

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRA-D-151-2021 (O&M)
Date of decision:29.09.2021

Vinod Patel

....Appellant

V/s.

State of Punjab

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Jagjit Pal Singh Sarao, Advocate for the appellant.

Mr. V.G.Jauhar, Senior DAG, Punjab.

Ritu Bahri, J.

The appellant has come up in appeal against the judgment dated 08.02.2021 passed by Additional Sessions Judge, Patiala whereby he has been convicted in FIR No. 59 dated 13.06.2017 under Section 302 of the Indian Penal Code registered at Police Station Banur for life imprisonment and fine of Rs. 10,000/- and in default of payment of fine, to further undergo RI for three months

The case of prosecution as made out from the challan report is that on 13.06.2017, a dead body was found lying near Lailan village. Sub Inspector Rupinder Singh alongwith the police party, proceeded towards village Lailan. When they reached on the turn of village Jansua, Amarjit Singh, son of Bakhshish Singh, resident of village Lailan, Tehsil Rajpur came present and got recorded his statement before SI Rupinder Singh as under:-

“2.1 That complainant is present Sarpanch of village Lailan, is married and has two sons. Today, on 13.6.2017 at about 10:00 am, complainant had left for his personal work for Rajpura. When the complainant reached opposite Heritage Public School, village Lailan, complainant saw a young boy, lying with his back towards

the road, near the bushes on the side of the fields of Buta Singh of village Lailan, complainant stopped his motorcycle and, with the intention to help the said young boy, reached at the spot, where complainant saw dead body of a young boy, aged 30-35 years, clean shaven, wearing pink colour T shirt and green colour capri. On the right arm of said dead body, the name Kamaldeep was tattooed in English. Blood was present on the mouth of the dead body which also bore marks of other injuries. Some unknown person had thrown the dead body in the bushes after tying the neck and knees of the said dead body with the help of plastic rope. Action be taken.”

On the basis of the above said complaint, ruqa was sent to Police Station Banur where formal FIR under Sections 302 and 201 IPC was registered against unknown person. Investigation started and photographer Amrik Singh was called at the spot. Photography and videography of the place was got conducted. Officials of mobile FSL lab were called at the spot who lifted blood stained earth, blood stained grass and leaves from the spot and converted the same into parcels. The dead body was deposited in the mortuary of Civil Hospital, Rajpura. On 15.06.2017, the dead body was identified to be that of Kamaldeep Singh, son of Mohinder Singh, aged 26 years, resident of village Bilwalpur, Police Station Sadar Ropar, District Rupnagar. Thereafter post mortem on the dead body was got conducted. The viscera of victim was sent to Chemical Examiner, Kharar. The clothes worn by the victim at the time of his death, were converted into parcel. The said clothes alongwith parcels containing blood stained earth, grass and leaves were sent to FSL, Mohali for comparison. After the identification of the dead body, call

detail record of mobile No. 9417694252 of victim was obtained on the basis of which statements of Sanjiv Kumar, son of Balbir Singh of village Boothgarh and Baljit Singh son of Prem Singh, resident of village Hirdapur were recorded under Section 161 Cr.P.C. As per the statement of Baljit Singh, he and Kamaldeep Singh were taking liquor at the Dhaba of Patel and while going, Kamaldeep had taken mobile phone of Lava company having sim No. 8427234226 of Baljit Singh, with him. On 20.06.2017, when the Investigating Officer, alongwith the police party, was present at the petrol pump of village Sudhaur, Gurpreet Singh son of Somnath, resident of village Sudhaur, Tehsil Rajpura produced Vinod Patel son of Radha Krishna, Patel, resident of Basdila Bajurgh, Police Station, Tarias Sujana, District Kushi Nagar, UP, who was residing as tenant in the house of Harbagh Singh, son of late Krishan Singh, resident of Sudhaur, Tehsil Rajpura. SI Rupinder Singh interrogated Vinod Patel and thereafter formally arrested Vinod Patel. On 21.06.2017, during interrogation of Vinod Patel, he made disclosure statement to the effect that on the night of 12.06.2017 Vinod Patel was present at his Dhaba. The daughter of Vinod Patel, namely Ritu who is having son aged one year was present in his rented house. When Vinod Patel, alongwith his wife Geeta, daughters Preeti, Priyanka and son Bhupinder returned from Dhaba and opened the gate of the house, Vinod Patel saw that Sukhi i.e. Kamaldeep had opened the suit worn by Ritu, daughter of Vinod Patel, on seeing which Vinod Patel caught hold of Sukhi. At that time, Sukhi was under the influence of liquor. Geeta, wife of Vinod Patel, locked the children in the room. Vinod Patel dragged Sukhi to the roof of the house, but out

