



2026:AHC:54778

Reserved on 25.11.2025

Delivered on 18.3.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3159 of 1984

Gobind Singh And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Abhilasha Singh (A.C.), Ravindra Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 51

HON'BLE ANIL KUMAR-X, J.

1. Heard Ms. Abhilasha Singh, learned Amicus Curiae for the appellant and Sri R.K. Singh, learned AGA for the State.
2. This criminal appeal has been preferred against the judgment and order dated 17.11.1986 passed by Additional Sessions Judge, Mainpuri in Sessions Trial No. 264 of 1983 by which the appellant has been convicted under Section 364 IPC and sentenced him for five years rigorous imprisonment.
3. As per office report dated 8.5.2019, the appellant no. 2 (Suraj) is reported to be dead. As such, the appeal filed on behalf of the appellant no.2 is declared abated.

The prosecution case, briefly stated, is as follows:

4. Sita Ram Kallu was the son of Chotey Lal (P.W.1), resident of village Ibballa Khera in the town of Shikohabad. On 20.02.1983 at about 5:00 p.m., Chotey Lal was sitting in his Baithak along with Tukman, Hoti Lal and Bare Lal, and they were talking with each other. At that time, Smt. Rambeti (P.W.2), the wife of Chotey Lal, was sitting in the courtyard near the door. The door of the Baithak opened into the courtyard. At that time, Govinda, Suraj and Alihasan, along with 3-4 other persons, came there. Suraj, Govinda and Alihasan came onto the platform situated outside the Baithak of Chotey Lal, while their companions remained standing at some distance on the road. Govinda, Suraj and Alihasan asked Sita Ram to accompany them to watch a cinema. Sita Ram went with them and all of them proceeded

towards the river Yamuna.

5. After that, Sita Ram did not return home. Chotey Lal then went in search of him but could not find him. He also went to the house of Govinda, but Govinda was not present there. The search continued the next day as well. During the search, Chotey Lal came to know that the headless body of his son was lying in the agricultural field of Gyanu. He went there and found that the headless body of Sita Ram was lying in the field. The kurta of Sita Ram was also lying near the dead body.

6. Thereafter, Rambeti along with Tukman Singh went to Police Station Shikohabad and lodged a verbal report at about 10:10 a.m. The report (Exhibit Ka-1) was recorded and a case was registered. The police started the investigation. The dead body of Sita Ram was sent for post-mortem examination, and the autopsy was conducted on 22.02.1983. Multiple incised wounds were found on the chest and abdomen of Sita Ram. The neck and head of Sita Ram were recovered on 24.02.1983 near a Pajawa situated in Ibhalla Rukanpura. The autopsy of the recovered head was conducted on 25.02.1983. The investigation of the case was carried out by Sri R.D. Pushkar, Sub-Inspector of Police. After completing the usual investigation, the police submitted charge-sheets against the accused Govinda, Suraj and Mahesh.

7. Case was committed to Sessions Court. All three accused were charged for offences under Section 147, 364, 302 read with Section 149 and 201 IPC. They denied charges and claimed for trial. The prosecution examined four witnesses to prove its case. P.W.-1 Chotey Lal stated that accused Govinda and Surja came to his house to call his son Sita Ram. An unknown person was also with them. They asked Sita Ram to go with them to watch a movie at the cinema hall. Thereafter, three persons took Sita Ram with them towards the Yamuna river. When Sita Ram did not return home, Chotey Lal started searching for him in the neighborhood. He went to the house of Govinda, where Govinda's mother told him that Govinda had also not returned home. Sita Ram could not be found that night.

8. The next morning he continued his search and came to know that Sita Ram might have gone to Firozabad, where he used to pull a rickshaw. Chotey Lal then went to Firozabad and asked other rickshaw pullers about his son, but they said that they had no information about Sita Ram.

9. When he returned, he came to know that the decapitated body of his son was lying in the agricultural field of Gyanu. He identified the body of Sita Ram by the tattoo on his hand which carried his name.

10. P.W.-2 Ram Beti stated that she was sitting near the window of her Baithak. Her husband P.W.-1 Chottey Lal, nephew Bare Lal and Tukman were sitting in the Baithak. Suraj and Govinda came near the platform and asked Sita Ram to accompany them for watching cinema. Accused Ali Hassan was standing a little away from the platform. All of them took Sita Ram along with them. Sita Ram did not return till night. She became busy in her house chores and her husband started searching for Sita Ram. On the next morning, around 9:00 am, they discovered the decapitated body of Sita Ram. P.W.-3 Tukman Singh has also corroborated the testimonies of two other witnesses. P.W.-4 H.C Kamla Singh is a formal witness who stated that he had lodged FIR on 21-02-1983 on dictation of Smt. Ram Beti. Statements of all the accused persons were recorded under Section 313 Cr.P.C. They denied the allegations and stated thjat they were falsely implicated in this case.

