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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 11th September, 2017

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CRL.A. 1641/2014 & CRL.M.(Bail) No.1514/2017

JHUNDE LAL

..... Appellant

Through: Ms. Rakhi Dubey, Advocate.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP alongwith
Insp. Pawan Sharma, PS Nihal
Vihar.

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CRL.A. 1106/2014

NAND RAM @ NAND LAL

..... Appellant

Through: Mr. Mahipal Singh, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP alongwith
Insp. Pawan Sharma, PS Nihal
Vihar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. At the outset, we may note that when the application seeking regular bail of the appellant Jhunde Lal was taken up for hearing, both the counsels agreed that the appeal itself may be disposed of. With the consent of the parties, we have called for the appeal filed by the appellant Nand Ram @ Nand Lal pending before the Single Judge of this Court for the final hearing as well.
2. Both the appeals are being decided vide a common judgment, since they arise out of the impugned judgments arising out of the same FIR No.221/10, registered at Police Station Nihal Vihar. Two separate judgments of conviction and orders on sentence dated 31.05.2014 and 30.07.2014 respectively have been passed by the Additional Sessions Judge against the appellants Jhunde Lal and Nand Ram.
3. The Criminal Appeal No. 1641/2014 has been filed under Section 374 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') by the appellant Jhunde Lal assailing the judgment dated 31.05.2014, arising out of Sessions Case No. 16/11, by which the appellant Jhunde Lal has been convicted under Section 302/201/34 of the Indian Penal Code (hereinafter referred to as 'IPC'). Challenge is also made to the order on sentence dated 30.07.2014 whereby the following sentences were passed against him:
 - (a) For the offence punishable under Section 302 of IPC, the appellant Jhunde Lal has been sentenced to rigorous imprisonment for life with a fine of Rs.20,000/- and in the default, to further undergo simple imprisonment for a period of two months;
 - (b) For the offence punishable under Section 201/34 of IPC, the appellant Jhunde Lal has been sentenced to rigorous imprisonment for

a period of three years with a fine of Rs.10,000/- and in the default, to further undergo simple imprisonment for a period of one month.

Both the sentences mentioned hereinabove were ordered to run concurrently.

4. The Criminal Appeal No. 1106/2014 has been preferred by the appellant Nand Ram @ Nand Lal under Section 374 of Cr.P.C. assailing the judgment dated 31.05.2014, arising out of Sessions Case No. 62/12, by which the appellant Nand Ram has been convicted for the offence punishable under Section 201/34 and Section 176 of IPC. Challenge is also made to the order on sentence dated 30.07.2014 whereby the following sentences were passed against him:

- (a) For the offence punishable under Section 201/34 of IPC, the appellant Nand Ram is sentenced to rigorous imprisonment for a period of three years and one month with a fine of Rs.10,000/-, in the default, to further undergo simple imprisonment for a period of one month;

- (b) For the offence punishable under Section 176 of IPC, the appellant Nand Ram is sentenced to rigorous imprisonment for a period of one month with a fine of Rs.500/-, in the default, to further undergo simple imprisonment for a period of four days.

Both the sentences mentioned hereinabove were ordered to run concurrently.

5. The brief facts of the present case as noticed by the learned Trial Court in the impugned judgments read as under:

“2. In the instant case Premwati was missing since 26.07.2010 (morning). She was living in tenanted premises alongwith her husband Jhunde Lal the accused. The couple was married for seven years and was issue less. The missing report was lodged

on 29.07.2010 by her brother Sh. Kallu (PW1). Jhunde Lal vacated the tenanted premises on 26.07.2010 in the afternoon in absence of Premwati. Jhunde Lal visited his native village but Premwati was not with him. Jhunde Lal told Ram Pal Singh husband of his village head that he had killed his wife Premwati and kept her body in suitcase and dropped in river Ganga with the help of co-accused Nand Ram @ Nand Lal (in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal), Jhunde Lal was apprehended on 22.12.2010 whereas co-accused Nand Ram @ Nand Lal was apprehended on 04.08.2012.”

6. The investigation was set into motion on filing of the missing report dated 29.07.2010 which was registered at 1.15 PM by PW1 Kallu (brother of the deceased) and was proved by him as Ex. PW1/A. As per the complaint, his married sister Premwati (deceased) was residing at RZC Block, First Floor, Nihal Vihar, Delhi as a tenant. On 26.07.2010 at about 6.00 AM, his sister left for work at *Paschim Vihar* and did not return since then. PW1 did not show suspicion on anyone. The said missing report was registered vide DD No.39B which was proved as Ex.PW10/A.
7. After about 3 months of filing of the missing report, FIR No.221/10 (Ex.PW17/A) dated 21.10.2010 was registered at 5.30 PM, at Police Station Nihal Vihar under Section 365 of IPC. The said FIR was registered on the basis of the complaint made by PW1 Kallu. As per the FIR, it was stated by PW1 Kallu that his sister Premwati (deceased) who had married the appellant Jhunde Lal, resident of Village Harsu Nangla, Police Station Milak, District Rampur, Uttar Pradesh, seven years prior to her being missing. After one year of their marriage, they both started living in Delhi and for the last three years they were residing at House No.197, RZC Block, First Floor, Nihal

Vihar, Delhi. It was further stated in his statement that on 26.07.2010, PW4 Lalwati (wife of the landlord PW2) enquired from PW9 Tika Ram (maternal uncle of the deceased) who stayed at Nihal Vihar in the same lane as to where the appellant Jhunde Lal had taken the room on rent. PW9 Tika Ram told PW4 Lalwati that he was not aware about the same. PW4 Lalwati informed PW9 that on 25.07.2010 the appellant Jhunde Lal had vacated the tenanted premises and took away his belongings. Thereafter, PW1 started searching for his sister Premwati and the appellant Jhunde Lal. On visiting the village of the appellant Jhunde Lal, the father of the appellant Jhunde Lal informed them that the appellant Jhunde Lal had visited the village but his wife did not accompany him. The missing report of the deceased was already filed vide DD No. 39B dated 29.07.2010. Despite best efforts, the missing person could not be traced. The finger of suspicion was raised by PW1 towards the husband of the missing person i.e. the appellant Jhunde Lal who might have killed her and threw her somewhere. The cause of the quarrel between the appellant Jhunde Lal and the deceased was stated to be that she (deceased) did not bear any child.

