

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

CRA-D-35-DB-2004 (O & M)

Reserved on: 19.05.2025

Date of Pronouncement:22.05.2025

Partap Singh

.... appellant

V/s

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Preetinder Singh Ahluwalia, Advocate,
with Ms. Simarpreet Sekhon, Advocate and
Mr. Udaiveer Sidhu, Advocate, for the appellant.

Mr. Siddharth Attri, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 10.12.2003 passed by the Additional Sessions Judge, Sangrur.

2. The instant FIR came to be registered on 31.01.2001. The accused-appellant/Partap Singh alongwith his co-accused/Suba Singh came to be convicted vide judgment of conviction and order of sentence dated 10.12.2003. The present appeal against the judgment of conviction and order of sentence was filed in January, 2004. The matter has come up for final hearing now after almost 24 years of the registration of the FIR.



3. The FIR in this case was registered on the basis of an affidavit dated 31.01.2001, sworn by complainant Baljit Singh son of Bhim Singh of village Gandu Khurd. As per the complainant, they were three brothers. Surjit Singh was younger to the complainant who had been serving at Dhaliwal Medical Hall, Sangrur between 1993 to 1998. Partap Singh who was a Proprietor of said chemist shop, had a doubt that Surjit Singh was having illicit relations with his (Partap Singh's) wife and due to that reason, Partap Singh turned out Surjit Singh from his shop. Thereafter, Surjit Singh started working with Balwant Medical Hall, Longowal. Surjit Singh later wanted to open his own medical shop at Sangrur and for that purpose, took on rent a shop near Partap Medical Hall. On 22.01.2001, the complainant along with his father Bhim Singh and Surjit Singh went to Dhaliwal Medical Hall to meet Partap Singh and upon their request, Partap Singh agreed to help Surjit Singh in running his own business. He (Partap Singh) told them (complainant party) that he was going to Ludhiana to purchase some medicines that evening and that Surjit Singh could accompany him to Ludhiana and he would introduce Surjit Singh in the market at Ludhiana. The complainant further swore that a sum of Rs. 75,000/- was handed over to Surjit Singh for the purchase of medicines. On 22.01.2001, at about 6.00 p.m., Partap Singh alongwith his servant came to Jatinder Singh's Modern X-ray shop, Sangrur and in the presence of one Parveen son of Mohan Lal, asked about the whereabouts of Surjit Singh. In the meantime, Surjit Singh

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::3::

contacted Jatinder Singh over the telephone and there took place a telephonic talk between Surjit Singh and Partap Singh also. Thereafter, about ten minutes Surjit Singh came to the shop of Jatinder Singh and Surjit Singh accompanied by Partap Singh, went away. At 6.30 p.m. on 22.01.2001 itself, the complainant alongwith his father Bhim Singh were present at Octroi Sangrur where they saw Shamsher Singh, Partap Singh and Surjit Singh coming from the side of Sangrur, in a red coloured Maruti car. The said Maruti car was being driven by Partap Singh. Surjit Singh was sitting next to him on the front seat and the car was going towards Ludhiana. On 23.01.2001, the complainant waited for Surjit Singh's return but in vain. On 24.01.2001, the complainant party made enquiries about the whereabouts of Surjit Singh, from Partap Singh and Shamsher Singh but they could not give any satisfactory reply. Surjit Singh was carrying his pass book of Punjab & Sind Bank, Sangrur and was wearing a wrist watch and a gold ring. Upon the failure of aforesaid persons to satisfy the complainant party regarding the whereabouts of Surjit Singh, the complainant side became suspicious that Partap Singh and his brother Shamsher Singh had either concealed Surjit Singh due to the abovesaid grudge or had killed him. On the basis of this affidavit, the police initially registered an FIR under Sections 365/34 IPC. During investigation the complainant Baljit Singh told the police that the number of the red coloured Maruti car was DBA-5882. The statements of witnesses were recorded. On 12.02.2001, accused Partap

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::4::

Singh, Shamsher Singh and Suba Singh were arrested. Earlier, on 10.02.2001, a report had been recorded against the DDR No.13 dated 09.02.2001, P.S.Sangat (Bathinda) regarding the recovery of an unidentified dead body. The belongings of deceased had been taken into possession vide a memo. During the course of investigation, upon a disclosure statement made by Suba Singh, the pass book of the deceased and a Mobile phone belonging to accused Partap Singh, were recovered and taken into possession. The car No.DBA-5882 allegedly used for the commission of offence, was taken into possession. Site plan was prepared. As per the PMR, the cause of death was due to asphyxia as a result of throttling which was sufficient to cause death in the ordinary course of nature. After completion of investigation and other formalities, the prosecution presented the challan in the Court.

