

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA No.939-DB-2004 (O&M)

Reserved on : January 30, 2020

Date of Decision: July 15, 2020

Sukhdev Singh

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. P.S. Brar, Advocate for the appellant.

Mr. H.S. Grewal, Additional A.G. Punjab.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 02.11.2004 rendered by the Sessions Judge, Ferozepur in Sessions Case No. 72 of 1997 whereby appellant, who was charged with and tried for offence punishable under Section 302 and Section 201 of Indian Penal Code (for short 'IPC') along with Gurmail Singh and Dalip Singh (his brother and father respectively) has been convicted and sentenced to undergo imprisonment for life and to pay fine of Rs. 5,000/-, in default of payment of fine to undergo further rigorous imprisonment for one year under Section 302 IPC. Under Section 201 IPC, he has been sentenced to undergo rigorous imprisonment for seven years. The sentences were ordered to run concurrently. Gurmail Singh and Dalip Singh have been

acquitted.

2. The case of the prosecution in a nutshell is that on 23.05.1997, Gurmit Kaur complainant moved an application Ex.P-1 to the Senior Superintendent of Police, Barnala stating that her husband Balbir Singh was employed in the military in 8 Sikh LI c/o 56 APO. He proceeded on leave for two months on 07.04.1997 but had not reached home till then. They came to know of it after so many days when two persons who were residents of village Mannawala and Paddi (Ludhiana) came to their house and told that their sons had sent money with her husband and they had come to receive that money. They verified from his Unit. They earlier sent a telegram to his Unit. From the reply received from the Unit they learnt that her husband was on two months leave w.e.f. 07.04.1997. On receiving the information they made enquiries from their relatives but did not find him anywhere. They then sent family members to enquire from the Unit and they learnt that her husband had proceeded on leave with Sukhdev Singh son of Dalip Singh resident of Sadhanwala. It was also learnt that at the time when he proceeded on leave he had Rs.40,000/- in cash. They went to the village of Sukhdev Singh thrice. On their first visit they made enquiries from the brother of Sukhdev Singh who informed that Balbir Singh had come there. However his father interrupted him and stated that many soldiers visit their place daily. It could not be said who had come or not. Despite the fact that all the family members of Sukhdev Singh knew Balbir Singh so well as they were on visiting terms to each other's houses, they were made to sit outside by the family members of Sukhdev Singh and were not allowed to talk to the family members. They were also not treated

sympathetically. After some time the father of Sukhdev Singh started talking about money without being asked. He stated that his son had not brought any money and that they were living hand to mouth. She apprehended that her husband had been murdered by Sukhdev Singh and his family in connivance with each other for the greed of money. She requested that justice be done. On receipt of that application the Senior Superintendent of Police Barnala got the matter enquired from CIA Staff Barnala who submitted report that Balbir Singh had been murdered by Sukhdev Singh with a small kirpan near the canal in the area of village Jhok Hari Har and threw his body in the canal. The SSP Barnala submitted the report to DIG Patiala Range who further sent it to DIG Ferozepur Range who in turn sent it to SSP Ferozepur for registration of case. On 28.07.1997 Sukhdev Singh accused was produced before ASI Jaswinder Pal Singh by Beant Singh Member Panchayat. On interrogation Sukhdev Singh made disclosure statement and got recovered a small kirpan Ex. MO-1 which was taken into possession. On completion of investigation challan was presented against the accused.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded that he was innocent and had been falsely implicated in the case. However he led no evidence in defence.

4. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

through the judgment and record.

