



2026:AHC-LKO:38750-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 206 of 1989

1. Laxmi Kant @ Pappu (dead)
2. Sunil KumarAppellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Nagendra Mohan, Virendra Mohan, Rajiv Kumar Bajpai, Suparna Mishra

Counsel for Respondent(s) : Government Advocate, Pawan Kumar Mishra

Connected with
CRIMINAL APPEAL No. - 336 of 1989

Puttoo Lal TrivediAppellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Nagendra Mohan, Anand Yadav, Katyayan Mishra

Counsel for Respondent(s) : Govt. Advocate, Pawan Kumar Mishra

Court No. -10

Reserved on 26.03.2026

Delivered on 27.05.2026

A.F.R.

**HON'BLE RAJNISH KUMAR, J.
HON'BLE MRS. BABITA RANI, J.**

(Per : Rajnish Kumar, J.)

- (1)** Criminal Appeal No. 206 of 1989 under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as “*Cr.P.C.*”) has been filed by convicts/appellants, Laxmi Kant

alias Pappu and Sunil Kumar, assailing the judgment and order dated 04.03.1989 passed by Sessions Judge, Hardoi, in Sessions Trial No. 209 of 1987; *State Versus Laxmi Kant alias Pappu and others*, emanating from Case Crime No. 183 of 1986, under Sections 302/34 of the Indian Penal Code, 1860 (here-in-after referred to as "*I.P.C.*") (against accused Laxmi Kant @ Pappu and Sunil Kumar) and under Section 302/120B I.P.C. (against all accused persons), Police Station Shahabad, District Hardoi, by which appellants, Sunil Kumar and Laxmi Kant @ Pappu (since deceased), have been convicted and sentenced under Section 302 I.P.C. read with Section 34 I.P.C. for life imprisonment and a fine of Rs.5,000/- each, which shall be paid to father of deceased on deposit and in case of default in payment of fine, they will suffer further imprisonment for one year and in view of this sentence, no separate sentence has been passed under Section 302 I.P.C. read with Section 120-B I.P.C. However, co-accused Natthu Lal and Sri Kant have been acquitted under Section 302 I.P.C. read with Section 120-B I.P.C.

- (2) Criminal Appeal No. 336 of 1989 under Section 454 Cr.P.C. has been preferred by appellant, Puttoo Lal Trivedi, assailing the judgment and order dated 04.03.1989 (supra), by which Motor Cycle, bearing registration No. U.S.W. 8137 (Rajdoot), of the appellant, Puttoo Lal Trivedi, has been forfeited in favour of the State.
- (3) Both Criminal Appeal No. 206 of 1989 and Criminal Appeal No. 336 of 1989, arising out of one and the same judgment and order dated 04.03.1989, have been clubbed, heard and are being decided together by means of this common judgment and order.
- (4) It is pertinent to mention that during pendency of Criminal Appeal No. 206 of 1989, convict/appellant no.1, Laxmi Kant

alias Pappu, died, therefore, Criminal Appeal No. 206 of 1989 filed on behalf of convict/appellant no.1, Laxmi Kant alias Pappu, stood abated by means of order dated 15.02.2024 passed by a Co-ordinate Bench of this Court. Thus, Criminal Appeal No. 206 of 1989 only survives on behalf of convict/appellant no.2, Sunil Kumar.

- (5) It is also pertinent to mention that while entertaining Criminal Appeal No. 336 of 1989, this Court, while admitting and summoning the trial Court's record, suspended the operation of the order regarding forfeiture of the motor cycle during pendency of the appeal and further directed to give the motor cycle in the custody of the appellant after obtaining sufficient security to the satisfaction of the Chief Judicial Magistrate, Hardoi, by means of order dated 26.04.1989 and as informed by learned counsel for the appellant, the custody of vehicle was taken by the appellant.

Facts of the case

- (6) The case of the prosecution, in short, is that complainant, Pran Nath Shukla son of Shri Shyamcharan, resident of Mohalla Dilerganj, police station Shahabad, district Hardoi, had submitted a written report at police station Shahabad, district Hardoi, on 03.11.1986, alleging therein that his son, Deepak Kumar, runs a shop of electrical goods, which is situated in the house of Natthulal Mishra, resident of Mohalla Dilerganj, Kasba Shahabad. Some rumours were spreading for a few days alleging an illicit relations of the daughter of Natthu Lal Mishra, who got married in Pali, with his son Deepak Kumar, aged about 17 years, as she used to visit frequently. Due to this, the family members of Natthu Lal were keeping enmity internally, although apparently they maintained cordial relations. Yesterday i.e. on 02.11.1986, at about 6:30 in the

evening, Laxmi Kant alias Pappu son of Natthu Lal, took his son Deepak Kumar, who was wearing *kurta-pajama*, on a Rajdoot motorcycle and in front of the house of Janardan Gupta in Mohalla Dilerganj near the peepal tree, Sushil Kumar Singh and Rajni Kant Srivastava saw them and also had a talk with them and since then his son did not return back home. In the morning, he (complainant) met Laxmi Kant in front of his house and he inquired about his son Deepak Kumar, but he refused to tell anything. Thereafter, he went in search of his son Deepak Kumar among Natthulal's relatives and his several relatives, but no whereabouts of him was found. Laxmi Kant had also left his home since morning, therefore, he has suspicion that Laxmi Kant and his associates would have disappeared his son and killed him or they would kill him. Report may be registered and legal action may be taken.

- (7) On the basis of the aforesaid report (Ext. Ka.1), initially a check F.I.R., bearing Case Crime No. 183 of 1986, under Section 364 I.P.C. was registered against accused Laxmi Kant alias Pappu and his associates on 03.11.1986 at 07:10 p.m. at Police Station Shahabad, district Hardoi.
- (8) The investigation of the case was entrusted to S.I. Jagdamba Prasad Mishra. He, after recording statement of the witnesses including complainant-Pran Nath Shukla, Rajni Kant and Sushil Kumar, inspected the place, where he was lastly seen and prepared the site-plan. However, whereabouts of complainant's son Deepak Kumar could not be traced on that day.
- (9) In the meantime, Home Guard Kamal Prakash, who was on duty at Police Station Kotwali, Shahjahanpur, saw a dead body near Jamaur culvert on 03.11.1986. He went to police station Kanth, District Shahjahanpur and informed about it, on the basis of which, an entry was made in G.D. No. 10 at 08:15 a.m.

on 03.11.1986 at police station Kanth, district Shahjahanpur. Thereafter, S.I. Ram Lakhan Singh, S.S.I. Hariraj Tyagi, Constable Virpal Singh, Constable Digambar Singh Constable Jagvir Singh and Constable Rampal Singh were sent for the spot with relevant papers. Head Moharrir S.K. Sharma also accompanied them. They reached the spot, but the dead body could not be identified by anybody.

- (10) In the meantime, Village Chowkidar Ram Krishna reached the police station Kanth, district Shahjahanpur on 03.11.1986 at 03:30 P.M and an entry was made in G.D. No. 22 therein and a Case Crime No. 238 of 1986, under Section 302 I.P.C. was registered on the basis of information noted down in G.D.No. 10 and the information was given by R.T. Set to the authorities. This report was handed over to Village Chowkidar Ram Krishna, who was also sent to the spot. The investigation of Case Crime No. 238 of 1986 was entrusted to S.I. Ram Lakhan Singh. He prepared the inquest report of unknown dead body, photo lash, challan lash, letter to C.M.O., letter to R.I. and sealed the dead body and sent it to mortuary, Shahjahanpur for post-mortem examination alongwith Constable Jagvir Singh and Constable Virpal Singh. He collected blood stained soil and plain soil and prepared recovery memo. He also recovered a pair of sandals of the deceased Deepak Kumar and memo of it was prepared. On 04.11.1986, Constable Vir Pal Singh along with Constable Jagvir Singh returned to Police Station Kanth and deposited the clothes of the deceased.
- (11) The post-mortem of the dead body in unknown was conducted on 04.11.1986, at 03:00 P.M., by Dr. R.S. Malviya at Sadar Hospital, Shahjahanpur. He found that the age of the deceased was about 18 years and his probable time of death was about one and half day. In the post-mortem report, following ante-mortem injuries have been noted :-

1. Fire arm wound of entry round 2 c.m. diameter, margins inverted with blackening 4 c.m. round wound, margin on outer side left thigh 11 c.m. below anterior superior iliac spine left, directed radially.
2. Fire arm wound of exit ½ c.m. diameter margins inverted on inner side of left thigh upper part, 4 c.m. below root of penis, dialated to left side probing proved that wound is communicated to injury no.1
3. Abrasion 1 c.m. x 0.5 c.m. on upper part of left scrotum adjacent to injury no.2.
4. Echimosi seen in left scrotum.”

