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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 128/2012**

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Judgment reserved on: 2nd March, 2016
Judgment pronounced on: 30th May, 2016

RAJ KUMAR

..... Appellant

Through: Mr. Harish Pandey with Mr.
Raghvendra Mishra and Mr. Manish
Kumar, Advocates.

Versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Aashaa Tiwari, APP for State.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been filed under Section 374 of the Code of Criminal Procedure and is directed against the judgment dated 22.10.2011 and order on sentence dated 29.10.2011 passed by the Additional Sessions Judge, New Delhi, in Sessions Case No. 52/2010, by virtue of which the appellant has been convicted under Section 302 of the Indian Penal Code and under Section 25/27 of the Arms Act, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 25,000/- for the offence punishable under Section 302 of the Indian Penal Code, and in default of the payment of fine to further undergo rigorous imprisonment for a period of one year. The appellant was further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- for the offence punishable under

Section 25 of the Arms Act and in default of payment of fine to further undergo simple imprisonment for one month. The appellant was also sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine to further undergo simple imprisonment for three months. All the sentences were ordered to run concurrently. It was also ordered that life imprisonment shall not be less than 25 years and it cannot be commuted less than 25 years.

2. The brief facts of the case as noted by the trial court are as under:

“On 15.08.2009 DD No. 21 A was received by SI Sishu Pal who reached at the place of occurrence H. No. 158/3, Gali Sanatan Dharamsala and saw one woman and one man lying in pool of blood and were dead. The woman had stab injury on left side chest which was bleeding and the male was having four wounds on his stomach and one on left foot and intestine had come out from one wound of stomach on account of injury and the meantime ACP/SHO also reached at the spot. Ct. Ram Naresh and HC Jayanti Prasad also reached at the spot and HC Jayanti Prasad handed over the copy of DD No. 21 to SI Sishu Pal. One Ashok Kumar met there and his statement was recorded. He stated that Ram Chander was living with his wife, son and daughter in Sabjimandi Maujpur for last 18-20 years and his wife and son had pre deceased him. Ram Chander was having weak financial position and therefore his daughter Seema was got married on 5.5.2003 with accused Raj Kumar by the mohalla people. After some days of marriage, accused Raj Kumar had started ill-treating her and was beating her. They made him understand many times but he did not mend his way. They were not insisting much accused as he may desert Seema. Seema had started living with his father for last two months at house no. 158/03 Gali Sanatan Dharamsala at the ground floor. It is stated that

he was standing at about 6:00 p.m. in front of his house near Hotel Apna and in the meantime accused Raj Kumar was running from street and was saying that he had killed both of them and he was having knife in his hand. Suspecting the same, he went running to the house of Ram Chander and saw Ram Chander and his daughter were lying in pool of blood. On the basis of his statement FIR was registered. Spot was inspected by crime team and was photographed. The dead bodies were sent to mortuary, GTB Hospital. Blood stained and blood cement concrete and earth control were seized from the spot. On 16.08.2011 the dead bodies were identified and inquest papers were prepared. The inquest papers of Seema were prepared by Tehsildar but postmortem could not be conducted and on 17.08.2011 after the postmortem, the dead bodies were handed over. On 19.08.2011, an information was received that accused Raj Kumar would surrender in the court and thereafter accused was arrested after taking permission from the court and he made disclosure statement he can get recovered the knife. He was remanded to two days police custody remand. Again he was interrogated and he made another disclosure statement and stated that he can get recovered knife and shirt and is wearing pant which was worn by him at the time of incident. The pant was taken and seized which was having blood stains. Thereafter on 21.08.2011 he was again taken on police custody remand for one day and one button actuated knife was recovered from railway track. He was again interrogated and further disclosed that he had previously stated falsehood that he had thrown shirt along with knife from train and he can get recovered the shirt from Sujjanpur and he pointed the house of son of his maternal uncle Sunil Sharma and produced shirt from his house which was seized. Subsequent opinion was taken regarding knife and after completion of the investigation the charge sheet filed. ”

