



CGHC010296512024



2026:CGHC:27654-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1599 of 2024**

Naresh Kumar Sahu S/o Puranik Sahu, Aged About 42 Years, R/o Village Dhodra, Police Station Abhanpur, District Raipur (C.G.)

... Appellant(s)**versus**

State of Chhattisgarh Through Police Station Abunpur District Raipur (C.G.)

...Respondent(s)

(Cause-titles taken from Case Information System)

For Appellant	:	Mr. Vivek Mishra, Advocate.
For Respondent/State	:	Mr. Ashish Shukla Additional Advocate General.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****06.07.2026**

1. Heard Mr. Vivek Mishra, learned counsel for the appellant, and Mr. Ashish Shukla, learned Additional Advocate General appearing for the State/respondent.

2. Although the matter is listed today for hearing on I.A. No. 1 of 2024, an application for suspension of sentence and grant of bail,



considering that the appellant has been in custody since 08.08.2024 and with the consent of learned counsel for the parties, the appeal is taken up for final hearing.

3. Learned State counsel submits that notice issued to the wife of the deceased (PW-2) was duly served; however, no one has entered appearance on behalf of the victim to oppose the present appeal.

4. The present criminal appeal has been preferred by the appellant under Section 14A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989"), assailing the judgment of conviction and order of sentence dated 08.08.2024 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Raipur, District Raipur (for short, "the trial Court"), in Special Criminal Case No. 10 of 2021, whereby the appellant has been convicted and sentenced as follows:

Conviction under Section	Sentence
Section 302 of the Indian Penal Code (<i>for short, 'IPC'</i>)	:Rigorous imprisonment (<i>for short, 'R.I.'</i>) for life and fine of Rs.2000/-, to default of payment of fine, 02 months R.I. more.
Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (<i>for short, 'Act of 1989'</i>)	:R.I. for life and fine of Rs.2000/-, to default of payment of fine, 02 months R.I. more.
All the sentences shall run concurrently	

5. The prosecution case, in brief, is that on 19.04.2020 at about



00:30 hours, Kishore Kumar Tiwari (PW-4), a ward attendant at the Government Hospital, Abhanpur, submitted before Police Station Abhanpur a hospital memo prepared by Dr. S.D. Kanwar of the Government Hospital, Abhanpur, informing that Kamal Dhruv had been brought to the hospital in a dead condition and that the cause of his death was unknown. The said memo, dated 18.04.2020 at 10:40 p.m., was issued on the letterhead of the Jeevan Deep Samiti, Community Health Centre, Abhanpur, and addressed to the Station House Officer, Police Station Abhanpur. In the said memo, Dr. S.D. Kanwar stated that "Kamal Dhruv, son of Ramkumar Dhruv, aged about 28 years, resident of Dhodra, was brought to the hospital in a dead condition by the 108 ambulance service. The information is being forwarded for necessary legal action."

6. On the basis of the aforesaid hospital memo, Merg Intimation No.28/2020 was registered at Police Station Abhanpur. During the merg inquiry, the investigating officer visited the hospital, prepared the inquest panchnama of the dead body vide Ex.P/2, and sent the body for post-mortem examination. Upon receipt of the post-mortem report and completion of the merg inquiry, Crime No.173/2020 was registered against an unknown person. During the course of investigation, on the basis of the memorandum statement (Ex.P/1) of the appellant and the evidence collected during the investigation, a charge-sheet was filed against the appellant before the jurisdictional Court.

7. The learned trial Court framed charges against the appellant for



the offences punishable under Section 302 of the IPC and Section 3(2)(v) of the Act of 1989. The charges were read over and explained to the appellant, who denied the same and claimed trial. In his examination under Section 313 of the Cr.P.C., the appellant denied the incriminating circumstances appearing against him and pleaded false implication.

8. In order to bring home the charge against the appellant, the prosecution examined 21 witnesses and exhibited 21 documents. The defence did not adduce any oral or documentary evidence in support of its case.

9. Upon appreciation of the oral and documentary evidence available on record, the learned trial Court, by the impugned judgment dated 08.08.2024, convicted the appellant of the offences punishable under Section 302 of the IPC and Section 3(2)(v) of the Act of 1989 and sentenced him accordingly, as noticed in paragraph 4 of this judgment. Aggrieved thereby, the appellant has preferred the present criminal appeal.

10. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court is contrary to the evidence on record and the settled principles governing cases based on circumstantial evidence and is, therefore, liable to be set aside. It is submitted that the entire prosecution case rests on circumstantial evidence, yet the prosecution has failed to establish a complete and unbroken chain of circumstances pointing exclusively towards the guilt of the appellant. The learned trial



Court has mainly relied upon the testimonies of PW-2 Smt. Durga Dhruv (wife of the deceased), PW-7 Smt. Kusmi Dhruv (mother of the deceased), PW-8 Ranu Sahu and PW-14 Yogesh Sahu to conclude that the deceased Kamal Dhruv was working at the appellant's farm on 18.04.2020 and was thereafter found lying unconscious near the appellant's house. The learned trial Court further accepted the testimony of PW-2 that, when she telephonically contacted the deceased in the afternoon, he informed her that he was with the appellant and three other persons, namely Narottam, Tulsiram and Rajendra and would return shortly, and on that basis drew an inference that the deceased and the appellant were "last seen together". However, no prosecution witness has deposed that he or she actually saw the deceased in the company of the appellant immediately prior to the occurrence. At best, the evidence of PW-2 establishes that she had last heard from the deceased over the telephone that he was with the appellant and three other persons. Thus, the learned trial Court committed a serious error in treating a case of "last heard" as one of "last seen together". He further submits that the alleged gestures made by the deceased while lying unconscious, as deposed by PW-2, were towards four persons, namely the appellant, Tulsiram, Narottam and Rajendra, who were standing together, yet the learned trial Court, on mere conjectures, concluded that the deceased intended to implicate only the appellant. Such a finding, according to the learned counsel, is wholly speculative and unsupported by any legal evidence.

11. Learned counsel for the appellant further submits that the



testimonies of PW-7 Smt. Kusmi Dhruv, PW-8 Ranu Sahu and PW-14 Yogesh Sahu do not advance the prosecution case. PW-7 herself admitted that neither she nor PW-2 had gone to the place of occurrence. PW-8 and PW-14 merely stated that they found the deceased lying unconscious near the byara and informed PW-2, who thereafter came and gave water to the deceased. None of these witnesses stated that they had seen the appellant and the deceased together on the date of the incident. It is further contended that the memorandum evidence also does not support the prosecution, as both memorandum witnesses, namely PW-1 Neharulal Sinha and PW-3 Domar Sahu, turned hostile, and no incriminating circumstance has been established against the appellant on the basis of the memorandum statement (Ex.P/1). Furthermore, although PW-2 named the appellant and three others in her police statement recorded on 19.04.2020, the FIR registered on 20.04.2020 was against unknown persons, thereby creating a serious doubt regarding the prosecution story. Even the complaint submitted by PW-2 to the Superintendent of Police reflects allegations of false implication. Although the postmortem report establishes that the death was homicidal, proof of homicidal death alone is insufficient to sustain a conviction unless the prosecution establishes beyond reasonable doubt that it was the appellant who committed the offence.

12. Learned counsel for the appellant further contended that several prosecution witnesses admitted that the deceased was a habitual consumer of liquor and often remained intoxicated after consuming



alcohol. Even PW-2 admitted that she administered glucose water to the deceased after finding him unconscious. Thus, there is no direct or scientific evidence connecting the appellant with the alleged crime. In cases based solely on circumstantial evidence, each circumstance must be conclusively proved and all the circumstances must form a complete chain excluding every hypothesis other than the guilt of the accused. Reliance is placed on the decisions of the Hon'ble Supreme Court in ***Arjun Marik v. State of Bihar***, reported in **1994 Supp (2) SCC 372**, ***Kanhaiya Lal v. State of Rajasthan***, reported in **(2014) 4 SCC 715**, and ***Anand Jakappa Pujari @ Gaddadar v. State of Karnataka***, reported in **2026 INSC 417**, wherein it has been consistently held that the circumstance of "last seen together" by itself is insufficient to sustain a conviction unless it is corroborated by other incriminating circumstances establishing a complete chain of guilt. In the present case, even the theory of "last seen together" is not established, and the conviction has been recorded solely on the testimony of PW-2, who is the wife of the deceased, without any independent corroboration. Accordingly, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt, the appellant is entitled to the benefit of doubt, and the impugned judgment of conviction and order of sentence deserves to be set aside.