8. After about 5 months of filing the missing report, the appellant Jhunde Lal was arrested on 22.12.2010, at about 7.55 PM from ISBT, Kashmiri Gate, Delhi.
9. On 01.12.2011, charge under Sections 302 and Section 201 of IPC was framed against the appellant Jhunde Lal. However, on filing of the supplementary charge sheet in Sessions Case No. 62/12, charge under Sections 201/34 and Section 176 of IPC was framed against the

appellant Nand Ram on 09.11.2012. Both the appellants pleaded not guilty and claimed to be tried.

10. To establish the guilt of the appellant Jhunde Lal, the prosecution examined as many as 25 witnesses. The statement of the appellant Jhunde Lal was recorded under Section 313 of Cr.P.C. whereby he pleaded innocence and claimed to be falsely implicated by his in-laws alongwith the Police officials. The appellant Jhunde Lal did not wish to lead any evidence in his defence. While in Crl.A. No. 1106/2014, the prosecution examined 7 witnesses to prove the guilt of the appellant Nand Ram. The statement of the appellant Nand Ram was also recorded under Section 313 of Cr.P.C whereby it was stated that all the witnesses relied upon by the prosecution were interested witnesses. The appellant Nand Ram also pleaded innocence and claimed to be falsely implicated in the present case, however, no witness was examined by him in his defence.
11. Ms. Rakhi Dubey, learned counsel for the appellant Jhunde Lal submits that the judgment of the Trial Court is based on surmises and conjectures and learned Trial Court has grossly erred in reaching to the conclusion of guilt against the appellant Jhunde Lal. The case of the prosecution is based on the circumstantial evidence and the chain of circumstances in the present case is not complete which can point towards the guilt of the appellant Jhunde Lal.
12. Learned counsel further contends that it would be highly unfair to convict the appellant Jhunde Lal solely on the basis of the last seen evidence of PW3 Mamta, reading of which shows that it is not trustworthy. The counsel strenuously urged that the last seen together theory would not be applicable in the facts and circumstances of the

present case for the reason that the dead body of the deceased could not be traced out as a result of which the cause and time of death of the deceased could not be ascertained. Thus, the case of the prosecution is based on presumptions and assumptions and there is no evidence which can connect the appellant Jhunde Lal with the crime.

13. Learned counsel for the appellant Jhunde Lal contends that the prosecution has relied upon the testimony of PW14 Rampal to show that the appellant Jhunde Lal went to his house and told him that he had killed his wife and threw her dead body in the river *Ganga* by putting her dead body in a suit case. The counsel further contends that the reading of the evidence of PW14 would show that he had not uttered a single word against the appellant Jhunde Lal.
14. Ms. Dubey contends that the motive alleged by the prosecution does not stand proved. It is the case of the prosecution that the deceased gave a sum of Rs. 49,500 to the appellant Jhunde Lal which was continuously demanded by the deceased; however, there is no evidence to substantiate the said argument. The counsel contends that the appellant Jhunde Lal is an innocent person and has been falsely implicated in the present case by his in-laws in collusion with the Police Officials. Attention of this Court has been drawn to the question put in his statement under Section 313 of Cr.P.C., more particularly, question No. 27 to show that his brother-in-law (PW1 Kallu) used to beat the appellant Jhunde Lal and compel him to leave the house, as a result of which, he was not staying with his wife in the tenanted house continuously i.e. six months prior to 25.07.2010. The relevant question reads as under:

“Q27 : It is further in evidence against you that as deposed by Sh.Tika Ram (PW9), the maternal uncle of your wife that you accused Jhunde Lal used to beat Premwati @ Prema and used to taunt her regarding not conceiving because Premwati @ Prema was not having any issue. Your wife Premwati @ Prema used to tell this fact to PW9 as and when she visited his (PW9) house or he met her. What do you say?”

Ans. It is correct that Premwati and myself had married for 10-11 years but from this wedlock we had no issue. It is incorrect that I used to beat my wife Premwati. It is also incorrect I used to taunt her regarding not conceiving. I do not know what my wife used to tell to her maternal uncle PW9 Sh.Tika Ram on her visit to his house or his visit to our house.

My brother-in-law (sala) PW1 Kallu used to beat me and compel me to leave the house, therefore, last six months prior to 25.07.2010 I was not living continuously with my wife Premwati. I used to occasionally visit the rented accommodation where me and my wife Premwati used to live i.e. house of Lalwati.

PW9 Tika Ram used to taunt me that I visit the house to take money from my wife Premwati. I used to clarify that why should I take money. I used to visit her as advised by my father, who used to live in village and my father used to give me money.”

15. The counsel for the appellant Jhunde Lal has highlighted this fact that a reading of the evidence of PW2 Sita Ram (landlord) would show that he had not supported the case of the prosecution and turned hostile despite the lengthy cross-examination made by the APP for the State. It was contended that PW16 Makhan Lal and PW25 Suraj also did not support the case of the prosecution and are planted witnesses. Reliance has also been placed by the prosecution on the testimony of PW1 Kallu whereby it was deposed by him that on reaching the

village of the appellant Jhunde Lal, he was informed by the other villagers and more particularly, by Rampal (PW14) that the appellant Jhunde Lal had confessed to him that he had killed his wife and had thrown her body somewhere. In the light of this argument, the counsel emphasised that if PW1 came to know in the month of August that the appellant Jhunde Lal had killed his sister then, why was there no FIR registered by him in the month of August. Thus, there was a delay of about 3 months in lodging the FIR in the present case. The counsel further points toward the FIR dated 21.10.2010, as per which the incident was registered under Section 365 of IPC and not under Section 302 of IPC. However, it was at the later stage that the appellant Jhunde Lal had been falsely implicated and all the witnesses were planted to make a false case against the appellant Jhunde Lal.

