



2025:DHC:11443-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 4th November, 2025
Pronounced on : 17th December, 2025

+ CRL.A. 255/2002

SUBHASH

.....Appellant

Through: Mr. S.S.Ahluwalia & Ms. Rimp
Rohilla, Advocates along with
appellant in person.

versus

STATE

.....Respondent

Through: Mr. Aman Usman, APP.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

J U D G M E N T

Per DINESH MEHTA, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure ('Cr.P.C.'), 1973 has been preferred by the appellant-Subhash assailing his conviction, for the offences punishable under Sections 302/34 IPC in Sessions Case No.84/98, vide judgment of conviction dated 12.02.2002; and order on sentence dated 15.02.2002 passed by Additional Sessions Judge, New Delhi (*hereinafter referred to as the 'Trial Court'*) imposing, *inter alia*, punishment upon the appellant to undergo rigorous imprisonment for life and to pay a fine of Rs. 500/- and in default thereof to further undergo rigorous imprisonment for 6 months.

2. The appellant, along with co-accused Ram Avtar and Rakesh, stood



2025:DHC:11443-DB



convicted for the murder of one Raju s/o Kakku Ram by way of the common judgment dated 12.02.2002. The appeal filed by Ram Avtar and Rakesh, being Crl. A. 224/2002, stood abated as per the order of this Court dated 03.07.2024 in view of the fact that they had passed away. The appeal therefore remains only *qua* the present appellant.

3. The prosecution case as per the charge-sheet was that on the intervening night of 10th and 11th February, 1998, the appellant along with Ram Avtar and Rakesh murdered Raju in a room on the second floor of house being F-1698, J.J. Colony, Tigri, New Delhi. After the incident, information was said to have been given by someone to the police control room, from where it was passed to Ambedkar Nagar Police Station.

4. At the place of occurrence, Sub-Inspector (SI) Jalis Ahmed, recorded the statement of one Akhlak Ahmed, who purported to be an eye-witness to the murder. Akhlak claimed to be renting the room in which the incident took place, and stated that the room was owned by the accused Ram Avtar. As per his version, on the fateful day, he had left the house in the morning after giving the key to Ram Avtar, which was his usual practice. He further stated that when he returned at around 8 p.m., he found that accused no.2-Ram Avtar was present in the room along with accused no.3-Rakesh (brother of Ram Avtar), the appellant-Subhash (their neighbour), and the deceased Raju. The four were said to be playing cards.

5. Further, in his statement recorded by the police, Akhlak went on to state that around 11 p.m., the deceased's brother Phool Singh (examined as PW-2) came there and asked the deceased not to play cards, however he didn't pay heed and continued. According to Akhlak, he proceeded to lie



down on a cot and covered himself with a quilt, only to be woken up around midnight by the cries of the deceased. It was then, that Akhlak witnessed accused Ram Avtar holding down the deceased's legs, accused Rakesh restraining the deceased's hands, and the appellant cutting open the deceased's neck with a knife. Akhlak's cries to save the deceased were stated to have brought the neighbours to the spot, which prompted the three accused persons to flee with the weapon.

6. The postmortem confirmed that several external ante-mortem injuries to the neck and the abdomen caused by a sharp stabbing weapon were the cause of death of Raju (deceased).

7. As per the prosecution, the appellant along with the accused Rakesh was apprehended on 20.02.1998 near Sarai Kale Khan Bus stand on the basis of some secret information.

8. During investigation, various articles including the blood-stained clothes of the deceased and the playing cards were seized. Based on the investigation, the testimony of other witnesses and postmortem report, a charge-sheet against the three accused was submitted under sections 302/34 of I.P.C. The fourth accused-Chander Mohan, was charge-sheeted under Section 201 IPC. The said charges were denied by the accused, whereafter the trial commenced.

9. During the course of the trial, the prosecution examined 25 witnesses to support its case. The accused denied the case set up against them in their statements recorded under section 313 of the Cr.P.C.

10. The prosecution case for establishing the guilt of the appellant relied on both, ocular evidence and circumstantial evidence. On the basis of



statements recorded during investigation, Akhlak Ahmed (PW-10) was claimed to be the sole eyewitness, while Hari Om (PW-3) and Azgar Khan (PW-4) were claimed to be the witnesses who had heard PW-10's cries after the incident, and had seen the appellant along with the other accused fleeing the house of Ram Avtar. However, all three of these witnesses resiled from their earlier statements, turning hostile.