13. *Per contra*, learned State counsel supports the impugned judgment and submits that the learned trial Court has properly appreciated the oral as well as documentary evidence available on record and has rightly recorded the conviction of the appellant. It is



submitted that the prosecution has successfully established that the deceased had gone to the appellant's farm on the date of the incident and, as deposed by PW-2 Smt. Durga Dhruv (wife of the deceased), during a telephonic conversation the deceased informed her that he was in the company of the appellant and three other persons. The evidence of PW-7 Smt. Kusmi Dhruv, PW-8 Ranu Sahu and PW-14 Yogesh Sahu, coupled with the medical evidence establishing the homicidal death of the deceased, sufficiently corroborates the prosecution case. It is contended that the learned trial Court has rightly appreciated the evidence in its proper perspective and that the circumstances proved by the prosecution form a complete chain pointing towards the guilt of the appellant. The minor discrepancies pointed out by the defence do not go to the root of the matter so as to discredit the prosecution case. It is, therefore, prayed that the appeal, being devoid of merit, deserves to be dismissed.

14. We have heard learned counsel for the parties at length, considered their rival submissions and carefully perused the entire record of the case.

15. The conviction of the appellant is primarily founded on the testimony of PW-2 Smt. Durga Dhruv, who is the wife of the deceased. The prosecution has also relied upon the medical evidence, namely the postmortem report (Ex.P/12), in support of its case.

16. The first question that arises for consideration before this Court is whether the death of deceased was homicidal in nature.



17. The prosecution has relied upon the testimony of Dr. Sumitra Uraon (PW-21), who conducted the postmortem examination on the dead body of the deceased on 19.04.2020 and proved the postmortem report (Ex.P/12). PW-21 deposed that on external examination, she noticed an abrasion extending from the upper part of the chest to the lower part of the neck (suprasternal notch), multiple abrasions on the posterior aspects of both elbows and the left shoulder, besides swelling and dislocation of the right shoulder joint. On internal examination, she found the trachea congested and swollen, fracture of the thyroid cartilage, damage to the muscles on both sides of the neck accompanied by dark clotted blood, congestion of both lungs, blood-stained froth inside the mouth, and dark-coloured blood in the chambers of the heart as well as in the major blood vessels. According to PW-21, the aforesaid injuries were ante-mortem in nature and, on the basis of the postmortem findings coupled with her medical experience, she opined that the deceased died due to asphyxia caused by throttling (manual compression of the neck), resulting in cardio-respiratory arrest. She further opined that the death was homicidal in nature and had occurred approximately 18 to 36 hours prior to the postmortem examination. During her cross-examination, PW-21 stated that compression of the neck obstructs the supply of oxygen to the brain and the entire body, and ordinarily a person can survive for only 3 to 5 minutes in such a condition. She also clarified that, considering the nature of the neck injuries found on the deceased, he would not have been capable of drinking water after sustaining those injuries.



18. In view of the medical evidence of Dr. Sumitra Uraon (PW-21) and the postmortem report (Ex.P/12), this Court has no hesitation in holding that the death of the deceased was homicidal in nature.

19. After hearing learned counsel for the parties and upon due consideration of the material available on record, we are of the considered opinion that the finding recorded by the learned trial Court regarding the homicidal nature of the death of the deceased is a pure finding of fact based on proper appreciation of the evidence available on record. The said finding is neither perverse nor contrary to the evidence on record. Accordingly, we affirm the said finding.

20. The next question which falls for consideration is whether the prosecution has succeeded in establishing, beyond reasonable doubt, that the appellant is the author of the crime.