of fear of public, again brought Sukhi downstairs. On reaching the ground floor Sukhi threatened to kill Vinod Patel and to kidnap the children of Vinod Patel and to take them to Ropar. Vinod Patel lost his temper and picked up the Sabbal lying near the staircase. Vinod Patel gave Sabbal blow from behind on the neck of Sukhi as a result of which Sukhi fell down. As Sukhi was lying on the ground, Vinod Patel strangled Sukhi with the help of Parna and wife of Vinod Patel caught hold the hands of Sukhi. Thereafter, wife of Vinod Patel gave Sabbal blows on the thighs of Sukhi. When Sukhi did not move and was found to have died, Vinod Patel brought his motorcycle inside the house and tied neck and knees of Sukhi with the help of plastic rope/bag. There were two mobiles phone and Rs.700 cash in the pocket of Sukhi. Vinod Patel took out both the mobile phones, removed their sims and kept Rs.700/-. Thereafter, with the help of his wife, Vinod Patel transported the dead body of Sukhi on the motorcycle and threw it in the fields on the way from Jansua to Khera. On the way, Vinod Patel threw the mobiles and sims of Sukhi in the Nala on the turn of the village. After coming home, wife of Vinod Patel washed the courtyard and thereafter both of them took bath. After making disclosure statement, iron Sabbal, motorcycle, Agochha/parna and mobile phones of Kamaldeep Singh were recovered by the Investigating Officer. Geeta, wife of Vinod Patel was nominated in the FIR and raid was conducted at the house of Vinod Patel but Geeta, wife of Vinod Patel, could not be arrested. Offence under Section 34 IPC was added in the FIR. The mobile phones of Oppo and Lava company, recovered at the instance of accused, were got identified from

Ramandeep Singh and Baljit Singh. During interrogation Vinod Patel revealed that he had burnt the clothes worn by him on 12.06.2017. Accused Geeta could not be arrested and after completing investigation, challan against accused Vinod Patel was presented before the learned Ilaqa Magistrate. After supplying copies of the documents to the accused under Section 207 Cr.P.C., the case was committed by the learned Ilaqa Magistrate to the Court of Sessions. Charges were framed against the accused under Section 302 IPC on 08.12.2017 to which accused did not plead guilty.

Prosecution examined Amarjit Singh Sarpach i.e. Complainant as PW1. PW2 Ramandeep Singh, brother of Kamaldeep Singh. PW3 Amrik Singh, Photographer, PW 4 Sanjeev Kumar, driver on the truck of NGR company of Rupnagar, PW5 Head Constable Hardev Singh, PW6 Dr. Ashwani Sharma, Medical Officer, Civil Hospital, Rajpura. PW7 Balbir Singh son of Om Parkash, PW7 Satbir Singh, Motor Registration Clerk, SDM office, Panipat, PW7 (doubly numbered) HC Kulwinder Singh, PW8 Gurinderjit Singh, PW9 Constable Inderpal Singh, PW10 SI Rupinder Singh, Investigating Officer, PW11 Gurpreet Singh, PW12 ASI Paramjit Singh, member of the police party headed by SI Rupinder Singh, PW13 Didar Singh, Patwari and PW14 Surjit Singh, Nodal Officer, Vodafone Idea Ltd.

