Krishna Kumar, and PW-3 Devidas, who stated that Radhey Shyam and Roop Kishore quarrelled over an affair involving Radhey Shyam's sister. The accused Dharam Pal intervened four to five days before the incident. The court found that Radhey Shyam didn't reconcile and kept a grievance, which was the motive for the murder. The testimony of the three witnesses was sufficient to establish the motive as alleged in the FIR.

Argument by appellant's counsel

12. Learned counsel has submitted that prosecution claims Dhanpati, the deceased's mother, also accompanied PW-1 Rampal and PW-2 Krishna Kumar to Ramleela where they met the deceased and the appellants. However, she was not produced by the prosecution and deliberately withheld, casting doubt on the prosecution's version. Dhanpati was an important witness, and there was no reason for withholding her unless the prosecution could prove she was dead or incapacitated to testify. PW-1 Rampal and PW-2 Krishna Kumar's testimony is unreliable as they have made contradictory statements or improved their earlier versions. PW-1 Rampal initially in F.I.R has not stated that the appellants took the deceased to their field of groundnut, but later stated during his examination. PW-2 has also improved his earlier version.

13. Similarly, Rampal has stated that he personally went to search Roop Kishore in the morning, contrary to his examination-in-chief where he claimed to have done so on Dhanpati's direction. This discrepancy suggests that none of the witnesses were aware of the

body lying in the orchard when they lodged the FIR. It also indicates that the prosecution witnesses were unaware of the actual culprits until the body was recovered, implicating the appellants based on mere suspicion. PW-6 Shiv Shankar Lal testified that he met the appellants while they were coming from the side of Devidas' tube well. However, no tube well is mentioned in the site plan. The prosecution has failed to provide an explanation for the absence of a tube well at the site where the body was recovered and where PW-6 Shiv Shankar Lal met the accused. During his cross-examination, PW-6 Shiv Shankar Lal admitted that the accused were not alone at the time of the meeting, as other villagers were also there to answer nature's call. He also clarified that the accused were not residents of his mohalla but resided in another mohalla. Additionally, PW-6 Shiv Shankar Lal admitted to seeing the accused from their backside and identifying them based on their voice. However, the time of this meeting is relevant, as it was early morning, and it must have been dark at that time. Furthermore, PW-6 Shiv Shankar Lal admitted that he was not carrying a torch or any other light source, making it unlikely that he could have identified the accused by their voice in the dark.

14. The learned counsel for the appellants has pointed out that the prosecution has failed miserably to prove motive in this case. PW-1 Rampal, in his FIR, stated that there was a quarrel between Radhey Shyam and Roop Kishore about Radhey's sister, which was settled a few days ago. However, when PW-1 was examined by the prosecution, he claimed that the incident occurred a month before Roop Kishore's murder. However, accused Dharam Pal, settled the dispute. Other witnesses have also made similar statements. If this alleged incident between Radhey Shyam and Roop Kishore is admitted, it cannot be held as the motive for murder. The prosecution witnesses themselves have admitted that the matter was settled. Any minor quarrel or scuffle between two

people cannot be imputed as the motive for committing a grave offence like murder. This fact is corroborated by the testimony of PW-1 Rampal and PW-6 Shiv Shankar Lal. PW-1 Rampal stated in the FIR that PW-6 Shiv Shankar Lal told him that the accused persons were nervous when he met them in the morning. However, PW-6 himself has not stated anything like that. If we consider PW-6's entire testimony, it becomes evident that when PW-6 Shiv Shankar Lal met the accused in the early morning, it was a normal meeting in the field where both the accused and other people were going to answer the call of nature.

15. Learned counsel for the appellants has placed reliance upon judgment **Rishi Pal vs. State of Uttarakhand (2013) 12 SCC 551** and **Kanhaiya Lal vs. State of Rajasthan (2014) 4 SCC 715**. It was submitted that present case hinges upon circumstantial evidence. In cases where there is no direct evidence and prosecution proceeds to prove its case upon circumstantial evidence, then it is mandatory for prosecution to prove that accused persons and deceased were last seen together before the occurrence. Apart from it, prosecution is bound to prove strong motive impelling the accused to commit murder if it desires conviction. Motive plays significant role in cases that rest entirely upon circumstantial evidence. Witnesses produced by the prosecution to prove that accused persons were accompanying the deceased before his dead body was recovered are not reliable and their testimony suffers from material discrepancies. Similarly, motive imputed upon accused persons is a weak motive and appellants cannot be convicted on the basis of a quarrel which was settled a month ago before the alleged incident took place.