21. The learned trial Court has principally relied upon the testimony of Smt. Durga Dhruv (PW-2), the wife of the deceased. PW-2 deposed that the deceased was an agricultural labourer and used to undertake agricultural work, including spraying pesticides, in the fields of the appellant Naresh Sahu, Tulsiram and Narottam. According to her, on 18.04.2020, the deceased had gone to the appellant's field for spraying pesticides. As he did not return home, she telephonically contacted him in the afternoon, whereupon the deceased informed her that he was sitting with the appellant and some other persons and would return shortly. However, when he did not return till about 6:30 p.m., the son and daughter of the appellant came to call her. On reaching the spot,



she found the deceased lying unconscious near the *byara* adjoining the houses of the appellant, Tulsiram and Narottam. PW-2 further stated that when she offered water to the deceased, he gestured towards his neck and thereafter pointed towards the appellant, Tulsiram, Narottam and Rajendra, who were standing nearby. According to PW-2, she understood from those gestures that the appellant and the other persons had assaulted the deceased. Thereafter, on her request, the deceased was taken to her house on a motorcycle, and after she called the 108 Ambulance Service, he was shifted to the Government Hospital, Abhanpur, where he was declared dead. PW-2 further deposed that there was no prior dispute between the deceased and the appellant except that she had asked the deceased to collect his wages on the date of the incident. She also proved her caste certificate (Ex.P/7), its seizure memo (Ex.P/8) and the *supurdnama* (Ex.P/9).

22. During her cross-examination, PW-2 admitted that the police had initially registered the FIR against unknown persons, although she asserted that she had disclosed the names of the appellant and the other persons to the police from the very beginning. She also admitted that if her police statement (Ex.D/1) did not contain the fact that the deceased had indicated by gestures that the appellant had strangled him, she could not explain the omission. She further admitted that if her police statement did not record that the deceased had informed her over the telephone that he was with the appellant and some other persons, she could not assign any reason for the same. PW-2 also admitted that the deceased had been working in the fields of the



appellant, Tulsiram and Narottam for about three years and that during this period there had been no dispute between them.

23. Smt. Kusmi Dhruv (PW-7), the mother of the deceased. PW-7 deposed that the appellant Naresh Sahu belongs to her village and that the deceased Kamal Dhruv used to work as an agricultural labourer in the fields of the appellant. According to her, on the date of the incident, the deceased had left home stating that he was going to work in the appellant's field. She further stated that when the deceased did not return home, her daughter-in-law, Smt. Durga Dhruv (PW-2), telephoned him, whereupon the deceased informed her that only a little work remained and that he would return shortly. However, when he did not return till evening, the daughter of the appellant came to their house and informed them that the deceased was at the appellant's house and was not feeling well. She further informed PW-7 that the deceased had been at the appellant's house since about 3:00 p.m. PW-7 further deposed that when she proceeded towards the appellant's house, she met the appellant on the way, who told her that the deceased had already been left at her house and that there was no necessity for her to visit his house. On returning home, she found the deceased lying there in an injured condition. According to PW-7, the deceased was unable to speak properly and was only making gestures by touching his chest and neck, from which she understood that he had been assaulted. Thereafter, an ambulance was called and the deceased was taken to the Government Hospital, Abhanpur.



24. During her cross-examination, PW-7 admitted that she had neither witnessed the occurrence nor visited the place of occurrence. She further admitted that neither she nor PW-2 had gone to the place of occurrence and that she had not seen who had brought the deceased to her house. She also admitted that she did not disclose any facts regarding the incident either to the Doctors at Khorpa Hospital or at the Government Hospital, Abhanpur. PW-7 further stated that if the facts regarding the appellant's daughter informing her that the deceased had been at the appellant's house since 3:00 p.m., or the gestures allegedly made by the deceased, were not recorded in her police statement, she could not assign any reason for such omission. She also stated that the police had not recorded her statement and that she was deposing before the Court as requested by her daughter-in-law.

25. Ranu Sahu (PW-8), in her examination-in-chief, deposed that she knew the appellant Naresh Sahu as he belonged to the same village and also knew the deceased Kamal Dhruv. According to her, about three years prior to her deposition, she found Kamal Dhruv lying unconscious near the village *byara* gate and informed his wife, Smt. Durga Dhruv (PW-2), about the same. Her brother, Yogesh Sahu (PW-14), accompanied her while informing PW-2. Thereafter, they returned to their house. She further stated that PW-2 came near the *byara*, found the deceased lying unconscious and gave him water. She also stated that the police had enquired from her during investigation and she narrated the aforesaid facts.



