

Sanjay vs State

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Court : Delhi

Decided On : Jun-18-2026

Judge : Hon'Ble Mr. Justice Navin Chawla,Hon'Ble Mr. Justice Ravinder Dudeja

Appeal No. : CRL.A./991/2002

Appellant : Sanjay

Respondent : STATE

Advocate for Pet/Ap. : Ms. Manika Tripathy, Mr. Aman Usman, Mr. Manvendra Yadav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23.03.2026

Pronounced on: 18.06.2026

+ CRL.A. 991/2002 SANJAYAppellant Through: Ms. Manika Tripathy,
Advocate with appellant in person.

versus

STATERespondent Through: Mr. Aman Usman, APP for the State with Mr. Manvendra Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J

1. Appellant Sanjay has challenged his conviction and consequent

Order on Sentence, whereby he has been held guilty for committing

the murder of Bhim Singh.

2. The investigation took off when on 10th April, 1996 at about

3.40 pm, Retd. Major Surender Singh Rana (PW-5) informed the local police that the body of a person was lying at Lower GTK Road in front of Nangli Radio Station. On this information, DD No. 19-A was recorded at PS Samai Pur Badli. SI Gurnam Singh (PW-18) along with staff rushed to the spot at Lower GTK Road, opposite Radio Station, opposite Nangli Poona, where he found a highly decomposed male body in bushes and ditches in between old well and the road. The

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face and the belly of the deceased had been eaten up by insects. It was difficult to identify the body from face. The deceased was wearing a white

sandows baniyan, coloured stripes shirt with label of Prince Tailor, dark sky colour pant and light blue socks. The height of the body was 5.7 inches and was of medium built. One piece of rope was tied around the neck of the body. The age and identity of the victim could not be ascertained because of decomposition of the dead body. The photographs of the dead body were taken. PW-18 sent Rukka through HC Fateh Singh (PW-9), on the basis of which, FIR No. [IPC] was registered. The pant and the shirt of the deceased were removed and seized. Proceedings u/s 174 of the Code of Criminal Procedure, 1973 [Cr.P.C.] were conducted and the body was sent to mortuary. After post-mortem, the dead body was cremated on 12th April, 1996.

3. The shirt on the person of the victim was bearing the label of

Prince Tailor, Rudra Pur, N. Tal. HC Rattan Lal Dogra (PW-7) was sent to Rudrapur. On receipt of information from him, Insp. Mahender Singh (PW-20) with SI Gurnam Singh (PW-18), HC Fateh Singh (PW-9), Constable Bal Kishan and Rajbir went to Rudrapur and investigated the matter. Shankar Singh (PW-3), brother of the deceased, met them at Transport Nagar. He identified the clothes to be that of his brother Bhim Singh. During investigation, statement of Raj Kumar @ Raju (PW-1), 12 year old son of deceased Bhim Singh, was recorded. He stated that his father Bhim Singh was a truck driver and

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used to take goods from there and return after several days; on 2nd April, 1996, his father was to go to Delhi after loading rice in truck; accused Sanjay and Chhira, the two cleaners on his truck, loaded the rice from mill; when his father Bhim Singh was ready to proceed to Delhi with the truck at 9.00 pm, he (Raj Kumar) said that he also wanted to accompany him; Kamlesh, a visitor in his neighbourhood who had to go at some place near Delhi, also got ready to accompany Bhim Singh. All

five of them, that is, Bhim Singh, helpers Sanjay and Chhira, he himself and Kamlesh boarded the truck, which reached Delhi border in the morning, where it was stopped and Kamlesh left; the truck remained parked there during day, and in the evening, went to Transport Nagar, Delhi, where they met accused John Massey, another truck driver, who was the resident of Rudrapur and had come there with his truck and was well known to Bhim Singh, Sanjay and Chhira; that Bhim Singh, John Massey and both the helpers took liquor and all of them took meals in a hotel there; thereafter Bhim Singh made him to sleep on the cabin seat of the truck and himself slept over the truck. Raj Kumar further stated that when he and his father were going to sleep, Sanjay, Chhira and John Massey were talking to each other; that when he got up in the morning, Sanjay and Chhira were unloading the rice bags from the truck in a godown and John Massey was also present there with his truck; when he (Raj Kumar) enquired from them about his father, they said that he had left for some urgent work in night and would come later on; after unloading, Sanjay and Chhira took hire money; Sanjay started driving truck while he and Chhira sat in the truck; John drove away his truck;

