

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.158 of 2002**

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Mantun Sahni @ Tuntun Sahni son of Sankar Sahni, Resident of village-
Barisankh, P.S.-Mufassil, Dist.-Begusarai

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Ms. Nazir, Amicus Curiae
For the Respondent/s : APP

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)**

Date : 29-11-2025

Ms. Maria Nazir is assisting this Court as
Amicus Curiae. In the present appeal, on 20.09.2025, before
another coordinate bench, no one appeared for the appellant, as
such, the bench appointed Mr. Rudrank Shivam Singh as
Amicus Curiae. However, today on call, he has chosen to absent
himself and in that circumstances, Ms. Nazir has been requested
to assist the Court in the present appeal.

2. The report of the S.P., Begusarai has been
received, according to which, the present appellant is alive.



(A). **PRAYER:**

3. The present memo of appeal has been preferred against the **judgment and order of sentence** dated **07.02.2002** and **08.02.2002** respectively passed in the **Sessions Trial no. 06/2001/25 of 2001** by the **learned 3rd Additional Sessions Judge, Begusarai** by which the Court found the appellant to be guilty for the offence under **Section 302 read with Section 34 of the Indian Penal Code** and accordingly, he was convicted and sentenced to **rigorous imprisonment for life and a fine of Rs. 5000/-** and in default of payment of fine, to undergo **rigorous imprisonment for six months.**

(B) **FACTS:**

4. The matter relates to **Begusarai Sadar Mufassil Case no. 142 of 2000** lodged on **30.05.2000** under **Sections 302/34** of the **Indian Penal Code.**

5. The informant, **Chhattu Sah** is the father of the **Hazari Sah (deceased)**. According to the prosecution story, on **29.05.2000**, the informant along with his son (deceased) and other family members had gone to attend the feast at Sukhdeo Sah's house. They went to the place at 6:00 p.m. in the evening and returned an hour later.

6. On the way, **Mantun Sahni (appellant)** and



Sulendra Sahni were standing whereafter, his son asked the informant to go home stating that he shall be accompanying them. When his son failed to return in the night, he went out in search at his orchard/*Dharamshala* as also '*Dera*' but could not find him whereafter he slept at the '*Dera*'.

7. **On 30.05.2000**, at 5 o'clock, the people raised alarm about the presence of a dead body in the mango orchard of Chandradeo Sao. He reached there and found his son, Hazari Sah dead with multiple injuries on the body.

8. The allegation is that five days ago, Mantun Sahni and Sulendar Sahni had altercation with the deceased's son and further, as on the alarm raised by the villagers about killing of his son, others came but these two accuseds failed to present themselves, as such he has strong suspicion that they are the main culprits. This led to the FIR aforesaid.

9. The Police investigated the matter and having found the case true against the appellant submitted **charge-sheet** against **Mantun Sahni** under section 302/34 of the **I.P.C.** So far as the **accused Sulendra Sahni** is concerned, as he was a juvenile, his case was separated from this appellant. Later, the cognizance was taken against the appellant under Section 302/34 of the Indian Penal Code which led to the initiation of



the trial against him *vide* **Sessions Trial No. 06 of 2001/25 of 2001.**

10. The case was taken up by the learned 3rd Additional Sessions Judge, Begusarai. The charges were framed against the appellant and he denied his role in the present case as such the trial commenced.

11. The prosecution side in support of the case, produced all together seven witnesses as follows:-

PW-1- Ram Charitra Sah

PW-2- Madan Sah (youngest son of the informant)

PW-3- Dr. Hari Narayan Singh (Doctor who conducted the post-mortem)

PW-4 -Chhattu Sah (informant of the case)

PW-5- Wakil Sah (brother-in-law of the informant)

PW-6- Baidyanath Sah (full brother of the informant)

PW-7- Shyamakant Jha (Officer-In-charge)

12. The **exhibits** produced by them is/are as follows:-

(i). **Exhibit 1-** the Inquest report;



(ii). **Exhibit-1/1**-Fardbeyan;

(iii). **Exhibit-1/2**- Signature of Rejendra Sah on
the fardbeyan;

(iv). **Exhibit-2**- the Postmortem report

(v). **Exhibit-3**- the testimony of PW-7

13. The Defence Side put forward two witness
as:

i. **D.W.- 1Anandi Sah**

ii. **D.W.-2 Ram Chandra Paswan**

14. **PW-1- Ram Charitra Sah** was the person who accompanied the informant/deceased to the feast in the evening. According to him, on the way, Hazari Sah (deceased) told him that he is going to the '*Terasi Tola*'. In his deposition, P.W.1 he has not stated anything about the appellant and Sulendra Sahni or Hazari Sah wanted to accompany them. Rather, it is his statement that while returning together, Hazari Sah informed that he was going towards '*Terasi Tola*'.