He also appended a note that on pursuing a track of bullet, it was found to transverse through muscles in front of left thigh bone horizontal and 2 wads and 3 metallic pieces were removed from thigh and 4 metallic pieces were removed from left scrotum which was opened and was found to have haetoma and ruptured haetoma was also found in pubic region.

On internal examination, he found that stomach was empty. He also took out from the body of deceased one sweater, one kurta, one baniyan, one janeo, one paizama, one underwear and one metallic ring. The finger prints were also taken in his presence.

- (12) On 04.11.1986, father of the deceased, Pran Nath Shukla, on getting information in regard to unknown dead body, reached the mortuary, Shahjahanpur. By that time, post-mortem of the dead body of the deceased was done. S.S.I. Hariraj Singh Tyagi, who accompanied S.I. Ram Lakhan Singh, had shown the unidentified dead body to the father and other relatives including Ashok Kumar Tewari. Upon seeing, complainant Pran Nath Shukla had identified the unknown dead body as his son Deepak Kumar and the dead body of the deceased Deepak Kumar was handed over to him. An entry in this respect was made in G.D. No. 22 at 06:55 p.m. on 04.11.1986. Thereafter, S.S.I. Hariraj Singh Tyagi along with other Constable returned to P.S. Kanth and an entry was made in G.D. at 07:45 P.M. on

04.11.1986, noting therein that the dead body of Deepak Kumar was given to his father and the offence commenced at Shahabad and ended at Jamaur culvert within that police station but the investigation will be done by police station Shahabad.

- (13) The Investigating Officer S.I. Ram Lakhan Singh, thereafter, made a report to higher authorities on 04.11.1986 that the offence relates to Police Station Shahabad, therefore, papers be sent to police station Shahabad for investigation. Thereafter, further investigation of the case was conducted by S.I. Jagdamba Prasad Mishra of Police Station Shahabad. In the course of investigation, he found one motor cycle, bearing registration no. USW 8137, (Rajdoot black), standing in the house of aunt Smt. Vimla Misra of Sunil Kumar on 05.11.1986 and upon inquiry of it, Smt. Vimla Misra stated that her nephew Sunil Kumar in the night along with one of his friend left the motor cycle. He took the motor cycle in possession and prepared memo of recovery. On 07.11.1986, at 06:50 A.M., the case property, which was taken during investigation by S.I. Ram Lakhan Singh of Police Station Kanth, district Shahjahanpur was brought by Constable Kamlesh Chandra and was deposited in the Malkhana of Police Station Shahabad and entry to this effect was made in G.D. No. 11. Thereafter, on 15.01.1987, Constable Rajendra Prasad Misra took the case property of Crime No. 183 of 1986 from Malkhana Shahabad to Sadar Malkhana, Hardoi and an entry to this effect was also made in G.D. No. 13. Thereafter, the case property was sent for chemical examination and Serologist's report. After completing the investigation, S.I. Mahak Singh had filed charge-sheet No. 145 of 1986 dated 31.12.1986 under Sections 364, 302 and 120-B I.P.C. against accused Laxmi Kant alias Pappu, Sri Kant, Natthu Lal and Sunil Kumar.

- (14) Learned Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions on 11.05.1987, where the case was registered as Sessions Trial No. 209 of 1987. Learned Sessions Judge, by means of order dated 23.05.1987, had framed charges against accused Laxmi Kant and Sunil Kumar under Sections 302 read with Section 34 I.P.C. and against all accused, Laxmi Kant, Sri Kant, Natthu Lal and Sunil Kumar, under Sections 302 read with Section 120-B I.P.C. All the accused persons denied the charges and pleaded for trial. Hence trial commenced.
- (15) The prosecution, in order to prove its case, examined 12 witnesses in oral evidence, which are as under :-

P.W.1-Rajnikant	Last seen witness
P.W.2-Pran Nath Shukla	Complainant/father of the deceased Deepak Kumar
P.W.3-Subhash Chandra Rastogi	Witness of criminal conspiracy
P.W.4-Smt. Krishna Kumari	Sister of complainant Pran Nath Shukla/witness of last seen
P.W.5-Chhotey	Resident of village Jamaur (Hostile)
P.W.6-Ram Pal	Resident of village Jamaur
P.W.7-Dr. R.S. Malviya	Conducted post-mortem of the dead body of the deceased and prepared the autopsy report
P.W.8-Rajendra Singh	Head Constable. He proved various G.D. Entries (Ex. Ka-5 to Ka-9).
P.W.9-S.I. Ram Lakhani Singh	Investigating Officer of Case Crime No. 238 of 1986, Police Station Kanth, District Shahjahanpur and prepared inquest report etc.
P.W.10-S.I. Jagdish Prasad Mishra	Investigating Officer of Case Crime No. 183 of 1986, Police Station Shahabad, District Hardoi.
P.W.11-Naubar Singh	Head Constable. He prepared the check F.I.R., bearing Case Crime No. 183 of 1986 and proved various G.D. Entries.
P.W.12-Mahak Singh	Investigating Officer, who submitted charge-sheet

- (16) In order to prove its case, the prosecution also placed on record and proved the following documentary evidence :-

Ext. Ka. 1	Written Report submitted by complainant
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	Pran Nath Shukla (P.W.2)
Ext. Ka. 2	Copy of Memo of identification of dead body of the deceased Deepak Kumar by his father, complainant (P.W.2) at the post-mortem house in the presence of witnesses and the dead body was handed over to him for cremation.
Ext. Ka. 3	Memo prepared by the Investigating Officer S.I. Jagdamba Prasad Mishra regarding two letters (Ext. IV and V) given by the complainant (P.W.2)
Ext. Ka. 4	Post-mortem report
Ext. Ka. 5	Copy of G.D. No. 10 at 08:15 A.M. dated 03.11.1986 of Police Station Kanth, Shahjahanpur regarding intimation that an unknown dead body is lying in Jamaur culvert by Constable Kamal Prakash.
Ext. Ka.6	Copy of G.D. No. 22 dated 03.11.1986 at 03:30 P.M. of Police Station Kanth, Shahjahanpur regarding registration of F.I.R., bearing No. 238 of 1986, under Section 302 I.P.C. on the basis of the report of Village Chowkidar Ram Krishna
Ext. Ka. 7	Copy of G.D. No. 22 dated 04.11.1986 at 06:55 P.M. regarding information given by Constable Virpal Singh handing over the dead body of the deceased to his father (complainant)
Ext. Ka. 8	Copy of G.D. dated 04.11.1986 at 07:45 P.M., noting therein that the dead body of the deceased was given to his father and offence commenced at Shahabad and ended at Jamaur culvert within that police station but the investigation would be done by P.S. Shahabad.
Ext. Ka. 9	Copy of G.D. No. 21 at 09:45 a.m.
Ext. Ka. 10	Noting of S.I. Ram Lakhan Singh to the Head Moharrir of Police Station Kanth
Ext. ka. 11	Inquest Report of unknown dead body
Ext. Ka. 12	Photo Lash of unknown dead body
Ext. Ka. 13	Challan Lash of unknown dead body
Ext. Ka. 14	Letter to Civil Surgeon, Shahjahanpur for post-mortem of the unknown dead body
Ext. Ka. 15	Memo of blood stained soil and plain soil
Ext. Ka. 16	Recovery Memo of two sandles of the unknown dead body
Ext. Ka. 17	Letter dated 04.11.1986 sent by S.I. Ram Lakhan Singh to the effect that the offence relates to P.S. Shahabad so that papers be sent to P.S. Shahabad for investigation
Ext. Ka. 18	Recovery memo of Motorcycle, bearing registration No. USW 8137 (Rajdoot black)
Ext. Ka. 19	Copy of G.D. No. 37 dated 05.11.1986 at 08:20 P.M.
Ext. Ka. 20	Site Plan of the place where Rajni Kant Srivastava and Sushil last seen deceased with Laxmi Kant
Ext. Ka. 21	Site plan of the place, where the dead body of the deceased was found