6. PW1- Gurmit Kaur deposed that her husband Balbir Singh was employed in Indian Army. Sukhdev Singh accused was also working in the same unit as her husband. Sukhdev Singh accused was on visiting terms to their house. Similarly, her husband was also on visiting terms to the house of Sukhdev Singh. Her husband was posted in 8 Sikh LI at Dehradun. About 2 ½ years ago two persons, one belonging to village Chowki Mann and the other belonging to Paddi came to their house. They stated that their sons who were in the Army had sent money through Balbir Singh her husband. She informed them that Balbir Singh had not come home. She then sent a telegram to the Unit of Balbir Singh to know about his whereabouts. She received reply that Balbir Singh was on leave for two months from 07.04.1997 onwards and had not come back. She then searched for Balbir Singh at the places of their relatives for number of days. As Balbir Singh was not traceable, she deputed Ranjit Singh maternal uncle of Balbir Singh and Darshan Singh brother of Balbir Singh who visited his Unit at Dehradun. From the Unit they learnt that Balbir Singh had gone on leave along with Sukhdev Singh accused. It was also learnt that when he left the Unit alongwith Sukhdev Singh, he was carrying Rs. 40,000/- (forty thousand) with him. Thereafter, she alongwith Ranjit Singh went to the house of Sukhdev Singh in village Sadhanwala where Gurmail Singh brother of Sukhdev Singh met them. He informed them that Balbir Singh had come with Sukhdev Singh. When inquiries were made from father of Sukhdev Singh namely Dalip Singh, he gave evasive reply that number of Army personnel come with Sukhdev Singh. Sukhdev Singh did not meet

them on that day. They came back to their village. They again visited the house of Sukhdev Singh two times but Sukhdev Singh was not available on both these visits also. They only met brother and father of Sukhdev Singh. She then moved an application to SSP Barnala suspecting that her husband had been murdered. She proved the application Ex.P1. She then sent second application Ex.P2 to SSP Barnala. She also handed over a telegram mark 'A' received from the Army Authorities to the police.

7. In cross examination by counsel for accused Sukhdev Singh, she stated that she had given first application to Barnala police after about one and a half month from the date of the leave of Balbir Singh. Before that she had only sent telegram to Army Authorities and no complaint has been made to any authority. In the first application, she had named Sukhdev Singh and his father and brother as suspects.

8. In cross examination by learned counsel for accused Gurmail Singh and Dalip Singh, she stated that she had gone to the village of Sukhdev Singh three times. She had gone to that village about after twenty days of receipt of telegram from Army.

9. PW2 Sarwan Singh resident of Chowki Maan deposed that he had retired as Subedar Major from Army. His son Hav. Maghar Singh was in the Army. In 1997, he was posted in Dehradun. He received a letter from his son Maghar Singh that he had sent Rs.9000/- through co- employee Balbir Singh. He received the letter in April 1997. On receipt of the letter, he went to the house of Balbir Singh to collect the money. He inquired about Balbir Singh. The wife of Balbir Singh told him that Balbir Singh had not come home from the Army. He then returned back to his village.

10. PW3 Ranjit Singh son of Maghar Singh deposed that he is an ex-Army person. Balbir Singh was his nephew (sister's son). About four years back, Balbir Singh had come on leave but he did not reach his village. Regarding this, information was given to police by the wife of Balbir Singh. He along with Darshan Singh, brother of Balbir Singh had gone to Dehradun to inquire about Balbir Singh. They were informed that Balbir Singh and Sukhdev Singh had gone on annual leave from 05.04.1997 as per record. Sukhdev Singh accused was on visiting terms with Balbir Singh. He alongwith Gurmit Kaur, wife of Balbir Singh had gone to the house of Sukhdev Singh in village Sadhanwala. Gurmail Singh brother of Sukhdev Singh informed them that Balbir Singh had visited his village few days back. Dalip Singh father of Sukhdev Singh intervened and told them that many Army personnel visited their house so they were not in a position to tell as to whether Balbir Singh had come to their house or not. He deposed that the entire family of Sukhdev Singh knew Balbir Singh very well. He along with his relations had gone to village Sadhanwala twice but they gave no information of whereabouts of Balbir Singh. It was learnt from the Unit of Balbir Singh that while proceeding on leave, he had withdrawn Rs.20,000/- from his GPF. He had also been given Rs.20,000/- by his colleagues for handing over to their relations. Balbir Singh was carrying Rs.40,000/- with him when he left for his village. He deposed that after his visit to village Sadhanwala, he was certain that Sukhdev Singh, Dalip Singh and Gurmail Singh had killed Balbir Singh for Rs. 40,000/-.

11. PW4 Kesar Singh son of Pal Singh resident of village Pandori deposed that five and half years ago, he had gone to Ferozepur. He was in

a bus to Muktsar Near National Hotel. At about 8.30 PM, Sukhdev Singh accused and Balbir Singh who were known to him earlier met him. They were on a scooter. Balbir Singh was in a drunken condition. Sukhdev Singh stated that he and Balbir Singh had come on leave together. They had come to the market and were going back to their village. They then went towards Johka road. Police had recorded his statement.