16. Lastly, learned counsel for the appellant Jhunde Lal submits that despite best efforts, the dead body of the deceased could not be traced which can unerringly point towards the time and cause of the death and there is no evidence on record to link the appellant Jhunde Lal with the charged offence. The version of the prosecution is false and highly improbable and ought to have been rejected by the learned Trial Court. It is further contended that the prosecution has failed to prove its case beyond reasonable doubt and as such the Trial Court should have given the benefit of doubt to the appellant Jhunde Lal.
17. In this background, it was prayed that the appellant Jhunde Lal is a young man having clean antecedents whose entire life would be spoiled on the basis of the false story made by the prosecution.
18. Mr. Mahipal Singh, learned counsel appearing on behalf of the appellant Nand Ram submits that mere suspicion would not be

sufficient to convict the appellant Nand Ram. It is further submitted by the counsel that the Trial Court has erred in reaching the conclusion of guilt against the appellant Nand Ram while relying upon the disclosure statement made by the appellant Jhunde Lal. There is no evidence against the appellant Nand Ram showing that he helped the appellant Jhunde Lal in throwing the dead body of the deceased on the road near GARHGANGA. Attention of this Court has also been drawn to the cross-examination of PW3 Vinay Gupta and PW4 Kapoor Babu, who had travelled in the rear side of the tempo on the fateful night, to show that they both were called by the Police Officials one month after their travel in the said tempo and were shown the appellant Nand Ram at the Police Station. In this background, the testimonies of both the witnesses are not reliable and are planted witnesses.

19. Counsel submitted that the appellant Nand Ram has already undergone a sentence of approximately seven months and was granted bail vide order dated 09.12.2014 passed by this Court. It is strongly prayed that the judgment of conviction as well as the order on sentence by which he has been held guilty is liable to be set-aside.
20. *Per contra*, Mr. Katyal learned counsel for the State submits that the State has been able to prove its case beyond any shadow of doubt. There is no infirmity in the orders of conviction as also the orders on sentence. The evidence of PW3 Mamta would show that the deceased was last seen in the company of the appellant Jhunde Lal on the fateful night. Thus, the Trial Court has correctly applied the theory of last seen. A complete reading of the testimony of PW1 Kallu coupled with the statement of the appellant Jhunde Lal under Section 313 of

Cr.P.C. would show that the appellant Jhunde Lal did not take any step to find his missing wife and evaded arrest.

21. The counsel for the State further submits that the motive in the present case has been established. It is the case of the prosecution that the appellant Jhunde Lal used to beat the deceased and also demanded money. The appellant Jhunde Lal had taken a sum of Rs.49,500/- from the deceased which she wanted to take back. This infuriated the appellant Jhunde Lal and caused her death.
22. Learned counsel for the State submitted that the appellant Jhunde Lal had admitted in his statement under Section 313 of Cr.P.C. that the tenanted premises where he last resided with the deceased was vacated by him in the absence of his wife. The relevant question 21 reads as under:

“Q.21: It is further in evidence against you that as deposed by PW3 Mamta that on 26.07.2010 at about 2.00-2.30 pm you accused had come to her house with a mini truck for taking his household articles. On asking of Mamta, whether deceased Premwati was aware about vacating the room, you accused replied that Premwati was aware of it. On asking of Mamta about the rent of the house, you accused told her that some articles were lying in the room and when you come back for taking those articles you accused will pay the rent as the rent will be due on 2nd of the month. You accused had left the house at about 02.30 pm in a mini truck but Premwati was not with you at that time. What do you say?”

Ans. On 25.07.2010 my wife Premwati had left for her work in the morning and while leaving the house she had told me that she did not want to stay with me, therefore, she would not return home.”

23. The counsel for the State contended that the conduct of the appellant Jhunde Lal is highly unusual which has been reflected by not filing

any missing report against his missing wife. The appellant Jhunde Lal never tried to search for her. The incident came to light only upon filing a missing report by the brother of the deceased namely PW1 Kallu. To substantiate this argument, learned counsel has relied upon the statement made by the appellant Jhunde Lal under Section 313 of Cr.P.C., more particularly; answer to question No.12. The question read as under:

“Q 12: It is in evidence against you that as deposed by PW1 Kallu efforts were made to trace Smt. Premwati but neither she has been traced nor her dead body has been recovered. What do you say?”

Ans. It is correct that the dead body of my wife deceased Premwati has not been recovered till date. I do not know the whereabouts of my wife Premwati after 25.07.2010 when she left for her work in the morning and while leaving the house she had told me that she did not want to stay with me, therefore, she would not return home.”