3. Charges for the offence punishable under Section 302 of the Indian Penal Code and under Section 25 read with Section 27 of the Arms Act were framed against the appellant, to which he pleaded not guilty and claimed trial.
4. In order to bring home the guilt of the appellant, the prosecution examined 27 witnesses in all. Thereafter, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he pleaded his innocence by denying all the incriminating circumstances. The appellant further took the plea of alibi and claimed to be falsely implicated.
5. Challenging the findings of the trial court, Mr. Harish Pandey learned counsel appearing on behalf of the appellant contended that conviction of the appellant by the trial court is based on conjectures and surmises and on erroneous appreciation of evidence resulting in flagrant miscarriage of justice which cannot be sustained in law.
6. Counsel for the appellant fervently urged that considering the number of injuries on the deceased, it is highly improbable that there would be no blood on the shirt worn by the appellant.
7. Counsel for the appellant further contended that it is unbelievable that at the time of arrest of the appellant he was wearing the same blood stained pants which was worn by him at the time of the incident.
8. On the last seen evidence, counsel for the appellant strongly urged that the evidence of last seen by itself, is a weak piece of evidence and therefore it may not be safe for the court to base the conviction of the appellant on such an evidence solitarily, unsupported by any other circumstantial evidence.

9. The learned counsel vehemently argued that the statement of PW2 Smt. Daya Rani (landlady) was inconsistent and did not support the case of the prosecution and further submitted that there were material contradictions in the testimonies of all the public witnesses.
10. To substantiate his arguments on the last seen theory, learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in ***Rishi Pal Vs. State of Uttarakhand*** reported in (2013) 12 SCC 551, wherein it was observed as under:

“19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the Appellant but suspicion howsoever strong is not enough to justify conviction of the Appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the Appellant may have murdered the deceased-Abdul Mabood. In doing so the trial Court over looked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence.

20. In Mohibur Rahman v. State of Assam [(2002) 6 SCC 715 : 2002 SCC (Cri) 1496] this Court held that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case.

“10. ... There may [however] be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the

liability for the homicide.” (Mohibur Rahman case[(2002) 6 SCC 715].

21. Similarly in Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court reiterated that the solitary circumstance of the accused and the victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded.

24. We may also refer to State of Goa v. Sanjay Thakran[(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] where this Court held that in the absence of any other corroborative piece of evidence to complete the chain of circumstances it is not possible to fasten the guilt on the accused on the solitary circumstance of the two being seen together.

26. Finally, in Jaswant Gir v. State of Punjab [(2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579] this Court held that it is not possible to convict the appellant solely on the basis of “last seen” evidence in the absence of any other links in the chain of circumstantial evidence; the Court gave benefit of doubt to the accused persons. ”

11. Reliance was also placed on ***Surender Prashad Singh Vs. State*** in ***Crl. Appeal No. 245/2002***, wherein this court observed as under:

“17. Last seen evidence does not by itself necessarily leads to an inference that the accused committed the crime unless the same is duly supported by other links in the chain of circumstantial evidence unerringly pointing out the guilt of the accused. The theory of last seen together evidence is thus held to be not of universal application based on which the conviction of accused can be sustained. It shall also be noted that the last seen evidence is only a relevant evidence to complete the chain of circumstantial evidence; however the conviction cannot be solely based on this piece of evidence. ”

12. Reliance was further placed on the Judgment of this Court titled as ***Sandeep Vs. State (NCT of Delhi) (Crl. Appeal No. 1377/2011)***, wherein last seen evidence theory was discussed in detail and held as under:

“22. From the material on record, it therefore falls that the material witness PW-5 Sukhdev Singh who allegedly saw the appellant and the deceased together failed to support the case of the prosecution. Even otherwise the fact that the deceased was last seen in the company of the appellant is not sufficient to convict the appellant.