Ext. Ka. 22	Statement of Chhotelal under Section 161 Cr.P.C.
Ext. Ka. 23	Copy of G.D. No. 17 at 08:10 a.m., giving the description of the investigation in detail.
Ext. Ka. 24	F.I.R. vide Case Crime No.183/1986, Police Station Shahabad, District Hardoi.
Ext. Ka. 25	Copy of G.D. Entry dated 03.11.1986, Police Station Shahabad, District Hardoi.
Ext. Ka. 26	Copy of G.D. No. 11 dated 07.11.1986 at 06:50 A.M. regarding deposition of case property from P.S. Kanth, Sahajanapur to P.S. Shahabad, Hardoi
Ext. Ka. 27	Copy of G.D. No. 14 dated 07.11.1986 at 07:30 a.m.
Ext. Ka. 28	Copy of G.D. No.23 at 09:30 dated 10.12.1986, Police Station Shahabad (Release of Motor Cycle U.S.W. 8137)
Ext. Ka. 29	Copy of G.D. No. 13 dated 15.01.1987 at 09:50 P.M.
Ext. Ka. 30	Report of Chemical Examiner and Serologist
Ext. Ka. 31	Affidavit of Malkhana Moharrir K.S. Dixit
Ext. Ka. 32	Charge-sheet

- (17) Apart from above, the prosecution, in order to prove its case, has also produced following material exhibits and proved it:-

Ext. I, II, III, IV and V	Love letters adduced by complainant (P.W.2)
Ext. VI	Papers relating to Motorcycle, bearing registration No. U.S.W. 8137

- (18) After recording the evidences of prosecution witnesses, the following two Court witnesses were summoned and examined:-

C.W.-1; Smt. Shahida Begum	Principal, Modern Montessori School, Shahabad. Proved that Usha Devi was a teacher.
C.W.-2; Usha Devi	Sister of accused/appellant Laxmi Kant

- (19) Thereafter, the statements of accused persons were recorded under Section 313 Cr.P.C., wherein they denied the incident. Accused Laxmi Kant alias Pappu stated nothing except denial. Accused Srikant stated that out of the enmity of shop, he has been falsely implicated. He had purchased the house of maternal grandfather of witness Subhash and as such he has been falsely implicated. Accused Natthu Lal stated that Subhash

Rastogi (P.W.3) was living in the house of complainant Pran Nath. The witness Rajni Kant has worked as a peon under the complainant Pran Nath, who was Naib Tehsildar and witness Smt. Krishna Kumari is the real sister of Pran Nath. He also stated that his daughter had given private examination of B.A. after passing Intermediate and she also took education in Tara Pathak Intermediate College, Shahjahanpur. Accused Sunil Kumar stated that sister's son of the complainant Pran Nath, namely, Govind Saran had a dispute with his brother in Loco and as a result of this, he has been falsely implicated in the incident.

- (20) In defence, three witnesses were examined, which are as under :-

D.W.1-Puttu Lal Trivedi	Father-in-law of accused Laxmi Kant alias Pappu/owner of the Motor Cycle Rajdoot USW 8137
D.W.2-Shyam Lal	Head Clerk of Loco Shed
D.W.3-Jagdish Prasad	Witness of fact that accused Srikant was on duty at Railway Station Balamau in the night of 28/29.10.1986

- (21) After hearing the learned Counsel for the parties and considering the evidence and material on record, learned trial Court, by means of the impugned judgment and order dated 04.03.1989, acquitted the accused Nathhu Lal and Sri Kant but convicted and sentenced the accused Laxmi Kant alias Pappu and Sunil Kumar, under section 302 read with Section 34 I.P.C. to undergo life imprisonment and a fine of Rs.5,000/- each. In the event of default of fine to undergo one year additional imprisonment. The learned trial Court has also provided that the motor cycle No. U.S.W. 8137 Rajdoot, which has been used in the commission of the crime, shall stand forfeited in favour of State.

- (22) Feeling aggrieved by the impugned judgment and order dated 04.03.1989, convicts/appellants, Laxmi Kant alias Pappu, and Sunil Kumar have preferred Criminal Appeal No. 206 of 1989, whereas appellant, Puttoo Lal Trivedi, owner of Motor Cycle No. U.S.W. 8137 Rajdoot, has preferred Criminal Appeal No. 336 of 1989, seeking release of the said vehicle in his favour.
- (23) No appeal against the order of acquittal of accused Natthu Lal and Sri Kant has been preferred either on behalf of the State or complainant, as informed by learned A.G.A.

Arguments

- (24) Heard Shri Anand Yadav, Advocate holding brief of Shri Katyayan Mishra, learned Counsel for the appellant in Criminal Appeal No. 336 of 1989, Shri Rajiv Kumar Bajpai, Advocate assisted by Ms. Suparna Mishra, learned Counsel for the appellant in Criminal Appeal No. 206 of 1989 and Shri Pawan Kumar Mishra, learned Additional Government Advocate for the State.

Submissions of appellants in Criminal Appeal No.206 of 1989

- (25) Learned counsel for the appellants in Criminal Appeal No.206 of 1989 submitted that the impugned judgment and order has been passed without considering the evidence and material on record appropriately and without making out the chain of circumstances complete against the appellants because the case rests only on circumstantial evidence. He further submitted that the investigation was tainted, which does not inspire confidence, therefore, on the basis of said tainted investigation, neither the charge sheet could have been filed nor the trial could have proceeded and convicted the appellants. Thus, he submitted that the impugned judgment and order is liable to be set aside and the appellants are liable to be acquitted.

Submissions of appellant in Criminal Appeal No.336 of 1989

(26) Learned counsel for the appellant in Criminal Appeal No.336 of 1989 submitted that the learned Trial Court has illegally held that the motor cycle in question bearing No. U.S.W. 8137 (Rajdoot) was used by the accused persons in committing the crime and forfeited the same, whereas neither the same was recovered on the pointing out of any of the accused nor the witnesses to the recovery of the said motor cycle were produced. He further submitted that the prosecution has failed to prove that the motor cycle was used in the crime, therefore, it could not have been forfeited. Thus, he submitted that the impugned judgment and order to the extent of forfeiting the motor cycle of the appellant is liable to be set aside and the appeal is liable to be allowed.

Submissions on behalf of State

(27) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellants. He submitted that the P.W.-1 had told P.W.-2 that he had seen Deepak going with Laxmi Kant on a motor cycle to Shahjahanpur and he had also told the number of motor cycle to the Investigation Officer and also deposed before the Court. He further submitted that the P.W.-4 has proved that he had seen and talked to Deepak lastly with Laxmi Kant @ Pappu and Sunil when they were going towards Shahjahanpur in the evening of 02.11.1986 at about 07:30 - 08:00 and, thereafter, Deepak has been found dead on the next morning. He further submitted that P.W.-5, in his statement recorded under Section 161 Cr.P.C., which was placed on record by the Investigating Officer and proved as Ex. Ka-22, had stated that Deepak had told him that his name is Deepak and Pappu and Sunil Mishra have brought deceiving him and fired on him and, thereafter, he was not found alive, therefore, the said statement of the deceased should be treated as dying

declaration, which is sufficient proof against the appellant. Thus, he submits that though the P.W.-5 has been declared hostile in the Court but the aforesaid statement of the deceased is to be treated as dying declaration in view of the judgment rendered in the case of **Pakala Narayana Swami Vs. Emperor;** (1939) 26 AIR PC 47. He further submitted that the motor cycle was also recovered from the house of relative of Sunil. Thus, he submits that chain of circumstances is complete and the learned Trial Court has rightly and in accordance with law, after considering the material and evidence on record, has convicted the appellants by passing a reasoned and speaking order. There is no illegality or error in the impugned judgment and order, which may call for any interference by this Court. Thus, he submits that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

- (28) We have considered the submissions of learned counsel for the parties and perused the records.

