

**AFR**  
**RESERVED**

**Court No. - 41**

**Case :- CRIMINAL APPEAL No. - 309 of 1999**

**Appellant :- Rajjan @ Yogesh Kumar**

**Respondent :- State Of U.P.**

**Counsel for Appellant :- Ravindra Singh, Akhilesh Singh, Dinesh Kumar Maurya, Shivam Yadav**

**Counsel for Respondent :- Govt. Advocate**

**Hon'ble Bachchoo Lal, J.**

**Hon'ble Pradeep Kumar Srivastava, J.**

**(Delivered by Hon'ble Pradeep Kumar Srivastava, J.)**

1. Heard Sri Akhilesh Singh, learned counsel for the appellant and learned A.G.A. for the State. Perused the record.
2. This criminal appeal has been preferred against the impugned order dated 12.02.1999, passed by 3<sup>rd</sup> Additional District & Sessions Judge, Farrukhabad, in Sessions Trial No. 407 of 1987 (State vs. Rajjan and another), Case Crime No. 244 of 1984, under Sections 302 and 201 I.P.C., Police Station Chhibramau. District Farrukhabad by which the accused-appellant Rajjan @ Yogesh Kumar has been convicted and sentenced under Section 302 I.P.C. for life imprisonment along with fine of Rs. 5000/- and in default one year additional rigorous imprisonment and under Section 201 I.P.C. for five years rigorous imprisonment along with fine of Rs. 3000/- and in default six months additional rigorous imprisonment. It has further been directed that both the sentences shall run concurrently. However, in the absence of sufficient evidences, other accused Vivek Kumar was acquitted from the charges leveled under Section 302/201 IPC.
3. As per prosecution version from the morning of 07.07.1984 to 08.07.1984 (exact time is not known) on Saurikh Road, Police Station Chhibramau, Farrukhabad, the accused persons namely Rajjan @ Yogesh and Vivek Kumar in furtherance of their common intention, caused the death of Smt. Ram Nandini by causing stab injuries by

knife. The dead body was thrown in a well so that the dead body may be destroyed and this they did in order to wash the evidence against them.

4. The report was lodged with regard to recovery of the dead body by Chowkidar, Police Station Chhibramau on 08.07.1984 orally that a dead body is lying in the dry well. The whereabouts of the dead woman could not be known. The woman is young. This oral report was entered into the GD on the same day and the police took the dead body into possession and the recovered blood stained bricks, plain bricks, slippers and piceces of broken bangles were also taken into possession from the spot and which were separately sealed. The inquest report was prepared. At the time of inquest, injuries caused by the knife were found on the body of the deceased. No incriminating material was found around the well due to which it appeared that she was killed somewhere else and her body was thrown in the well. Thereafter, the case was registered under Sections 302 and 201 IPC.

5. The case was investigated and during investigation some local persons sent a letter in which it was mentioned that the woman was killed by accused Rajjan @ Yogesh Kumar and his friend. The husband of the deceased when came from the field on 06.07.1984, was informed by his elder sister-in-law (Bhabhi) that his wife has gone to her parents Rajjan @ Yogesh Kumar. She gave her the key of the house. The husband continued searching his wife for 6 to 7 days but did not find her either on her parental house or on the house of the sister of Rajjan @ Yogesh Kumar. On 25.07.1984, the husband lodged a first information report against Rajjan @ Yogesh Kumar for the offence under Section 498 IPC and continued searching her and Rajjan @ Yogesh Kumar. Later on, he came to know that a dead body has been recovered in Village Chhibramau in the previous month. He went to the police station and on the basis of her clothes, slippers and

photo of the dead body, he recognized to be of his wife Ram Nandini. His statement and the statements of Dhaniram and Munna Lal was recorded by the Investigating Officer and the Investigating Officer came to a conclusion that Ram Nandini was killed by Rajjan @ Yogesh Kumar and his friend Vivek Kumar by causing injuries by knife and after taking her ornaments, they threw her dead body in the well. Regarding motive for the commission of the offence, it was also found during investigation that accused Rajjan @ Yogesh Kumar is the brother of the brother-in-law (Saarhu) of the husband of deceased Ram Nandini. He is aged about 24-25 years and the deceased was also of similar age and he used to come to her and was having illicit relationship with the deceased. The people knew her to be his keep. On 06.07.1984, wearing her ornaments, she went with Rajjan @ Yogesh Kumar and because she was insisting him to solemnize court marriage with her, the accused persons killed her.