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31. Analyzing the material on record, it appears that the case of the prosecution has not stood sufficiently or properly established. It is doubtful that the appellant was last seen with the deceased before she was killed as the only witness who saw them together was the brother of the deceased, who turned hostile and this circumstantial evidence against the appellant has not been established. The Crime Team who visited the crime scene has nowhere shown the presence of the appellant at the scene of crime.”

13. The learned counsel submitted that the prosecution has failed to establish the motive behind the alleged offence and further submitted that in the cases of circumstantial evidence, motive plays a pivotal role in proving the guilt of the accused. The counsel further relied upon ***Rishi Pal Vs. State of Uttarakhand*** reported in (2013) 12 SCC 551, wherein the Hon’ble Supreme Court observed as under:

“15. The second aspect to which we must straightaway refer is the absence of any motive for the Appellant to

commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the Appellant nor is there any evidence to prove any such enmity. All that was suggested by learned Counsel appearing for the State was that the Appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the Appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the Appellant to succeed in his design. The prosecution case on the contrary is that the Appellant had induced the complainant to part with the car and a sum of Rs. 15,000/-. The Appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the Appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.”

14. Reliance was further placed on the view taken by the Hon’ble Supreme Court in ***Tomaso Bruno Vs. State of U.P.*** reported in **2015 (1) SCALE 498** and held as under:

“34. Where the case is based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence. If motive is indicated and proved, it strengthens the probability of the commission of the offence. In the case at hand, evidence adduced by the prosecution suggesting motive is only by way of improvement at the stage of trial which, in our view, does not inspire confidence of the court.”

15. On the aspect of recovery, the counsel for the appellant submitted that the alleged recovery of weapon used in the commission of crime and the clothes worn by the appellant must not be given any credence as there is incurable discrepancy with regard to the place and manner of the recovery. This view was further fortified by the Apex Court in ***Mohan Singh Vs. State of Haryana*** reported in (1995) 3 SCC 192, whereby the Hon'ble Supreme Court held as under:

“5. The prosecution case with regard to the search of the appellant and seizure of a country-made pistol from the possession of the appellant rests on the evidence of Hira Lal PW 5, Head Constable Desh Raj PW 6 and Sub-Inspector Baljit Singh, PW 7. The rest of the prosecution witnesses are formal in nature. PW 6 and PW 7 as said above are police officials being Head Constable and Sub-Inspector of Police respectively. Only Hira Lal, PW 5 is said to be an independent witness. According to the prosecution the investigation had taken place in the waiting hall of Rewari Railway Station. Head Constable Desh Raj, PW 6 clearly deposed in the cross-examination that 10 to 20 persons were present in the waiting hall at that time. From the evidence of Desh Raj, PW 6 and Baljit Singh, PW 7 it is clear that the Railway Booking Office and tea vendors' stall were located near the place where the appellant was apprehended and searched. But no one from amongst the persons sitting in waiting hall or anyone from the booking office or tea stall was joined as

witness by the investigation in the search and seizure of the country-made pistol said to have been recovered from the possession of the appellant. From the evidence of PW 6 and PW 7 it does not appear that they made any effort whatsoever to call any public witness or railway officials working in the booking office while taking the search of the appellant and recovery of pistol in that process. No explanation is forthcoming for not joining any independent witness. Baljit Singh, PW 7, however, preferred to pick up Hira Lal, PW 5 who is nobody but a mobile sweet vendor. According to the prosecution Hira Lal happened to be there when the appellant was apprehended at that particular time when search of his person was made and the country-made pistol is said to have been recovered. In these facts and circumstances when the police officials deliberately avoided to join any public witness or railway officials though available at the time when the appellant was apprehended the evidence of Hira Lal who is nobody but a chance witness and the evidence of police officials PW 6 and PW 7 has to be closely scrutinised with certain amount of care and caution.”