15. **PW-2 Madan Sahni** is the youngest son of the informant. He was also accompanying the family to the feast. He has narrated the informant's version. During the cross-examination, the PW2 stated that he had no knowledge whether his brother died due to excessive consumption of '*toddy*' and



further do not know who has killed him. This P.W. during his cross-examination accepted that his brother (deceased) was used to consume '*toddy*'.

16. **PW-3** Dr. Hari Narayan Singh is the **Medical Officer** who conducted the post-mortem of the deceased. He has recorded about damage of one eye as also the injuries near the left ear beside the fracture of parietal bone. He further found the abrasion on the neck and dissection of thorax and abdomen, were found empty. Bladder was also found empty. The time of death has been recorded between 6 to 24 hours.

17. **PW-4 Chhatuu Sahni** is the **informant** of the case. He has supported the prosecution story and stated that there was some dispute due to money between the accused and his son. According to him, they had their meal at 6 o'clock whereafter, they returned home. Upon sight of appellant and Sulendra hs son, Hazari Sah (deceased) went to *Terasi Tola* and the house of Mantun Sahni is also there.

18. During the cross-examination, he further accepted that he chose not to go the house of the appellant or Sulendra Sahni in the night while searching his son around 7.00-7.30 PM.

19. **PW-5 Wakil Sah** is the cousin brother-in-law



of the informant. He has not accompanied the informant/deceased to the feast and according to him, around 7:00 pm, when he was returning home from his field, had seen Mantun Sahni, Sulendra Sahni and the deceased strolling there. He asked the deceased to return home but was informed that he will be coming later on.

20. **PW-6 Baidyanath Sah** is the full brother of the informant. He had also gone to attend the feast and according to him, they returned around 6:45 pm and found Mantun Sahni and Sulendra Sahni, whereafter, the deceased went with them. In his deposition, the aforesaid PW recorded that while returning, they saw the appellant and Sulendra Sahni sitting on a brick soling whereafter the deceased, Hazari Sah also sat there.

21. **PW-7 is Shyamakant Jha, the Officer-In-charge** of the Begusarai Sadar Mufassil Police Station, who recorded the *fardbeyan* of the informant as also sent the dead body for the post-mortem. He examined the place of occurrence and found some pieces of bread. The inquest report was also prepared at the place of occurrence itself. During the cross-examination, he accepted that he did not visited the house of Sukhdeo Sahni to check whether there was feast or not. The PW



further acknowledged that he failed to incorporate that both the informant and accused have their residential houses side by side. He accepted that the statement of witnesses were recorded at one go on 15.06.2000 at the Police station itself. He however denied that the investigation was faulty.

22. The defence side produced two witnesses which are as follows:-

- (i) DW-1 **Anandi Sah** and
- (ii) DW-2 **Ramchandra Paswan**.

23. DW-1 **Anandi Sah** in his deposition stated that he had seen Hazari Sah (deceased) in the orchard.

24. **DW-2 Ramchandra Paswan** on the other hand has recorded that the dead body of Hazari Sah was found near the 'Bhola Baba' temple. Nothing more has been recorded by him save and except the fact that at around 8-9 PM, when he visited to his orchard, he had not seen them and further he slept all night in his field but never heard any sound of scream.

25. The Trial Court heard the parties and on the basis of testimony of the witnesses, came to the conclusion that the prosecution has proved the case. It is the case of last seen when the deceased was accompanying the appellant and the accused are certainly answerable to the circumstances and as



they failed, the allegation that they murdered the deceased stand proved. It is further to be noted that the Trial Court put the onus of proving his whereabouts at the time of occurrence to him.

26. The Trial court thus came to the conclusion that Section 302/34 of the Indian Penal Code is proved beyond reasonable doubt and accordingly, *vide* an order dated **07.02.2002 and 08.02.2002** convicted and sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs. 5000/- and in default of payment of fine, to undergo rigorous imprisonment for six months.

27. Aggrieved, the present appeal.

28. The appeal was earlier admitted and *vide* **orders dated 14.02.2006 read with 21.02.2006**, the sole appellant was released on bail.

(C) **SUBMISSIONS:**

29. Ms. Maria Nazir, learned amicus curiae made the following submissions:-

(i) the appellant has been convicted only on the basis of having last seen with the deceased. The submission is that even if we go through the statements recorded by the prosecution witnesses, most of them being relatives and even then, three versions have come out:



(a) while the **informant-PW4-Chattu Sah** alleged that after the feast, they were returning home around 6:45 pm. On the way, the appellant and Sulendra Sahni were present. Hazari Sah wanted to accompany them and left the place. On the other hand, **PW-6- Baidyanath Sah** recorded that while returning after the feast, he saw Mantun Sahni and Sulendra Sahni sitting on a brick soling where after Hazari Sah also sat;

(b) his version is contrary to the original version that on the way, they saw the appellant whereafter, Hazari Sah wanted to accompany them;

(c) on the other hand, the **PW-1 Ramchandra Sah** version is entirely different inasmuch as, according to him, while returning home after the feast, the deceased Hazari Sah told them that he was going to *Terasi Tola*. P.W.1 has said nothing about the appellant.

