



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ **CRL.A. 326/2003**

INAM SINGH@BHURA

.....Appellant

Through: Mr.Nikhil Palli, Adv. (*Amicus Curiae*) with Ms.Niyati Razdan, Adv.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp. Rajeev Kumar, P.S. Najafgarh.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

NAVIN CHAWLA, J.

1. The present appeal has been filed by the appellant against the judgment of conviction dated 18.10.2002 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as, the 'Trial Court') in Sessions Case No. 7/2002, arising out of FIR No. 529/2000, registered under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as, the 'IPC') at Police Station Najafgarh, Delhi, convicting the appellant of the offence punishable under Section 302 of the IPC.



2. The appellant further challenges the order on sentence dated 01.11.2002 passed by the learned Trial Court, whereby the appellant has been sentenced to undergo imprisonment for life along with a fine of Rs.100/- for the said offence. In default of payment of the fine, he has been sentenced to undergo further rigorous imprisonment for one day.

CASE OF THE PROSECUTION:

3. Briefly stated, it is the case of prosecution that:
- a. On 27.10.2000, at about 2:45 a.m., information was received by PW-9/ASI *Puran Singh*, who was posted in a PCR van in Najafgarh, that a person was lying in a pool of blood behind the Krishna Model Chottewala School.
 - b. Upon receiving the said information, PW-9/ASI *Puran Singh* proceeded to the spot and reached the house of PW-12/Ram Kishan, where he found the deceased lying in a pool of blood in an unconscious state. PW-9/ASI *Puran Singh* then removed the deceased to the DDU Hospital for treatment. This information was recorded *vide* DD No. 6B (Ex.PW5/2).
 - c. At about 2:50 a.m., information was also received at Police Station Najafgarh that a person was lying in a pool of blood behind Krishna Model Chottewala School. The said information was recorded *vide* DD No. 5A, (Ex.PW5/1), and was forwarded to PW-5/Head Constable *Sant Ram*, who along with PW-2/Constable *Santosh Kumar* proceeded to the alleged



place of occurrence and reached the residence of PW-12/*Ram Kishan*. As the deceased had already been moved to the hospital by a PCR van, PW-5/*HC Sant Ram* proceeded to the DDU Hospital, while PW-2/*Constable Santosh Kumar* remained at the spot.

d. On reaching the hospital, PW-5/*HC Sant Ram* moved an application (Ex.PW5/3) for permission to record the statement of the deceased. The deceased, however, was declared to be unconscious and unfit to make a statement.

e. Subsequently, an FIR bearing No. 529/2000 (Ex.PW1/1) was registered by PW-1/*HC Sudesh* under Section 308 of the IPC, and the investigation was entrusted to PW-7/*ASI Om Prakash*.

f. During the course of the investigation, PW-7/*ASI Om Prakash* visited the place of occurrence, that is, the residence of PW-12/*Ram Kishan*. He prepared the rough site plan (Ex. PW-7/1) and the seizure memo (Ex. PW-2/1) regarding the seized hand pump cylinder, an empty liquor bottle, two glasses, blood-stained pieces of the floor, pieces of bricks, earth control and sample of blood seized from the spot.

g. In the meanwhile, the deceased succumbed to his injuries and passed away on 27.10.2000, at around 2:10 p.m. The said information was recorded *vide* DD No. 42B (Ex.PW-7/2).

h. The prosecution alleged that further investigation revealed that PW-12/*Ram Kishan* was acquainted with the appellant and the deceased. On the eve of Diwali, that is, on



26.10.2000, at about 8:30 p.m., PW-12/*Ram Kishan*, PW-6/*Jai Bhagwan*, the appellant, and the deceased had reached the house of PW-12/*Ram Kishan* and consumed liquor there. At about 9:20 p.m., PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* had left the room, leaving the appellant and the deceased there alone. Later, at about 12:40 a.m. on 27.10.2000, PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* returned to the house of PW-12/*Ram Kishan*, found the door locked, and on peeping through a window, found the appellant lying on a cot. They then knocked on the door, which was opened by the appellant, whereupon, PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* saw the deceased lying unconscious in a pool of blood on the floor. On being questioned by PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan*, the appellant allegedly stated that the deceased had quarrelled with him, due to which he had hit the deceased with an iron pipe.

i. Thereafter, PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* proceeded to Dharampura area to the residence of the maternal uncle of the deceased to intimate him, but were unable to meet him as he did not wake up. PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* then went to the house of PW-6/*Jai Bhagwan* in Dichaon Kalan. From there, PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* went to the *Bhatta* near village Badli in Haryana. In the evening of 27.10.2000, upon returning to the residence of PW-12/*Ram Kishan*, they came to know that the deceased had



succumbed to his injuries. PW-12/Ram Kishan then approached the police and disclosed the facts of the incident.

j. Thereafter, the investigation was taken over by PW-15/S.I. Jagbir Singh, who learnt that the appellant was lodged in the Etah Jail, Etawah, in connection with another case. Accordingly, PW-15/S.I. Jagbir Singh got a production warrant issued for 15.11.2000. Thereupon, the appellant was produced and was formally arrested by PW-15/S.I. Jagbir Singh in the present case.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

4. The learned Trial Court, *vide* the order dated 10.05.2001, framed the following charge against the appellant:

“that you on 26/10/2000 in between 10-30 P.M. to 12-30 A.M. at RZ-17, Roshan Pura, near Krishna Model School, Najafgarh, New Delhi, committed murder of Munshi Ram and thereafter committed an offence punishable u/s- 302 IPC and within my cognizance.”

