

**Raj Mani Vs. State**

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**Court :** Delhi

**Decided On :** Apr-11-1997

**Reported in :** 1997IIIAD(Delhi)1014; 1997CriLJ3879; 1997(3)Crimes273; 67(1997)DLT351; 1997(42)DRJ270

**Judge :** Arun Kumar and; N.G. Nandi, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 51 of 1993

**Appellant :** Raj Mani

**Respondent :** State

**Advocate for Pet/Ap. :** Sunil Sethi and; P.K. Behl, Advs

**Judgement :**

**N.G. Nandi, J.**

(1) The appellant stands convicted for the offence under Section 302 Indian Penal Code . for the murder of Dhani Ram, S/o Ram Nihar and sentenced to undergo imprisonment for life vide impugned judgment dated 26th November 1992 by the learned Additional Sessions Judge, Delhi in Sessions Case No.3/88 in F.I.R. No.98/87 Police Station Sultan Puri, Delhi

(2) The facts leading to the filing of the present appeal by the appellant/convict, shortly stated, are that on 24th April 1987, at about 7.30 A.M. an information on telephone was received at the police station that dead body of a young man was lying near Village Sultan Puri in Indira Park. This information was recorded at Serial No.7/A in the D.D.Register; that police party went to the place in the part near the D.D.A. office where the dead body was lying; therefore, a case under Section 302 Indian Penal Code . was registered. The dead body was sent for post-mortem examination to the mortuary and the enquiry was initiated. The dead body was cremated as unclaimed. that on 6th August 1987, a complaint from one Ram Nihar, S/o Manglu, r/o Jaitipur, District Pratapgarh (U.P) was received at P.S.Sultan Puri regarding the missing of his son Dhani Ram since 23rd April 1987 and the suspicion was expressed on Raj Mani S/o Ram Nath who was to accompany missing Dhani Ram to their village on 23rd April 1987 to attend the marriage of his younger brother and son of the complainant, Ram Nihar; that the investigation further revealed that one Islam, S/o Mohd.Rafi had left Dhani Ram to Raj Mani at this House No.C-8/251, Sultan Puri on 23rd April 1987. The complaint filed on 6th August 1987 by Ram Nihar was registered as F.I.R. No.168/87 under Section 364 Indian Penal Code . and the investigation started. The complainant also handed over a registered letter purported to have been written by one Arun Kumar Paanwala, Civil Lines, Allahabad to the police along with the written complaint.

THAT Raj Mani was arrested who is also alleged to have made a disclosure statement. On completion of the investigation, charge-sheet was filed against Raj Mani for the offence under Section 302 Indian Penal Code . for committing the murder of deceased Dhani Ram, S/o Ram Nihar. The charge was framed against accused Raj Mani for the offence alleged. The prosecution, in order to bring the guilt home to the accused adduced oral as well as documentary evidence. The learned Trial Judge, appreciating the evidence on record and considering the statement under Section 313 of the Code of Criminal Procedure of the accused, found the accused guilty for the offence alleged and convicted him for the offence under Section 302 Indian Penal Code . and sentenced him to suffer imprisonment for life, as aforesaid. It is this finding of guilt and the sentence imposed which have been assailed in the present appeal under Section 374(2) of the Code of

Criminal Procedure by the appellant/convict.

(3) It may be noted, at the outset, that there is no direct evidence in the form of testimony of eye witnesses so as to connect the appellant with the commission of the offence and the only evidence on by the prosecuting is the circumstantial evidence.

(4) It is not disputed by the appellant that deceased Dhani Ram died a homicidal death. PW-29, Dr.L.T.Ramani of Civil Hospital, Delhi deposed that on 24th April 1987, he conducted post-mortem on the dead body of an unknown male aged about 20/22 years, sent by S.H.O. Police Station Sultan Puri. The post-mortem report, Ex.PW-29/A has been proved through the evidence of this witness. In the opinion of the witness the injury on the dead body over the neck was anti-mortem caused by heavy cutting weapon and was sufficient to cause death in ordinary course of nature. The cause of death was haemorrhagic shock, consequent to cut throat injury and the time of the injury was about 18 hours prior to the post-mortem examination. Taking the evidence of PW-29 and the post-mortem notes, Ex.PW-29/A, the homicidal death of the deceased has been established by the prosecution.

