

Surya Narain vs State

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Court : Delhi

Decided On : Apr-21-2026

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

Appeal No. : CRL.A./168/2005

Appellant : Surya Narain

Respondent : STATE

Advocate for Pet/Ap. : Ms. Inderjeet Sidhu, Ms. Devyani Singh, Mr. Aman Usman, Mr. Manvendra Yadav, Mr. Vikasdeep Sharma, Mr. Shafiq Khan, Ms. Anjani Suri, Mr. Sudarshan Jha

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 05thFebruary, 2026 Pronounced on: 21st April, 2026 +
CRL.A. 557/2004 ANIL KUMAR @ KALLUAppellant Through: Ms.
Inderjeet Sidhu, Adv. (DHCLSC) with Ms. Devyani Singh, Adv.

Versus

THE STATE (NCT OF DELHI)Respondent Through: Mr. Aman
Usman, APP with Mr. Manvendra Yadav, Adv. and Insp. Mahesh, PS-

Dabri. + CRL.A. 168/2005 SURYA NARAINAppellant Through: Mr. Vikasdeep Sharma, Mr. Shafiq Khan, Ms.Tanya Sharma, Ms. Anjani Suri, Mr. Sudarshan Jha, Advs.

versus

STATERespondent Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv. and Insp. Mahesh, PS-Dabri.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

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RAVINDER DUDEJA, J.

1. The present appeals have been preferred by the appellants

against the judgment of conviction dated 01st May 2004 and the order

on sentence dated 05th May 2004 passed by the learned Additional Sessions Judge, New Delhi [trial court], in Sessions Case No. Dabri. Since both appeals emanate from the same FIR, and assail the common impugned judgment and order on sentence, they are being disposed of together by this common judgment. Brief facts of the case:

2. The criminal machinery was set into motion on the basis of an

information received on 09th May, 1997 at around 2.00 pm at PS Dabri regarding a murder at House no. 120/396, Shiv Puri, following which, SI

Madan Lal (PW-15) along with Constable Brij Mohan reached the spot and found the body of Dooja Devi lying in the house. On examination of the body, it was found that the neck of the victim was slit with a sharp-edged weapon. There were three deep cut marks on the neck and a chunni was found tied around the neck. There was also a small cut mark on the left shoulder of the victim. A vegetable cutting Darati was lying near the refrigerator. The rooms at the first floor of the house were found ransacked. The main gate of the house was locked from inside while the rear gate was found open. From the circumstances, it appeared to be a case of murder and robbery, and

Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 2 of 34 therefore PW-14 Inspector Ombir Singh, who also reached at the spot, prepared the Rukka Ex. PW-6/A and got the FIR registered under Section 392/302 IPC.

3. During investigation, it was revealed that both the appellants,

namely Anil Kumar @ Kallu and Surya Narain, were last seen in the company of deceased Dooja Devi at the rear door of the house shortly before the incident and were later seen leaving the vicinity soon after the murder with a grey colour bag, which contained robbed articles including gold and silver ornaments and cash etc. Appellant Anil Kumar was arrested. He made a disclosure statement leading to the recovery of stolen articles, while appellant Surya Narain was arrested from Bihar with a suitcase containing jewellery and other valuables belonging to the deceased. Surya Narain got recovered two blood stained shirts, one worn by him and another worn by Anil Kumar at the time of incident from House No. RZ-64, Gali No. 5, Kailash Puri. Statements of witnesses were recorded under Section 161 Cr. P.C and on completion of investigation, charge sheet was filed against both the appellants under Section 302 and 394 read with Section 34IPC and the appellants were sent to court for trial.

4. Charge under Section 394/302/34 IPC was framed against both the appellants, to which, they pleaded not guilty and claimed trial.

5. Prosecution examined as many as 17 witnesses, including the witnesses of last seen evidence, husband of the victim, police officials, the doctor and formal witnesses. Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 3 of 34

6. Statements of both the appellants were recorded under Section 313 Cr.PC, wherein, they stated that they were innocent.

7. In his defence, Surya Narain examined DW-1 Jawala Singh to prove that police had picked him from his house on 09th May, 1997 and took him to the police station and falsely implicated him in the present case.

8. After the conclusion of the trial, the learned Trial Court convicted the appellants under Sections 394/302/34 of the IPC vide

judgment dated 01.05.2004.

9. Vide separate order on sentence dated 05.05.2004, both the

appellants were sentenced under Section 394/34 IPC to undergo rigorous imprisonment for seven years each and to pay a fine of Rs. 5,000/- each, in default of payment of fine to further undergo simple imprisonment for five months each. They were further sentenced under Section 302/34 IPC to undergo imprisonment for life each and to pay a fine of Rs. 10,000/- each, in default of payment of fine to further undergo simple imprisonment for ten months each, with both the sentences directed to run concurrently.