12. In cross examination, he stated that he had mentioned the date of his visit to Ferozepur in his statement to the police. He had made his statement to the police three months thereafter. His village was at a distance of 7/8 kilometers from the village of Gurmit Kaur. The disappearance of Balbir Singh was the talk of town before Baisakhi which falls on 13th or 14th April. He was not related to Balbir Singh. He admitted that Gurmit Kaur had taken him to Police Station Sadar, Ferozepur for recording statement. Before that he had not gone to police station on his own. He had stayed in Ferozepur on the night when he saw deceased along with Sukhdev Singh. He had stayed at the house of Maghar Singh near the chowk of Udham Singh which is near the flour mill.

13. PW5 Amarjit Kaur wife of Nachhattar Singh resident of village Paddi deposed that her husband was serving in the Indian Army. He was posted at Dehradun at the time of occurrence. Her husband was on leave. Balbir Singh had to come on leave after that and was to bring her husband's salary from Dehradun. Balbir Singh did not come from Dehradun. She alongwith her husband visited the house of Balbir Singh. The lady present in the house informed them that Balbir Singh has not come.

wherein he deposed regarding special report to Senior Superintendent of Police and the duty magistrate.

15. PW Beant Singh was given up as having been won over.

16. PW7 Bhupinder Singh deposed that he was owner of Ashirwad Hotel, situated near Damoria Bridge, Ludhiana. He stated that a register was maintained regarding visitors to the hotel. He had given a copy of the same to police. He proved the copy of visitor register Ex.P4. The name of Balbir Singh as having visited and stayed at the hotel was mentioned at Sr. No. 6 in Ex.P4. He had stayed with Sukhdev Singh from 3 PM on 06.04.1997 to 11 AM next day. They stayed in Room No.201. The entry bears the signatures of the customers.

17. In cross examination, he stated that he did not know the customers personally. The Register was maintained by Manager. Signatures of the visitors are obtained at the time of their arrival after recording their addresses. He admitted that entry did not bear signatures of Sukhdev Singh. He denied that entry has been made at the instance of police.

18. PW8 ASI Sukhwant Singh deposed that on 24.08.1997, he was posted at P.S. Sadar Ferozepur. He had recorded the statements under Section 161 Cr.P.C. of Maghar Singh, Havildar and N/K Nachhattar Singh during investigation.

19. In cross examination, he stated that he had gone to Dehradun to record their statements. He had also gone there to take the record but the record was not given to him. He had met the Adjutant in connection with record but does not remember his name. Statement of Adjutant was not recorded but information regarding Balbir Singh and Sukhdev Singh was

obtained.

20. PW9 SI Jaswinder Pal deposed that on 13.07.1997 he was posted at P.S. Sadar Ferozepur. Smt. Gurmit Kaur had produced one telegram Ex.P5 before him. He recorded the statement of Ranjit Singh (PW) on 14.07.1997 who produced photograph of Balbir Singh mark 'B'. On 20.07.1997 when he was going to village Sadhanwala in connection with investigation of case, Beant Singh, Member Panchayat of village Jhoke produced accused Sukhdev Singh. Sukhdev Singh was formally arrested. On interrogation, he made disclosure statement Ex.P6 that he had kept concealed a kirpan buried under eucalyptus tree and he could get same recovered. Pursuant thereto, he got the kirpan recovered after removing earth with his hand which was taken into possession vide memo Ex.PN. The kirpan recovered is Ex.MO-1. On completion of investigation, Inspector Hardev Singh presented the challan against accused.

21. In cross examination he deposed that except Beant Singh, all the witnesses were from the village of the complainant.

22. PW10 Harbans Singh deposed that in 1997 he was posted at CIA Staff Barnala. An application Ex.P2 was filed before SSP Barnala by Gurmit Kaur which was entrusted to him through SP(D) for inquiry vide order Ex.P2/A. He conducted the inquiry and submitted the report. His report indicting Sukhdev Singh was sent to SP(D) Barnala. It was mentioned in his report that the matter should be sent to Ferozepur as the occurrence had taken place in the area of Ferozepur. He proved his report dated 03.06.1997 Ex.P10.