The case remained pending for recording testimony of Baljit Singh, son of Prem Singh and repeated summons were sent to him but the witness was not traceable at the given address and in this backdrop, evidence of prosecution was closed.

The statement of accused was recorded under Section 313

Cr.P.C and he did not lead any evidence.

The trial Court after going through the entire evidence led by the prosecution, gave following findings point wise.

Point No. I) Whether accused Vinod Patel committed the murder of Kamaldeep Singh on the night of 12.6.2017?

The entire prosecution was based on circumstantial evidence, last seen theory and recovery of weapons i.e. Iron Sabbal and Agochha/Parna used to strangulate the victim and recovery of mobile phones of Oppo of victim and Lava of Baljit Singh, which had been given to the victim when both of them were taking liquor at Patel Dhaba.

With respect to the issue of last seen theory, it is based upon the version given by PW4 Sanjeev Kumar. He was the person who saw the deceased for the last time when the deceased was sitting with Baljit Singh at Patel Dhaba. Baljit Singh, thereafter, remained untraceable. PW4 Sanjeev Kumar was working as Driver in the same company as of Kamaldeep @ Sukhi and he made a request to Sukhi to get his meal packed and take the same in Nalas Plant. As per the version of Sanjeev Kumar, after going inside Nalas Plant, he called Kamaldeep for 5-6 times and talked to him about loading of trucks, taking of meal and taking of truck together to Ropar. After 10.00 pm when Sanjeev Kumar made a call to Kamaldeep, the mobile of Kamaldeep was switched off. Kamaldeep also did not get the truck loaded and later Sanjeev Kumar came to know that Kamaldeep had been murdered. As per SI Rupinder Singh, Investigating Officer, Mohinder Singh, father and Ramandeep Singh, brother of the deceased,

vide their statements Ex.PW10/F and Ex.PW10/G respectively, disclosed that deceased was having two mobile numbers i.e. 8360773230 and 9417694252. The CDR of mobile of Sanjeev Kumar i.e. 97812-38360 has been placed on record as Ex.PW14/B. The certificate under Section 65-B has also been placed on record. As per the CDR, on the late evening of 12.06.2017, there were six calls between mobile of Sanjeev Kumar and mobile No. 8360773230 of deceased between 19.05.36 hours to 21.42.11 hours. The duration of said calls varied from 137 seconds to 9 seconds. After 21.42.11 hours on 12.6.2017 there was no call between deceased and PW4 Sanjeev Kumar. The trial Court held that the version of PW4 Sanjeev Kumar regarding having seen deceased for the last time at Patel Dhaba inspired confidence and established that the deceased was last seen at Patel Dhaba. Even if Baljit Singh had not put in appearance, his presence on the night of 12.06.2017 at Patel Dhaba would be insignificant keeping in view the recoveries of weapon of offence and articles of deceased effected from accused Vinod Patel.

Point No. II) Inter play of last seen theory with the recoveries in the present case

In the present case, as per the disclosure statement of Vinod Patel (Ex.PW10/K) two mobile phones Ex.MO/2 and Ex.MO/3 were recovered vide memo Ex.PW10/M at the instance of accused from inside the Nala in which the same were thrown by accused. Vide memo Ex.PW10/N, Ramandeep Singh, brother of deceased identified Oppo phone of deceased on which there was photograph of Babbu Mann on the reverse. Ramandeep Singh, while appearing as PW2 did