10. Aggrieved thereby, the appellants have preferred the present appeals. The sentence awarded to Appellants Anil Kumar and Surya Narain was suspended on 18th August 2006 and 11th August 2005, respectively. Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 4 of 34 Submissions on behalf of Appellant No.1 - Anil Kumar @ Kallu:

11. The learned counsel for Appellant No.1 submits that the entire

prosecution case rests solely on circumstantial evidence. It was argued that the learned Trial Court erred in recording conviction by relying mechanically on oral testimonies without subjecting them to strict scrutiny, as mandated in cases based on circumstantial evidence. The evidence on record, when examined holistically, does not form a complete and unbroken chain leading exclusively to the guilt of the appellant. At best, the case is founded on suspicion and conjectures, which, however grave, cannot substitute proof beyond reasonable doubt. The Trial Court failed to notice glaring contradictions inter se the prosecution witnesses on material aspects, thereby resulting in miscarriage of justice.

12. It was further submitted that the prosecution placed undue

reliance on the testimonies of PW-2 and PW-7 to establish the circumstance of last seen together. The learned counsel submitted that even if their evidence is accepted in its entirety, it is by itself insufficient to form the basis of conviction. It is an admitted position that appellant Anil Kumar was residing with the deceased, and his presence in the house or locality was neither unnatural nor incriminating. Similarly, accused Surya Narayan was stated to be a frequent visitor. Therefore, the mere presence of the appellant with the deceased does not advance the prosecution case. Further, the possibility of PW-2 and PW-7 being planted witnesses cannot be ruled

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out, as the prosecution failed to establish that they were immediate neighbours and their house locations are not shown in the site plan, particularly that of PW-2, who allegedly witnessed events from his house. The assertion that the accused were seen leaving the spot carrying a

grey suitcase containing looted jewellery also remains unproved.

13. The alleged circumstance of robbery is equally fraught with

serious inconsistencies. The learned counsel submits that the rukka, stated to have been recorded after the arrival of PW-1, does not mention any missing articles, thereby rendering the prosecution version doubtful. The subsequent list of articles supplied by PW-1 in his supplementary statement does not tally with the articles allegedly recovered from the accused and placed for Test Identification Parade (TIP). Significantly, certain jewellery articles recovered from the spot near the dead body were later shown as having been recovered from accused Surya Narayan. If robbery was indeed the motive, it remains unexplained why valuable articles were left at the place of occurrence. These contradictions strike at the very root of the prosecutions robbery narrative, suggesting that the theory was introduced as an afterthought.

14. The learned counsel further assails the prosecution case relating

to arrest, disclosure statements, and recoveries, contending that these vital links in the chain of circumstances are wholly unreliable. One of the prosecution witnesses, PW-5, turned hostile but was not declared Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 6 of 34

hostile. The arrest of appellant Anil Kumar was effected after five days from the vicinity of the place of occurrence, which was also his place of residence, negating any allegation of abscondence. The prosecution version that the arrest of the appellant no.1 followed the disclosure of co-accused Surya Narayan is contradicted by evidence on record and even by PW-1. No arrest memo was duly proved. Recoveries are further rendered suspect due to non-joining of independent witnesses, absence of TIP for the grey suitcase, camera, and watch, and the admitted fact that the recovered suitcase was not sealed and was shown to PW-1 by the police prior to identification. The TIP of jewellery was conducted after

nearly one year without any explanation, and no malkhana entries were proved.

15. Lastly, it was submitted that the Trial Court ignored grave lapses

in investigation. The possibility of involvement of third persons was never ruled out neither investigated. The unknown caller who passed information was not investigated/examined, and as per PW-2, the son of the deceased discovered the body first when he entered the house, yet was not examined. The police initially suspected sexual assault but abandoned that line of investigation without explanation, reinforcing the defence claim that the robbery angle was an afterthought. The description of the place of occurrence itself is contradictory across police records and oral evidence.

16. It was emphasized that no weapon of offence was recovered,

and articles such as the white button and iron darati seized from the Signed By:VAISHALI CRL.A. 557/2004 & CRL.A.168/2005 Page 7 of 34 spot were not properly investigated. The failure of the appellant to

offer any explanation under Section 313 Cr.P.C. cannot be held

against him, as the accused has a right to remain silent and the prosecution, having failed to discharge its primary burden of proving its case beyond reasonable doubt through a complete and credible chain of circumstances, cannot seek to fill its own glaring loopholes by drawing adverse inferences from such silence. In these circumstances, the learned counsel submitted that the prosecution has failed to prove its case beyond reasonable doubt, and the appellant Anil Kumar @ Kallu is entitled to the benefit of doubt.

Submissions on behalf of Appellant No. 2-Surya Narayan

17. The learned counsel for Appellant No.2 assailed the prosecution

case at its very foundation by pointing out certain contradictions in the statements and depositions of PW-1, the complainant who is the husband of the deceased. It was contended that PW-1, in his statement under Section 161 Cr.P.C., attributed the information about the incident from his neighbour Suresh, whereas in his deposition before the Trial Court he stated that he received a message at his office. Further inconsistencies arise regarding whether PW-1 entered the house and discovered missing articles on 09.05.1997 or whether the house was locked and he was not permitted entry. Furthermore, PW-1 has also vacillated on whether he informed the police about missing articles on 09.05.1997 or only on 10.05.1997, and whether the list supplied pertained to missing articles or merely articles lying in the

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house prior to the incident. These contradictions, it is argued, go to the root of the prosecution case and render PW-1 an unreliable witness. Notably, PW-1 consistently expressed suspicion only against accused Anil Kumar @ Kallu, and the name of Appellant No.2 Surya Narayan did not surface at the initial stage of investigation, despite PW-2 and PW-7 allegedly being present with him prior to the preparation of the rukka.