30. The submission is that in his statement, the **PW1** has not named either the appellant or Sulendra Sahni. Further submission is that P.W.1 is the only the person who can be considered as an independent witness while other witnesses are full brother or son or the cousin brother-in-law.

31. Learned *amicus curiae* further submits that



the informant alleged in the F.I.R. that on hearing the alarm about the presence of the dead body of Hazari Sah, all the villagers assembled but the allegation is that the accused failed to turn up. She submits that this cannot be the reason to implicate the appellant, convict and sentence him to undergo imprisonment for life. There can be multiple reasons for not presenting themselves at the place of occurrence, fear can be one of the important factor, as if, the prosecution version has to be accepted, they were the persons who were last seen.

32. Learned *amicus curiae* further submits that the Police utterly failed to investigate the matter on the whereabouts and/or the presence of the accused persons either at the time of feast or at the time of the occurrence.

33. Ms. Nazir submits that surprisingly, the Trial Court failed to look into these faulty investigation and in fact recorded that when the accused was accompanying the deceased, he is answerable to the circumstances. She submits that certainly, it was the duty of the Police to prove beyond the reasonable doubt about the role of the appellant relating to the death by completing the chain of events from the time (6:45 P.M.), when it is alleged that the accused accompanied the deceased till his death.



34. Learned counsel submits that number of prosecution witnesses have accepted the fact that not only the deceased was in the habit of consuming *toddy*, he also used to remain out of his house regularly in the night and as such, even his father has stated that after searching him for a while, he returned and slept at home. The submission is that in that background, the statement of one of the witness i.e. DW-2, Ram Chandra Paswan that he slept in the orchard and did not hear any scream cannot be ignored. She submits that the appellant was forced to remain in jail for couple of years after the conviction till he was granted bail in the year 2006.

35. She concludes by submitting that the appeal is fit to be allowed and the appellant be acquitted of all the charges as the prosecution side failed to prove the charges beyond the reasonable doubt.

36. Learned APP representing the State on the other hand opposes the prayer. The submission is that the appellant was last seen with the deceased and on the next day, the dead body was found with multiple injuries. Further, despite the villagers who were present there, the appellant chose not to come to the place which clearly shows his involvement. In that background, the trial court is fully justified in



convicting/sentencing him to life imprisonment. Thus the appeal is fit to be dismissed.

(D) FINDINGS:

37. We have heard the parties and gone through the prosecution story, the statement of the witnesses, the exhibits as also the order dated 07.02.2002 and 08.02.2002 passed by the learned Trial Court. The prosecution version is that while the informant and his son (deceased) alongwith others were returning home after a feast from the house of Sukhdeo Sah, at around 6:45 PM, they saw the appellant and Sulendra Sahni, whereafter, the deceased wanted to accompany them. Later, when the deceased failed to return home, the informant started searching him between 7:00 to 7:30 pm but could not find his son. Ultimately, he returned home and slept. Later, in the morning, the dead body was found.

38. If the prosecution version is to be believed, the deceased on his own went with the appellant and Sulendra around 6:45 PM, within 15 minutes, the informant went to search him at around 7:00 PM. Later he returned home at 7:30 PM. In the opinion of the court, it is not probable that within 15 minutes, the informant went out in search of his son but came back after half an hour at 07:30 PM. and slept. Further, it is not



his case that despite knowledge that the deceased went with the appellant and Sulendra Sahni, he visited their houses in the evening to know/enquire from them about his son. It is to be noted that during the summer time, the sun sets at 7:30 P.M.

39. Even in the next morning, after the dead body was found and according to the allegation, the accused did not present themselves despite the fact that all the villagers came, he did not checked the accused's whereabouts at their respective houses. The informant further accepted during the cross-examination that his son used to consume *toddy*.

40. In that background, the statement made by **PW-1 Ram Charitra Sah** has to be taken into the account that after the feast, when they were returning, the deceased told them that he is going to *Terasi Tola*. He neither named the appellant nor stated that the deceased wanted to accompany them. Unfortunately, this statement of P.W.1 was completely missed by the learned Trial Court.

41. Again, the **P.W.-6, Baidyanath Sah** recorded that while returning, they saw the accused sitting on brick soling, this version is quite different from the informant's story.