26. In her cross-examination, PW-8 admitted that the place where the deceased was lying was near the under-construction house of Bodhan Dhruv, where sand, gravel and stones were lying, and that the deceased was found lying over those construction materials. She further admitted that the deceased was a habitual consumer of liquor and frequently remained lying at different places after consuming alcohol. According to her, on the date of the incident also, the deceased appeared to be under the influence of liquor and the villagers had asked her to call his wife, believing that he was lying there in an intoxicated condition. She further stated that when she informed PW-2, the latter remarked that such conduct was usual for the deceased and that he must again be lying intoxicated. PW-8 further deposed that PW-2 brought a lemon water to the deceased in the presence of the persons gathered there. She also stated that at that time the appellant was not present at the spot, as he had gone to his agricultural field. Lastly, she stated that she had informed the police that PW-2 had given lemon water to the deceased and thereafter taken him home.

27. Yogesh Sahu (PW-14), in his examination-in-chief, deposed that he knew the appellant, Naresh Sahu, as he was his father. He also knew the deceased, Kamal Dhruv, who had died about three to four years prior to his deposition. According to him, on the evening of the incident, while he had gone out for a walk, he found the deceased lying unconscious on a heap of construction debris by the roadside near the under-construction house situated in front of their residence. Thereupon, he went to the house of Smt. Durga Dhruv (PW-2), wife of



the deceased, and informed her about the same. He also informed his cousin sister, Ranu Sahu (PW-8), regarding the condition of the deceased. PW-14 further stated that, upon receiving the information, PW-2 came to the spot and given water to the deceased with the help of a spoon. Thereafter, someone took the deceased to his house on a motorcycle.

28. Having carefully examined the entire evidence available on record, we are of the considered opinion that although the prosecution has successfully established that the death of the deceased was homicidal in nature, it has failed to prove, beyond reasonable doubt, that the appellant is the author of the crime. It is well settled that proof of homicidal death, by itself, cannot sustain a conviction unless the prosecution further establishes, through cogent, reliable and legally admissible evidence, that the accused alone committed the offence. In the present case, there is no eyewitness to the occurrence and the entire prosecution case rests solely upon circumstantial evidence. Consequently, the prosecution was under a legal obligation to establish every incriminating circumstance beyond reasonable doubt and to prove a complete chain of circumstances leading only to the irresistible conclusion that it was the appellant, and none else, who committed the offence.

29. The principal circumstance relied upon by the learned trial Court is that the deceased was allegedly "last seen together" with the appellant. Upon a careful scrutiny of the evidence on record, we find ourselves



unable to concur with the said finding. The testimony of PW-2, Smt. Durga Dhruv, merely indicates that when she telephonically contacted the deceased during the afternoon, he allegedly informed her that he was sitting with the appellant and three other persons, namely, Tulsiram, Narottam and Rajendra, and would return shortly. Significantly, no prosecution witness has deposed that he or she had actually seen the deceased alive in the company of the appellant immediately before the occurrence or within such proximity of time as would attract the doctrine of "last seen together". Thus, the prosecution evidence, at its highest, establishes only that the deceased was "last heard" by PW-2 to be in the company of the appellant and certain other persons. Such evidence cannot, in law, be equated with proof of the circumstance of "last seen together".

30. The distinction between the concepts of "last heard" and "last seen together" is neither artificial nor merely semantic. The doctrine of "last seen together" is founded upon direct evidence that the deceased was actually seen alive in the company of the accused at or about the time of the occurrence, thereby giving rise to an inference that the accused was the last person with whom the deceased was alive. Such an inference can arise only where the prosecution proves, through reliable evidence, that the time gap between the deceased having been seen alive with the accused and the discovery of the deceased is so small that the possibility of any person other than the accused being the author of the crime stands effectively excluded. In the absence of such evidence, the doctrine cannot be invoked.



31. In the present case, there is a complete absence of evidence satisfying the aforesaid requirement. No witness has deposed that the deceased was actually seen in the company of the appellant at or near the time of the occurrence. The prosecution has also failed to establish the precise time when the deceased allegedly parted company with the appellant or the approximate time when the fatal assault was committed. The telephonic conversation relied upon by PW-2 merely indicates that, according to the deceased, he was sitting with the appellant and three other persons sometime during the afternoon. Such evidence, even if accepted in its entirety, does not establish that the deceased continued to remain in the company of the appellant thereafter or that he was last seen alive with him immediately preceding the occurrence.

