



2026:DHC:2248-DB



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

Reserved on: 12.02.2026
Pronounced on: 18.03.2026

+ **CRL.A. 567/2002**

ABRAR ETC.

.....Appellants

Through: Mr.Mohd. Shamikh and
Mr.Vaseem Mian, Advs.

versus

N.C.T. OF DELHI

.....Respondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed, challenging the judgment dated 29.05.2002 passed by the learned Additional Sessions Judge, Shahadara District, Karkardooma Court, Delhi in SC No.16/2001, titled *State v. Abrar & Anr.*, convicting the appellants of the offences under Sections 365/34, 302/34, 201/34 and Section 404 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').



2. The appellants further challenge the order dated 29.06.2002 passed by the learned Trial Court, imposing the following punishment on them:

Sections (IPC)	Punishment
302	<i>Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo further Simple Imprisonment for one year.</i>
365	<i>Rigorous Imprisonment for a term of seven years and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo further Simple Imprisonment for one year.</i>
201	<i>Rigorous Imprisonment for three years and to pay a fine of Rs.3,000/- each and in default of payment of fine to undergo further Simple Imprisonment for eight months.</i>
404	<i>Rigorous Imprisonment for three years and to pay a fine of Rs.3,000/- each and in default of payment of fine to undergo further Simple Imprisonment for eight months.</i>

3. It is the case of the prosecution that on 24.08.2000, a missing person report was lodged at Police Station (PS) Gokul Puri by Mr. Wahid Khan, PW-1, brother of the missing person-Mr. Sitabi,



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informing that he alongwith his family and younger brother-Mr. Sitabi were living at Moonga Nagar. The appellants, namely, Mr. Abrar and Ms. Shanno, also started residing in the neighbourhood and with the passage of time, an illicit relationship developed between the appellant no.2- Ms. Shanno and the deceased. Due to this reason, Mr. Wahid Khan (PW-1) shifted to Nehru Vihar, however, the deceased started living at Moonga Nagar with his other brother, namely, Mr. Ashraf, and continued visiting terms with the appellant no.2. Due to the same, PW-1 got the deceased married to his sister-in-law, namely, Ms. Shabana, on 14.07.2000. On 20.07.2000, the deceased came to Delhi from the village and stayed with PW-1 at night and, in the morning, he went to his own room at Moonga Nagar, but thereafter did not come back. PW-1 then contacted the landlady of the house, PW-4- Ms. Saraswati, and she told him that in the evening of 25.07.2000, the deceased had gone with the appellant no.2 and had not come back. On the same day, the brother-in-law of PW-1 and the deceased, Mr. Jakir (PW-2), informed PW-1 that on 25.07.2000 at about 10.00 p.m., he had seen the deceased in the company of the appellants near Brijpuri Pulia and on his enquiry, the appellant no.2 informed that all three of them were going to attend a marriage at Rampur. PW-1 stated in his complaint that despite the best efforts, neither the appellants nor the deceased could be traced out. On coming to know that the appellants were in the area of Khajoori Pushta, PW-1 went there and enquired about the deceased but did not receive any satisfactory reply. Therefore, he made a complaint to the police, on the basis of which,



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FIR No.344/2000 was registered under Sections 365/34 of the IPC on 24.08.2000.

4. It is further the case of the prosecution that on receipt of secret information and on the pointing of complainant-PW-1, on 26.08.2000, the appellants were arrested from Khajoori Pushta, where they made disclosure statements to the effect that the deceased- Mr. Sitabi was having illicit relations with the appellant no.2- Ms. Shanno, and after his marriage to the sister-in-law of PW-1, namely, Ms. Shabana, both the appellants planned to get rid of him and accordingly, on 25.07.2000, they took him to Vamanpuri, District Rampur. They stated that the deceased was made to drink excessively and then taken to the bridge over river Ram Ganga, where they strangled him with the help of a cloth tape (katran). They stated that they also removed two gold rings, wrist watch, and Rs. 4,000/- from the body of the deceased, where-after they threw his dead body in the river Ram Ganga. They stated that one gold ring was sold to a goldsmith- Mr. Sanjeev (PW-21), while the wrist watch and the other ring were kept at the house of the sister of the appellant no.2, Ms. Rehana (PW-6).