24. Keeping in view all the incriminating material against the appellants Jhunde Lal and Nand Ram, it was prayed by the counsel for the State that the learned Trial Court has rightly convicted both the appellants.
25. We have heard learned counsels for both the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgments rendered by the Trial Court. The learned Trial Court while convicting the appellant Jhunde Lal summarised the following circumstances against the appellant Jhunde Lal which reads as under:

“ TO SUM UP:

This chain clearly proves that:

- *As per the case of prosecution Premwati was missing since 26.07.2010 morning and as per accused Jhunde Lal she did not return after leaving on 25.07.2010 in the morning;*
- *Accused Jhunde Lal vacated the tenanted premises on 26.07.2010 in the afternoon in absence of Premwati;*
- *Articles were loaded with the help of PW15 in a tempo, driven by PW25 and arranged by PW24 through her cousin;*
- *After vacating tenanted premises, whereabouts of Jhunde Lal were not known;*
- *Accused Jhunde Lal did not lodge even missing report. On 29.07.2010 PW1 Kallu brother of deceased Premwati lodged missing report vide DD No.39B, Police Station Nihal Vihar Ex.PW-10/A;*
- *Nanhe father of accused Jhunde Lal met PW1 and PW9 and others (when they visited on 27.07.2010) and told that Jhunde Lal came in the village but Premwati had not come alongwith him. Jhunde Lal had visited his native village alongwith some unknown lady;*
- *PW2 has admitted that Jhunde Lal alongwith his wife was their tenant on first floor;*
- *PW3 has seen Premwati and Jhunde Lal in tenanted premises on first floor on 25.07.2010 at about 7.00 PM / 8.00 PM;*
- *On 26.07.2010 in the afternoon Jhunde Lal vacated the premises in presence of PW3 and gave reply that Premwati knew about vacating the premises and that he has taken another room on rent in Shukar Bazar;*
- *Accused Jhunde Lal beaten Premwati one week prior to 25.07.2010;*
- *On 26.07.2010 PW4 had enquired from PW9 as to whether accused Jhunde Lal had visited him;*
- *On 05.08.2010 PW9 visited native village of Jhunde Lal alongwith Head Constable Yash Pal (PW19) where some villagers told them that Jhunde Lal had killed Premwati;*
- *Accused Jhunde Lal made his disclosure statement Ex.PW-16/C in presence of PW16 wherein he has*

- disclosed that he (accused Jhunde Lal) has killed his wife;
- Jhunde Lal did not take step for lodging of missing report or the FIR in respect of his wife. Rather Jhunde Lal was not available;
 - PW24 asked Jhunde Lal about whereabouts of his wife to which he replied that she (wife of accused Jhunde Lal) had gone for her work and would return in the evening. Jhunde Lal further stated “USKE (wife of accused Jhunde Lal) AANE SE PEHLE HI SAMAN LEKAR JANA HAI, VARNA WHO LADAI KAREGI”;
 - On 26.07.2010 Jhunde Lal loaded his household articles in the vehicle of Sh.Suraj (PW25) with the help of two boys;
 - They left Nihal Vihar at 09.00 PM in the vehicle of Sh.Suraj (PW25);
 - PW24 also travelled in the same vehicle for Fateh Ganj. She was sitting in front cabin alongwith driver (PW25) and conductor / helper whereas accused Jhunde Lal alongwith his household articles, his paternal uncle (CHACHA) Nand Ram @ Nand Lal (accused in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) was sitting in rear side of the vehicle with two more boys (Vinay Gupta and Kapoor Babu examined as PW3 and PW4 in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal). Those two boys got down at Moradabad;
 - From Delhi to village Harsu Nangla vehicle was stopped twice, once when driver and conductor had their food at one hotel and second time when Jhunde Lal called for TIRPAL (tarpaulin) as it was raining;
 - Nand Ram @ Nand Lal (accused in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) got down at village Milak;
 - Accused Jhunde Lal got down alongwith his household articles at village Harsu Nangla;
 - PW24 proceeded in the same vehicle for Fateh Ganj to the house of her brother;
 - Village Harsu Nangla is on way from Delhi to Fateh Ganj;

- Accused Jhunde Lal has admitted payment of Rs.4,500/- as fare of tempo;
- Accused Jhunde Lal has admitted payment of Rs.100/- to PW15 Jhandi;
- From testimony of PW15 it is clear that by way of cross examination it is not challenged that household articles including GATHRI / bundle of Jhunde Lal were loaded in a vehicle / tempo in July, 2010; later on PW15 came to know that, that GATHRI / bundle which they had loaded in tempo contained dead body of Premwati wife of accused Jhunde Lal; it was first floor house of Jhunde Lal from where household articles; wooden bed and GATHRI / bundle were brought down via staircase and balcony and loaded in the tempo;
- From the testimony of PW25 it is established that vehicle was not having enough articles, half of the vehicle was loaded, PW25 has even asked Jhunde Lal that value of articles loaded would be fare (Rs.4,500/-) only;
- Accused Jhunde Lal used to beat and ill treat Premwati;
- Even once when sister of PW1 was alive, accused Jhunde Lal went at the village of PW1 and met PW1 and his mother and stated that “AGAR TUMHARI LADKI MAR – MARA GAI TO MUJHE MAT KEHNA”. This part of testimony of PW1 Sh.Kallu is unrebutted;
- Factum of PW4 running committee (Chit) and Premwati being member of that committee (Chit) and Premwati had received Rs.49,500/- committee (Chit) amount in the month of HOLI is admitted;
- Accused Jhunde Lal had taken the committee (Chit) amount i.e. Rs.50,000/-. He (Jhunde Lal) had also taken one gold chain of Premwati. Jhunde Lal had taken a sum of Rs.50,000/- (committee amount) and gold chain to his village and had given the same to his father;
- A perusal of record / bank account of Jhunde Lal shows that the statement of account Ex.PW-20/B shows credit of Rs.50,500/- by cash on 23.02.2010 and withdrawal of Rs.5,000/- (cash) and 40,000/- (cash) on 12.07.2010 and 28.07.2010 respectively;