Analysis in Criminal Appeal No.206 of 1989

- (29) The son of the complainant, namely, Deepak Kumar was doing a business of electric goods in a shop situated in Mohalla Dilerganj, which was owned by accused Natthu Lal. Deepak Kumar disappeared on 02.11.1986 around 06:30 PM, thereafter, his whereabouts were not known. When he did not return, in the intervening night of 02/03.11.1986, he was searched by his father Pran Nath i.e. the complainant. He came to know from Rajni Kant Srivastava and Sushil Kumar Singh that they had seen his son alongwith son of accused Natthu Lal, namely Laxmi Kant @ Pappu going on a motor cycle at about 06:30 PM on 02.11.1986 in front of house of Janardan Gupta near a Pipal Tree and his son was wearing kurta and paizama at that time. They had also talked with them and, thereafter, he did not return. The complainant met the accused Laxmi Kant in front of

his house on next morning and he enquired about Deepak Kumar but he showed ignorance and refused to tell him anything. Thereafter, he went for search of his son Deepak Kumar among his relatives and relatives of Natthu Lal but he could not get the whereabouts of his son and the accused Laxmi Kant had also left his house, therefore, he doubted that Laxmi Kant and his associates have done away his son Deepak Kumar on account of his illicit intimacy with daughter of Natthu Lal, who was married in Pali and on account of which rumour, Natthu Lal and his family kept enmity and grudge in their hearts, however, they were not showing it. Thus, on the basis of aforesaid facts and with the aforesaid allegations, the F.I.R. was lodged by the complainant on 03.11.1986 at 07:10 PM, a corresponding entry of which was made in the G.D. No.34 at 07:10 PM. The investigation started, however, in the meantime dead body of the deceased was found on Jamaur culvert, Shahjahanpur in the morning of 03.11.1986 and his post-mortem was conducted in unknown on 04.11.1986. On the same day in the evening, father of the deceased went to mortuary in Shahjahanpur in search of his son and found his dead body. Accordingly, investigation proceeded and after completion of investigation into the matter, charge sheet was filed against the accused persons, upon which, cognizance was taken by the learned Magistrate and the case was committed to the Court of Sessions for trial, where the charge was framed, however, the same was denied by the accused persons and pleaded for trial. Consequently, the trial commenced.

- (30) The first circumstances, which has been produced by the prosecution to show the complicity of accused in the commission of offence is that deceased was lastly seen in the company of accused Laxmi Kant alias Pappu and he was going with them, which was seen by P.W.1 and one Sunil Kumar. P.W.2 is only hearsay witness. There is no dispute that said

Sushil Kumar was not examined by prosecution, reason best known to the prosecution. This fact is also not disputed that next day the dead body of deceased was found near Jamaur culvert, Shahjahanpur and his death was caused by firearm and his death occurred at about 09:00 p.m., same day on which he was lastly seen i.e. on 02.11.1986 itself. Therefore, homicidal death on 02.11.1986 has not been raised in challenge and the only fact in issue between the parties is complicity of accused. For the purpose of judicious and righteous dispensation of justice and give the observations thereof, it is always beneficial to bring on record the brief resume of evidence of factual witnesses.

- (31) Rajni Kant appeared as P.W.-1. He stated that he knows the accused Laxmi Kant, who resides in his area and the deceased Deepak Kumar. On 02.11.1986 i.e. the next day of Deepawali around 06:30 in the evening, he alongwith Sushil Kumar was standing in front of house of Janardan Gupta, when Laxmi Kant and Deepak Kumar came on a motor cycle from the north. The motor cycle was being driven by Laxmi Kant and the number of the motor cycle was U.S.W. 8137, which was Rajdoot motor cycle of black colour. Sushil Kumar Singh stopped them and asked, then Deepak told that he is going to Shahjahanpur with Laxmi Kant. On being asked about the motor cycle, Laxmi Kant informed that his motor cycle has some fault and this is the motor cycle of one of his relatives, then both of them went towards the Ghas Mandi in the south. Thereafter, he has not seen Deepak alive.
- (32) In cross-examination, the P.W.-1 deposed that he is working as Moharrir with an Advocate in Tehsil Shahabad. However, he was not registered as Moharrir. The complainant Pran Nath was an Ameen in Tehsil Shahabad. When he worked with Ram Hari, then Pran Nath was Naib Tehsildar. Explaining about the place

he was standing, he stated that he was standing in front of the house of Janardan Gupta. He further deposed that none came from the neighbourhood of Janardan, when they saw and met Deepak. He along with Sushil was going to market. Deepak and Laxmi Kant met about 100 meters away from the house of Sushil. He knew Deepak as he was residing in his Mohalla. However, he had no friendship with him rather Sushil Kumar had friendship with Deepak. He had not stopped Deepak and Laxmi Kant rather it was Sushil, who had stopped and asked them about their going and it was then that Deepak had told that they are going to Shahjahanpur. On a query of Sushil regarding motorcycle, Laxmi Kant told that it is of his relative but the name of relative was not asked. While they were talking, none of the Mohalla had passed from there. He further deposed that this fact was shared by him with police. He also deposed that he knows father of Laxmi Kant, who has retired and running a shop of pumping set. He further deposed that they had met at 06:30 PM when it was dark and the lights were on; and after talking with Laxmi Kant and Deepak, he along with Sushil proceeded towards market. He further deposed that Sushil Kumar had told of their meeting with Deepak to his father at 08:30 on the next morning near Jawahar Lal School, which is at a distance of 40 meters on the west side of the road and he was also present at the relevant time. Sushil had met near the school. He had also told Pran Nath in regard to the memory about number of the motor cycle and since he had seen the motor cycle, therefore, it was but natural. On a query by the Court, he deposed that there was nothing special in the motor cycle, however, since they were going on it, therefore, he could notice the number of motorcycle and it remained in memory. He denied the suggestion that he would not have seen the motor cycle and the number. He also denied the suggestion that he does not know Laxmi Kant and gave false evidence under pressure of Pran Nath.

- (33) The complainant, Pran Nath appeared as P.W.-2. He deposed that Deepak was his son, who was aged about 17 years at the time of incident. At the time of incident, he was running an electric goods shop under the name and style of Vinay Electric House. The shop was in front of the Co-operative Bank. His shop was in one of the shops of Natthu Lal. There are four shops in the house of Natthu Lal, out of which, one was of his son, one shop was of fertilizer, one shop was of pumping set, which was looked after by Natthu Lal himself and in fourth shop, there was a tailor. Deepak was doing business for the last six months and paid rent in each month. He further deposed that Natthu Lal had two sons, namely, the accused Laxmi Kant @ Pappu and Srikant and had three daughters, out of which two have been married. One has been married in Pali and another in Umrauli. The daughter, who was married in Pali, was teaching in Modern Montessori School in Shahabad. Laxmi Kant is married and name of his father-in-law is Puttu Lal, who is resident of Shahjahanpur. The accused Srikant is servant in Railway and resides in Roza Railway Colony. Fourth accused Sunil, who is present in Court, resides with his brother Sushil, who works in Railway in Roza. He further deposed that it was a rumour for the last 15 – 20 days that Deepak had developed illicit relations with Usha, who was married in Pali but it could not be confirmed. He further deposed that Deepak had gone from his house wearing kurta, paizama and sweater lastly on 02.11.1986, whereas in the first information report, lodged by himself, he had mentioned that he was seen by Sushil Kumar Singh and Rajni Kant Srivastava in front of house of Janardan Gupta going on Rajdoot motor cycle with Laxmi Kant @ Pappu wearing kurta and paizama.
- (34) He further deposed that when his son did not return till morning of 03.11.1986, then, he started his search. Sushil Kumar and Rajni Kant met him in front of Jawahar Lal School and told that

Deepak Kumar had gone to Shahjahanpur with Laxmi Kant on black motor cycle but number of motor cycle was not told by them, therefore, he asked from Laxmi Kant but he did not tell anything and, thereafter, Laxmi Kant did not meet. He had searched Deepak among his relatives as well as of his and Natthu Lal and when Deepak did not meet, he lodged the F.I.R. at the Police Station Shahabad and proved the written tehrir as Ex. Ka-1.

