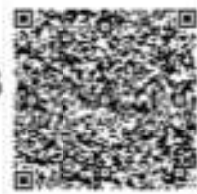


CRA-D-473-DB-2007 (O & M)

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2024:PHHC:168727-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-473-DB-2007 (O & M)
Date of decision:16.12.2024

Rajinder Singh

..... Appellant

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Varun Katyal, Advocate,
Ms. Ekta Chauhan, Advocate and
Mr. Bhanu Chaudhary, Advocate, for the appellant.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 19/20.03.2007 passed by the Additional Sessions Judge, Hisar.

2. The instant FIR came to be registered on 07.07.2005. The accused-appellant came to be convicted vide a judgment of conviction and order of sentence dated 19/20.03.2007. The present appeal is dated

21.05.2007. The matter has come up for final hearing now after more than 19 years of the registration of the FIR.

3. The prosecution was launched on the basis of statement made by complainant Ram Chander son of Chiranji Lal resident of viliage Pabra to the police on 7.7.2005. The said statement when translated into English runs somewhat as under:-

"That I am resident of the abovesaid address and am a labourer. We are three brothers and I am the eldest and next is Lakhi Ram and youngest is Dharam Pal who is working as Beldar in PWD (B&R). A road is under construction from village Kanoh to village Balak and my brother Dharam Pal was on duty there. On 6.7.2005 my brother Dharam Pal took along Shamsheer son of Baljit and Basau son of Balbir and Rajinder a Kala son of Birbal residents of Pabra for labour. Yesterday around Birbal residents of Pabra for labour. Yesterday around 6.00 PM Shamsheer and Basau returned to village Pabra after their duty but my brother Dharam Pal and Rajinder @Kala did not reach back till late in the night. In their search, I went to village Kanoh where sister-in-law (Sali) of my brother Dharam Pal is married to Pal Dhanak She told me that Dharam Pal and one other person had come to her house around 7.30 PM the previous day; that they had consumed liquor and that they went away after taking tea. I also came back and slept at my house and in the morning. I came to know that my brother Dharam Pal and Rajinder @ Kala had not returned to the house. Today in the morning around 7.00 AM I alongwith my paternal uncle Ram Kumar went to search them from village Pabra to Kanoh and on the way, I found my brother Dharam Pal lying prostrate on the road. His mouth was bleeding. I felt him with my hands and found that he was dead. I am sure that my brother has been

killed by Rajinder @ Kala with sharp edged weapon. I left my uncle Ram Kumar son of Mamu Ram to guard the dead body of my brother".

4. The statement of Ram Chander was reduced to writing by DSP Deepak Saharan and was sent to the police station for registration of a case. The police party reached the place of occurrence and completed inquest proceeding. The dead body was got photographed and was sent to the hospital for post mortem examination. A plastic chappal of blue colour, a lathi of kikkar and three broken teeth of deceased Dharam Pal and sample of blood on a cotton swab were taken into possession vide recovery memos. Statements of the witnesses were recorded under section 161 CrPC. The articles were sent to the FSL Madhuban for analysis. During investigation, accused-appellant Rajinder was arrested on 12.7.2005 and on interrogation, he suffered a disclosure statement about smashing Dharam Pal with a kikkar lathi under the bridge of the Sirsa railway line and taking out a purse containing Rs.3100/- from the pocket of the said Dharam Pal. Accused-appellant/Rajinder also stated that he had thrown away the purse and had spent Rs.1000/-. He further disclosed about keeping concealed his own blood stained clothes and remaining amount taken by him from the deceased. The disclosure statement was duly reduced into writing and pursuant thereto accused/appellant Rajinder led the police party to the disclosed place and took out a polythene from under a stone which contained a pant of sky-blue colour and a T-shirt of grey colour with white strips. The clothes were blood stained. The accused-appellant also took out another

polythene from under another stone and handed over the same to the police which contained Rs.2100/- being two currency notes of denomination of Rs.500/- and eleven currency notes of denomination of Rs.100/- The clothes and the currency notes were converted into parcels and were sealed with a seal and were taken into possession by the police. Clothes of the accused-appellant were sent to the FSL Madhuban for analysis. Location plan of the place of recovery was prepared. Statements of the witnesses were recorded under section 161 CrPC. On completion of the investigation, a challan was presented in the court against the accused-appellant.