- The fact that co-accused Nand Ram @ Nand Lal (in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) has also travelled with the accused Jhunde Lal in rear side of the truck has also been proved by PW24 Smt.Bhanmati @ Moti as well as PW25 Sh. Suraj the driver;
- PW15 has proved in his un rebutted testimony that they had also brought one GATHRI of blanket from the house of accused Jhunde Lal to the ground floor took the same in the tempo and later on they came to know that the GATHRI they had brought down to the ground floor for loading the same in the contained dead body of Premwati wife of accused Jhunde Lal;
- From the testimony of Sh.Jhandi (PW15), Smt.Bhanmati (PW24) and Sh.Suraj (PW25) it is clear that accused Jhunde Lal and co-accused Nand Ram @ Nand Lal (accused in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) were in the back side of the tempo along with household articles. Household articles were also having one GATHRI of blanket containing dead body of Premwati;
- It is admitted that accused Jhunde Lal alongwith co-accused Nand Ram @ Nand Lal (accused in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) was sitting in the rear side of the vehicle, two more boys also travelled in the same vehicle in rear side and those two more boys had got down at Moradabad, PW24 alongwith driver and conductor / helper were sitting in the front cabin;
- Jhunde Lal has disclosed in his disclosure statement Ex.PW-16/C that while travelling in tempo, he with the help of co-accused Nand Ram @ Nand Lal (accused in supplementary charge sheet SC No.62/12 titled State Vs. Nand Ram @ Nand Lal) threw dead body of Premwati on road near GARGANGA;
- Accused Jhunde Lal has taken false plea that he was working at Brick Kiln but no reason what to talk of cogent reason has been given by accused for not taking steps for lodging of missing report of his wife even though he was apprehended on 22.12.2010; ”

(Emphasis Supplied)

26. The case of the prosecution is based on the circumstantial evidence. To decide the present appeals, we deem it appropriate to deal with the circumstances under separate heads.

Evidence of last seen:

27. One of the primary incriminating circumstance found by the Trial Court against the appellant Jhunde Lal was that he was last seen in the company of the deceased. It will be useful to examine the testimonies of PW3 Mamta (daughter of PW4) and PW4 Lalwati (landlady of the tenanted room).
28. PW3 Mamta testified in her examination-in-chief that the appellant Jhunde Lal alongwith the deceased was residing on the first floor of their house on rent. The couple had no issues. The deceased used to work as a maid in *kothies* and used to leave the house at about 6.00 AM and return at 5.00-6.00 PM. Her mother was running a chit fund having twenty members including the deceased. The deceased had received an amount of Rs.49,500/- on maturity in the month of February. On 25.07.2010, deceased came to her house between 5.00-6.00 PM and sat with her mother for about one hour and thereafter she went to her room. On the same day at about 7.00-8.00 PM, when she went upstairs, she found that the deceased was grooming in front of the door of her room. The appellant Jhunde Lal and the deceased both were seen together. On the next day i.e. 26.07.2010, when PW3 got up at about 7.00-8.00 AM, she found the room of the appellant Jhunde Lal locked. On the same day, at about 2.00-2.30 PM, the appellant

Jhunde Lal had arrived with a mini truck to take his household articles. On being asked as to whether the deceased was aware about vacating the room. On this, the appellant Jhunde Lal replied that the deceased was aware of it. PW3 again asked about the rent for that month, to which the appellant Jhunde Lal told her that some articles were lying in the room and when he would come back to pick those articles, he would pay the rent which would be due on 2nd of the month. Thereafter, the appellant Jhunde Lal left their house at about 2.30 PM in a mini truck. PW3 further deposed that she did not know what had happened with the deceased as she never saw her after that. The room of the appellant Jhunde Lal was opened by the Police officials after 2-3 days of his vacating. The appellant Jhunde Lal had beaten the deceased one week prior to the incident of 25.07.2010. The appellant Jhunde Lal was duly identified by PW3 in the Trial Court.

29. The next witness examined by the prosecution in support of the last seen together was PW4 Lalwati who deposed on similar lines as deposed by PW3 Mamta and corroborated regarding the appellant Jhunde Lal resided at the first floor of their house as a tenant for the last three years; the deceased was working as a maid in the *kothies* and was running a chit fund. PW4 further testified in her examination-in-chief that the deceased had received an amount of Rs. 49,500 in the month of *holi*, after the maturity of the chit fund. The deceased informed PW4 that the amount was taken by her husband. On 25.07.2010, the deceased had returned to their house at about 6.00 PM after finishing work and sat with her for 10-15 minutes. Thereafter, the deceased left for her room. PW4 did not remember as to when the appellant Jhunde Lal had reached the house on the said day. On

26.07.2010, at about 9.00 AM, PW4 had gone for work and returned at about 4.00/4.30 PM. Her daughter informed that the appellant Jhunde Lal had vacated the tenanted room and had taken another room in *Shukar Bazar* and would pay the rent in the evening. PW4 further deposed that she had gone to the house of PW9 Tika Ram (maternal uncle of the appellant Jhunde Lal) but he failed to tell the whereabouts of the appellant Jhunde Lal. On the next day, PW4 went for the work, her daughter (PW3) informed her about the arrival of the Police officials at their house. It was further deposed by PW4 that she was not aware as to what had happened with the deceased as she had not seen her after 25.07.2010. The statement of PW4 was recorded by the Police officials. In a leading question by the APP for the State in the Trial Court, it was admitted by PW4 that she told the Police officials in her statement that the appellant Jhunde Lal had arrived after half an hour of the deceased leaving for her room. In her cross-examination, it was stated by PW4 that her statement was recorded by the Police officials at the Police Station and the same was not read over to her after writing it down.

30. On a conjoint reading of the testimonies of PW3 and PW4 shows that on 25.07.2010, at about 6.00 PM, the deceased after returning from work, sat with PW4 for some time. Thereafter, the deceased left for her room at the first floor. In the meantime, the appellant Jhunde Lal also came to their house and joined the company of the deceased. It was specifically deposed by PW3 that on the fateful night, at about 7.00-8.00 PM, when PW3 went upstairs, she found the deceased grooming in front of the door of her room and saw the appellant Jhunde Lal in the company of the deceased. The next day, at about

7.00-8.00 AM, the tenanted room was found locked. On the same day, at about 2.00-2.30 PM, the appellant Jhunde Lal came alone and partially vacated the tenanted room. Thereafter, the whereabouts of the the appellant Jhunde Lal were not known and was arrested on 22.12.2010 from ISBT, Kashmere Gate, Delhi. In our view, the evidence of last seen together has been satisfactorily established by the prosecution.