5. The appellant pleaded not guilty and claimed trial.
6. To prove its case, the prosecution examined 15 witnesses, including the alleged ‘last seen’ witnesses and the concerned official witnesses.
7. The appellant, in his examination under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, ‘Cr.P.C.’), denied the incriminating evidence against him. He stated that he used to sell *agarbattis* in the Najafgarh area. PW-12/Ram Kishan had borrowed Rs. 5000/- from him and when he had



demanded the said money back for his son's treatment in a hospital at Khanpur, PW-12/*Ram Kishan* had initially requested for additional time and later denied to repay. He denied his presence at the place of occurrence and stated that on the eve of Diwali, he had gone to his house for 5-6 days. He further stated that he had neither met the deceased or PW-6/*Jai Bhagwan* nor did he know them. He also stated that he had been falsely implicated in the present case and claimed to be innocent. In his supplementary statement under Section 313 of the Cr.P.C., he stated that it was correct that he was lodged in the District Jail Etawah in connection with another case and a production warrant was issued pursuant to which he was formally arrested in the present case.

8. The appellant did not lead any evidence in his defence.

FINDINGS OF THE LEARNED TRIAL COURT

9. The learned Trial Court primarily relied upon the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* and on the judgment of the Supreme Court in ***Tahir v. State (Delhi)***, (1996) 3 SCC 338, and held that the deceased was last seen alive with the appellant. The learned Court observed that PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* had left the appellant alone in the company of the deceased at around 9:30 p.m. They had returned to the house at around 12:30-12:40 a.m., and found the deceased lying unconscious in a pool of blood. It was held that, therefore, the appellant was last seen with the deceased.



10. The learned Trial Court also accepted the explanation furnished by PW-6/*Jai Bhagwan* for not reporting the incident to the police, and opined that the conduct of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* was not unnatural or abnormal. It was opined that they were puzzled upon seeing the deceased in an unconscious state and did not want to get involved in the quarrel between the appellant and the deceased. The learned Trial Court further observed that they were unaware that the injuries sustained by the deceased were of such serious nature as to result in his death.

11. The learned Trial Court found the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* to be reliable and also rejected the contention that the uncle of the deceased would have accompanied them had they actually gone to his house to intimate him.

12. The learned Trial Court also relied upon the extra-judicial confession made by the appellant to PW-12/*Ram Kishan* and PW-6/*Jai Bhagwan* when they had come back to the room.

13. The learned Trial Court observed that the failure on the part of the learned counsel for the appellant to cross-examine PW-12/*Ram Kishan* on the aspect of him borrowing Rs.5000/- from the appellant, indicated that this plea of the appellant was merely an afterthought. The learned Trial Court, relying on ***Virsa Singh v. State of Punjab***, 1958 SCC OnLine SC 37, along with the MLC Report and the Post-Mortem Report, held that the appellant intended to inflict the injuries sustained by the deceased.



14. Consequently, the appellant was convicted for the offence under Section 302 of the IPC and the order on sentence dated 01.11.2002 was passed, imposing the sentence as noted hereinabove.

SUBMISSIONS OF THE LEARNED AMICUS CURIAE FOR THE APPELLANT

15. Mr.Nikhil Palli, Advocate, the learned *Amicus Curiae* appointed for the appellant by the order dated 22.08.2025, submits that the appellant has been convicted purely on the basis of the circumstantial evidence, including the 'last seen' theory, which has been wrongly applied in the present case. He submits that PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*, instead of taking the deceased to the hospital or alerting the police, left him unconscious in a pool of blood and claimed to have gone to Dharampura area to alert the maternal uncle of the deceased. However, no evidence in the form of statements of neighbours or other public witnesses, or travel records was produced by the prosecution. Further, the behaviour of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* in neither alerting the authorities nor attending to the deceased is unnatural and questionable.

16. He submits that though it is also the testimony of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* that they left the appellant and the deceased at the residence of PW-12/*Ram Kishan* as PW-6/*Jai Bhagwan* had to go for his duty as the conductor of a bus, there is no corroboration to this claim as well. The learned *Amicus Curiae* submits that the statements of these two witnesses, PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*, are irreconcilable and the



prosecution has not produced any route details, travel time evidence, duty records, or depot entries to bridge this gap.