4. On commitment, charges were framed under Section 364, 302 IPC and 201 IPC against all the accused. They pleaded not guilty and claimed Trial.

5. In order to prove its case, the prosecution examined 21 witnesses. The gist of their statements is as under:-

Dr. K.S. Brar, CMO, Civil Hospital, Bathinda was examined as PW-1. He stated that he conducted the post-mortem examination on the deceased. The body was discoloured, foul smelling and there were bloated features. Scalp hair was absent. Tooth and nails were easily pulled out.



Adipocere formation was present at places. The skin peeled off at places. On dissection of the neck, underline tissues were conjusted and there was a fracture of the hyoid bone cornua or hyoid bone are doing inverts.

Injuries

5cm x 1cm grazed abrasion is present on the left latero posterior aspect of the neck.

In his opinion, the cause of death in this case was due to asphyxia as a result of throttling which was sufficient to cause death in the ordinary course of nature and ante-mortem in nature. He stated that the probable time between the injury and the death was within 4 to 10 minutes and the probable time within the death and the post-mortem was within 2-3 weeks.

Dr. Bhupender Singh was examined as PW-2. He stated that he was the owner of a red coloured Maruti Car bearing registration No.DBA-5882. This car was sold by him to Suba Singh but he could not identify him.

The complainant-Baljit Singh was examined as PW-3. His statement has already been referred to hereinabove. Additionally, he stated that on 10.02.2001, he joined the police party in search of his brother. The police party was informed that the dead body of a person of same description was recovered by them from Rajwaha in the area of Doomwali a day earlier and that the post-mortem of the dead body had been conducted at Civil Hospital, Bathinda after which it had been cremated. Based on this

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::6::

information, they went to Police Station Sangat where a parcel containing a red t-shirt, Ex.P-1, one *banyan* white coloured Ex.P-3, a grey coloured pant Ex.P-2 and blue coloured underwear Ex.P-4, a pair of nikkar Ex.P-5, a pair of socks of blue colour Ex.P-6 and Woodland shoes Ex.P-8 alongwith a ring of his brother were handed over and taken into police possession by the police party. On 12.02.2001, Partap Singh and Suba Singh were apprehended while driving in a car bearing No.DBA-5882. From the search of Suba Singh, a mobile phone was recovered. The car and the RC were also taken into possession. In cross-examination, he stated that between 20.01.2001 and 31.01.2001, they did not move any application/complaint before the authorities or engaged any lawyer to move such application. He identified a wrist watch belonging to his brother Ex.P-10 and the gold ring containing the inscription of 'SS' Ex.P-11.

Bhim Singh, father of the deceased was examined as PW-4. His version is similar to that of his son Baljit Singh. In cross-examination, he stated that after 24.01.2001, he had come to Sangrur only on 05.02.2001. He had not given any written complaint regarding his son Surjit Singh, though, his other son-Baljit Singh did.

The statement of Nachhatar Singh was recorded as PW-5. He stated that on 22.01.2001 at about 8.30 p.m., he alongwith son of Chanan Singh was coming on scooter from Rarha Sahib Gurudwara and going towards Sangrur. In the light of the scooter, he saw a red coloured Maruti



car standing near the road. He saw accused Partap Singh, Shamsher Singh and Suba Singh standing outside that car while Surjit Singh-deceased was sitting inside on the front seat. He stopped the scooter and on asking, Shamsher Singh stated that they were going to Ludhiana to purchase medicines and had to obtain money from somebody for the sale of buffalos. They had stopped to urinate. Thereafter, he had remained away from the village for about 16/17 days and then on 10.02.2001, he had come to the village and was informed that the Surjit Singh had been murdered and his dead body was thrown in the Canal. On 11.02.2001, he narrated the aforesaid occurrence to the police. He identified the wrist watch Ex.P-10 and the car bearing registration No.DBA-5882 make Maruti used by the accused. In cross-examination, he stated that Bhim Singh father of Surjit Singh-deceased was his uncle in relation. Balwinder Singh PW was the son of the maternal uncle of his father. His village was at distance of about 100 kms. from the place where he last saw the deceased in the company of the accused. Similarly, the village of Balwinder Singh was also at a similar distance from the place where they last saw the accused in the company of the deceased. He admitted that due to fog, movement on the scooter was difficult in the night time at 8.30 p.m. He admitted that the distance between his house and the house of Surjit Singh was 150 yards.

The statement of Samir Khan @ Sonu was recorded as PW-6.