5. On commitment, charges were framed under Sections 302 and 404 IPC. The accused/appellant-Rajinder Singh pleaded not guilty to the charge and claimed trial.

6. In support of its case, the prosecution examined fifteen witnesses in all besides placing reliance upon several documents.

7. PW-1 Kartar Singh, Sub Inspector deposed about preparing the report under section 173 CrPC.

8. PW-2 Satya Narain, HC and PW-3 Constable Suresh Kumar tendered in evidence their affidavits Ex.PA and Ex.PB respectively to complete the chain of link evidence.

9. PW-4 Balbir Singh Halka Patwari deposed about preparing a scaled site plan Ex.PC with correct marginal notes at the asking of Tehsildar. Hisar.

10. PW-5 Ajeet Singh deposed about taking photographs of the dead body which was lying on the Pabra-Kanoh road on 07.07.2005. He

proved photographs Ex.PD/1 to Ex.PD/4 and negatives Ex.PD/5 to Ex. PD/8.

11. PW-6 Dr. Rajiv Joshi deposed about conducting autopsy on the dead body of Dharam Pal son of Chiranji Lal resident of Pabra on 07.07.2005 on Ex.PD application of the police at Medical College, Agroha. He proved autopsy report Ex.PE, diagram Ex.PE/1 and inquest report Ex.PF. The shirt, pant and underwear of the deceased were taken out from a sealed parcel received from FSL Madhuban and were identified by PW-6 Dr. Rajiv Joshi as pant Ex.P-9(MO), shirt Ex.P-10(MO) and underwear Ex. P-11(MO) and the same were handed over by him to the police. PW-6 Dr. Rajiv Joshi testified that the cause of death in his opinion was laceration of the brain, a vital organ which was sufficient to cause death in the ordinary course of nature. PW-6 Dr. Rajiv Joshi also stated that injuries No.1 and 3 were possible by the lathi Ex.P-12 which was taken out from a sealed parcel received from the FSL.

12. PW-7 Ram Chander HC testified that on 07.07.2005 after post mortem examination, the Medical Officer handed over to him the viscera, clothes and papers and that he had handed over the same to the Investigating Officer vide memo Ex.PH. He tendered in evidence his affidavit Ex.PJ to complete the chain of link evidence.

13. PW-9 Deepak Saharan DSP testified that on 07.07.2005, he was officiating as SHO Police Station Agroha. On that day, he was present at bus stand Kirmara in connection with routine patrolling in Govt. gypsy

No.HR-39A/2733. Ram Chander complainant met him and made a

statement Ex.PM and later the said Ram Chander appended his signatures on Ex.PM after admitting the same to be correct. He further stated that he sent a ruqa (Ex.PN) to the police station through constable Manjeet Singh for registration of the case that thereafter, he reached the place of occurrence, called a photographer and got the dead body photographed. He prepared the inquest report Ex.PF and rough site plan Ex. PO with correct marginal notes. He further stated that he lifted one pair of plastic chappals, one wooden piece of kikar, broken teeth and a swab of blood from around the dead body of Dharam Pal and converted these articles into sealed parcels, sealed with seal ASY and took the same into his possession vide recovery memo Ex.PQ. A sealed parcel received from the FSL was opened and PW-9 Deepak Saharan DSP identified wooden piece of kikar as Ex.P-13 and a pair of chappals as Ex.P-14. Another sealed parcel was opened and teeth and jaw were taken out which were identified by PW-9 Deepak Saharan as Ex.P-15 to Ex.P-19 being the same which he had recovered from near the dead body of Dharam Pal. PW-9 Deepak Saharan DSP was subjected to searching cross- examination wherein he broadly supported the prosecution case on all material aspects.