5. It is the case of the prosecution that the appellants then led the police party to the recovery of one gold ring and wrist watch of the deceased from the house of Ms. Rehana (PW-6). They then got recovered the cloth tape (katran) used for strangulating the deceased, from the jungle near the bridge, and lastly, a gold ring from the shop of the jeweller, Mr. Sanjeev Kumar (PW-21).



6. On basis of the above allegations, *vide* order dated 07.02.2001, charges under Sections 365/34, 302/34, 201/34, and 404/34 of the IPC were framed against the appellants by the learned Trial Court.

7. The prosecution, in support of its case, examined 22 witnesses.

8. The learned Trial Court, in its impugned judgment of conviction, framed the following circumstances for consideration:-

“56. After hearing the arguments, the following points have emerged for consideration: -

- a) The relationship between accused Shanno and Sitabi (deceased).*
- b) Last seen evidence and disappearance of Sitabi.*
- c) Effect of recovery of gold rings and wrist watch and cloth tape.*
- d) Effect of non-recovery of dead body. Has Sitabi been murdered, if so by whom?”*

9. On an analysis of the evidence, the learned Trial Court held that the above circumstances stood proved against the appellants. It held that mere non-recovery of the dead body of the deceased, would not cast a doubt on the case of the prosecution. The learned Trial Court concluded as under:

“101. Sitabi was living with his brother PW-1 at Moonga Nagar. The accused persons took house on rent in the neighbourhood. Acquaintance between the two families led to the development of illicit relationship between Sitabi and accused Shanno. This was not approved by PW-1 and in order to prevent dishonour of the family PW-1 shifted to Nehru Vihar but sitabi in order to continue the relationship instead of shifting to Nehru Vihar started living with his other brother Ashraf Ali



in the same locality. After some time even said Ashraf Ali turned him out with the result that he took room on rent in the house of PW-4 Saraswati where accused Shanno had been freely coming to meet Sitabi. In these facts and circumstances PW-1 Wahid Khan got Sitabi married to his own sister in law Sahaba PW-1 (sister of PW-2 Jakir) on 14.7.2000 and on 20.7.2000 Sitabi comes and stays for a night in the house of PW-1 Wahid Khan, at Nehru Vihar, shows him photographs of the marriage and next morning leaves for his own room in the house of PW-4 Saraswati where said landlady Saraswati saw Sitabi leaving the room in the company of accused Shanno at about 8.30/9.00 p.m. and then PW-2 Jakir saw both the accused persons and Sitabi together at Brijpuri Pulia when Sitabi told that they were going to attend a marriage at Rampur and thereafter Sitabi was never seen.

102. Both the accused persons started hiding themselves and could be traced out with great difficulty by PW-1 and when they did not give any plausible explanation about the whereabouts of Sitabi they arrested, their disclosure statements were recorded which led to the discovery of new facts and recoveries of two gold rings and wrist watch belonging to Sitabi, duly identified by his relation PW-1 Wahid Khan. The rings were made by jeweller. PW-7 Sahid upon order having been placed by PW-1 and Sitabi. One of the said rings was recovered from a goldsmith PW Sanjeev to whom accused Abrar had sold the same. Even the documentary evidence in the shape of a receipt regarding sale of the ring has been proved as Ex.PW-21/A.

103. Persistent efforts have been made to search the dead body. Officials of Delhi Police went to police stations Ganj, Shahbad and Siroli, part of the cloth tape which was used got strangulating Sitabi was got recovered by



the accused person. Five witnesses from different police stations of Uttar Pradesh Police have deposed about arrival of Delhi Police party at their police stations in connection with the investigation of this case. The occurrence took place in late July, when the rivers after monsoon are over flowing and flooded. Sitabi was a bachelor aged about 22 years and was an earning persons as he was working as a mechanic. Accused Shanno was aged about 20 years. In the facts and circumstances of the case it goes without saying that Sitabi was having a female companion and Shanno was having an earning paramour. Then suddenly Sitabi got married, it came as a bolt from the blue for Shanno. Love arising out of illicit relations has many facets like, jealousy, over possessiveness, anger, revenge and so on. The illicit relationship of the wife must generate animosity in the heart and mind of the husband against the paramour which may become explosive on getting even a slightest co-operation from the wife. Sitabi got married to Sabana which was taking Sitabi away from accused Shanno. Then onwards accused Shanno and accused Abrar had unity of minds and the end result was planned murder of Sitabi though emotional causes were different. I am therefore of the opinion that on the basis of entire evidence and circumstances the only definite conclusion is that guilt of the accused persons is established beyond a shadow of doubt and the facts so established are consistant only hypothesis of guilt of the accused persons and are not explainable to any other hypothesis. Nature of proof is conclusive and clinching and chain of events in my view is complete and leaves reasonable ground for conclusion pointing to the innocence of the accused persons. I am of the firm opinion that it is accused Shanno and her husband accused Abrar who had planned, abducted and murdered Sitabi and caused



