



CRA-D-933-DB-2008

-1-

**307 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-D-933-DB-2008**

Date of Decision: 07.07.2026

Braham Dutt and others

..... Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ  
HON'BLE MR. DEEPAK MANCHANDA**

Present: Mr. Sartaj Singh Narula, Sr. Advocate with  
Ms. Vedika Dave, Advocate, for the appellants.  
Ms. Shaveta Sanghi, DAG, Haryana.

**Rajesh Bhardwaj, J.**

1. Present appeal emanates from the judgment of conviction dated 14.11.2008 and order of sentence dated 17.11.2008 passed by learned Additional Sessions Judge, Panipat.
2. Succinctly, facts of the case are that the FIR in the present case was registered on the statement of the complainant, namely, Surender (PW-1). It was alleged that his sister, namely, Prem Lata (since deceased) got married about 14-15 years ago with Krishan. For the last 10-11 years, they had temperamental differences and brother-in-law (*Jija*) of the complainant had filed a divorce petition. His sister Prem Lata (since deceased) and nephew (*Bhanja*) Vimal @ Poppy aged about 11-11½ years (since deceased) were living in the parental house of Prem Lata in village Khanpur Kalan. About 2 months ago, his sister and nephew had gone to village Manana on *Teharavi* of father-in-law of his sister. Thereafter, on arriving at compromise, his sister Prem Lata and his brother-in-law Krishan started living together. On 05.11.2006, his sister had made a telephone call on the



mobile phone of his cousin Kuldeep about the harassment being caused to her. On receiving the phone call, the complainant alongwith his cousin Baljit had gone to the matrimonial house of his sister in village Manana and tried their best to settle the dispute, but Krishan and his family members did not listen to the same. The complainant and his cousin Baljit slept in the *Chaubara* of the house of the matrimonial house of his sister. At 02:00 a.m., the complainant woke up on hearing some noise. The complainant and his cousin Baljit peeked down on the ground floor and saw his brother-in-law Krishan, Braham Dutt (appellant No.1), Kitabo (appellant No.2) and Lokesh (appellant No.3) were going outside the house. They identified them in the electric light. The complainant and his cousin Baljit came down and saw that his sister Prem Lata and *Bhanja* Vimal @ Poppy were lying dead. Both of them had been strangled. The complainant informed his family members about the same through phone and thereafter, went to the Police Station to give the information. It was alleged that his sister and nephew had been murdered by Krishan, Braham Dutt, Kitabo and Lokesh by strangulating them with *Chunni*. Thus, request was made to take legal action against the culprits. On the registration of the FIR, the investigation commenced. Challan was presented against all four of the accused, namely, Krishan, Braham Dutt, Kitabo and Lokesh. However, during the trial, co-accused Krishan died in Jail and hence, charges were framed against remaining three accused, namely, Braham Dutt, Kitabo and Lokesh and they were tried by learned trial Court. To substantiate its case, the prosecution examined eight witnesses i.e. Surender (PW-1), Baljit Singh (PW-2), Dr. Dalip Singh (PW-3), C. Mahender Singh (PW-4), SI Sukhbir Singh (PW-5),



Sultan Singh Photographer (PW-6), C. Jagbir Singh (PW-7) and Inspector Dalbir Singh (PW-8). Besides this, the prosecution also produced the following documentary evidence:-