18. It was further submitted that the alleged recovery of jewellery,

cash, saree and a briefcase from the possession of Appellant No.2 is highly doubtful and appears to be a planted recovery. PW-1, while deposing before the Trial Court, stated that jewellery and valuables were kept in a briefcase. However, no such fact finds mention in his statement under Section 161 Cr.P.C., where only individual missing articles were listed. The alleged briefcase itself is a commonly available item, as admitted by PW-7 and PW-13, and no distinctive identification marks were proved. The inconsistencies regarding the amount of missing cash, Rs.7,000/- in the police statement and Rs.13,500/- in court, along with

the introduction of a saree not mentioned earlier, further weaken the prosecution case. It was submitted that the sealing, custody, and identification of recovered articles are also shrouded in doubt, particularly when PW-1 initially stated that the jewellery was shown to him by police and later claimed that he identified it only in court. Such conduct, according to the defence, gravely undermines the credibility of the alleged recoveries.

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19. The prosecutions reliance on PW-2 and PW-7 as last seen

witnesses has also been seriously questioned. It was submitted by the learned counsel that, PW-2 merely stated that he saw accused Appellant no. 1/Anil Kumar @ Kallu talking to the deceased, with Appellant No.2 allegedly standing nearby, without any allegation of quarrel, weapon, or untoward incident. PW-7, on the other hand, gave a highly inconsistent version, initially claiming to have seen the accused from a distance of 1000 yards and later stating that they passed near his house, with Appellant No.2 carrying a grey suitcase. It was further submitted that, crucially, PW-7 admitted that such suitcases are commonly available and failed to state whether the accused were wearing blood-stained clothes. Despite allegedly being present with PW-1 from 2.00-2.30 PM onwards and the incident happened around 1.30 PM, PW-7 claims to have informed the police only in the evening. The learned counsel submitted that these contradictions render the last seen theory unreliable and insufficient to implicate Appellant No.2, especially when PW-1 himself did not initially name him.

20. Learned counsel for the appellant no. 2 raised doubts regarding

the arrest of Appellant No.2 from Madhubani, Bihar. Although prosecution witnesses PW-10 and PW-13 claimed that the arrest was effected on 12.05.1997 and transit remand was obtained, however, no

documentary proof of such remand has been placed on record. SI Atul Kumar Mishra of PS Thana Nagar, Madhubani, an alleged witness to

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the arrest and recovery, was never examined by the Trial Court during the trial. No independent public witness was joined at any stage of recovery or arrest. Furthermore, more contradictions were highlighted among police witnesses regarding the preparation of arrest memos, disclosure statements, and the sequence of investigation. The alleged recovery of blood-stained clothes is also rendered meaningless as the FSL report merely confirms the presence of human blood, without matching the blood group of the deceased. Fingerprints and photographs taken at Police Station Dabri were never proved. These lapses, it was argued, reflect a tainted and hollow investigation.

21. Lastly, it is submitted that the present case rests entirely on

circumstantial evidence, and the prosecution has failed to establish a complete and unbroken chain pointing only towards the guilt of Appellant No.2. Reliance is placed on a catena of judgments of the Supreme Court, including Charan Singh v. State of U.P. MANU/SC/ 1994, Jaswant Gir v. State of Punjab MANU/SC/2585/2005, State of UP v. Ashok Kumar Srivastava MANU/SC/0161/1992, Ramreddy Rajesh Khanna Reddy v. State of A.P. MANU/SC/8070/2006, and K.V. Chacko v. State of Kerala MANU/SC/0776/2000 and Mohibur Rahman and Anr. v. State of Assam MANU/SC/0690/2002:

(2002) 6SCC715, which consistently hold that suspicion, however grave, cannot substitute proof, and that the circumstance of last seen by itself is insufficient to sustain a conviction. It is further submitted Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 11 of 34

that the statements of the accused persons under Section 313 Cr.P.C. are not substantive evidence and cannot be used to fill gaps in the prosecution case. In the absence of credible motive, reliable recoveries, uncorroborated last-seen evidence, or scientific linkage, the prosecution has miserably failed to prove the guilt of Appellant No.2 beyond reasonable doubt. Consequently, the benefit of doubt must enure to Appellant No.2 Surya Narain. Submissions made by the State:

22. Mr. Usman learned APP for the State submitted that, the prosecution case rests entirely on a complete and coherent chain of circumstantial evidence, which, when taken cumulatively, leads to the

conclusion of the appellants guilt. It was submitted that, seventeen

prosecution witnesses were examined, and the appellants were duly examined under Section 313 Cr.P.C. and were given ample opportunity to lead defence evidence. Except Appellant No.2, who examined one defence witness (DW-1) on a limited issue of arrest, no defence version of substance was presented by the Appellants during the trial. It was emphasized that, the defence evidence failed to dent or displace the prosecution case. The trial court, therefore, rightly proceeded on the basis of unimpeached prosecution evidence.