17. He submits that even though PW-8/*Sanjeev Kumar*, the landlord, saw four people entering the apartment, he did not see any of them leaving. In such circumstances, the possibility of any person other than the appellant being the perpetrator of the crime cannot be ruled out. Further, the time gap between the appellant and the deceased being last seen together by PW-8/*Sanjeev Kumar*, that is, at about 9:00 p.m., and the deceased being removed to the hospital, is not so narrow as to exclude the possibility of the offence having been committed by PW-6/*Jai Bhagwan*, PW-12/*Ram Kishan*, or even by some other person. In furtherance of his submission, he places reliance on the judgment of the Supreme Court in ***Bodhraj @ Bodha & Ors. v. State of Jammu and Kashmir***, (2002) 8 SCC 45.

18. He submits that there is also a discrepancy on how the body of the deceased was discovered by the police. As per the prosecution, the information received was of a person lying in a pool of blood behind Krishna Model Chottewala School. How the police reached the house of PW-12/*Ram Kishan* on the basis of this information has not been explained by the prosecution.

19. He submits that though the present case relies on circumstantial evidence, neither has any motive been imputed to the appellant nor was the weapon of offence established. He places reliance on the judgments of the Supreme Court in ***Kundula Bala Subrahmanyam & Anr. v. State of Andhra Pradesh***, 1993 (2) SCC 684; ***State of Haryana v. Sher Singh & Ors.***, (1981) 2 SCC 300; and, ***Sakharam v.***



State of Madhya Pradesh, (1992) 2 SCC 153, to submit that it is a settled principle of law that absence of motive assumes significance when the prosecution's case rests entirely on circumstantial evidence.

20. Further, placing reliance on ***Sujit Biswas v. State of Assam***, (2013) 12 SCC 406, he submits that the possibility of the appellant being innocent cannot be ruled out, as the chain of evidence does not establish the guilt of the appellant with unshakable certainty. He also places reliance on ***Sharad Birdhichand Sarda v. State of Maharashtra***, (1984) 4 SCC 116, to submit that the prosecution case fails to satisfy the test of the five golden principles, that is, the 'panchsheel', governing cases based on circumstantial evidence. As laid down in the said case, the hypothesis borne out of the facts of the present case does not point only towards the guilt of the appellant.

21. He also places reliance on the judgments of the Supreme Court in ***Kali Ram v. State of Himachal Pradesh***, (1973) 2 SCC 808; and ***Pradeep Kumar v. State of Chhattisgarh***, (2023) 5 SCC 350, to submit that when two views are possible on the basis of the evidence adduced then the view favouring the accused must be adopted, especially when the case is based on circumstantial evidence alone.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE

22. Mr. Aman Usman, the learned Additional Public Prosecutor for the State, submits that the prosecution has successfully established the guilt of the appellant beyond reasonable doubt through reliable oral, medical and circumstantial evidence. He contends that the learned Trial Court has rightly recorded the finding of conviction and that the



impugned judgment suffers neither from perversity nor from any misreading of evidence, warranting interference by this Court.

23. He submits that the prosecution's case primarily rests upon the testimony of PW-12/*Ram Kishan*, whose presence at the place of occurrence is natural and undisputed, as he was the tenant of the premises from where the deceased was recovered in an injured condition. PW-12/*Ram Kishan* was also acquainted with both the deceased and the appellant, which rules out any possibility of mistaken identity. He submits that the learned Trial Court has rightly accepted the testimony of PW-12/*Ram Kishan* as reliable since nothing material emerged during his cross-examination to discredit his version. He submits that the testimony of PW-12/*Ram Kishan* is also consistent and corroborated with the testimony of PW-6/*Jai Bhagwan* on every material aspect.

24. He further submits that as per the testimony of PW-6/*Jai Bhagwan*, when PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* returned to the place of occurrence, they found the room bolted from inside which was opened by the appellant. They then found the deceased lying unconscious in a pool of blood. According to the learned APP, these circumstances establish that the deceased was last seen alive in the exclusive company of the appellant, and the fact that the door was bolted from inside, rules out the possibility of any third-party gaining access to the room.

25. He submits that the appellant failed to offer any plausible explanation regarding the injuries sustained by the deceased or when and how he parted ways with the deceased. He submits that such



failure on the part of the appellant constitutes an additional link in the chain of circumstances that establishes his guilt.

26. The learned APP also places reliance on the extra-judicial confession made by the appellant to PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*, and submits that the same was voluntary, spontaneous and made prior to the commencement of investigation, thereby lending considerable assurance to its truthfulness and reliability.

