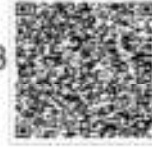


2026.PHHC:049674-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
SR. NO.102

CRA-D-372-DB-2004 (O&M)  
RESERVED ON:14.10.2025  
PRONOUNCED ON: 10.02.2026  
UPLOADED ON:- 07.04.2026

RAM KUMAR

...APPELLANT(S)

VERSUS

STATE OF HARYANA

...RESPONDENT(S)

**CORAM:** HON'BLE MR. JUSTICE N.S.SHEKHAWAT  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

**Present:** Mr. Deepak Singh Saini, Advocate  
for the appellant.

Mr. Rajinder Kumar Banku, Sr. DAG, Haryana and  
Mr. Rajiv Sidhu, Sr. DAG, Haryana.

**N.S. SHEKHAWAT, J.**

1. Feeling aggrieved by the impugned judgment of conviction dated 12.03.2004 and the order of sentence dated 16.03.2004 passed by the Additional Sessions Judge, Kurukshetra, whereby the appellant was convicted for commission of offence under Section 302 IPC and was sentenced to undergo life imprisonment with fine of Rs.25,000/- along with stipulated condition, the appellant has preferred the present appeal before this Court.

2. The FIR Ex. PL/2 in the present case was registered on the basis of statement made by Hardayal Chand son of Ram Chander. The relevant extract of the FIR is reproduced below:-

*“Statement of Shri Hardayal Chand son of Ram Chander, Caste Brahman, resident of Udarsi, aged about 70 years.*

*Stated that I am resident of aforesaid address and do agricultural work. My brother Kesho Ram had seven sons. The eldest Dharam Pal and at fourth place was Pawan Kumar. Pawan Kumar did agricultural work. He had a quarrel with Ram Kumar son of Ram Kishan Caste Saini resident of Jhinwarheri, who is posted in Canal Department at bridge of village Udarsi, as Beldar and there was a quarrel between Pawan Kumar and Ram Kumar about ten days ago. Before that also Ram Kumar had given beating to Pawan Kumar many times. On 22.9.2001, Pawan Kumar and Ram Kumar and servant Ramesh son of Bachna Ram, Caste Jhinwer, resident of village Udrasi had gone to Jhansa at about 12.00 noon by riding their motorcycle no.HR-07D-1057. On that day at about 5.30 P.M. Ram Kumar told us by coming in the village that Pawan Kumar while returning from Thansa after putting of his Chappals and parking his motorcycle outside, had jumped into the canal near bridge of Udarsi towards village Salpani. Till today I and my nephew Dharam Pal and Shish Pal and other villagers kept on searching at Bhakra canal and during this period kept on making enquiries from Ram Kumar also. Today at about 2.00 p.m. the dead body of Pawan Kumar floating in*

*the canal has been recovered from Bhakra canal from Jyotisar towards Kirmach. Fresh blood is oozing out from its nose. There are marks of scratches and dragging on nose, forehead and near the eyes. The hair has pulled off from the forehead and there are marks of dragging and he is wearing the same Payjama and shirt. On seeing the dead body, we are fully confident that Ram Kumar firstly gave beating to Pawan Kumar and after that with intention to kill pushed him in the canal. We by putting the dead body near the bank and after identification of the same by me and Dharam Pal, Shish Pal telephoned to the Police station. You have come at the spot. I have got recorded my statement to you, heard it and it is correct. I am near the dead body to guard it. Sd/- English Hardayal Chand Attested by Sd/ English Hanu Ram Assistant Sub Inspector Police Station Jhanda dated 25.9.2001.*

*Police Proceedings: Today I, Assistant Sub Inspector alongwith Mahesh Kumar Head-constable No.188 and Prithvi Singh U.G.C. No.718, Gurnam Singh Constable No.741 were present in the police station. In the meanwhile a telephonic message was received in the police Station from village Udarsi to the effect that dead body of Pawan Kumar has been found near Jyotisar. Police be sent. As a report in this connection was already registered at No.19 dated 22.9.2001, so I, Assistant Sub Inspector after taking the copy of the report and along with the officials reached at the spot. I got the dead body of Pawan Kumar photographed after getting it out of the water and its*