23. Furthermore, the testimony of PW-1, the complainant and

husband of the deceased, established the occurrence, the fact of robbery, and the belongingness of the stolen articles. His evidence regarding the condition of the house, missing articles, registration of Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 12 of 34

FIR, and subsequent identification of recovered property was consistent and credible. The identification of jewellery and other articles in the TIP

and in court conclusively proved the motive of robbery. This foundational evidence remained unchallenged by the appellants during the trial, in material particulars. The prosecution thus proved both the occurrence and motive beyond reasonable doubt.

24. Learned APP further submits that, the circumstance of last

seen together was proved through PW-2 and further corroborated by PW-7. PW-2 deposed that the appellants were seen with the deceased and both the appellants and the deceased were seen talking to each other shortly before her death. Whereas PW-7 saw them leaving the vicinity with a grey suitcase. The proximity of time between the last-seen evidence and the discovery of the crime excluded the possibility of intervention by a third party. The conduct of the appellants in immediately leaving the locality further strengthened this circumstance. These facts satisfied the legal requirements governing reliance on last-seen evidence.

25. The recoveries of stolen articles at the instance of the appellants

formed a vital link in the chain of circumstances. PW-13 and PW-14 proved the arrest of Appellant No.2 from Bihar and the recovery of a suitcase containing stolen jewellery and other articles from the residence of Appellant no. 2 within days of the incident. Articles recovered from Appellant No.1 were also duly proved through reliable witnesses. The objections raised by the appellants regarding delay in

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Test Identification Proceedings or absence of independent public witnesses are without merit, particularly in the absence of any demonstrated prejudice. It is a settled position of law that police officials are not incompetent witnesses merely because of their official status, and there exists a presumption in favour of the regularity of official acts.

Reliance was placed upon the Supreme Court decision in Ram Swaroop v. State of NCT of Delhi, AIR 2013 SC 2068. Possession of stolen property soon after the commission of the offence attracts the statutory presumption under Section 114 illustration (a) of the Evidence Act. The appellants failed to offer any explanation whatsoever for such possession, thereby reinforcing the prosecution case.

26. The recovery of blood-stained clothes pursuant to the disclosure

statements under Section 27 of the Indian Evidence Act, 1872 constitutes an additional and significant incriminating circumstance against the appellants. PW-5 and PW-10 have consistently proved the factum of recovery, and the FSL report confirms the presence of human blood on the seized clothes. However, since the recovery in this case is late, after 6 days, the blood over the clothes would have likely got putrefied, making it difficult to ascertain the blood grouping. The chain of custody stands duly established, as the sealed parcels were proved to have been deposited and received by the FSL in intact condition. Significantly, no suggestion of tampering or fabrication was put to the Investigating Officer during cross-

Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 14 of 34 examination, thereby lending further credibility to the prosecution version.

27. It was submitted by the learned APP that the contention

regarding lack of proof of ownership of the recovered clothes is wholly untenable. The appellants never disputed either the recovery or the fact that the clothes belonged to them, and in any event, the prosecution is not required to establish ownership of old and used clothes. What is material under Section 27 of the Evidence Act is the exclusive knowledge of the accused regarding the place of concealment, which renders the recovery admissible and relevant. Once blood-stained clothes are recovered at the instance of the accused, the burden shifts upon them to

explain the presence of bloodstains, a fact especially within their knowledge, which they failed to do. Although blood grouping could not be determined due to degradation over time, the detection of human blood, coupled with a duly proved seizure memo and an intact chain of custody, attracts the presumption of regularity of official acts and further strengthens the prosecution case.

28. Lastly it was submitted that, medical evidence was led through

PW-4 Dr. K. Murtaza, who conducted the post-mortem examination of the deceased. He found eight ante-mortem injuries, including incised and blunt force injuries, and opined that the cause of death was shock due to injury to the neck vessels. This medical opinion conclusively established homicidal death and was fully consistent with

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the prosecution version of a violent assault during the commission of robbery by the appellants. The medical evidence, when read with the FSL report and seizure memos Ex.PW14/A to PW14/F, further corroborates the prosecution case. The cumulative effect of motive, last-seen evidence, recoveries, scientific and medical evidence formed a complete and unbroken chain. No perversity, illegality, or material irregularity was shown in the findings of the trial court. The omissions alleged under Section 313 Cr.P.C. caused no prejudice to the appellants, as they failed to demonstrate or disclose any manner in which non-putting of such incriminating circumstances resulted in prejudice or failure of justice to them.

29. Reliance was placed upon the decisions in Bhimsingh v. State

of Uttarakhand, (2015) 4 SCC 281, State of Goa v. Pandurang Mohite, AIR 2009 SC 1066, Rohtas Kumar v. State of Haryana, 2013 (82) ACC 401 (SC), Prithipal Singh v. State of Punjab, (2012) 1 SCC 10, Ashok v.

State of Maharashtra, (2015) 4 SCC 393, Surinder Kumar v. State of Punjab, Crl. Appl No. 512/2009, Rahul Mishra v. State of Uttarakhand, AIR 2015 SC 3043, State of Punjab v. Sawaran Singh, Crl.A no. 763/1997, dated 25.07.2005, SC and Suresh Chand Bhari v. State of Bihar, Crl.A No. 329/1992, in support of his submissions. Accordingly, the conviction and sentence under Sections 302/392/34 IPC merit confirmation. Analysis and Conclusion:

30. We have heard the rival submissions made by the parties and Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 16 of 34 have perused the record.