Finding of Learned Trial Court

11. The Trial Court, on consideration of the entire evidence on record, found that no offence under Section 147 I.P.C. was made out, as P.W.1 Chotey Lal, father of the deceased, had clearly stated that only three persons had come to call his son and he had seen only those three persons. The Court further held that there was no evidence to indicate as to who committed the murder of Sita Ram or when the murder was committed, nor was there any material to show that the accused had participated in committing the murder or in causing disappearance of evidence. Consequently, the charges under Sections 302/149 and 201 I.P.C. were also held not proved. The Trial Court also observed that no evidence was available against accused Mahesh and Rashid as they had not been named by any witness, and therefore they were entitled to acquittal. With regard to accused Alihasan, the Court noted that he had been named only by P.W.2 Smt. Rambeti, whereas P.W.1 Chotey Lal and P.W.3 Tukman Singh had not named him. Considering that Smt. Rambeti was sitting in the inner courtyard, Alihasan was standing at some distance, and it was already dark after sunset, the Court held that she had little opportunity to identify him and therefore extended the benefit of doubt to him.

12. However, the Trial Court found the testimony of the three eye-witnesses consistent on the point that accused Govinda and Suraj had come to call Sita Ram @ Kally and that he had gone with them. The Court found no material to discredit their evidence and observed that though the witnesses were relatives of the deceased, they were natural witnesses and could not be treated as interested witnesses. The suggestion that Govinda had been falsely

implicated because he had refused to perform scavenging work at the complainant's house was found to be improbable. Relying upon the principle laid down in *Dalbir Kaur v. State of Punjab*, AIR 1977 SC 472 the Trial Court held that the testimony of close relatives cannot be discarded merely on that ground. Accordingly, it concluded that the prosecution had proved beyond doubt that accused Govinda and Suraj had abducted Sita Ram @ Kally in order to commit his murder, thereby, committing the offence punishable under Section 364 I.P.C. Consequently, it acquitted accused Govinda and Suraj of the charges u/s 147, 302/149 and 201 IPC and convicted them for the offence u/s 364 IPC.

Arguments on behalf of the Appellants

13. Learned counsel for the appellants submitted that the conviction under Section 364 I.P.C. is wholly unsustainable in law and on facts. It was argued that the entire prosecution case merely establishes that the deceased had gone with the appellants voluntarily for the purpose of watching a cinema and there is no evidence of force, compulsion or deceit so as to constitute abduction. It was further contended that the Trial Court itself has acquitted the appellants of the charges under Sections 302/149 and 201 I.P.C. by recording a clear finding that there is no evidence to show as to who committed the murder or that the appellants had participated in the same, and therefore the essential ingredient of intention of murdering the deceased is completely lacking. It was also submitted that the case rests solely on the "last seen" evidence which is by itself insufficient to sustain conviction under Section 364 I.P.C. in the absence of any corroborative circumstance such as motive, recovery or any other incriminating material. Learned counsel contended that in the absence of proof of abduction coupled with intention to murder, conviction under Section 364 I.P.C. cannot be sustained and the appellants are entitled to acquittal.

Arguments on behalf of the State (A.G.A.)

14. Learned A.G.A. for the State supported the judgment of the Trial Court and submitted that the evidence of P.W.1, P.W.2 and P.W.3 clearly establishes that the appellants had taken the deceased with them and thereafter he was not seen alive and his dead body was subsequently recovered in a mutilated condition. It was contended that the circumstance of the deceased being last seen in the company of the appellants, coupled with the fact that he was later found murdered, is sufficient to draw an inference that the appellants had taken him with the intention to murder him. It was further argued that the testimony of the eye-witnesses is consistent and reliable and there is no reason to disbelieve their statements merely because

they are related to the deceased. Learned A.G.A. thus submitted that the Trial Court has rightly appreciated the evidence on record and has rightly convicted the appellants under Section 364 I.P.C., which does not call for any interference by this Court.

Conclusion

15. Upon consideration of the entire evidence on record and the submissions advanced on behalf of the parties, the principle question which arises for determination in the present appeal is whether the prosecution has been able to establish the charge under Section 364 I.P.C. against the appellants.