14. PW-10 Devender Singh SI deposed about scribing the formal FIR Ex.PR on receipt of statement Ex.PM and ruqa Ex.PN and proved Ex.PS his endorsement Ex.PS.

15. PW-13 Ram Chander complainant testified that his youngest brother Dharam Pal was employed as a Beldar in PWD (B&R) at Barwala where a road from village Kanoh to village Balak was under construction.

On 06.07.2005, his brother Dharam Pal took along Shamsher, Basau and Rajinder @ Kala to village Kanoh as labourers for the work at the road. On that day, around 6.00 PM both Shamsher and Basau reached back but his brother Dharam Pal and Rajinder did not come back till late at night. He enquired about both of them and he came back and slept at his house. On the next morning around 7.00 AM, he alongwith his uncle went in search of his brother. When they reached a distance of 02 Kms from village Pabra, they saw the dead body of Dharam Pal lying dead on the road in a prostrate position and that blood was flowing from his mouth. He further stated that he saw broken teeth, pair of chappals and one wooden piece of kikar near the dead body. Thereafter, he left for informing the police and that the police recorded his statement Ex. PM on which he affixed his thumb impressions. He strongly suspected accused-appellant Rajinder for the murder of his brother Dharam Pal.

16. PW-11 Ram Kumar deposed about accompanying PW-13 Ram Chander in search of Dharam Pal and finding dead body lying in a prostrate position on Pabra-Kanoh road on 07.07.2005. He stated that many persons from the village had gathered near the dead body. The police inspected the place of occurrence and recorded his statement and those of some other persons. The police lifted a sample of blood on a swab, broken teeth, wooden piece of kikar and pair of chapals. He further stated that these articles were converted into parcels by the police and were taken into possession vide memo Ex.PQ which bore his signatures. PW-11 Ram Kumar further stated that after post mortem examination, the Medical Officer

handed over the parcel of clothes of the deceased and visera to the police and that the said parcel and envelope were taken into possession by the police vide recovery memo Ex.PH and that he signed the said recovery memo as well.

17. PW-12 Smt. Bhateri wife of Jaipal testified that her sister Rajbala was married to Dharam Pal. Dharam Pal was employed as a Beldar in PWD (B&R). About one year two months back around 7.30 PM Dharam Pal alongwith Rajinder accused-appellant came to her house in village Kanoh and that her brother-in-law Dharam Pal had introduced his companion as Rajinder as his labour colleague. She stated that they both were intoxicated. She served tea to them and thereafter they left for village Pabra. The next morning she came to know that Dharam Pal had been murdered by Rajinder @ Kala. During cross-examination, she stated that they were not willing to take tea and that by their coherence in conversation, she gathered that they had consumed liquor. She further stated that Lakhi Ram and Ram Chander both brothers of deceased Dharam Pal had not visited her on 06.07.2005 and that some persons came to her house on 07.07.2005 and told her about the murder of Dharam Pal.

18. PW-14 Prem Singh deposed about arresting accused-appellant Rajinder and stated that on interrogation, he disclosed that he had murdered Dharam Pal on the night intervening between 6 and 7 July 2005 with a kikar lathi and thereafter, had taken a purse containing Rs. 3100/- from the pocket of the deceased. He had spent Rs.1000/- and had concealed the remaining Rs 2100/- in a polythene paper under the bridge of Sirsa railway line by

digging the earth. He had also concealed his clothes which he was wearing at the time of the murder of the deceased near the place where the money was concealed. He further stated that pursuant to the disclosure statement (Ex.PK), accused-appellant Rajinder led the police party to the disclosed place and after removing a stone, had got recovered a polythene containing his clothes ie. a pant and shirt both blood stained. Thereafter, he removed another stone and took out another polythene containing Rs.2100/- being two currency notes of denomination of Rs.500/- and eleven currency notes of denomination of Rs.100/-. The clothes and currency notes were converted into separate sealed parcels, sealed with ASY and were taken into possession vide recovery memo Ex.PL which bore his signatures and signatures of HC Balbir Singh. Two sealed parcels were opened and one contained a pant Ex. P-20 and shirt Ex.P-21 and the other contained currency notes of denomination of Rs.500/- Ex.P-22 and Ex P-23 and eleven currency notes of denomination of Rs.100/- Ex P-24 to Ex.P-34.