31. The prosecution case is based on circumstantial evidence. The

prosecution mainly relies upon the testimonies of PW-1 (Mr. Mudrika Prasad), PW-2 (Mr. Shiv Kumar), PW-3 (Dr. K. Goyal), PW-7 (Mr. Mahinder Singh), PW-10 (HC Mani Ram) and PW-14 (Inspector Ombir Singh). Generally speaking, the circumstantial evidence revolves around three principal circumstances namely, motive, last seen together and recovery. Conviction can be sustained on circumstantial evidence provided the chain of circumstances is complete and points unerringly towards the guilt of the accused. Each circumstance must be proved beyond reasonable doubt and must collectively exclude every hypothesis other than the guilt of the accused. Tested on these settled principles, the prosecution case, in the present matter, withstands judicial scrutiny.

32. The principles laid down in Abdul Nassar v. State of Kerala &

Anr. 2025 INSC 35, underscore that in cases based on circumstantial evidence, the courts must rigorously analyse each witnesss testimony, clearly draw and articulate reasonable inferences, ensure every incriminating circumstance is individually proved and collectively forms an unbroken chain pointing solely to guilt, and provide a reasonable judgment demonstrating that such conclusions exclude any plausible

hypothesis of innocence. The relevant portion of the aforesaid judgement reads as under: 30. We deem it essential to enunciate the principles that courts must adhere to while

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appreciating and evaluating evidence in cases based on circumstantial evidence, as follows: (i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked. (ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated. (iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. (iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the

conclusion was logically derived from the

evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt. (v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

33. The homicidal death of the deceased stands conclusively proved

through the medical evidence of PW-3 Dr. K. Goyal, who found multiple ante-mortem injuries and opined that death was caused due to shock

from injury to the neck vessels. This medical opinion remained unshaken in cross-examination and is fully consistent with the prosecution version of a violent assault. The defence has not come out

Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 18 of 34 with any alternative cause of death. Thus, the foundational fact of homicidal death is firmly established.

34. The circumstance of last seen together has been proved

through cogent and consistent testimonies of PW-2 and PW-7. PW-2 Shiv Kumar deposed that on 09th May, 1997 at about 12:00 noon, he saw both the accused present at the rear door of the house of the deceased Dooja Devi, where, accused Anil Kumar was talking with her while she was cleaning. This clearly establishes their presence with the deceased immediately prior to the incident. He further stated that shortly thereafter, at about 1:00 pm, the deceased was found lying in a pool of blood. This fact corroborates the close proximity of time between the presence of the accused and the occurrence of the crime. PW-2 thus categorically places both the appellants with the deceased shortly before her death. PW-7 Mahinder Singh, on the other hand, testified that at about 1:30 pm, on the same day, he saw both the accused emerging from the street(gali) adjoining the back door of the house of the deceased. He further stated that accused Surya Narain was carrying a grey briefcase at that time. His testimony places the accused leaving the scene of crime immediately after the commission of the offence. There is no cross examination of both these witnesses worth any weight. There is not even a suggestion to the witnesses that they had not seen the accused in the gali before or after the occurrence. There is no averment that there was any previous ill-will or enmity between the accused and the witnesses leading to their false

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implication. The defence that accused Anil Kumar was the resident of the same area and accused Surya Narain was known to him and was a visitor at his home, is of no help as no question was put to both these witnesses regards the same to justify their presence at the place of occurrence. It is also significant to note that it has come in the testimony of PW-2 Shiv Kumar that at about 1.00 pm when the son of Mudrika Prashad came to his house, he found the front door of the house closed and he entered the house from the backside and saw his mother lying in a pool of blood. The presence of the appellants with deceased Dooja Devi alive near the rear gate of the house and later being spotted by PW-7 in the gali near the back door of the house of Mudrika Prashad, is also not without any significance. The site plan does not depict the location of house of PW-2, but the same is of no significance, as it is nowhere the defence of the accused that the house of PW-2 was far away from the house of the victim or that he could not have seen the accused persons talking with the victim from his house. Though certain inconsistencies were pointed out with regard to the distance from which PW-7 claimed to have seen the appellants, minor discrepancies in estimation of distance are but natural and do not detract from the core of his testimony. The time gap between the deceased being last seen alive in the company of the appellants, appellants leaving the scene of crime just after the occurrence and the discovery of her body, is so narrow that the possibility of intervention by a third person stands excluded, thereby forming a strong and

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complete link in the chain of circumstantial evidence. The trial Court, in the impugned judgment, recorded as under:- I have gone through the statement of all the witnesses in this case but the accused persons have nowhere alleged that they have been falsely implicated on account of previous enmity with the complainant Mudrika Prasad or any other family members of the Mudrika Prasad. Nor they have alleged that PW Shiv

Kumar and PW7 Mahinder Singh have implicated them on the account of previous enmity. In the absence of previous enmity between the parties, they could not implicate them falsely in a serious case like murder. So in my opinion witnesses in this case are truthful witnesses and since they had no enmity with the accused persons they would not falsely implicate them in a murder case.