11. PW-10, who was a star witness of the prosecution, changed his version in the dock and testified only that he heard some noise from his room, went downstairs and raised an alarm which made people gather. He, however, denied having witnessed anything regarding the murder. Although PW-10 admitted his signature on statement (Ex. PW 10/A), which was allegedly made by him to the police, he stated that he did not know anything about its contents and that the police had obtained his signatures on many papers.

12. Similarly, PW-3 and PW-4 denied having told the police in their statements under section 161 Cr.P.C that they saw the appellant and the other accused running out of accused Ram Avtar's house when they reached the spot upon hearing the cries of "*pakro, pakro.*"

13. Phool Singh (PW-2) being the younger brother of the deceased, nevertheless, stood by his version of events recorded earlier. He deposed that on the relevant day, he had gone to Ram Avtar's room to search for his brother i.e. the deceased at around 10/11 p.m. and found him playing cards with the appellant, Ram Avtar, and Rakesh. He also deposed that when he asked the deceased to return home, the deceased told him to go home and assured that he would follow. When the deceased did not return even after



2025:DHC:11443-DB



two hours, Phool Singh (PW-2) went to Ram Avtar's house again and learnt about the murder. He further deposed that except for the three accused and the deceased, he had not seen any other person in that room.

14. Ashok Kumar (PW-1) is the cousin brother of the deceased, who deposed that he was a resident of Tigri on the date of the incident, and knew the appellant as well as Ram Avtar and Rakesh as they lived two lanes away from the lane in which he lived. At around 11:30 p.m. to 12:00 a.m. on 10/11.02.1998, while he was at his house, he heard noise and went to house No.F. 1698 J.J. Colony, Tigri, and found Raju lying dead in a room on the second floor. He further stated that one Akhlak was the tenant of accused Ram Avtar and that Akhlak was occupying the room in which the body of Raju was found. PW-1 also deposed that on receipt of information by the police that accused Rakesh and appellant would come from Hapur by bus or truck, he accompanied the police to Sarai Kale Khan bus stop. He stated that at about 7:30-8:00 p.m on 20.02.1998 appellant and Rakesh were seen coming from the side of Nizamuddin and were then arrested. Although PW-1 also claimed that the appellant got a pant recovered by the police in his presence, the same was denied during the cross-examination.

15. SI Jalis Ahmed was examined as PW-19 and deposed that he had reached the spot along with two constables on receipt of the information to find a dead body of a young boy on the floor with cut injuries on the neck and stomach. This witness stated that he saw playing cards on the floor, and met PW-10 at the spot and recorded his statement. In his cross-examination, he denied the suggestion that he had not visited the spot.

16. PW-16, Constable Rajesh Kumar, visited the spot along with PW-19



2025:DHC:11443-DB



on the night of the incident. He deposed that PW-10 met them there and gave his statement to PW-19. In his cross-examination, he denied the suggestion that PW-10 was not present at the spot and that his statement was not recorded by PW-19. He also stated that PW-2 was present at the spot.

17. PW-17, Constable Sham Veer, also visited the scene of the crime on the fateful day, and further deposed that he met PW-10 there. He stated that on 20.02.1998, the appellant was arrested along with Rakesh near Sarai Kale Khan bus stand on the basis of secret information. He also deposed that PW-1 had accompanied the police at the time of said arrest.

18. PW-18, Constable Haffisulla, had also accompanied PW-19 to the scene of occurrence and deposed that PW-10's statement was recorded by PW-19 there, and also about the arrest of the appellant together with Rakesh on 20.02.1998 and the recovery of clothes at the instance of the appellant.

19. PW-25, Inspector Omvir Singh, was the IO of the case and deposed about the arrest on 20.02.1998, and stated in his cross-examination that he had recorded the statement of PW-2 on the spot at 3 am on the date of the incident.

20. On the basis of the evidence on record, the Trial Court convicted the appellant under section 302/34 I.P.C. rejecting the defence's case for acquittal in light of the sole eye-witness turning hostile. The Trial Court relied on the testimony of PW-2 which established that the deceased was last seen in the company of the accused. The Trial Court observed that the accused had not alleged that PW-2 possessed any motive to falsely implicate them, and also that they had failed to put forward any plea as to whether, and if yes, then when, they parted ways with the deceased? The Trial Court



took note of the conduct of the three accused in absconding immediately after the murder and took it to be an additional incriminating circumstance.