Arguments of learned AGA-I

16. Learned AGA-I has submitted that prosecution from the very beginning has come up with a case that the deceased Roop Kishore along with the appellants was seen by PW-1 Rampal and PW-2

Krishna Kumar in Ramleela fair. Their testimony is unblemished and proves that when PW-1 Rampal, PW-2 Krishna Kumar along with Dhanpati were at Ramleela fair, they met with deceased along with appellants. They also stated that they have stayed there till 1:00 am in the night and when they asked the deceased Roop Kishore to return home along with them, accused persons took Roop Kishore on the pretext of visiting their fields even when Roop Kishore was not inclined to accompany. Prosecution story is also consistent on this point that earlier to this incident, certain quarrel over Radhey Shyam's sister had occurred between Roop Kishore and Radhey Shyam. Dead body of Roop Kishore was found some hours later after the accused persons and deceased were seen together. Therefore, it could not be a co-incidence that dead body of the deceased was found on the very next day when the appellants, despite unwillingness of Roop Kishor, took him away with them. It can not be ruled out that the appellants driven by the motive, as stated by prosecution witnesses, took Roop Kishore with them and committed his murder.

Conclusion

17. After hearing the learned counsel for the appellants at length, we have carefully perused the judgment of the trial court and considered the arguments advanced by the learned counsel. The prosecution case is based upon circumstantial evidence. It is bound to prove that none except the accused persons committed murder as they were last seen with the deceased. Said circumstance alone may not be sufficient to convict the accused person unless prosecution is able to prove that accused persons also had motive to kill the deceased person and/or there are other attending facts and circumstances to establish that the appellants alone could have caused that occurrence, and that the occurrence may not have been caused in any other way. To that extent, the evidence of last seen is

one of the links in the chain of circumstances that the prosecution must prove.

18. In these circumstances, first, it is necessary to examine the testimony of those witnesses who claim to have seen the accused persons along with the deceased before the alleged murder was committed. As per FIR, informant Rampal and PW-2 Krishna Kumar had last seen the appellants in the company of the deceased Roop Kishore. Learned trial court has examined their testimony. Both witnesses are consistent from the very beginning that they had gone to Ramleela fair along with Dhanpati where they met the appellants and the deceased in the night at 9:00 pm as well as at 1:00 am in the night when they left. They have also stated that though they asked Roop Kishore to return along with them, but he went along with the appellants.

19. The appellants' counsel challenged their testimony regarding certain statements made during trial. Both witnesses claimed that the appellants asked Roop Kishore to accompany them to their fields to look after their guava grove and groundnut crop, fearing villagers might damage them. Yet, this statement does not spring from the FIR version. It was first made before the trial court. Even if it is considered an improvement, it may not be enough to discard the testimony of those witnesses. It may be an omission. Yet, Rampal (PW-1) maintained - when he discovered (the next morning) that the deceased was not at home, he went to check if, the deceased was in the hut situated on his agricultural field. During his cross-examination, he also described wholly normal behaviour of the accused at the Ramlila where he met them with the deceased. All three were roaming together, and he had a normal conversation with them. The accused and the deceased remained together over a long period of four hours. It clearly suggests, no unnatural or unusual or suspicious behaviour was noted by him, at

that time. In that circumstance, he returned home leaving the deceased in the company of his friends. That is a wholly normal and natural occurrence disclosed. The fact that he went in search of the deceased to their hut located on the agricultural field coupled with the fact that his dead body was found on that field may indicate that the occurrence was caused after the deceased may have gone to rest there, after returning from the Ramlila. Notably, his dead body was not recovered from the agricultural field of the accused.

20. Then Krishna Kumar (PW-2) also proved similar occurrence. In that, he specified, when the deceased was asked [by him, Rampal (PW-1) and Dhanpati (not examined)], to return home with them, the appellants suggested they would first go to their agricultural field. Also, he proved, the next date it was learnt that the deceased had been murdered, after the discovery of his dead body in the orchard. He too proved wholly normal behaviour noticed by him - between the accused and the deceased. All being friends were seen roaming around and sitting by the stage watching enactment of the Ramlila.

21. Dhanpati, the mother of the deceased, who also described to have last seen her son in the company of the appellants, was not examined at the trial. No reason exists for the same.