27. He submits that the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* are also corroborated by the medical evidence. The MLC Report and the Post-Mortem Report indicate that the deceased suffered multiple grievous head injuries resulting in cranio-cerebral damage. The injuries were caused by a hard and blunt object and were sufficient in the ordinary course of nature to cause death. Further, the prosecution's case is strengthened by the recovery of an iron pipe/cylinder pipe of the handpump, which was used in the commission of the offence.

28. He submits that the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* deserve full acceptance as there existed no motive for them to falsely implicate the appellant. The plea of the appellant that he had lent money to PW-12/*Ram Kishan* leading to his false implication, is a mere suggestion which remains uncorroborated.

29. He submits that the appellant, in his statement under Section 313 of the Cr.P.C., stated that he had gone to his native village on the occasion of Diwali, however, the said defence was neither put to the prosecution witnesses nor substantiated through any defence evidence.



Consequently, the learned Trial Court rightly considered the plea to be an afterthought and devoid of any evidentiary value.

30. The learned APP also relies upon the testimony of PW-7/ASI *Om Prakash* regarding the contemporaneous recovery of the blood-stained earth, earth control, liquor bottles, glasses, hand pump cylinder and other incriminating articles from the place of occurrence, to submit that the investigation was conducted promptly, fairly and impartially.

31. He submits that even though the information of the offence recorded *vide* DD No. 5A (Ex. PW 5/1) does not mention the place of occurrence as the house of PW-12/*Ram Kishan*, the place of occurrence was in close proximity to the landmark mentioned in the information received and, due to such proximity, it was not difficult for the police to locate the same.

32. It is submitted by the learned APP that even if it is assumed that there are certain deficiencies or lapses in the investigation, such defective investigation cannot constitute a ground to discard the otherwise reliable and trustworthy evidence. He contends that the substantive evidence adduced by the prosecution independently establishes the guilt of the appellant beyond a reasonable doubt and any alleged defects in the investigation cannot enure to the benefit of the appellant.

33. He further contends that the inconsistencies highlighted by the learned *Amicus Curiae* relate to peripheral aspects of the prosecution's version, are natural in a truthful testimony, do not form a core part of



the prosecution's case and are attributable to the witnesses deposing after a lapse of time.

34. In conclusion, the learned APP submits that the prosecution has succeeded in establishing an unbroken chain of circumstances, showing that: (i) the deceased was last seen alive in the exclusive company of the appellant; (ii) the appellant failed to explain the injuries sustained by the deceased while he was in his exclusive company; (iii) the appellant made an extra-judicial confession admitting to the assault; (iv) the medical evidence fully corroborates the oral testimonies; (v) the recovery of the weapon strengthens the prosecution case; and, (vi) no circumstance has been brought on record which is consistent with the appellant's innocence. Accordingly, he submits that the cumulative effect of these circumstances unmistakably points to the guilt of the appellant.

ANALYSIS AND FINDINGS

35. We have considered the submissions made by the learned counsels for the parties and have perused the record.

36. The case of the prosecution is based on the 'last seen' theory. It is supported by the testimony of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*, with corroboration sought from the testimony of PW-8/*Sanjeev Kumar*. We shall, therefore, first consider the testimony of these witnesses in detail.

37. PW-6/*Jai Bhagwan* stated that on 26.10.2000, on the day of Diwali, he was on duty on a DTC Bus plying on route no. 835 from 5:00 p.m. onwards, with his rest time being from 8:30 to 9:30 p.m.



During his rest time, he had gone to Najafgarh to buy some articles, where he found PW-12/*Ram Kishan*, whom he knew from before, along with the appellant and the deceased, neither of whom he knew from before. He accompanied the three of them to the room of PW-12/*Ram Kishan* located at Dharampura, where the four of them started consuming liquor. He stated that after he had consumed a small quantity of liquor, he told the others that he had to resume his duty at 9:30 p.m. from Najafgarh. He, along with PW-12/*Ram Kishan*, left the residence of PW-12/*Ram Kishan* at about 9:20 p.m., leaving the deceased and the appellant behind. He stated that when they reached the place from where he was to take the trip, they found that the driver had already taken the Bus to the DTC Depot. They, therefore, reached the DTC Depot, that is, at Dichaon, from where he took the bus for the trip. He completed his trip at Tilak Nagar. After completing the trip, he took the vehicle to DTC Dichaon and deposited the cash. He states that PW-12/*Ram Kishan* had remained with him throughout this trip. Thereafter, he and PW-12/*Ram Kishan* proceeded to the residence of PW-12/*Ram Kishan*, where they found the door of the quarter bolted from inside. They gave several calls and after a few minutes, the appellant opened the door. He stated that he noticed that the appellant had an injury on his head and the deceased also had serious head injuries and was bleeding. The deceased and the appellant were under the influence of liquor. He further stated that upon inquiry, the appellant told him that the deceased had abused the appellant, after which a quarrel had taken place and they had assaulted each other. He stated that he saw an iron rod lying near the deceased. He stated that



on seeing the condition of the deceased, he and PW-12/Ram Kishan were puzzled and thought that both, the deceased and the appellant, would get themselves treated in the morning. They, therefore, left the place. The appellant then bolted the door of the room from inside. He stated that PW-12/Ram Kishan had accompanied him to his house in Village Dichaon and had stayed with him. In the morning, they came to know that the deceased had sustained serious injuries and was removed to a hospital where he passed away. He denied the suggestion that a quarrel had taken place in his presence when they were taking liquor or that he had seen the actual infliction of injuries upon the deceased by the appellant. He again stated that since it was night and he and PW-12/Ram Kishan were puzzled, they did not intimate the neighbours or the police.