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he again asked Sanjay and Chhira as to where his father was, then both of them replied that he would meet them on the way; they reached Rudrapur in the evening and he again asked both of them about his father and was told by them that he had gone for some urgent work and would come back after one or two days; that he told all this to his mother and uncle Shankar Singh, who had been searching for his father and who went to Delhi also in that connection, but he could not be traced; from that very day, Sanjay absconded and Chhira had been telling lies; they (the deceaseds family) had suspicion that something unpleasant had happened with his father, and that now, he identified his pant, shirt and socks, shown to them which were got stitched from Sanjay Tailor in Rudra Pur at Holi festival and was wearing while leaving for Delhi; that it

was suspected that the accused persons had murdered and thrown away his body somewhere.

4. Truck No. URN-9557 was seized vide memo Ex. PW-7/A.

Statement of Sanjay Tailor (PW-2) was recorded. Documents were collected from Amir Food Pvt. Ltd., Dibdiba Bilas Pur, UP, from where the rice were loaded in the truck and from Karam Industries Godown, G.T. Karnal Road, Delhi, where the rice was unloaded. Site plan Ex. PW18/B was prepared. As per the post mortem report Ex. PW-6/A, death was due to ligature constriction of neck caused by ligature material found tied around the neck. Accused Chhira Singh and John Massey were arrested. They confessed their guilt and pointed the place where they had thrown the dead body of Bhim Singh after strangulating him. On 12th July, 1996, charge-sheet was filed against

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accused Chhira Singh and John Massey. The name of accused Sanjay was kept in Column No. 2, as he could not be arrested.

5. Subsequently, Sanjay surrendered in the Court on 09th

September, 1996. He also made confession and pointed out the place where the dead body was thrown as also the place where the rice was unloaded. Supplementary charge sheet was presented against him on 26th September, 1996.

6. Charges under Section 302/201/34 IPC were framed against

Chhira Singh, John Massey and appellant Sanjay. They pleaded not guilty and claimed trial.

7. In order to prove its case, prosecution examined 20 witnesses,

viz. PW-1 Raj Kumar (He is the son of the deceased, who accompanied him in the truck. He is the witness of last seen). PW-2 is Sanjay Kumar (He was running a tailoring shop in the name of Prince Tailor and had stitched the pants and shirt recovered from the body of the deceased). PW-3 is Shankar Singh (He is the brother of the deceased; He identified the pant, shirt and the pair of socks removed from the body of the victim to be the same which were worn by deceased Bhim Singh while he left with the truck). PW-4 is HC Raj Kumar (Duty Officer). PW-5 is retired Major Surender Singh Rana (He gave information regarding discovery of the dead body). PW-6 is Dr. Ashok Jaiswal (He had conducted the post-mortem of the deceased). PW-7 is ASI Rattan Lal Dogra (He verified from Prince Tailor that he had stitched the shirt of the deceased. PW-8 is Constable Vijay Singh (Special Messenger). PW-9 is HC Fateh Singh (witness

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of investigation, who took rukka from the spot for the registration of the FIR). PW-10 is Rajiv Kumar (Accounts Clerk of Amira Foods India Pvt. Ltd.). PW-11 is Constable Ram Kishore (He had passed the information regarding the discovery of the body to Duty Officer). PW- 12 is SI Manohar Lal (He prepared the scaled site plan Ex. PW-12/A). PW-13 is Raj Kumar (Photographer). PW-14 is ASI Vidya Devi (Duty Officer). PW-15 is Chanan Dass (owner of the truck). PW-16 is Constable Rajpal (He took the body to Subzi Mandi Mortuary for the post-mortem of the deceased). PW-17 is Ashok Kumar (An employee of Karam Industries). PW-18 is SI Gurnam Singh (first IO). PW-19 Mohd. Meera Sharif (An employee of Amira Foods India Ltd.). PW- 20 is Inspector Mahender Singh (Second IO).

