

2025:PHHC:088106-DB



CRA-D-418-DB-2004 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(106)

CRA-D-418-DB-2004 (O & M)

Reserved on: 15.07.2025

Date of Pronouncement: 18.07.2025

Pirthi Singh . . . Appellant

V/s

State of Haryana . . . Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. J.S. Mehndiratta, Advocate as Amicus Curiae,
with Mr. Inderpreet Singh Brar, Advocate,
for the appellant.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 09/12.04.2004 passed by the Presiding Officer, Special Court (under SC & ST Act, 1989), Kurukshetra.

2. The instant FIR came to be registered on 17.04.1999. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 09/12.04.2004. The present appeal against the judgment of conviction and order of sentence was filed on 30.04.2004. The matter has come up for final hearing now after almost 26 years of the registration of the FIR.



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3. The prosecution case in brief is that Maddi Ram, resident of Village, Jhinjarpur, Balmiki by caste, had three daughters, namely, Nikki. Sundra (since deceased) and Bimla. He had one son named Sunder Singh complainant (PW-13) of this case. Smt. Sundra (since deceased) was married with Amar Singh son of Chhotu Ram resident of Village Kangwal, Police Station Naggal. On 03.04.1999, Smt. Sundra (deceased), sister of complainant Sunder Singh (PW-13) left her the matrimonial home (from the company of her husband Amar Singh) for Kurukshetra for fetching medicines but when she did not come back home, her husband Amar Singh telephonically enquired from Sunder Singh (PW-13) as to whether she had reached her parental house as she not had not gone back to Kangwal, Sunder Singh (PW-13) replied in the negative. Thereafter, Sunder Singh and his relatives searched for Smt. Sundra (deceased) but in vain. On 07.04.1999, a Daily Diary Report No.10 (Ex.DA) was got registered in Police Station, Naggal regarding her having been turned out of the matrimonial home by her husband-Amar Singh. Then, relatives of the parental side of Smt. Sundra (deceased) searched for her. On 12.04.1999, the dead body of Smt. Sundra was recovered from Bhakhra Canal near Kirmach Syphon. In this regard, a Daily Diary Report No.8 (Ex.PN) was registered at Police Post. Jyotisar. Thereafter, SI Charan Dass (PW-15) alongwith constables Trilochan Chand and Raj Pal @ Labh Singh reached at the Syphon of Bhakhra Canal near Kirmach and completed the proceedings under Section



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174 of the Code of Criminal Procedure (Ex.PD) of the dead body of Smt. Sundra (deceased). Thereafter, the dead body was despatched to LNJP Hospital, Kurukshetra through constables Trilochan Singh and Raj Pal @ Labh Singh Singh for post-mortem examination. On application (Ex.PA/1), the post-mortem on the dead body of Smt. Sundra was requested to be conducted by a panel of doctors consisting of Dr.Jagmal Singh (PW-1), Dr.C.R.Khatri and Dr.G.D. Mittal. Since the dead body was in advance stage of putrefaction, it was referred to PGI, Rohtak (Ex. PA). On 13.04.1999 at 10.00 A.M, vide post-mortem report (Ex.PE) the post-mortem on the dead-body of Smt. Sundra (deceased) was conducted by Dr.P.K. Paliwal (PW-6), Associate Professor. Department of Forensic Medicine, PGI (M.S.), Rohtak. He had opined that the death of Smt.Sundra in this case was because of "strangulation coupled with smothering". He had further opined that the dead-body was in advance stage of decomposition and that the death of Smt. Sundra could be possible on 03.04.1999. Requisite documents and Viscera etc. were handed over to the police. Formal FIR (Ex.PF/1) was recorded 17.04.1999 by SI Karam Singh, the then Station House Officer, Police Station, Naggal. He had recorded the statements of Smt. Angoori Devi and Kalu Ram on the same day. The Deputy Superintendent of Police, Headquarters had verified the investigations. On 18.04.1999, statements of Lilu Ram, Deep Chand, Pirthi Singh Sarpanch, Moman Ram, Ishwar Dayal were recorded by the Investigating Officer. At the instance of the



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Investigating officer, ASI Charan Dass (PW-15) recorded the statements of MHC Brij Bhan and Constable Raj Pal @ Labh Singh in Police Station, Naggal. Documents and viscera were taken in possession by the Investigating Officer and were deposited in the Malkhana of the Police Station, Sadar Thanesar.