|               |                                                                                                           |
|---------------|-----------------------------------------------------------------------------------------------------------|
| Ex. PA        | Copy of DDR No.8 dated 6.11.2006 ( <i>ruqa</i> ).                                                         |
| Ex. PB        | Copy of PMR of Prem Lata.                                                                                 |
| Ex. PC        | Application dated 6.11.2006 moved by SHO requesting to perform postmortem on dead body of Smt. Prem Lata. |
| Ex. PC/1      | Inquest report of Prem Lata.                                                                              |
| Ex. PD        | PMR of Vimal.                                                                                             |
| Ex. PE        | Application moved by SHO to CMO G.H. Panipat for conducting postmortem on dead body of Vimal.             |
| Ex. PE/1      | Inquest report of Vimal.                                                                                  |
| Ex. PF        | Affidavit of C. Mahender Singh.                                                                           |
| Ex. PG        | Disclosure statement of accused Lokesh.                                                                   |
| Ex. PH        | Demarcation memo of place of occurrence.                                                                  |
| Ex. PJ        | Scaled site plan.                                                                                         |
| Ex. PK        | Copy of FIR.                                                                                              |
| Ex. PL        | Rough site plan.                                                                                          |
| Ex. PM        | Recovery memo of <i>dupatta</i> .                                                                         |
| Ex. PN        | Disclosure statement of accused Krishan.                                                                  |
| Ex. PO        | Demarcation memo of place of occurrence by accused Braham Dutt and Kitabo.                                |
| Ex. P1        | Ligature.                                                                                                 |
| Ex. P2 to P6  | Photographs.                                                                                              |
| Ex. P7 to P11 | Negatives.                                                                                                |

Thereafter, on recording the statements of the accused under Section 313 Cr.P.C., defence examined Bobby Dua, Press Reporter of Delhi Punjab Kesri as DW-1, Dharamdev Jha, Press Reporter of Dainik Jagaran as DW-2, Lal Chand Chowkidar as DW-3 and R.K. Singh, SDM, Karnal as DW-4. In documentary evidence, defence tendered the following documents:-



|          |                                                                     |
|----------|---------------------------------------------------------------------|
| Ex.DA    | Dainik Jagaran News Paper dated 07.11.2006.                         |
| Ex.DB    | Statement of Baljit Singh under Section 161 Cr.P.C.                 |
| Ex.DC    | Punjab Kesari News Paper dated 07.11.2006.                          |
| Ex.DW4/A | Certified copy of report dated 19.01.2007 submitted by SDM, Karnal. |

On the conclusion of the trial, learned trial Court convicted the said three accused for the murder of Prem Lata and Vimal @ Poppy vide order dated 14.11.2008 and they were sentenced to undergo life imprisonment for the offence under Section 302/34 IPC vide order dated 17.11.2008. Aggrieved by the same, the appellants, namely, Braham Dutt, Kitabo and Lokesh filed the present appeal. **It is apposite to mention that during the pendency of the present appeal, appellant, namely, Braham Dutt (appellant No.1) died and appeal against him stands abated.** Resultantly, the present appeal survives only qua appellants Kitabo wife of Attar Singh and Lokesh son of Attar Singh.

**Contentions raised by learned Senior Counsel for the appellants**

3. It has been vehemently contended by learned Senior Counsel for the appellants that the appellants have been falsely and frivolously implicated by the complainant only being the family members. He has contended that appellant Kitabo was the *Jethani* of deceased Prem Lata, whereas, Lokesh is son of Kitabo and appellant Braham Dutt was the brother-in-law of deceased Prem Lata, who was employed in Army. Braham Dutt had a separate residential house and Kitabo and Lokesh also had their separate residential house. He has submitted that the appellants had no axe to grind with the deceased, however, they had been roped in the present case