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disappearance of evidence of offence by throwing the dead body in river Ram Ganga, after removing the gold rings, wrist watch and cash from the body of Sitabi. Then they misappropriated the sale proceeds of one gold ring. In the result the accused persons namely Shanno and Abrar are held guilty of offences punishable under section 365/34, 302/34, 201/34 and 404 IPC. They are convicted accordingly.”

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANTS

10. The learned counsel for the appellants submits that there are material contradictions in the statements of the witnesses. The entire case of the prosecution is based on the last seen theory propounding on the statement of PW-2 and PW-4. He submits that PW-2, who is the brother-in-law of the deceased and would be knowing of the alleged illicit relationship between the appellant no.2 and the deceased for several days, never raised any alarm on seeing the deceased leaving along with the appellant no.2. Similarly, PW-4 is alleged to have informed about the deceased being missing, but only after many days of the disappearance of the deceased. PW-1, brother of the deceased, though states that he made efforts to find whereabouts of the deceased and the appellants, did not make any complaint to the police for almost one month of the deceased not being heard of. He further submits that this itself raises a doubt on the last seen theory of the prosecution and in any case, breaks the chain between the period when the appellants were allegedly seen with the deceased and the making



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of the complaint. In support, he places reliance on a decision in *Murugan v. State*, AIR 2025 SCC 2125.

11. The learned counsel for the appellants, by placing reliance on decision in *Rambraksh @ Jalim v. State of Chattisgarh*, 2016 (12) SCC 251; *Navaneethakrishnan v. State by Inspector of Police*, AIR 2018 SCC 2027; *Jabir and Ors. v The State of Uttarakhand*, (2023) 16 SCC 111, submits that conviction only on the basis of 'last seen' evidence is not sustainable.

12. He further submits that in fact, the dead body of the deceased has not been recovered till date and it is only the presumption that he had died, on which the case of the prosecution rests.

13. The learned counsel for the appellants further submits that there are contradictions in the statements of the witnesses with respect to the alleged recoveries, clearly showing that the alleged recovered articles have been planted and shown to have been recovered at the instance of the appellants. He submits that PW-3 is supposed to be the witness to these alleged recoveries, which is extremely doubtful inasmuch as no reason has been assigned on why she would be specifically taken from Delhi all the way to Rampur and made a witness to such recoveries. He further submits that the recovery of gold ring from PW-21 is also doubtful, and he has been harassed to become a witness. He submits that mere recovery of items at the instance of the appellants, even if presumed to be correct, would not be sufficient to hold them guilty of murdering the deceased.



SUBMISSIONS OF THE LEARNED APP FOR STATE

14. On the other hand, the learned APP submits that there is a complete chain of circumstantial evidence made out by the prosecution against the appellants. He submits that the statements of PW-2 and PW-4 are consistent and completely trustworthy to the effect that they had last seen the deceased with the appellants. Since that day, the appellants also disappeared and were traced only on 26.08.2000, and on being arrested, they gave their disclosure statements- Ex.PW1/I and Ex.PW1/J respectively. Accordingly, their Police Remand was obtained and they were taken to Rampur, UP. Based on the said disclosure statements, recoveries were made from the house of PW-6 Ms. Rehana, the sister of the appellant no.2; from near the bridge where they had, after killing the deceased, thrown the body in the river Ram Ganga; and also from the shop of PW-21. He submits that therefore, the conviction of the appellants is not based solely on last seen evidence, but also on the recoveries made at their behest.

15. He further submits that the recoveries made cannot be doubted, as the DD Entries placed on record duly establish the movement of the police party from Delhi to Rampur and thereafter to Bareilly. In the search and seizure not only the independent witness- PW-3- Ms. Raisa was involved, but also the police personnel from different police stations in U.P. were involved; each proving the recovery at the instance of appellant. He submits that minor contradictions in the statements of these witnesses cannot come to the aid of the appellants.