6. After finding sufficient evidence against the accused persons, charge sheet was submitted by the Investigating Officer under the aforesaid sections.

7. The learned trial court framed charges against the accused persons for the offences under Sections 302 and 201 IPC. The accused persons denied the charges and claimed trial.

8. The prosecution examined PW-1 Munshi, PW-2 Lala Ram, PW-3 Munna Lal, PW-4 Dhani Ram. PW-5 Khannu Singh, PW-6 Chandrabhan Singh, PW-7 Harvansh Singh, PW-8 Dr. K.K. Jagatyyani, PW-9 Suresh, PW-10 Ram Sewak Gupta and PW-11 Ram Awatar, who have stated about the incident and proved the documentary evidence.

9. The statement of accused persons were recorded under Section 313 Cr.P.C., wherein they have stated that they have been falsely

implicated in the present case due to enmity with Munna Lal who is brother-in-law (Saarhu) of the husband of the deceased.

10. After hearing counsel for both the sides, the learned trial court has acquitted co-accused Vivek Kumar and convicted and sentenced the present accused-appellant Rajjan @ Yogesh Kumar for the offences under Section 302 and 201 I.P.C.

11. Feeling aggrieved by the impugned judgment, the convicted appellant has filed the present criminal appeal stating that the impugned conviction and sentence is against the weight of evidence on record and is contrary to law and the sentences awarded is too severe. The impugned judgment is liable to be set aside and the appellant is entitled for acquittal.

12. Learned counsel for the appellant has submitted that there is no eye witness who might have seen the occurrence nor anybody saw the accused causing injuries to the deceased and throwing her dead body in the well. Moreover, there was no reason for the accused-appellant to kill the deceased if he was having illicit relationship with her. There is no evidence on record to link the appellant with the commission of offence. Moreover, the co-accused has been acquitted on the basis of same evidence by the impugned order.

13. On the other hand, learned A.G.A. has argued that the chain of circumstances proved by the prosecution has established the guilt beyond any shadow of doubt against the appellant and on the basis of evidence on record, the learned trial court has rightly convicted and sentenced him.

14. PW-1 Munshi is the witness who saw the people gathered around the well in which the dead body of the deceased was lying and he gave information in the police station and during statement he signed over the G.D. Ext. Ka-1.

15. PW-2 Lala Ram is the husband of the deceased who has stated that the deceased was his wife and was aged about 22-24 years who was healthy and of fair complexion. The accused Rajjan took her from his house when he was on his field. He came to know about it, when he came back and did not find his wife and the door of the house was closed. His Sister-in-law (Bhabhi) informed him that his wife has gone to her parents with Rajjan, leaving behind his elder son Sonu. He has stated that his wife used to go and come back to her parents but when she did not come back in 10-12 days, he went to her parents' house and when he told that she did not come there, he went to her sister but she also told that she did not come there. He inquired about Rajjan and found that his tea shop which is situated at road ways bus stand was closed. He was told by local persons that Rajjan is not coming from 10-15 days and the shop is closed. Then he filed a report against Rajjan which he filed before the court at the time of statement and proved the same as Ext. Ka-1. He has further stated that he continued searching his wife and after about a month, he went to Chhibramau market. He found the people talking about the dead body of a woman recovered from the well. He consulted his family members and after 12-13 days, he went to Police Station Chhibramau and on inquiry he was shown the clothes after breaking the seal and by the clothes, he recognized that the same was of his wife as she used to wear that clothes in the house. The recovered clothes, broken bangles and slippers have been proved by him in his examination as Material Exts. 1 to 5. Rajjan used to come to his house and he was in his relation and he believes that he must have killed his wife. She went with Rajjan wearing ornaments of about Rs. 10,000/-.