in a premeditated manner. It is submitted that the alleged occurrence took place in the intervening night of 5/6.11.2006 and *ruqa* as evident from the Ex.PA was sent and at 10:00 a.m., the FIR (Ex.PK) was registered on 06.11.2006. He has submitted that inquest reports Ex.PC/1 and Ex.PE/1 were prepared on 06.11.2006, however, no time was recorded of the preparation of the inquest reports. It is contended that postmortem of both the dead bodies i.e. Ex.PB and Ex.PD, was carried out on 06.11.2006. He has contended that the prosecution case is primarily based on the evidence of the complainant, namely, Surender (PW-1) and Baljit (PW-2). Though both the witnesses had been projected as last seen witnesses, however, their presence at relevant time is not even proved. It is further contended that the complainant, namely, Surender (PW-1) is a Government employee, who is employed in Haryana Police. From the perusal of his deposition before the trial Court, it is apparent that he has not produced any relevant record from his place of posting to prove that at the relevant time, he was present in the village Manana where the alleged occurrence took place. During the cross-examination of Surender (PW-1), he admitted that the house of Attar Singh who is the husband of Kitabo and father of Lokesh, was situated outside the village. Therefore, the appellants had no occasion to be present at the house of the deceased in the middle of the night. He has further contended that the presence of Baljit (PW-2) is also not proved at the place of occurrence as there are material contradictions in his deposition. It is submitted that Baljit (PW-2) had deposed in his examination-in-chief that they alongwith 5-6 persons had gone to village Manana. Rest of the family members returned back to their parental village Khanpur Kalan, whereas, Surender and Baljit,



CRA-D-933-DB-2008

-6-

both stayed back at village Manana. It is contended that both these witnesses PW-1 and PW-2 had no occasion to stay back in village Manana. He has contended that the distance between the place of occurrence and the Police Station is about 04 kms, whereas, the *ruqa* was sent on 06.11.2006 and the FIR was registered on 06.11.2006 at 10:00 a.m. Thus, there is an unexplained delay in registration of the FIR and the same proves that the witnesses were never present at the time of occurrence and the FIR registered is totally with a coloured version.

To buttress his arguments, it has been contended that as per admitted case of the prosecution, matrimonial dispute was between Krishan and deceased Prem Lata. The appellants before this Court are only the family members of the in-laws of Prem Lata. Neither they had any dispute with deceased Prem Lata nor there was any motive for them to commit the murder of both the deceased. It is submitted that case of the prosecution is full of material contradictions, but learned trial Court failed to prove the same. He has contended that the prosecution failed to prove its case beyond the reasonable doubts against the appellants and thus, the conviction order being unsustainable in the eyes of law deserves to be set aside by acquitting the accused-appellants from the charges framed against them.

He has placed reliance upon the judgments of Hon'ble Supreme Court in Inderjit Singh vs. State of Punjab, 1991(2) RCR (Criminal) 400; Vithal Tukaram More vs. The State of Maharashtra, 2002(3) RCR (Criminal) 629; Dhanwant Singh vs. Union Territory, Chandigarh, 2007(2) RCR (Criminal) 868 and Anand Jakkappa Pujari @ Gaddadar vs. The State of Karnataka, 2026 AIR Supreme Court 2168.

**Contentions made by learned State Counsel.**

4. Learned State counsel has vehemently opposed the submissions made by learned Senior Counsel for the appellants. It has been contended that the case of the prosecution is based on the direct evidence of PW-1 and PW-2, who had duly supported the case of the prosecution. The contradictions, if any, in their depositions, are not material in nature. She has submitted that the alleged occurrence took place in the intervening night of 5/6.11.2006. On sending *ruqa*, the FIR was promptly registered. The appellants were seen by both the witnesses going outside the house in which the murders of Prem Lata and Vimal @ Poppy had been committed. The appellants are not the distant relatives of the deceased, but appellant Kitabo was the *Jethani* of Prem Lata and Lokesh is the son of Kitabo. Since beginning, they alongwith Krishan had been harassing the deceased and on the fateful night, all of them with a common intention, strangled both the deceased in a premeditated manner. It is contended that complainant Surender (PW-1) duly proved his presence at the relevant time of occurrence as he was on leave during those days. She contends that the case of the prosecution was proved beyond the reasonable doubts and the order passed by learned trial Court in convicting the appellants and sentencing them to undergo life imprisonment, suffers from no legal infirmity. The appellants had committed a heinous offence and thus, the appeal being devoid of any merits deserves to be dismissed.