19. PW-8 Balbir Singh HC substantially supported PW-14 Prem Singh on all material aspects of the case.

20. The Public Prosecutor tendered in evidence FSL report Ex.PT and Ex.PU and closed the prosecution evidence.

21. After the prosecution closed its evidence, the statement of the accused-appellant as contemplated under section 313 CrPC was recorded wherein he denied all the incriminating evidence and circumstances against him and claimed himself to be innocent. However, the accused-appellant did not produce any evidence in his defence despite opportunity.

22. Based on the evidence led, the accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 19/20.03.2007 passed by the Additional Sessions Judge, Hisar as under:-

Name of the Convict	Under Section	Rigorous Imprisonment	Fine	In default of payment of fine
Rajinder Singh	302 IPC	RI for Life	Rs.5,000/-	SI for 05 months

23. The aforementioned judgment is under challenge before this Court.

24. The learned counsel for the accused-appellant contends that the version of PW-13/Ram Chander (complainant) cannot be believed. As per his case, two other persons, namely, Shamsher and Basau alongwith the accused-appellant and the deceased had gone together to village Kanoh but only Shamsher and Basau came to village Pabra. However, neither Shamsher nor Basau were examined as prosecution witnesses to substantiate this version of the complainant.

He contends that the evidence of PW-12/Bhateri Devi, sister-in-law of the deceased-Dharam Pal is also not believable. As per her case, the accused-appellant and the deceased had come to her house in a drunken condition a night prior to the occurrence and had, thereafter, gone away. However, interestingly, as per the report of the FSL (Ex.PG), the organs of the body of the deceased did not contain any Ethyl alcohol. It is his contention that taking the allegations to be true, the evidence of “last seen” is not enough to inculcate the accused since the accused-appellant and the

deceased purportedly came to meet this witness at 07.30 p.m. in the evening whereas the body was discovered on 07.07.2005 at 2.10 p.m.. This gap of approximately 16/17 hours shows that there could be intervening circumstances and/or others who could have committed the offence in question. Reliance is placed upon '*State of U.P. versus Satish 2005(3) SCC 114, State of Goa versus Sanjay Thakran and another 2007(2) RCR (Criminal) 458, Rambraksh @ Jalim versus State of Chhattisgarh 2016(3) RCR (Criminal) 330 and Smt. Gargi versus State of Haryana 2019 AIR SC 4864*'.

He further contends that the recovery of blood stained clothes and money from the accused-appellant was also not sufficient to establish his guilt because as per the FSL report, the blood group of the blood stains on the shirt is not mentioned whereas the other articles such as *kachha*, teeth, T-shirt and pants show the material to be disintegrated. Similarly, the alleged recovery of cash from the accused-appellant belonging to the deceased does not further the prosecution case as there is nothing to suggest that the money purportedly recovered at the instance of accused-appellant had been taken away from the deceased by the accused-appellant.

He contends that though the accused-appellant had not absconded but even if it were to be so, the said fact itself was not sufficient to establish the culpability of the accused-appellant. Reliance is placed on '*Sujit Biswas versus State of Assam, 2013 3 RCR (Cri.) 227*'.

He, therefore, contends that the judgment of conviction and order of sentence dated 19/20.03.2007 is liable to be set aside and the accused-appellant ought to be acquitted of the charges framed against him.

25. The learned counsel for the State, on the other hand, while referring to the affidavit dated 04.11.2024, contends that the offence stood established beyond a reasonable doubt. There was sufficient evidence of the accused-appellant and the deceased being seen in the company of each other a night prior to the occurrence as per the depositions of PWs No.12 and 13. The recovery of blood stained clothes had been effected on the basis of disclosure statement of the accused-appellant alongwith cash belonging to the deceased. Therefore, the chain of circumstantial evidence was complete with the additional factor of the accused-appellant absconding after the offence having been committed.