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16. The learned APP further submits that the two gold rings which have been recovered from the house of PW-6 Ms. Rehana and from the shop of PW-21 Mr Sanjeev Kumar, have been proved to be belonging to the deceased, as they were made by PW-7- Mr. Shahid, who duly identified them. He also produced a kachha invoice for the same (**Ex.P-5**). Similarly, PW-21 deposed that one of the rings was sold to him by the appellant no.1 and he had also obtained the signature of the appellant no.1 on the kachha invoice for the same.

17. He submits that from these circumstances, it is proved beyond doubt that the appellants killed the deceased. Relying on the judgment of the Supreme Court in *Gulab Chand v. State of M.P.*, 1995 (3) SCC 574, he submits that in similar circumstances, where the articles belonging to the deceased had been recovered from the accused therein, the Supreme Court held that a presumption deserves to be drawn under Illustration (a) of Section 114 of the Indian Evidence Act, 1872 against the accused therein, that they would also have murdered the deceased.

18. He submits that it is not an invariable rule of criminal jurisprudence that the failure of police to recover the dead body will render the prosecution case doubtful, entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with other facts and circumstances, to arrive at a finding. Reliance is placed on *Sanjay Rajak v. State of Bihar*, (2019) 12 SCC 552.



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19. Further, by placing reliance on *Subhash Aggarwal v. State of NCT*, (2025) 8 SCC 440, he submits that mere failure of the prosecution to prove motive, is not sufficient to order acquittal of the accused, where the other circumstances proved are convincing and provide an unbroken chain of circumstances leading only to one conclusion of guilt of accused and not to any other hypothesis. He submits that such a case is made out against the appellants herein.

ANALYSIS/CONCLUSION

20. From the above, it would be apparent that the case of the prosecution is based on the alleged illicit relationship between the deceased and the appellant no. 2; the appellants and the deceased being last seen leaving together in the evening of 25.07.2000; the appellants disclosing that after they had murdered the deceased, they had dumped his body in the river Ram Ganga, given deceased's one golden colour ring and wrist watch to the sister of appellant no. 2 – PW-6 Ms. Rehana for safe keeping, and sold another gold ring to PW-21 Mr. Sanjeev Kumar and finally, the alleged recovery of the ring and the watch from the PW-6, the cloth piece (katran) allegedly used to strangle the deceased, from the jungle near a bridge on river Ram Ganga at the pointing of the appellants, and another ring from the PW-21, and from the testimony of PW-7 establishing that the rings had been made by him at the asking of the PW-1.

21. What is most important in this case is that the dead body of the deceased could not be recovered. The evidence adduced by the prosecution therefore, has to be tested on this important anvil.



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22. In the entire case of the prosecution, PW-1 plays a pivotal part, and therefore, his testimony is to be discussed in detail, and wherever necessary, reference shall be made to the statements of other witnesses in corroboration or to show contradiction in his testimony.

23. PW-1, in his statement, reiterated the allegation of the deceased having an illicit relationship with the appellant no.2, because of which, he got the deceased married to his sister-in-law- Shabana on 14.07.2000. He further stated that on 20.07.2000, the deceased came to his house, showed him the photographs of his marriage, and stayed at his house in the night. In the morning, he left stating that he is going to his house. As he did not come back to the house for the next 5-7 days, PW-1 went looking for him at his house at Bhagirathi Vihar, where he did not find him. He then, on 27/28.07.2000, enquired from PW-4- Ms. Saraswati, the landlady of the deceased, who informed him that the appellant no.2 used to come to the residence of the deceased and that she had also come on 25.07.2000, and that the deceased had accompanied her at about 9:00 p.m to 9.30 p.m on the same day, and since then he did not return.

24. PW-1 further stated that he then met his brother-in-law-PW-2- Mr. Jakir, who was also living in the same colony, that is, Bhagirathi Vihar, where the deceased used to reside, and enquired about the deceased from him. He is stated to have informed PW-1 that he had seen the deceased along with the appellants near Brijpuri Pulia on 25.07.2000 at about 10.00 p.m.; he had shaken hands with the deceased and enquired as to where the deceased was going, on which,



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the deceased replied that he was going along with the appellants to a village in Rampur to attend a marriage.

25. PW-1 further stated that he searched for the deceased but could not find him. He later came to know that the appellant no.2 was seen in Delhi near Khajoori Pushta. He searched for her and also went to Pooja Colony, where appellant no. 2's sister resides, but could not find her. On enquiry, he came to know that the appellant no.2 was seen there some days ago.