22. One more witness i.e., PW-3 Devi Das, who is father of the deceased, has deposed that he reached the Railway Station at 7:30 pm on 13.10.1983 where he found Roop Kishore wandering with the appellants. As far as this witness is concerned, his testimony does not further support the prosecution case. Yet, it extends the normal/uneventful company to five and half hour. It is settled law that theory of "last seen together" comes into play, where time gap between point of time when deceased was last seen alive with accused and when deceased was found dead, is so small that

possibility of any person other than accused being author of crime becomes impossible. In this particular case, PW-3 Devi Das, had seen the appellants with Roop Kishore at least 12:00 hours before his dead body was found.

23. Testimony of PW-4 Kali Charan and PW-6 Shiv Shankar Lal, produced by prosecution to prove that appellants were seen by above witnesses near the place of occurrence at about 4:00 am in the morning, is also not significant. Firstly, because they have not seen the appellants and the deceased together, rather they have only stated that both appellants were found by them in the morning coming from the side of orchard i.e. the place where dead body was found. Secondly, even their said deposition up to that extent is not much reliable. PW-4 Kali Charan in his examination-in-chief has stated that he met Dharam Pal near tube well of Devi Das at about 4:00 am, but after a pause has stated that Radhey Shyam was also accompanying Dharam Pal. Uncertainty in examination-in-chief of this witness about presence of both appellants at the time he met them itself casts doubt. Similarly, PW-6 Shiv Shankar Lal has stated that he could identify persons from 10-15 paces. He has also stated that it was dark when he met the accused and he was not carrying any source of light with him. Interestingly he has also admitted that appellants were 20-25 paces away from him when he met them and he identified them from backside. Further he has stated that he identified them through their voice not by looking at them from backside. He has also admitted that both appellants are residents of different mohallas. Testimony of this witness regarding the way he identified the appellants is contradictory and does not inspire confidence. Therefore, on one hand, above witnesses have no relevance because they have not seen the appellant along with the deceased and on the other hand, their testimony itself is contradictory and unreliable. Therefore,

prosecution cannot claim these witnesses who have lastly seen the appellants with the deceased before the alleged incident.

24. Therefore, testimony of PW-1 Rampal and PW-2 Krishna Kumar is relevant for consideration as to whether they can be held to be the persons who had last seen the deceased and the appellants together. Both witnesses have stated that they saw the appellants and the deceased together in night at 1:00 am before they departed while the dead body of the deceased was discovered at 7:00 am on 14.10.1983. Postmortem of deceased was conducted on 15.10.1983 at 4:00 pm. Dr. Adarsh Sanghi, who conducted postmortem, opined that death might have occurred 36 hours ago. It means that the alleged murder was committed in between 2:00-3:00 am. Therefore, above two witnesses could be safely held as the persons who have lastly seen the deceased in the company of the appellants. Testimony of above witnesses is unblemished on this particular aspect that they were the persons who saw the deceased in the company of the appellants soon before his murder. From the foregoing discussions, it is concluded that prosecution has proved that PW-1 and PW-2 have witnessed the appellants along with deceased Roop Kishore soon before his murder.

25. Now the next point for consideration is whether prosecution has been able to prove the motive imputed against appellants ?

26. In **Jan Mohammad Vs. State of Bihar, (1953) 1 SCC 5**, it was held, motive is important element in chain of presumptive proof where the prosecution story is based purely on circumstantial evidence. In that context, it was observed as below :

"17. Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the

accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed."

(emphasis supplied)

27. Similarly, in **Sakharam Vs. State of M.P., (1992) 2 SCC 153**, it was observed, lack of motive in a prosecution case conferred that circumstantial evidence may lose relevance only where evidence is overwhelming. Otherwise lack of motive may be a factor that may work to the benefit of the defence. In that regard, it was observed as below :

"9. There is absolutely no motive on the part of the appellant to murder the deceased. Absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus point for the accused in a case where the evidence against him is only circumstantial."

(emphasis supplied)

28. Then, in **Arjun Marik Vs. State of Bihar, 1994 Supp (2) SCC 372**, it was again observed that conclusion of innocence may not be reached merely because there is lack of evidence of motive, if the involvement of the accused is otherwise established. At the same time, the Supreme Court cautioned, in cases of circumstantial evidence existence of strong motive is important to exclude reasonable possibilities of anyone else being the perpetrator of the crime. In that regard, it was observed as below :

"10. Learned counsel for the appellants first contended that the motive for the crime is said to be the greed for wealth and reluctance of deceased Sitaram to advance further loan to the appellant, Arjun Marik but in fact there is no material on record either to suggest that the deceased Sitaram was carrying on money lending business or that the appellant Arjun Marik was indebted to him or ever took any sums on loan from the deceased. In this connection it may first be pointed out that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be

considered to show that within all human probability the crime must have been committed by the accused."