31. In this background, the testimony of PW1 Kallu also assumes importance. PW1 in his examination-in-chief deposed that his sister Premwati (deceased) married the appellant Jhunde Lal ten years prior to his deposition in the Trial Court. The deceased was residing with the appellant Jhunde Lal in a rented accommodation at C-Block, Nihal Vihar, Delhi. The deceased used to work as a part time maid in *kothies* at Paschim Vihar. In the morning of 26.07.2010, the deceased went to work but did not return thereafter. Despite best efforts by PW1, the deceased could not be traced. Thereafter, on 29.07.2010, PW1 went to the Police Station Nihal Vihar and registered a missing report of the deceased vide DD No. 29B by giving all the details regarding her missing. It was further deposed by PW1 that PW4 Lalwati enquired from PW9 Tika Ram regarding the whereabouts of the deceased and the appellant Jhunde Lal. PW4 also informed PW9 that the appellant Jhunde Lal had vacated the room and started residing at some other place. To this, PW9 replied that he was not aware about the same. The said information was told to him by PW9 in the evening. Thereafter, PW1 visited the house of PW4 and enquired the same whereby it was stated by PW4 that the appellant Jhunde Lal had vacated the rented room. PW1 went to the Police Station Nihal Vihar and filed a missing

report of the deceased. After three days from lodging of the missing report, PW1 alongwith PW9 and other persons went to the Village Harsu Nangla where they met Nanhe (father of the appellant Jhunde Lal) who told them that the appellant Jhunde Lal had come to the village but the deceased did not accompany him. PW1 then, made efforts to enquire from the other villagers whereupon Rampal (PW14) informed them that the appellant Jhunde Lal told him that he had killed his wife and threw her somewhere.

32. It was further deposed by PW1 that he visited village Harsu Nangla about 2-3 times alongwith Police Officials who had lifted Nanhe (father of the appellant Jhunde Lal) alongwith the brother-in-law of the appellant Jhunde Lal whose name he did not remember and were brought to Delhi. PW1 further deposed that the appellant Jhunde Lal used to beat his sister and threaten to kill her as she did not conceive any child. PW1 also deposed that while he was searching for the deceased, the appellant Jhunde Lal threatened to kill him as he had already killed Premwati (deceased). In his cross-examination, PW1 stated that he did not make any complaint regarding the beating given to the deceased by the appellant Jhunde Lal. It was voluntarily explained that since it was a matter between the husband and wife, the deceased asked him not to make any complaint. It was further emerged from the cross-examination of PW1 that he did not remember as to whether on the day of occurrence his sister had returned to the rented house. PW1 failed to recollect the date on which PW14 had stated to him about the confession made by the appellant Jhunde Lal.
33. Having discussed the testimonies of PW3, PW4 and PW1, we deem it appropriate to reproduce Section 106 of the Evidence Act:

“Section 106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

(Emphasis Supplied)

34. The theory of last seen gains significance in criminal jurisprudence from Section 106 of the Evidence Act as it places the burden on the accused to prove a fact especially within his knowledge. Normally, it is for the prosecution to prove each and every fact against the accused beyond reasonable doubt, however, owing to the application of Section 106, if a fact is especially within the knowledge of the accused, he must account for it. The prosecution has to show that the accused and the deceased were last seen together and the time gap between the death and the last seen was so small as to exclude the possibility of other persons coming in contact with the deceased. In such a case, the fate of the deceased would remain in the exclusive knowledge of the accused. On the other hand, a huge gap may lead to the inference that other persons had intervened and the whereabouts of the deceased no longer remains in the special knowledge of the accused, in which case the accused no longer has to account for his presence with the deceased. Hence, the time gap is of great significance as a huge gap may make it improper to place the burden on the appellant and in his failure, draw an adverse inference against him.
35. In the present case, there is no evidence regarding as to when the deceased parted the company of the appellant Jhunde Lal on the night of 25.07.2010 and thus, the burden is on the appellant Jhunde Lal to explain what happened thereafter. There was no defence taken by the

appellant Jhunde Lal in his statement under Section 313 of Cr.P.C. in this regard. In the absence thereof, the finger of suspicion goes to the appellant Jhunde Lal in whose company the deceased was last seen by PW3 and PW4.

36. It is noteworthy to mention that the dead body of Premwati could not be traced. The prosecution while relying upon the disclosure statement (Ex.PW16/C) of the appellant Jhunde Lal projected their case as the appellant Jhunde Lal after killing his wife travelled alongwith the appellant Nand Ram in a tempo. The appellant Jhunde Lal with the help of the appellant Nand Ram threw the dead body of the deceased on the road near GARHGANGA.
37. In the present case, PW10 W/Const. Sunil who was working as a DD writer at Police Station Nihal Vihar on 29.07.2010 recorded the missing report of the deceased vide DD No.39B which was proved by him as Ex.PW10/A and handed over the same to PW19 HC Yashpal Singh for taking necessary action.
38. PW19 HC Yashpal Singh deposed in his examination-in-chief that after receipt of DD No.39B regarding missing of Premwati (deceased), various steps were taken including hue and cry notices and photographs were published in the newspaper to trace the missing person. On 05.08.2010, PW19 alongwith PW1 Kallu went to the matrimonial home of the deceased which was at Village Harsu Nangla, District Rampur, Uttar Pradesh in the search of the deceased and the appellant Jhunde Lal, however, on reaching, the house was found locked. Again on 11.11.2010, PW19 alongwith Const. Kuldeep, PW1 Kallu and PW9 Tika Ram (maternal uncle of the appellant

Jhunde Lal) visited the aforesaid address and met Nanhe @ Saligram (father of the appellant Jhunde Lal).

