



2026:DHC:3274-DB



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

Reserved on: 16.03.2026
Pronounced on: 21.04.2026

+ **CRL.A. 965/2001 & CRL.M.A. 10935/2019**

AJAY MAHTOAppellant

Through: Mr.Kavindra Kumar Gill, Adv.
(*Amicus Curiae*)

versus

STATERespondent

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Vikram Singh, PS
Welcome.

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. The instant appeal has been preferred by the appellant, challenging the judgment dated 28.09.2001 passed by the learned Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in Sessions Case No. 80/2001 arising out of FIR No. 316/1998 lodged at Police Station Welcome, New Delhi, *vide* which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*').



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2. The appellant further challenges the Order on Sentence dated 29.09.2001 passed by the learned Trial Court, whereby the appellant had been sentenced to undergo rigorous imprisonment for life along with a fine of Rs. 5,000/- under Section 302 of the IPC. In case of default of payment of fine, the appellant was to further undergo simple imprisonment for six months.

3. The sentence imposed by the learned Trial Court on the appellant had been suspended by this Court till the pendency of the present appeal, *vide* order dated 05.04.2006. The appellant, however, thereafter failed to appear before this Court since 2010. In view of the above, the appellant had been declared as a Proclaimed Offender *vide* order dated 27.11.2025 passed by this Court. The appeal has been heard with the appellant having been represented by Mr.Kavindra Kumar Gill, Advocate, appointed as *Amicus Curiae*.

BRIEF FACTS OF THE CASE:

4. It is the case of the prosecution that Smt. Nirmala Devi/PW-1, w/o Sh. Ram Murti Pandey (hereinafter referred to as '*deceased*'), lodged a complaint on 19.12.1998 at Police Station Welcome, Delhi, stating that the deceased had left his house on 31.10.1998 with his vehicle, which was a TATA Truck 609, bearing registration no. DL-1LB-5184, for Patna, Bihar and thereafter his whereabouts were not known. She suspected that the appellant Ajay Mahto, his brother-Jitender Mahto, who was also the helper in the truck, along with his brother-in-law and the father-in-law had kidnapped her husband and



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had stolen the vehicle owned by the deceased. Based on the complaint, FIR No.316/1998 under Section 365 of the IPC was registered.

5. It is also the case of the prosecution that the brother of the deceased, Ram Samuj Pandey (PW-10), informed the Investigating Officer that on 07.11.1998, during the night, the vehicle belonging to the deceased was seen at Dera Bhoot Nath in Patna near the house of the in-laws of the appellant.

6. During the course of investigation, accused persons, namely, Shahto Mehto and Shyam Mehto were arrested, and they made disclosure statements confessing that the deceased, who was the owner of the vehicle, had been killed in the night of 07.11.1998 by the appellant along with his associate Ravinder @ Ramu. Pursuant to the disclosure made by the accused- Shahto Mehto, the accused- Ravinder @ Ramu was arrested on 31.12.1998, whereafter he also made a disclosure statement. Thereafter, on 06.01.1999, the appellant was arrested from Patna, Missitola Mohalla. He also allegedly made a confessional statement and at his instance, the TATA Truck No. DL-1LB-5184, which was found to be in a non-working condition, was recovered. It also came to light that in respect of the recovery of the dead body of the deceased, FIR No. 492/1998 under Sections 302/201 of the IPC had been registered against unknown persons at Police Station Phulwari Sharif, Patna, Bihar, however no further information regarding the said FIR was received.

7. Upon completion of the investigation, a charge-sheet was filed against appellant, that is, Ajay Mehto and Ravinder @ Ramu, Shyam



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Mehto and Shahto Mehto for the offences punishable under Sections 120-B/302/201/202/392/412/34 of the IPC.

8. The learned Trial Court, *vide* order dated 10.03.2000, had discharged the accused- Ravinder @ Ramu. Further, the learned Trial Court had declared the other two accused, namely, Shyam Mehto and Shahto Mehto, as Proclaimed Offenders, *vide* order dated 23.02.2000. The trial therefore proceeded only against the appellant.

9. The learned Trial Court, *vide* order dated 09.03.2000, framed the following charge against the appellant:

“That between the night of 7th and 8th of November, 1998 near Sipara Flyover, Patna by-pass you committed the murder of Ram Murti Pandey and thereby committed an offence punishable under Section 302 IPC and within the cognizance of this court.

Secondly, on the aforesaid date, time and place, you committed the robbery of Tempo Tata- 609 belonging to Ram Murti Pandey and thereby committed an offence punishable under Section 392 IPC and within the cognizance of this court.

And I hereby direct that you be tried by this court on the aforesaid charges.”

10. The appellant pleaded not guilty to the aforesaid charges and claimed trial.

11. In order to prove its case, the prosecution examined 16 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. was recorded on 07.09.2001, in which he again pleaded innocence.

12. By the impugned Judgment dated 28.09.2001, the learned Trial



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Court, relying on the testimonies of PW-1/Smt. Nirmala Devi, PW-2/Rama Kant Pandey, and PW-15/ Mangal Singh, opined that the prosecution had been able to prove its case against the appellant beyond reasonable doubt as it was proved that the deceased was last seen with the appellant, as he had travelled with the appellant and Jitender Mahto to drop goods off at Sri Ganga Nagar and that the appellant had himself loaded the goods on the vehicle owned by the deceased. The relevant extract from the impugned judgment of the learned Trial Court is reproduced as under:

“20. On the basis of the evidence as adduced by the Prosecution, they are able to prove that it was the accused who was with the deceased when they went to Patna and when they loaded the truck of the deceased ferri Ganga Nagar at Arti Roadways Sikandar Manzil, Frazerorad Patna. They have also proved that it was accused who gave wrong information to Mangal Singh (PW-15) about deceased as well as truck TATA 609 DL-1LB-5184 of the deceased. It is also proved on record that the truck was left abundant at dhabha/hotel at Maya Bighas More, Sankari Nadi crossing, Kadir Ganj, Distt. Nawada Bihar, and natrual it was the accused who had left the truck there because it was he only who could have revealed out the position of the truck which was in his possession along with the deceased. The date and the time co-incide with the commission of the murder of the deceased by the accused and the place where the dead body of the deceased was found which was a deserted one further, raise the pointed finger towards the accused only who was expected to inform the complainant (PW-1) about the truck no. TATA 609 DL 1LB-5184 and about its owner i.e. the deceased but he failed to do so, the reason being that he was the person behind



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*the murder of the deceased. In this context I refer to the case and observations of their Lord Ship's of the Apex Court wherein in the similar facts and circumstances, their Lord Ship's arrived to the conclusion that only the accused was the perpetrator of the crime and none else. Ref is made to the case of **Sucha Singh vs. State of Punjab** reported in JT 2001 (4) SC 107 wherein their Lord Ship's observed as under:*

“The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors with help that information from the court there is every justification for drawing the inference, in the light of all the proceedings and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

“Persons are kidnapped in the sight of others and are forcibly taken out of the light of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the murders of their activities of killing kidnapped innocents outside the ken of others.”

21. Although, no looting of the truck can be attributed to the accused Ajay Mehto in the facts and circumstances of the case. Not only there is no defence at all on record in favour of the accused, what to talk of plausible defence, but also submission made by the Ld. Counsel for the accused that there is no direct evidence against the accused, is of no help to the accused as in the facts and circumstances. and the chain of circumstances as has been proved by the prosecution, beyond reasonable



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doubt, all the evidence adduced by prosecution raise the accusing finger towards the accused Ajay Mehto and none else who could be said to have committed the offence of murder of deceased Ram Murti Pandey.

22. I am not able to accept the submission of Ld. Def. Cl. that because of the hostile deposition of PW-7 Bhikari Pandit, the chain of circumstances is not complete. As already discussed even Bhikari Pandit (PW-7) has proved that the truck in question i.e. TATA 609 was found lying abundant at his dhabha and it was for the accused to inform about the whereabouts of the truck and the owner which he failed to do. It is not the case of the accused that he had given any information to anyone. In fact, truck was seized by the Local police which was later on transferred and seized by the Delhi Police during investigation of the case u/s 302 IPC.

Keeping in view the complete chain of circumstances, I hold that the prosecution is able to bring home the guilt of the accused Ajay Mehto that it was the accused only who committed the murder of Ram Murti Pandey on 7/8th near Sipra Fly Over, Patna. However, keeping in view the fact that the truck was found lying. abundant, no conviction can be based for the offence u/s 392 IPC in respect of the truck or in respect of the belongings of Ram Murti Pandey as the belonging to Ram Murti Pandey are not only not proved but such allegations merge with the commission of murder of the deceased by the accused. Accused Ajay Mehto is accordingly held guilty for the offence punishable u/s 302 IPC and convicted thereunder, but is given benefit of doubt for the offence u/s 392 IPC. Orders passed accordingly”.

13. Aggrieved by the conviction and the Order on Sentence passed



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by the learned Trial Court, the appellant has preferred the present appeal before this Court.

SUBMISSIONS MADE BY THE LEARNED AMICUS CURIAE ON BEHALF of THE APPELLANT:

14. Mr.Gill, the learned *Amicus Curiae* appointed for the appellant, has submitted that in the present case, the prosecution has failed to prove its case against the appellant.

15. He submits that the entire case of the prosecution is based on the assertion that the appellant was working as a Driver and was driving the truck of the deceased, however, no cogent evidence in this regard has been placed in form of any appointment letter, salary slip or other document.

16. He submits that, even otherwise, the entire case of the prosecution is based on the last seen theory and only on circumstantial evidence.

17. He further submits that there are material contradictions in the statements of the witnesses and the same clearly show that the appellant has been found guilty only on the basis of suspicion and not on any cogent evidence.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE:

18. On the other hand, Mr.Usman, the learned APP for the State, submits that the prosecution has been able to prove its case against the appellant, not only by the last seen theory for which there is evidence in form of PW-15, Mangal Singh, who had seen the appellant with the



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deceased while his goods were being loaded for being transported to Sri Ganga Nagar on 07.11.1998, and the body of the deceased was found early next morning on 08.11.1998 at around 7 A.M., but also from the own conduct of the appellant wherein his whereabouts were not known from the date of the incident till he was apprehended.

19. He submits that the present case is based on circumstantial evidence and complete chain of circumstance thereof has been proved from the testimonies of PW-5/Ram Prasad, Chowkidar, who had found the body of the deceased; PW-2/Rama Kant Pandey and PW-10/Ram Samuj Pandey, the brothers of the deceased, and other police officials who had taken part in not only apprehending the appellant but also were witnesses to the discovery of the truck and the place of the dead body of the deceased at the instance of the appellant.

20. He submits that, therefore, a complete chain of circumstantial evidence against the appellant had been proved and he has rightly been convicted by the learned Trial Court.

ANALYSIS & FINDINGS

21. We have considered the submissions made by the learned counsels for the parties.

22. The entire case starts from a complaint made by PW-1/Smt. Nirmala Devi, the wife of the deceased, recorded on 19.12.1998, stating therein that her husband was the owner of a Tata 609 Truck. On 31.10.1998, he had left for Patna (Bihar) to deliver goods in his



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vehicle. The appellant was the driver of the said vehicle while the brother of the appellant, Sh. Jitender Mahto, was the helper. She stated that the whereabouts of the deceased were not known thereafter till the filing of the complaint though he had been searched for. She had stated that she suspected that the appellant and Sh. Jitender Mahto may have committed the murder of her husband by kidnapping him and looting the truck.

23. In her statement before the learned Trial Court, she stated that the deceased did not give any phone call to her after leaving for Patna. She stated that efforts were made to trace out the deceased and as the whereabouts were not known, the complaint dated 19.12.1998 (Ex. PW-I/A) was filed with the police.

24. Interestingly, the brother of the deceased/ Rama Kant Pandey (PW-2), in his statement before the learned Trial Court, stated that PW-1/Smt. Nirmala Devi had told him that she had received a phone call from the deceased on 07.11.1998. There is no mention of this call in the complaint and in fact, PW-1, as noted hereinabove, had stated that she had not received any call from the deceased after he had left for Patna.

25. More importantly, PW-2 further stated that as the deceased did not return, he along with PW-10/Ram Samuj Pandey and the son of the deceased went to Arti Roadways at Frazair Road, Patna, where the owner of the transport company informed him that the vehicle was loaded with goods from Sri Ganga Nagar (Rajasthan) on 07.11.1998. He stated that the owner of the transport company, PW-15/Mangal



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Singh further told him that the deceased was present at the time of loading of the goods along with the driver, that is the appellant, and the helper. He further told him that the appellant had given him a phone call on the morning of 08.11.1998 and said that the vehicle had broken down at Patna Pahari and the deceased had left for Allahabad to bring money. The appellant is further supposed to have informed PW-15 that he wanted to shift the goods to some other vehicle for transport to Sri Ganga Nagar and the same were shifted to another vehicle.

26. The witness further stated that he enquired and ascertained the address of the father-in-law of the appellant through Sh. Mangal Singh. How would PW-15/Mangal Singh know the address of the father-in-law of the appellant, is not shown by the prosecution.

27. PW-2 further stated that he went to the house of the father-in-law of the appellant where the appellant's brother-in-law met him. He stated that though the father-in-law and brother-in-law of the appellant told him that the appellant or his brother had not come to the house with their vehicle, however, on enquiry from neighbours, he was told that the appellant and his brother- Jitender Mahto had come in TATA 609 Truck on 08.11.1998 and the vehicle was entangled in the mud, whereafter the appellant pulled the truck with the help of a crane and went away.

28. Similar statement is also made by PW-10/Ram Samuj Pandey, the elder brother of the deceased.

29. What is of relevance, however, is that these important facts are



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not stated in the complaint and no reason for suppressing the same from the complaint lodged by PW-1/Smt. Nirmala Devi has been supplied.

30. As noted hereinabove, the case of the prosecution is based on circumstantial evidence including the last seen theory. In such a case, the prosecution is required to make out a case which is only inconsistent with the innocence of the accused and consistent only with his guilt, but also, the incriminating circumstances should be such as to lead only to hypothesis of guilt and must exclude every other possibility of innocence of the accused. The complete chain of circumstance should be fully established and mere suspicion cannot take place of proof. Reference in this regard may be made to the Judgments of the Supreme Court in ***Manoj @ Munna v. State of Chhattisgarh***, 2025 SCC OnLine SC 2858 and ***Narendrasinh Keshubhai Zala v. State of Gujarat***, (2023) 18 SCC 783.

31. In the present case, the very fact that the complainant already had made enquires, and if PW-2 and PW-10 are to be believed, they already knew that the appellant had come to the house of his father-in-law where the truck had broken down and had to be towed away, and that PW-15 had informed them that the appellant had called him informing him of the breaking down of the truck at Patna Pahari and the shifting of goods, these were important facts to be disclosed at the very inception and at the time of the filing of the complaint. The concealment of the same casts a doubt at the very inception of the prosecution itself. It also puts in doubt the alleged disclosure of the



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place of parking of the broken down truck by the appellant.

32. Even otherwise, the case of the prosecution is based on last seen theory. It has been held that the doctrine of last seen theory 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. It has, however, been held that conviction cannot be sustained merely on the ground that the accused was last seen with the deceased; the prosecution must establish a complete chain of circumstances proving the guilt of the accused. Reference in this regard may again be made to the judgment of the Supreme Court in *Manoj @ Munna v. State of Chhattisgarh* (supra).

33. From the statement of PW-15, while the prosecution may be said to have proved that the appellant was last seen in the company of the deceased while the goods of PW-15, Sh. Mangal Singh were being loaded on the truck of the deceased for being transported to Sri Ganga Nagar (Rajasthan), from the own statement of PW-15, it is also coming on record that the appellant had given him a call on the morning of 08.11.1998 stating that the truck had broken down and the deceased had gone to Allahabad to arrange for money for its repairs. He had also told him that the goods were being shifted to another truck. From the own statement of PW-15, therefore, the circumstances of parting of company of the appellant and the deceased was made out.



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34. In this regard, there is another important witness, that is, PW-7/Bhikhari Pandit, who is the owner of a *dhaba* and is stated to have informed the police that it was the appellant who had parked the vehicle near his *dhaba* and had told him that the same was out of order and he would soon bring a mechanic and the owner of the vehicle, whereafter he did not return. PW-7, however, did not support the case of the prosecution in his examination before the Court. However, from the statement made to the police, what can again be ascertained is that the fact of the truck breaking down and the deceased not being with the appellant would stand established. Whether this place is called Patna Pahari or how far is Patna Pahari from this place of parking of the truck, is not shown by the prosecution. It is important as PW-2 and PW-10 have already been informed by PW-15 that the truck was reported to have broken down at Patna Pahari. If this is the same place or near that place, the case of the prosecution that the place of parking of the truck was discovered on the disclosure of the appellant, must fail.

35. The next circumstance alleged against the appellant is the alleged disclosure of the place of recovery of the dead body of the deceased. In our view, the same cannot be sufficient, especially given the other contradictions in the statements of the witnesses, to bring home the guilt of the appellant.

36. It has repeatedly been warned that there is a substantial distance to be travelled between suspicion and proof for finding an accused guilty of an offence beyond reasonable doubt. Any doubt that arises



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due to breaking down of even one link in the chain of circumstantial evidence, would lead to the acquittal of the accused. In the present case, the prosecution has been unable to travel the distance between suspicion and proof beyond reasonable doubt against the appellant.

37. For the reasons stated hereinabove, we are unable to sustain the impugned judgment dated 28.09.2001 passed by the learned Trial Court, convicting the appellant of offence under Section 302 of the IPC, and consequentially, the order dated 29.09.2001 awarding the sentence of rigorous punishment of life imprisonment on the appellant. The same are, accordingly, set aside.

38. The appellant is acquitted of the charge framed against him *vide* order dated 09.03.2000 by the learned Trial Court.

39. His Bail Bond and surety are discharged.

40. The appeal is, accordingly, allowed in the above terms. The pending application also stands disposed of.

41. A copy of this order be communicated to the concerned Jail Superintendent and the learned Trial Court for their information and record.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

APRIL 21, 2026/sg/as