He stated that on 22.01.2001 at about 6.40 p.m. while he was accompanied

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::8::

by Sat Pal and they were coming from Sangrur towards *Ladda Kothi* on foot, near the farmhouse of Shamsher Singh, they saw a red Maruti car old model bearing No.DBA-5882 coming from the side of the Sangrur. It was being driven by accused-Partap Singh. On the front seat Surjit Singh was sitting whereas Shamsher Singh was sitting in the rear seat. Suba Singh came out from the farmhouse of Shamsher Singh, sat in the same car after which it drove away.

Darshan Singh was examined as PW-7. He stated that he had seen a dead body near the Moga of a canal of a young man of the age of about 25 years.

Dharminder Singh draftsman was examined as PW-8. He prepared the scaled site plan/Ex.PK on 07.03.2001.

Sonu-photographer was examined as PW-9. He stated that he took five photographs Ex.PL to Ex.PO/1, the negatives of which were Ex.PP to P-T.

Vijay Kumar was examined as PW-10. He stated that he had cremated the dead body of an unknown person which had been handed over to him for cremation by the police of Police Station Sangatpura. He was the President of Sahara Jan Sewa, Bathinda.

Chaman Lal was examined as PW-11. He stated that till April, 2003 he was M.C. of Mandi, Sangat (Bathinda) 2 to 2½ years prior to the occurrence, he had gone to Police Station Sangat in connection with some

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::9::

work. Two persons, a Sarpanch and his brother who he did not know earlier, were present at the police station. The police broke open a bundle containing a pant, a shirt, a gold ring bearing impression 'SS' and a pair of boots which were identified by those two persons in his presence and that of the police.

MHC Rajwinder Singh was examined as PW-12. He brought the original DDR register containing DDR No.13 dated 09.02.2001, P.P., Doomwali, Police Station Sangat.

ASI Jagdish Kumar was examined as PW-13. He stated that on 09.02.2001, he alongwith the police party was present at the Barrier Doomwali where Darshan Singh-Chowkidar gave information of an unidentified dead body lying near the Kinoo garden of Ranjit Singh. Inquest proceedings were conducted and the body was sent for post-mortem examination. At Police Station Sangat. Chaman Lal, M.C. was called and in his presence, a parcel containing clothes of the deceased were opened and were shown to Baljit Singh who identified the clothes to be those of his brother. Thereafter, the body was handed over to Sahara Welfare Club for cremation. In cross-examination, he stated that he had seen the DDR Register of Police Post Doomwali dated 10.02.2001. Its photocopy from DDR No.1 to 14 is Ex.DX and DDR of Police Station Sangat dated 10.02.2001 is Ex.DY.



ASI Ajit Singh was examined as PW-14. He referred to different aspects of investigation. A ring belonging to the deceased was got identified in his presence and the identification memo of the clothes and ring Ex.PX was prepared by him.

Balkar Singh-Accountant was examined as PW-15. He stated that he had brought the bank account record pertaining to Surjit Singh at the Punjab and Sind Bank, Sangrur. The pass book Ex.P-13 had been issued from their branch.

SI Sukhram was examined as PW-16. He stated that on 05.03.2001, his statement was recorded with respect to different aspects of investigation. After completion of the investigation, the challan was submitted to SHO Rattan Singh.

ASI Balbir Chand was examined as PW-17. He referred to different aspects of investigation. He also stated that on 03.02.2001, he alongwith Gurmail Singh-H.C., Davinder Pal Singh-PHG conducted a raid at the house of accused and recorded statements of Jatinder Singh @ Jitti, Sonu @ Samir Khan and Ranbir Singh. PW-Sonu named Suba Singh. On 05.02.2001, he recorded the statement of Bhim Singh, father of the deceased. On 12.02.2001, he arrested Shamsher Singh who on his personal search got recovered one revolver of .32 bore alongwith 02 empty and 02 live cartridges. He recorded the statements of PWs-Teja Singh and H.C. Malkiat Singh. On 15.02.2001, all the three accused were interrogated in his



presence. On interrogation, Suba Singh made a disclosure statement before SI Kulwant Singh in his presence and in the presence of PW-5/Nachhatar Singh that pass book of the Punjab and Sind Bank and a wrist watch of the deceased had been concealed by him after the murder and he could get the same recovered. A statement Ex.PD was recorded. On the basis of the disclosure statement, he got recovered the pass book/Ex.P-13 and the wrist watch/Ex.P-10 both of which were taken into police possession. PW-5/Nachhatar Singh identified the wrist watch to be that of the deceased.