16. Section 364 I.P.C. provides punishment for kidnapping or abducting any person in order that such person may be murdered. The essential ingredients of the offence are that the accused must have kidnapped or abducted the victim and such kidnapping or abduction must have been committed with the intention that the person abducted may be murdered or may be so disposed of as to be put in danger of being murdered. Thus, the existence of intention or knowledge that the victim may be murdered constitutes the most essential ingredient of the offence.

17. In the present case, the evidence of P.W.1 Chotey Lal, P.W.2 Smt. Rambeti and P.W.3 Tukman Singh only establishes that accused Govinda and Suraj had come to the house of the deceased and had asked Sita Ram to accompany them for watching a cinema and that Sita Ram went with them towards the river Yamuna. None of the witnesses has stated that the appellants had used any force, compulsion or deceitful means to take Sita Ram with them. On the contrary, the evidence indicates that Sita Ram voluntarily accompanied them. In these circumstances, the element of kidnapping or abduction itself becomes doubtful.

18. Even otherwise, there is absolutely no evidence on record to indicate that the appellants had taken Sita Ram with the intention to murder him. The Trial Court itself has recorded a categorical finding that there is nothing in the evidence to show as to who committed the murder of Sita Ram or when the murder was committed. The Court has also held that there is no material on record to show that the accused had participated in committing the murder or in causing the disappearance of evidence and, on that basis, the appellants were acquitted of the charges under Sections 302/149 and 201 I.P.C.

19. Once such findings have been recorded by the Trial Court, it becomes difficult to sustain the conviction of the appellants under Section 364 I.P.C.,

because the prosecution has failed to establish the intention or knowledge required by the said provision. The evidence merely indicates that the deceased was last seen going with the appellants. Such a circumstance by itself cannot establish that the appellants had abducted the deceased with the intention that he might be murdered.

20. In **Thakorlal D. Vadgama v. State of Gujarat, 1973 AIR 2313** the Supreme Court has held that in order to constitute kidnapping or abduction there must be evidence to show that the accused had taken or enticed the victim by force, compulsion or deceitful means and that mere voluntary accompaniment of the victim with the accused does not necessarily amount to kidnapping or abduction.

21. The principle relating to the "last seen" circumstance has also been explained by the Supreme Court in **Rambraksh @ Jalim vs. State of Chhattisgarh, AIR 2016 S C 2381** wherein it has been held that the circumstance of last seen together by itself cannot form the basis of conviction unless it is supported by other incriminating circumstances forming a complete chain of evidence pointing unerringly towards the guilt of the accused.

22. In the present case, the prosecution has not been able to establish any such additional circumstance. There is no evidence of motive, no recovery of any incriminating article at the instance of the appellants and no circumstance connecting them with the subsequent murder of Sita Ram. The recovery of the decapitated body from the field of Gyanu and the subsequent recovery of the severed head do not in any manner connect the appellants with the commission of the murder.

23. The Trial Court, after having disbelieved the prosecution case with regard to the offences under Sections 147, 302/149 and 201 I.P.C., proceeded to convict the appellants under Section 364 I.P.C. solely on the basis that the deceased had gone with them. Such reasoning, in the opinion of this Court, is clearly erroneous. Mere fact that the deceased was last seen in the company of the appellants does not by itself establish that they had abducted him with the intention to commit his murder.

24. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. In **Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622** the Supreme Court has laid down that in cases resting on circumstantial evidence the chain of circumstances must be so complete as to exclude every hypothesis except the guilt of the accused. In the present case, the circumstances relied upon by

the prosecution fall far short of establishing such a complete chain.

25. Thus, the finding recorded by the Trial Court that the appellants had abducted Sita Ram in order to commit his murder, is not supported by reliable evidence and appears to be based on conjectures and surmises. The prosecution has failed to prove the essential ingredients of Section 364 I.P.C. beyond reasonable doubt.

26. For the reasons discussed above, the appeal is allowed. The judgment and order passed by the Trial Court convicting the appellant Govinda under Section 364 I.P.C. is hereby set aside. The appellant is acquitted of the charge under Section 364 I.P.C. by giving them the benefit of doubt. The appellant is on bail. Their bail bonds and sureties are discharged. He need not surrender and shall stand discharged from their liabilities, unless required in any other case.

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

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

March 18, 2026
Ujjawal

(Anil Kumar-X,J.)