21. The Trial Court, however, rejected the recovery of blood-stained clothes at the instance of the appellant in the presence of PW-1/Ashok Kumar, who later admitted in his cross-examination that the appellant was not present when the clothes were recovered by the police.

22. Learned counsel for the appellant argued that the conviction on the basis of last seen evidence is unsustainable. Last seen theory requires corroboration and the accused cannot be convicted solely on the basis of being last seen with the deceased. For his aforesaid contention, learned counsel relied on the judgment rendered in the case of **Kanhaiya Lal v State of Rajasthan**, reported in (2014) 4 SCC 715. It was contended that PW-2's evidence is unreliable on account of discrepancies. PW-2's presence in the room is doubtful in view of his statement that he did not see Akhlak Ahmed (PW-10) present in the room, who was cited as an eye-witness.

23. While maintaining the version of PW-2 (Phool Singh) that he went to the room on two occasions, is unnatural and, is not corroborated by any other independent witness. He argued that testimony of PW-2 is unbelievable and not corroborated on the one hand and cannot be relied on as, he being the real brother of the deceased was an interested witness.

24. Learned counsel submitted that prosecution has failed to establish any motive for the appellant to kill the deceased and that neither did PW-2 state that any sharp weapon or other equipment was present in the room, nor have any fingerprints been obtained from the playing cards. Moreover, the Trial Court has ignored the fact that another person named Hanif was also playing



cards with the deceased person and the accused on the date of the incident. However, the prosecution has deliberately failed to examine Hanif.

25. It was further argued that the Trial Court was wrong in presuming that the appellant was guilty simply because he was not present at/disappeared from the spot, particularly when the appellant categorically denied his presence at the spot in his statement under section 313 of the Cr.P.C. Furthermore, there are no independent witnesses that confirm the presence of the appellant at the place of the incident.

26. Learned counsel strongly contended that the sole so-called eye-witness Akhlak Ahmed (PW-10) vehemently denied his presence at the scene of the offence, and stated that the police had taken his signature on some papers mischievously. In any case, the statement of a witness under section 162 of the Cr.P.C. cannot be used as evidence as confirmed by Hon'ble the Supreme Court in a catena of judgments.

27. Learned Additional Public Prosecutor (APP) on the other hand, argued that PW-2, the brother of the deceased had clearly seen and proved the appellant in the company of the deceased shortly before the murder, and that the appellant has failed to offer any explanation as to when and how he parted company with the deceased, who was last seen playing cards with him, and has instead opted for outright denial of all allegations during his explanation given in terms of Section 313 Cr.P.C.

28. Learned APP further argued that the conduct of the appellant in absconding immediately after the incident, and being apprehended only on 20.02.1998 on the basis of some information received from Sarai Kale Khan, constitutes an incriminating circumstance and strong evidence pointing



2025:DHC:11443-DB



towards his guilt.

29. While relying on the recovery effected during investigation, learned APP submitted that blood-stained clothes had been recovered including clothes said to belong to the appellant, pursuant to information furnished during investigation. He, therefore, asserted that the chain of circumstances comprising the last-seen evidence coupled with abscondence of the appellant and recovery of blood-stained clothes, which the appellant had worn at the time of the offence, collectively form a complete chain consistent only with the guilt of the appellant.

30. Heard learned counsel for the parties and perused the record.

31. The genesis of the prosecution case was the statement given by Akhlak Ahmad (who appeared in the witness box as PW-10) to the police shortly after the incident. This witness admitted to being the tenant of accused Ram Avatar, and confirmed the presence of Ram Avatar, Rakesh, and the appellant in the room together with the deceased at the time of the incident. PW-10, as per the statement given to the police, went on to state that he got up hearing the screams of the deceased and witnessed the three accused persons committing the murder. SI Jalis Ahmed deposed that he met said Akhlak Ahmad at the spot and recorded his statement, which was read over to him and signed by him. The same was corroborated by other two police personnel, who deposed in the Court as PW-16 and PW-18.

32. PW-10 being a crucial witness for the prosecution, however, turned hostile during the trial and stated that he did not witness anything. Though we are cognizant of legal position settled by Hon'ble the Supreme Court in **Bhajju v. State of Madhya Pradesh** (2012) 4 SCC 327 while discussing



the evidentiary value of the testimony of a hostile witness, that the evidence of hostile witnesses can be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident and the part of the evidence of a hostile witness being relied upon must be corroborated with other reliable evidence in order for it to be admissible, however, in the present case, PW-10 in his examination-in-chief completely resiled from his earlier statements to state that:

"I heard some noise from my room. I went down stairs. I raised alarm and occurred words 'Doro Doro'. The people had gathered there. I did not witness anything regarding the incident in the present case."