16. PW-3 Munnal Lal has stated that he knows Rajjan who is relative of Lala Ram and he used to come to the house of Lal Ram. He saw the deceased coming with Rajjan on 06.08.1984 at 10 A.M. and both went to Chhibramau on a bus. At that time, he was sitting on a

*pulia* where the bus used to stop and witness Dhani Ram was also present there, who also saw the deceased coming with Rajjan. Both PW-3 and Dhani Ram were grazing their buffalos. He has stated that since then he never saw the deceased. Lala Ram had gone to search out his wife and when he came back, he informed him about it.

17. PW-4 Dhani Ram has also stated that when he and Munna Lal were grazing their buffalos. From the road side *pulia* they saw the deceased going with accused Rajjan on a bus to Chhibramau. Thereafter, he never saw the deceased.

18. PW-5 Khunnu Singh has not stated anything in support of prosecution version, hence he has been declared hostile.

19. PW-6 S.I. Chandrabhan Singh has stated that he got the investigation of the case on 11.08.1984 and prior to him, the case was being investigated by S.I. Harvansh Singh and SI V.K. Gupta. After recording the statements of the witnesses and completing the investigation, he submitted charge sheet against both the accused persons which is Ext. Ka-2.

20. PW-7 S.I. Harvansh Singh has stated that he recovered the dead body of the deceased from the well along with other articles. He prepared the inquest report which is Ext. Ka-2, photo lash Ext. Ka-3, letter to CMO Ext. Ka-4, Challan dead body Ext. Ka-5, recovery memo of slipper and broken bangles Ext. Ka-6, memo of blood stained bricks and plain bricks Ext. Ka-7 and sight map Ext. Ka-8.

21. PW-8 Dr. K.K. Jagatyani has conducted post-mortem of the dead body on 09.07.1984 which was brought by Constable Raj Narayan Singh and Constable Kailash Singh of Police Station Chhibramau in sealed condition along with relevant papers and they also identified the dead body of the deceased. The postmortem report has been proved by this witness as Ext. Ka-9. According to doctor, the

deceased must have died about 1 and 1 ½ days ago. In the external examination it was found that the rigor mortis was passed from the upper portion of the body and was present in the lower limb. The following ante-mortem injuries were found on the dead body of the deceased :-

**External Examination :-**

*(i) Incised wound 8 cm. X 8.5 cm. X skull deep in the right side of the head.*

*(ii) Incised wound 3 cm. X 0.5 cm. X bone deep above the left eye.*

*(iii) Incised wound 2.5 cm. X 0.5 cm. X bone deep on the left side of the lower jaw.*

*(iv) Multiple incised wounds, seven in number in the area of 11 cm. X 7 cm. on the front portion of the neck.*

*(v) Multiple stabbed injuries in the abdomen area of 22 cm. X 20 cm. Smallest injury was 0.5 cm. X 0.5 cm. and the deepest injury was 4 cm. X 1 cm. with clean cut.*

**Internal Examination :-**

Both lungs and its membranes were found in decomposed conditions. Cuttings were found in the pharynx and esophagus. Liver was found incised and empty. Small and large intestines were found incised at several places and liver was also found incised. In the abdomen cavity of liver, two liters of blood and liquid stool were found in mixed condition.

According to doctor, the deceased was died due to ante-mortem injuries, shock, hemorrhage and heavy bleeding. All the injuries found on the body of the deceased were possible to have been caused by knife and were sufficient to cause death. The death was possible on 07.07.1984 in between 08:00 to 08:30 PM.

22. PW-9 Suresh Chandra has been declared hostile, who has not

supported the prosecution version.

23. PW-10 Ram Sewak Gupta has also been declared hostile.

24. PW-11 Ram Awatar has stated that Lala Ram is his younger brother and his wife was Ram Nandini. Both have two children. Ram Nandini used to come and go to her parents' house. His brother Lala Ram has lodged a missing report in police station about his wife. The dead body was recovered from the well. When she went from her house, she was wearing ornaments. He did not see when the dead body was recovered from the well. He identified the clothes of the deceased after 12-13 days. On recovery of the dead body, accused Rajjan fled away and was not on his shop and the shop remained closed.