26. It is further stated by PW-1, that one day he came to know that the appellants were seen at Khajoori Pushta, and accordingly informed the police at PS Gokul Puri. He then went to Khajoori Pushta along with SI Kailash Chand, where they apprehended the appellants near Red Light, Khajoori Pushta.

27. He stated that, on interrogation by the police, the appellants stated that they had killed the deceased, but gave different versions of the manner in which they had committed the crime, on which he filed the Complaint-Ex. PW-1/A with the police. We must herein note that the said Complaint on which the FIR was registered under Section 365/34 of the IPC, is dated 24.08.2000, and whereas, as per the prosecution, the appellants had been apprehended on 26.08.2000. This, however, is not sufficient to cast a doubt on the case of the prosecution, as this is only a minor discrepancy in his statement regarding the happening of two days.

28. PW-1 further stated that that the appellants led the police to the house of the sister of the appellant no.2 PW-6 Ms. Rehana at Village



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Rampur, where PW-6 came after some time and on enquiry produced one golden colour ring and one wrist watch, which he identified to be that of the deceased. We must herein note that the fact of the police party leaving for Rampur on 26.08.2000 and recovering the watch and ring from the house of PW-6, is corroborated from the statement of other witnesses as well, as we shall be discussing herein after.

29. He further stated that thereafter, the appellants led the police party to village Wahampuri (other witnesses have referred to it as Vamanpuri/Bamanpuri), Shahbad, and as the police vehicle was about to cross the Ram Ganga Bridge, they pointed the place where they had strangled the deceased with the help of cloth tape (katran) and thrown the body into the river Ram Ganga. He states that the cloth tape (katran) was recovered from the jungle at the showing of the appellants. He stated that the police then called the local divers to try to trace the body from the river, but could not find it. This part of his testimony is also supported by other witnesses, as we shall discuss hereinafter.

30. PW-1 further stated, that thereafter, they all went to the shop of Mr. Sanjeev Kumar (PW-21) in Pooja Colony, U.P, who, after some hesitation, produced the gold ring stating that the appellants had sold the same to him for Rs.700/-.

31. PW-21 Mr. Sanjeev Kumar, the goldsmith, was examined. He state that it was about 2-3 months before the police visited his shop along with the appellant no. 1, that the appellant no. 1 along with a lady had come to sell the ring to him. He pointed to the appellant no. 1



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Mr. Abrar, as the one who had sold the ring to him. He produced a receipt (Ex. 21/A) bearing the signatures of the appellant no. 1, acknowledging sale of the ring and receipt of Rs. 590/- in lieu thereof.

32. As far as purchase of the rings is concerned, the prosecution relied upon PW-7 – Mr. Shahid, who is stated to have sold the same along with other jewellery items to PW-1 and the deceased. He also produced a slip containing the price of the items sold (Ex. P-5).

33. PW-3 Ms. Raisa, is the witness to the alleged disclosure statements of the appellants and the recoveries made at their instance. She states that on 26.08.2000, she was called by the police as she is a Social Worker of the area. She states that the personal search of the appellants was carried out in her presence and they were arrested. She further states that on 27.08.2000, she along with the police went to Rampur, U.P., as the appellants had pointed out that they had left a gold ring and a wrist watch with PW-6 Ms. Rehana, sister of the appellant no.2, and the same was produced by PW-6 to the police party. They also got recovered the brown rope (rassi/katran), and on the next day, that is, on 28.08.2000, the gold ring was also recovered from PW-21- Mr. Sanjeev Kumar at the instance of the appellants.

34. As far as recoveries of two rings, the wrist watch and the cloth tape (katran), is concerned, apart from PW-1, PW-3, PW-21 and PW-7, whose testimonies we have discussed in detail above, PW-6 Ms. Rehana, sister of the appellant no.2 was also examined by the prosecution. She stated that some police officials had come to her village and asked her to sign the papers and, on her refusal, they



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obtained her thumb impression on blank papers. She was cross examined by the learned APP for the State, however, remained hostile. The fact that the police had visited her house, however, gets corroborated by her statement.

35. PW-12 Ct. Ved Ram, P.S. Ganj, Rampur, U.P. was also examined as a witness of the recovery made from the house of PW-6.

36. PW-10 Ct. Nathu Singh from Police Station: Kotwali, District Rampur, stated that on 27.08.2000, he was asked to accompany the officials from the Delhi Police and along with them and the appellant no.1, he went to Ram Ganga Bridge, where the appellant no.1 had pointed to a Sheesham Tree situated about 70-80 metres away from the Ganga Bridge, from where he produced the cloth tape (katran) which was lying in the bushes.