(5) The prosecution relies on the circumstances (i) PW-30 left the deceased Dhani Ram in the house of accused in the noon of 23rd April 1987; (ii) PW-17 saw the deceased in the company of accused in the evening while passing from in front of the room of the witness; (iii) recovery of the diary/copy, Ex.P-1 belonging to the deceased, by the accused from the `chapper' (thatched roof of the hut). The prosecution also relies on the conduct of the accused (i) on the night of 24th April 1987, the accused met his landlord PW-15 at the Delhi railway station with the Vip bag at Prayag Raj Express and that the accused stated that he was going to give the bag to Dhani Ram and that he returned without the bag thereby pretended to have handed over the bag to Dhani Ram falsely suggesting that Dhani Ram was alive on the evening of 24th April 1987; (ii) letter dated 24th August 1987 marked `X' purported to have been posted from Allahabad under an assumed name suggesting falsely that deceased had died in accident.

(6) One of the arguments by Mr.Sethi amicus curiae learned counsel for the appellant is that there is no satisfactory and trustworthy evidence to establish the circumstance of last seen together and the evidence of PW-17 is vague and not reliable. According to the prosecution, deceased Dhani Ram was to come to his village to attend the marriage of his younger brother and that accused Raj Mani was also to come for the said marriage and that is why, both were to come together to Village Jaitipur.

(7) PW-13, Ganga Ram, stated in his evidence that he was sharing the room with accused in quarter No.C-8/251, Sultan Puri, Delhi and that one Mithu Lal was the landlord of the said quarter; that about 7/8 months back, he had left for his duty and when he returned, he found his said quarter locked; that he collected the key of the quarter from the landlord who told him that his brother Dhani Ram (deceased) had come and he had gone along with the accused for walk; that when he opened the lock, he found the luggage of his brother kept there; that the accused came to the quarter in the night and on enquiry, witness learnt from him that Dhani Ram had told him that he was going to his employer in Moti Nagar.

PW-15, Mithu Lal in this regard stated in his evidence that Dhani Ram used to visit the accused. It is pertinent to note that Mithu Lal does not corroborate PW-13 that he told him that his brother Dhani Ram had come and that he had gone for a walk along with the accused. It may also be seen that PW-13 does not say that his brother Dhani Ram (deceased) was to go to Village Jaitipur along with the appellant on 23rd April 1987. @BTINDENT = PW-17, Ram Padarath, stated in his evidence that in the year 1987, he was living as a tenant on the first floor accommodation of C-8/251; that he knew Dhani Ram (deceased); that before leaving for his native village, Dhani Ram had come to meet the accused at his room. However, the witness does not recollect the date and day when he came but he came sometime in the year 1987; that Dhani Ram had come at about 6.30 P.M. when the witness had returned from the duty and that he saw Dhani Ram and the accused passing from in front of his room. The witness did not have talk with them. It appears from the evidence of this witness that before leaving for his native village, Dhani Ram had come to meet the accused and further some time in the year 1987 at about 6.30 P.M, the witness saw Dhani Ram and the accused

passing from in from of the room of the witness. The witness does not say that both were to go together nor does the witness say about the day and the date on which he saw Dhani Ram and the accused passing from in front of his room. It may be recalled here that according to PW-15, Dhani Ram used to visit the accused meaning thereby that he must be often visiting PW-13 and the visit of the deceased in the year 1987 to the room of PW-13 which is in C-8/251 in the neighborhood of the witness, even accepting the say of the witness, cannot be regarded as the solitary/only visit of the deceased to the accused.

PW-21 Ram Nihar, the complainant, stated in the evidence that Dhani Ram was his son and he used to work with Arvind Khanna (Public Witness -28) in Delhi; that in those days, accused used to reside in Sultan Puri; that about 2 1/2 years back, the marriage of his other son Panna Lal was to be solemnized in the village; that Dhani Ram was called to attend the marriage and Dhani Ram had written to the witness that along with the accused, he would be reaching the village. However, Dhani Ram did not reach the village; that accused reached the village 10/15 days after the receipt of the letter, Ex.PW-21/A by him; that on receipt of this letter, the witness came to Delhi and contacted Arvind Khanna who told the witness that Dhani Ram left his place with Islam for going to the quarter of the accused; that thereafter the witness lodged the report, Ex.PW-21/B and that the said letter, Ex.PW-21/A was handed over to the police; that the accused was with his son Dhani Ram. As far as this witness is concerned, it is sought to be suggested that it was deceased who had written to the witness that he will be reaching the village along with the accused but the deceased did not reach the village and that the accused reached the village after 10/15 days of the receipt of the letter, Ex.PW-21/A. The witness came to Delhi and contacted Arvind Khanna (Public Witness - 28) who told the witness that Dhani Ram was left by Islam (Public Witness -30) to the place of Raj Mani on 23rd April 1987. It may be appreciated that neither the letter stated to have been written by deceased to his father (Public Witness -21) comes forth on record nor PW-28 corroborates PW-21 about PW-21 having met him in connection with the missing of his son Dhani Ram who was to be accompanied by the accused to the village nor PW-28 having told to PW-21 about Islam having left Dhani Ram to the place of the accused on 23rd April 1987.