16. Lastly, the counsel has relied upon **Narender Singh Vs. State (Cri. Appeal No. 560/1999)**. The relevant paras are as under:

“21. Recovery of clothes i.e. the shirt and the pant of the appellant with blood stains on 10th August, 1997, nearly three days after the occurrence is debatable and doubtful. The prosecution version is that there were blood stains on the shirt and the pyjama and the FSL report Ex.PW19/A confirms the blood group which matches with the blood group of the deceased. As per the prosecution case, the appellant had come back to his own house in the buggi with his sister and sister-in law. In case there were fresh blood stains on the clothes worn by the appellant, it would have been noticed and the appellant would have been questioned. The clothes would also have been

washed as nobody would like to keep dirty blood stained clothes in their house. The appellant, as per the police case was arrested on 10th August, 1998 and had made disclosure statement Ex.PW7/B on the same day. The said disclosure statement does not mention the place where the clothes were concealed and hidden. As per the seizure memo, Ex.PW7/C, clothes were recovered from the house of the appellant on 10.8.1997. On the same day itself i.e. 10th August, 1997, the appellant was taken to the fields of Rattan Singh where he purportedly identify the place of occurrence. The pointing out memo (Ex.PW7/D) is not admissible and would not be covered under Section 27 of the Evidence Act. The place of occurrence was already known to the police and as per the investigations made by them on 8.8.1997; the dead body of Sangeeta was recovered from the same place. Surprisingly, the police could not recover the sickle as per their case on 10th August, 1997. On 11th August, 1997, one day police remand was obtained from the Metropolitan Magistrate and the sickle was recovered as per seizure memo/pointing out memo Ex.PW7/E on 12th August, 1997. It is not indicated in the seizure memo/pointing out memo or in the sketch (Ex.PW7/F) that any blood stains were found on the sickle.

23. At this stage, we would like to reiterate the established principle that to base conviction on circumstantial evidence, the prosecution must establish all pieces of incriminating circumstances by reliable and clinching evidence. The circumstances so proved must form a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances should not lead to any other hypothesis.”

17. On the converse, Ms. Aashaa Tiwari learned Additional Public Prosecutor appearing on behalf of the State strongly refuted the submissions made by the counsel for the appellant and lent support to the judgment on conviction and order of sentence passed by the

Sessions Judge. Counsel argued that the prosecution has been able to prove their case beyond any shadow of doubt. The testimonies of the witnesses so examined prove the guilt of the appellant. Further the testimony of PW1 Ashok Kumar stands corroborated from the testimony of PW2 Smt. Daya Rani who are witnesses to the last seen.

18. Counsel for the State further submits that on the basis of evidence produced on record as well as the circumstances proved by the prosecution forms a complete chain pointing unequivocally towards the guilt of the appellant.
19. We have heard learned counsel for the parties at considerable length and given our anxious consideration to the arguments advanced by them. We have also gone through the entire material placed on record including the record of the trial court.
20. In the facts of the present case, there is no direct evidence to prove the commission of crime of murder by the appellant, and the case primarily rests upon the circumstantial evidence only. It is a trite law that where the case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In other words, there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

21. In this case, on consideration of evidence and materials on record and after considering the arguments advanced, we have found that the following circumstances were relied upon by the prosecution to prove the guilt of the appellant:

1. *The circumstance of last seen of the appellant corroborated by the testimony of PW2 Smt. Daya Rani.*
2. *Appellant was seen running with knife in his hand by PW1, 3 and 4.*
3. *Weapon of offence used in commission of crime got recovered at the instance of the appellant.*
4. *Medical Evidence.*
5. *Forensic evidence establishing the spot and presence of human blood on the pant of the appellant.*

22. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the appellant to be found innocent.

