

2026 LiveLaw (SC) 532

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SANJAY KUMAR; J., K. VINOD CHANDRAN; J.

Criminal Appeal No. 2507, 2508 of 2026; May 22, 2026

Papan Sarkar @ Pranab *versus* State of West Bengal

Criminal Evidence — Circumstantial Evidence — Last Seen Together Theory — Extra-judicial Confession — Recovery under Section 27 of the Indian Evidence Act — Absence of Motive — Conviction set aside - Last Seen Together Theory — Time Gap & Proximity - What assumes significance in placing reliance on the 'last seen together' theory is the gap between the time the accused and the deceased were seen together and the occurrence of death - The proximity of the death having occurred within a short time after they were last seen together is most relevant for that fact to be taken as an incriminating circumstance - When the time gap is large, intervening circumstances can snap the link and prevent an adverse inference against the accused, even if the accused fails to explain when they parted company. [Relied on *State of Goa v. Sanjay Thakran and Another*, (2007) 3 SCC 755; Para 7-10]

Elastic Time of Death - Extra-Judicial Confession - Exculpatory Statements - Where the postmortem report indicates an elastic timeframe for the time of death (e.g., '24 hours not passed during examination') and the time gap between when the deceased was last seen with the accused and the recovery of the body is large, death cannot be termed as proximate. Consequently, no conviction can be sustained solely based on the last seen together theory - An exculpatory statement made by an accused absolving himself and accusing the co-accused is, by its very nature, unreliable. It cannot be used against co-accused persons as they have no opportunity to cross-examine the maker, nor does it incriminate the maker since it lacks an element of confession. Furthermore, a statement made while being detained by a mob under pressure, undue duress, or threat of violence lacks credibility and is a weak piece of evidence. [Paras 9-11]

Recoveries under Section 27, Evidence Act — Essential Ingredients - Concealment and its knowledge, revealed from the statement of the accused, are the crucial ingredients of Section 27 of the Indian Evidence Act - In the absence of a recorded statement showing that the concealment was effected by the accused, a mere recital in the seizure list that objects were recovered "on being shown and certified" by the accused does not qualify as a valid recovery under Section 27 - Assault: Where weapon recoveries lack clarity, are made from open spaces with free access, are not produced or confronted before the witnesses in Court, and are not shown to the medical officer to elicit an opinion on whether they could cause the injuries found on the deceased, such recoveries do not form a clinching incriminating circumstance – Motive - While the absence of motive is not imperative when the chain of circumstances is so complete as to establish only a hypothesis of guilt, its absence raises a reasonable doubt when the individual links in the chain of circumstances are weak, unproven, or not incriminating. [Paras 12 - 19]

For Petitioner(s) Ms. Ashima Mandla, AOR Ms. Mandakini Singh, Adv. Mr. Ayush Shrivastava, Adv.

For Respondent(s) Ms. Shraddha Chirania, Adv. Mr. Kunal Mimani, AOR

J U D G M E N T

K. VINOD CHANDRAN, J.

The son of the *de-facto* complainant found missing from the evening of 31.10.2012, turned up dead on the next day in a field, head down with the legs sticking up from a ditch. His three companions of the previous day found drinking and roaming around were rounded up and arrayed as accused. The prosecution went to trial with the circumstances of the last seen together theory, extra-judicial confession, recovery of the objects used as weapons & a motorbike, seizures from the place of occurrence, oral testimonies and the serological report. The trial court convicted the accused and sentenced them, which was confirmed by the High Court. Two out of the three accused are before us in appeal i.e. the first and second accused, the third having not filed an appeal.

2. We have heard Ms. Ashima Mandla, learned Counsel appearing for the appellant and Ms. Shraddha Chirania, learned Counsel appearing for the respondent who also filed written notes of submissions.

3. Before the trial court, sixteen witnesses were examined and 40 exhibits were marked, which included documents. The trial court found from the last seen together theory, extra-judicial confession; both spoken of by more than one witness, testimony of PW-4 who spoke of A3 having come to her house on the very same night, the recovery of the objects used as weapons, the seizures carried out and the serology report, that a complete chain of circumstances was established to nail the accused with the crime of premeditated murder. The multiple depositions regarding the last seen together theory and the extra-judicial confessions corroborated each other. So did the extra-judicial confession of the murder having been committed in a field, corroborated by the recovery of the body from the field and the detection of alcohol in the stomach, corroborated the testimony of the deceased having been found drinking with the accused. The High Court too listed out the above circumstances to convict the accused.