25. There is no evidence of any witness who might have seen the accused causing death of the deceased and the prosecution case is based on circumstantial evidence of "last seen together" and two witnesses have been examined to prove this fact. In *State of Rajasthan Vs. Kheraj Ram, (2003) 8 SCC 224, Vilas Pandurang Patil Vs. State of Maharashtra, (2004) 6 SCC 158, Arun Bhanudas Pawar Vs. State of Maharashtra, 2008 (61) ACC 32 (SC) Vithal Eknath Adlinge Vs. State of Maharashtra, AIR 2009 SC 2067* and *Vijay Kumar Vs. State of Rajasthan, (2014) 3 SCC 412*, the Supreme Court has laid down that circumstantial evidence, in order to be relied on, must satisfy the following tests :

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

26. In ***Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281***, it was laid down that when the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The court considers ordinary human probabilities.

27. In ***Rohtas Kumar Vs. State of Haryana, 2013 (82) ACC 401 (SC), Prithipal Singh Vs. State of Punjab, (2012) 1 SCC 10***, it has been further laid down that The doctrine of "last seen together" shifts the burden of proof on the accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him.

28. Further, in ***Ashok Vs. State of Maharashtra, (2015) 4 SCC 393***, it was explained by the Supreme Court that initial burden of proof is on prosecution to adduce sufficient evidence pointing towards guilt of accused. However, in case it is established that accused was last seen together with the deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106, Evidence Act. But last seen together itself is not conclusive proof but along with other circumstances surrounding the

incident like relations between accused and deceased, enmity between them, previous history of hostility, recovery of weapon from accused, etc. non-explanation of death of deceased, etc.etc. may lead to a presumption of guilt of accused.

29. In this case the dead body of a woman (the deceased) was seen by the village Choukidar lying in a dry well and he reported the same on 8.7.1984 at 2.30 P.M. to the P.S. Chhibramau of which an entry was made by police in the corresponding G.D. The police took the dead body in possession. It was found by the inspection of the dead body that multiple incised, stabbed and cut wounds were present on her body. Inquest was prepared on the same day and after completing the formalities, the dead body was sent for postmortem to the District Hospital. The police also registered an offence under section 302,201 I.P.C. against unknown person as Crime No.244 of 1984.

30. The postmortem was conducted by PW-8 Dr. K. K. Jagatyani on 9.7.1984 at 2.15 P.M. and he has stated that multiple ante-mortem incised, stabbed and cut wounds were found on the body of deceased caused by knife on all over the body from abdomen to face and head. According to doctor, the deceased was died due to ante-mortem injuries, shock, hemorrhage and heavy bleeding. All the injuries found on the body of the deceased were possible to have been caused by knife and were sufficient to cause death. The death was possible on 07.07.1984 in between 08:00 to 08:30 P.M. and it appears that after causing death, the dead body was thrown into the well. It is pertinent to mention that by the time of postmortem, the deceased was not identified nor the reason of killing and the assailant had come to light.

31. The learned trial court has taken the reference of letters sent by some unknown persons to police attached in the file as paper no. 11A to 11A-2 and 11A-3 stating the persons involved in the murder of

deceased and one of the name finds mention of accused Rajjan and his companions. In other letter the deceased has been identified to be Veena Pathak. But in none of the letters, the deceased has been identified to be Smt. Ramnandini w/o Lalaram (PW-2). It is not understandable why the learned trial court took reference of those letters which were not authenticated by any evidence nor it appears how the police used those letters for the purpose of this case. It appears that in none of the statement of witnesses, particularly formal witnesses/I.O., it has not been clarified when and on what date the dead body was identified and by whom for the first time.

32. It is pertinent to mention that the C.D. (case dairy) is not attached in the lower court record nor it was provided to us by the learned A.G.A. even though we asked during arguments. But unfortunately, we could not get a positive answer and it was said that it is a very old case and it will be very difficult to get it searched and made available. So we do not have help of C.D. which might become helpful in appreciating the sequence of investigation and exact date of discovery of particular fact and the facts narrated by the learned trial court. It is why we have to narrate the prosecution version in the way the same has been narrated by the learned trial court in the impugned judgment. In fact, we have almost reproduce the same without getting those facts verified by C.D., since there is no F.I.R. in this case. Therefore, we have to understand that sequence by the statement of witnesses.