23. Based on the testimony of PW2 Smt. Daya Rani; the circumstance No. 1 i.e. the presence of the appellant at the spot was proved. PW2 Smt. Daya Rani (landlady) in her testimony deposed as under:

“...I had asked the father of the deceased Seema namely Sh. Ram Chander before the incident as to why he does not send his daughter to her matrimonial home and on this, he told me that the husband of his daughter used to beat her and as such, he was not sending his daughter to her matrimonial home.

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...deceased Seema was residing at the house of her father for the last about two months before the incident and

during that period, Raj Kumar came there and quarrel on this account.

It is wrong to suggest that I have stated to the police in my statement and it so happened that on 15.08.2009, at about 5.30 PM, when I get down from the 1st floor, I saw that accused Raj Kumar was quarrelling with his wife Seema and his father-in-law Ram Chander and thereafter, I went upstairs and after ten-fifteen minutes, I heard noise of crying and on this, I immediately get down and saw that Seema and Ram Chander were lying in the pool of blood and thereafter, immediately, I came out in the street and called one boy who called the police over 100 number. (Confronted with the statement Ex.PW-2/A from portion A to A, wherein it is so recorded).

24. PW2 Smt. Daya Rani in her cross-examination stated as under:

“It is wrong to suggest that accused Raj Kumar had not come at the tenanted portion where Ram Chander was residing in my house on 15.08.2009, at any time.

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It is further wrong to suggest that there is cordial relations between Ram Chander, Seema and accused Raj Kumar.”

25. Based on the testimony of PW1 Ashok Kumar; the circumstance No. 2 i.e. the appellant was running with knife in his hand after the commission of the crime stands proved. PW1 Ashok Kumar who is complainant in the present case testified as under:

“After marriage, accused Raj Kumar has started harassing and beating her. I and other mohalla people had tried to make him (accused Raj Kumar) understand to not to give beatings to Seema. But, he continued harassing and beating her and he did not change his behavior. Due to this behavior of accused Raj Kumar, she (Seema) came to her father's house i.e 158/3, Gali

Sanatan Dharm Shala, Maujpur to live there, about two months prior to the incident.

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On 15.08.2009, at about 05:45-06:00 PM, I was present in front of hotel namely 'Apka Bhojnalaya', I saw that accused Raj Kumar was coming running from the side of house of Ram Chander and he was having knife in his hand and on seeing me he stopped there and told that 'maine dono ko maar dia hai. Jo kara jaye kar lo.' I immediately went to the house of Ram Chander and found that Sh. Ram Chander and his daughter Seema were lying in the room in blood of pool (khoon se latpat the)."

26. PW1 Ashok Kumar in his cross-examination stated as under:

"The rented house of deceased Ram Chander was at the distance about 20-25 steps away from my house. The house of the deceased Ram Chander was after leaving 2-3 street from my house.

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I used to treat Seema as my daughter.

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It is further wrong to suggest that accused Raj Kumar was also having good relation with the deceased Ram Chander. It is further wrong to suggest that there was visiting terms in between the family of the accused Raj kumar and deceased Ram Chander.

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I came at the apna bhojnalaya at about 05:00 PM. Apna bhojnalaya is of my bhabhi (sister-in-law)."

27. The legal position pertaining to appreciation of circumstantial evidence of '*last seen*' has been summarised in a Division Bench decision titled as *Arvind @ Chhotu vs. State, ILR (2009) Supp. (Del) 704*, in the following words:

“(i) Last-seen is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding the guilt or otherwise of an accused where the last seen theory has to be applied.

(ii) It is not necessary that in each and every case corroboration by further evidence is required.

(iii) The single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last seen.

(iv) Proximity of time between the deceased being last seen in the company of the accused and the death of the deceased is important and if the time gap is so small that the possibility of a third person being the offender is reasonably ruled out, on the solitary circumstance of last-seen, a conviction can be sustained.