(8) PW-28, Arvind Khanna deposed in evidence that in the year 1987, he was residing in C-129, Moti Nagar and working as contractor; that one Dhani Ram was working as `munshi' with the witness, who was the resident of Pratapgarh (U.P), since the end of year 1985; that in April 1987, Dhani Ram had asked the witness that he wanted leave and needed some money in connection with the marriage of his brother; that the witness handed over Rs.1,600.00 to Dhani Ram and the leave was also granted to him; that on 23rd April 1987, at about 12 noon, Dhani Ram told the witness that he was having about Rs. 5,000.00 with him and that his cousin Raj Mani was to accompany him to their village as Raj Mani also had to attend the marriage in the village; that Dhani Ram requested him to make arrangement for conveyance for reaching his cousin Raj Mani at Sultan Puri, whereupon the witness asked his other worker Islam to leave Dhani Ram to his cousin by scooter; that thereafter Islam took Dhani Ram on company's scooter No.DBV-1669 to Sultan Puri; that after about 1 1/2 to 2 hours, Islam returned and told the witness that he had left Dhani Ram with his cousin brother Raj Mani and also told that money was also entrusted to Raj Mani and since that day, Dhani Ram did not return to the witness.

(9) PW-30, Islam, S/o Rafiq Ahmed stated in his evidence that in the year 1987, he was working with Arvind Khanna (Public Witness -28) as a worker; that on 23rd April 1987, at about 12 noon, at the instructions of his employer Arvind Khanna, the witness went to leave Dhani Ram, Supervisor working with Arvind Khanna at Sultan Puri on company's scooter No.DBV-1669 as Dhani Ram was having sufficient money with him; that Raj Mani was the cousin brother of deceased Dhani Ram; that both had to go to the village in the marriage of Dhani Ram's brother; that the witness left Dhani Ram at 12.30 P.M. at C-8/251, Sultan Puri where accused Raj Mani was present; that Rs.5,200.00 were handed over to accused Raj Mani by deceased Dhani Ram and the witness was assured by Raj Mani that he should not worry as he had taken charge of the money and both would go safely to the village in the marriage. In the cross-examination, it has been stated that the witness was told by Arvind Khanna that he should leave Dhani Ram to Sultan Puri to his brother as he was having lot of money; that the witness and Dhani Ram reached Sultan Puri at about 12.30 P.M. The witness has denied the suggestion that when he reached Raj Mani's house, he was not present.

(10) It would be seen from the evidence of PW-28 and PW-30 that at the instructions of PW-28, PW-30 took Dhani Ram to Sultan Puri on company's scooter No.DBV-1669 as Dhani Ram was having a substantial amount of Rs.5,000.00 . It is also suggested that it was at the instance of Dhani Ram that he was taken to Sultan Puri as both were to go together to attend the marriage. According to PW-17, he had seen Dhani Ram and the accused passing from in front of his room at about 6.30 P.M. According to PW-30, he reached along with Dhani Ram to Sultan Puri at the place of Raj Mani at about 12.30 P.M.

(11) As pointed out above, the evidence of PW-17 does not speak of the day and date of he having seen Dhani Ram in the company of accused Raj Mani at 6.30 P.M. Dhani Ram, as suggested from the evidence of PW-15, was visiting Raj Mani. PW-28, Arvind Khanna has been residing in Moti Nagar. According to PW-28 and PW-30, Dhani Ram was taken to Sultan Puri on scooter. It is not suggested from the evidence of PW-28 or PW-30 as to when Dhani Ram and Raj Mani were to go from Delhi, in other words, in the noon, afternoon evening, late evening or during the night of 23rd/24th April 1987. According to PW-30, he took Dhani Ram to Sultan Puri at 12.30 P.M. According to PW-13, when he returned in the evening from his duty, he found his quarter locked and he collected the key from the landlord who told him that his brother Dhani Ram had come and he has gone along with the accused for a walk, but landlord Mithu Lal, PW-15 does not depose to this effect. PW-13, PW-14, PW-15, PW-17 and PW-20 do not say in their evidence about the working hours of the accused so as to suggest his availability at his quarter at about 12.30 P.M, as sought to be suggested by PW-30.