8. Statement of accused Sanjay was recorded under Section 313 of

Cr.P.C. He pleaded innocence. He stated that Bhim Singh was driving the truck in question and that he had accompanied him in the truck with his son Raj Kumar and co-accused Chhira Singh to Delhi and returned with the truck after unloading the rice. He further stated that Bhim Singh went missing during the night at Transport Nagar. He claimed that he had merely joined the journey for a ride at the request of Chhira Singh. He denied any involvement in the crime and asserted that he was falsely implicated and was present at his maternal uncles house, and later, surrendered before the court. He refused to lead any evidence in his defence.

9. The learned Trial Court, while returning the finding of guilt

against accused Sanjay and Chhira Singh, observed that not only the accused came back with the truck telling PW-1 that his father would

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come after 3-4 days, but they even unloaded the rice, collected the hire money and returned to Rudrapur, did not report to the owner or to the family of the truck driver, but left after parking the truck unattended in the transport area. The learned Trial Court was of the view that although the facts were in their personal knowledge, but they did not come out with any version regarding his disappearance, what to speak of plausible explanation, despite being fully aware of the prosecution against them.

10. However, with regard to co-accused John Massey, the learned

Trial Court observed that there was nothing on record that he had any meeting of mind or any occasion to have meeting of mind with accused Sanjay and Chhira to commit the offence and the circumstances do not warrant drawl of any such inference. The learned Trial Court found that the only evidence against him of his having taken dinner and liquor with

the deceased and his helpers is not sufficient to prove charge against him, and thus, acquitted him.

11. Vide separate Order on Sentence dated 23rd August, 2002, the

appellant and co-accused Chhira Singh were sentenced to undergo imprisonment for life with fine of Rs. 5,000/- each, in default of payment of fine, to undergo Rigorous Imprisonment for five months under section 302/34 IPC, and further sentenced them to Rigorous Imprisonment for five years with a fine of Rs. 5,000/- each, in default, to undergo Rigorous Imprisonment for five months under Section

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12. Aggrieved thereby, the appellant has preferred the present

appeal. The sentence of the appellant was suspended by this Court on 21st July, 2003 and subsequently affirmed on 03rd December, 2003.

SUBMISSIONS OF THE APPELLANT-SANJAY:

13. The learned counsel for the appellant assails the prosecution

case as being wholly unreliable and riddled with material contradictions, particularly on the aspect of identification of the deceased. It is submitted that the prosecution story rests on the premise that the appellant Sanjay and co-accused Chhira Singh had accompanied the deceased Bhim Singh and his son in a truck, after which the deceased went missing and was later found dead. However, it is emphasized that despite the alleged disappearance, the son of the deceased (PW-1) failed to raise any alarm or lodge a complaint for 3-4 days. Even in his deposition, PW-1 stated that he was informed by the accused that his father would return after a few days, and he accepted this explanation without suspicion. The conduct of PW-1, in neither informing others promptly nor taking steps to

trace his father, is argued to be unnatural and inconsistent with normal human behaviour. Such delay and inaction, according to the learned counsel, cast a serious doubt on the veracity of the prosecutions narrative.

14. It was further contended that the identification of the deceased

is highly doubtful and unreliable, as it is based solely on the clothes allegedly recovered from a highly decomposed body. The body, as per prosecution witnesses, was in such a decomposed state that facial or physical identification was not possible. PW-1 initially identified the

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clothes Ex. P-1 and Ex. P-2 as belonging to his father, but later, upon being recalled, denied that those clothes belonged to the deceased. This material contradiction strikes at the root of the prosecutions case. The learned counsel argued that when the primary basis of identification itself is shaky and inconsistent, the entire chain of circumstances collapses. It was submitted that the prosecution has failed to establish beyond reasonable doubt that the body recovered was indeed that of Bhim Singh.