On 19.04.1999, the investigation of this case was taken over by the Inspector of Police Om Parkash. On 21.04.1999, he had effected the arrest of the accused. On interrogation, the accused made a disclosure statement (Ex.PJ) in presence of HC Bharat Lal (PW-9) and Om Parkash, Special Staff, Kurukshetra. The accused had disclosed that on 03.04.1999, he had taken Smt. Sundra (deceased) on the carrier of his cycle for Jyotisar and then had taken her to the Forest Nursery by the side of the Canal on Dhand. Road. This Nursery was also called "Raogarh Nursery". He made her comfortable in a shed (*Kotha*) in the Nursery and duping her, committed rape on her on a wooden portable platform (*Takhat*) which was already placed in the said *kotha*. Thereafter, he had come out of the said *kotha* and an argument ensued. She threatened to disclose the mis-deed of committing of rape by him on her. He got frightened, forcibly made her lie on the wooden portable platform (*Takhat*) and strangulated her with her *Chuni*. Thereafter, he locked the *kotha* and had been roaming about in the Nursery. At about 9.00 P.M., picking up the dead body on his shoulders, he threw her in the Canal. He undertook to identify the *kotha* and also assured to get the



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wooden portable platform (*Takhat*) recovered from the said *kotha*. He also undertook to get the place from where he had thrown the dead-body in the Canal identified. His disclosure statement (Ex.PJ) was recorded. Pursuant to this disclosure statement, he took the police to the stated Nursery, identified the *Kotha*, opened it and got the wooden portable platform (*Takhat*) recovered. There were stains on two planks of the said platform. These stains were of urine, saliva and semen. The said portions of the wooden portable platform were got separated with the help of a carpenter. The said wooden portions were put in a separate parcel. The parcel was sealed with the seal 'OP'. Cycle mark Hero was also produced by the accused which was allegedly used in the commission of the crime. It was also taken in possession by the police vide recovery memo (Ex.PK). The spot was inspected. He also got the place (where the body of the deceased was allegedly thrown in the Canal) identified.

Investigations were taken over by ASI Charan Dass (PW-15) on 14.06.1999. He got the site inspected by a Draftsman who prepared scaled site-plan (Ex.PC/1). The articles taken from the spot as also those handed over by the Medical Officer (who conducted the post-mortem) were sent to the Forensic Science Laboratory, Haryana, Madhuban (Karnal), for analysis.

After completion of the investigation, final report under Section 173 of the Code of Criminal Procedure was prepared by SI Jagdish Chand and was presented in the Court.



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4. Charge under Sections 376 IPC, 302 IPC and 201 IPC as also under Section 3(1)(xii) and Section 3(2)(v) of the SC & ST Act were framed to which he pleaded not guilty and claimed trial.

EVIDENCE OF THE PROSECUTION

5. The prosecution, in support of its case examined as many as 17 witnesses. For convenience and clarity, the prosecution evidence is being discussed under the following groups: -

- i) Complainant and related witnesses;
- ii) Medical evidence;
- iii) Investigating Officer and related witnesses;
- iv) Scientific evidence; and
- v) Formal witnesses.

(i) COMPLAINANT AND RELATED WITNESSES

6. Sunder Singh complainant (PW-13) is the brother of the deceased. He proved his statement (Ex.DA) made to the police on **07.04.1999/07.04.1999** about Smt. Sundra, his sister having gone missing when she had not reached her parental house on 03.04.1999 (when she had started from her in-laws from village Kangwal to Jhinjarpur). He further deposed that on 17.04.1999 her dead-body was found from Bhakhra Canal near Kirmach Syphon. He had given the information to the police. He had participated in the inquest proceedings. He had also disclosed that Lad PW-17 (son of his uncle) had also disclosed to him that the deceased was found by him on the cycle of Pirthi accused on 03.04.1999. He had then made a complaint (Ex.PF) to the Police Post, Jyotisar.



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7. Raj Pal @ Labh Singh @ Labh Singh (PW14) is also a witness of having last seen the deceased in the company of the accused on 03.04.1999. He had started from village Ahbad Pur for Bahari Mohalla, Kurukshetra. He was to leave his mother there. On the way, he had seen Smt. Sundra (since deceased) in the company of the accused near Canal bridge on Dhand Road. They were found sitting in the Nursery. After leaving his mother in Bahari Mohalla, Kurukshetra, he had gone back to his village. The Nursery was located on the way. He had identified the accused in the Court as well. After some days, he had come to know that Smt. Sundra had been killed and her dead-body was recovered from the Canal. This information was given to him by Raghbir Singh PW. Then, immediately he had disclosed to Raghbir Singh that he had seen Smt. Sundra in the company of the accused in the Nursery near Canal bridge on Dhand Road.