4. We have to examine each of the circumstances as pointed out by the trial court and affirmed by the High Court. In the present appeal, PW1 is the *de-facto* complainant, the father of the deceased. The FIS was taken down as recited by PW1, by PW2. It was the testimony of PW1 that on the evening of 30.10.2012 at around 4 PM, the three accused came on a motorbike and his son accompanied them on another motorbike, belonging to PW1. When his son did not reach home by 8 o'Clock, he searched for him along with PW3 and PW8. He also spoke of PW4, the aunt of A3 having spoken of A3 having approached her on the same night. On the next day morning, he heard about the death of his son and the detention of A1 and A2 by villagers. The last seen together theory commences from PW1's testimony, of his son having gone with the three accused at about 4 PM and is taken forward, by the prosecution, through PW3, PW11 and PW14.

5. PW3 spoke of having seen the accused together with the deceased roaming at around 10 AM and at 5 PM, in his presence, PW1 having enquired about the deceased with his elder son. He spoke of having searched for the son of PW1 at the house of A1 and A3. A1 was not in his house and A3 is said to have gone with a truck. PW3 also spoke of A3 having come back at night with his father to enquire about the whereabouts of the deceased with PW1. The said statement is in contrast with the testimony of PW14 that A3 along with his father and another person came to PW1 on the same night and threatened him; not stated by PW1 itself. PW14 also spoke of having seen the accused and the deceased roaming around at 5 PM. PW3's testimony that he had seen the deceased with the accused at 10 AM is of no use since PW1 admits that his son was at home after that

and he accompanied the accused only at 4 PM, after which PW14 had seen him at 5 PM, the dead body having been recovered on the next day morning.

6. One other crucial witness projected by the prosecution is PW11 who testified that she saw the four men drinking in the field behind the BDO office, on the evening of 30.10.2012 when she was returning from work. The trial court and the High Court laid emphasis on this testimony especially since the post mortem report indicated alcohol in the stomach of the deceased, which was held to have corroborated the testimony of PW11. However, a close reading of the cross-examination of PW11 raises grave suspicion about her testimony. She admitted in her cross-examination that the BDO office was open till evening and that the locality was thickly populated; reducing the chances of a drinking spree in public. The justification for her presence in the locality was that she was returning from work, but, she was unable to point out or specify the house in which she worked, the name of her employer or even the locality in which the house was situated. We cannot but opine that PW11's testimony does not inspire enough confidence to make it an incriminating circumstance to find the accused guilty of the offence alleged on the strength of the accused and the deceased having been seen together in the evening of 30.10.2012, that too drinking, in the field behind the BDO office. One other witness, PW13, put forth to speak on the four persons having come to the hotel in which he was employed at 6 pm, turned hostile.

7. Be that as it may, we have the evidence of PW1 and PW14, the first of whom spoke of the accused having taken the deceased from his house at 4 PM and PW14 having testified that the four persons together were seen roaming at around 5 PM. What assumes significance in placing reliance on the last seen together theory is the gap between the time they were seen together and the death having occurred. The proximity of the death having occurred within a short time after the accused and the deceased were seen together is most relevant, for the said fact to be taken as an incriminating circumstance against the accused. When the time gap is large then there could be intervening circumstances, which snaps the link and prevents an adverse inference against the accused merely for the reason that the accused does not put forth an explanation as to when he parted company with the deceased (**State of Goa v. Sanjay Thakran and Another¹**).

8. Immediately, we have to examine the postmortem report, which notices the time of autopsy as 31.10.2012 at 2.10 PM, the inquest having been at 10.15 AM, which report was proved in trial by the Doctor examined as PW10. The postmortem report indicates the loss of left eye with massive lacerations around both the left and right eyes, sharp cut injuries and massive lacerations on the face and even on the occipital bone on the posterior aspect of the skull as also burning of the right side of the face along with the right shoulder. No doubt the death was delivered in a brutal manner, and the Doctor speaks of death having been caused due to the shock by reason of the wounds sustained and the resultant hemorrhage. The Doctor does not speak of any single injury having led to the death.