26. We have heard the learned counsel for the parties and gone through the record.

27. This is a case where no eye witness is available and the entire case rests upon circumstantial evidence. Conviction can certainly be recorded on the basis of circumstantial evidence. In '*Sharad Birdhichand Sarda versus State of Maharashtra, AIR1984 SC 1622*', the Hon'ble Apex Court laid down the five golden principles, which constitutes the "Panchsheel" of the proof of a case based on circumstantial evidence:-

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be 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.

28. As per the prosecution case, on 06.07.2005, the accused-appellant, the deceased, one Shamsher and Basau went from village Pabra to village Kanoh for labour work. While Shamsher and Basau returned to the village, the deceased and the accused-appellant did not do so. However, other than the statement of the complainant/PW-13, there is no independent witness of this fact as neither Shamsher nor Basau were ever examined as prosecution witnesses during the course of the Trial.

29. PW-12/Bhateri Devi is the sister-in-law of the deceased and the purported witness of “last seen”. Her evidence is also not plausible. As per her, the accused-appellant and the deceased came to her house in a drunken condition and she served them tea. However, as per FSL report (Ex.PG), no Ethyl alcohol was found in the stomach, liver, spleen, etc. of the deceased. Further, her statement during the course of investigation was recorded after a month of the occurrence as has been admitted by her. Had she been a

witness of “last seen” her statement would have certainly been recorded immediately after the occurrence.

On the other hand, even if her statement of the deceased and the accused-appellant coming to her house a night prior to the occurrence is taken to be true, as per her case, both of them had come to her house at 7.30 p.m. whereas the body was recovered on the next day at about 2.10 p.m. in the afternoon i.e. after a gap of 16/17 hours. This gap is sufficient for other intervening accused to have committed the murder and by no stretch of imagination can it be said that it was the accused-appellant alone who could have committed the murder.

30. In ***State of U.P. versus Satish 2005(3) SCC 114***, the Hon’ble Supreme Court has held as under:-

23. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.

In *State of Goa versus Sanjay Thakran and another 2007(2)*

RCR (Criminal) 458, the Hon'ble Supreme Court has held as under:-

32. *We shall now weigh the last seen doctrine with respect to D-2-Priya Nanda. According to P.W.-11, after about 30 to 45 minutes when he saw A-1 and D-1 walking towards the beach, he had seen A-1 alone while A-2 was sitting with D-2 in the hotel. After some time, he saw the accused persons and D-2 walking away from Iguana Miraj Hotel. We can safely assume that P.W.-11 saw both the accused persons along with D-2 latest by around 10.30 -11.00 p.m. P.W.-6 Amit Banerjee had only a momentary glance of the lady sitting in the Maruti car who, according to the prosecution, came to Hotel Seema on 27.02.1999 with D-2 with a male person allegedly A-1. P.W.-6 has mentioned that the guard of the hotel had an opportunity to see the persons who came along with D-2. However, the prosecution chose not to examine the guard to identify either A-1 or A-2. It is difficult to believe P.W.-6 that he had seen A-2 sitting in the car when he had got an opportunity to look at her for merely one to two minutes. In his statement, he has described her as a lady with short hair. He has not given any description indicating that he had seen somebody sitting in the car whose face was visible from one side. Even when he was examined by the police, he had not described the features of A-2. In the absence of any other supporting material on record, it will not be possible to believe the statement of P.W.-6 that he had seen A-2 sitting in the car on the night of 27.02.1999 to establish the fact that when D-2 left the hotel she accompanied A-2. Similarly, with respect to A-1, P.W.-6 who had an opportunity to see A-1 for the first time for a very short duration to recognise him to be a person who accompanied D-2 to Hotel Seema on the night of 27.2.1999, he had only a fleeting*

glance of male person who came with D-2 as he was busy in settling the account with her. That apart, the dead body of D-2 was found at around 7.30 a.m. on 28.02.1999 at Vagator Beach, around 60 kms. from the beach where the dead body of D-1 was recovered and quite a long distance from Hotel Seema. Hence, there has been a considerable time gap of approximately 8½ hours when D-2 was last seen alive with the accused couple. There being a considerable time gap between the persons seen together and the proximate time of crime, the circumstance of last seen together, even if proved, cannot clinchingly fasten the guilt on the accused.