15. The testimony of PW-2, the tailor, is also heavily relied upon by

the defence to demonstrate inconsistencies in the prosecution case. Initially, PW-2 stated that the clothes shown to him (Ex. P-1 and Ex. P-2) were stitched by him for Bhim Singh and bore the label of his shop, Prince Tailors. However, in cross-examination, he contradicted himself by stating that those clothes did not bear his label and were not stitched by him. Upon being recalled, he introduced a new version by identifying a different set of clothes (Ex. P-3 and Ex. P-4) as those stitched by him for the deceased, allegedly bearing his shop label. The learned counsel submitted that such shifting stands and improvements render the

testimony of PW-2 wholly unreliable. Moreover, PW-2 admitted that he maintained no records, issued no receipts, and had no documentary proof of his business, thereby further weakening the evidentiary value of his statements.

16. The learned counsel further submitted that even the recovery

evidence is fraught with contradictions and discrepancies. PW-9, a recovery witness, stated that the clothes recovered from the body included a shirt, pant, and socks bearing blood stains, and that a label

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of Prince Tailor was visible at the time of seizure. However, in cross-examination, PW-9 admitted that there was no label on the pant at the time of seizure. This directly contradicts other prosecution evidence suggesting the presence of such a label. Additionally, inconsistencies arise regarding the identification of exhibits, particularly Ex. P-3, which is alternately described as socks and as clothing items by different witnesses. The learned counsel argued that such inconsistencies cannot be dismissed as minor discrepancies, as the entire case hinges upon the identification of the deceased through these very articles. The possibility of tampering or fabrication cannot be ruled out, especially when it is admitted that the polythene containing the seized articles was not sealed by PW-6.

17. Attention was also drawn to the medical and investigative

lapses in the prosecution case. PW-6, the doctor who conducted the post-mortem, stated that the body was of an unknown male and that there were no visible ante-mortem injuries except for a rope found around the neck. Despite this, no forensic or scientific analysis was conducted on the rope, which could have been crucial in determining the cause of death. Furthermore, the doctor opined that there were no other

signs of violence on the body, thereby weakening the prosecutions theory of homicidal death. Such lapses in investigation, coupled with the absence of scientific evidence, create serious gaps in the prosecutions case.

18. Furthermore, it was contended that the prosecution has failed to

establish any motive or meeting of mind between the accused persons to commit the alleged offence. The testimony of PW-3 also does not

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implicate the appellant directly, as it only refers to co-accused Chhira Singh and John Massey, pointing out the place where the body was dumped, with no mention of the appellant Sanjay. Moreover, discrepancies exist regarding the stitching of clothes, with PW-3 stating that the deceased was a regular customer of PW-2 for 5-6 years, whereas PW-2 claimed that the deceased had visited only once or twice. The delay in lodging any complaint, the absence of prompt police action, and the failure to record statements at crucial stages further weaken the prosecutions case. It was also pointed out that the clothes were allegedly handed over in an unsealed condition, which is contrary to established procedures and raises the possibility of tampering. Additionally, the prosecution has failed to establish any motive whatsoever for the alleged crime, which assumes great significance in a case based purely on circumstantial evidence. The absence of motive, coupled with lack of scientific corroboration, leaves the chain of circumstances incomplete.

19. It was thus submitted that the prosecution has failed to establish

a complete and unbroken chain of circumstances pointing exclusively towards the guilt of the appellant. The last seen theory is weak and inconclusive, particularly in light of the conduct and testimony of PW-

1. No direct evidence links the appellant to the commission of the

offence, and even the alleged disclosure statements do not inspire confidence. The role attributed to co-accused persons does not implicate the appellant with certainty, and there is no evidence showing his participation in any of the stages of the alleged crime. It was also submitted that suspicion, however strong, cannot take the

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place of proof, and the appellant has been wrongly convicted on the basis of conjectures and surmises. In view of the settled principles governing circumstantial evidence, it is prayed that the conviction and sentence be set aside, as the prosecution has miserably failed to prove its case beyond reasonable doubt.

SUBMISSIONS OF THE RESPONDENT- STATE:

20. The learned Additional Public Prosecutor [APP] for the State

submitted that the testimony of PW-1 cannot be read in isolation and must be appreciated in conjunction with his statement recorded under Section 161 Cr. PC., which has been duly incorporated in the charge-sheet. It was contended that any perceived inconsistency in the deposition of PW-1 stands clarified when read harmoniously with his earlier statement. The learned APP further relies upon the testimony of PW-3 to explain the delay in lodging the complaint, submitting that PW-3 categorically deposed that he had approached the Rudrapur Police Station, but no complaint was registered and no action was taken by the local police. Thus, the delay in initiating formal proceedings is sought to be justified as being beyond the control of the family members of the deceased. It was argued that such delay, in the peculiar facts of the case, ought not to be viewed adversely against the prosecution.