8. PW-17/Lad son of Nantu Ram was a resident of village Jhinjarpur. Deceased Smt. Sundra was his niece i.e. daughter of his brother. He had brought his grand-son to Jyotisar for treatment on 03.04.1999. Thereafter, he had boarded a jeep from 3rd Gate, Kurukshetra University, Kurukshetra for his village. It was about 4.00 or 5.00 P.M., when they had reached near the bridge over Bhakhra Canal on Kurukshetra-Dhand Road. The jeep was stopped there for a while for taking some more passengers from the bridge. He had then seen Smt. Sundra (now deceased) riding on the carrier of the cycle of the accused. The jeep had started after picking up



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passengers. He had then reached home. On reaching his house, he had got a telephonic message from his daughter married at Kalyat that his son-in-law was not well. Immediately, had gone to Kalyat to enquire about his well being. On his return after about 15 days, he came to know of the death of Smt.Sundra. He had made a statement to the police about having seen the deceased last in the company of the accused.

(ii) MEDICAL EVIDENCE

9. Dr.Jagmal Singh (PW-1) was posted as Medical Officer, L.N.J.P. Hospital, Kurukshetra on 12.04.1999. On that day at 4.00 P.M., Constables Tarlochan Singh and Raj Pal @ Labh Singh had brought the dead body of Smt. Sundra (deceased), aged about 20 years to the hospital for post-mortem. examination. The dead body was examined by a Panel of doctors consisting of him, Doctor C.R. Khatri and Doctor G.D. Mittal. The dead body being in advance stage of putrefaction, the same was referred to P.G.I. (M.S.), Forensic Medicines Department, Rohtak for Expert opinion. He had proved photocopy of the original report Ex.PA and the application (Ex.PA/1) moved by the police.

10. On 12.04.1999, Dr. P.K. Paliwal (PW-6), Associate Professor, Department of Forensic Medicines, P.G.I. (M.S.), Rohtak had received the dead body of Smt. Sundra (deceased) alongwith the inquest report (Ex.PD). It had been referred by a Panel of doctors of L.N.J.P. Hospital, Kurukshetra vide their report (Ex.PA). Dr.P.K.Paliwal (PW-6) had conducted the post-



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moretm on the dead body of the deceased on 13.04.1999 at 10.00 A.M. and had found the following injuries on her person.

1. *There was a ligature mark over the thyroid Cartilage placed transversly, all around the neck, measuring 2 cms. in width. Abrasions were present at the site of ligature. Underneath tissues were ecchymosed; and,*
2. *There were multiple contusions and abrasions over the face region on both cheeks, nostrils and angle of mouth size was 2x1 cms. to 1.5 to 1 cm.. Underneath tissues were ecchymosed.*

Cause of death was opined to be strangulation coupled with smothering; the dead body was at the stage of decomposition. The probable duration between the death and post-mortem was about 1 to 2 weeks.

The following articles were handed over to the police:-

1. A copy of PMR No.99/4/16 dated 13.04.1999.
2. Dead body duly stitched.
3. Sample of seal.
4. One sealed packet (containing clothes bearing) five seals.
5. One sealed packet having vaginal swab and smear with two seals.
6. Police Papers (12 in number), duly initialled

This witness had also opined that the death in this case was possible on 03.04.1999. He also opined that injury no.1 found on the dead body was possible with the help of the head wear (*Chunni*) usually used by the ladies. He also proved carbon copy of the post-mortem report (Ex.PE).

(iii) INVESTIGATING OFFICER AND RELATED WITNESSES

11. S.I.Charan Dass (PW-15) on 12.04.1999 was posted A.S.I./Incharge, Police Post, Jyotisar. On that day, he had recorded Rapat No.8 dated 12.04.1999 (Ex.PN) on the statement of Sunder Singh (PW-13).