- (35) In view of above, from the evidence of P.W.-1 and P.W.-2, it is apparent that on the one hand, P.W.-1 has deposed that the deceased Deepak Kumar had met him and Sushil Kumar Singh going on a motor cycle towards Shahjahanpur and they had met in front of house of Janardan in his Mohalla but on the other hand, the evidence of P.W.-2 does not indicate that the deceased Deepak had gone with Laxmi Kant @ Pappu from home, whereas the house of Deepak was at a distance of 100 steps from the place, where P.W.-1 and Sushil Kumar Singh had seen Deepak with Laxmi Kant @ Pappu. The P.W.-2 has deposed to have asked from Laxmi Kant about Deepak after P.W.-1 and Sushil Kumar Singh told him that they had seen Deepak with him, whereas in the first information report, it was mentioned by him that he met Laxmi Kant in front of his house on the very next morning and asked about Deepak Kumar, who denied to tell anything about him. The evidence of P.W.-1 also shows that Sushil Kumar Singh was friend of Deepak and he had talked to Deepak and told the complainant about last seen but he has not been examined. It is also apparent from the evidence of P.W.-1 and P.W.-2 that they were known to each other as working in Tehsil and P.W.-1 must have been subordinate to P.W.-2 and Sushil Kumar Singh, who was friend of Deepak Kumar and an independent witness, has not been produced. It is also apparent from evidence of Investigating Officer P.W.-10 that number of motor cycle was told by him

and other two witnesses told that they do not recollect, thus, P.W.-1 had not told the number to the Investigating Officer. The P.W.-2 has also deposed that number was not told by P.W.-1 and Sushil Kumar Singh. Hence Sushil Kumar was a material witness, who has been withheld.

(36) The learned Trial Court has recorded a finding, upon consideration of evidence of P.W.-1, that he is a reliable witness and he had seen Deepak lastly with accused Laxmi Kant going towards Shahjahanpur on motor cycle on the ground that he does not bore any enmity, living in same Mohalla or vicinity, and there was an occasion of 'Deepawali' festival to be present in market, but failed to consider that he had seen Deepak and Laxmi Kant in colony and not in market and if the finding of occasion of 'Deepawali' festival for their presence is to be considered to hold reliability of his testimony, then it should also have been considered that P.W.-1 has also deposed that none had passed from the said place, when they saw Deepak and Laxmi Kant, whereas on the 'Deepawali' festival people used to come out of houses and meet and go to the houses of others in Mohalla, particularly in the evening, therefore, absence of anybody else and withholding Sushil Kumar Singh coupled with the fact that P.W.-1 and P.W.-2 were working in same office and P.W.-1 must have been subordinate to P.W.-2 casts doubt about testimony of P.W.-1.

(37) The P.W.-2 further deposed that he continued to search his son Deepak and went to Shahjahanpur on 04.11.1986 and at mortuary, he came to know that post-mortem was conducted of an unknown body and clothes were sealed. He saw and identified the dead body of Deepak. Four other persons were with him in search. The dead body was given in his custody by the Inspector of Police Station Kanth, District Shahjahanpur and a supurdgi memo was prepared, which was signed by him

and proved as Ex. Ka-2. He further deposed that he went to Chhaya Kua, Shahjahanpur to arrange for a vehicle, where Sri J.P. Mishra, S.O., Shahabad met him and he had a talk with him. It is very strange that whenever any material information was to gather or given to some person connected with the case, they met P.W.-2 with co-incident. Rajni Kant and Sushil Kumar Singh met in front of school during search on the next day of last seen by them for information of going of Deepak with Laxmi Kant @ Pappu and Sri J.P. Mishra, the Investigating Officer of F.I.R. at Police Station Shahabad, after dead body was found. The said Investigating Officer has admitted in his evidence that he came to know about death of Deepak at Chhaya Kunwa, Shahjahanpur.

- (38) The P.W.-2 further deposed that Deepak was wearing kurta, paizama and sweater, whereas he had mentioned in the F.I.R. that P.W.-1 and Sushil Kumar had seen him in kurta and paizama, although sweater was also recovered from the body of deceased, which is recorded in post-mortem report but it remained unexplained as to how P.W.-1 and Sushil Kumar Singh had seen in Kurta and Paizama only on the same day that too at a short distance of 100 steps from house, which also creates doubt about testimony of P.W.-1.
- (39) The **motive** of murder has been shown in the rumour of illicit relation of the deceased with the sister of Laxmi Kant. To prove the said motive, the complainant has placed on record the aforesaid love letters, alleged to have been written by sister of Laxmi Kant, who appeared as C.W.-2. However, their placing on record, as discussed above, creates doubt about their recovery.
- (40) P.W.-2 had deposed that as per his inference Usha had written letters to Deepak and two letters were recovered from the shop

of Deepak, which he had handed over to the Inspector of Police Station Shahabad on 11.11.1986, in regard to which, he had prepared a memo before him, which has been marked as Ex. Ka-3. Thereafter, as recorded in the evidence of P.W.-2, he went out of the Court and brought certain more letters and told that he had got certain more letters, which he placed on record and the same were marked as Ex-1, Ex.-2 and EX.-3. The Court has further recorded that a copy of the letters be kept on record and the other letters be traced out as they are not available in file. On the next date i.e. after three days, when his cross-examination resumed, he deposed that the letters, which were handed over by him to Sub Inspector on 11.11.1986 are before him and were marked as Ex.4 and Ex.5 and a memo of which is Ex. Ka-3. However, the said two letters were placed on record by him on the same day because he deposed that the two letters, which have been placed on record today, were found on 10.11.1986 in the drawer of show-case in the shop of Deepak and the remaining were found after 10-15 days, when the shop was vacated. They were recovered in a copy of passbook of Co-operative Bank, which was kept at other place behind the electric goods. The two letters were handed over by him to the Inspector, when he met in front of Police Station Shahabad and his statement was recorded at that time.

- (41) The Sub Inspector, Sri J.P. Mishra, who appeared as P.W.-10, has deposed that on 11.11.1986, the complainant Pran Nath had come to the police station and filed two letters written by Pushpa to the deceased, which are on record as Ex.-4 and Ex.-5 and the corresponding memo is Ex. Ka-3. However, in the cross-examination by the Court, he stated that the complainant Pran Nath had given two love letters i.e. Ex.-4 and Ex.-5 in front of police station, which were entered by him in C.D. and not in the G.D. of the police station. However, there is no mention of the recovery memo and it has also not been

mentioned that on account of shortage of paper, the entry of recovery memo is not being prepared but the names of the witnesses are mentioned. In regard to which, it is mentioned on the memo that they are witnesses. He further deposed that he had not made any over writing under his signature in Ex. Ka-3. By mistake '12.11.86' was written, which was written as '11.11.86' and '12.11.86' above remained written. It is wrong to say that he made a forged entry in Ex. Ka-3. This paper was submitted by the Incharge Inspector on 12.11.86, which is 11.11.86. Thus, there is contradiction in regard to the place, where two letters were handed over by the complainant to the Inspector and it has also not been clarified as to who were the witnesses called by him and if they were called, as to why their statements were not recorded and if their statements could not have been recorded, why they were called. Be that as it may, P.W.-2 admitted that he placed on record the said two letters recovered from the drawer of shop of Deepak on the date of his further cross-examination, which in itself creates doubt on the recovery memo of same, which deepens in view of evidence of Investigating Officer. The recovery of three letters separately by P.W.-2 from the same shop and the manner of placing them on record also creates doubt. Learned Trial Court failed to consider it.