35. Thus, the argument that PW-2 and PW-7 are unreliable or

planted witnesses is devoid of merit. Their testimonies are natural, mutually corroborative and inspire confidence. We also like to herein quote the response of the Appellant No. 1 to a question put to him at the time of recording his statement under Section 313 of the Cr.P.C.: Q1. IT is in evidence against you that on 9.5.97 at about 12 noon PW-2 Shiv Kumar who runs a grocery shop and knows you saw you alongwith co-accused at the rear door at the house of Mudrika Prasad while his wife Duja Devi was cleaning stairs near the back door of his house . What have you to say? A. It is correct.

36. Additionally, 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 Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 21 of 34

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. Reliance to this effect may be placed on the judgment of the Supreme Court in Manoj @ Munna v. The State of Chhattisgarh, 2025 INSC 1466.

37. PW-14 Inspector Ombir Singh, who reached the spot upon

receiving DD No. 23-A, deposed that on reaching the spot, he found that the house was ransacked and from the circumstances, it appeared to be a case of murder and robbery.

38. PW-13 SI Harivansh Singh and PW-10 HC Mani Ram proved

the recovery of stolen property, including jewellery and a suitcase, from the possession of accused Surya Narain. PW-14 Insp. Ombir Singh also proved the recovery of a wristwatch and camera belonging to the complainant from accused Anil Kumar pursuant to his disclosure statement. PW-5 Ct. Rakesh stated in his deposition that upon the arrest of accused Anil Kumar, his personal search was taken vide memo Ex. PW5/A and upon interrogation he disclosed that the clothes which were worn by him at the time of incident was kept by him at the house of accused Surya Narain. The prosecution additionally established the recovery of blood-stained clothes of both accused at the house of Surya Narain, on which human blood was detected, and no explanation was offered by the accused under Section

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39. The recovery of blood-stained clothes at the instance of the

appellant Surya Narain on 16th May, 1997, pursuant to his disclosure statements constitutes a significant incriminating circumstance and lends further corroboration to the prosecution case. The FSL report confirms the presence of human blood on the recovered blood stained clothes, thereby, establishing a clear nexus between the appellant Surya Narain and the crime. Although blood grouping could not be determined, such inability does not diminish the evidentiary value of the recovery. The appellants failure to offer any explanation for the presence of bloodstains

on the clothes recovered from his possession, a fact especially within his knowledge, assumes considerable incriminating significance. In *State of Rajasthan v. Thakur Singh*,

(2014) 12 SCC 211, the Supreme Court held that Section 106 of the

Evidence Act does not shift the general burden of proof from the prosecution, it obliges the accused to explain facts especially within his knowledge and failure to offer such explanation, particularly, when the prosecution has established foundational facts, constitutes a strong incriminating circumstance consistent with guilt. The relevant paras read as under; 15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872 [106.Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations(a) When a person does an act with some intention other than that which the character

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and circumstances of the act suggest, the burden of proving that intention is upon him.(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.] . This section provides, inter alia, that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

16. Way back in *Shambhu Nath Mehra v. State of*

Ajmer [*Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404 : 1956 Cri LJ 794 : 1956 SCR 199] this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it

is well-nigh impossible or extremely difficult for the prosecution to prove that fact. It was said: (AIR p. 406, para 11) 11. This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word especially stresses that. It means facts

that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling

conclusion that in a murder case the burden lies on

the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. xxx

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] in which case the appellant was prosecuted for the murder of his wife Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 24 of 34

inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was

held to be inconsistent with the innocence of the

accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

40. The contention that the prosecution version becomes doubtful

due to the fact that the list of missing articles is not given in the rukka and the subsequent discrepancies in the list of articles does not merit acceptance. As may be seen, the rukka Ex. PW-6/A was prepared on the basis of DD No. 23-A Ex. PW-15/A and not on the statement of PW-1 Mudrika Prashad. PW-1 Mudrika Prashad deposed that on reaching his house, he came to know about the murder of his wife Dooja Devi. On hearing the same, he became perplexed. His testimony clearly establishes that he was not in a position to immediately furnish the inventory of the missing articles on 09th May, 1997, obviously, because he lost his wife and was in a state of shock. In cross examination, PW-1 stated that he came to know about the entire missing articles in the morning of 10th May, 1997 and he supplied the list of stolen articles to the police. Thus, the absence of detailed list of stolen articles in the rukka stands explained and does not create any dent in the prosecution case. Minor variations between the list of missing articles and the recovered articles do not affect the substratum of the prosecution case, particularly, when the recovered articles were duly identified by PW-1 in TIP and in court.

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41. The main challenge to the recovery on the ground of non-

joining of independent witnesses or delay in TIP is unsustainable. Although, it is contended by the appellants that the suitcase, which contained eight sarees and the jewellery articles, was not sealed but the fact remains that the other articles recovered from both the appellants were duly sealed and were identified by PW-1 in the TIP. Admittedly, there is no independent public witness of recovery but then there is no rule of law that the police witnesses are unreliable merely because of their official status. Reliance in this regard may be placed on the Supreme Courts decision in Mohd. Naushad v. State (NCT of Delhi) 2023 SCC OnLine SC 784. There is no presumption that police officials

shall necessarily depose falsely to implicate the accused. Rather, there is presumption that public officials would depose truthfully. Insofar as delay in conducting of the TIP is concerned, while it is desirable that such proceedings be conducted at the earliest, the same by itself is not fatal to the case of the prosecution.