33. The incident took place on 8.7.1984 when the dead body was for the first time seen by the village Choukidar. On 19.8.1984, the statement of Lalaram (husband of deceased) and his brother Ramautar have been examined by I.O. PW-6, as he has stated in his statement. It means that after 40 days from the discovery of dead body, the two close relatives of the deceased have been examined. In all possibility,

the deceased must have been identified thereafter by them as the I.O. has stated that on 20.8.1984, he got informed about the deceased.

34. To begin with the analysis of the statement of PW-11 Ramautar who is the elder brother of Lalaram. He has stated that he does not know whether the accused took the deceased a day before her dead body was discovered. He has however stated that accused Rajjan used to come to the house of Lalaram as he was his relative being younger brother of his brother in law (husband of deceased sister). He has stated that after 12-13 days from the date of discovery of the dead body, he identified her dress as he had seen the deceased wearing that dress earlier. It was black petticoat and blouse and sari printed with black flower. He gave his statement to I.O. after 12-13 days. He has denied that he ever gave statement to I.O. that one day before, she went with Rajjan locking her house and delivering the key to the wife of his brother Ramkishan. One more thing this witness has stated that Lalaram had lodged a missing report about his wife.

35. PW-2 is Lalaram and the correctness of the statements of both the witnesses needs to be compared and tested on the basis of evidence of each other. He has stated that his bhabhi (wife of elder brother) told him that his wife (deceased) has gone to her parents with Rajjan leaving his elder son Sonu and key of his house with her. Bhabhi has not been examined nor she is a witness in charge sheet who could have been the best witness of this fact. He has stated that his wife used to go to her parents and come back and therefore, for 10-12 days he waited for her. When she did not come back, he went to her parents and was informed that she did not come to them. He did not even find her to her sister in law in Atrouli (Rajjans' house). He went to Rajjan's shop at Bus Station and found that shop is closed and Rajjan is missing from the last 10-15 days. Then he lodged a F.I.R. against Rajjan and the copy of F.I.R. was filed by the witness

which is Ext. Ka-2. From the perusal of Ext Ka-2, it appears that in PS Talgram, the witness lodged N.C.R. against Rajjan on 25.7.1984 for the offence under section 498 I.P.C. with allegation that Rajjan has eloped with his wife Rajnandini on 6.7.1984 with ornaments gold, valuable and cash with her. The witness in the F.I.R. are Dhani Ram And Munna Lal who have been examined as PW-3 and PW-4 in this case. After that he continued searching her for some times. He started searching her after 10-12 days, continued searching for next 17-18 days. Thereafter, when he went to Chhibramau market, he heard some people talking that identity of the dead body of the woman recovered from well is yet not known. Then, after 12-13 days, with due consultation with family members, he went to Police Station, Chhibaramau where S.O. showed him dresses of the dead body which were sealed and he recognized them to be of her wife. He has also identified and proved the wearings while giving statement on oath in court.

36. It appears from the statement of both witnesses that none of them are witness of any relevant fact nor they saw deceased going from house with accused. Except that they identified wearings of deceased, there is nothing important in their statement. PW-6 IO has stated that the deceased house situated at Bamrouli and from there, PS Chhibaramau is at the distance of 10-12 km. It appears strange that a person whose wife was missing since long, could not know about the discovery of dead body earlier which must have become talk of the town looking to her young age and in the brutal way she was caused to death, particularly when his brother Ramautar examined as PW-11 has stated that he identified the wearings after 12-13 days from the date of recovery of dead body.

37. PW-3 Munnalal and PW-4 Dhani Ram are the star witnesses of circumstance of “last seen together” and both have stated that they

saw both Rajjan and Rajnandini on 6.7.1984 at about 10 A.M. getting the bus and going to Chhibaramau. At that time they were grazing their buffalo sitting on a pulia. The time of death as ascertained by postmortem report is on 7.7.1984 at about 8-8.30 P.M. It means there is gap of about 34 hours between last seen together by two witnesses and death of deceased. Both the witnesses are of same village and their residence is at the distant of less than 100 yards from the house of deceased. Both have stated that they informed about it to Lalaram after 17-18 days. The statement of both these witnesses was taken by IO after about two and half months.