Sukhdev Singh were called for enquiry by him. He had recorded their statements. They had confessed their mistake. On the basis of their admission before him, he had submitted his report against both of them. He admitted that he did not collect any evidence against them except their admission. One reason for the same was that matter pertains to Ferozepur.

24. PW11 Hav.Nachhattar Singh 8 Sikh LI, Tibbri Cantt., Gurdaspur deposed that on 24.8.1997 he was posted at Dehradun. He knew Balbir Singh. He belonged to his Unit. Sukhdev Singh accused also belonged to same Unit. Both of them had come on annual leave for two months in April till June. He had authorized Balbir Singh to collect his salary from Platoon Havildar as he had come on leave earlier. Balbir Singh had collected his salary of Rs. 7000/- from Platoon office before proceeding on leave. He belongs to village Paddi. Balbir Singh belongs to village Chhiniawala. He deposed that his village was at a distance of 30/35 kilometers from village Chhiniawala. Neither Balbir Singh returned nor his salary was given to him or any of his family member.

25. In cross examination he deposed that he had come on leave on 22/23.03.1997. He denied that he is deposing falsely being friend of Balbir Singh. He was confronted with his statement under Section 161 Cr. P.C. where the factum of payment of Rs. 8,000/- to Balbir Singh by him for giving to his wife was mentioned but it was not stated that he had authorized Balbir Singh to collect Rs. 7,000/- . He stated that he had not handed over any money to Balbir Singh himself. He admitted that there is no authority letter in the police file or the judicial file.

on 24.08.1997, he was posted at Dehradun. Balbir Singh was also posted at Dehradun in the same company. Balbir Singh had gone on leave for two months along with Sukhdev Singh accused. He deposed that his village is Chowki Mann. He had given Rs. 9000/- to Balbir Singh for handing over to his father Sarwan Singh in village Chowki Mann. His father did not receive the money.

27. In cross examination he stated that he did not know that whether Balbir Singh and Sukhdev Singh travelled together while coming to Punjab. He came to know after 15 days as payment had not been received by his father. His father had gone to house of Balbir Singh.

28. PW13 M.D. Naidu, Instructor Class C.A.S.C. Central College, Bangalore deposed that in 1997 he was posted at Dehradun with 8 Sikh L/I as Adjutant. Sukhdev Singh and Balbir Singh were from same battalion. As per record in 1997, they availed annual leave. As per certificate Ex.P11, Balbir Singh was granted 60 days leave from 07.04.1997 to 05.06.1997. As per certificate Ex.P12, Sukhdev Singh was granted 60 days leave from 07.04.1997 to 05.06.1997. He had attested certificates Ex.P11 and Ex.P12. Balbir Singh had withdrawn a sum of Rs.20000/- from Pay Account on 02.04.1997. He proved the attested copy of pay order Ex.P13. Ex.P14 was certified copy of receipt of said amount bearing signatures of Balbir Singh. It had also been attested by him (PW13). He also proved Ex.P15 the Acquaintance Roll showing receipt of Rs.3000/- by Balbir Singh. The Company Commander had responded to a telegram pertaining to the inquiry of whereabouts of Balbir Singh. He proved its attested true copy Ex.P16

the original of which had been retained in the office.

29. The case against the accused is based entirely on circumstantial evidence.

30. The case was initiated on an application Ex. P-1 moved by Gurmit Kaur complainant on 23.5.1997 to the Senior Superintendent of Police, Barnala stating that her husband Balbir Singh was employed in the military in 8 Sikh LI c/o 56 APO. He proceeded on leave for two months on 07.04.1997 but had not reached home till then. They came to know of it after so many days when two persons who were residents of village Mannawala and Paddi (Ludhiana) came to their house and told that their sons had sent money with her husband and they had come to receive that money. To verify this fact they sent a telegram to his Unit. From the reply received from the Unit they learnt that her husband was on two months leave w.e.f., 07.04.1997. On receiving the information they made enquiries from their relatives but did not find him anywhere. They then sent family members to enquire from the Unit and they learnt that her husband had proceeded on leave with Sukhdev Singh son of Dalip Singh resident of Sadhanwala. It was also learnt that at the time when he proceeded on leave he had Rs. 40,000/- in cash. They went to the village of Sukhdev Singh thrice. On their first visit they made enquiries from the brother of Sukhdev Singh who informed that Balbir Singh had come there. However his father interrupted him and stated that many soldiers visit their place daily. It could not be said who had come or not. Despite the fact that all the family members of Sukhdev Singh knew Balbir Singh so well as they were on visiting terms to each other's houses, they were made to sit outside by the family members of Sukhdev Singh and were not allowed to talk to the family members. They