(v) Proximity of place i.e. the place where the deceased and the accused were last seen alive with the place where the dead body of the deceased was found is an important circumstance and even where the proximity of time of the deceased being last seen with the accused and the dead body being found is broken, depending upon the attendant circumstances, it would be permissible to sustain a conviction on said evidence.

(vi) Circumstances relating to the time and the place have to be kept in mind and play a very important role in evaluation of the weightage to be given to the circumstance of proximity of time and proximity of place while applying the last-seen theory.

(vii) The relationship of the accused and the deceased, the place where they were last seen together and the time when they were last seen together are also important circumstances to be kept in mind while applying the last seen theory. For example, the relationship is that of husband and wife and the place of the crime is the matrimonial house and the time the husband and wife were last seen was the early hours of the night would require said three factors to be kept in mind while applying the last-seen theory.”

28. In ***State of U.P. vs. Satish*** reported in ***AIR 2005 SC 1000***, the Hon’ble Supreme Court held as under:

“The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case, there is positive evidence that the deceased and the accused were seen together by witnesses-PW3 and PW5, in addition to the evidence of PW2”

29. It is in evidence that PW1 was in fact the first person who was found on the spot at the time when the police visited the spot and noticed the dead bodies which is evident from the version of the Investigating Officer SI Shishu Pal (PW27) who had categorically deposed that at the spot public persons gathered and one Ashok Kumar had met him and his statement Ex.PW1/A was recorded. PW1 has categorically deposed in his testimony that he raised an alarm after he saw the dead bodies of the deceased persons lying in a pool of blood. PW1 also withstood the test of cross-examination which makes his testimony credible and trustworthy. It is further in evidence that PW2 Smt. Daya Rani is also a witness to the last seen. Furthermore, it would be relevant to point out that there was no reason as to why PW1 and PW2 would have deposed against him; there is no enmity or any other ulterior motive imputed to him. After reading the above discussed testimonies and in view of the aforesaid principles governing the case it stands established that the deceased was last seen alive in the company of the appellant. This unhesitatingly points the finger of guilt towards the appellant. In our view, the prosecution was able to establish the 'last seen' theory against the appellant.
30. So far as medical evidence is concerned, PW12 Dr. Meghali Kelker conducted the post-mortem examination of the deceased Ram Chander. As per the postmortem report Ex.PW12/A, the deceased had received the following anti mortem injuries:
- i) Incised stab wound measuring 2 x 0.2 x 3.5 cm present on antromedial aspect of left thigh.

- ii) Incised stab wound measuring 3 x 0.2 x 5 cm deep present on right abdomen.
- iii) Incised stab wound measuring 2 x 0.2 x 4 cm deep present horizontally on left lower chest.
- iv) Incised stab wound measuring 1.5 x 0.2 x 4 cm deep present on left lower abdomen obliquely placed.
- v) Incised stab wound measuring 2.5 x 0.2 x 16 cm present on left lower chest.
- vi) Incised stab wound measuring 3.6 x 2.2 x 8 cm deep present on right abdomen.
- vii) Incised stab wound measuring 3.4 x 0.2 x 6 cm deep present on right lower abdomen.
- viii) Superficial incised wound measuring 2 x 0.2 cm present on the palmar aspect of base of left little finger obliquely placed and muscle deep.
- ix) Superficial incised wound measuring 9.5 x 0.3 cm muscle deep present on medial side of ventral aspect of left forearm.
- x) Reddish abrasion 4 x 0.5 cm present on ventral aspect of left lower forearm 0.5 cm above left wrist joint.
- xi) Incised stab wound measuring 2.5 x 0.2 x 7 cm deep, obliquely placed, present on back of left shoulder.

On Internal Examination, it was found that the intestines contained fluid and injuries as described in Injury No. 2, 6 and 7. Cuts present in omentum as described in Injury No. 2, 3, 6 and 7. Cuts seen in mesentery as described in Injury No. 2. Extravasation of blood seen in soft tissues and muscles of abdominal wall.