38. Interestingly, the following suggestion was put to him by the learned counsel appearing for the appellant, to which he answered as under:

“Q. I put it to you that Munshi Ram was so intoxicated that he could not control himself and had fallen on the hand pump cylinder and sustained the injury accidentally or that the accd. had caused the injuries.

Ans. Since I was not there, therefore, I cannot say as to how it had happened. It is wrong to suggest that accused had not told anything to me or that in this regard I have deposed at the behest of the police.”

39. It is also relevant to note herein itself that in his examination-in-chief, PW-6/Jai Bhagwan had given the name of the deceased as Prem Singh, which he later clarified as Munshi Ram. He stated that he had



taken a wrong name as he did not know the deceased from before.

40. The other witness to the 'last seen' is PW-12/*Ram Kishan*, who stated that he knew the deceased from before. He also knew the appellant, as the appellant hailed from the same District, that is, District Etawah, and he, as also the appellant, used to sell *agarbattis*. He stated that on 26.10.2000 at about 8 p.m., he had come to his room along with the deceased, the appellant, and PW-6/*Jai Bhagwan*. He stated that PW-6/*Jai Bhagwan* had met them on the way. All of them reached the room at about 8:30 p.m. and then consumed liquor. He stated that at about 9:30 p.m., PW-6/*Jai Bhagwan* left the room stating that he had to attend his duty. He stated that he also accompanied PW-6/*Jai Bhagwan*, while the appellant and the deceased were left in the room. He stated that when he and PW-6/*Jai Bhagwan* reached the bus stop, they came to know that the driver of the bus of which PW-6/*Jai Bhagwan* was the conductor, had taken the bus to the depot. They, therefore, went to the DTC Bus Depot, Dichaon Kalan, from where PW-6/*Jai Bhagwan* had taken the bus for Tilak Nagar. After completing the trip, they came back to the room at about 12:40 a.m. They peeped through the window and found the appellant lying on a cot. The door of the room was found bolted from inside, so they knocked at the door, and the appellant opened it. He stated that they then found the deceased lying unconscious in a pool of blood on the floor. They inquired from the appellant as to what had happened, upon which the appellant informed them that the deceased had a quarrel with him and, therefore, he had hit the deceased with an iron pipe. He stated that he and PW-6/*Jai Bhagwan* then went to the house of the



maternal uncle of the deceased, who used to reside in the Dharampura area, to intimate him, however, the uncle did not wake up. He stated that he and PW-6/*Jai Bhagwan* got perplexed and frightened and, therefore, they both went to Dichaon Kalan, to the house of PW-6/*Jai Bhagwan*, where they stayed during the night. From there, they both went to the *bhatta* of PW-6/*Jai Bhagwan* near Village Badli in Haryana and in the evening they came back to the room of PW-12/*Ram Kishan*, and came to know that the deceased had died. He stated that they, therefore, went to the police station and narrated the facts to the police officials. He admitted that there were four more rooms in the house where he was a tenant. Two of the other rooms were occupied by tenants, while the remaining two were in the occupation of the landlord, who sometimes used to come to those rooms, while at other times, they used to remain locked. He stated that all the five rooms were in a row and the first room was a *mandir* belonging to the landlord; the next room was in his possession; the third and the fourth rooms were in the possession of the other tenants and the fifth room was in the occupation of the landlord. He stated that he did not notice if the other tenants were in the room when he had come to his room to consume liquor, or when he left the room, nor had anyone from the locality come to inform them that a quarrel had taken place between the deceased and the appellant. He denied the suggestion that he was deposing falsely as he had some business rivalry with the appellant. He also stated that he had not complained to the police as he was frightened.

41. The other important witness for the prosecution is PW-



8/*Sanjeev Kumar*, the landlord of the room of PW-12/*Ram Kishan*. He stated that on 26.10.2000, on the day of Diwali, four persons had come to the room of PW-12/*Ram Kishan*. He did not know the three persons accompanying PW-12/*Ram Kishan* by name, but was familiar with their faces as they used to come to that room repeatedly. He stated that they had come to the room at about 9 p.m., had started taking liquor, and were also making noise. He stated that he did not know what happened thereafter, but at about 3:00 a.m. on 27.10.2000, police officials came and an injured man, who was crying, was removed to the hospital. He identified the appellant as one of the persons who had come to the room of PW-12/*Ram Kishan* on 26.10.2000 and consumed liquor. Importantly, he was not cross-examined by the appellant.