*identification was also got done. Hardayal Singh aforesaid got recorded his statement to me, which was read over to him in vernacular, who after hearing and understanding his statement and admitting it as correct signed underneath the same in English language. I identify the same. From the statement of Hardayal Chand, offence under section 302 I.P.C. is found to have been committed. Therefore, this write up is being sent to the police station through Gurnam Singh Constable No.741 for registration of the case. After registration of the case, number of the case be informed and special report in the case be sent to the higher officers and Station House Officer be also sent at the spot. I, Assistant Sub Inspector is busy in the investigation. Sd/- Hanu Ram satant Sub Inspector Police Station Jhansa. Dated 25.9.2001. At 3.35 PM. At Bhakra canal Jyotisar.”*

3. After registration of the FIR, necessary investigation was conducted by the police. The inquest report was also prepared, and postmortem on the dead body of the deceased Pawan Kumar was got conducted from a board of doctors. After completion of investigation, final report under Section 173 Cr.P.C. was prepared by the police and presented before the area magistrate. Since the offence was exclusively triable by Court of Sessions Judge, the case was committed by the area magistrate. After taking into consideration the challan and accompanying documents, the trial court found prima-facie commission of offence under Section 302 IPC, and the appellant was charge-sheeted accordingly. The appellant abjured his guilt and claimed that he may be tried by the trial court.

4. In support of the charge, the prosecution placed reliance on deposition made by 17 witnesses. The Prosecution examined Doctor Surender Kumar, Medical Officer, PW1, who had conducted postmortem on dead body of Pawan Kumar at 5:15 PM on 25.9.2001 and exhibited the postmortem report as Exhibit PC. In his statement, he stated as under:-

*“It was a dead body of an averagely build and averagely nourished man wearing white shirt with black lining, blood stained and a brown pyjama. The length of the body Was 5'8". The body was swollen as a whole. Foul smelling, skin was peeled of at places and can be easily peeled of at other place, skull scalp hair were easily pluck-able. Superficial veins were prominent over chest, shoulders and abdomen. Washerman hands and feet appearance. Greenish discolouration was present at places. Rigor mortis was absent. Face and upper part of chest and neck were suffused, Eyes and mouth were closed. Fluid blood was coming out of both nostrils. Diffuse swelling was present on the frontoparietal region, more on the left side. On dissection haematoma was present in the scalp layers. On opening the skull, there was extra dural and sub dural haematoma present underneath. Brain matter was partially liquefied. Piece of brain was sent for analysis with chemical examiner.*

*Larynx and trachea mucosa was congested and blood stained froth was present. His both lungs were congested and oedematous on cut section fine froth were oozing out. Piece of each lung was sent for chemical examination His heart was*

*healthy and right chamber was full of blood. Piece of heart and blood from heart was sent for chemical examination. His abdominal wall was distended. Stomach contained small amount of liquid material. Stomach with its contents was sent for chemical examination. His small intestines were healthy. It contained chyme and gases. Piece with its contents was sent for chemical examination. Large intestine were healthy. They contained faecal matter and gases. Piece with its contents were sent for chemical examination. His liver was congested and early changes of putrefaction present. Piece was sent for chemical examination. His spleen and kidneys were congested and piece from each was sent for chemical examination. Bladder was healthy and empty. His organs generation were healthy and were markedly swollen.*

*The cause of death in this case was to be given after the receipt of report from chemical examiner”.*

5 This witness further stated that the interval between death and postmortem was between two to five days. On 11.2.2002, application Exhibit PD was moved before the board of doctors along with report of Chemical Examiner Exhibit PD/1. Opinion was sought as to cause of death of Pawan Kumar, the deceased in the present case. After going through report of Chemical Examiner, they had opined that the cause of death was combined effect of head injury and drowning, both ante-mortem in nature and sufficient to cause death in ordinary course of nature, and their report in this regard was Exhibit PD/2. Again on 18.2.2002, application dated

about time spent between injury and death and as to whether the injury on head of the deceased was possible for reasons mentioned in point no. 2 of the application. After going through record, they opined vide Exhibit PE/1 that the duration between head injury and death was few minutes to few hours; however, it may vary as injury was ante-mortem, and possibility of the injury on dead body because of reasons given in query no. 2 was unlikely.