21. It was further submitted that PW-1, being a child witness of

approximately 10 years of age at the relevant time, believed the representations made by the accused persons, namely Sanjay and Chhira, who were employees known to the family. The learned APP contended that the child witness trusted the assurances given by the

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accused that his father would return after a few days, and therefore his conduct in not immediately raising alarm cannot be termed unnatural. Attention is also drawn to the conduct of the appellant, who, upon initiation of investigation, absconded and failed to disclose his whereabouts to any authority. Reliance is placed upon the testimony of PW-20, the Investigating Officer, who stated that efforts were made to trace the accused persons, including Sanjay and John Massey, but they could not be located. Such conduct of abscondence, it was argued, constitutes an important incriminating circumstance against the appellant.

22. The learned APP further submitted that the recovery and

identification of clothes were carried out solely for the purpose of establishing the identity of the deceased, and minor discrepancies regarding articles such as baniyan or underwear are inconsequential, as such items are generic in nature and not determinative of identity. It is contended that the emphasis placed by the defence on omissions in the seizure memo is misplaced and does not affect the core of the prosecution case. Lastly, it was urged that the appellant remained untraceable for a prolonged period of 9-10 months and was declared a proclaimed offender during the course of proceedings. His eventual surrender, according to the prosecution, was a calculated move aimed at creating a false narrative and evading the consequences of law. In view

of these circumstances, the learned APP submits that the

prosecution has successfully established a chain of incriminating facts

pointing towards the guilt of the appellant.

ANALYSIS AND REASONING:

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23. The criminal law was set into motion upon recovery of an

unidentified body which was in a decomposed state. The post-mortem of the body was conducted by PW-6 Dr. Ashok Jaiswal, who found the rope tied around the neck of the body. Upon examination, he concluded that the death was due to ligature constriction of the neck, which was sufficient to cause death in the ordinary course of nature. The autopsy report therefore proves that the death was homicidal. However, the identification of the deceased itself remains highly doubtful and suffers from serious infirmities. The body discovered was in a highly decomposed condition, as deposed by Dr. Ashok Jaiswal (PW-6), SI Gurnam Singh (PW-18) and IO Inspector Mahender Singh (PW-20), making visual identification impossible and compelling the prosecution to rely solely upon the clothes, allegedly recovered from the body. However, even this mode of identification is riddled with contradictions. PW-1 initially identified the clothes marked as Ex. P-1 and Ex. P-2 as belonging to his father; however, upon being recalled, he stated that he had heard in court that a wrong packet of clothes had been opened, and therefore, later identified Ex. P-3 and Ex. P-4 on that basis, asserting that Ex. P-1 and Ex. P-2 were not his fathers clothes. As per seizure memo of the clothes of the deceased Ex. PW-9/A, the shirt was pattidar of green and other multiple colours. When cross examined, PW-1 stated that the shirt was of sky colour with stripes. There is also confusion with regard to

the recovery of socks, inasmuch as, PW-1 nowhere deposes about the same, and rather in cross examination, states that he does not remember the colour of the socks. With regard to the colour of the

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shirt, the Trial Court recorded the observation that the shirt was having stripes of green and white colour, while the colour of the pant was green. If the prosecution case is to be believed, the clothes were shown to PW-1 and PW-3 at Rudrapur. However, PW-1 deposed that upon receipt of information regarding the recovery of the body, he and his uncle came to Delhi, where they were shown the shirt and pant worn by his father at the time when he went missing from the truck. PW-18 has further added to the confusion regarding the colour of the shirt worn by the deceased, inasmuch as, according to him, the colour of the shirt was pattidar blue and some other colour, probably red. According to PW-20, the shirt was of green and sky blue colour while the pant was of dark sky blue colour. PW-7 ASI Rattan Lal Dogra, who had taken the clothes of the victim to Rudrapur for the purpose of making enquiry on the basis of label of Prince Tailor on the shirt, was shown the shirt Ex. P-1, having blood stains and pant Ex. P-2, which admittedly are not the clothes of the deceased, but he identified them as the same which were taken by him to Prince Tailor, Rudrapur. There is also contradiction with regard to the colour of socks of the deceased. PW-3 identified the socks to be belonging to his brother. According to him, the socks were of white colour. According to PW- 18, the colour of the socks was Fauji colour while as per PW-20, the colour of the socks was blue and PW-7 could not tell the colour of the socks.