9. What is pertinent in considering the circumstance of last seen together is that the postmortem report indicates the time of death as '*24 hours not passed during examination after death of deceased*'. The time provided is very elastic and since PW14 stated that he saw the deceased along with the accused at 5 PM on the previous day, death could have happened at any time in the intervening night or in the morning, before the body was

¹ (2007) 3 SCC 755

recovered at around 10 AM on 31.10.2012. The time frame being quite large to term death as proximate, there can be no conviction based on the last seen together theory in the present case. We have to hence, necessarily look at the other circumstances, which together, if found incriminating enough, the last seen together theory also would offer a link, though a weak one, in the chain of circumstances.

10. The next circumstance projected by the prosecution is the extra-judicial confession as spoken of by PW3, PW8, PW12 and PW14. As per their testimony, when PW1's son did not return even on the next day, there was a massive search carried out, and the villagers had detained A1 and A2. It is the testimony of PW8 that he assured A1 that the mob would not assault him upon which A1 confided to him that the three accused together murdered PW1's son. The testimony was that A1 told PW8 that, at first A3 hit the deceased and thereafter he insisted that A1 and A2 assault him and thus together they killed the deceased. It is pertinent that in cross-examination PW8 specifically stated that while A1 made the confession PW3 was present with him. PW3 on the other hand speaks not of a confession but an exculpatory statement made by A1 that it was A2 and A3 who killed the deceased. PW12 and PW14, two other witnesses who spoke of the extra-judicial confession also spoke in tandem with what PW3 stated. The exculpatory statement made absolving himself and accusing the co-accused, by its very nature is unreliable. It cannot be put against the other accused, for no cross examination being provided to them, of the one who made that statement. It cannot also incriminate the person who made the statement since there is no element of confession in the recital as spoken of by three witnesses, as against one.

11. It is also of relevant import that PW8 specifically spoke of a mob having detained A1 and A2 and PW8 having taken A1 aside to speak to him, when he made the confession in the presence of PW3; thus again raising a suspicion of whether PW12 and PW14 were privy to the statement made by A1. The extra-judicial confession by its very nature being a weak piece of evidence has not at all been proved in the present case. In any event, the statement is made when the two accused were detained by a mob, on the accusation of murder. Obviously, there is considerable pressure put on the detained persons, who could have spoken, on undue duress or under threat of violence. In fact, the records indicate that after arrest, when A1&2 were taken for medical examination, they had injuries on their body, which again cuts at the root of credibility of the statement made; which anyway has doubtful standing as a confession.

12. Now we come to the recoveries made allegedly with the aid of the accused. The dead body was found in a field, an open space with free access to anybody. The stone and glass piece are said to have been recovered from the place of occurrence itself, albeit with the aid of the accused. We have serious doubts about the recoveries having the status of a recovery under Section 27 of the Indian Evidence Act, but for the time being we would assume it to be so. A stone, weighing 1-1.5 kg and a glass piece were said to have been recovered, on the showing of the accused, specifically A1 and A2. The seizure list as seen from the records does not indicate the specific place from which it was recovered other than stating that it is '*from the PO at the paddy land of Jogesh Roy*'. The learned State Counsel would argue that though the paddy field had free access, it was thick with stalks and there could definitely be a concealment; the growth not borne out from the evidence. We do not for a moment doubt that there could be concealment even in a public place or in a field with thick vegetation, but there is no statement recorded from the accused as to such a concealment having been effected and then the police having been led to the location and the material object recovered from the place of concealment. Recital in the seizure list is only that '*on being shown and certified by accused 1 and 2*'.

Concealment and its knowledge, revealed from the statement of the accused, is the crucial ingredient of Section 27 which can lead to that being used in a criminal trial, any other confession to a police officer being excluded as self-incriminating.

13. Further, the said recoveries are/ made on 02.11.2012 and the same was witnessed by PW5, the Pradhan who had come to the place of occurrence at the time of the recovery of body, on 31.10.2012 and at the time of recovery, on 02.11.2012. In fact, the testimony of PW5 is that the signature on the inquest report and the seizure report are his and it relates to one broken spectacles, one stone, one *gangee* and four pairs of sandals and one single sandal. It is not clear from the testimony of PW5 as to which were seized by the police on 31.10.2012 and what was recovered on 02.11.2012. The recovery thus has no clarity and more importantly the accused pointing out the concealed objects or even their presence at the time was not deposed to by PW5.