not make any reference to mobile phone of the deceased. When mobile Oppo Ex.MO/3 was produced in the Court, SI Rupinder Singh specifically stated that there was photograph of Punjabi Singer Babbu Mann on the back side of phone and there was no cross-examination to this version. Recovery of iron Sabbal from near the rear wall of Patel Dhaba situated outside Gate No. 1 of Nalas Plant was effected. The said iron Sabbal was produced in the Court as Ex.MO/4. Vide memo Ex.PW10/C accused also got recovered motorcycle No. HR 06F 1334 on which dead body of the deceased was transported and Agochha/Parna used to strangle the deceased was recovered from inside his rented house. The disclosure statement Ex.PW10/K and recovery memos Ex.PW10/L, Ex.PW10/M, Ex.PW10/, Ex.PW10/N, Ex.PW10/O and Ex.PW10/Q coupled with the testimony of PW4 Sanjeev Kumar becomes the strongest link to prove the guilt of accused Vinod Patel. The ownership of the motorcycle was neither established to be that of accused and nor the manner in which the said motorcycle came into possession of accused has been brought on record. However, PW7 Balbir Singh, son of Om Parkash, stated that his father Om Parkash, original owner of motorcycle had died in the year 2010 and he was not aware as to whom his father had sold the motorcycle, which was still in the name of Om Parkash. Since recovery of the motorcycle was done on the statement made by the accused, it connects the same with the accused that the said motorcycle was used to transport dead body of the deceased where it was spotted by PW1 Amarjit Singh.

With respect to the testimony of PW6 Dr. Ashwani Sharma, who was one of the members of the Board of Doctors and

conducted post mortem examination, the trial Court held that in the dead body there was no smell of alcohol after the death. In the present case, the murder was committed on the late night or the intervening night of 12/13.6.2017. The post mortem was conducted after 72 hours and in these 3 days, the smell of alcohol in the body of deceased would have evaporated and hence the version of PW4 Sanjeev Kumar that he had seen Kamaldeep with Baljit Singh at Patel Dhaba and both were having liquor, does not get diluted and last seen theory propounded by Sanjeev Kumar coupled with the statement made by accused Vinod Patel and the recoveries made thereafter completed the joints of the circumstantial evidence proving guilt of the accused and he was convicted for committing murder of Kamaldeep Singh @ Sukhi.

Learned counsel for the appellant has referred to the deposition of PW8 Gurinderjit Singh, from the office of General Manager, Telecom District, Leela Bhawan, Patiala who produced the record of mobile No. 94176-94252 and this number was issued to Kamaldeep Singh on 11.06.2016. Photocopy of CAF has been proved as Ex.PW8/A, photocopy of Election ID card of Mohinder Singh as Ex.PW8/B and call detail report of said mobile as Ex.PW8/C. Certificate under Section 65B, furnished by D.T.Kaushik, has been proved as Ex.PW8/D. On this mobile, which was belonging to Kamaldeep Singh, there was no call from mobile No. of PW4 Sanjeev Kumar i.e. 97812-38360. It has been proved by producing PW14 Surjit Singh, Nodal Officer, Vodafone Idea Ltd. that this phone was issued in the name of Sanjeev Kumar. No investigation has been carried out to lead evidence to show mobile number belonging to Baljit Singh. It is

on this mobile No.8360773230 six calls of PW4 Sanjeev Kumar were made at night when he had last seen the deceased in the company of Baljit Singh having liquor at Patel Dhaba. This was the most important link to prove the last seen theory given by PW4 Sanjiv Kumar. Baljit Singh was not traceable despite number of summons sent to him and finally prosecution evidence was closed.