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Thereafter, alongwith Constables Tirlochan Chand and Raj Pal @ Labh Singh as also PW-Sunder Singh, he had reached near the Syphon of Bhakhra Canal where he had conducted the inquest proceedings under Section 174 Cr.P.C. (Ex.PG) on the dead body of Smt. Sundra. Thereafter, he had despatched the dead body of Smt. Sundra (for post-mortem) to L.N.J.P.. Hospital, Kurukshetra through Constables Tarlochan Chand and Raj Pal @ Labh Singh Singh. He further deposed that the dead body was referred from L.N.J.P. Hospital, Kurukshetra to Medical College, Rohtak where on 12.04.1999, the post-mortem was conducted. After conducting the post-mortem, Constable Tarlochan Singh had produced before him the papers regarding inquest, post-mortem report as also a sealed parcel of clothes etc. which he had despatched to Police Station Naggal, through Head Constable Chander Bhan. He further deposed that on 17.04.1999, when he was present at Bus stand, Sunder Singh (PW-13) had met him and had produced before him an application (Ex.PF) on which he had made his endorsement (Ex.PF/2) which had been sent to the police station, Thanesar by him, through Head Constable Jagdish Chand for registration of the case.

Thereafter, he accompanied by Sunder (PW-13) and other police officials had reached the spot and had prepared a rough site plan (EX.PO). The Station House Officer had also arrived at the spot who took over the investigations from him.



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On 18.04.1999 on the direction of the S.H.O. he had reached the Police Station, Naggal where MHC Brij Bhushan had produced before him the above sealed parcel, inquest report and post-mortem report which were taken into possession by him vide recovery memo (Ex.PH). He had recorded the statements of MHC Brij Bhushan and H.C. Raj Pal @ Labh Singh. On return to Police Station, he had deposited the case property with the MHC of Police Station, Sadar Thanesar. On 14.06.1999 he had recorded the statements of Sandeep and Ishwar under Section 161 Cr.P.C.

12. SI Karam Singh (PW-10) was then posted as Station House Officer of Police Station, Sadar Thanesar. He deposed that on 17.04.1999, when he was on patrol duty on G.T. Road near Shahabad, he had received a V.T. message about registration of the case inter alia under Sections 376 and 302 of the Indian Penal Code. On this information, he had reached Jyotisar Head where ASI Charan Dass, Incharge, Police Post, Jyotisar and few more persons were already there. He had recorded the statement of Kalu Ram. He had then reached village Kanthala where statement of Smt. Angoori Devi was recorded by him. On 18.04.1999 he had recorded the statements of Leelu Ram, Deep Chand, Pirthi Ram Sarpanch, Moman and Ishwar Dayal by visiting village Jyotisar. Thereafter, investigations were taken over by the District Inspector Om Parkash from him.

13. The DSP Om Parkash (PW-16) was then posted as District Inspector of Police Head Quarters at Kurukshetra. It was on 19.04.1999,



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when the investigations of this case had been entrusted to him. On 21.04.1999, he along with other police officials had gone to Bus Stand, Jyotisar, in connection with the investigations of this case where he had found Kehar Singh, Ex-Sarpanch. He disclosed to this witness that the accused had been spotted by him when he was going on his cycle towards the side of the pond. This witness then had proceeded in the said direction. The accused was found near the water tank. He was taken into custody. Interrogation was made. He made a disclosure statement (Ex.PJ). Cycle was taken into possession vide recovery memo. (Ex.PK). Pursuant to the said disclosure statement, he had pointed out the place where the rape was allegedly committed by him on the deceased and where she was allegedly murdered. Thereafter, he had also disclosed the place where he had allegedly thrown her in the Canal. Memo (Ex.PK/2) was prepared in this regard. Rough site plan (Ex.PQ) was drawn. Thereafter, this witness had arranged a photographer and got the spot photographed. The wooden potable platform (*Takhat*) was also taken into possession along with two wooden pieces separated from there. Recovery memo (Ex.PK) was prepared. The accused was formally arrested (Ex.PR). The statements of HCs Bharat Lal and Om Parkash were recorded by him. The accused was got medico legally examined from L.N.J.P. Hospital, Kurukshetra.

14. HC Bharat Lal (PW-9) on 21.04.1999 was posted in Police Post, Jyotisar. He joined the investigations of this case. It was in his presence



that the accused was arrested on 21.04.1999 from Jyotisar by Inspector Om Parkash when HC Om Parkash was also present. The accused was interrogated and on interrogation, he had made a disclosure statement (Ex.PJ) pursuant to which he got the wooden platform (*Takhat*) recovered from the shed (*Kotha*) of the Nursery (described in the disclosure statement Ex.PJ). The cycle produced by the accused was also taken into possession vide memo (Ex.PK) in his presence and in the presence of HC Om Parkash. Pursuant to the disclosure statement (Ex.PJ) the accused got the wooden platform (*Takhat*) recovered, planks out of which were separated and converted into a sealed parcel which was taken into possession vide memo. (Ex.PK/1). The seal after use was handed over to this witness. Memo (Ex.PK/2) with regard to demarcation of the Shed in the Nursery was prepared.