39. PW17 HC Somveer Singh was posted as a duty officer at the Police Station Nihal Vihar and deposed that on 21.10.2010, he recorded the FIR in the present case and the same was proved by him as Ex.PW17/A. Further investigation was marked to PW22 SI K.P.Singh.
40. PW22 SI K.P.Singh was the initial Investigating Officer in the present case and thereafter, the investigation in the present case was completed by PW23 Insp. Sehdev Kumar Rana.

Motive:

41. It is true that motive assumes importance in the cases based upon circumstantial evidence. In the present case, it is the case of the prosecution that the appellant Jhunde Lal had taken an amount of Rs. 49,500 from the deceased and deposited the same in Sehkari Bank, Milak, Rampur, Uttar Pradesh. In support of their case, PW21 Raj Kumar (branch manager) was examined by the prosecution. Reliance had been placed upon the statement of account (Ex.PW20/B) of the appellant, which shows credit of Rs. 50,500/- by cash on 23.02.2010. On a further reading of Ex.PW20/B would show that amount of Rs.5,000/- and Rs. 40,000/- was withdrawn on 12.07.2010 and 28.07.2010 respectively. It is also in evidence that the receipt of Rs. 49,500/- is duly established upon reading of the testimonies of PW3 and PW4. Thus, in our view, the prosecution has successfully established motive behind the death of the deceased while adducing cogent evidence to prove the same.

Conduct of the appellant Jhunde Lal:

42. It is noteworthy that the missing report with regard to the missing of the deceased had been registered by PW1 Kallu and not by the husband of the deceased (the appellant Jhunde Lal). On 29.07.2010, DD No. 39B (Ex.PW10/A) was registered at the instance of PW1 Kallu i.e. on the 4th day after the deceased had gone missing.
43. It is evident from the arrest memo of the appellant Jhunde Lal (Ex.PW16/A) that he was arrested on 22.12.2010, at about 7.55 PM from ISBT, Kashmiri Gate, Delhi. The reading of the same would further show that it was witnessed by PW16 Makhan Lal (maternal uncle of the deceased) and Const. Kuldeep. However, the stand taken by the appellant Jhunde Lal in his statement under Section 313 of Cr.P.C. runs contrary. The relevant question reads as under:

“Q.50. It is further in evidence against you that as deposed by Shri. Makhan Lal (PW16) that at about 8.00 PM you accused Jhunde Lal were caught at ISBT, Kashmiri Gate with the help of Police and arrested vide arrest memo Ex.PW16/A and your personal search was conducted vide memo Ex.PW16/B. You were interrogated by the Police and your disclosure statement Ex.PW16/C. What do you say?”

Ans. It is a matter of record; however, I have surrendered in presence of my father before the Police on 22.12.2010 in Police Station at Delhi.”

44. From above, we have found that the mere *ipse dixit* of the appellant Jhunde Lal that he had surrendered in presence of his father at the Police Station, Delhi and was not arrested from ISBT Kashmere Gate, Delhi cannot be accepted. On the basis of the evidence adduced by the prosecution, it can safely be concluded that the appellant Jhunde Lal

evaded arrest for about 5 months and fled away from Delhi after killing his wife.

45. In the given case, we find the conduct of the appellant Jhunde Lal as highly unusual which clearly point towards the appellant Jhunde Lal as the guilty person. There is no evidence which can show the steps taken by the appellant Jhunde Lal after his wife had gone missing. There is no explanation rendered by the appellant Jhunde Lal that what prompted him to vacate the tenanted house in the absence of his wife. The prosecution while relying upon the testimonies of PW13 Putula, PW15 Jhandi, PW24 Bhanmati @ Moti and PW25 Suraj duly corroborated that the tempo being taken from PW13 with the help of PW24 and the same was driven by PW25. The articles which belonged to the appellant Jhunde Lal were loaded with the help of PW15 Jhandi. The sequence of events narrated by PW3 as well as the conduct of the appellant Jhunde Lal prima facie gave rise to a serious suspicion against him. On a cumulative reading of all the evidence available on record, we are of the view that there is no reason as to why the appellant Jhunde Lal would be falsely implicated by his in-laws and the Police officials. The deceased was not seen after 25.07.2010 by anyone.
46. Keeping in view the last seen evidence of PW3 alongwith other evidence available on record, we find clinching evidence pointing unmistakably to the guilt of the appellant Jhunde Lal. We find no infirmity in the findings recorded by the Trial Court basing conviction of the appellant Jhunde Lal. We see no reasons to interfere with the view taken by the Court below. Accordingly, the appeal stands dismissed.

47. The Trial Court record be sent back along with a copy of this judgment.
48. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail records.

Crl.M.(Bail) No. 1514/2017 in Crl.A. 1641/2014 (for regular bail)

49. In view of the judgment passed, the bail application stands dismissed.

Crl.A.1106/2014

50. Before dealing with the arguments of the counsel for the appellant Nand Ram, we deem it appropriate to re-visit the law regarding Section 201 of IPC.
51. In the case of *V.L. Tresa vs. State of Kerala* reported at (2001) 3 SCC 549, the Hon'ble Supreme Court while discussing the law on Section 201 of IPC noted the following ingredients. The relevant para 11, 12 and 14 read as under:

“11. Section 201 IPC reads as below:

“201. Causing disappearance of evidence of offence, or giving false information to screen offender:

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

[if a capital offence] shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine;

[if punishable with imprisonment for life] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

[if punishable with less than ten years' imprisonment] and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

12. Having regard to the language used, the following ingredients emerge:

(I) committal of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(III) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence; and

(IV) the act should have been done with the intention of screening the offender from legal punishment.