14. The recovery on 02.11.2012, as evidenced from the seizure report, was with respect to four items; the stone, a broken glass and two spectacles, one of which was broken, not testified to by PW5. The other objects were seized at the time of inquest from the place of occurrence from where the body was recovered. Yet again as we already observed there is no statement taken of the accused of a concealment and the recoveries made do not qualify to be one under Section 27. The stains on the stone found at the place of occurrence and the serology report of it being human blood, hence, is of no consequence.

15. We also have to observe that the seizure is said to have been made in the presence of both the accused without indicating as to who out of the two revealed the concealment. As a matter of fact, PW16, the Investigating Officer, testifies that both the accused A1 and A2 informed him that if they are taken to the place of occurrence they would recover the stone and broken glass with which the deceased was murdered and also the motorcycle of Samir; the last of which we will deal with a little later. Here we have to emphasize that PW5, the witness to the recovery, categorically stated that neither the stone nor the glass piece was produced in Court and hence not confronted to the witness. More pertinently the alleged weapons of assault were not shown to the Doctor to elicit his opinion as to whether the said objects could have caused the injuries found on the dead body. The recoveries are of no avail and do not form a clinching incriminating circumstance against the accused.

16. Yet another recovery is that of the motorcycle of the deceased. In fact, PW12 speaks of information received about the motorcycle having been kept in a house by A1 and A3 and recovered from there, prior to the arrest of the accused and in the course of the ongoing search, in the morning of 31.10.2012. PW9 is the house owner who spoke of three persons having come to his house to park the vehicle on 30.10.2012, however, he failed to identify the accused. The discrepancy noticed insofar as the recovery of the alleged weapons of assault, equally applies in the case of the seizure of the motorcycle also. Pertinent also is the fact that the motorcycle though handed over to PW1 on challan the same was not produced before Court nor was its registration details proffered to indicate that it belongs to the deceased or PW1, as is the version of PW1. PW1 was also not asked about the recovery of the motorcycle and handing over by the police.

17. One other incriminating circumstance was projected through PW4, the aunt of A3. PW4 was put in the box to speak of A3 having come to her on the night of 30.10.2012 to keep his bike in her house, having run out of petrol. There was nothing elicited from PW4 in her chief examination but for marking a statement recorded by the Magistrate. In cross examination she categorically stated that after the death of his son, PW1 had been frequently visiting her and threatening her with dire consequences if she does not depose

falsely in the instant case. It was in re-examination that she was asked by the Prosecution about the statements made to the police, clearly impermissible. Even when she was asked the said questions, first she denied A3 having come to her house at night and then she admitted it. There can be no credence placed on such a witness or an incriminating circumstance found from her testimony. One other aspect is that there is no motive projected, which we are quite conscious is not imperative when the chain of circumstances is so complete as to establish only a hypothesis of guilt, without leaving any room for a hypothesis of innocence. In the present case, the absence of motive, especially when the murder was brutal, is yet another aspect raising a reasonable doubt.

18. In the totality of the circumstances, each having been examined by us, none of those projected having qualified as incriminating, linking the accused to the murder, we cannot but reverse the order of conviction handed down by the Trial Court and affirmed by the High Court. The appeals stand allowed and the appellants herein shall stand released forthwith if not already released as per our orders on the last day of hearing, unless they are required in any other case and if released, their bail bonds shall stand cancelled.

19. We place on record our appreciation for the meticulous preparation and adroit presentation of both the learned Counsel.

20. Before we leave the matter, we see that the appeals have been filed only by A1 and A2. A3 too has been languishing in jail along with A1 and A2 and for reasons best known has not chosen to file an appeal. In the circumstance of having acquitted the two accused, it is only proper that A3 also be provided assistance to file an appeal. We direct the Member Secretary, National Legal Services Authority to get in touch with the Member Secretary of the West Bengal State Legal Services Authority, who shall through the Secretary of the District/Taluk Legal Services Authority, having jurisdiction over the prison in which A3 is imprisoned, provide sufficient assistance to A3 and ensure that an appeal is filed before this Court from the impugned judgment. The same shall be done within a period of two months and the compliance be reported to us, for which purpose alone the matter is posted on 20th of July, 2026.

21. Pending application(s), if any, shall stand disposed of.