(iv) SCIENTIFIC EVIDENCE

15. As per the report of the Forensic Science Laboratory, Haryana, Madhuban (Karnal) Ex.P5, Salwar, lady-shirt, broken glass bangle with two metallic *karas* and two pieces of wooden planks as also two smeared glass slides and two cotton wool swabs had been sent to FSL, Madhuban Laboratory examination had been carried to detect the presence of blood, semen, urine and Saliva etc. on the exhibits. Blood was detected on Salwar, Lady-shirt, slides smears and swabs. Traces of blood were also found on bangles. Blood could not be detected on wooden planks. Similarly, semen,



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urine and saliva could not be found on the said planks. As per serological analysis (Ex.PS/1) of blood, no conclusive result could be made as the material on Salwar as also on the lady-shirt had disintegrated. Traces of blood on bangles could not be put to serological test as the sample was enough for such test.

(vi) FORMAL WITNESSES

16. Constable Rameshwar Dass (PW-2) tendered his affidavit (Ex.PB), Constable Raj Pal @ Labh Singh (PW-11) tendered his affidavit (Ex.PL) in evidence and HC Jagbir Singh (PW-12) tendered his affidavit (Ex.PK) in evidence.
17. Constable Sudeep Kumar (PW-3) on 14.06.1999, prepared the scaled site-plans (Exs. PC and PC/1) on the demarcation of Sunder Singh PW-13.
18. Ishwar Chand, Photographer (PW-4) took snaps Ex. P1 to P3 from Bhakhra Kirmach Syphon and photographs Exs.P4 to P13 from the Nursery near Bhakhra Canal.
19. Inspector Jagdish Chander (PW-5) after completion of the Investigation prepared the final report of this case under Section 173 of the Code of Criminal Procedure.
20. HC Surinder Singh (PW-7) on 17.03.1999 on receipt of *ruqa* Ex.PF recorded the formal FIR (Ex.PF/1) of the present case. This witness had also tendered his affidavit (Ex.PG) in evidence.



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21. HC Vrish Bhan (PW-8) on 14.04.1999 while posted as MHC in Police Station, Naggal (Ambala) received one parcel of clothes, one parcel of swabs (sealed with the seal bearing impression 'FM"), two sample seals, Inquest Report and post-mortem report of Smt. Sundra (deceased) which he handed over to ASI Charan Dass 18.04.1999. The aforesaid articles were taken over by him vide memo Ex. PH.

22. Vide statements dated 09.05.2000, 07.09.2001 and 14.09.2001 of the Public Prosecutor, PWs Dr. G.D. Mittal, Dr. C.R. Khatri, Lilu Ram, Deep Chand, Ishwar Dayal, Pirthi Singh, Moman Ram, Angoori Devi and HC Om Parkash were given up. Vide statement dated 15.01.2004 after tendering reports of FSL (Exs.PS and PS/1) the Public Prosecutor closed the evidence of the prosecution.

STATEMENTS UNDER SECTION 313 OF THE CODE OF CRIMINAL PROCEDURE AND DEFENCE OF THE ACCUSED.

23. After the evidence of the prosecution was closed. The statement of the accused under Section 313 of the Code of Criminal Procedure was recorded separately. Incriminating material coming in the evidence him against was put to him to elicit his explanation in that regard. The accused denied the prosecution case *in toto*, claimed innocence and false implication.

24. In his defence, the accused produced Kehar Singh as DW-1. He was an Ex-Sarpanch of the village. The accused was known to him. He deposed that having been joined in the investigations, he had spoken about



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the antecedents and credentials of the accused. He further mentioned that accused Pirthi neither made any confession in his presence nor anything was got recovered by him.

25. On 18.03.2004, ASI Charan Dass (PW-15) was further cross-examined regarding the statement of PW-17/Lad son of Nantu Ram on 04.07.1999. An additional statement of the accused under Section 313 of the Code of Criminal Procedure was then recorded in this regard on the same day i.e. 18.03.2004.