42. From the above testimonies, it would be clear that PW-6/*Jai Bhagwan*, PW-8/*Sanjeev Kumar* and PW-12/*Ram Kishan* are the witnesses for the 'last seen', who had seen the appellant with the deceased on the night of the incident.

43. The learned *Amicus Curiae* appearing on behalf of the appellant has tried to discredit the testimony of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* by stating that their conduct upon seeing the deceased in an injured condition was unnatural, as instead of helping the deceased, they decided to go to the house of the maternal uncle of the deceased (as per PW-12/*Ram Kishan*) or to the house of PW-6/*Jai Bhagwan* (as per PW-6/*Jai Bhagwan*). He submits that PW-12/*Ram Kishan* and the appellant were in the same business of selling *agarbattis* and, therefore, PW-12/*Ram Kishan* tried to falsely



implicate the appellant in this case.

44. He submits that even PW-8/*Sanjeev Kumar* has not come out as a reliable witness and, in any case, cannot be stated to be a witness for last seen, as he had seen the appellant in company of even PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* and has not deposed of having seen the appellant alone with the deceased at any later stage.

45. We find merit in the said submissions of the learned *Amicus Curiae*.

46. PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* have given complete details of how they, along with the appellant and the deceased, got together and went to the room of PW-12/*Ram Kishan* to consume liquor. Their testimonies are supported by PW-8/*Sanjeev Kumar*, who stated that he saw four persons coming to the room of PW-12/*Ram Kishan* on the fateful night for consuming liquor. PW-8/*Sanjeev Kumar* also identified the appellant as one of the four persons. As noted by us hereinbefore, PW-8/*Sanjeev Kumar* was not cross-examined on this vital evidence and, therefore, his testimony and identification of the appellant as one of the persons who was with the deceased in the room of PW-12/*Ram Kishan*, remain unchallenged. Having accepted that the appellant was seen in the company of the deceased, the question to be considered is whether the prosecution has carried this circumstance to the irrefutable conclusion that it could only be the appellant who caused injuries to the deceased resulting in his death.

47. We would first take note of the settled position of law on ‘last seen’ being an important circumstance in the chain of circumstances



to bring home the guilt against the accused. It is no longer *res integra* that the last seen theory comes into play when the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. Even in such cases, the Courts should look for some corroboration as ‘last seen together’ does not, by itself, necessarily lead to the inference that it was the accused who had committed the crime. It has been held that there must be something more, establishing the connectivity between the accused and the crime and, therefore, the Court should look for some corroboration. We may quote from the judgment of the Supreme Court in **Anand Jakkappa Pujari @ Gaddadar v. State of Karnataka**, 2026 SCC OnLine SC 716, as under:

“41. 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 the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case, the courts should look for some corroboration.

42. In *State of U.P. v. Satish*, (2005) 3 SCC 114 : 2005 SCC (Cri) 642, this Court observed:—

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the



deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.

(Emphasis Supplied)

43. *By now, it is a well settled position of law that the circumstance of “last seen together” does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. The Courts should look for some corroboration.”*

48. In ***Manoj alias Munna v. State of Chhattisgarh***, 2025 SCC OnLine SC 2858, while reiterating the above principles, the Supreme Court further considered as to whether the mere absence of any explanation by the accused about when he left the company of the deceased is sufficient to bring home the charge against the accused. The Supreme Court held that under Section 106 of the Indian Evidence Act, 1872, it becomes incumbent upon the accused to explain how and when he parted ways with the deceased, as such fact was within the exclusive knowledge of the accused. However, at the same time, Section 106 of the Indian Evidence Act does not shift the primary burden of proof to establish the guilt of an accused, which, in a criminal trial, always remains on the prosecution. It was held that an adverse inference under Section 106 of the Indian Evidence Act is to



be drawn against the accused person only when the prosecution has been able to establish the case beyond reasonable doubt. Section 106 of the Indian Evidence Act does not dilute or substitute the fundamental obligation of the prosecution to prove the guilt of the accused beyond reasonable doubt, and can come into operation only in situations where the prosecution has already established a reasonable inference against the accused. Though the ‘last seen’ and absence of any explanation by the accused may raise a doubt that he may have committed the offence but these are not, in the absence of other material, sufficient to convict the accused. We quote from the judgment as under:

“24. The doctrine of last seen rests on the logical presumption that where an individual is last seen alive in the close company of an accused, and is soon thereafter found dead, the accused must reasonably account for the circumstances in which they parted ways, as such facts fall particularly within his knowledge. Thus, it rests on the presumption that human behavior follows natural probabilities, and, hence, the person who was last seen with the deceased must be able to explain the facts that resulted in the subsequent death of the deceased.