were also not treated sympathetically. After some time the father of Sukhdev Singh started talking about money without being asked. He stated that his son had not brought any money and that they were living hand to mouth. She apprehended that her husband had been murdered by Sukhdev Singh and his family in connivance with each other for the greed of money. She requested that justice be done.

31. While deposing before the Court as PW 1 Gurmit Kaur has deposed broadly on similar lines.

32. In cross examination by learned counsel for accused Gurmail Singh and Dalip Singh, she stated that she had gone to the village of Sukhdev Singh three times. She had gone to that village about after twenty days of receipt of telegram from Army.

33. PW3 Ranjit Singh son of Maghar Singh deposed that he is an ex-Army person. Balbir Singh was his nephew (sister's son). About four years back, Balbir Singh had come on leave but he did not reach his village. Regarding this, information was given to police by the wife of Balbir Singh. He deposed on similar lines as PW 1 Gurmit Kaur. He also affirmed that he along with Darshan Singh, brother of Balbir Singh had gone to Dehradun to inquire about Balbir Singh. They were informed that Balbir Singh and Sukhdev Singh had gone on annual leave from 05.04.1997 as per record.

34. The circumstantial evidence that is relied upon by the prosecution to bring home the guilt of the accused is the following:

1. Balbir Singh and Sukhdev Singh had both been sanctioned leave for two months from 07.04.1997 to 05.06.1997. PW13 M.D. Naidu, Instructor Class C.A.S.C. Central College, Bangalore deposed that in

1997 he was posted at Dehradun with 8 Sikh L/I as Adjutant. Sukhdev Singh and Balbir Singh were from same battalion. As per record in 1997, they availed annual leave. As per certificate Ex.P11, Balbir Singh was granted 60 days leave from 07.04.1997 to 05.06.1997. As per certificate Ex.P12, Sukhdev Singh was granted 60 days leave from 07.04.1997 to 05.06.1997.

2. The evasive replies of Dalip Singh when PW1 Gurmit Kaur and PW3 Ranjit Singh went to the house of Sukhdev Singh to enquire about his whereabouts and their inability to meet Sukhdev Singh. On their first visit Gurmail Singh, the brother of Sukhdev Singh admitted that Balbir Singh had come to their house but his father Dalip Singh interrupted to say that many Army personnel visit their house and it cannot be said that Balbir Singh had actually come to their house despite the fact that Balbir Singh and Sukhdev Singh were friends and visited each other's house frequently and were known to each other's families.
3. Balbir Singh had Rs. 40,000/- with him when he left the Unit. PW13 M.D. Naidu, Instructor Class C.A.S.C. Central College, Bangalore deposed that Balbir Singh had withdrawn a sum of Rs. 20000/- from his Pay Account on 02.04.1997. He proved the attested copy of pay order Ex.P13 and Ex.P14 the certified copy of receipt of said amount bearing signatures of Balbir Singh. He also proved Ex.P15 the Acquaintance Roll showing receipt of Rs.3000/- by Balbir Singh. PW12 Naib Subedar Maghar Singh 8 Sikh LI deposed that on 20.08.1997, he was posted at Dehradun. His village was Chowki

Mann. Balbir Singh was also posted at Dehradun in the same company. He had given Rs.9000/- to Balbir Singh for handing over to his father Sarwan Singh in village Chowki Mann. His father did not receive the money. PW11 Hav. Nachhattar Singh 8 Sikh LI, Tibbri Camp, Gurdaspur deposed that on 24.08.1997 he was posted at Dehradun and was from village Paddi. He knew Balbir Singh who belonged to his Unit. Sukhdev Singh accused also belonged to same Unit. Both of them had come on annual leave for two months in April till June. He had authorized Balbir Singh to collect his salary from Platoon Havildar as he had come on leave earlier. Balbir Singh had collected his salary of Rs.7000/- from Platoon office before proceeding on leave. Neither Balbir Singh returned nor his salary was given to him or any of his family member.