SI Kulwant Singh was examined as PW-18. He stated that on 12.02.2001, in the presence of Baljit Singh-brother of the deceased, Partap Singh and Suba Singh were apprehended while driving in a car. Suba Singh got recovered a mobile phone No.98141-33570 make Motorola. He suffered a disclosure statement leading to the recovery of a pass book and a wrist watch belonging to the deceased.

Kulwant Singh-Reader Tehsildar, Taran Tarn, was examined as PW-19. He brought the record regarding the transfer of car bearing No.DBA-5882 from the name of Bhagwanpreet Singh son of Sadhu Singh to Dr. Bhupinder Singh son of Darshan Singh.

Subhash Chand/PW-20 brought the original record pertaining to telephone connection No.33141 standing in the name of Shamsheer Singh-partner M/s Dhaliwal MEDICAL Hall, Opposite Civil Hospital, Sangrur.



H.C. Ranjit Singh/PW-20 (wrongly mentioned as PW-20 by the Trial Court while recording his statement as prosecution witness) tendered into evidence his affidavit Ex.PHH.

6. The statements of accused persons were recorded under Section 313 Cr.P.C. wherein they denied the correctness of prosecution version and prosecution evidence against them and claimed no concern with the deceased or his disappearance. They claimed that they were innocent and had been falsely implicated in the case.

7. In defence evidence, DW-1/Narinder Singh, stated that he had never seen Surjit Singh, since deceased, working in the Medical Store at Longowal. DW-2/HC Kamaljit Singh brought the log-book of Alwan Nissan No.PB-13-B-1576. As per him, ASI Balbir Chand or Kulwant Singh did not go outside the limit of the Sangrur City. Copy of the log entry is Ex.DAE. DW-3/Hakam Singh a teacher in the Govt. Primary School, Gandu Khurd, stated that as per their admission register, the date of birth of Surjit Singh was 10.01.1970. He passed 5th Class in the year 1982 and then left the school. Copy of entry is Ex.DAF. DW-4/Const. Major Singh stated that the summoned record had since been weeded out (destroyed). DW-5/Vijay Pal Incharge, PSEB, Civil Lines, stated that on 22.01.2001 accused Suba Singh, was working as a Sub Station Attendant at Amritsar, was present in the office between 9 a.m. to 5 p.m. The entry from attendance register is Ex.DEE and certificate issued by the SDO is Ex.DFF and enrolment bill of



employees is Ex.DGG. The witness, however, failed to produce during his cross-examination, any entry or writing that his colleague Suba Singh (accused) might have made in records, on that day. DW-6/Satwinderjit Singh, Sub Station Attendant, PSEB, Civil Lines, Amritsar has also made a similar statement, but he also could not produce any writing work or entry made by accused Suba Singh in the office records on 22.01.2001. Thereafter, the defence closed its evidence.

8. Based on the evidence led, the accused-appellant, namely, Partap Singh alongwith his co-accused/Suba Singh came to be convicted and sentenced by the Court of the Additional Sessions Judge, Sangrur, vide judgment of conviction and order of sentence dated 10.12.2003 as under:-

Name of the accused	Offence U/Ss	Sentence	Fine	In default of payment of fine
Partap Singh and Suba Singh	302 IPC	Life Imprisonment	Rs.10,000/- each	RI 01 year each
	364 IPC	RI 10 years	Rs.2,000/- each	RI 06 months each
	201 IPC	RI 03 months	Rs.1,000/- each	RI 03 months each

All the sentences were ordered to run concurrently.

9. The aforementioned judgment of conviction and order of sentence dated 10.12.2003 passed by the Additional Sessions Judge, Sangrur is under challenge before this Court.



10. During the pendency of this appeal, the sentence of the accused-appellant, namely, Partap Singh was suspended by this Court vide order dated 08.04.2004.

11. The learned counsel for the appellant contends that as per the allegations, the deceased was “last seen” in the company of the accused on 22.01.2001. The FIR came to be registered only on 31.01.2001. The body was found on 09.02.2001. Jatinder Singh and Parveen who were named in the FIR as having seen the accused with the deceased were strangely enough not examined as prosecution witnesses. The statement of PW-3/Bhim Singh, the father of the deceased was first recorded under Section 161 Cr.P.C. only on 05.02.2001. Similarly, the statement under Section 161 Cr.P.C. of PW-5/Nachhatar Singh who is also a relative of the deceased was recorded only on 11.02.2001. The statement of PW-6/Samir Khan @ Sonu under Section 161 Cr.P.C. was recorded on 03.02.2001. This delay in the recording of the FIR and the statements under Section 161 Cr.P.C. during the course of investigation is fatal to the prosecution case. Even otherwise, evidence in the nature of “last seen” is relevant only when the time gap between the last sighting of the accused with the deceased and the discovery of the dead body is so small that the possibility of any other person being with the deceased is totally ruled out. That is not so in the present case. Further, the conviction cannot be solely based upon the evidence in the nature of “last seen”. In the instant case, other than the “last seen” evidence