He has further referred to Division Bench judgments of Supreme Court passed in *Laxmi vs. State of Andhra Pradesh 2014(4) RCR CrI. 389*, *Ramesh Kumar vs. The State of Punjab, Md. Younus Ali Tarafdar vs. State of West Bengal 2020(3) SCC 747* and *Vijay Kumar vs. State of Himachal Pradesh 2014(4) R.C.R. (Criminal) 389* on the proposition that if recovery of some articles was made at the disclosure of the accused and there is no other evidence, the recovery is of weak kind of evidence in a case based on circumstantial evidence. He has further argued that as per the statement given by PW4 Sanjeev Kumar, the appellant has not been named. Sanjeev Kumar had only seen Kamaldeep @ Sukhi with Baljit Singh, son of Prem Singh, resident of village Hirdapur Kheri. Baljit Singh has not appeared as witness in the case and even as per the statement of Baljit Singh which was recorded on 16.06.2017, he remained silent with regard to PW4 Sanjeev Kumar as well as the presence of Vinod Patel. No record has been produced during investigation pertaining to NGR company that they had hired Sanjeev Kumar, Baljit Singh and Kamaldeep Singh @ Sukhi on a truck.

Learned counsel for the State Mr. V.G. Jauhar, Senior Deputy Advocate General, Punjab has vehemently argued that PW4

Sanjeev Kumar was the eye-witness who had seen Kamaldeep Singh @ Sukhi alongwith Baljit Singh outside Dhaba of Vinod Patel. PW4 Sanjeev Kumar was working as driver in the company where Kamaldeep Singh was working as driver and he made a request to Sukhi to get his meal packed and take the same in Nalas Plant. This witness had made 5-6 telephone calls to Kamaldeep @ Sukhi about taking of meal and taking of truck together to Ropar.

The prosecution has produced certificate under Section 65B of the Indian Evidence Act to show that in the late evening of 12.06.2017 there were six calls between the mobile of Sanjeev Kumar i.e. 97812-38360 and mobile No. 8360773230 of deceased between 19.05.36 hours to 21.42.11 hours. The CDR of mobile of Sanjeev Kumar i.e. 97812-38360 has been placed on record as Ex.PW14/B. The disclosure statement Ex.PW10/K and recovery memos Ex.PW10/L, Ex.PW10/M, Ex.PW10/, Ex.PW10/N, Ex.PW10/O and Ex.PW10/Q coupled with the testimony of PW4 Sanjeev Kumar completes the chain of circumstantial evidence against the accused Vinod Patel and the appellant has been rightly convicted by the trial Court.

Heard learned counsel for the parties and perused the case file.

The law with respect to circumstantial evidence had come up for consideration in ***Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 (4) SCC 116*** in which the Supreme Court had laid down the principles regarding circumstantial evidence. The relevant para is reproduced as under:-

1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be'

fully established;

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The Supreme Court in ***Mustkeem @ Sirajudeen Vs. State of Rajasthan 2011 AIR (SC) (Crl.) 1683*** has observed in para Nos. 26 and 27 as under:-

26. In a most celebrated case of this Court reported in ***1984 (4) SCC 116 Sharad Birdhichand Sarda Vs. State of Maharashtra in para 153***, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under:-

1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

27. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

In the above referred judgment, it is observed that under Section 27 of the Indian Evidence Act, if there is no eye witness and case is based on circumstantial evidence, then discovery of the weapon of the offence on the basis of disclosure statement would not automatically lead that offence is committed by the accused. The burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of offence and what is admissible under Section 27 of the Indian Evidence Act is the information leading to discovery and not any opinion formed on it by the prosecution. In para Nos. 28, 29 and 30, it is observed as under:-

- 28.If the recovery memos were prepared at the Police Station itself then the same would lose its sanctity as held by this Court in *Varun Chaudhary Vs. State of*

Rajasthan reported in AIR 2011 SCC 72.

29. The scope and ambit of Section 27 were also illuminatingly stated in ***AIR 1947 PC 67 Pulukuri Kotayya & Ors. Vs. Emperor*** reproduced hereinbelow:-

“...it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

The same were thereafter restated in another judgment of this Court reported in ***2004 (10) SCC 657 Anter Singh Vs. State of Rajasthan.***

30. The doctrine of circumstantial evidence was once again discussed and summarised in ***2008 (3) SCC 210 Sattatiya @Satish Rajanna Kartalla Vs. State of Maharashtra*** in the following terms:

“10. ..It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct

evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstance from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances”.