38. Three more witnesses have been examined by prosecution but they did not support prosecution version nor proved any other circumstance showing involvement of accused-appellant in the murder of deceased. PW-5 is Khunnu Singh who has stated that he did not see accused killing some woman and this he has said twice- in examination-in-chief and after being declared hostile, when cross-examined by the prosecutor. He has further stated that he does not know if such statement was written by police. PW-9 Suresh Chand, though has stated that he knew accused as while going to Kanpur in relation to business, he used to take tea on his shop. He has stated that he never saw the deceased on his shop nor he saw her going with Rajjan on Rickshaw in the night of the date of incident. Although, he has nowhere stated the deceased to be keep of accused, in his statement the word 'keep' has occurred more than once, probably for the reason that while putting questions this word was used by the prosecution with a view to indicate that the deceased was his 'keep.' Similar statement has been given by PW-10 Ramsewak Gupta. All these three witnesses have been declared hostile.

39. Since C.D. is not provided, it is not clear what statement all these three witnesses had given to I.O. from which the prosecution

derived support and made them witness. But, from the overall statements of these witnesses, a rough idea is possible in this regard. PW-5 has been examined as a witness who allegedly saw accused committing murder to which he denied. It means that the only witness who was supposed to give direct evidence in support of prosecution has not supported the prosecution. It also means that the prosecution case was based on direct as well as circumstantial evidence. This option is not open to prosecution to shift the case from direct evidence to circumstantial evidence. PW-9 was a witness who saw the deceased and accused going on rickshaw in the night of the date of incident, a fact to which he has denied. PW-10 was examined to show the conduct of accused that on 7.7.1984 in the night, accused came very disturbed and asked scooter from painter and the witness has denied to this statement. It also goes to indicate that the prosecution case based on the "last seen together" evidence of PW-3 and PW-4, is not correct as subsequent to them, allegedly, she was seen by above mentioned witnesses whose support was necessary for the prosecution.

40. In a case based on circumstantial evidence, it is always important to allege and prove strong motive for the commission of offence as motive provides a link to complete the chain. Except that the deceased went with accused no motive appears to have been alleged by prosecution. The learned trial court has narrated in the impugned judgment that regarding motive for the commission of the offence, it was also found during investigation that accused Rajjan @ Yogesh Kumar is the brother of the brother-in-law (Saarhu) of the husband of deceased Ram Nandini. He is aged about 24-25 years and the deceased was also of similar age. *The accused used to come to her and was having illicit relationship with the deceased. The people knew her to be his keep. On 06.07.1984, wearing her ornaments, she went with Rajjan @ Yogesh Kumar and because she was insisting*

*him to solemnize court marriage with her, the accused persons killed her.* For attributing this motive, the learned trial court has taken a reference of police report which was submitted by police on bail application of accused and with the help of same, has given a finding that both had developed illicit relation and the deceased was insisting for marriage, and therefore, the accused committed murder. None of the prosecution witness has stated this motive in on oath statement. PW-2 who is the husband of the deceased and PW-11, his elder brother, have simply stated that the accused was relative and he used to come to their house. In the statement of PW-9 Suresh Chandra and PW-10 Ramsewak Gupta have been examined, but they have nowhere stated the deceased to be keep of the accused. No witness has been examined to prove that the deceased ever insisted the accused for court marriage. In reading the police report in evidence and thereby imputing motive on that basis and giving finding regarding existence of motive is perverse and illegal. We are firmly of the view that in absence of any admissible evidence, such finding could not be given by the learned trial court. Secondly, if the accused was in relation with the deceased, he was in a beneficial situation and there is no evidence to show that because of some very annoying reason which occurred subsequently, he decided to remove her. In such situation, absence of any motive casts shadow of doubts on prosecution case.