4. Balbir Singh and Sukhdev Singh stayed at Hotel Ashirwad, Ludhiana on the night of 06.04.1997 and left at 11.00. AM on 07.04.1997. In this regard PW7 Bhupinder Singh deposed that he was owner of Ashirwad Hotel, Ludhiana. He stated that a register was maintained regarding visitors to the hotel. He proved the copy of visitor register Ex.P4. The name of Balbir Singh as having visited and stayed at the hotel was mentioned at Sr. No. 6 in Ex.P4. He had stayed with Sukhdev Singh from 3 PM on 06.04.1997 to 11 AM next day. They stayed in Room No.201. The entry bears the signatures of the customers.

In cross examination, he stated that he did not know the customers personally. The Register was maintained by Manager.

Signatures of the visitors are obtained at the time of their arrival after recording their addresses. He admitted that entry did not bear signatures of Sukhdev Singh.

5. Deposition of PW4 Kesar Singh about that five and half years ago, he had gone to Ferozepur. He was in a bus to Muktsar Near National Hotel. At about 8.30 PM, Sukhdev Singh accused and Balbir Singh who were known to him earlier met him. They were on a scooter. Balbir Singh was in a drunken condition. Sukhdev Singh stated that he and Balbir Singh had come on leave together. They had come to the market and were going back to their village. They then went towards Johka road. From this it is argued that the accused and the deceased were last seen together on 07.04.1997 by PW4. Thereafter Balbir Singh has not been seen or heard of.

In cross examination PW4 stated that he had made his statement to the police three months after he had seen the deceased and accused. His village was at a distance of 7/8 kilometers from the village of Gurmit Kaur. The disappearance of Balbir Singh was the talk of town before Baisakhi which falls on 13th or 14th April. He was not related to Balbir Singh. He admitted that Gurmit Kaur had taken him to Police Station Sadar, Ferozepur for recording statement. Before that he had not gone to police station on his own.

35. All the above circumstances even cumulatively are not sufficient to establish the guilt of the accused appellant.

36. The first point that stares us in the face is that it has not been

established that Balbir Singh has died a homicidal death or that in fact he had died. His body has not been recovered. No belonging of Balbir Singh has been recovered from the accused or on his disclosure statement. The accused is alleged to have been produced before PW9 SI Jaswinder Pal by one Beant Singh, Member Panchayat of village Jhoke on 20.07.1997 where after he was formally arrested. On interrogation, he is alleged to have made disclosure statement Ex.P6 pursuant where to he got recovered a kirpan buried under eucalyptus tree which was taken into possession.

37. Hon'ble Supreme Court in *Rishipal v. State of Uttarakhand, (2013) 12 SCC 551* considered the question of the effect of absence of corpus delicti. It was held that in the absence of *corpus delicti* the court looks for clinching evidence that proves that the victim has indeed been done to death. If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder. But failure of the prosecution to assemble such evidence would result in failure of the most essential requirement in a case involving a charge of murder.

38. The Hon'ble Court observed as under:

“10. Coming next to the question whether the prosecution has brought home the charge of murder levelled against the appellant, we must at the outset point out that the case is entirely based on circumstantial evidence. No direct evidence has been adduced to prove that Abdul Mabood, whose corpus delicti has not been recovered, was done to death, nor any evidence adduced to show where and when the same was disposed of by the appellant assuming that he had committed the crime alleged against him. The legal position regarding

production of corpus delicti is well settled by a long line of decisions of this Court. We may briefly refer to some of those cases.

11. In Rama Nand v. State of H.P. this Court summed up the legal position on the subject as: (SCC pp. 522-23, paras 27-28)

“27. ... In other words, we would take it that the corpus delicti i.e. the dead body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand, appellant? It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused ‘caused the death’ of the person alleged to have been killed.

28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. ‘I would never convict’, said Sir Mathew Hale, ‘a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead’. This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered

as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old 'body' doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be 'proved', if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned."

(emphasis supplied)

To the same effect is the decision in Ram Chandra v. State of U.P. where this Court said: (AIR p. 387, para 6)

“6. ... It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable.”

12. *Reference may also be made to State of Karnataka v. M.V. Mahesh where this Court observed: (SCC p. 354, para 3)*

“3. ... It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court.”

