

**Prem Pal Vs. State**

**Prem Pal Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/848647](http://sooperkanoon.com/848647)

**Court :** Delhi

**Decided On :** Mar-26-2010

**Judge :** Pradeep Nandrajog and; Suresh Kait, JJ.

**Appeal No. :** Crl. Appeal No. 193/2008

**Appellant :** Prem Pal

**Respondent :** State

**Advocate for Def. :** Richa Kapoor, A.P.P

**Advocate for Pet/Ap. :** Vikas Padora, Adv. in Crl. Appeal Nos. 193 and 669/2008 and; Rita Hingmang, Adv. in Crl. Appeal No. 6

**Disposition :** Appeal allowed

**Judgement :**

**Pradeep Nandrajog, J.**

1. The learned Trial Judge has held that the evidence led by the prosecution has proved that the deceased Shri Dharampal was last seen in the company of the appellants on the day when Dharampal died. It has further been held that the prosecution has established that the muffler used as the ligature material to strangulate Dharampal to death which was found tied around the neck of Dharampal when his dead body was detected was proved to be belonging to

appellant Prem Pal. The learned Trial Judge has further held that the prosecution has successfully proved that the pair of shoes Ex.P-17 recovered from the bushes near the place where the dead body of Dharampal was recovered were got recovered by appellant Mahi Lal. Lastly, the learned Trial Judge has held that from the testimony of Anita PW-1, the wife of the deceased a motive has been proved i.e. a fight between the appellants and the deceased over money. From the trinity of circumstances against the appellants i.e. both appellants being last seen in the company of the deceased, the appellants having a motive and qua one the pair of shoes of the deceased were recovered and qua the other the ligature material was proved to be belonging, verdict of guilt i.e. having caused the murder of Dharampal has been returned.

2. The law of last seen evidence being incriminating requires that it has been successfully proved by the prosecution that the accused and the deceased were last seen together in such circumstances that with reference to the proximity of the time when the deceased was seen alive in the company of the accused and the time of death as also the proximity of the place where they were last seen together and the place where from the dead body was recovered, requires an explanation from the accused as to how and when they parted company and in the absence of any credible explanation the presumption of guilt against the accused may be drawn.

3. Let us see the last seen evidence in the instant case. Four witnesses of the prosecution have spoken about it. Smt. Anita PW-1, the wife of the deceased, deposed that she and her husband were residing at Gandhi Vihar, Timarpur on 18.2.2003. While deposing in examination-in-chief she stated that in the morning of 18.2.2003 the appellants came to her house and her husband left in their company but never returned, but in cross-examination stated that Asha PW-2, the sister of her husband, had told her that she i.e. Asha had seen her husband in the company of the accused. Asha Rani PW-2 deposed that in the afternoon of 18.2.2003 she saw her brother Dharampal in the company of the appellants in his house, but on cross-examination stated that she saw all three on the way. Karambir PW-3 who claims to be a tea vendor having his workplace near Batra Cinema, Mukherjee Nagar simply deposed that he had been seeing the accused

and the deceased in the company of each other but does not remember any particular date. Bansi Lal PW-4, the brother of the deceased, deposed that around 12:30 PM on 18.2.2003 when he was coming from the side of Mukherjee Nagar after delivering tiffins he saw his brother in the company of the appellants and that they were proceeding towards a 'theka'-liquor shop.

4. It is apparent that the testimony of PW-1 on the issue of her husband being in the company of the appellants is hearsay evidence. It is further apparent that as per the sister of the deceased she saw the deceased who was then alive in the company of the appellants at around noon time. The place where she saw them together is either at the house of the deceased or somewhere on the way. It is further apparent that PW-3 has simply blogged certain facts by throwing no light on any particular day on which he saw the deceased, when alive, in the company of the appellants. As per PW-4 he saw all three together at around noon time.