there is the recovery of a watch and pass book purportedly belonging to the deceased from accused Suba Singh who has since passed away. He, thus, contends that the impugned judgment is liable to be set aside. Reliance is placed on '*Venkatesan versus State of Tamil Nadu 2008(3) RCR (Criminal) 563, Krishnan and Ramasamy and others versus State of Tamilnadu 2014(12) SCC 279, Nizam and anr. Versus State of Rajasthan 2015(4) RCR (Criminal) 271, Anjan Kumar Sarma & others versus State of Assam 2017(3) RCR (Criminal) 386, Dinesh Kumar versus The State of Haryana 2023(3) RCR (Criminal) 1, R. Sreenivasa versus State of Karnataka (Criminal Appeal No.859 of 2011 decided on 06.09.2023) and Sanjay versus State of Uttar Pradesh 2025 INSC 317* '.

12. The learned counsel for the State, on the other hand, contends that there is evidence of the deceased being seen last in the company of the accused by PW-3/Baljit Singh-complainant, PW-4/Bhim Singh, PW-5/Nachhatar Singh and PW-6/Samir Khan @ Sonu. Additionally, the recovery of a wrist watch (Ex.P-10) and pass book (Ex.P-13) of the deceased have been effected from Suba Singh. He, thus, contends that as the offence stands established beyond reasonable doubt, the present appeal merits dismissal.

13. We have heard the learned counsel for the parties.

14. The present case is based on circumstantial evidence and in the context of circumstantial evidence, the Hon'ble Supreme Court in the case



of *Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR*

Supreme Court 1622 held as under:-

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :-

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. ”

(emphasis supplied)



In **Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273**, in the context of circumstantial evidence, the Hon'ble Supreme Court held as under:-

“46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

- 1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
- 2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;*
- 3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
- 4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.”*

47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and



circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.”

(Emphasis supplied)

The Hon’ble Supreme Court in the case of **Anjlus Dungdung Versus State of Jharkhand, 2006(4) RCR (Criminal)** has held that suspicion howsoever strong cannot take the place of proof. The relevant para is as under:-

“12. Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of bloodstained balwa and tangi upon the disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion



howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.”

(Emphasis supplied)

15. The Hon’ble Supreme Court has dealt with the evidentiary value of “last seen” evidence. Some of the relevant judgments are enumerated hereunder:-

In ‘**Venkatesan versus State of Tamil Nadu 2008(3) RCR (Criminal) 563**’, where the time-gap between the deceased “last seen” in the company of the accused and his death was 03 days, the Hon’ble Supreme Court held as under:-

13. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In State of U.P. v. Satish, 2005(1) Apex Criminal 437 : [2005(3) SCC 114] it was noted as follows :

"22. 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."

14. In Ramreddy Rajesh Khanna Reddy v. State of A.P., 2006(2) RCR (Criminal) 462 : 2006(1) Apex Criminal 675 : [2006(10) SCC 172] it was noted as follows :

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and 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. Even in such a case the courts should look for some corroboration.

28. In *State of U.P. v. Satish* [2005(3) SCC 114] this Court observed : (SCC p. 123, para 22)

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

(See also Bodhraj v. State of J&K, (2002(8) SCC 45).)"

15. A similar view was also taken in Jaswant Gir v. State of Punjab, 2006(2) RCR (Criminal) 202 : 2006(1) Apex Criminal 700 : [2005(12) SCC 438].



16. Above being the position, the inevitable conclusion is that the trial court and the High Court were not justified in directing conviction of the appellant. He is acquitted of the charges. The bail bonds executed pursuant to the order granting bail shall stand discharged.

In '**Krishnan and Ramasamy and others versus State of Tamilnadu 2014(12) SCC 279**, where the time-gap between the deceased "last seen" in the company of the accused and his death was 09 days, the Hon'ble Supreme Court held as under:-

21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik and others v. State of Bihar, 1994(2) RCR (Criminal) 609 : (1994) Supp.(2) SCC 372, this Court held as follows :

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

22. This Court in Bodhraj v. State of Jammu and Kashmir, (2002)8 SCC 45, held that the last seen theory comes into play where time-gap between the point of time when the accused and the deceased were seen last alive and 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 will be hazardous to come to a conclusion of guilt in cases



where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4th April, 2004 at Vadakkumelur village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and intervening period of seven days there was nobody in contact with the deceased.