13. *In Lakshmi v. State of U.P. the legal position was reiterated thus: (SCC p. 205, para 16)*

“16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in the absence of identification of the body and cause of the death.”

14. *In the absence of corpus delicti what the court looks for is clinching evidence that proves that the victim has been done to*

death. If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus delicti will not by itself be fatal to a charge of murder. Failure of the prosecution to assemble such evidence will, however, result in failure of the most essential requirement in a case involving a charge of murder. That is precisely the position in the case at hand. There is no evidence either direct or circumstantial about Abdul Mabood having met a homicidal death. The charge of murder levelled against the appellant, therefore, rests on a rather tenuous ground of the two having been last seen together to which aspect we shall presently advert when we examine whether the two being last seen together is proved as a circumstance and can support a charge of murder.”

39. Like in the case before the Hon'ble Supreme Court, in the present case also there is no evidence, direct or indirect, of Balbir Singh having met a homicidal death.

40. As referred to above the charge is sought to be proved against the accused on the ground that he and Balbir Singh were sanctioned leave together, both of them stayed together in Ashirwad Hotel on the night of 06.04.1997 and were last seen together on the night of 07.04.1997 and that Balbir Singh did not reach home thereafter. The motive alleged is that Balbir Singh had Rs. 40000/- with him and he was done to death for that amount.

41. As regards the entry at Ashirwad Hotel the same does not conclusively establish that Balbir Singh and Sukhdev Singh had both stayed there on the night of 6.4.1997. It was admitted by PW7 Bhupinder Singh in

his cross examination that he did not know the customers personally. The

Register was maintained by Manager. The entry did not bear signatures of Sukhdev Singh. The evidence of PW4 Kesar Singh about having seen Balbir Singh and Sukhdev Singh together at Muktsar Bus Stand on the night of 07.04.1997 at about 8.30 PM on a scooter also does not appear to be very convincing. In his cross examination he stated that he had made his statement to the police three months after he had seen them. He also admitted that Gurmit Kaur had taken him to Police Station Sadar, Ferozepur for recording statement. Before that he had not gone to police station on his own. He also stated that the disappearance of Balbir Singh was the talk of town before Baisakhi which falls on 13th or 14th April. If that was so there is no explanation as to why, he being privy to an important circumstance having seen Balbir Singh with accused Sukhdev Singh on 07.04.1997 did not choose to go to the police or even inform the family members of Balbir Singh about having seen the two together.

42. Apart from the not very convincing nature of the evidence it is also important to note that the circumstance of last seen does not of itself lead to the inference that the accused has committed the crime.

43. Hon'ble Supreme Court in ***Rishipal's case*** (*supra*) referred to various decisions on the point as under:

“20. In Mohibur Rahman v. State of Assam 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, SCC p. 720, para 10)

21. *Similarly in Arjun Marik v. State of Bihar 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.*

22. *So also in Godabarish Mishra v. Kuntala Mishra this Court declared that: (SCC p. 269, para 11)*

“11. ... (g) The theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances.”

23. *In Bharat v. State of M.P.¹⁴ two circumstances on the basis whereof the appellant had been convicted were (i) the appellant having been last seen with the deceased, and (ii) recovery of ornaments made at his instance. This Court held: (SCC p. 111, para 12)*

“12. ... Mere non-explanation cannot lead to the proof of guilt against the appellant. The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant.”

24. *We may also refer to State of Goa v. Sanjay Thakran 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.*

25. *Reference may also be made to Bodhraj v. State of J&K¹⁶ where this Court held: (SCC p. 63, para 31)*

“31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen 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.”

26. *Finally, in Jaswant Gir v. State of Punjab 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.”*

44. The projected motive for the offence also does not appear to be very plausible. As per the prosecution, Balbir Singh and accused Sukhdev Singh were serving in the same Unit. They were friends. They were on visiting terms to each other's homes. It does not appeal to reason that a serving Army person would murder his colleague for mere Rs.40,000/-.

45. Thus, the prosecution has not been able to prove the case against the accused beyond reasonable doubt.

46. Accordingly, this appeal is allowed. The judgment of conviction and order of sentence are set aside. The accused is on bail. His sentence

was suspended vide order dated 05.10.2009. His bail bonds stand discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No