- (42) The learned Trial Court, examined Smt. Shahida Begum, the Principal of the Modern Montessori School as C.W.-1 and Smt. Usha Devi as C.W.-2 and, considering the evidence of C.W.-1, has recorded a finding only to the effect that one lady Usha was a teacher at the time when she was principal. However, it could not be proved that she was the sister of Laxmi Kant @ Pappu. The learned Trial Court, considering the evidence of C.W.-2 Smt. Usha Devi, has held that she can not be held to be a reliable witness at all. However, during her examination on oath, she was make to write but after considering her writing,

the learned Trial Court has recorded a finding that what she has written makes one to believe that the education standard is either not up to the mark or the witness deliberately twisted and made such writing which may not make any sense and the Court can not be guided by such writing at all. Even thereafter proceeded to consider her handwriting under Section 73 of the Indian Evidence Act, 1872 and recorded a finding that I have tried to find out certain alphabets of Usha 'Da' of Devi which have been repeated in the love letters. Even in the handwriting 'Phu' of 'Phool' as well as 'La' of 'Phool' and 'Gu' of 'Gulab' are the letters, which have been repeated in the handwriting. The pen pressure twist had distorted mostly in the writing before this Court, but when examined by magnifying lens, they bear similarity. However, I do not check these letters as authentically as argued by the prosecution. However, considering her cross-examination, in which, she has come to know about the murder of Deepak Kumar only four days after, the learned Trial Court has recorded a finding that this is possible only when she has sympathetic vibrations in herself for such a young boy of 18 years of age. However, from the aforesaid findings, it is clear that no conclusive finding could be recorded that the letters placed on record by the complainant were written by C.W.-2 to the deceased Deepak Kumar. Thus, this Court is of the view that since no conclusive finding could be recorded on the basis of records and evidence that the aforesaid letters were written by the C.W.-2 to the deceased Deepak Kumar, the motive shown by the prosecution for the murder of the deceased is not proved. Rumour can not take place of proof to record a finding of motive and guilt. However, even if the motive is not proved, it can not be a ground to discard the prosecution case if the prosecution is otherwise able to prove it's case, though motive is an important factor, particularly in the case of circumstantial evidence.

(43) In view of above, P.W.-1, P.W.-2 and P.W.-3 have not named the appellant, Sunil Kumar. However, P.W.-4, Smt. Krishna Kumari, who is aunt (बुआ) of the deceased, has named the appellant, Sunil Kumar and deposed **two instances of last seen**. She admitted that the complainant, Pran Nath Shukla is her brother and deceased Deepak is his son. She further deposed that Laxmi Kant and Sunil were friends and they were also friend of Deepak and they used to come and go together to her house in the Roza Junction Railway Colony. Sri Kant, who is brother of Laxmi Kant, is also working at Roza Junction and lives in her colony. Sushil, who is brother of the accused Sunil, is working in Railway and resides in the same colony. Her husband is also working in Railway and the house, in which she resides, is allotted in his name. She further deposed that who so ever comes from Shahjahanpur, used to go from front of her house and there is an electric pole in front of her house. She had further deposed that on 02.11.1986 at 07:30 - 08:00 in the night, while she was standing near the gate of the door of her house, she saw Laxmi Kant and Deepak going on motor cycle towards the north. Laxmi Kant was riding the motor cycle while Deepak was his pillon rider. After 15-20 minutes, they returned and she was waiting for them because Deepak normally used to come to her house. When they returned, Sunil was also on the motor cycle and Deepak was sitting in between Laxmi Kant and Sunil. She stopped Deepak and as the motor cycle slowed down, he told that he would come tomorrow and they went towards Shahjahanpur.

(44) In the cross-examination, she stated that she was standing on the door because she was giving fodder to her cow. She also deposed that the house of Sunil is at a distance from her house and she does not know as to who resides near the house of Sunil. She further stated that she had not tried to search Laxmi

Kant and Deepak on the next day. However, on 4.11.1986, she sent her children to enquire, however, admittedly, she did not go and when the children told her, she kept quite. She also stated that children were sent to the quarter of brother of Laxmi Kant. She has also deposed that she had got searched on 04.11.1986 at 04:00 in the evening and at 05:00 in the evening the Inspector had come. However, she had not sent any information to the police. She has also deposed that on 04.11.1986, one of a relative of Deepak, namely, Ashok Tiwari had come and asked for Deepak, then she informed that Deepak had come. However, she does not know Ashok Tiwari and she had met on the said day only. Thus, her evidence shows that she was not only aunt of the deceased Deepak, but had deep affection for him, therefore, she waited for him to return for about 15 - 20 minutes. However, even after gathering information from the house of Sunil and Sri Kant, she had not informed to police. The learned Trial Court has rejected the objection of defence that she is a related witness on three grounds firstly persons is expected to visit the house of a relative on the occasion of Deepawali, secondly she, having a cow is not disputed and she being a lady of fifty years, it is not unnatural that she would have come out to give fodder to cow and in colonies or quarters being a small cattle are tied outside and there was sufficient light and thirdly she had deposed that whenever Deepak used to come to his friend's house, he visited her, but failed to consider that as per own testimony of P.W.- 4, Deepak had not visited her house and findings have been recorded mainly on presumption. Even otherwise her evidence testifies only the last seen together which can not be sufficient to hold guilty.

- (45) From the evidence of P.W.4, it has emerged in her evidence that she saw the deceased on two occasions, firstly, he was with the accused Laxmikant and secondly he was seen with Laxmikant and Sunil. Although we concur the finding of learned trial

Court that tethering of cattle and some how probability of her presence on account of cattles, on the place of occurrence, may be respected, but one more factor which constraints us to ponder upon is that as per P.W.4, the deceased was seen by her on two occasions repeatedly, but if we analyze the situation like a prudent person, then, it appears that probability of happening and given version of P.W.4 Smt. Krishna Devi is altogether does co-exist and, therefore, does not appeal to our mind. Reason is not for to seek. It is not disputed that accused Sunil and P.W.4 reside in same colony and are acquainted with each other, then, in such situation, had the accused was having common intention to kill the deceased, then, we do not think in persepective of any person of ordinary prudence, will repeatedly pass through in front of house of P.W.4, as there was every liklihood of being seen, specifically, when they had another way to go to their destination. Therefore, the evidence of P.W.4, as put forth is highly improbable.

- (46) Chhote appeared as P.W.-5. He had also named the appellant Sunil Kumar in his statement under Section 161 Cr.P.C., which has been placed on record by the Investigating Officer as Ex. Ka-22. This statement was recorded on 05.11.1986, in which, he stated that he was fishing in the river about 150 yards (gaj) away from the place of incident in the night of Pareva, when he heard the sound of 2 - 3 fires and before that he heard 'Pappu don't kill'. Upon hearing the noise of fire, Rampal also came from his field and then he, Rampal and his nephew Ramkishan went to the place of occurrence. When they reached there, two persons ran towards south on the motor cycle, which was parked on the south of bridge. They went near the injured, who told his name Deepak and that Pappu and Sunil Mishra have shot him bringing him there deceiving him. He asked to take him to the hospital but on account of fear of being implicated, they ran away and did not tell it to anybody. The incident was

stated of 08:30 - 09:00 in the night. He admitted in his examination-in-chief before Court that he was fishing in river Makshi at 08:00 in the night about 14 months ago, when his nephew Ramkishan was with him. He had heard the noise of fire, thereafter, Rampal had come from his field and all the three ran away. He had not seen any injured there. Thus, he was declared hostile. In the cross-examination, he admitted that his statement was recorded by the Inspector on the 3rd day but he had not told that he had heard 'Pappu don't kill'. He also denied to have given any statement that they had gone to meet the injured, who has told the aforesaid.

(47) Rampal appeared as P.W.-6, who also admitted that he was at his field when he had heard sound of fires and upon hearing the same, he alongwith Chhote and Ramkishan, who were fishing in the Bakshi river, ran away from there. He had not seen the injured and the motor cycle. He also deposed that the Inspector had recorded his statement on the next day, which was given by him as the false thing was told by the Inspector and on account of fear, he had told that. In the cross-examination, he admitted that he had come with the police personnel. He has also stated that earlier he has not given the evidence on account of fear of the Inspector and the police personnel.