5. The place where the dead body of the deceased was noted as deposed to by Kanwar Singh PW-7, Section Officer in the Horticulture Department of DDA, is near Pontoon Pul at Majnu Ka Tila which is a place on the banks of river Yamuna across the outer Ring Road near Timarpur. Mukherjee Nagar is at least 4 to 5 km away. As deposed to by Kanwar Singh he saw the dead body in the bushes and he informed the police. The exact spot has been shown in the site plan to scale Ex.PW-11/A. It is just next to a drain. Kanwar Singh PW-7 has thrown no light as to when he detected the dead body and informed the police, but light is thrown on the said fact by HC Kishan Chandra PW-8 who has deposed that he received a call at the PCR at 10:32 AM on 19.2.2003 about a dead body lying near a nallah at Majnu Ka Tila which he recorded in the PCR form Ex.PW-8/A.

6. It is apparent that the dead body was seized after 10:32 AM on 19.2.2003 and as deposed to by SI Mukesh Kumar PW-13 pursuant to the police control room informing the local police station and DD Entry No. 24B being recorded he left for the spot. DD Entry No. 24B, Ex.PW-20/A, proved through the testimony of its scribe HC Vedvati shows that the same has been recorded at 10:35 AM on 19.2.2003. After it was seized the dead body was sent to Subzi Mandi Mortuary where Dr. Ashok Jaiswal PW-15 conducted the post-mortem at 1:00 PM on

20.2.2003 and prepared the post-mortem report Ex.PW-15/A, recording therein that alcohol was present in the stomach of the dead body and that the likely time of death could be 1 days prior. He noted ligature injuries on the neck and opined that the cause of death was asphyxia. Relevant would it be to record that, with reference to the post-mortem report, the likely time of death of the deceased would be around 7:00 PM of 18.2.2003 and since there is always a margin of two hours plus or minus on either side of the likely time of death, with reference to the post-mortem report, it can safely be said that the deceased died anywhere between 5:00 PM to 9:00 PM on 18.2.2003.

7. But the fact that the dead body was detected in an open area the more probable time of death would be when it became dark for the reason it would be difficult for somebody to kill the deceased in daylight as there was always a possibility of fear of being seen. In this connection it assumes significance to note that as deposed by Kanwar Singh PW-7 he detected the body in the morning of 19.2.2003 when he was taking round to inspect the work being done by the labour near the Pontoon Pul. It is apparent that labour was working at site and to commit the crime and not be detected would require darkness to set in. On 18.2.2003 darkness sets in by around 6:30 PM and areas start getting abandoned by around 9:00 PM.

8. Under the circumstances, in all fairness to the appellants, it must be held that the last seen evidence is not of the quality required by law when it would be required from the appellants to speak. The proximity of time and place of the death and last seen respectively has lost nexus in the instant case. The evidence shows that if at all, the appellants were seen with the deceased at around noon time. The probable time of death of the deceased would be somewhere around 8:00 or 9:00 PM. Assuming it to be a little prior, it certainly cannot be around 5:00 PM for the reason working hours in Delhi are 9:00 AM to 5:00 PM and we have evidence on record that labour employed by DDA was working at the site on 18.2.2003.

9. With reference to the ligature material used to strangle the deceased i.e. a muffler found on the neck of the deceased, Asha Rani PW-2 has deposed that the muffler which was tied around the neck of her brother was seen by her with appellant Prem Pal. When and how and under what circumstances she saw the

muffler with Prem Pal has not been deposed to by her. Bansi Lal PW-4 has deposed that a boy called Pittu was present at the spot where the body of his brother was found when the police arrived and he i.e. Pittu told the police that the muffler belongs to his i.e. Bansi Lal's brother.

10. We find that the learned Trial Judge has gullibly accepted the deposition of Asha Rani PW-2 and has discounted the testimony of Bansi Lal PW-4 by holding that Pittu has not been examined as a witness. That apart, the muffler in question can be seen in the photographs of the dead body of the deceased which were taken by Rakesh Bhardwaj PW-22, a photographer by profession.

11. The muffler is an ordinary muffler and has no particular or peculiar design on it. Such a muffler, in our opinion, could belong to anyone.

12. In a case of circumstantial evidence it would be unsafe to sustain the conviction of an accused solely through the linkage of the muffler in question and that too when the offence relates to murder.