24. In Jaswant Gir v. State of Punjab, 2006(2) RCR (Criminal) 202 : (2005)12 SCC 438, this Court held that in absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed.

In ‘Nizam and anr. Versus State of Rajasthan 2015(4) RCR (Criminal) 271’, where the time-gap between the deceased “last seen” in the company of the accused and his death was 03 days, the Hon’ble Supreme Court held as under:-

14. Courts below convicted the appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the appellants on 23.01.2001. Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the



accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

15. Elaborating the principle of "last seen alive" in State of Rajasthan v. Kashi Ram, 2007(1) RCR (Criminal) 131 : (2006) 12 SCC 254, this Court held as under :-

"23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., Re. (AIR 1960 Madras 218)"



The above judgment was relied upon and reiterated in Kiriti Pal v. State of West Bengal, (2015) 5 Scale 319.

16. In the light of the above, it is to be seen whether in the facts and circumstances of this case, whether the courts below were right in invoking the "last seen theory." From the evidence discussed above, deceased-Manoj allegedly left in the truck DL-1GA-5943 on 23.01.2001. The body of deceased-Manoj was recovered on 26.01.2001. The prosecution has contended the accused persons were last seen with the deceased but the accused have not offered any plausible, cogent explanation as to what has happened to Manoj. Be it noted, that only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.

17. During their questioning under Section 313 Cr.P.C., the accused-appellants denied Manoj having travelled in their truck No. DL-1GA-5943. As noticed earlier, body of Manoj was recovered only on 26.01.2001 after three days. The gap between the time when Manoj is alleged to have left in the truck No. DL-1GA-5943 and the recovery of the body is not so small, to draw an inference against the appellants. At this juncture, yet another aspect emerging from the evidence needs to be noted. From the statement made by Shahzad Khan (PW-4) the internal organ (penis) of the deceased was tied with rope and blood was oozing out from his nostrils. Maniya village, the place where the body of Manoj was recovered is alleged to be a notable



place for prostitution where people from different areas come for enjoyment.

18. In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory.

19. In case of circumstantial evidence, court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the case at hand, neither the weapon of murder nor the money allegedly looted by the appellants or any other material was recovered from the possession of the appellants. There are many apparent lapses in the investigation and missing links: - (i) Non-recovery of stolen money; (ii) The weapon from which abrasions were caused; (iii) False case lodged by PW-2 alleging that he was being robbed by some other miscreants; (iv) Non-identification of the dead body and (v) Non-explanation as to how the deceased reached Maniya village and injuries on his internal organ (penis). Thus we find many



loopholes in the case of the prosecution. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts. The chain of circumstantial evidence cannot be said to be concluded in any manner sought to be urged by the prosecution.

In ‘Anjan Kumar Sarma & others versus State of Assam 2017(3)

RCR (Criminal) 386’, where the time-gap between the deceased “last seen” in the company of the accused and his death was 02 days, the Hon’ble Supreme Court held as under:-

18. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In Kanhaiya Lal v. State of Rajasthan, 2014(2) RCR (Criminal) 180 : 2014(2) Recent Apex Judgments (R.A.J.) 436 : (2014) 4 SCC 715 this court held that:

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime.

There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

.....

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* [(2010) 15 SCC 588]."

In Arjun Marik v. State of Bihar, 1994(2) RCR (Criminal) 609 : 1994 Supp (2) SCC 372 this court held that:

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

19. This Court in Bharat v. State of M.P., 2003(1) RCR (Criminal) 637 : (2003) 3 SCC 106, held that the failure of the accused to offer any explanation in his statement under Section 313, Cr.P.C. alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the Accused stood un-rebutted and thus the Appellants were liable to be convicted.

20. Mr. R. Venkataramani relied upon Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 at p.582 to buttress his submission that the circumstance of last seen together coupled with lack of any satisfactory explanation by the accused is a very strong circumstance on the basis of which the accused can be convicted. It was held by this Court in the above judgment as follows:-



"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

21. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran, 2007(2) RCR (Criminal) 458 : 2007(2) Recent Apex Judgments (R.A.J.) 101 : (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under:-



"34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."

As we have held that the other circumstances relied upon by the prosecution are not proved and that the circumstances of last



seen together along with the absence of satisfactory explanation are not sufficient for convicting the accused. Therefore the findings recorded in the above judgment are not applicable to the facts of this case.