(48) In view of above, the P.W.-5 and the P.W.-6 have turned hostile and the P.W.-6 has also stated that he had given statement to the police on account of the fear and as a false thing was told to him by police. No further cross-examination was made from him in this regard. So far as the statement of P.W.-5 under Section 161 Cr.P.C. is concerned, which has been placed on record, the same is not considerable for the reason that he has denied before the Court to have given any such statement. It is also noticed that in the statement under Section 161 Cr.P.C., he stated that he heard 'Pappu don't kill' from a distance of 150 yards (gaj), which is highly improbable and evidence of P.W.-6

shows that the police had got their statement misleading them, which may be to solve the case and show good work. Even otherwise the statement under Section 161 Cr.P.C. cannot be relied for any purpose except for contradicting him in cross-examination under Section 162 Cr.P.C. in the manner provided under Section 145 of the Indian Evidence Act, 1872. The judgment in the case of **Pakala Narayana Swami Vs. Emperor (Supra)** is of no assistance to learned A.G.A. and distinguishable on the facts of the present case. The learned Trial Court has placed reliance of testimony of P.W.-5 and P.W.-6 on the ground that they had heard sound of fire in the night of 02.11.1986 near the culvert, where the dead body was found on next morning but it cannot be a ground to hold the appellant guilty.

- (49) In view of above, the P.W.-5, Chhote and the P.W.-6, Ram Pal, the star witnesses of prosecution have turned hostile, therefore, there is no eye witness account of crime and the case rests on the evidence of 'last seen together' only as P.W.-1 had deposed that he had seen the deceased Deepak lastly with Laxmi Kant @ Pappu going on a motor cycle towards Shahjahanpur but he had neither seen nor named the only surviving appellant, Sunil Kumar, therefore, his testimony is not of any assistance to the case of prosecution in regard to the appellant Sunil Kumar. The P.W.-4, Smt. Krishna Kumari has deposed that she had seen Sunil Kumar going with deceased Deepak Kumar and Laxmi Kant @ Pappu from Roza Railway Colony in front of her house around 07:30 - 08:00 in the night on 02.11.1986, when he was sitting in between Laxmi Kant @ Pappu and Sunil Kumar, who was residing in her colony, when Deepak had told her from the motor cycle that he would come on the next day and they went towards Shahjahanpur. The next day dead body of Deepak was found on Jamaur culvert on Shahjahanpur - Jalalabad Road but it has not been proved by any of the witness that Jamaur culvert

falls on the way in between Roza Railway Colony and Shahjahanpur. The evidence of P.W.-10, S.I. Jagdamba Prasad Mishra shows that he had gone with S.I. Ram Lakhan Singh on the place of occurrence in front of Jamaur on the Pulia of Bakshi Nala on Shahjahanpur - Jalalabad Road and, after inspection, prepared the site plan on his pointing out, whereas the F.I.R. was lodged on the information given by Watchman Ram Kishore and site-plan has not been prepared on his pointing out, therefore, place of recovery of dead body also remained unproved by any cogent evidence because he has also not been produced.

- (50) The evidence of 'last seen together' is very weak kind of evidence and conviction cannot be made only on the basis of evidence of 'last seen together' without considering the 'circumstantial evidence' and chain of circumstances complete in the manner, in which they refer only and only towards the guilt of the accused and there is no hypothesis of innocence of the accused. The 'circumstantial evidence' is to be seen on the touchstone of 5 golden principles (Panchsheel) laid down by the Hon'ble Supreme Court, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**; AIR 1984 SC 1622. The said 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(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."

- (51) In view of above, the normal principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances on the basis of which inference of guilt is drawn, should be of a

definite tendency unerringly pointing towards the guilt of the accused only. The circumstances, on the basis of which inference of guilt is sought to be drawn after considering cumulatively, should form a complete chain showing that in all human probability, the crime was committed by the accused only. However, if the prosecution fails to show and prove the chain of circumstances and exclude every hypothesis other than the guilt of the accused, the conviction on the basis of 'circumstantial evidence' cannot be made and it will not sustain. The conviction can be made on the basis of theory of 'last seen together', where time gap between the pointing of time, when accused and deceased was seen last alive, and, when the deceased is found dead is too short and the probability of other than accused being the author of crime becomes impossible. However, the time gap between both the incident is to be seen on the facts and circumstances of each case and the evidence of last seen together can not be rejected merely because there is long period.

- (52) The Hon'ble Supreme Court, in the case of **Chetan v. State of Karnataka**; (2025) 9 SCC 31, considered the issue of 'last seen' theory and held that conviction on the basis of 'last seen together' can be made only if the gap between the 'last seen' and the recovery is so short that the inference of anybody else is not possible. However, it cannot be said in every case that evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period. The relevant paragraphs 86 and 87 are extracted herein below:-

"86. In this regard, the learned Senior Counsel has relied on the decision of this Court in State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] wherein this Court held that: (SCC p. 775, paras 31-32)

"31. Before we analyse the evidence of PW 11 Dinesh Adhikari, who was working as a domestic help in the bar and restaurant Iguana Miraj, PW 14 Calvert Gonsalves, who was said to be in the company of A-1 and D-1 on the evening of 27-2-1999 outside the lounge of the restaurant and PW 6 Amit Banerjee, who was working as Receptionist of Hotel Seema, we would refer to certain decisions of this Court on the point of "last seen together". It is a settled rule of

criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the abovementioned general principle with reference to the principle of last seen together in Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] as under: (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 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. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.'

32. In Ramreddy Rajesh Khanna Reddy [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] this Court further opined that even in the cases where time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."

87. However, it may be noted that this Court also observed in the aforesaid decision of Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] that it cannot be said in all cases that the evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period, as stated in para 34 of the aforesaid decision which is reproduced herein as below: (SCC p. 776)

"34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time-gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time-gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time-gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time-gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time-gap would not affect the prosecution case."

(53) In the aforesaid case of **Chetan v. State of Karnataka (Supra)**, the Hon'ble Supreme Court also considered as to when the conviction can be made on the basis of circumstantial evidence. The relevant paragraphs 131 to 134 are extracted herein below:-

"131. The present case is clearly one that is founded on circumstantial evidence. By its very nature, circumstantial evidence as opposed to direct evidence, is the inference one draws from the existence of a fact based on certain established fact/circumstance. This process invariably involves intuitive reasoning, proper understanding of human behaviour and psychology. This reasoning has to be rational, probative and which accords with the natural human behaviour. At the same time, there will always be certain subjective elements, which however, cannot be in the nature of surmise or conjecture. The inference may not lead to absolute certainty as we are dealing with human behaviour and reconstructing a past incident in hindsight. Naturally, when evaluating the proven circumstances for drawing certain inferences therefrom, a logical, rational and pragmatic approach must be adopted without being too technical, pedantic, or seeking absolute proof, for this principle of circumstantial evidence is not based on statutory provision.

132. Thus, based on lived human experiences and human behaviour, if any supposition of fact is clearly inferable from an established fact, the inferred position of fact should be adopted as correct. Law does not require that a fact requires to be proved on absolute terms bereft of all doubts. What law contemplates is that for a fact to be considered proven, it must eliminate any reasonable doubt. Reasonable doubt does not mean any trivial, fanciful or imaginary doubt, but doubt based on reason and common sense growing out of the evidence in the case. A fact is considered proved if the court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

133. It is also settled that where the evidence is circumstantial in nature, the circumstances from which the inference of guilt is to be drawn, should be fully established. In other words, each of the circumstances from which certain inferences are sought to be drawn, is required to be proved in accordance with law, and there cannot be any element of surmise and conjecture, and each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused person. The court has to examine the cumulative effect of the existence of these circumstances, which would point to the guilt of the accused, though any single circumstance may not in itself be sufficient to prove the offence. Thus, if the combined effect of all these circumstances, each of which has been independently proved, establishes the guilt of the accused, then the conviction based on such circumstances can be sustained. These circumstances so proved must be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved.

134. Thus, if upon evaluation of a set of proved circumstances consistent with understandable and socially recognised human behaviour, as a cumulative consequence, a clear and definitive pattern emerges which irresistibly points to the culpability of the accused person, we see no reason why we should not accept such an inferred conclusion to be correct to fasten criminal liability on the accused. On the other hand, if such an inference is sought to be assailed on the ground of any doubt, the doubt must be a reasonable one consistent with human behaviour under the circumstances of the case and not fanciful, abstract speculation or imagination."