.... ..

14. Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The

foremost necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur v. State of Punjab [AIR 1952 SC 354]. Further, in Roshan Lal v. State of Punjab [AIR 1965 SC 1413] this Court in AIR para 12 of the Report observed:

“(12) Section 201 is somewhat clumsily drafted, but we think that the expression ‘knowing or having reason to believe’ in the first paragraph and the expression ‘knows or believes’ in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under Section 201. If it be supposed that the word ‘believes’ was used in a sense different from the expression ‘having reason to believe’, it would be necessary for the purpose of inflicting punishment upon the accused to prove that he ‘believes’ in addition to ‘having reason to believe’. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved.”

(Emphasis Supplied)

52. The prosecution has mainly relied upon the testimonies of PW3 Vinay Gupta and PW4 Kapoor Babu to convict the appellant Nand Ram. To determine the culpability of the appellant Nand Ram, it would be useful to discuss their testimonies in detail.
53. PW3 Vinay Gupta deposed in his examination-in-chief that they deal in sale and purchase of old clothes. PW3 used to leave Delhi for Muradabad on every Monday with old clothes to be sold in Tuesday market at Muradabad. One female whom they used to address as

Bhabhi told them that one tempo would go to Rampur, Uttar Pradesh via Muradabad and offered them to board the same. PW3 further deposed that few years prior to his deposition in the Trial Court, he alongwith his friend Kapoor Babu (PW4) boarded one tempo in the night hours with the bundles of old clothes. The lady (*bhabhi*) alongwith the driver and one helper were sitting inside the cabin i.e. front portion of the said tempo. However, PW3 alongwith his friend PW4 and one old man were sitting at the rear side of the tempo. The old person was identified by them in the Trial Court as the appellant Nand Ram. Thereafter, they both were tired and slept. They both got down at Muradabad and the other person sitting at the rear side of the tempo went to sit in the cabin. Learned APP for the State sought permission to ask a leading question from PW3 whereby it was admitted that on 26.07.2010, at about 8.30/9.00 PM, they had boarded the tempo. The name of the lady who accompanied them was admitted as Bhanmati. They de-boarded the said tempo at about 3.00/4.00 AM on the next day. It was denied by PW3 that one more person namely Jhunde Lal who was talking to the appellant Nand Ram also accompanied them in the tempo. It was also denied that when they de-boarded at Muradabad, they had seen the appellant Nand Lal and Jhunde Lal sitting in the same tempo. In his cross-examination, it was stated by PW3 that he was called by the Police officials at the Police Station after one month or ten days after they boarded the said tempo where the appellant Nand Ram was shown and identified by him.

54. The next witness relied upon by the prosecution is PW4 Kapoor Babu, who had deposed on similar lines as PW3. It was deposed by PW3 in his examination-in-chief that he was residing under the tenancy of one

lady who offered them a tempo ride for Muradabad. Few years prior to his deposition in Trial Court, he alongwith his friend PW3 Vinay Gupta and one old man and one boy travelled at the rear end of the tempo. They both were tired and slept. PW4 identified the appellant Nand Ram in the Trial Court as one of those two persons who travelled in the same tempo while sitting at the rear end. Thereafter, at about 3.00 AM, they got down at Muradabad from the said tempo and the other two persons who were sitting in the tempo went in the cabin i.e. front portion of the tempo. Learned APP for the State sought permission to ask leading question from PW4 whereby it was deposed by him that he could not tell the name of his landlady who accompanied them in tempo as Bhanmati. It was admitted by PW4 that one more person namely Jhunde Lal also accompanied them in the said tempo, however, he could not tell that the appellant Nand Ram and Jhunde Lal were talking to each other in the said tempo. In his cross-examination, PW4 stated that he was called by the Police officials at the Police Station after one month from the day when they boarded the said tempo and was shown the appellant Nand Ram and identified him.

55. After reading of the testimonies of PW3 and PW4, we have found that there is no evidence regarding the appellant Nand Lal throwing the dead body of the deceased on the road near GARGANGA. The case projected by the prosecution is that during the journey from Delhi to village Harsu Nangla the said tempo was stopped twice, *firstly*; when the driver and the conductor had their food at a hotel and *secondly*; when the appellant Jhunde Lal called for the tarpaulin as it was raining. It has nowhere come in the evidence that the said tempo was

stopped more than twice. Furthermore, on reading the cross-examination of PW3 and PW4, we have found that they both were called by the Police officials after one month from their boarding the said tempo and were shown to the appellant Nand Ram at the Police Station where they identified him as the accused. In view of the above, the evidence of PW3 and PW4 is not trustworthy. Moreover, the TIP proceedings of the appellant Nand Ram have not been conducted by the prosecution.

56. Applying the law discussed by the Supreme Court of India in the case of *V.L. Tresa (supra)*, we are of the view that no case made out against the appellant Nand Ram and the learned Trial Court has erred in reaching to the conclusion of guilt against the appellant Nand Ram while relying upon the disclosure statement made by the appellant Jhunde Lal. The appellant Nand Ram cannot be convicted merely on the basis of suspicion. There is no evidence that the appellant Nand Ram had caused the evidence to disappear in order to screen the appellant Jhunde Lal. In our view, the prosecution has failed to show that the appellant Nand Ram had knowledge or had reason to believe that the appellant Jhunde Lal had committed the murder of his wife and carrying her dead body in the said tempo.
57. Applying the broad guidelines laid down by the Hon'ble Supreme Court, we are of the considered view that the evidence adduced by the prosecution falls short of bringing the case within the ambit of Section 201/34 and Section 176 of IPC against the appellant Nand Ram.
58. Accordingly, the appeal is allowed.
59. The Trial Court record be sent back along with a copy of this judgment.

60. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail records.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 11, 2017

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