22. Due to the lack of chain of circumstances which lead to the only hypothesis of guilt against the accused, we set aside the judgment of the High Court and acquit the Appellants of the charges of Section 302, 201 read with 34 IPC. The Appellants are directed to be set at liberty forthwith, if not required in any other case.

In '***Dinesh Kumar versus The State of Haryana 2023(3) RCR (Criminal) 1***', where the time-gap between the deceased "last seen" in the company of the accused and his death was 04 days, the Hon'ble Supreme Court held as under:-

12. The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased. This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of



guilt (See: Anjan Kumar Sarma & Others v. State of Assam (2017) 14 SCC 359 -para 19).

The circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed. Particularly, in the present case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak (See: - Malleshappa v. State of Karnataka (2007) 13 SCC 399 - para 23).

In Nizam & Anr. v. State of Rajasthan (2016) 1 SCC 550 where the time gap between the last seen together and the discovery of the body of the deceased was long, it was held that during this period the possibility of some other interventions could not be ruled out. Where time gap between the last seen and time of death is long enough, as in the present case, then it would be dangerous to come to the conclusion that the accused is responsible for the murder. In such cases it is unsafe to base conviction on the "last seen theory" and it would be safer to look for corroboration from other circumstance and evidence which have been adduced by the prosecution. The other circumstances here is the so called discovery, and most of these, as we have already discussed, fail to meet the requirement of Section 27 of the Evidence Act.

As per the post-mortem which was conducted on 12.05.2000 at 4:15 P.M, the death was 48 hours prior to the post mortem, which means it was before 4:00 P.M. on 10.05.2000. Even assuming that the death has taken place, a day earlier i.e. 09.05.2000, still there is a long gap between the last seen which is at 7:00 pm on 08.05.2000 and the morning of 09.05.2000. In the case of State of Goa v. Sanjay Thakran (2007) 3 SCC 755, where in the evidence of last seen, the recovery of dead body was only a few hours before "last seen", it was not considered reliable.



The same was again emphasized by this Court in Ajit Singh v. State of Maharashtra (2011) 14 SCC 401 where it was emphasized that the time between victim last seen alive and the discovery of the body of the deceased has to be of close proximity, so that any other person being the author of the crime cannot be ruled out. In this case, even if we take the time between the last seen and the approximate time of death as per the post-mortem, which would go beyond 48 hours preceding the time of post-mortem and the time of death can be stretched to the morning of May 9, 2000, which still begs an explanation from the prosecution as to the time gap, as the deceased was last seen with the two accused on 08.05.2000 at 7:00 P.M.

The trial court as well as the High Court have lost sight of the vital aspect of the matter. Both the Courts have relied on Section 106 of the Act and have held that since the accused was last seen with the deceased and he has not been able to give any reasonable explanation of his presence with the deceased in his statement under section 313 of the Cr.P.C., 1973 it has to be read against the accused and therefore it has to be counted as an additional link in the chain of circumstantial evidence. In present case in the findings of the trial court and High Court this appears to be the most important aspect which weighed with the trial court as well as the High Court in establishing the guilt of the accused. We are, however, afraid this is a complete misreading of Section 106 of the Act.

Section 101 of the Act places the burden of proof on the prosecution. It reads as under :-

101. Burden of proof - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 106 of the Act creates an exception to Section 101 and reads as under :-



106. Burden of proving fact especially within knowledge - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Section 106 of the Act is an exception to the rule which is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person.

The burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances. We have no reason to doubt the testimony of PW-10 (Karanjit Singh), the sole witness of last seen. In his statement under section 313 of the Code of Criminal Procedure, 1973 when the appellant was questioned about being in the company of the deceased on 08.05.2000 along with co-accused Mange Ram, no explanation was given by the appellant about his whereabouts. It is for this reason that it has been held that the accused has not been able to discharge his burden under Section 106 of the Act and therefore this has to be read as an additional link in the chain of evidence against the appellant. To our mind, however, Section 106 of the Act would not even come to play here under the facts and circumstances of the present case.

13. What has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. In this case when the evidence of last seen itself is on a weak footing, considering the long gap of time between last seen by PW-10 and the time of death of the deceased, Section 106 of the Act would not be applicable under the peculiar facts and the circumstances of the case.



In '***R. Sreenivasa versus State of Karnataka (Criminal Appeal No.859 of 2011 decided on 06.09.2023***', where the time-gap between the deceased "last seen" in the company of the accused and his death was more than 02 days, the Hon'ble Supreme Court held as under:-

17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In Laxman Prasad v. State of Madhya Pradesh, (2023) 6 SCC 399, we had, upon considering Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 and Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750, held that '... In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.' It would be unsafe to sustain the conviction of the appellant on such evidence, where the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to Suresh Thipmappa Shetty v. State of Maharashtra, 2023 INSC 749 : 2023 SCC OnLine SC 1038.