(12) From the evidence of PW-28 and PW-30, all that could be said is that Dhani Ram was left at the quarter of accused Raj Mani at about 12.30 P.M. and nothing further. Even accepting the say of PW-30 that Raj Mani was present at his quarter at 12.30 P.M, the incident has taken place during the night of 23rd/24th April 1987, according to the prosecution.

(13) The evidence of PW-13 cannot be regarded trustworthy and reliable as he did not meet Dhani Ram in the quarter and was only told, according to him, by the

landlord that Dhani Ram had gone with the accused for a walk which is not corroborated by the landlord Mithu Lal, PW-15, as pointed above nor the evidence of PW-17 can be said to be inspiring confidence as he only says that some time in the year 1987 at about 6.30 P.M, he had seen Dhani Ram and accused passing from in front of his room without giving any specific day, date and month. Looking to the time gap of deceased Dhani Ram having been left at the place of accused as per PW-30 and the time of incident according to the prosecution, especially considering the evidence of PWs-13, 14, 15 and 17, as aforesaid, the evidence of PW-28 and PW-30 cannot be regarded sufficient so as to conclusively hold that the deceased came to the place of the accused at 12.30 P.M. and that from 12.30 P.M. till the time of occurrence, deceased Dhani Ram remained in the company of accused Raj Mani alone and that he was seen soon before the commission of the offence in company of accused Ran Mani.

(14) Another circumstance relied on by the prosecution is that the recovery of note book/diary, Ex.P-1 is at the instance of the accused. According to the prosecution, accused produced diary, Ex.P-1 from the roof of his house/chappar which contained handwriting of deceased Dhani Ram. The accused in his further statement under Section 313 of Code of Criminal Procedure denied having produced diary, Ex.P-1. He has also denied Ex.P-1 to be in the handwriting of deceased Dhani Ram.

(15) EX.PW-11/A is the Seizure Memo regarding the pointing out and taking into possession of the note book/diary, Ex.P-1. PW-11 stated that on 26th September 1987; that police brought the accused to the village; that Raj Mani led police to his house and from there, he got recovered one copy which was wrapped in a polythene paper. The police took away that copy which is Ex.P-1. In the cross-examination, it has been stated that he does not know the contents of Ex.PW-11/A. This witness does not say about the handwritings in the copy/diary, Ex.P-1

(16) PW-12, Smt.Suraj Kali, Wd/o Dhani Ram stated in her evidence that deceased Dhani Ram was her husband; that diary of her husband was recovered from the `chappar' of the accused; that she has seen diary, Ex.P-1 and it is her husband's diary which was taken out by her father-in-law who was also present.

The witness has been cross-examined by the prosecuting. In the cross-examination for the accused, it has been stated by her that police did not record her statement; that diary, Ex.P-1 was not written by her husband in her presence: that in front of `chappar', no wall was built nor lock placed and adjacent to the `chappar', the villagers passed. From the evidence of this witness, the handwriting of copy/diary, Ex.P-1 cannot be said to have been proved to be that of deceased Dhani Ram. According to this witness, copy, Ex.P-1 was taken out by her father-in-law and that adjacent to `chappar', there is no wall nor any lock placed. Considering the evidence of PW-12, it cannot be said with any reasonable certainty that it was accused who took out the diary, Ex.P-1 from the `chappar'/roof. The handwriting of Ex.P-1 also, on the basis of the evidence of PW-12, cannot be said to be that of the deceased. The `chappar' seems to be on road adjacent to which the villagers used to pass and there is no wall built in front of the `chappar' nor any lock placed. This would be suggestive of `chappar' being a place where anyone can have access. Not only that, vide F.I.R. No.187 dated 31st July 1987, suspicion was not cast on the accused meaning thereby the place was known to the complainant as well as the investigating agency.

(17) According to the prosecution, letter Ex.PW-21/A is in the hand writing of the accused. It may be noted that the report No.CFSL-87/D-4685 dated 31st May 1985 is by Mr. S.C. Mittal, Senior Scientific Officer-I (Documents). The said report is a report by a handwriting expert and on the basis of which the prosecution wants to suggest that the accused is the writer of the letter, Ex.PW-21/A.