6. In his cross-examination, PW1 Doctor Surender Kumar, stated that vide query no. 2 Exhibit PE, opinion was sought whether injury was possible on account of touching head of dead body with pukka surface in canal. The injury found on head was however possible if deceased had struck his head in canal by falling on pukka surface. In case a person consumes liquor and thereafter immediately falls in a canal, liquor will be found in viscera. I have seen the report of Chemical Examiner Exhibit PD/1 and there is no mention of liquor having been found in the viscera. He further stated that possibility of death between 20-21.9.2001 could not be ruled out; possibility of suicidal death also could not be ruled out.

7. The prosecution further examined PW2 HC Prithvi Singh, PW3 C. Gurunam Singh, PW4 C. Gulzar Singh, PW5 ASI Teg Singh, PW6 ASI Shri Bhagwan And their testimonies were formal in Nature. The prosecution further examined PW7 Jora Singh Patwari, who prepared scaled site plan Exhibit PJ on the demarcation of Shailender and Kulwant Singh. Randhir Singh, Inspector, CIA Staff Kurukshetra who was entrusted with the investigation of the case on 12.03.2002 appeared as PW-8. He searched for Ram Kumar, but he was not found on 12.03.2002. On 13.03.2002, he was present at bus stand Jyotisar and on getting the information, he spotted Ram

Kumar, accused and arrested him. The prosecution further examined PW-9 Kulwant Singh, who stated that he knew Pawan Kumar, since deceased, as well as Ram Kumar, accused. He never saw Ram Kumar and Pawan Kumar going together on a motorcycle on the banks of river. He was declared hostile by the Public Prosecutor and was cross-examined. The prosecution further examined PW 10 Ramesh Kumar, who was employed as a servant with Pawan Kumar, deceased. About one year and one month ago, he and Pawan Kumar had left the house on a motorcycle for Jhansa. Pawan Kumar had to make payment of a crop. Ram Kumar, accused met them and he also accompanied them to Jhansa on a motorcycle. Ram Kumar was driving the motorcycle and they reached at the shop of a doctor. Pawan Kumar gave the money to the doctor as the person to whom the payment was to be made was not found. Thereafter, Pawan Kumar took a sum of rupees 200 from the doctor and then all three went towards the bus stop. Ram Kumar and Pawan purchased a bottle for a sum of rupees 110 and thereafter at the shop of a Tea vendor, he, Pawan Kumar and Ram Kumar took liquor. Thereafter they all three left from there and reached Bhogpur at the house of his maternal uncle and then all three had taken liquor again. At that time Pawan and Ram Kumar exchange blows. Since PW 10 Ramesh Kumar was under the influence of liquor, he was left at the place of his maternal uncle and Ram Kumar and Pawan Kumar left on motorcycle. In his cross examination, he admitted that he had left the employment after completing one year after the death of Pawan Kumar. He could not tell about the brothers of Pawan Kumar and even could not tell how many brothers they were. He could not even tell as to whether his brothers reside in the village or outside the village. He did not know what was the relation of Kesho Ram with Pawan