In '***Sanjay versus State of Uttar Pradesh 2025 INSC 317***', where the time-gap between the deceased "last seen" in the company of the



accused and his death was 08 days, the Hon'ble Supreme Court held as under:-

32. The only circumstance remaining against the accused that can be believed, is the last-seen theory. PW1, PW2, PW3 and PW6 and PW7 have deposed that they saw the accused lastly with the deceased. It is settled law, however, that conviction cannot be solely based on last-seen theory. This Court in Krishnan v. State of T.N., (2014) 12 SCC 279 had observed :

"21. The conviction cannot be based only on the circumstance of last seen together with the deceased. In *Arjun Marik v. State of Bihar* [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31)

"31. Thus the evidence that the Appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

24. In *Jaswant Gir v. State of Punjab* [(2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579] this Court held that in the absence of any other links in the chain of circumstantial evidence, the Appellant cannot be convicted solely based on "last seen together" even if version of the prosecution witness in this regard is believed."

(Emphasis supplied)

33. We must also clarify that even the last-seen theory against the accused-appellant is not free from suspicion. In her cross-examination, PW7, an independent witness, who has been relied upon for this circumstance, admits that she had not told the



I.O.- PW8, on the first instance, that she had seen the accused leaving the marriage hall with the deceased. The reason for this omission at the first instance remains unexplained.

16. Coming back to the facts of the instant case, as per the prosecution case, the deceased was “last seen” in the company of the accused persons on 22.01.2001. However, the FIR came to be registered at the instance of the complainant-Baljit Singh (PW-3) only on 31.01.2001. Thereafter, Bhim Singh/PW-4-father of the deceased made a statement under Section 161 Cr.P.C. before the investigating agency on 05.02.2001 regarding the deceased having been “last seen” in the company of the accused on 22.01.2001, Samir Khan @ Sonu (PW-6) got recorded his statement under Section 161 Cr.P.C. on 03.02.2011 regarding having “last seen” the deceased in the company of the accused on 22.01.2001. The body was discovered on 09.02.2001 after which the statement of PW-5/Nachhatar Singh was recorded under Section 161 Cr.P.C. on 11.01.2001 regarding he having “last seen” the deceased in the company of the accused on 22.01.2021 at 8.30 p.m.

17. Quite apparently, the time gap between the deceased having been “last seen” in the company of the accused is approximately 17 days i.e. 22.01.2001 to 09.02.2001. Further, there is no plausible explanation as to why complainant-Baljit Singh (PW-3), the brother of the deceased and Bhim Singh (PW-4), the father of the deceased would chose to keep quite for 09-10 days before getting registered the FIR. Similarly, PW-5/Nachhatar Singh



who is also a relative of the deceased only got his statement recorded on 11.02.2001 whereas Samir Khan @ Sonu got recorded his statement on 03.02.2001. Therefore, their evidence is to be taken with a pinch of salt in the attending facts and circumstances.

18. The recovery of a wrist watch (Ex.P-10) and bank pass book (Ex.P-13) both belonging to the deceased have been shown to have been recovered from Suba Singh. This evidence, even if taken to be correct alongwith the evidence of “last seen” is insufficient to affix the guilt of the accused. Be that as it may, Suba Singh has since expired during the pendency of the instant appeal. Therefore, a connected appeal bearing No.CRA-D-754-DB-2003 filed by him (Suba Singh) stood abated vide order dated 07.01.2020 passed by this Court.

19. In view of the aforementioned facts and circumstances alongwith the law as laid down by the Hon’ble Supreme Court, it is apparent that the gap between the deceased “last seen” in the company of the accused and the recovery of the body is approximately 17 days and it cannot be said by any stretch of imagination that there could not have been any other intervening person/persons who may have committed the offence in question. Be that as it may, “last seen” evidence in the absence of any other substantive evidence in itself is insufficient to convict the accused. Thus, it cannot be held that the chain of circumstantial evidence unerringly points towards the guilt of the accused.

CRA-D-35-DB-2004 (O & M)

2025:PHHC:069283-DB



::38::

20. The up-shot of the aforementioned discussion is that the prosecution has not proved its case against the accused beyond reasonable doubt. Therefore, we find merit in the instant appeal. The impugned judgment dated 10.12.2003 passed by the Additional Sessions Judge, Sangrur is set aside and the accused is acquitted of the charges framed against him.

21. The pending applications, if any, shall stands disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

22.05.2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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