24. The above contradictions regarding the incorrect identification

at times by the witnesses and regarding the colour of clothes, which the witnesses identified to be belonging to the deceased, are of

significance, particularly when, the body has been identified only by the wearing clothes. These contradictions create doubt as to whether the body has been rightly identified by the family members, to be belonging to Bhim Singh.

25. The conduct of the prosecution witnesses, particularly PW-1

and PW-3, raises serious doubts about the credibility of the prosecution case and weakens the chain of circumstances sought to be established. Admittedly, no complaint was lodged immediately after the alleged disappearance of the deceased, despite the family being aware that he had not returned, and the explanation that the Rudrapur police did not register the complaint, does not inspire confidence in the absence of any further efforts by the family. PW-1, in his testimony, narrates the sequence of events in a manner that reflects a passive acceptance of the situation, including accompanying the accused persons back to Rudrapur on being told that his father would return after a few days. His conduct in neither raising alarm, no hue and cry nor informing others immediately, despite noticing his father missing under suspicious circumstances, appears wholly unnatural and inconsistent with ordinary human behaviour. Similarly, PW-3 admits that although he was informed about the disappearance by his nephew PW-1 and even travelled to Delhi in search of the deceased, he did not lodge any formal complaint or pursue any effective steps with the authorities. The overall conduct of these key witnesses, son of the deceased and brother of the deceased, reflects indifference and inaction at crucial stages, thereby creating significant gaps in the prosecution narrative. This delay and lack of prompt action assume

greater significance in a case based entirely on circumstantial evidence, where each link must be firmly and cogently established.

26. The only incriminating circumstance pressed by the prosecution

is the last seen theory, namely that the deceased was last seen in the company of the appellant and co-accused persons. However, this circumstance, by its very nature, is weak and requires strict scrutiny. There is substantial time gap between the last seen on 02nd April, 1996 and recovery of the body on 10th April, 1996. The accused can be convicted on the basis of last seen evidence only when the time gap between the deceased being last seen with the accused and the death is so minimal that the possibility of any third party intervention is completely ruled out. In the present case, such proximity is conspicuously absent, as there is no clear or definite evidence establishing the exact time of death. The body was found in a highly decomposed condition, which itself indicates that considerable time had elapsed, thereby, diluting the evidentiary value of the last seen circumstance. The prosecution's own case shows that deceased left for Delhi on 02nd April, 1996 and was last seen with the accused on the night of 03/04th April, 1996. PW-1 returned to Rudrapur on 05th April, 1996 at about 5:00 AM, by which time, the deceased was already missing. The post-mortem conducted on 12th April, 1996, coupled with the medical opinion of PW-6 Dr. Ashok Jaiswal that death had occurred approximately one week prior, suggests that the death in all likelihood took place on 05th April, 1996. This creates a substantial and unexplained time gap between the point when the deceased was last seen with the accused and the probable time of death. Such a gap

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leaves open the real possibility of intervention by third party, thereby, breaking the chain of circumstance, sought to be established by the

prosecution.

27. The doctrine of proximity in both space and time is the

governing test for assessing the probative value of last seen evidence. In the present case, the deceased went missing from Transport Nagar, where, the truck was stationed during the night. However, the body was recovered from Nangli Poona near Radio Station. There is no evidence as to what is the distance between the place of last seen and the place of recovery of body. There is also no explanation as to how the body reached the place of recovery or who dumped the same over there. The mere non-explanation by the appellant of the whereabouts of the victim only for the reason that he was last seen alive with him, cannot lead to inference of guilt against the appellant. The Honble Supreme Court in the case of Kanhaiya Lal Vs. State of Rajasthan (2014) 4 SCC 715, held that evidence on last seen together is a weak piece of evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the

judgment in paras 12 and 15 can be profitably referred:

12. 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 connectivity between the accused and the crime. Mere nonexplanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt

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against the appellant.