In *Manthuri Laxmi Narsaiah Vs. State of A.P.* 2012 AIR (SCW) 2234, the Supreme Court was examining a case where the accused was cultivating land of the deceased on crop sharing basis and the deceased landlord did not give some more land to the accused for cultivation purpose and there arose differences in this context. The eye witness in that case had seen the accused returning to the field however the deceased was not with him. Merely because the accused was seen coming from field could not be taken as evidence of last seen and Supreme Court held that this evidence was not of importance. Moreover, the extra judicial confession made by accused and recovery of axe and other incriminating articles at instance of accused did not constitute material chain of circumstances against accused. The case held to be of no evidence and the accused was acquitted. In para 2(c), the Supreme Court observed as under:-

This is the primary evidence which the prosecution has relied upon against the appellant. First of all, we find that the extra-judicial confession was jointly made by the accused to P.W. 10. We have also gone through the evidence of P.W. 10 and find from a reading thereof that he was a convenient witness for the police as he admitted that he had stood bail in a large number of excise cases and that

he was running a toddy shop. He also admitted in his cross examination that he was associated in some kind of business with P.W. 1 the first informant and the son of the deceased. In the face of the above, we are of the opinion that the recovery of the axe and other incriminating articles do not constitute a material chain of circumstances against the appellant. It is by now well-settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence. We, accordingly, allow the appeals, set aside the judgment of the High Court insofar as the appellant is concerned and order his acquittal. He is directed to be released forthwith if not required in connection with any other case.

The Supreme Court exonerated the accused while extending the benefit of doubt.

In ***Ramesh Kumar Vs. The State of Punjab 2018 All SCR (Crl.) 399***, the Supreme Court held that recovery of weapon at instance of the accused would not be sufficient evidence to arrive at conclusion that he had committed crime. In para Nos. 3 and 4, it is observed as under:-

3. Except for the recovery of a dagger at the instance of the present accused appellant Ramesh Kumar there is no other incriminating material. The motive attributed for the crime is only qua the accused Harcharan Singh. All other circumstances are relatable to the said accused Harcharan Singh.

4. Recovery of dagger which can be reasonably connected with the postmortem report, undoubtedly, is a very strong incriminating circumstance. But it is our considered view that the above, by itself, cannot permit us to arrive at a

conclusion, without any error, that it is the accused appellant Ramesh Kumar and nobody else who could have and did commit the crime. A lurking doubt remains in our minds which the accused appellant Ramesh Kumar would be entitled to. We, therefore, allow this appeal and set aside the order of the High Court as well as the conviction and sentence recorded against the accused appellant Ramesh Kumar who is acquitted on the benefit of doubt. We further direct that the appellant Ramesh Kumar be released from custody forthwith unless his custody is required in connection with any other case.

In *Vijay Thakur Vs. State of Himachal Pradesh 2014(4)*

R.C.R. (Criminal) 389, the Supreme Court was examining a case of blind murder and discovery of some articles at the disclosure of accused was made. There was no eye witness to the incident and while referring to Section 27 of the Indian Evidence Act, the Supreme Court held that except the so called recoveries, there was no circumstantial evidence which could be proved against the appellant and completes the chain of events pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In para Nos. 14, 15 and 16 it has been observed as under:-

“14. In *Mani v. State of Tamil Nadu, (2008) 1 SCR 228*, this Court made following pertinent observation on this very aspect:

“21. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case....”

15. There is a reiteration of the same sentiment in

Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 in the following manner:

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence.”

16. Likewise, in ***Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724***, this Court observed as under:

“24. In a most celebrated case of this Court, ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185)

“(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

It is settled position of law that suspicion, however strong, cannot take the character of proof.