25. Recently in the case of Padman Bibhar v. State of Odisha, this Court, speaking through one of us (Prashant Kumar Mishra, J.), while acquitting the accused of charges under Sections 302 and 201 of the IPC held that the conviction cannot be sustained against the accused merely on the ground that the accused was last seen with the deceased.

26. In Rambraksh v. State of Chhattisgarh, this Court observed that the last seen theory applies only when the time gap between the



last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

“12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.”

(emphasis applied)

27. Further this Court in the case of *Krishnan alias Ramasamy v. State of Tamil Nadu* while relying on its judgment in *Arjun Marik v. State of Bihar* observed as follows:

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

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen



last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.””

(emphasis supplied)

28. In *Kanhaiya Lal v. State of Rajasthan*, this Court held that evidence on last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 of the IPC.

29. Another circumstance that the High Court took into consideration against the appellant was that the present appellant has not offered any explanation about when he left the company of the deceased Yuvraj Singh Patle and in absence of such explanation and circumstance, inference would be possible that the present appellant has committed homicidal death amounting to murder of Yuvraj Singh Patle and with a view to conceal the evidence of crime, he burnt his dead body.

30. It is a settled principle that Section 106 of the Indian Evidence Act, 1872 clearly provides that when a fact lies especially within the knowledge of a person, the burden of proving that fact rests upon him. Accordingly, when an accused is shown to have been last seen in the company of the deceased, it becomes incumbent upon him to explain how and when they parted ways. The explanation furnished must be reasonable, probable, and satisfactory in the opinion of the Court. If such an explanation is offered, the burden cast by Section 106 of the Evidence Act stands discharged. However, if the accused fails to present a credible explanation regarding facts within his special knowledge,



this failure constitutes an additional link in the chain of circumstantial evidence established against him. At the same time, it must be emphasized that Section 106 of the Evidence Act does not shift the primary burden of proof, which in a criminal trial always remains on the prosecution.

31. Thus, any adverse inference under Section 106 of the Evidence Act is to be drawn against the accused person when the prosecution has been able to establish the case beyond a reasonable doubt.

32. This Court in the case of *Sabitri Samantaray v. State of Odisha* while elaborating on the principle surrounding Section 106 of the Evidence Act observed that this provision does not dilute or substitute the prosecution's fundamental obligation to prove the guilt of the accused beyond reasonable doubt. Rather, it comes into operation only in situations where the prosecution has already established a reasonable inference against the accused. This Court held thus:

“18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the



prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] ”

(emphasis supplied)

33. Further, in the case of Anees v. State Government of NCT, this Court held thus:

“37. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word “especially” means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, “especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience”.”

(emphasis supplied)

D. CONCLUSION



34. *In view of the above discussion, we are of the opinion that the nature of circumstantial evidence available against the appellant though raises a doubt that he may have committed the offence but the same is not so conclusive that he can be convicted only on the evidence of the last seen together. Be that as it may. It is a settled proposition that whenever any doubt emanates in the mind of the Court, the benefit shall accrue to the accused and not the prosecution. The present is a case where except for the evidence of last seen together, there is no other corroborative evidence against the appellant. Therefore, the conviction only on the basis of last seen together cannot be sustained."*

49. We shall now test the evidence led by the prosecution on the above principles. We shall also proceed on the assumption that the appellant was last seen in the company of the deceased and that he has not explained when and how he parted ways with the deceased.

50. As noted hereinabove, the case of the prosecution primarily rests on the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*. While it is their case that they left the appellant and the deceased in the company of each other in the room of PW-12/*Ram Kishan*, no proof or corroboration of such statement is forthcoming from the prosecution. If PW-6/*Jai Bhagwan* had indeed gone for his bus duty, there would have been some evidence produced by the prosecution to corroborate the same. For PW-12/*Ram Kishan* to leave the appellant and the deceased in his room while going along with PW-6/*Jai Bhagwan* without any work and in the middle of the night, is also an unnatural conduct, especially when the entire case starts on an averment that it was PW-12/*Ram Kishan*, the appellant, and the



deceased who had planned to sit together and consume liquor on Diwali and to celebrate the festival. In such circumstances, why PW-12/*Ram Kishan* would suddenly leave the appellant and the deceased and go along with PW-6/*Jai Bhagwan*, who was not even a part of the initial plan, has not been explained and is found to be unnatural.

51. Even more unnatural is the conduct of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* after they allegedly returned at around 12:30-12:40 a.m., after PW-6/*Jai Bhagwan* had finished his duty. They, after seeing the deceased lying unconscious in a pool of blood, instead of helping him, went away. While PW-6/*Jai Bhagwan* has stated that after leaving the deceased in an injured condition, they both proceeded to the house of PW-6/*Jai Bhagwan*, PW-12/*Ram Kishan* states that they first went to the house of the maternal uncle of the deceased, then to the house of PW-6/*Jai Bhagwan* at Dichaon Kalan and, thereafter, to the *bhatta* of PW-6/*Jai Bhagwan* near Village Badli in Haryana. These are not minor inconsistencies as claimed by the learned APP, but are sufficient to cast doubt on the version of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan*.

52. The learned Trial Court erred in placing unquestioned reliance on the testimonies of PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* and upon their versions of the incident. It failed to note that though it may have been possible that PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* would have walked away from the place of the incident, wanting not to be involved in the same, but in the present case, the place of the incident was the room of PW-12/*Ram Kishan* himself. It would, therefore, have been extremely unnatural for a person to leave an



injured friend in his own room, rather than taking him for medical treatment.

53. The learned Trial Court also erred in observing that PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* may not have been able to gather the gravity of the injuries suffered by the deceased, as this is contrary to their testimonies wherein they stated that the deceased was lying unconscious and in a pool of blood. It is also not shown by the prosecution as to who discovered the deceased in a pool of blood and informed the police about the same.

54. The next circumstance against the appellant is the recovery of the cylindrical portion of a handpump, which is claimed by the prosecution to be the weapon of offence. Curiously, the same was not shown to the doctor who conducted the post-mortem of the deceased, that is, PW-4/*Dr. Alexander*, for obtaining his opinion if the injuries on the deceased could have been caused by the same. There is also no forensic evidence on whether any blood was found on the same. These were vital pieces of evidence which were required to complete the chain of circumstances. In their absence, there are only loose pieces of circumstances which are not connected so as to bring home the guilt of the appellant.

55. Another piece of evidence relied upon by the prosecution is the alleged extra-judicial confession made by the appellant to PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* when they returned to the house of PW-12/*Ram Kishan*, wherein the appellant allegedly stated that a quarrel had taken place and the deceased and the appellant had assaulted each other. However, we have already noted hereinabove



that PW-6/*Jai Bhagwan* and PW-12/*Ram Kishan* do not come out to be completely reliable witnesses.

56. It is settled law that if the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the same, even if it is admissible in evidence. The value of such confession depends upon the veracity of the witness to whom it has been made. An extra-judicial confession, by its very nature, is a rather weak type of evidence and requires appreciation with a great deal of care and caution. Where it is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. We may usefully refer to the judgments of the Supreme Court in ***Sahadevan & Anr. v. State of Tamil Nadu***, (2012) 6 SCC 403, and ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh***, (2023) 16 SCC 510.

57. It is a settled principle of law that where the case of the prosecution is based on circumstantial evidence, the chain of circumstances must be complete and should exclude every possible hypothesis except the one pointing to the guilt of the accused. It should not leave any reasonable ground for a conclusion consistent with the innocence of the accused. We may quote from the judgment of the Supreme Court in ***Jabir & Ors. v. State of Uttarakhand***, (2023) 16 SCC 111, as under:

“22. A basic principle of criminal jurisprudence is that in circumstantial evidence cases, the prosecution is obliged to prove each circumstance, beyond reasonable doubt, as well as the links between all circumstances; such circumstances, taken



cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; further, the facts so proved should unerringly point towards the guilt of the accused. The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused, and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : (1985) 1 SCR 88] These were so stated in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : (1985) 1 SCR 88] wherein the Court, after quoting from Hanumant [Hanumant v. State of M.P., (1952) 2 SCC 71 : 1952 SCR 1091], observed that : (Sharad Birdhichand Sarda case [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : (1985) 1 SCR 88], SCC p. 185, paras 153-54)

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033]



wherein the following observations were made : (SCC p. 807, para 19)

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

These panchsheel precepts, so to say, are now fundamental rules, iterated time and again, and require adherence not only for their precedential weight, but as the only safe bases upon which conviction in circumstantial evidence cases can soundly rest."

58. In our view, in the present case, the prosecution has failed to meet the above tests and satisfy the *panchsheel* principles for bringing home its case against the appellant on the basis of circumstantial evidence.

59. Given the above, we hold that the learned Trial Court has erred in law and on facts in convicting the appellant for the offence



punishable under Section 302 of the IPC. We, therefore, set aside the impugned judgment of conviction dated 18.10.2002 and the impugned order on sentence dated 01.11.2002.

60. The appellant is acquitted of the charges levelled against him.

61. The bail bond and the surety submitted by him shall remain valid for a period of six weeks from today in terms of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 437A of the Cr.P.C.).

62. The appeal is allowed in the above terms.

63. A copy of this Judgment be sent to the concerned Jail Superintendent and the learned Trial Court for necessary information and compliance.

64. We express our gratitude to the learned *Amicus Curiae* for rendering assistance to us in the present appeal.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

SEPTEMBER 18, 2026/sg/Yg