13. On the issue of the recovery of the pair of shoes Ex.P-17 attributed to appellant Mahi Lal, we note that Anita PW-1, the wife of the deceased identified the pair of shoes as belonging to her husband. So did Asha Rani PW-2 and Bansi Lal PW-4. But, the question is, whether the recovery stands established with credibility and secondly whether the circumstance of the recovery, if recovery is held established, sufficient in a case of circumstantial evidence to sustain a conviction as the sole incriminating evidence.

14. We note that the recovery memo Ex.PW-13/A is also the pointing out memo and records the pointing out-cum-recovery of the pair of shoes. The same records the pointing out-cum-recovery to be joint at the instance of both the appellants, but the Judge has used the same only against Mahi Lal on the reasoning: 'As per the prosecution the said shoes Ex.P-17 were got recovered by accused person. PW-4 Bansi Lal says that the shoes Ex.P-17 were recovered by police from accused Mahi Lal as he was wearing it. However, PW-13 SI Mukesh Kumar says that accused Mahi Lal got recovered the shoes of the deceased from near the place of incident and they were seized vide memo Ex.PW-13/A. As per PW-14 Inspector

R.K.Rathi, the shoes Ex.P-17 were got recovered by both the accused persons from the bushes near the place of recovery of dead body. Lastly, as per PW-21 SI Suman it was accused Mahi Lal who had got recovered the pair of shoes Ex.P-17. I have also gone through the seizure memo Ex.PW-13/A and it says that accused Mahi Lal and accused Prem Pal both got recovered the shoes Ex.P-17. The Ld.defence counsel here says that there cannot be a joint recovery of shoes. A bare reading of seizure memo Ex.PW-13/A show that it was accused Mahi Lal who first got recovered the shoes Ex.P-17 belonging to the deceased. The argument of joint recovery of shoes can be sustainable only qua accused Prem Pal, as once the shoes were got recovered by accused Mahi Lal, it cannot be said that the said shoes were re-discovered by co-accused Prem Pal.'

15. It is apparent that the learned Trial Judge has somewhat contrived his reasoning to give logic to the same.

16. But, we have more fundamental grounds to hold that the recovery of the pair of shoes does not inspire incriminating character of the highest order.

17. The place of recovery of the shoes is the same as where from the dead body was recovered. The dead body was seized in the morning of 19.2.2003 and the pair of shoes has been recovered the same day but after the appellants were arrested at around 5:30 PM. It is obvious that the police had accessed the place in the morning at around 11:00 AM on 19.2.2003. It assumes importance to note that as recorded in the memo Ex.PW-2/A when the dead body was seized, blood stained soil, control earth and two bricks stained with blood were lifted from the place of the crime. We find it strange that the pair of shoes lying nearby was not picked up. The possibility of the police officers having noticed the pair of shoes lying nearby but deliberately not picking them up to show that they were lifted later on at the instance of the accused or the possibility of the recovery being planted cannot be ruled out. Add on to the same the contradictory testimony of the witnesses to the recovery and the fact that the recovery is from an open area, renders the same most unsatisfactory.

18. The Rule of Law is clear. The proof of fact pertaining to a circumstance wherefrom an adverse inference is to be drawn has to be of the highest order i.e.

the fact wherefrom inference is to be drawn has to be proved with purity and like any other fact.

19. We are compelled to hold that the incriminating evidence relating to the recovery of the pair of shoes Ex.P-17 is seriously tainted, in any case, lacks credibility of the degree required by law in a case of circumstantial evidence.

20. The learned Trial Judge has held that a motive has been proved through the testimony of Anita PW-1 as per whom her husband and the accused were working as whitewashers and for some work done together, a few days prior they quarreled with each other.

21. Suffice would it be to state that motive is a weak piece of evidence for the reason inference of guilt from motive is based on presumptive logic i.e. that the accused had a motive is the presumption that he did the act. Indeed, every piece of presumptive logic is always treated as weak evidence.

22. To bring the curtains down, the appeals are allowed. The appellants are acquitted of the charge framed against them of having murdered Dharampal.

23. Since the appellants are in jail we direct a copy of the instant order be sent to the Superintendent, Central Jail, Tihar in each Appeal. The appellants are directed to be set free unless required in custody in any other case.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**