42. The motive for the crime, namely robbery, also stands

established through the testimony of PW-1 and in the testimony he has stated about the missing articles from the house after the crime and the proved recoveries of those stolen articles at the instance of the appellants. The disturbed and ransacked condition of the house as was deposed by the Investigating Officer PW-14 Ombir Singh, missing valuables from the house as per list given by PW-1 on 10.05.1997,

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and subsequent recovery of those valuables from the appellants after their apprehension and at their instances, as well as the blood stained clothes recovered from the house of Appellant Surya Narain at the disclosure of Appellant Anil Kumar, form a coherent narrative. Alleged contradictions regarding the exact list of articles or amount of cash are minor and do not negate the core prosecution case. Motive, though not indispensable, clearly strengthens the chain of circumstantial evidence in the present case. The Trial Court rightly relied upon these cumulative circumstances to uphold the prosecution version.

43. The appellants contentions regarding lapses in investigation,

contradictions in site plans, delay in conducting TIP, or non-examination of certain witnesses do not create a dent in the prosecution case. Admittedly, the unknown caller, who passed on the information to the police, was not investigated/examined, son of the deceased, who discovered the body first when he entered the house, has also not been

cited as a witness and SI Atul Kumar Mishra, PS Thana Nagar, Madhubani has also not been cited or examined. However, we find that nothing turns on their testimonies and multiplicity of the witnesses would not have served any purpose. Even otherwise, defective investigation by itself cannot be a ground for acquittal when substantive evidence otherwise proves the guilt of the accused. The evidence of material witnesses has remained intact and trustworthy. The silence of the appellants under Section 313 Cr. P. C,

Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 27 of 34 in the face of strong incriminating circumstances and no explanation given by them, further reinforces the prosecution case.

44. The trial Court while convicting the appellants/accused persons

held as under:

The prosecution has also proved another circumstance by producing PW1 Mudrika Prasad who has deposed before the court that on 9/5/97 on receipt of serious message in his office he came back to his house on 9/5/97 at about 2.00 or 2.30 P.M. And he found his wife Dooja Devi was murdered in the house. He also found that the jewellery and cash was missing from the house and goods were lying scattered. He also gave the list of articles to the police. I have also gone through the cross examination of this witness but nothing significant could be elicited in the cross examination which could impeach the credibility of this witness. So it is proved on record by the prosecution that robbery was committed in the house of PW1 Mudrika Prasad and at the time of robbery his wife was also murdered by the accused persons. This witness PW1 has also identified all the jewellery articles which have been recovered at the instance of accused persons including the grey colour bag which was seen in the hands of accused Surya Narain by PW7 Mahinder Kumar and all the jewellery articles which were contained in the grey colour bag have been identified by the witness. This witness has also identified the

camera and wrist watch which were recovered at the instance of accused Anil. The camera Ex.PW5/D and wrist watch Ex.P3 and jewellery articles Ex.P1 to P35 which were identified by PW1 Mudrika Prasad belong to him so this is another circumstance proved by the prosecution against the accused persons. The next circumstance which has been proved

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by the prosecution against the accused persons is the recovery of camera and wrist watch belonging to the complainant PW1 Mudrika Prasad and was recovered at the instance of accused Anil in the presence of PW14 SI Ombir Singh and in the presence of PW16 SI Jagbeer Singh. I have also gone through the statements of these witnesses and I have not found any major discrepancy in the statement of these two witnesses on the point of recovery of camera and wrist watch at the instance of accused Anil. Both these witnesses have categorically stated that accused was arrested on 14/5/97 and he was carrying wrist watch which belongs to PW1 Mudrika Prasad and accused made disclosure statement and got recovered camera from the house of his Mama. The grey colour bag and jewellery articles belonging to Dooja Devi deceased and PW1 Mudrika Prasad were also got recovered at the instance of accused Surya Narain in the presence of PW10 HC Mani Ram and PW13 SI Harivansh Singh. I have also gone through the statements of these witnesses but I have not found any serious discrepancy in the statements of these witnesses so it is proved that the grey colour bag and the jewellery articles belonging to deceased Dooja Devi and Mudrika Prasad were recovered at the instance of accused Surya Narain and all these articles which were recovered have been identified by PW1 Mudrika Prasad in TIP before the court. So this is another circumstance proved by the prosecution that the articles which were robbed at the time of commission of crime by the accused persons have been recovered from both the accused and were identified by PW1 Mudrika Prasad. Another circumstance proved by the prosecution

against the accused persons is that the clothes of both the accused persons which were blood stained have been recovered from accused Surya Narain in the presence of