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35. In the light of the factors that evidence regarding the recovery of the incriminating materials from the accused persons has been discarded; that there has been sufficient time gap between the instances when the accused persons were last seen together with the deceased persons; and in the absence of any other corroborative piece of evidence to complete the chain of circumstances to fasten the guilt on the accused couple, we are of the opinion that the accused have been rightly given the benefit of doubt by the courts below. We have found that the finding of the High Court that the chain of circumstances is not complete to conclusively establish that either A-1 or A-2 alone or with the common intention of each other have committed the dreadful crime of murder of newly married couple, is correct and merely suspicion, however grave, cannot replace the weight attached to the evidence. Accordingly, we order for dismissal of the appeals.

In **Rambraksh @ Jalim versus State of Chhattisgarh 2016(3)**

10. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

In ***Smt. Gargi versus State of Haryana 2019 AIR SC 4864'***,
the Hon'ble Supreme Court has held as under:-

28.2. On the facts of the present case, it emerges that as per the version of PW-7, the deceased was lastly in his company on 28.04.1997 when he allegedly expressed his dejection and fear as also his plan to return with luggage. The appellant has pointed out that the deceased was with her in the morning of 29.04.1997 when he pointed out his tour programme commencing that day with scheduled return on 03.05.1997. It is not in dispute that the deceased was regularly on tour for longer durations of about two weeks in connection with his duties. The dead body was recovered on 01.05.1997 and as per post-mortem report, the probable time that had elapsed between death and postmortem (on 02.05.1997 at 12.30 p.m.) was 24 to 72 hours. On the basis of this opinion, it cannot be assumed by way of arithmetical calculation that the deceased might have met with his end on 29.04.1997. The possibility of it being a day later is not ruled out.

28.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In SK. Yusuf (supra), this Court has said:-

"21. 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."

31. The recovery of the alleged blood-stained clothes or cash from the accused-appellant does not further the prosecution case. Firstly, other than the shirt on which the blood group could not be ascertained, the other alleged recovered articles could not be tested for blood grouping as the material had disintegrated as per the FSL report (Ex.PU). The *kikkar* log allegedly used to commit the offence is also not blood-stained. As regards the cash amount purportedly recovered at the instance of the accused-appellant, the same did not have any unique identification marks so as to ascertain that the same belonged to the deceased.

32. As regards the accused-appellant absconding after the purported commission of the offence, the Hon'ble Supreme Court in ***Sujit Biswas versus State of Assam, 2013 3 RCR (Cri.) 227***, has held that the said fact in itself is not sufficient to affix guilt upon the accused-appellant. The relevant

extract of the aforesaid judgment is as under:-

“14. Whether the abscondance of an accused can be taken as a circumstance against him has been considered by this Court in Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638, wherein the Court observed:

“27. In Matru alias Girish Chandra v. State of U.P., AIR 1971 SC 1050, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under:

‘19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self- preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.’ 28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.”

While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including Matru (supra); and State of M.P. thr. CBI & Ors. v. Paltan Mallah & Ors., AIR 2005 SC 733.

15. Thus, in a case of this nature, the mere abscondance of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondance is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See: Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200; and Sk. Yusuf v. State of West Bengal, AIR 2011 SC 2283).”

33. In view of the aforementioned discussion, apparently, from the evidence on record the guilt of the accused-appellant has not been established beyond reasonable doubt.

34. Therefore, the impugned judgment of conviction and order of sentence dated 19/20.03.2007 is set aside and the accused-appellant is acquitted of the charges framed against him.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

December 16, 2024
sukhpreet

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