Finally, reference can be made to judgment passed in ***Md. Yunus Ali Tarafdar Vs. State of West Bengal 2020(3) SCC 747*** in which the Supreme Court was examining Section 106 of the Indian Evidence Act, 1872 where there was no evidence on record to show that the accused was last seen with the deceased. The only evidence was that the sister of the deceased and relatives of the deceased were informed by the deceased that he was going to visit the accused. Hence, it cannot be said that the accused failed to explain as to what happened after they were last seen together especially when there is no evidence to show that they were last seen together. Conviction was set aside and the accused was given benefit of doubt. In para Nos. 12 and 14 it has been observed as under:-

“12.The conviction of the Appellant is mainly on the basis of the recovery of the watch which was with the deceased pursuant to the confessional statement of the Appellant. According to the prosecution, the receipt issued by PW 4, the owner of the watch shop was seized from the Appellant during the course of investigation. His confessional statement was recorded pursuant to which the receipt was

seized from his house. Thereafter, the watch was seized from the shop of PW 4 along with counterfoil of the receipt on which the signature of appellant was found. The contention of the defense is that the Appellant was coerced by the police into signing the counterfoil of the receipt. It was also argued that there the receipt was not seized from the house of the Appellant.

14. On an overall consideration of the evidence on record, especially the evidence of PWs 11, 12 and 16 would not lead us to believe that the Appellant and the deceased were last seen together. The evidence of PWs 11 and 16 only shows that they were informed by the deceased that he was going to visit the Appellant. There is no evidence on record to show that the Appellant was last seen with the deceased. Section 106 of the Indian Evidence Act, 1872 is not applicable to the facts of the case. It cannot be said that the Appellant failed to explain as to what happened after they were last seen together especially when there is no evidence to show that they were last seen together.”

In the facts of the present case, apparently eye witness PW4 Sanjeev Kumar had seen Kamaldeep Singh @ Sukhi alongwith Baljit Singh in the Patel Dhaba and both were taking liquor. The evidence collected further shows that there were six calls between mobile of Sanjeev Kumar and mobile No. 8360773230 of deceased between 19.05.36 hours to 21.42.11 hours. Baljit Singh had not appeared as witness and telephone calls were not made by Sanjeev Kumar over the phone of Kamaldeep Singh @ Sukhi in the presence of Vinod Patel owner of Dhaba. The presence of Vinod Patel is not made out on the scene. The only evidence against the appellant is the disclosure statement (Ex.PW10/K) and recovery memos Ex.PW10/L, Ex.PW10/M, Ex.PW10/, Ex.PW10/N, Ex.PW10/O and Ex.PW10/Q.

Recoveries are the only evidence which were made after disclosure statement. As per the disclosure statement of Vinod Patel (Ex. PW10/K), two mobile phones (Ex.MO/2 and Ex.MO/3) were recovered from inside the Nala in which the same were thrown by the accused. Vide memo Ex.Pw10/N, Ramandeep Singh, brother of the deceased identified Oppo phone of deceased. Vide Ex.MO/4, iron Sabbal was recovered. Vide memo Ex.PW10/C motorcycle No. HR 06F 1334 was recovered on which the dead body of the deceased was transported and Agochha/Parna used to strangle the deceased was also recovered from inside his rented house. These recoveries itself cannot be made basis for convicting the accused.

The Lower Court while referring to judgment of Supreme Court in *Paramsivam and Others vs. State through Inspector of Police, 2014(3) Law Herald (SC) 2037*, held that discovery of an object from an isolated place, pointed out by the accused is admissible in evidence.

In *Paramsivam's case (supra)*, the last seen evidence was given by PW1 and PW2 that they had seen the accused No. 2 and 3 who had taken the deceased from his house and they also identified the accused in the Test Identification Parade as well. However, in the present case, no Test Identification Parade was conducted so that PW1 Amarjit Singh, Sarpanch could identify the accused. The dead body of the deceased Kamaldeep Singh @ Sukhi was found on the basis of statement made by PW1 Amarjit Singh. However his statement does not relate to last seen theory that he had seen the deceased with the accused before his death. The evidence of PW1 Amarjit Singh is

relevant for the purpose of recovery of dead body and not with respect to last seen theory that he had seen the deceased Kamaldeep Singh @ Sukhi with the accused before his death.