Kumar. He also did not know how many brothers Kesho Ram had and where they were residing. Pawan Kumar used to cultivate his land with the help of his tractor and he used to drive himself. He was the only servant employed by him. The prosecution further examined PW 11 Randhir Singh, panch of village Udarsi. He disclosed that on 10.10.2001 Ram Kumar, accused was present at his house in the evening and he told that the police was after him and he requested him that he should get the compromise done with Pandit Hardyal Chand. He further disclosed that a fight had taken place between him and Pawan Kumar and Pawan had received an injury on his head. There after he was picked by Ram Kumar and he threw Pawan in the river. Randhir told him that he would tell the entire occurrence to Pandit Hardyal Chand. After this talk with him, Ram Kumar left his house. On the next morning, he narrated everything to Hardyal Chand and the police also recorded his statement on 11.10.2001. In cross examination he stated that Ram Kumar, accused was not related to him. However they were friends. Still further, Ram Kumar contacted him at about 7/8:00 PM and stayed with him for 5/10 minutes and then left there after he never met him nor he went to his village to meet him. He did not meet any other person except Hardyal on 11.10.2001 to narrate the facts divulged by Ram Kumar. He did not tell about this fact to anybody in the village including the sarpanch and member panchayat. He did not know as to how many brothers Ram Kumar was having. He did not know anything about his sisters. He did not know even his father. He did not know about the relations of the accused.

8. The prosecution further examined PW-12 Silinder Singh, who stated that on 22.09.2001, he accompanied by Kulwant Singh went to the house of his *bhua* (Aunt) at village Kamalpur on motorcycle to get a

tubewell (*kotha*) constructed. He had earlier also gone there. When they were going to village Kamalpur, at a distance of 1 kilometer from Jhansa, they noticed that Pawan Kumar, since deceased and Ram Kumar, accused were quarreling with each other in a drunken condition. At that time Pawan Kumar was already having an injury on his head. They stopped their motorcycles and requested them not to fight and to proceed further. Thereafter, he and Kulwant Singh left on their motorcycles towards village Kamalpur. When he and Kulwant Singh were returning after four days after the construction of a tubewell kotha, they came to know that Pawan Kumar had died due to drowning. Then, he and Kulwant narrated everything to Hardyal Chand, uncle of Pawan Kumar. In his cross examination, he stated that Kulwant Singh was driving the motorcycle, where Ram Kumar and Pawan met them on the bridge which is 1 kilometer from that point. He did not know the name of fufad (Uncle) of Kulwant Singh nor he knew the names of the sons of the fufad (uncle) of Kulwant Singh. In his cross-examination, he admitted that the affidavit exhibit DD was bearing his signatures. However he stated that signatures on the affidavit were procured from him on the pretext of getting sanction loan for him for the purchase of buffaloes. The prosecution further examined Dharmpal as PW-13. He stated that 8/10 days prior to 25.09.2001, Pawan Kumar (deceased) and Ram Kumar (accused) had an altercation. Even earlier, Ram Kumar and Pawan Kumar used to quarrel. On 22.09.2001, Pawan Kumar (deceased), Ram Kumar (accused) and Ramesh PW 10, had gone to Jhanssa on a motorcycle for making payment of fodder. At about 5:00 PM Ram Kumar accused came to his house and told him that Pawan Kumar had jumped into the canal near Udarsi bridge. He also told him that before jumping into the canal he had

parked the motorcycle and had put off his chappals near the motorcycle. They made search for the dead body of the deceased but no clue was found. On 25.09.2001, they spotted the dead body near bus stand Jyotisar bridge. He identified the dead body to be of Pawan Kumar, his brother. There was injury on the head and the dead body was brought. The prosecution further examined PW 14 Hardyal Chand, who supported the case of the prosecution as mentioned in the FIR exhibit PL/2. The prosecution further examined PW 15 ASI Hanuram, who had recorded DDR No. 19 dated 22.09.2001 after tracing the dead body of Pawan Kumar. The prosecution further examined PW-16 Ram Kumar, inspector who was posted as SI/SHO on 25.09.2001. He conducted the initial investigation and prepared the rough site plan exhibit PM with correct marginal notes and also recorded the statements of various prosecution witnesses. In his cross examination, he stated that, he had reached the spot from where dead body was recovered at around 5:00 PM. He had seen the dead body and there were signs of injuries but he did not know whether any serious injury with sharp edge weapon like kulhadi was given to the deceased. The prosecution further examined PW-17 ASI Avatar Singh, who was interested with the investigation of the present case on 01.12.2001. He also recorded the statements of various prosecution witnesses under section 161 Cr.P.C. and also collected the expert report. He also sought the opinion of the doctor regarding the cause of death, which was supplied to him. He was posted there on 29.11.2001. The case file remained with him from 01.12.2001 to 18.12.2001 and he had read the same. The file remained with him even thereafter and he did not remember that DSP had furnish a *Zimni* on 26.09.2001. He did not know as to whether any

dispute between the Ram Kumar, accused and deceased had taken place earlier to the present occurrence.