33. Hence, going by the above decision of Hon'ble the Supreme Court, the most crucial witness remaining for the prosecution in this case is Phool Singh (PW-2), the brother of the deceased, who deposed that while searching for his brother who had left home in the morning without eating anything, he was informed by his friend Hanif that his brother was playing cards on the second floor of house No.F-1698. He further stated that he went to his brother's room at around 10/11p.m. and found that his brother was playing cards with Ram Avatar, Rakesh and the appellant, and also that he did not see anybody else at that place.

34. On the analysis of testimony of PW-10, the hostile witness, nothing substantial can be concluded, however, on the basis of testimony of Phool Singh (PW-2) circumstance of last seen stands proved.

35. However, the other circumstance i.e. recovery of the blood stained clothes of the accused Subhash, is seriously weakened as PW-1, in whose presence the recovery was made categorically denied the appellant's presence when the clothes were seized. In view of this contradiction, no



2025:DHC:11443-DB



weight can be attached either to the disclosure or to the recovery said to have been made pursuant to it. Moreover, the same has been discarded by the Trial Court and we find no reason to take a view different from that adopted by the Trial Court, that too when the prosecution has not filed any cross-appeal.

36. Moreover, the fact that the body of the deceased found in the room at F-1698, Tigri, which was in the tenancy of PW-10 gives rise to a presumption against the appellant in light of the provision of Section 8 of the Indian Evidence Act, but given the fact that the room was accessible to several persons including the accused, cannot by itself lead to a solid proof of appellant's guilt as the room was neither found locked nor was it found to be exclusively under the control or exclusive access of the appellant.

37. Further, no motive has been proved, apart from PW-2's testimony that the deceased was playing cards with the appellant and the co-accused earlier that night. Hence, even if the circumstances of last seen is found proved against the appellant in light of the testimony of PW-10, it is only one circumstance which can be said to be proved.

38. So far as the argument of the learned APP regarding the abscondence of the appellant is concerned, though it is a relevant circumstance under Section 8 of the Indian Evidence Act, but it is not conclusive of guilt by itself. Such conduct may justifiably strengthen the chain of circumstances against an accused only when it is viewed alongside incriminating material. The same view has been affirmed by Hon'ble the Supreme Court in the case of **Matru v. State of U.P.** 1971 (2) SCC 75, wherein it was held that:

"19. ... 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.
... ”

(Emphasis Supplied)

39. In the case at hand, the only evidence which remain to establish the charge are – the circumstance of the last-seen and the appellant’s abscondence after the incident, which too is at the most a relevant fact but a small item or piece in the bunch of evidence. However, these circumstances, even if considered cumulatively, do not constitute a complete and unbroken chain of evidence pointing conclusively to the guilt of the appellant. In view of the judgment rendered by the Hon’ble the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**, (1984) 4 SCC 116 each circumstance must be firmly proved, must point unerringly towards the guilt of the accused, and must exclude any reasonable hypothesis of innocence of the accused.

40. We were at the outset informed that two of the appellants-convicts namely, Ram Avtar and Rakesh have since passed away and the appeal in hand survives only qua Subhash.

41. Having considered the entirety of the material on record, we are of the view that on the basis of the material available on record, it cannot be said that it was the appellant alone, who had murdered the deceased, that too when two more persons (Ram Avtar and Rakesh), who were playing cards



2025:DHC:11443-DB



with the deceased and were lastly seen together, absconded and were caught together.

42. In view of the discussion foregoing, we are firmly of the view that the Trial Court has committed a grave error of law, so also of appreciation of evidence while convicting the appellant for the offence under Section 302 read with Section 34 IPC.

43. The appeal, therefore, succeeds.

44. The impugned judgment dated 12.02.2002 and the order on sentence dated 15.02.2002 passed by the Trial Court are hereby quashed and set aside. We are informed that the appellant-Subhash is on bail. Accordingly, the bail bonds furnished by him stand discharged.

45. A copy of this judgment be sent to the Trial Court for the purpose of record.

(DINESH MEHTA)
JUDGE

(VIMAL KUMAR YADAV)
JUDGE

DECEMBER 17, 2025/ck