31. PW12 Dr. Meghali Kelker, vide report EX.PW12/B, further opined that the cause of death was due to haemorrhagic shock as a result of ante mortem injury to mesenteric blood vessels produced by sharp edged weapon and injury No. 1 to 9 and 11 are caused by sharp edged weapon and injury No. 2, 3, 6 and 7 are sufficient to cause death in the ordinary course of nature independently as well as collectively. PW12 also gave subsequent opinion regarding weapon of offence and opined that injuries no.1 to 9 and 11 can be possible by the given weapon or this type of weapon and gave further opinion with respect to the coinciding cuts present on the body and clothes and opined that injury No. 2, 3, 4, 5, and 11 has corresponding cut marks on the shirt and banyan and injury No.1 has corresponding cut mark on the trouser, and injuries no. 6 and 7 have corresponding cut marks on the shirt and injuries No. 8, 9 and 10 do not have corresponding cut marks on the clothes and injury No.10 was caused by blunt force impact.
32. PW13 Dr. Atul Gupta conducted the post-mortem examination of the deceased Seema. As per the postmortem report Ex.PW13/A, the deceased had received the following anti mortem injuries:
- i) Wedge shaped incised stab wound 2.7 x 0.15 cm obliquely placed on outer aspect of left upper arm.
 - ii) Wedge shaped incised stab wound 3.1 x 0.15 cm obliquely placed on upper outer aspect of chest on left side.
 - iii) Wedge shaped incised stab wound 3.2 x 0.2 cm obliquely placed on upper outer aspect of left breast. Depth of the wound was 7 cm.

- iv) Wedge shaped incised stab wound 2.5 x 0.2 cm on back of trunk vertically placed on left side. Depth of the wound was 10.5 cm.
- v) Incised stab wound 2.9 x 0.2 cm on back of trunk right side. Depth of the wound was 10.5 cm.
- vi) Two incised wounds on sole of right foot communicating with each other cutting only the subcutaneous tissues placed 3.5 cm apart. Medial incised wound was of size 4 x 0.15 cm. Lateral wound was of size 5 x 0.15 cm on lateral border of right foot.
33. PW13 Dr. Atul Gupta further opined that the cause of death was shock due to ante mortem injuries on chest organs produced by a sharp edged weapon and injuries no.2, 4, and 5 were sufficient in the ordinary course of nature to cause death.
34. As per the Forensic report Ex. PW18/A, the relevant observations are mentioned as under:

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel 9: One sealed cloth parcel sealed with the seal of "HR" containing exhibit 9.

Exhibit 9: One pants described as pants of accused 'Raj Kumar'.

Parcel 10: One sealed cloth parcel sealed with the seal of "HR" containing exhibit 10 kept in a polythene.

Exhibit 10: One shirt described as shirt of accused 'Raj Kumar'.

Parcel 11: One sealed cloth parcel sealed with the seal of "MK" containing exhibit 11.

Exhibit 11: One knife having rusty stains.

RESULT OF ANALYSIS

1. Blood was detected on exhibit 9.
 2. Blood could not be detected on exhibits 10 & 11.
35. After reading the FSL report Ex.PW-18/A, it is evident that Exhibit 9 is the pant worn by the appellant, Exhibit 10 is shirt of the appellant and Exhibit 11 is the alleged knife used in commission of crime. As per result, Exhibit 9 contains human blood of group 'A' and blood could not be detected on Exhibit 10 and 11 i.e. shirt and knife. However, blood could be detected on pant of the appellant having blood group 'A' and deceased Ram Chander was having blood group 'A'. As per Exhibit 12, the same is blood on gauge of the deceased Ram Chander.
36. In view of the above, it is to be seen whether the prosecution has succeeded in establishing the sequence of circumstances which can be called conclusive in nature and there is no unbroken chain leaving a gap of missing links and such circumstances are consistent with the hypothesis of the guilt of the appellant. As per the case set up by the prosecution, the circumstances which conclusively establishes the involvement of the appellant in the commission of the said murder mainly are as under:
- i) Deceased persons were last seen alive in the company of the appellant Raj Kumar as per the testimonies of PW2 Smt. Daya Rani.