(18) One of the arguments advanced on behalf of the defense is that the report, Ex.PX-2 being that of Senior Scientific Officer-I cannot be straight away accepted and read in evidence in view of Section 293 of the Criminal Procedure Code inasmuch as the said report does not pertain to any Chemical analysis nor it is by any officer or the expert, contemplated by sub-section 4 of Section 293 of the Code of Criminal Procedure and that the accused did not have the opportunity to challenge this report, as it was produced at the stage of recording of the statement of the accused under Section 313 of the Code of Criminal Procedure.

(19) It is submitted by Mr.Behl, learned A.P.P. for the respondent/State that clause (a) of Section 293 is attracted in the instant case as regards the report, Ex.PX-2. Sub-Section 4 provides that this action (Section 293) applies to the Government Scientific Experts namely

(A)any Chemical Examiner or Assistant Chemical Examiner of Government;

(B)to ` (f) .....

THE Senior Scientific Officer-I, in our opinion, is not covered in clause (a) of sub-section 4 of Section 293 since while examining the handwriting in question, he was neither discharging his functions as a Chemical Examiner nor Assistant Chemical Examiner to the Government so as to make the report admissible in evidence without examining the maker of the report as the witness. Section 293 Cr.P.C. nowhere uses the expression handwriting expert or Senior Scientific officer I (Documents). The Legislature must be aware about the reports of examination of handwriting by the experts. It has consciously not included such reports in Section 293 Cr.P.C. This may be for the reason that the science of handwriting is not a perfect science just as the science of finger prints. This means that the maker of the report regarding handwriting has to appear as a witness for the proof of the contents of the report. In the present case, the handwriting expert's report, Ex.PX-2 has not been, therefore, proved in accordance with the law and cannot be read in evidence.

(20) On behalf of the respondent reliance has been placed on the decision reported in the case of Phool Kumar Vs . Delhi Administration : [1975]3SCR917 . While considering Section 293 of the Criminal Procedure Code in the light of the facts that neither the Court thought it fit nor the prosecution or the accused filed any application to summon and examine the expert as to the subject matter of the report of the finger-print expert and the report used as evidence against the accused, the Supreme Court held that no objection can be taken at appellate stage by the accused against non-examination of the finger print expert. In the case before the Supreme Court, the expert report pertained to fingerprint. Clause (c) of sub-section 4 of Section 293 of the Code includes the Director of Fingerprint Bureau. Thus, the report of the finger print expert is covered under clause (c) of

sub-section 4 of Section 293. The report of the handwriting expert/Senior Scientific Officer-I (Documents) is not covered under sub-section 4 of Section 293 of the Code and, therefore, the principle enunciated by the Supreme Court in this judgment would not be of any assistance to the prosecution.

(21) Another limb of attack to the report, Ex.PX-2 is that the sample/specimen handwriting of the accused were taken by the investigating agency while he was in the police custody. In view of the decision in State of Bombay Vs . Kathi Kalu, : 1961 CriLJ856 , this argument does not deserve any credence and the same is noted for being rejected.

(22) It may be seen from the above, that according to PW-21, Ram Nihar, deceased was to come with the accused to Village Jaitipur, Pratapgarh; that PW-30 left deceased Dhani Ram at the house of the accused at 12.30 P.M. on 23rd April 1987; that PW-17 saw Dhani Ram and the accused passing from in front of the room of the witness at 6.30 P.M. Relying on the decision in the case of Mahavir Prasad v. State of Rajasthan reported in 1991 Criminal Law Journal page 368, it has been contended on behalf of the appellant that in absence of direct evidence to connect the appellant with the crime and the prosecution relying on the circumstantial evidence being that the accused had left the village in company of deceased and returned alone would not be sufficient to hold he accused guilty of committing the murder of Dhani Ram and this circumstance, though may create suspicion against the appellant, the same cannot establish the charge of murder.

(23) According to the prosecution, the accused and the deceased were to go together to village Jaitipur, Distt. Pratapgarh but the accused alone reached the village and that according to PW-30 and PW-17, the deceased was with the accused, as pointed out above. The accused alone reaching to the village may be a circumstance which may create suspicion but nothing further. It need hardly be said that suspicion, howsoever strong, cannot take the place of proof and when the case rest solely on the circumstantial evidence, the chain of circumstances must be so complete so as to point to the guilt of the accused alone inconsistent with the hypothesis of the innocence of the accused.

(24) In the case of Jaharlal Das Vs . State of Orissa reported in : 1991 CriLJ1809 , it has been observed by the Supreme Court in para 9 thereof that 'in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however strong cannot be allowed to take the place of proof..... The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused'.