32. The learned trial Court, however, proceeded on the erroneous assumption that the aforesaid telephonic conversation itself constituted proof of the circumstance of "last seen together". In our considered opinion, such an approach is legally unsustainable. The statement allegedly made by the deceased during the telephonic conversation only indicates where he claimed to be at that point of time. It cannot substitute direct evidence establishing that the deceased was actually seen alive in the company of the appellant immediately before the occurrence. By treating evidence of "last heard" as constituting evidence of "last seen together", the learned trial Court applied an incorrect legal principle and consequently drew an adverse inference against the appellant which is not warranted by the evidence on record.



33. It is equally significant that even according to PW-2, the deceased had allegedly informed her that he was sitting not only with the appellant but also with three other persons, namely, Tulsiram, Narottam and Rajendra. Therefore, even if the telephonic conversation is accepted as truthful, it does not exclusively connect the appellant with the deceased. The evidence merely indicates that the deceased was allegedly in the company of four persons. In the absence of any evidence showing what transpired thereafter or identifying the person who remained with the deceased immediately before the occurrence, no exclusive incriminating inference can be drawn against the appellant alone. Criminal liability cannot rest upon assumptions or selective inferences unsupported by legally admissible evidence.

34. Thus, the foundational circumstance upon which the prosecution case substantially rests, namely, that the deceased was last seen alive in the company of the appellant, remains wholly unproved. Once the principal circumstance itself is found to be absent, the chain of circumstantial evidence suffers a serious break. It is a settled principle of criminal jurisprudence that where the very foundation of a case based on circumstantial evidence fails, the remaining circumstances, unless independently sufficient to establish guilt beyond reasonable doubt, cannot sustain a conviction. Consequently, the finding recorded by the learned trial Court on the aspect of "last seen together" is liable to be rejected.

35. The learned trial Court has further placed reliance upon the



testimony of PW-2 with regard to the alleged gestures made by the deceased while he was lying unconscious. According to PW-2 herself, the deceased pointed towards four persons, namely, the appellant, Tulsiram, Narottam and Rajendra, who were allegedly standing together. Even if the testimony of PW-2 is accepted in its entirety, the alleged gestures were not directed exclusively towards the appellant. Despite this, the learned trial Court proceeded to infer that the deceased intended to implicate only the appellant. Such an inference is wholly conjectural and finds no support from the evidence on record. It is a cardinal principle of criminal jurisprudence that a Court must record its findings on the basis of proved facts and not on speculation or surmises. Where the evidence is reasonably capable of more than one interpretation, the view favourable to the accused must necessarily prevail. Consequently, the alleged gestures, even if accepted, do not constitute a definite or conclusive incriminating circumstance against the appellant.

36. The testimonies of PW-7 Smt. Kusmi Dhruv, PW-8 Ranu Sahu and PW-14 Yogesh Sahu also do not advance the prosecution case. PW-7 admittedly neither witnessed the occurrence nor visited the place where the deceased was found lying. Her evidence is, therefore, entirely hearsay insofar as the actual occurrence is concerned. PW-8 and PW-14 merely deposed that they found the deceased lying unconscious near the village byara and thereafter informed PW-2 regarding his condition. Neither of them stated that they had seen the deceased in the company of the appellant at any point of time on the



date of the incident. On the contrary, PW-8 categorically deposed that when the deceased was found lying unconscious, the appellant was not present there, as he had already gone to his agricultural field. Their evidence, therefore, does not establish any circumstance connecting the appellant with the commission of the offence.

37. Another circumstance which creates a serious dent in the prosecution case is the unexplained inconsistency between the version of PW-2 and the contents of the First Information Report. While PW-2 asserted that she had disclosed the names of the appellant and the other persons to the police immediately after the occurrence, the FIR was nevertheless registered against unknown persons. The prosecution has offered no explanation whatsoever for this material inconsistency. Further, the omissions in the police statements of PW-2 and PW-7 regarding the alleged telephonic conversation and the gestures purportedly made by the deceased assume considerable significance. These are not minor omissions but relate to the very circumstances upon which the prosecution seeks to establish the guilt of the appellant. Such material improvements made for the first time before the Court materially impair the credibility of their testimony, particularly when the entire prosecution case rests upon circumstantial evidence.