37. PW-18-HC Tanjeb Singh and PW-22-Ct. Subhash from P.S. Gokal Puri were also examined to prove the recoveries made at the instance of the appellants.

38. IO of the case SI Kailash Chand Yadav was examined as PW-20, who deposed about the arrest of the appellants, the disclosures made by them, and the recoveries made at their instance.

39. In ***Gulab Chand*** (supra), the Supreme Court, in a case where recoveries of articles belonging to the deceased had been recovered from the accused, held that while there can be no hard and fast rule laid down as to what inference should be drawn from certain circumstances, and that mere recovery of stolen articles may not be sufficient to infer that the person in possession of the stolen property



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had committed the murder, and that suspicion cannot take place of proof, at the same time, it held that if ornaments in possession of the deceased are found to be in possession of the accused soon after the murder, a presumption of guilt may be permitted under Illustration- (a) to Section 114 of the Indian Evidence Act, 1872.

40. As far as the last seen theory is concerned, the prosecution relies upon PW-2-Mr. Jakir, brother-in-law of the PW-1 and the deceased (as PW-1 and the deceased had been married to two sisters), and on PW-4 Ms. Saraswati, the landlady of the deceased's house in Bhagirathi Vihar.

41. PW-2 Mr. Jakir has stated about seeing the deceased along with the appellants near Brijpuri Pulia at about 10.00 p.m. on 25.07.2000. He has further stated that on enquiry, the deceased told him that they were going to Rampur to attend a marriage. He has also stated that the deceased was wearing two gold rings in his right hand, which he noticed as the deceased shook his hands.

42. PW-4 Ms. Saraswati, the landlady of the deceased's house in Bhagirathi Vihar, in her statement stated that the appellant no.2 used to visit the room of the deceased, and on 25.07.2000 at about 8:30 p.m., she had seen the appellant no.2 and the deceased leaving the house together.

43. From the above analysis of the evidence, it is apparent that the deceased was known to the appellants. The statement of the PW-1 that the deceased was having an illicit relationship with the appellant no. 2, could not be disputed by the appellants.



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44. From the statement of the PW-4, it has also been proved that on 25.07.2000 at about 8:30 P.M., she had seen the appellant no. 2 and the deceased leave the house of the deceased together, informing her that he would not be coming back in the night but would be returning only in the morning. She did not see the deceased thereafter.

45. The learned counsel for the appellants has submitted that this is a very weak piece of last seen evidence, inasmuch as, though the deceased was stated to be missing from 25.07.2000, no complaint was lodged with the police till 24.08.2000, that is, almost a month thereafter. He further submits that PW-2 was the brother-in-law of PW-1 and the deceased, however, he also did not file any complaint with the police when the deceased did not return for such a long time. He submits that this itself throws a doubt on the testimony of PW-1, PW-2 and PW-4 and in any case, their testimony cannot be treated as last seen due to the long passage of time between the alleged last seen and the filing of the complaint of the deceased being missing.

46. While the above submissions would have cut ground in case the prosecution was based only on the last seen theory, however, in the present case, apart from the last seen, there are also recoveries alleged against the appellants on their disclosure.

47. Further, PW-4, who is the landlady of the deceased can have no reason to falsely implicate the appellants as being the persons with whom the deceased had left on 25.07.2000 and not seen thereafter.

48. The reaction of the PW-1 in not lodging a police complaint on finding the deceased missing, is also not unnatural. The deceased had



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been reported to have been last seen leaving with the respondent no. 2, with whom he is alleged to be in an affair. PW-2 and PW-4 had informed the PW-1 that the deceased had been seen leaving with the respondent no. 2, on his own free will and not as a consequence of any threat or coercion. In such scenario, for the PW-1 to make efforts on his own to find the whereabouts of the deceased and the appellants, rather than rushing to the police, cannot be said to be unnatural or such that would cast a doubt on his statement.

49. Similarly, PW-2 had seen the deceased going along with the appellants and was informed that they are going to attend a marriage in a village at Rampur. It cannot be expected that the PW-2 should have raised a hue and cry as he did not see the deceased thereafter for some time.