15. The theory of last seen-the appellant

having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These

facts assume further importance on account of

absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*, (2010) 15 SCC 588

28. The Honble Supreme Court in the case of *Rambraksh @ Jalim*

vs. *State of Chhattisgarh* (2016) 12 SCC 251, reiterated above legal position in the following words in paras 12 and 13:

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.

13. In a similar fact situation, this Court

in Krishnan v. State of T.N. (2014) 12 SCC 279 held as follows: (SCC pp. 284-

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85, paras 21-24) 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 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.

22. This Court in Bodhraj v. State of

J&K held that:

31. 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 will be hazardous to come to a

conclusion of guilt in cases where there

is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six

days in lodging the FIR. As per prosecution story the deceased

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Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In *Jaswant Gir v. State of Punjab*,

this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of last seen together even if version of the prosecution witness in this regard is believed.

29. Interestingly, the deceased was allegedly last seen not only with

the appellant and co-accused Chhira Singh, but also with John Massey, who has since been acquitted by the Trial Court on the same evidence, thus, not adopting the uniform application of last seen principle. In the absence of any corroborative evidence such as recovery, motive, or forensic linkage, the last seen theory in the present case remains

inconclusive and insufficient to form the sole basis of conviction, and therefore, cannot be relied upon to sustain the guilt of the appellant.

30. Prosecution has also sought to rely upon the conduct of the

appellant, particularly his alleged abscondence, as an incriminating circumstance. However, such reliance is misplaced and insufficient in law to sustain a conviction. The abscondence, by itself, is not

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conclusive proof of guilt and can at best be treated as an additional circumstance where the other circumstances proved on record unerringly points towards the guilt of the accused. There may be several possible reasons for such abscondence, including fear of false implication or harassment by the police. In the present case, the record clearly reflects that the appellant ultimately surrendered himself before the Court on 09th September, 1996, which substantially dilutes the prosecutions attempt to portray him as evading the process of law. If the appellant had a guilty conscience and intended to permanently evade justice, there would be little reason for him to voluntarily submit to the jurisdiction of the Court. The prosecution has also failed to establish any deliberate or prolonged concealment on the part of the appellant immediately after the alleged incident nor has it shown any overt act suggesting an attempt to destroy evidence or mislead the investigation. As per his statement under Section 313 Cr. PC, appellant was at his maternal place and surrendered himself in the court. The prosecution has not proved any circumstance which may show that the abscondence of the appellant was deliberate or intentional, and hence, the same cannot be treated as a determinative incriminating circumstance.

31. In the present case, the only evidence against the appellant is of

last seen together. There is no motive proved on record. Moreover, the so-called weapon of offence, that is, rope has not been recovered at the instance of the appellant.

32. On the basis of the above discussion, we are of the opinion that

the nature of the circumstantial evidence available against the

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appellant, even though may raise some doubt that he may have committed murder, but the same is not so conclusive that he can be convicted only on the basis of evidence of last seen together.

33. The Honble Supreme Court in the case of Sujit Biswas vs.

State of Assam, (2013) 12 SCC 406, held that suspicion, howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of the suspicion. Para 6 of the said judgment reads as under:-

13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved, and something that will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between may be and must be is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between may be true and must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden

rule must be applied. In such cases, while keeping in mind the distance between may be true and must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the

facts and circumstances of a case so demand,

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then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P.,(1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777.

34. The solemn duty of a criminal court is not to convict merely

because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt. It is a settled principle that when two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the view favourable to the accused must be adopted. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.

CONCLUSION:

35. Ergo, we extend benefit of doubt to the appellant.

Consequently, the appeal is allowed and the appellant stands acquitted of all the charges levelled against him.

36. It is directed that the bail bond submitted by the appellant, when

his sentence was suspended, shall remain valid for another period of six months from today in terms of Section 437-A Cr. PC.

37. A copy of this judgment be sent to the concerned Jail

Superintendent and the learned Trial Court for information and compliance.

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38. The appeal is accordingly allowed and disposed of.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

JUNE 18, 2026/ NA/ RM

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