- ii) The appellant was seen running with the knife in his hand immediately after the incident by PW1 before whom he stopped and said “*maine dono ko maar dia hai. Jo kara jaye kar lo*”
 - iii) Medical evidence corroborating the number of injuries and subsequent opinion regarding the weapon of offence used in the commission of the offence.
 - iv) Forensic report reveals that the blood group of the deceased was found on the pant worn by the appellant when he was arrested.
37. The next plea raised by the counsel for the appellant in his defence that on the fateful day the appellant had gone to some other place and he had cordial relation with the deceased. However, he has not led any evidence to substantiate the same. There is no doubt that the onus of proving the same is on the appellant. By virtue of Section 106 of the Evidence Act and having regard to the testimonies of PW1 Ashok Kumar, PW2 Smt. Daya Rani, the appellant ought to have explained the incriminating circumstances. The presumption under Section 106 of the Indian Evidence Act is explained in ***Hasmuddin vs State of Delhi (2008) ILR 2 Delhi 701***, wherein it has been held by the Delhi High Court that:

*“20. As per settled law it is not as if the conviction can only be based on the sole ground of last seen as last seen together may not by itself necessarily lead to the inference that it was the accused who committed the crime. We consider it necessary at this stage to refer to a decision of the Supreme Court of India reported in **State of Rajasthan v. Kashi Ram AIR 2007 SC 145**, where the*

law on this subject has been discussed in detail. Relevant portion of the same reads as under:

*“20. In **Joseph s/o Kooveli Poulo v. State of Kerala (2000) 5 SCC 197**; the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Mary's convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the Sister in charge of the Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When question under Section 313 Cr.P.C, the appellant did not even attempt to explain or clarify the incriminating circumstances inculcating and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held:*

*Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see **State of Maharashtra v. Suresh, (2000) 1, SCC 471**). That missing link to connect*

the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and cause for the death of Gracy.

21. In *Ram Gulam Chaudhary and Ors. v. State of Bihar*, (2001) 8 SCC 311; *the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held: In the absence of an explanation, considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.*

22. In *Sahadevan alias Sagadevan v. State, represented by Inspector of Police, Chennai* (2003) Vol. 1 SCC 534, *the prosecution established the fact that the deceased was*

seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:

Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 Cr.P.C. they have not taken any specific stand whatsoever.

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially

within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

38. Applying the above discussed principles of law, we agree with the observation made by the trial court that the deceased was last seen alive in the company of the appellant and since appellant did not lead any evidence in defence to prove alibi the appellant fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him and the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.
39. After considering the entire evidence and re-appreciating the same in the light of arguments and the reasons given by the trial court, we are of the view that the last time when the deceased persons were seen alive and when the appellant was seen with the knife and when the dead bodies were seen, had occurred in so short duration that there is no possibility of any third person entering in the house and committing the offence. The chain of circumstances are so well interconnected and complete which rules out any possibility that there can be any other person other than appellant who had committed the murder. The circumstances from which an inference of guilt is drawn are cogently and firmly established and the circumstances have definite tendency unerringly pointing towards the guilt of the

appellant; the circumstances, taken cumulatively, forms a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else.

40. In the light of the preceding discussion, we find no infirmity in the judgment passed by the trial court and we see no reason to interfere with the same. Accordingly, the conviction of the appellant under Section 302 of the Indian Penal Code and under Section 25/27 of the Arms Act is upheld.
41. The appeal therefore fails and is dismissed.
42. The copy of this order be sent to the Superintendent Jail.
43. The trial court record be sent back.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

MAY 30, 2016

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