38. It is a settled principle of criminal jurisprudence that where a conviction is sought to be founded solely upon circumstantial evidence, every incriminating circumstance must be firmly established and the chain of circumstances must be so complete as to exclude every



reasonable hypothesis consistent with the innocence of the accused. In

Sharad Birdhichand Sarda v. State of Maharashtra, reported in ***AIR 1984 SC 1622***, the Hon'ble Supreme Court authoritatively laid down the five golden principles governing cases based on circumstantial evidence, namely: (i) the circumstances from which the conclusion of guilt is to be drawn must be fully established; (ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused; (iii) the circumstances should be of a conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one sought to be proved; and (v) there must be a complete chain of evidence which leaves no reasonable ground for a conclusion consistent with the innocence of the accused and must show that, in all human probability, the offence was committed by the accused alone.

39. Applying the aforesaid principles to the facts of the present case, we find that the prosecution has failed to establish even the foundational circumstance relied upon by the learned trial Court, namely, that the deceased was last seen alive in the company of the appellant. At the highest, the evidence merely establishes that the deceased was last heard by PW-2 during a telephonic conversation allegedly stating that he was with the appellant and three other persons. Such evidence cannot, in law, be elevated to proof of the circumstance of "last seen together". Once the principal circumstance itself remains unproved, the remaining circumstances are wholly insufficient to constitute the complete chain of evidence envisaged in ***Sharad Birdhichand Sarda*** (supra). The alleged gestures attributed to the



deceased are ambiguous, the medical evidence does not connect the appellant with the crime, and the material omissions and inconsistencies in the testimonies of PW-2 and PW-7 further erode the credibility of the prosecution version. Viewed cumulatively, the prosecution has failed to satisfy the well-settled tests governing convictions based on circumstantial evidence.

40. The prosecution has also failed to establish any cogent motive for the commission of the alleged offence. The evidence of PW-2 itself indicates that there had never been any prior dispute between the deceased and the appellant, except that she had requested the deceased to collect his wages on the date of the incident. Although proof of motive is not an indispensable requirement in every criminal case, its absence assumes considerable significance where the prosecution case rests entirely upon circumstantial evidence and the other incriminating circumstances are themselves weak and inconclusive. In the present case, the cumulative effect of the deficiencies noticed hereinabove gives rise to a reasonable doubt regarding the prosecution version, and such doubt must necessarily enure to the benefit of the appellant.

41. For all the aforesaid reasons, we are unable to sustain the findings recorded by the learned trial Court. The conviction of the appellant rests upon an erroneous appreciation of the evidence, particularly in treating evidence of "last heard" as constituting proof of "last seen together" and in drawing speculative inferences from the



alleged gestures attributed to the deceased. The remaining circumstances relied upon by the prosecution have neither been conclusively established nor do they collectively form a complete chain pointing unerringly towards the guilt of the appellant. It is trite that suspicion, however grave or compelling, can never substitute legal proof. The prosecution has, therefore, failed to establish the guilt of the appellant beyond reasonable doubt, and the appellant is consequently entitled to the benefit of doubt.

42. Consequently, the appeal deserves to be and is accordingly **allowed**. The impugned judgment of conviction and order of sentence passed by the learned trial Court are hereby set aside. The appellant is acquitted of all the charges levelled against him by extending to him the benefit of doubt. The appellant shall be released forthwith, if not required in connection with any other case.

43. In view of the final disposal of the appeal, I.A. No. 1 of 2024 (application for suspension of sentence and grant of bail) does not survive for consideration and is accordingly **disposed of**.

44. Keeping in view the provisions of Section 437-A of Cr.P.C. (now Section 481 of BNSS), appellant is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant



of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

45. The learned trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

**Sd/-
(Ravindra Kumar Agrawal)
Judge**

**Sd/-
(Ramesh Sinha)
Chief Justice**