(25) It may be appreciated that PW-21, Ram Nihar, S/o Manglu Lodged a complaint on 31st July 1987, Ex.PW-20/B which has been registered as F.I.R. In the F.I.R, it is alleged that his son Dhani Ram working with Arvind Khanna, contractor, was to come home on 23rd April 1987 to attend the marriage of his brother along with Raj Mani residing in Sultan Puri, Delhi by Prayag Raj Express; that Raj Mani reached home but Dhani Ram did not and on enquiry, he learnt that Raj Mani had committed the murder of Dhani Ram in the night of 23rd April 1987. It is pertinent to note that in the F.I.R, Ex.PW-21/B, there is no mention of receipt of the letter, Ex.PW-21/a posted from Allahabad on the basis of which, according to PW-21, he went to Delhi and contacted PW-28 Arvind Khanna, the employer of deceased Dhani Ram. It may also be noted that complaint, Ex.PW-21/B only mentions PW-21 having come to Delhi for making enquiries. There is no mention in Ex.PW-21/B that the complainant met PW-28 Arvind Khanna and was told, as deposed by PW-21. PW-21 is also said to have produced the envelop, Ex.PW-19/A, which is said to have contained the letter, Ex.PW-21/A. It is stated by PW-19, an employee from the postal department at Allahabad Chowk Post Office that envelope, Ex.PW-19/A bears No.1494 in the hand of the witness and after registering the register letters in the registered list, same sent to Allahabad R.M.S. The said registered letter was for District Pratapgarh. In the cross-examination, it is stated that Ex.PW-19/A does not bear the signature of the witness; that year 1987 is not visible on this envelope.

(26) As per the prosecution, the photographs of the dead body were taken by PW-6 on 24th April 1987. The photographs, Ex.PW-6/8 to PW-6/14 are the enlargements of the photographs developed by PW-6 from the negatives.

According to the prosecution, after the post-mortem by PW-29, Dr.L.T.Ramani on 24th April 1987, the dead body was cremated as unidentified. Now the complaint, Ex.PW-21/B is after the complainant having come to Delhi and made enquiries. However, the complaint dated 31st July 1987 is about the missing of his son Dhani Ram as he did not reach Village Jaitipur on 23rd April 1987. It may be noted that on 24th April 1987, the photographs of the dead body, Ex.PW-6/8 to PW-6/14 were taken by the S.H.O. of the concerned police station. The fact of death of Dhani Ram was known to the S.H.O. when the complaint, Ex.PW-21/B was filed by PW-21. In that case, photographs Ex.PW-6/8 to PW-6/14 could have been shown to the complainant as regards the identity of the dead body photographed and the complaint could not have been registered for the offence under Section 364 Indian Penal Code . as it has been done. In any event, the murder of deceased Dhani Ram was known to the concerned police station and the photographs were very much there on 31st July 1987/6th August 1987 when the complaint, Ex.PW-21/A came to be registered as the F.I.R. by the concerned police station.

(27) In the instant case, the evidence of last seen together, especially considering the evidence of PW-13, PW-15, PW-17 and PW-30 cannot be said to prove with reasonable certainty that the circumstance of last seen together has been established beyond a shadow of doubt by the prosecution. The state of evidence with regard to the circumstance of last seen together being as above and the same being not free from suspicion, no finding with regard to the proof of the circumstance of last seen together can be recorded. In our opinion, in absence of prosecution establishing the circumstance of last seen together beyond all suspicions, prosecution failing to prove handwriting of copy/diary, Ex.P-1 to be that of deceased Dhani Ram for the reasons aforesaid and the prosecution having failed to prove letter, Ex.PW-20/B to have been written by the accused in view of the report, Ex.PX-2 being inadmissible, as aforesaid, the prosecution cannot be said to have established the circumstances against the accused beyond shadow of doubt so as to complete the chain of circumstances pointing to the guilt, of the accused and the accused alone inconsistent with the hypothesis of the innocence of the accused.

(28) In our opinion, the learned Trial Judge, on the appreciation of the evidence on record, with reference to the legal position, as above, cannot be said to be justified in recording a finding of guilt against the accused and the finding of guilt and the sentence imposed would be liable to be set aside.

(29) In the result, the appeal succeeds. The finding of guilt recorded and the sentences imposed vide impugned judgment dated 26th November 1992 in Sessions Case No.3/88 in F.I.R. No.98/87 Police Station Sultan Puri are hereby set aside. The appellant/accused Raj Mani is ordered to be set at liberty forthwith, if not required in any other case.

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