50. In *Rambraksh* (supra), the Supreme Court held that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. It was held that 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 the possibility of any person other than the accused being the perpetrator of the crime becomes impossible. The prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

51. Similarly, in *Navaneethakrishnan* (supra), the Supreme Court held that the law presumes that it is the person who was last seen with the deceased, who would have killed the deceased, and the burden to



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rebut the same lies on the accused to prove that they had departed. It was held that the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with certainty, however, cannot alone discharge the burden of establishing the guilt of accused beyond reasonable doubt, and requires corroboration.

52. In *Jabir* (supra), the Supreme Court while again emphasising that in a case based on circumstantial evidence, the prosecution is obliged to prove each circumstance as well as the links between all circumstances, beyond reasonable doubt, disbelieved the witnesses who were set up to prove the last seen. Similar was the case in *Murugan* (supra).

53. From the above, it would be evident that the last seen theory is only one of the circumstances, which in conjunction with other circumstances, if proved beyond reasonable doubt, may complete the chain of circumstances alleged against the accused to establish their guilt. Though alone it may not be sufficient to establish the guilt of the accused, along with the other circumstances, it may be vital and may play an important part to establish the guilt.

54. In the present case, having found that the deceased was last seen in the company of the appellants, as stated in the testimonies of PW-2 Mr.Jakir (Brother-in-Law) and PW-4 Ms.Saraswati (landlady), we proceed to consider whether there are other circumstances which would complete the chain of circumstances and bring home the guilt against the appellants.



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55. We have hereinabove discussed in detail the evidence of the witnesses to the recoveries made at the pointing of the appellants. Though the learned counsel for the appellants has made strong emphasis on the PW-3 Ms.Raira not being the natural witness and, in fact, stated that she is a stock witness used by the police, there is no such evidence coming on record to support the same. In fact, she denies such a suggestion put to her. In any event, PW-1 stands firm on the recoveries made at the pointing of the appellants. In addition thereto, the remand application filed stated that the body of the deceased has to be recovered from Rampur, which could only be if the appellants had disclosed the same to the police. There is also evidence of DD entries with respect to the departure of the police party to Rampur; the involvement of the police officials from other police stations in U.P. for recovery of the gold ring and the watch of the deceased from PW-6 Ms.Rehara and the piece of cloth (katran) from near the bridge at Ram Ganga river. There is also the testimony of PW-21 Mr.Sanjeev and PW-7 Mr.Shahid regarding the recovery of the second gold ring and the rings being made at the asking of PW-1 and the deceased.

56. In our view, these circumstances coupled with the last seen evidence, establish the guilt of the appellants.

57. There is, however, still an important point to be considered, which is that the dead body of the deceased has not been recovered. It is the case of the prosecution that the appellants, after strangulating the deceased, had thrown his body in the Ram Ganga river. It has also



come on record that the police party which went to Rampur, made efforts to recover the dead body from the river, and having not been successful in the same, even went to various police stations on the way, inquiring if any dead body has been recovered.

58. In Sanjay Rajak (supra), the Supreme Court discussed in detail the law relating to circumstance of non-recovery of the dead body/*corpus delicti* and the effect it has on the case of prosecution, by holding as under:

“9. It is not an invariable rule of criminal jurisprudence that the failure of the police to recover the corpus delicti will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behavior. In the facts and circumstances of the present case, the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with the recovery from his house of the belongings of the deceased. Rama Nand v. State of Himachal Pradesh, (1981) 1 SCC 511, was a case of circumstantial evidence where the corpus delicti was not found. This court upholding the conviction observed:

“28.....But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where



the discovery of the dead body is impossible. A blind adherence to this old “body” doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale’s enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. “homicidal death” is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3 of the Evidence Act, a fact is said to be “proved”, if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned....”

10. *Sevaka Perumal v. State of Tamil Nadu*, (1991) 3 SCC 471, was also a case where the corpus delicti was not found yet conviction was upheld observing:



“5....In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced...””

59. In view of the above, mere non-recovery of the dead body is not fatal and cannot come to the aid of the appellants.

60. For the reasons stated hereinabove, we find no merit in the present appeal. The same is accordingly dismissed.

61. The appellants must surrender, within a period of two weeks from today, to undergo their remaining sentence. In the event of failure to surrender within two weeks of the date of this judgment, appropriate steps shall be taken by the State to ensure their arrest for undergoing the remaining sentence.



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62. A copy of this order be sent to the learned Trial Court as also the concerned Jail Superintendent for ensuring compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

MARCH 18, 2026/Arya/sg/pb