9. After recording 17 witnesses, the prosecution evidence was closed and the entire incriminating evidence was put to the accused. However, in his statement under section 313 Cr.P.C., he stated that he was innocent and had been falsely involved in the present case. In his defense, the appellant/accused examined DW-1 OP Narwal, DSP Panipat. He submitted that he was entrusted with the investigation of this case on 29.09.2001. On that day, he had called complainant, Sheeshpal, Pritam Singh, Ram Kumar and few more persons in CIA staff Kurukshetra. No evidence against Ram Kumar, accused was available with him till 29.09.2001. He also called few more persons on 01.10.2001 in connection with the investigation of the present case. He admitted that Ram Kumar, accused, was not arrested on that date as sufficient evidence was not available against him. He had gone to the spot on 04.10.2001 and inspected the spot but he could not find any clue or signs of fight etc. He further admitted that till 04.10.2001, nothing showing any previous enmity between the accused and deceased had come to his notice. After examining DW-1 OP Narwal, the defense closed the evidence.

10. Learned counsel for the appellant vehemently argued that this case is based on circumstantial evidence and in the present case, the chain of circumstances was not complete and the appellant was liable to be acquitted by this Court. He further submitted that the complainant had come to know about the incident on 22.09.2001, whereas the FIR was got registered by the complainant side on 25.09.2001 after unexplained delay of three days. In

the suspicion and there was no evidence to connect him with the commission of crime. Still further, there were no eye witnesses, who had seen the appellant pushing the deceased in the canal. Moreover, most of the prosecution witnesses were either closely related to the deceased or interested witnesses. Even, it has been alleged that soon before his death, the deceased, along with other accused, had consumed liquor. However, from the report of the chemical examiner, the liquor was not found in the viscera of the deceased. Even PW-1 Dr. Surender Kumar also admitted that in case a person consumed liquor and, thereafter, immediately falls in the canal, liquor will be found in his viscera. He had seen the chemical examination report Ex. PD/1 and there is no mention of liquor in the viscera. Thus, the entire prosecution story was false.

11. Learned counsel for the appellant further argued that even the prosecution examined PW-11 Randhir Singh, before whom, the appellant had allegedly suffered extra-judicial confession on 10.10.2001. However, the appellant had no relationship with him nor the said witness was a man of influence. In fact, he was a simple Punch of the village and could never help the appellant in any manner. Apart from that, just to create the “last seen” evidence, the prosecution had introduced PW-10 Ramesh Kumar, who was servant of the deceased. Even as per his deposition, he along with the appellant and the deceased had consumed liquor and, immediately thereafter, the occurrence had taken place. However, from the viscera report of chemical examination, it was apparent that no liquor was found in the viscera of the deceased. This clearly shows that he had projected a wrong story before the Court and his testimony was liable to be discarded.

Similarly, PW-12 Silinder Singh had also deposed on similar lines and he

was also introduced by the prosecution to falsely involve the appellant. Learned counsel further submitted that even in a case of circumstantial evidence, it is necessary for the prosecution to prove the motive. However, in the present case, there was no motive on the part of the appellant to commit such a heinous offence. Even nothing was recovered from the appellant which could connect him with the commission of the crime.

12. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the appellant on the ground that sufficient incriminating evidence was led on the file by the prosecution to prove the involvement of the appellant in the crime. He further submitted that even the delay in reporting the matter to the police already stood explained. In fact, on 22<sup>nd</sup> September 2001, the appellant informed the family of the deceased that he had committed suicide and, immediately thereafter, vide Ex. DE, the matter was reported to the police by getting a DDR registered. Thereafter, when the dead body was found on 25.09.2001, a formal FIR Ex. PL/2 was registered by Hardayal Chand, PW-14. Learned State counsel further submitted that even the deceased was “last seen” in the company of the appellant immediately before the occurrence and the time gap between the “last seen point” and the occurrence was so small, which clearly ruled out the involvement of any other person in the crime. To prove the “last seen theory”, the prosecution had examined PW-10, Ramesh Kumar, and PW-12, Silinder Singh, and the offences stood proved against the appellant in the present case. Even, he has referred to findings recorded by the trial Court and submitted that the same are liable to be upheld by this Court.

13. We have heard learned counsel for the parties and perused the record carefully.

14. In the present case, Pawan Kumar, deceased, had admittedly been reported to be missing since 22.09.2001, whereas the formal FIR Ex. PL/2 was registered on the basis of the statement made by Hardayal Chand, uncle of the deceased, at 04.45 p.m. on 25.09.2001. Even, as per the prosecution, the deceased was in the company of the appellant on 22.09.2001 and Hardayal Chand and her family members were aware of the alleged enmity between the appellant and the deceased. Still, the family members of the deceased did not report the incident on 22.09.2001 and no suspicion was raised initially against the appellant. In case the family of the deceased was aware of the enmity between the appellant and the deceased, they should have reported the incident on 22.09.2001 itself. However, the FIR Ex. PL/2 was registered by PW14 Hardayal Chand by raising a suspicion against the appellant on 25.09.2001. The trial Court wrongly held that since the DDR Ex. DE, lodged by Dharam Pal son of Kesho Ram, clearly shows that they had no suspicion on any person, even there is no mention of the version of the prosecution as projected in the FIR Ex. PL/2. Even in Ex. DE there is no allegation that the appellant was also inimical towards the deceased. Thus, we have no hesitation to hold that there was delay of three days in reporting the matter to the police by the complainant.

15. In the present case, admittedly, there was no eyewitness of the occurrence and the case of the prosecution is primarily based on the circumstantial evidence. The Hon'ble Supreme Court in a large celebrated judgment of *Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4*

conviction on the basis of circumstantial evidence and had further held as follows:-

"153.xxx xxx xxx

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

xxx xxx xxx

(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."*

*These five cardinal principles have been reiterated on numerous occasions, including in the recent decisions in **Mohd. Yunus Ali Tarafdar v. State of W.B.**, (2020) 3 SCC 747 & **R. Damodaran v. State Represented by the Inspector of Police**, 2021 SCC OnLine SC 134. Keeping these conditions in mind, we shall now examine the case at hand.*

*28. It appears to us that the following circumstances need to be considered to arrive at the guilt of the appellants: (i) Last seen theory; (ii) Motive & (iii) false information provided and subsequent conduct of the appellants. (i) Last seen theory*

*29. The case of the prosecution in the present case heavily banks upon the principle of 'Last seen theory'. Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the*

*perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive", a 3-judge bench of this Court in the case of **Satpal v. State of Haryana, (2018) 6 SCC 610** has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held:*

*" .Succinctly stated., it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."*

16. In the present case also, the "last seen" evidence was based on the testimony of PW9 Kulwant Singh, PW10 Ramesh Kumar, PW12 Silinder Singh. PW9 Kulwant Singh did not support the prosecution case and categorically deposed that he had never seen the appellant going together on a motorcycle with the deceased and his testimony was of no use for the prosecution. Similarly, the prosecution examined PW10 Ramesh Kumar, who was allegedly employed as a servant with the deceased. In his statement, he did not mention any date and year of the incident and simply