In the present case, Baljit Singh who was last seen having liquor with Kamaldeep @ Sukhi has not been examined. There is no telephone call made by Sanjeev Kumar over the phone of Kamaldeep Singh @ Sukhi in the presence of Vinod Patel, owner of Dhaba. Apart from disclosure statement Ex.PW10/K and recovery memos Ex.PW10/L, Ex.PW10/M, Ex.PW10/, Ex.PW10/N, Ex.PW10/O and Ex.PW10/Q, there is no evidence to show the presence of Vinod Patel, owner of Dhaba when the witness PW4 Sanjeev Kumar had last seen Kamaldeep Singh @ Sukhi alongwith Baljit Singh. The chain of evidence is not complete to leave any reasonable ground for the conclusion that it was Vinod Patel who was last seen in the company of deceased by the eye-witness PW4 Sanjeev Kumar. With regard to recovery of objects at the disclosure of the appellant, such recoveries would not automatically lead to conclude that offence is committed by the accused. The recoveries (Ex.PW10/L, Ex.PW10/M, Ex.PW10/, Ex.PW10/N, Ex.PW10/O and Ex.PW10/Q,) made pursuant to the disclosure statement Ex.PW10/K, would be admissible only with regard to the information leading to discovery and not any opinion can be formed on it by the prosecution as per the judgments referred above by the Supreme Court. The circumstantial evidence has to be fully established. In the absence of any direct evidence that appellant was last seen in the company of the deceased Kamaldeep Singh @ Sukhi by the eye-witness PW4 Sanjeev Kumar, recoveries made pursuant to the

disclosure statement cannot be made basis for conviction of the appellant.

In the present case, the evidence given by PW4 Sanjeev Kumar that he had last seen Kamaldeep Singh @ Sukhi with Baljit Singh at the Dhaba of Vinod Patel, has not been substantiated by examining Baljit Singh and Sanjeev Kumar. He had nowhere stated that he had seen Kamaldeep Singh @ Sukhi with Baljit Singh and Vinod Patel. The last seen evidence as per the discussion above does not complete the chain of evidence of last seen theory.

Balbir Singh, son of Om Parkash, who appeared as PW7 stated that his father Om Parkash, was the original owner of motorcycle and died in the year 2010. He was not aware as to whom his father had sold the motorcycle, which was still in the name of Om Parkash. There was no evidence to show that the motorcycle was transferred in the name of Vinod Patel.

Amarjit Singh who appeared as PW1 had only stated that accused transported the body of the deceased Kamaldeep Singh @ Sukhi on the motorcycle and had nowhere stated that he had last seen the accused Vinod Patel in the company of the deceased Kamaldeep Singh @ Sukhi just before his death. PW1 Amarjit Singh was the Sarpanch and the complainant who proved his statement recorded by the Investigating Officer on 13.06.2017 as Ex.PW1/A. Hence, even if the statement given by PW1 Amarjit Singh is admissible in evidence, the judgment of Supreme Court in *Paramsivam's case (supra)* cannot be made basis for conviction of the accused as Amarjit Singh PW1 had never seen the deceased Kamaldeep Singh @ Sukhi in the company of

Vinod Patel.

Hence, in the absence of any direct evidence that the deceased Kamaldeep Singh @ Sukhi was last seen with the accused, judgment dated 08.02.2021 convicting the accused for life imprisonment is set aside as per the Supreme Court judgments referred above and appeal is allowed.

Pending applications stand disposed of.

(RITU BAHRI)
JUDGE

29.09.2021
Divyanshi

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No