- (54) Similar view has been taken by the Hon'ble Supreme Court in the cases of **Chandrabhan Sudam Sanap Vs. State of Maharashtra**; (2025) 7 SCC 401 and **Karakkattu Muhammed Basheer Vs. State of Kerala**; (2024) 10 SCC 813.
- (55) The P.W.-3 Subhash Chandra Rastogi was produced to prove the conspiracy by Sri Kant and to dispute the same, the evidence of D.W.-2 and D.W.-3 was adduced. However, they have lost their relevance as the learned Trial Court has discarded the evidence of P.W.-3 and acquitted Sri Kant, which has not been challenged either by the State or complainant.

Conclusion

- (56) Adverting to the facts of the present case, it is apparent on record that evidence in case in hand is of 'last seen together' and the 'circumstantial evidence' together with same does not prove the guilt of the appellants as the chain of circumstances is not complete as discussed above, coupled with the facts that evidence of P.W.-4 does not inspire confidence and the evidence of 'last seen' adduced by P.W.-1 also creates doubt, even otherwise it is not in regard to the surviving appellant Sunil Kumar. Thus, this Court is of the view that the learned Trial Court has recorded the conviction without considering and appreciating the materials on record appropriately and merely on the basis of surmises and conjectures and the post-mortem report has been considered relying on the rumour of illicit relations of the deceased Deepak with the sister of Laxmi Kant @ Pappu and letters to be of Usha, whereas it could not be proved but relied on presumption and without any cogent evidence, therefore, the only surviving appellant Sunil Kumar is entitled for benefit of doubt and acquittal accordingly and the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside.

Analysis in Criminal Appeal No.336 of 1989

- (57) The Criminal Appeal No.336 of 1989 has been filed because the motor cycle bearing No. U.S.W. 8137 (Rajdoot) has been forfeited to the State of U.P. on the ground that it has been used in commission of crime. Section 452 Cr.P.C. provides '*Order for disposal of property at conclusion of trial*'. Sub Section (1) of Section 452 Cr.P.C. provides that on conclusion of inquiry or trial in any Criminal Court, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. Thus, the Criminal Court has ample power to pass suitable order for disposal of property, which has been used for commission of any crime under Section 452 Cr.P.C. by either of three modes viz, destruction, confiscation or delivery to any person claiming to be entitled to possession.
- (58) The Hon'ble Supreme Court, in the case of **Nevada Properties Pvt. Ltd. Through Its Directors Vs. The State Of Maharashtra and Another**; (2019) 20 SCC 119, has held that the words, “may make such order as it thinks fit” in Section 452 vests the court with the discretion to dispose of the property in any of the three modes specified, namely, destruction, confiscation or delivery to the person entitled to be in possession thereof or otherwise. The relevant paragraph 23 is extracted herein below :-

"23. Section 452 states that when an inquiry or trial in a criminal court concludes, the court may make an order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming himself to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which an offence appears to have been committed or which has been used for the commission of any offence. The context is wide, albeit the words, “may make such order as it thinks fit” in Section 452 vests the court with the discretion to dispose of the property in any of the three modes specified,

namely, destruction, confiscation or delivery to the person entitled to be in possession thereof or otherwise (see N. Madhavan v. State of Kerala [N. Madhavan v. State of Kerala, (1979) 4 SCC 1 : 1979 SCC (Cri) 883]). However, an order under Section 452 is not an order determining title or ownership but that of the right to possession, and therefore where serious claims to ownership are put forward, it would be best if the criminal courts directs the parties to establish their claim before the civil court. The criminal court can, however, pass appropriate order of interim nature as it may be appropriate."

(59) The Hon'ble Supreme Court, in the case of **Union of India Vs. Ganpati Dealcom (P) Ltd.**; (2023) 3 SCC 315, has held that Section 452 Cr.P.C. has inbuilt safeguards of in personam criminal forfeiture, wherein confiscation occurs at the end of the trial and the confiscation is to be determined at an evidential standard of "beyond reasonable doubt" and are dependent on the result of the criminal trial. The relevant paragraph 115 is extracted herein below :-

"115. Under the IPC, forfeiture is recommended to be a form of punishment under Section 53. Accordingly, the Code of Criminal Procedure, 1973 provides for a mechanism for interim custody and forfeiture at the conclusion of trial under Section 451CrPC (in personam forfeiture), which reads as under:

"451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

- (a) property of any kind or document which is produced before the court or which is in its custody,*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.*

452. Order for disposal of property at conclusion of trial.—(1) When an inquiry or trial in any criminal court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence."

The aforesaid provisions under the CrPC have inbuilt safeguards of in personam criminal forfeiture, wherein confiscation occurs at the end of the trial. Under these provisions, confiscation is to be determined at an evidential standard of "beyond reasonable doubt" and are dependent on the result of the criminal trial."

Conclusion

(60) Adverting to the facts of the case, P.W.-1 has deposed that he had seen Laxmi Kant @ Pappu and Deepak Kumar going on a

Rajdoot motor cycle having No. U.S.W. 8137. The P.W.-4, Smt. Krishna Kumari has also deposed that she had seen Laxmi Kant @ Pappu and Deepak Kumar and only surviving appellant, Sunil Kumar going on a motor cycle but she had not given number and make of the motor cycle. The P.W.-1 had not told the number of motor cycle to P.W.-2, when he met on the next day of missing of the deceased Deepak and Sushil Kumar Singh, who is said to have told number, as deposed by P.W.-2, has not produced. The said motor cycle was recovered from Kamalnayanpur on 05.11.1986 and witnessed by the aunt of the accused Sunil Kumar and the recovery memo in this regard was prepared, which has been proved as Ex. Ka-18 by Investigating Officer and only on this ground, a finding has been recorded that it was used in the crime and, therefore, the same has been forfeited in favour of the State but without considering that witness to recovery has not been examined and recording any reason as to why it could not be delivered to the owner i.e. Puttoo Lal Trivedi, who was neither accused nor witness in the case in hand, even if the vehicle was used in the crime, whereas we are of the view that once the trial concluded, unless the circumstances so demand, the vehicle should have been released in favour of the owner, particularly when he was not involved in the crime in any manner. Thus, this Court is of the view that this appeal is also liable to be allowed and the judgment is liable to be set aside to the said extent and Rajdoot Motor Cycle is liable to be released in favour of the appellant, which is in his custody in compliance of an interim order passed by this Court.

Order

Criminal Appeal No.206 of 1989

(61) Criminal Appeal No.206 of 1989 is **allowed**. The impugned judgment and order dated 04.03.1989 passed against surviving

appellant no.2-Sunil Kumar by learned Sessions Judge, Hardoi in Sessions Trial No. 209 of 1987 is hereby set-aside. The sole surviving appellant no.2-Sunil Kumar is hereby **acquitted**. He is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

- (62) However, appellant Sunil Kumar is directed to file personal bond and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973, within fifteen days from today.

Criminal Appeal No. 336 of 1989

- (63) Criminal Appeal No. 336 of 1989 is **allowed**. The impugned judgment and order dated 04.03.1989 forfeiting the Rajdoot Motor Cycle bearing registration No. U.S.W. 8137 in favour of the State is also hereby set-aside. Consequently, since Motor Cycle, bearing registration No. U.S.W. 8137 (Rajdoot), has already been in the custody of the appellant Puttoo Lal Trivedi in compliance of the interim order dated 26.04.1989 passed by a Co-ordinate Bench of this Court, we provide that the said motorcycle shall stand released in favour of the appellant-Puttoo Lal Trivedi. The sureties/bond furnished under the interim order dated 26.04.1989 passed by this Court for release of motorcycle are/is discharged.
- (64) Let a copy of this order alongwith trial Court's record be transmitted to the Court concerned forthwith and in any case within a week from today for necessary information and further action.

(Mrs. Babita Rani, J.) (Rajnish Kumar, J.)

May 27, 2026
Saurabh