stated that about 01 year and 01 month ago, Pawan Kumar (deceased) had left the house on a motorcycle for Jhansa. Pawan Kumar had to make the payment of *Barseem* crop. On the way, the appellant also met them and he also accompanied them on the same motorcycle. After making the payment of *Barseem*, the appellant and the deceased had purchased a bottle of English liquor and had consumed liquor at two places. He stated that since he was heavily drunk, he was left at the house of his relative and Ram Kumar appellant and Pawan Kumar (deceased) left that place. However, again the said witness appears to be planted by the local police in the present case. He claimed himself to be in the employment of Pawan Kumar (deceased). However, he could not tell about the brothers of the deceased and could not even tell as to how many brothers they were. He even could not tell whether the brothers of the deceased reside in the village or outside the village. He had no knowledge about the family of the deceased at all. Still further, he stated that the deceased used to cultivate his land with the help of his tractor and he used to drive himself. Even he did not know how much amount was to be paid by him towards *Barseen* crop. Still further from the testimony of this witness, it was apparent that he had no knowledge about the family of Pawan Kumar (deceased) and even though, he claimed himself to be servant of Pawan Kumar. Consequently, this witness stated that at the time of incident, the deceased was heavily drunk. However, the viscera of the deceased was sent to the chemical examiner and it was found by the chemical examiner that no liquor was present in the viscera. Even PW1 Dr. Surender Kumar stated that in case a person consumes liquor and thereafter immediately falls in the canal, liquor will be found in his viscera.

deceased. Thus, the entire story projected by PW10 Ramesh Kumar was false. The prosecution further examined PW12 Silinder Singh to show that he had also seen the deceased in the company of the appellant and both of them were quarreling in a drunkard condition. Again, for the above stated reasons and relying upon the report of chemical examiner, the story projected by PW12 Silinder Singh was also false and unbelievable. Even, he had sworn an affidavit Ex. DD, wherein he stated that his statement was wrongly recorded by the police and he had no knowledge about the quarrel between the appellant and the deceased. He admitted his signatures on the affidavit Ex. DD, whereby the present appellant was clearly exonerated.

17. Even otherwise, the law is well settled that the evidence of “last seen theory” is a weak kind of evidence and in such cases, the Courts must look for some kind of corroboration by way of prosecution evidence. Even the “last seen theory” should rather be applied by taking into account the case of the prosecution in its entirety. The Courts have to not only consider the factum of “last seen theory”, but also have to keep in mind the circumstances that precede and followed from the point of the deceased being so last seen in the presence of the accused. Even though by leading the evidence relating to “last seen theory”, the prosecution has failed to establish that the deceased was last seen alive in the company of the appellant, still, we would examine the other piece of evidence produced by the prosecution before the trial Court.

18. In the present case, the prosecution had examined PW11 Randhir Singh before whom the appellant had allegedly suffered the extrajudicial confession. He stated that on 10.10.2001, the appellant contacted him at his residence and requested him that he should get the

matter compromised with Hardayal Chand, complainant. He asked him to speak the truth. He stated that the deceased had received an injury on his head from his hand and he had thrown him in the river. However, after talking, Randhir neither took him to Hardayal Chand nor reported the matter to the police. Surprisingly, he did not tell anything about the extrajudicial confession to anyone and even he got his statement recorded on 18.12.2001. However, the said witness stated falsely that the police had recorded his statement on 11.10.2001. Even, he had failed to explain as to why he remained mum from 10.10.2001 to 18.12.2001 when he actually made his statement before the police. Even otherwise, PW11 Randhir Singh was a punch of villager and there was no evidence to show that either he was having good relations with the police or was an influential person. Thus, the appellant had no reason to go to him to make an extrajudicial confession. Still further, to prove the charge of murder, the prosecution was under a duty to show that Pawan Kumar, since deceased, had died due to injuries and it was a case of homicidal death. To prove the charge, the prosecution had placed reliance on the testimony of PW1 Dr. Surender Kumar, who had conducted the post-mortem examination on the dead body of the deceased. He was part of the medical board along with two more doctors and had recorded detailed findings in its report. As per him, the cause of death in the present case was combined effect of head injury and drowning and both the injuries were antimortem in nature and were sufficient to cause death in ordinary course of nature. He categorically stated that the injury found on the head of the deceased was possible, if the deceased had struck his head in the canal by falling on the *pucca* surface of the canal. He further stated that the possibility of a suicidal death in the present case could not be ruled out.