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PW10 HC Mani Ram and PW5 Ct. Rakesh Kumar. Clothes recovered were two shirts and two pants out of which one pant and one shirt belongs to accused Anil Kumar and one pant and one shirt belongs to accused Surya Narain. These clothes were found to be blood stained and as per FSL report Ex.PW14/G and H human blood has been found on the clothes of both the accused persons i.e. one pant of one accused and one shirt of another accused. Both the accused persons have failed to explain as to how the human blood was found on their clothes which they were wearing at the time of commission of crime so this is another circumstance proved by the prosecution against the accused persons. Another circumstance proved by the prosecution against the accused persons is post mortem report. PW3 Dr. K. Goel conducted the post mortem of Dooja Devi and he has found 8 injuries on the person of Dooja Devi deceased and the injuries were ante mortem in nature. Injuries no. 1 to 6 were caused by sharp and cutting weapon by striking or drawing. Injury no. 7 and 8 were caused by blunt force possible by friction against hard rough surface. In his opinion cause of death was haemorrhagic shock consequent to injuries to neck vessels. Injury no. 1 to 3 were sufficient to cause death individually or collectively in ordinary course of nature. Time since death was about 24 hours. Post mortem was conducted by the doctor on 10/5/97 and the incident took place between 1.00 to 1.50 P.M. on 9/5/97. So the medical evidence supports the ocular evidence of the witnesses that the incident had taken place between 1.00 to 1.50 P.M. on 9/5/97. I have gone through the statements of witnesses. Since the deceased was last seen alive in the company of accused persons at about 12.00 noon and thereafter she was never seen alive by anyone and further the recovery

of the robbed articles has been made at the instance of accused persons from their possession. All these allegations of the prosecution were put to the accused u/s 313 Cr.P.C. But they did not offer any explanation consistent with their innocence regarding the incriminating facts proved against them, they by itself is a circumstantial fact against them..

45. Recovery of stolen articles were effected from the accused within 4-5 days of the incident. Recovery of stolen articles soon after their robbery leads to presumption of guilt of accused. In Gulab

Chand v. State of M.P. (1995) 3 SCC 574, the Supreme Court held

that a presumption of guilt under Section 114 illustration (a) of the Evidence Act may be drawn when stolen property of the deceased is found in the possession of the accused soon after the murder, but such presumption weakens or disappears if a considerable time gap has elapsed. The relevant paragraph reads as under: 4. The High Court has placed reliance on the other decision of this Court rendered in Tulsiram Kanu v. State [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225]. In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be read along with the important time factor. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case.

46. Just to summarise, in order to establish its case, prosecution Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 31 of 34

examined seventeen witnesses, each contributing a vital link in the chain of circumstantial evidence. PW-1, Mudrika Prasad, deposed that upon returning home he found his wife murdered and, though initially not permitted to enter, later identified the missing jewellery and articles and informed the police, thereby establishing both the occurrence of robbery and identity of stolen property. PW-2, Shiv Kumar, proved the last seen circumstance by stating that he saw both accused at about noon at the rear door of the house, with accused Anil Kumar conversing with the deceased. PW-7, Mahinder Singh, further corroborated this by deposing that he saw both accused leaving the vicinity shortly after the incident, with accused Surya Narain carrying a briefcase. The medical evidence of PW-3, Dr. K. Goyal, conclusively established homicidal death caused by multiple ante- mortem injuries, consistent with the prosecution timeline. The recoveries from another crucial link, as PW-10 and PW-13 proved the arrest of accused Surya Narain and recovery of a suitcase containing stolen jewellery and articles from his possession. PW-14, the Investigating Officer, proved the arrest of accused Anil Kumar and recovery of a wristwatch from his person and a camera pursuant to his disclosure statement, which were duly identified by PW-1 in TIP conducted by PW-17. The prosecution further established that the blood-stained clothes of both accused persons were recovered at the instance of accused Surya Narain, and the FSL report confirmed the presence of human blood on those clothes. These recoveries, made

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within a few days of the incident, directly connect the accused persons with the crime and remained unexplained by them. Taken cumulatively, the evidence establishes that the accused were present at the scene before and after the occurrence and, coupled with the timely recovery of stolen property and incriminating articles, forms a complete and unbroken chain of circumstances pointing towards their guilt.

47. When all the circumstances are taken cumulatively, that is,

homicidal death, last seen evidence, known identities of the accused persons to the witnesses who had seen the appellants in the vicinity before and after the murder took place, recoveries of stolen articles at the instance of the appellants, recovery of blood-stained clothes as well from the appellant Anil Kumar from the possession of Appellant Surya Narain, motive for robbery, and medical and forensic corroboration, they form a complete and unbroken chain leading only to the guilt of the appellants. The prosecution has successfully proved its case beyond reasonable doubt. No perversity or illegality is shown in the findings of the Trial Court. Consequently, the appeals are dismissed, and the conviction and sentence awarded to the appellants namely Anil Kumar and Surya Narain are affirmed.

48. Both the appellants, Anil Kumar and Surya Narain are directed

to surrender before the Jail Superintendent within a week from today to serve their remaining sentence. In the event of failure to surrender, appropriate steps shall be taken by the State to ensure their arrest for Signed By:VAISHALICRL.A. 557/2004 & CRL.A.168/2005 Page 33 of 34 undergoing the remaining sentence.

49. A copy of this judgement be sent to the Trial Court and Jail Superintendent for information and necessary action.

50. The appeals are accordingly disposed of.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

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