42. Further, from the statements of the



prosecution witnesses, it is clear that the deceased was in the habit of consuming *toddy* and further used to remain outside in the night. Even if, the presence of the appellant along with the deceased is accepted, the chain under no circumstance gets completed inasmuch as the prosecution has utterly failed to look into the factors which could have nailed the appellant about his continuous presence with the deceased till his death. The postmortem report recording the time of death between 6 to 24 hours do not help the case either.

43. It is to be noted that the police failed to procure the weapon/material used in the killing of the deceased. In fact, the police from the beginning made a faulty investigation by accepting the informant's version as sacrosanct and acted on the same line. After a fortnight, the police summoned and recorded the statements of all the witnesses at one go at the police station itself on 15.06.2000 and thereafter submitted the charge-sheet in a routine manner. The fact that the police never visited the house of Sukhdeo Sah to ascertain whether there is/was any feast or not and/or whether the informant/deceased were present there or not clearly shows how casually and in an unprofessional manner, a murder case has been investigated.



44. Further, it is also not the prosecution case that any point of time, the police either visited the house of the appellant and/or his neighbours to ascertain his whereabouts at the time of occurrence. Further, though in the F.I.R., it has been recorded that the entire villagers came to the place of occurrence, the police for the reasons best known chose not to record the statements of any of them. Instead and as recorded earlier, a fortnight later, the family members were summoned and their statements recorded at the police station at one go.

45. The police is certainly answerable to the said faulty investigation wherein it accepted the informant's version and submitted charge-sheet in a routine manner.

46. The learned Trial Court failed to look into these aspects and instead accepting the informant's version came to the conclusion that since they were last seen persons, whereabouts not clear and as such they are the culprits. This led to the conviction of this appellant under Section 302/34 of the Indian Penal Code and he was sentenced to undergo rigorous imprisonment for life as also fine of Rs. 5,000/- and in default of payment, further rigorous imprisonment for six months.

47. The evidence of last seen is a weak piece of evidence and conviction on the basis of last seen without any



supporting evidence cannot be the ground for conviction under Section 302/34 of the IPC.

48. This Court has also taken note of the exhibits and failed to understand why the police despite recording the presence of blood stains at the place of occurrence neither collected it nor put forward it before the court as exhibit. The Police further failed to procure/seize the weapon used in the alleged killing.

49. Whether the suspicion based on last seen can be the sole ground to convict an accused under section 302/34 of the IPC, this Court wonders. Further, as observed, the last seen theory alone cannot be the basis for conviction unless it is supported by evidences completing the chain. The time gap between the last sighting and the death being unclear, the conviction cannot be sustained.

50. The case is based purely on the circumstantial evidence. In that background, the prosecution is/was obliged to prove each and every circumstance to complete the entire chain so that there is no scope of probability to conclude that it was the appellant herein who committed the crime.

51. In the case of **Kanhaiya Lal vs State of**



Rajasthan report in **(2014) SCC 715**, Hon'ble Apex Court in paragraph 15 observed as follows:

15. The theory of last seen the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan.

52. Recently too, the Hon'ble Supreme Court in the case of **Padman Bibhar vs. State of Odisha** in **SLP(Cr.) No.17440 of 2024** in **paragraphs 23 and 24** recorded as follows:

23. On the basis of above discussion, we are of the opinion that the nature of circumstantial evidence available against the appellant though raises doubt



that he may have committed murder but the same is not so conclusive that he can be convicted only on the basis of evidence on 'last seen together'.

24. It is held by this Court in Sujit Biswas vs. State of Assam suspicion, howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of the suspicion. It is held thus in para 6:

"6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be



true and "must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate Judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of Justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is



based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P. (1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777,"

53. The aforesaid two judgments of Hon'ble Apex Court are fully applicable in this case where only on the basis of last seen theory, the appellant has been convicted. This Court has come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt against the appellant. It has completely failed to establish the guilt of the appellant as it could not complete the chain of circumstances to exclude every possible theory except that of guilt.

54. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 07.02.2002 and 08.02.2002 respectively in T.S. No. 06/ 2001/25 of 2001 passed by the learned 3rd Additional Sessions Judge, Begusarai is hereby set aside. The appellant, who is on bail, is absolved of the bail bonds.

55. Before parting, this Court would like to put on record its word of appreciation for Ms. Maria Nazir, learned *Amicus Curiae* for the proper assistance rendered by her in a



professional manner. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5000/- (five thousand) to Ms. Maria Nazir, learned *Amicus Curiae*, as consolidated fee for the legal assistance rendered by her which shall be paid to her within a period of two weeks from the date of receipt of this order.

(Rajiv Roy, J)

(Khatim Reza, J)

Ravi/Prabhat

AFR	AFR
CAV DATE	NA
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