26. After recording of the additional statement of the accused under Section 313 of the Code of Criminal Procedure, the accused was again called upon to enter his defence in terms of Section 232 of the Code of Criminal Procedure, but the accused, however, led no evidence in defence and closed his evidence.

27. Based on the evidence led, the accused-appellant, namely, Pirthi Singh came to be convicted vide judgment of conviction and order of sentence dated 09/12.04.2004 as under:-

Offence under Section	Sentence	Fine	In default of payment of fine
302 IPC	Imprisonment for Life	Rs.10,000/-	RI 01 year
201 IPC	RI 03 years	Rs.5,000/-	RI 03 months

All the sentences were ordered to run concurrently.



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28. The aforementioned judgment of conviction and order of sentence dated 09/12.04.2004 passed by the Presiding Officer, Special Court (under SC & ST Act), Kurukshetra, is under challenge before this Court.

29. During the pendency of this appeal, the sentence of the accused-appellant, namely, Pirthi Singh was suspended by this Court vide order dated 25.05.2007.

30. The learned Amicus Curiae for the accused-appellant contends that the deceased went missing on 03.04.1999. The first version of PW-13/Sunder Singh-complainant was recorded on 07.04.1999 (Ex.DA), as per which the husband of Sundra (deceased) was a habitual drinker and used to beat her and she was turned out of the matrimonial home on 03.04.1999. No person was named as an accused. The dead body of the deceased was recovered from the Canal on 12.04.1999 and even during the inquest proceedings, no person was named as a suspect or an accused by the complainant-Sunder Singh. It was on 17.04.1999 when the FIR came to be registered that the complainant stated that on an enquiry, he came to know that Lad son of Nantu Ram had seen the deceased sitting on the cycle of Pirthi Singh-accused on 03.04.1999. The statement of this witness was recorded under Section 161 Cr.P.C. only on 04.07.1999 after the challan was prepared on 20.06.1999 and was submitted on 05.07.1999.

One Raj Pal @ Labh Singh was examined as PW-14 who also stated that he had “last seen” the deceased in the company of the accused on



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03.04.1999. No statement of this witness was recorded under Section 161 Cr.P.C., though, he was subjected to interrogation. Ultimately, an application was moved under Section 311 Cr.P.C. to summon these two witnesses as prosecution witnesses. It is his contention that had either of these witnesses seen the deceased in the company of the accused on 03.04.1999, they would have disclosed this fact to the complainant and his family members, particularly, in the case of PW-17/Lad who is admittedly the *chacha* of the deceased and the complainant.

He, further, contends that taking the evidence of "last seen" to be true, then this evidence in itself is insufficient to establish the culpability of the accused in the absence of any other substantive evidence.

He, thus, contends that the impugned judgment dated 09/12.04.2004 is liable to be sent aside and the accused be acquitted of the charges framed against him.

31. The learned counsel for the State, on the other hand, contends that the evidence of PW-14/Raj Pal @ Labh Singh and PW-17/Lad regarding they having "last seen" the deceased in the company of the accused cannot be faulted. PW-17/Lad has explained as to why he had not informed the complainant party of having "last seen" the deceased in the company of the accused stating that he had gone to Kalyat to visit his daughter. The post-mortem of the deceased was conducted on 13.04.1999 and Dr. P.K. Paliwal (PW-6) had stated that the probable time between the death and post-mortem



was about 01 to 02 weeks and on being questioned, he stated that the death was possible on 03.04.1999, meaning thereby that the medical evidence regarding the time of death was in consonance with the deceased being "last seen" in the company of the accused. He, thus, contends that there is sufficient evidence on record to come to the conclusion that it was the accused-Pirthi Singh alone who had committed the offence in question. Therefore, the present appeal deserves to be dismissed.

32. We have heard the learned counsel for the parties.

33. The present case is based on circumstantial evidence and in the context of circumstantial evidence, the Hon'ble Supreme Court in the case of Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622 held as under:-

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :-

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."



(2) *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

(3) *the circumstances should be of a conclusive nature and tendency.*

(4) *they should exclude every possible hypothesis except the one to be proved, and*

(5) *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

153. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. ”*

(emphasis supplied)

In Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273, in the context of circumstantial evidence, the Hon'ble Supreme Court held as under:-

“46. *Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:*

1. *Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*

2. *Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;*

3. *The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*



4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved."

47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard."

(Emphasis supplied)

In the recent judgment of '**Karakkattu Muhammed Basheer versus The State of Kerala 2024(10) SCC 813**', the Hon'ble Supreme Court in the context of circumstantial evidence has held as under:-

11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date. Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one



conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.

The Hon'ble Supreme Court in the case of Anjlus Dungdung Versus State of Jharkhand, 2006(4) RCR (Criminal) has held that suspicion howsoever strong cannot take the place of proof. The relevant para is as under:-

“12. Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of bloodstained balwa and tangi upon the disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as



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such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.”

(Emphasis supplied)

34. In the instant case, there is evidence of PW-17/Lad Singh son of Nantu Ram, the uncle of the deceased to the effect that he had “last seen” the deceased in the company of the accused on 03.04.1999. A perusal of the record would reveal that the deceased-Sundra wife of Amar Singh went missing on 03.04.1999. PW-13/Sunder Singh-complainant, the brother of the deceased filed a missing person report Ex.DA on 07.04.1999 stating that Amar Singh husband of Sundra was a drunkard and would beat his wife. She had turned her out of the matrimonial home on 03.04.1999. There is no



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reference to the fact that Lad had “last seen” the deceased in the company of the accused. The dead body of Sundra was recovered from the Canal on 12.04.1999. Even during the course of inquest proceedings, there is no reference to Lad. The FIR came to be registered against the accused-Pirthi Singh on 17.04.1999. At this stage, the complainant-Sunder Singh mentioned in the FIR that the deceased had been seen in the company of the accused on 03.04.1999. The statement of Lad was recorded during the course of investigation under Section 161 Cr.P.C. on 04.07.1999. When examined as a prosecution witness during the course of the Trial and on being cross-examined as to why he had not informed anyone immediately after it had come to his knowledge that his niece had gone missing, he stated that he had gone to visit his son-in-law who was ailing at Kalyat and came back only after 15 days. While the explanation seems attractive at the first instance, it defies logic. Undoubtedly, this witness is a resident of the same village i.e. Kangwal where from the deceased hails. He being the real uncle of the deceased and the complainant would have known that she had gone missing at least on 07.04.1999, if not prior thereto. Despite the said fact, neither does his version find mention in the missing person’s report dated 07.04.1999 nor is there any reference of the same in the inquest report dated 12.04.1999. Even in the FIR there is a passing reference of him having seen the deceased in the company of the accused which fact he purportedly conveyed to the complainant. Stranger is the fact that his statement under



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Section 161 Cr.P.C. was recorded only on 04.07.1999 after the challan had been prepared on 20.06.1999 and the challan was submitted in the Court of Illaqa Magistrate on 05.07.1999 itself, i.e. one day after his statement was recorded under Section 161 Cr.P.C. Thus, his evidence of having “last seen” the deceased in the company of the accused becomes doubtful.

35. As regards the evidence of PW-14/Raj Pal @ Labh Singh, he too is stated to have “last seen” the deceased in the company of the accused-Pirthi Singh on 03.04.1999. As per his deposition, the deceased’s caste and creed is that of his grand-mother and he enjoyed close relations with the family of the deceased. Strangely, he admits during the course of his cross-examination that it was only 20/25 days after seeing the deceased in the company of the accused that he had informed the police vide his statement in this regard. Interestingly, the police did not record his statement during the course of investigation under Section 161 Cr.P.C. but instead, he was interrogated by the police and his interrogation in question answer form is Ex.DC. Thus, his deposition can also not be relied upon to convict the accused.

36. We may also add here that for reasons best known to the prosecution the name of PW-17/Lad son of Nontu Ram did not find mention in the list of witnesses and as has already been mentioned above, the statement of Raj Pal @ Labh Singh/PW-14 was not recorded under Section 161 Cr.P.C. during the course of investigation. Therefore, the prosecution



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had moved an application under Section 311 Cr.P.C. for examining both these witnesses which was allowed by the Trial Court on 25.04.2001. This fact of one witness not being cited in the list of witness, though, his statement was recorded under Section 161 Cr.P.C. only one day prior to the presentation of the challan and the statement of the second witness not being recorded at all during investigation leading to an application being moved under Section 311 Cr.P.C. creates a doubt in the mind of the Court that the investigation has set-up these witnesses so as to falsely implicate the accused.

37. Be that as it may, even if the statements of these witnesses of having "last seen" the deceased in the company of the accused on 03.04.1999 are taken to be the gospel truth, it is a matter of fact that the body came to be recovered only on 12.04.1999 i.e. after a gap of 09 days. Though, PW-6/Dr. P.K. Paliwal has opined that probable duration between the death and post-mortem was 01-02 weeks and that the deceased could have died on 03.04.1999, the said opinion in itself cannot lead to a conclusion that the deceased was murdered soon after she was seen last in the company of the accused on 03.04.1999 and that the time-gap between the deceased being "last seen" with the accused and the death was so small so as to obviate the possibility of any other person intervening to commit the offence in question. Quite to the contrary, once the evidence of "last seen" pertains to 03.04.1999 and the body was discovered on 12.04.1999, it can be safely held



that this gap of 09 days is sufficient to create a doubt in the prosecution case and that the commission of the offence by any intervening person coming into the contact with the deceased cannot be ruled out.

38. Be that as it may, even if the statements of PW-17/Lad Singh and PW-13/Raj Pal @ Labh Singh regarding them having "last seen" the deceased in the company of the accused are taken to be true, the said evidence in itself is insufficient to convict the accused.

39. In '*Malleshappa versus State of Karnataka, 2008 AIR Supreme Court 69*', the Hon'ble Supreme Court held as under:-

*24. In the present case also, there is no proximity of time and place. We have already noted that the dead body, even if it is to be accepted, was that of the deceased-Yankanna, had been recovered after 10 days after the date of which the deceased was last seen in the company of the appellant. This singular piece of circumstantial evidence available against the appellant, even if the version of PW-10 is to be accepted, is not enough. It is fairly well settled that the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. It is true as has been held by this Court in *Lakshmi & Ors. v. State of U.P.*, 2002(4) RCR (Criminal) 82 : [(2002)7 SCC 198] that it is not an inflexible rule that the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased though are factors to be established by the prosecution but it cannot be held as a general rule and broad proposition of law that where these aspects are not established,*



it would be fatal to the case of the prosecution and in all eventualities, it ought to result in acquittal of those who may be charged with the offence of murder provided the charges against the accused otherwise can be established on the basis of the other reliable and trustworthy evidence.

40. In '*Kanhaiya Lal versus State of Rajasthan, 2014(2) RCR(Criminal) 180*', the Hon'ble Supreme Court held as under:-

11. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

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*13. The theory of last seen - the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan, (2010)15 SCC 588*.*

14. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is



allowed and the conviction and sentence imposed on the appellant/accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise.

41. In '**Padman Bibhar versus State of Odisha, 2025 AIR Supreme Court 2538**', the Hon'ble Supreme Court held as under:-

20. This Court in Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715 has held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the judgment in paras 12 and 15 can be profitably referred:

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen-the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan,(2010) 15 SCC 588"



21. Similarly, this Court in *Rambraksh @ Jalim v. State of Chhattisgarh*, (2016) 12 SCC 251 has reiterated above legal position in the following words in paras 12 and 13:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

13. In a similar fact situation this Court in *Krishnan v. State of T.N.* (2014) 12 SCC 279 held as follows: (SCC pp. 284-85, paras 21-24)

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In *Arjun Marik v. State of Bihar* (1994) Supp (2) SCC 372 this Court held as follows: (SCC p. 385, para 31)

'31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.'

22. This Court in *Bodhraj v. State of J&K*, (2002) 8 SCC 45 held that: (SCC p. 63, para 31)



'31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.'

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

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

24. In Jaswant Gir v. State of Punjab, (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed."

22. *In the case at hand also the only evidence against the appellant is of 'last seen together'. The evidence of motive does not satisfy us to be an adverse circumstance against the appellant inasmuch as if the appellant has any doubt about his wife's chastity, he would have caused injury or harm to his wife rather than to wife's cousin with whom he had no animosity. Moreover, the so-called weapon of the offence i.e. the stone has not been recovered at his instance nor there is any memorandum statement of the appellant.*



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42. The aforementioned discussion regarding the evidence on record as also the law laid down by the Hon'ble Supreme Court would reveal that the chain of circumstantial evidence is not so complete so as to conclusively establish the guilt of the accused.

43. We, therefore, deem it appropriate to set aside the impugned judgment of conviction and order of sentence dated 09/12.04.2004 passed by the Presiding Officer, Special Court (under SC & ST Act, 1989), Kurukshetra and acquit the accused-Pirthi Singh of the charges framed against him.

44. The pending applications, if any, shall stand disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

18.07.2025

sukhpreet

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No