41. A joint study of several judgments of the Supreme Court regarding presence of motive in cases based on circumstantial evidence such as *Babu Vs. State of Kerala, (2010) 9 SCC 189, Ravinder Kumar Vs. State of Punjab, 2001(2) JIC 981 (SC), State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370, Nathuni Yadav Vs. State of Bihar, (1998) 9 SCC 238, Sakha Ram Vs. State of M.P., 1992 CrLJ 861 (SC), Jagdish Vs. State of M.P., 2009 (67) ACC 295 (SC)* and *G. Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914*, it is clear

that the law is two fold depending upon the conclusiveness of the circumstances proved in a particular case. Normally, prosecution should prove motive in a case based on circumstantial evidence. But, absence of motive in a case based on circumstantial evidence is not of much consequence when proved circumstances is so conclusive that it completes the chain in itself raising the only hypothesis that is the guilt of the accused.

42. In *State of Goa Vs. Pandurang Mohite*, AIR 2009 SC 1066, *State of U.P. Vs. Satish*, 2005 (3) SCC 114 and *Sardar Khan Vs. State of Karnataka*, (2004) 2 SCC 442, it has been remarked that circumstances of “last seen together” do not by themselves and necessarily lead to the inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. The time gap between last seen alive and the recovery of dead body must be so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

43. In *Niranjan Panja Vs. State of W.B.*, (2010) 6 SCC 525 and *State of U.P. Vs. Satish*, (2005) 3 SCC 114, it has been further affirmed by the Supreme Court that the 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 author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists.

44. Recently, in *Ravi vs State of Karnataka*, AIR 2018 SC 2744, reversing the conviction based on “last seen together” where there was a time gap of four days between last seen and recovery of dead

body and as per postmortem report the death must have occurred 30 hours ago, the Supreme Court held that the time gap was considerably large and no corroboration was forthcoming, and therefore, in absence of any other circumstance which could connect the accused with crime, reasonable doubt as to involvement of accused is created and in such situation, the burden would not shift under section 106 of the Evidence Act. Following the judgment in *Mohibur Rahman vs State of Assam*, (2002) 6 SCC 715 and *Mallesappa vs State of Karnataka*, (2007) 13 SCC 399, the court held:

*“Last seen together’ is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements of this Court, the time lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time lag is considerably large,....., it would be safer for the court to look for corroboration.”*

45. Now, considering the law laid down and factual situation in Ravi (supra), and comparing to the fact situation of this instant case, we find that time gap between the fact of “last seen together” and death of deceased is about 34 hours. The two witnesses who have proved the circumstance of “last seen together” are not the persons who last saw the two together and the prosecution proposed to prove the prosecution version by even direct evidence by a witness who saw the accused killing the deceased and by evidence of witness who also allegedly saw them together subsequently, but these witnesses turned hostile. “Last seen together” may be a conclusive circumstance depending upon the facts of a particular case. For instance, if two persons were last seen staying together in the night in a hotel room and next morning one was found to have been killed, the circumstance of last seen is enough conclusive and the burden to prove otherwise will certainly shift on the other person and in such

case, unless otherwise is proved, the presence or absence of motive becomes insignificant. But if those two persons were seen traveling in a public transport and after more than 24 hours the other is found dead, the time gap will become relevant and some more incriminating evidence shall be required to corroborate the circumstance of last seen to complete the chain and prove the guilt. There is no evidence further corroborating such as recovery of any incriminating article such as knife used for causing death or any other evidence of like nature.

46. In view of above discussion, we find that the learned trial court has committed error in holding that the chain of circumstances was complete to reach a finding of guilt against accused-appellant. The impugned judgment is perverse, illegal and not sustainable under law and is liable to be set aside.

47. Therefore, the appeal is **allowed**. The impugned judgment dated 12.02.1999, passed by 3<sup>rd</sup> Additional District & Sessions Judge, Farrukhabad, in Sessions Trial No. 407 of 1987 (State vs. Rajjan and another), Case Crime No. 244 of 1984, under Sections 302 and 201 I.P.C., Police Station Chhibramau. District Farrukhabad convicting and sentencing the accused-appellant is set aside. Consequently, the accused-appellant Rajjan @ Yogesh Kumar is acquitted.

48. If the accused-appellant Rajjan @ Yogesh Kumar is in jail, he shall be released forthwith.

49. The office is directed to transmit back the lower court record to the learned trial court immediately along with a copy of this judgment for information and compliance.

**Order Date :-** 01.10.2019  
sailesh

(Hon'ble Pradeep Kumar Srivastava,J.) (Hon'ble Bachchoo Lal,J.)