(emphasis supplied)

29. Motive for alleged murder in this case is said to be a quarrel between deceased Roop Kishroe and Radhey Shyam, a month prior to alleged incident. All the witnesses i.e., PW-1 Rampal, PW-2 Krishna Kumar and PW-3 Devi Das have consistently stated that Radhey Shyam and Roop Kishore were friends and both quarrelled on certain issue which was related to sister of Radhey Shyam. Informant Rampal in the FIR has stated that said issue occurred but the deceased and Radhey Shyam again became friendly 4-5 days before the incident. Neither he has given any details of quarrel nor has stated about the time of its occurrence. During his examination-in-chief, he stated that the said incident occurred one month before the incident. He has further stated that said dispute was settled after Dharam Pal intervened. PW-2 Krishna Kumar has also said the same fact. When PW-2 Krishna Kumar was cross examined, he said that he was not aware of the quarrel but Dhanpati informed him about it. He has also stated that said quarrel occurred as sister of Radhey Shyam was molested. He further stated, he had disclosed it to the I.O. and if I.O. has not mentioned in his statement, he cannot tell the reason for it. Similarly, PW-3 Devi Das has also stated similar facts in his examination. In his cross-examination, he has stated that he became aware of the said fact one month prior to the incident after it was told to him by his family members. Testimony of PW-2 Krishna Kumar and PW-3 Devi Das reveals that said fact was not in their personal knowledge but they were told of it by their family members.

30. Therefore, only one witness PW-1 Rampal remains who has alleged that a quarrel had occurred because of the sister of the deceased. If statement of this witness is considered, it becomes

apparent that he has only made a reference of a simple quarrel, without disclosing the reason behind it. He has not disclosed the details and particulars of the incident as well as the quarrel which occurred as a consequence. Hence, the alleged motive as relied upon by the prosecution cannot be accepted. Before imputed, motive is held as an important link in cases of circumstantial evidence, it is necessary for the prosecution to prove that said motive was so strong and immediate that it could instigate the accused to commit the crime. In this case, prosecution witnesses have alleged about a simple quarrel between the deceased and Radhey Shyam. None of the witnesses have disclosed the degree of dispute which occurred between the two. Even the alleged cause-molestation has not been proven by PW-1. It is not clear whether said molestation was committed by the deceased or someone else as it is difficult to infer from their statement as to who committed it. In absence of specific details, no inference can be drawn. Before it can be held that motive put forth by prosecution is sufficient to hold the appellants guilty, it is imperative for the prosecution to lead evidence of such quality from which it can be inferred that a particular incident was of such nature which could compel the accused persons to commit the murder. Even if version of prosecution is accepted then also motive could be imputed only against Radhey Shyam and Dharam Pal does not have any motive to do so as alleged.

31. From the foregoing discussions, it is evident that prosecution has been successful in proving that appellants are the persons who were last seen with the deceased. But it is trite law that circumstances of last seen together does not by itself necessarily lead to an inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. In this reference it will be relevant to note that in this particular case which is squarely covered by

circumstantial evidence it was necessary for the prosecution to establish a strong enough motive behind the alleged murder along with the fact that accused and the deceased were last seen together. But prosecution has miserably failed to prove motive advanced by it. Alleged motive is weak and the appellants cannot be convicted on the basis of mere last seen with the deceased. There is no other circumstance of recoveries etc. to link the appellants with the occurrence. Therefore, appellants deserve to be acquitted, on a benefit of doubt, thus exists.

32. In view of the above, the present appeal is **allowed** and the appellant no. 1 Radhey Shyam is acquitted of the charges.

33. Accordingly, judgment of conviction and order of sentence is set aside. The appellant Radhey Shyam is on bail and his personal bond is cancelled and sureties are discharged and further directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two month from today.

34. The Trial Court's record be remitted back along with copy of this judgment.

35. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 11.7.2025

Ujjawal

(Anil Kumar-X,J.)

I agree.

(S.D. Singh,J.)