Moreover, there was no medical evidence on record which could clearly show that it was a case of homicidal death. Rather, the doctor had clearly opined that it could be a case of suicidal death and, thus, the basic ingredients of the offence under Section 302 IPC was not even proved in the present case. Still further, in the case of circumstantial evidence, the motive plays a crucial role in establishing the credibility of the prosecution case, while a weak or absent motive alone may not be sufficient to acquit an accused, if other circumstances form a complete chain pointing unerringly to the guilt, it rather weighs in favour of the accused and creates a reasonable doubt. In the present case also, it has been mentioned in the FIR that the appellant had exchanged hot words with the deceased few days prior to the occurrence and even the prosecution has failed to prove that there was any serious dispute or fight between the appellant and the deceased. Rather, it has been admitted by various prosecution witnesses that the appellant and the deceased were drinking together at different places. Consequently, the prosecution had failed to prove the motive which would supply a link in the chain of circumstantial evidence and rather absence of motive would serve as a ground to reject the prosecution case.

19. The absence of motive in a case depending on circumstantial evidence is a factor which always weighs in favour of the accused. Apart from that, even the trial Court itself observed in his judgment that the investigation in the present case was tainted. The trial Court clearly held that the investigation commenced on 25.09.2001, however, no steps were taken by the IO to investigate the case fairly and vigorously till 01.12.2001. Even, the entire prosecution case revolves around a visit by the deceased with the appellant to village Jhansa to clear the payment of *Barseem* crop purchased

by him on credit. However, admittedly, neither the person, who received the payment was examined nor any investigation was conducted with regard to payment of *Barseem* crop by the deceased to anyone. Even while appearing as a witness in the Court, the IO was not able to find out the name of the doctor and the supplier of *Barseem* crop, which clearly showed that he was not associating them during investigation. Even, there were no *jimmies* between 10.12.2001 to 11.02.2002 and it clearly reflected that the police was not inclined to proceed against the appellant as there was no evidence against him. This fact has also been admitted by DW1 O.P. Narwal, DSP, Panipat, who was the IO of the present case. He clearly stated that he remained the IO of the case till 04.10.2001. He had inspected the spot near the canal but could not find any clue or signs of any fight, etc., Even, he recorded the statements of various witnesses and there was no evidence to show previous enmity between the appellant and the deceased. Even, he could not find sufficient evidence for arresting the appellant in the present case. He clarified that till the investigation of the case remained with him, there was no evidence available on file against the present appellant. Thus, it is apparent that later on, certain statements were recorded on 18.12.2001, i.e., after about three months of the occurrence, and the statements of witnesses of the “last seen” and extrajudicial confession were recorded.

20. In view of the above discussion, we have no hesitation to hold that there is a long gap between the charge against the appellant and the evidence, which the prosecution has adduced. The circumstantial evidence led by the prosecution does not establish the guilt of the appellant at all.

While the principles laid down by the Hon'ble Supreme Court in the cases of circumstantial evidence require that the facts must be consistent with the

hypothesis of the guilt of the accused, however, the evidence produced by the prosecution in the present case gives rise to doubts, improbabilities and inconsistencies.

21. As a result of our discussion, we allow the present appeal and set aside the impugned judgment of conviction dated 12.03.2004 and the order of sentence dated 16.03.2004 passed by the Court of Additional Sessions Judge, Kurukshetra. The appellant is acquitted of the charge and his bail bonds, if any, stand discharged. He be set at liberty forthwith, if not required in any other case.

22. All pending applications, if any, are disposed of, accordingly.

23. Trial Court record be sent back to the trial Court.

**(N.S.SHEKHAWAT)**  
**JUDGE**

**(SUKHVINDER KAUR)**  
**JUDGE**

**10.02.2026**  
mks/amit rana

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO