

Anil Sharma vs.state

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Court : Delhi

Decided On : Mar-18-2019

Appellant : Anil Sharma

Respondent : State

Advocate for Pet/Ap. : Mr. Jitendra Sethi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

31. 01.2019 Date of Decision:

18. 03.2019 + CRL.A. 668/2003 ANIL SHARMA Appellant Through Mr. Jitendra Sethi, Mr. Hemant Gulati and Ms. Anshika Sethi, Advocates. versus Respondent Through Ms. Aashaa Tiwari, APP for State. STATE CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MR. JUSTICE MANOJ KUMAR OHRI MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred by the appellant against the judgement dated 19.07.2003, arising out of FIR No.874/1998, under Section 302 IPC registered at Police Station Dabri and the order on sentence dated 19.07.2003, whereby he was convicted and sentenced to undergo life imprisonment and pay a fine of Rs.5,000/-, and in case he defaulted on payment of the fine, to further undergo simple imprisonment for six months in consequence thereof. The two co-accused, namely Hans Raj and Sudershan, who faced trial along with the

appellant, were however acquitted by the trial court. Crl.A.668/2003 Page 1 of 18
2. As per the prosecution case, the incident came to light on 10.12.1998, at about 10 a.m. when information was received at Police Station Dwarka about a dead body lying near the drain in Sector-V, Pappan Kalan, Madhu Vihar. The said information was recorded as DD No.11 (Ex.PW-1

and Ex.PW-11/2) and the same was marked to SI Rajiv Yadav (PW-11), who along with Ct. Dinesh (PW-21) reached the spot and found a dead body near the road, lying in the grass. The skull of the deceased was torn and broken and his brain was found lying near the head in the grass. The body was sent for postmortem examination which was conducted on 12.12.1998. As it appeared to be a case of murder, FIR No.874/1998 under Section 302 IPC was registered. The dead body was identified on 12.12.2018 as that of Kamal Verma by his brother-in-law, Surinder Kumar (PW-14).

3. During the investigation, pursuant to the disclosure statement made by the co-accused, Sudershan, a wrist watch and gold kara belonging to the deceased was seized vide seizure memo (Ex.PW-9/9). The investigation proceeded and subsequently, through the statements of the family members of the deceased, the role of the present appellant came to light. It was stated by the family members during the investigation that the appellant was a friend of the deceased Kamal and used to visit his house. During these visits, the appellant came close to Anita, the deceaseds sister and had a relationship with her out of which, a child was born. A few days prior to the date of the incident, when the appellant visited the house of Kamal, his mother addressed him as the uncle of the child at which the appellant became angry and threatened to teach them a lesson. On 09.12.1998, the appellant went to Kamals house. Kamal was called downstairs by the appellant through the co-accused, Hans Raj. He went Crl.A.668/2003 Page 2 of 18 downstairs and left with them whereafter he never returned. As per the prosecution case, the appellant and the two co-accused had committed the murder of Kamal Verma. The appellant surrendered on 17.12.1998. His disclosure statement (Ex.PW-9/2) was recorded by the police and on his disclosure, the alleged weapon of offence, a kulhari (axe) was recovered and sent along with the other exhibits to the FSL.

4. After the investigation was completed, the charge-sheet was filed in the concerned Court. A charge under Section 3 IPC was framed against the appellant and the co-accused persons. The prosecution examined 24 witnesses in all to prove its case against the accused persons. In defence, the appellant examined two witnesses.

5. The material prosecution witnesses examined include Anita, sister of the deceased as PW-1; Varsha, sister of the deceased as PW-2; Sheetal, niece of the deceased as PW-3 and Bharat Kumar, brother of the deceased as PW-5. One public witness, Mangal Prashad, a witness to the recovery of the kulhari was examined as PW-4 (subsequently, he was also examined as PW-17). The Storekeeper, HC Karan Pal was examined as PW-20. Insp. Ombir Singh Bhati, the Investigating officer was examined as PW-24. SI Jasmohinder Singh Chaudhary, witness to the recovery of the kulhari, was examined as PW-9. The postmortem report (Ex.PW-10/1) was proved by Dr. Komal Singh (PW-10).

6. Arguments were heard from the side of the appellant and also the State. Mr. Jitendra Sethi, learned counsel for the appellant assailed the impugned judgment on the ground that (a) the prosecution had failed to prove the motive; (b) the recovery of the kulhari is not believable; (c) the CrI.A.668/2003 Page 3 of 18 appellant had never absconded and (d) the evidence of last seen is not credible.

7. Ms. Aashaa Tiwari, learned APP for the State supported the impugned judgment. She urged that if a part of the testimony of a hostile witness indicts an accused, the same could be relied upon. To fortify her arguments, she relied upon *Khujji @ Surendra Tiwari vs. State of Madhya Pradesh* reported as (1991) 3 SCC627 and *Rameshbhai Mohanbhai Koli & Ors vs. State of Gujarat* reported as 2010 (11) SCALE120. On the aspect that failure or inability to prove the motive does not weaken the prosecution case, she placed reliance on *State of UP vs. Babu Ram* reported as AIR 2000 SC1735. ANALYSIS Dr. Komal Singh (PW-10) conducted the post mortem and proved the postmortem report (Ex.PW-10/A). Postmortem Report External Injuries 1. There was one abrasion on lateral side of the left eye 4 cm. x 1 cm. Imprint gravel abrasion on the left side of cheek and 5 2. and 6 in number varying from 5 x 2 mm. to 1 mm.

3. One massive crush injury of the skull of right side and to some extent to the left side also. Multiple flaps of scalp tissue hanging from the skull margins were clean out. Pieces of the bone removed from the injured's head at right frontal bone spacing anterior one third, upper part of the temporal bone, core of the left parietal bone. Few area of the anterior portion of left side of occipital bone, 3 cm. medial part of right parietal bone. CrI.A.668/2003 Page 4 of 18 9. Internal Examination: Skull cavity contain part of the cerebellar lobe, cerebrum missing and the interior cranial and middle cranial had been disfigured. Borders of broken bones were corrugated. Follery of the base disappeared about 14 cm. x 1 cm. Stomach contained 200 ml. of undigested food. Trachea was found to be congested. Opinion: Cause of death in this case was coma subsequent to craniocerebral injury. All injuries were antemortem and were of same duration. Multiple pieces of the bones were shown by IO which were about in number. All were part of the deceased skull. Time since death was about 60 hours. While deposing in Court, PW-10 was asked as to which injury was sufficient to cause death in ordinary course of nature. The witness replied that Injury no.3 was sufficient to cause death in ordinary course of nature. The kind of injuries found on the dead body, which were antemortem in nature, could have been caused by the axe, Ex.P1 which has been seen in the court by me. My detailed report in this respect is Ex. PW-10/1. PW-10 also proved his subsequent opinion (Ex.PW-10/12) on the weapon of offence. The same reads as under: Injury sustained on scalp may be caused this weapon of offence. 10. The prosecution has relied on the following four circumstances to prove its case against the appellant which are: (a) (b) (c) (d) Motive. Recovery of kulhari. Conduct of the appellant in absconding Evidence of last seen. CrI.A.668/2003 Page 5 of 18 (a) MOTIVE¹¹ As per the statement of the witnesses, namely PW-1, PW-2, PW-3 and PW-5, it has come on record that on account of the appellants friendship with Kamal Verma, a relationship had developed between him and Anita (PW-1) and a child was born. As per the statements of PW-1 & PW-5, on 06.12.1998, when the appellant had visited their house, their mother had in a jest addressed the appellant as the uncle of his own child which made him angry. While leaving, the appellant had threatened to teach them a lesson. This incident had taken place three days prior to the incident when Kamal Verma had gone missing.

12. All the witnesses have stated that the appellant was very friendly with the deceased. They were known to each other from earlier times when the deceased and his family members were living in Asha Park. When Kamal & his family had shifted from Asha Park about three years back, the appellant used to visit them in their new house regularly. It has also come in the testimony of the witnesses that the appellant used to have food and liquor with the deceased. No witness has stated that there was any bad blood between the appellant and the deceased. PW-1 & PW-5 admitted in their cross-examination that the appellant had helped the deceased in getting a job. In the light of the above and in the absence of any positive evidence to the contrary, we are of the view that the appellant did not have any motive against the deceased. The provocation, if any, of calling the appellant uncle of his own child was given by the mother of the deceased and not by the deceased. The motive, if any, could have been against the mother of the deceased. In Babu Rams case (supra), the motive was primarily against the accused directly which was not the fact situation in CrI.A.668/2003 Page 6 of 18 present case. The reliance placed by the learned APP for the State on the decisions in Khujji (supra) and Rameshbhai (supra) could not be of much help as, even if, the examination-in-chief of PW-1 is taken into consideration, the motive was only against the mother of the deceased and not against the deceased. Thus, we do not find any reason to believe that the appellant had any motive to commit the murder of the deceased. (b) RECOVERY OF KULHARI (AXE) 13. As per the case of the prosecution, pursuant to the appellants disclosure statement (Ex.PW-9/2) dated 17.12.1998, the weapon of offence (kulhari) was recovered from Happy Model School, Janakpuri, where it was found inside the boundary wall near the pots. Mangal Prashad, the security guard at Happy Model School, was a witness to the recovery of the kulhari and deposed as PW-4 on 09.03.2001. He deposed that on 17.12.1998, the police came to the school along with the appellant at about 2 a.m. and found one kulhari inside the school boundary. His further examination was deferred as the kulhari had not been received in the court from the store room. Subsequently, on 18.01.2002, Mangal Prashad was mistakenly examined as PW-17, as it did not come to the notice of the Court that he had already been examined as PW-4. On 18.01.2002, PW-4 did not support the prosecution case and stated that although the police had recovered something, but he was not

shown any article. In his cross-examination by the learned APP, he stated that the kulhari was shown to him in the Police Station on the next day where he had signed the seizure memo (Ex.PW-4/1). He did not identify the kulhari. The other witnesses associated with the recovery were PW-9, SI Jasmohinder Singh Chaudhary and PW-24, Inspector Ombir Singh Bhati. CrI.A.668/2003 Page 7 of 18

14. Learned counsel for the appellant has referred to the entry dated 22.12.1998 in the Store Room register (Ex.PW-20/1), wherein it was recorded that vide RC-163/21, the kulhari was taken out from the store room by Insp Ombir Singh for seeking an opinion. However, the kulhari was re-deposited in the store room without taking any opinion. PW-20, the Store Keepers testimony is silent about the said movement of the kulhari on 22.12.1998. Even the testimony of the I.O. (PW-24) is silent about taking out the kulhari on 22.12.1998 for obtaining any opinion. Dr. Komal Singh (PW-10) also did not state that the kulhari was brought to him on 22.12.1998. Learned counsel for the appellant has argued that though it had come in the disclosure statement of the appellant that he purchased the said kulhari from Andheria More in Mehrauli, yet the Investigating Officer made no efforts to investigate or examine any person in this regard.

15. Although the kulhari was later on taken to the CFSL for an opinion, however, the CFSL report was neither produced, nor exhibited during the trial. The Trial Court noted that the blood group on the kulhari could not be verified. Further, even the evidence of any CFSL report was not put to the appellant during his examination under Section 313 Cr.PC.

16. We are of the view that in the absence of any CFSL report, the prosecution has not been able to link the kulhari with the murder of Kamal. (c) CONDUCT OF THE APPELLANT IN ABSCONDING

17 The Trial Court has also relied on the circumstance that the appellant had absconded after the deceased was found missing. As per the sequence of events, the body of the deceased was found on 10.12.1998. Thereafter, the appellant had surrendered on 17.12.1998. Three days before that, on 14.12.1998, Vipin Bala Sharma (DW-1), wife of the CrI.A.668/2003 Page 8 of 18 appellant had submitted an application (Ex.DW-1/P-1) to the DCP (South- West), wherein she wrote that her husband had left for Punjab on 10.12.1998, in relation to some property matter. However, when the said witness

testified before the Court, she elected to state that the appellant was in her company at their home in the intervening night of 09/10.12.1998. She further stated that the appellant was at home till 6:30 p.m., as their younger child was sick and at about 7/7:45 p.m., they had gone to see a Doctor. At about 9 p.m. they came back to their home. She further stated that the appellant remained in the house and went to the office the next day, in the morning. However, no prescription slip issued by the Doctor was produced or placed on record by the witness to substantiate the above stand. The stand taken by his wife in the above application to the effect that the appellant had gone out of Delhi on 10.12.1998, was anyway post the incident and therefore, loses relevance. Learned counsel for the appellant has argued that no material has been brought on record by the Investigating Officer to demonstrate the steps taken by him to trace the appellant except for making a bald statement that the appellant was not traceable.

18. We find that the circumstance of the appellant absconding after 09.12.1998, was not even put to him during his examination under Section 313 Cr.PC, although the same was relied upon by the learned Trial Court. The purpose of examination of the accused under Section 313 Cr.PC is to provide him an opportunity to put forth his explanation in respect of the evidence against him. It is for the benefit of the accused and not to operate to his detriment. It is well settled that when a circumstance is not put to the accused during his examination under Section 313 Cr.PC and the same is used for convicting him, a prejudice is caused to the accused. Reference in CrI.A.668/2003 Page 9 of 18 this regard is made to the decisions of the Supreme Court in Ranvir Yadav vs. State of Bihar reported as (2009) 6 SCC595 and Sukhjit Singh vs. State of Punjab reported as (2014) 10 SCC270 (d) LAST SEEN¹⁹ The prosecution has examined Anita (PW-1) and Varsha (PW-2), both sisters of the deceased; Sheetal, niece of the deceased (PW-3) and Bharat Kumar, brother of the deceased (PW-5) in support of the last seen evidence.

20. PW-1, Anita deposed that earlier, they were living in Aasha Park and the appellant was running a workshop in the name and style of M/s. Hi-tech Auto Engineering near their house and that is how he had become friendly with her deceased brother, Kamal Verma. Before meeting the appellant, she was married

to one Puran Chand on 13.04.1995. However, after a couple of months of their marriage, she had left her matrimonial home and returned to her parents house, as her husband had begun to like another girl. She further deposed that as the appellant used to visit their house, they developed relations and in the year 1997, she and the appellant got married in a temple. Before marrying her, the appellant had told her about his marital status. She got pregnant from the appellant and a son was born out of the said marriage on 12.07.1998 at Kapoor Hospital, Karol Bagh where the appellant as well as her family members were present. She came back to her parents house and the appellant used to visit her every week. The appellant used to have food and liquor with her brother, Kamal Verma. On 06.12.1998, when the appellant visited their house, her mother called him in the adjoining room and jokingly told the appellants child that his uncle had come. On hearing this, the appellant got angry and while Crl.A.668/2003 Page 10 of 18 leaving, he threatened that they would have to pay a heavy price for calling him the uncle of his own child. The witness also stated that on 09.12.1998, at about 7:45 pm, a person came to their house and called her brother, Kamal. Her sister, Varsha opened the door and was told by that person that the appellant was calling Kamal downstairs. Kamal looked downstairs from the balcony and found the appellant standing there. He told his mother that he was going downstairs as the appellant was calling him. The witness clarified during her examination-in-chief that on 06.12.1998, when the appellant had got angry and threatened that they would have to pay a heavy price for addressing him as the uncle of his child, he was alluding to her family members.

21. Perusal of the records shows that the examination-in-chief of PW-1 was completed on 16.11.2000 and her cross-examination, on behalf of the appellant, was conducted on 31.05.2001 i.e, after 5 months. In her cross- examination, the witness admitted that she was residing in the house along with the deceased, her parents and younger sisters. She stated that her elder brother, who was married, was not residing with them. She later clarified that while her brother, Bharat Kumar and his wife were not residing with them, however, their daughter, Sheetal was residing with them. She stated that she had gone to meet the appellant in jail after her examination-in- chief was recorded on 16.11.2000. She admitted that the appellant had got employment for the deceased. When PW-1 was recalled for

further examination on 22.11.2002, she stated that her brother was not wearing any wrist watch when he had left the home and she did not identify the gold kara which was seized by the police. The witness wrote a letter (Ex.PW1/D1) to the appellant in January 2003 while he was in judicial custody in Tihar jail stating inter alia that she had made statements before Crl.A.668/2003 Page 11 of 18 the police and in Court at the behest of her family members. As a result, she was summoned again for further examination. During her further examination on 20.02.2003, PW-1 reiterated what she had written in the above letter. She also stated that her deposition before the court on 16.11.2000, was a lie. The said witness was cross-examined by the learned APP for the State where she denied the suggestion given by him that she had arrived at a compromise with the appellant as she wanted to settle down with him.

22. PW-2, Varsha deposed that on 09.12.1998, at about 7:45 - 8:00 p.m., she answered the door bell. She saw one person, identified as Hans Raj in court, who told her that Anil was waiting downstairs for Kamal. The witness further deposed that on looking down below, Kamal had told his mother that the appellant was calling him downstairs and he would come back in five minutes. The witness identified the appellant in the court. During her cross-examination, the witness admitted that when the doorbell rang, her mother, Kamal (brother), Anita (sister), Jyoti (sister) and sister-in-law Deepa (wife of Kamal) were all present in the house. She admitted that she had not looked from the balcony on that day. She did not identify the kara and said that her brother was not wearing any wrist watch on 09.12.1998.

23. The testimony of PW-3, Sheetal is similar to the testimony of PW-2. The said witness further deposed that on 09.12.1998, she had seen the appellant on the road while she was seeing off her mother. However, this part of her testimony was disbelieved by the trial court. In her cross-examination, she admitted that her parents, i.e. PW-5 (father) and her mother were residing in Tilak Nagar. On a court question, the witness Crl.A.668/2003 Page 12 of 18 replied that she had been residing with her grandparents and the same was also reflected in her records.

24. PW-5, Bharat Kumar deposed that the appellant was the father of his sisters child. He also narrated the incident of 06.12.1998, when his mother had addressed the appellant as the uncle of his own child, at which he had become angry and threatened to teach them a lesson. The witness stated that on 09.12.1998, he was present in the house when the door bell rang and his brother was called downstairs by Anil (the appellant herein). The witness claimed to have looked down from the balcony and saw his brother, Kamal, the appellant and one more person at the turn of the street going towards Jail Road. During his cross-examination, PW-5 admitted that he along with his wife, two children, two sisters, mother, brother (deceased), brothers wife and elder sister Anita were residing in that house. The witness stated that when Kamal did not return home, they made a complaint with Police Station Hari Nagar, however, the same was not recorded. He also denied the suggestion as to whether the deceased used to wear a watch or any kara. He stated that the deceased was not wearing any watch on 09.12.1988.

25. A closer look at the testimonies of the above witnesses would show that only PW-5, Bharat Kumar has stated that he had seen his brother, Kamal going along with the appellant and the co-accused, Hans Raj. All the other three witnesses, i.e. PW-1, PW-2 & PW-3 stated that they had only heard Kamal saying that he was going downstairs to meet the appellant. They did not claim to have seen either the appellant standing downstairs or Kamal going with the appellant. As per the prosecution case, it was the co-accused, Hans Raj who had come upstairs, rung the door bell Crl.A.668/2003 Page 13 of 18 and informed Kamal that he was being called downstairs by the appellant. No witness has stated that the appellant had come upstairs on 09.12.1998.

26. In these circumstances, out of all the family witnesses, it was only PW-5 who claimed to have seen the appellant going with his brother (the deceased) alongwith another co-accused, Hans Raj at about 07.45- 8 pm. However, none of the other witnesses mentioned the presence of PW-5 in the house on 09.12.1998. In fact, in her testimony, PW-2 not only failed to state anything about the presence of PW-5, she also did not state anything about the presence of PW-3 on the said day in the house.

27. Even if the statements of the above witnesses that the deceased was last seen in the company of the appellant on 09.12.1998 at about 7:45 - 8:00 p.m. are believed to be true, the body of Kamal was discovered on the next day, on 10.12.1998 at 10 am. The gap between the evidence of last seen and the discovery of the dead body comes to about 14 hours. The postmortem examination was conducted on 12.12.1998 at 12:10 p.m. wherein the time since death was mentioned as approximately 60 hours, which would relate back to reckoning the time of the incident as around 12:10 a.m. on the intervening night of 09/10.12.1998. It is noteworthy that in the case of the co-accused, Hans Raj, who had come upstairs on 09.12.1998 to call the deceased down, the circumstance of last seen was found insufficient to convict him and he was accordingly acquitted by the Trial Court.

28. Learned counsel for the appellant has argued that the conduct of the family members of the deceased was suspicious as they did not lodge any missing report. Nor did they name or cast any suspicion on the appellant. Indeed, no missing report has been placed on record. However, it has come CrI.A.668/2003 Page 14 of 18 in the testimony of the witnesses PW-5 and PW-24 that when Kamal did not return home, missing reports were lodged - one in P.S. Hari Nagar and another in P.S. Tilak Nagar. Initially, the family members of the deceased did not have any suspicion on the appellant but later, when the body of Kamal was discovered on 10.12.1998, a finger of suspicion was pointed by them at the appellant. Records reveal that the appellant had surrendered on his own on 17.12.1998 and his disclosure was recorded. Pursuant to his disclosure, the weapon of offence (kulhari) was recovered from Happy Model School, Janakpuri, lying amongst the pots on the western side, inside the grill. The same was seized vide seizure memo (Ex.PW-4/1).

29. Learned counsel for the appellant sought to argue that the name of the appellant was not mentioned either in the statement of PW-5, Bharat Kumar made before the police on 12.12.1998 or in the brief facts recorded by the I.O. In support of the said submission, he has placed reliance on the decision in Ghanshyam and Ors. Vs. State reported as II (2007) DLT (CrI.) 54. We do not see much merit in the aforesaid submission made by learned counsel for the appellant as at that time,

the family had no suspicion against the appellant. The decision relied on by learned counsel is also not applicable to the facts of the present case as the captioned case was based on the testimony of an eye-witness and for this reason, non-mentioning of the name of the assailant in the brief facts recorded by the I.O. was found to be fatal to the prosecution case.

30. Looking at the totality of the evidence led by the prosecution against the appellant, we find that the evidence of last seen was stated only by PW-5. The other witnesses namely, PW-1, PW-2 and PW-3 had only heard that the deceased had left in the company of the appellant. As discussed CrI.A.668/2003 Page 15 of 18 above, the presence of PW-5 at that time in the house of the deceased is itself doubtful, as none of the other residents of the house, i.e. PW-1, PW-2 or PW-3 have mentioned his presence in the house on 09.12.1998.

31. Be that as it may, the time gap between the last seen and discovery of body of the deceased on the next day, is about 14 hours which is considerably long. Moreover, the postmortem was conducted after 2 days and it mentioned the time since death as 60 hours. The evidence of last seen may raise a suspicion, but that by itself is not independently sufficient to lead to a finding of guilt. The evidence of last seen is a piece of circumstantial evidence and not direct evidence and can be used only as a link in the chain of circumstances but the chain must be complete and unbroken. Reference in this regard is made to the decision of the Supreme Court in State of Uttar Pradesh vs. Satish reported as (2005) 3 SCC114 wherein it was held that: 22. The 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 author of the crime becomes impossible.

32. Further, in Sahadevan and Ors. vs. State of Karnataka reported as (2012) 6 SCC403 the Supreme Court held that: 27PW4 stated that he had seen the deceased going on a moped with Chandran at about 2.00 o'clock in the afternoon. The time lag between the time at which this witness saw the accused and the deceased together and when the body of the deceased was found is considerably long the next day found on CrI.A.668/2003 Page 16 of 18 33. To the similar effect is the decision of the Supreme Court in Digamber Vaishnav and Ors. Vs. State of

Chhattisgarh reported as (2019) SCC Online SC316 in which it was observed by the Court that: 40. The prosecution has relied upon the evidence of PW-8 to show that the Accused and victims were last seen together. It is settled that the circumstance of last seen together cannot by itself form the basis of holding Accused guilty of offence. If there is any credible evidence that just before or immediately prior to the death of the victims, they were last seen along with the Accused at or near about the place of occurrence, the needle of suspicion would certainly point to the Accused being the culprits and this would be one of the strong factors or circumstances inculcating them with the alleged crime purported on the victims. However, if the last seen evidence does not inspire the confidence or is not trust worthy, there can be no conviction. To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body. [emphasis supplied].

34. In the present case, due to time gap noted above, the possibility of some other person, besides the appellant having committed the crime, cannot be ruled out. As noted above, even the motive is found to be wanting against the appellant. The evidence led by the prosecution points towards the mother of the deceased as the person who made the objectionable comment describing the appellant as the uncle of his own son. There was no motive for the appellant to have killed the deceased. Kamal's mother was not even cited as a witness. Though the wife of Kamal was present in the house, she was also not cited as a witness. The recovery of the kulhari, weapon of offence is also shrouded in doubt. Further, the kulhari was not proved to be connected to the crime as since the CFSL CrI.A.668/2003 Page 17 of 18 report was not exhibited, it was not put to the appellant in his examination under Section 313 Cr PC. The watch and kara of the deceased which were recovered at the instance of the co-accused were not identified by any of the witnesses. The trial court had found the evidence of last seen to be deficient against the co-accused, Hans Raj and acquitted him. The same analogy would apply to the appellant.

35. In view of the aforesaid facts and circumstances, we are of the view that prosecution has miserably failed to prove its case against the appellant. As a result, the present appeal is allowed. The appellants conviction under Section 302

IPC is set aside and he is set free. The appellants bail bonds are discharged. He shall however, comply with the provisions of S.437A Cr PC at the earliest.

36. Trial court record is returned alongwith a certified copy of this judgment.
(MANOJ KUMAR OHRI) JUDGE (HIMA KOHLI) JUDGE MARCH18 2019 dc/na
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