**Analysis**

5. The Court has heard counsel for the parties and perused the record with their able assistance. Evidently, the case of the prosecution is



based on the circumstantial evidence. As per case of the prosecution, the alleged occurrence took place in the intervening night of 5/6.11.2006. The law machinery put on motion on the statement of the complainant, namely, Surender (PW-1). On sending *ruqa* (Ex.PA), FIR (Ex.PK) was registered. The challan was presented against four accused, namely, Krishan, Braham Dutt, Kitabo and Lokesh. Krishan was the husband of deceased Prem Lata and father of deceased Vimal @ Poppy. During the trial, Krishan committed suicide in Jail as submitted before this Court, whereas, co-accused Braham Dutt died during the pendency of the present appeal. From the overwhelming evidence produced on record, it is deciphered that primarily, the matrimonial dispute was between deceased Prem Lata and her husband Krishan. The occurrence took place in the matrimonial house of deceased Prem Lata at village Manana. The star witness produced by the prosecution for proving its case, is based on evidence of Surender (PW-1) and Baljit (PW-2). Both these witnesses are not the eye-witness, but they have been produced as last seen witness. Admittedly, PW-1 is employed in Haryana Police. He was examined by learned trial Court as PW-1. To prove his presence in village Manana at the relevant time of occurrence, no official record was produced by the prosecution. PW-1 had specifically deposed that on seeing all the accused going outside the house, they saw dead bodies of Prem Lata and Vimal @ Poppy. However, the FIR in the present case was registered on 06.11.2006 at 10:00 a.m. Though the inquest reports were prepared, but the time of its preparation was not mentioned on the same. The distance between the place of occurrence and the Police Station is hardly 04 kms as evident from the record, thus, the delay occurred in





registration of the FIR, creates a serious doubt on the case of the prosecution. Baljit (PW-2) had deposed that they went to village Manana alongwith 5-6 other persons, however, rest of the family members returned, whereas, only Surender (PW-1) and Baljit (PW-2) stayed back in Village Manana. The material contradiction made by both PW-1 and PW-2 creates serious doubt regarding their presence in village Manana at the relevant time of occurrence. Besides this, admitted case of the prosecution is to the effect that there was matrimonial dispute between the husband and wife i.e. Krishan and Prem Lata and on account of this motive, Prem Lata and her son were murdered. From the deposition of PW-1, it is apparent that the appellants were living in separate house from the deceased, which was situated outside the village. Thus, the argument advanced by learned Senior Counsel for the appellants, gains significance that neither the appellants were present at the place of occurrence nor they had any motive in committing murder of both the deceased. They had been implicated only being the family members of in-laws of deceased Prem Lata. On re-appreciation of the evidence, the case of the prosecution is found to be suffering from serious doubts. As per the law settled, once the prosecution failed to prove its case beyond reasonable doubts, benefit of doubt goes to the accused.

6. A three-Judge Bench of this Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, while discussing the law laid down in the case of **Hanumant vs. State of Madhya Pradesh, 1975 AIR 1083** held as under:

“Before discussing the cases relied upon by the



High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh. (1) This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh(2) and Ramgopal v. State of Maharashtra(3). It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

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

**It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established.** There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783]* where the following observations were made :  
[SCC para 19, p. 807 : SCC (Cri) p. 1047]



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

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

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

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

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

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

7. In Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, (SC) 2022 AIR Supreme Court 5273, Hon'ble Supreme Court observed as under:-

**"Principles Of Law Relating To Appreciation Of Circumstantial Evidence**

45. In 'A Treatise on Judicial Evidence', Jeremy Bentham, an English Philosopher included a whole chapter upon what lies next when the direct evidence does not lead to any special inference. It is called Circumstantial Evidence. According to him, in every case, of circumstantial evidence, there are always at least two facts to be considered:



- a) The Factum probandum, or say, the principal fact (the fact the existence of which is supposed or proposed to be proved; &
- b) The Factum probans or the evidentiary fact (the fact from the existence of which that of the factum probandumis inferred).

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

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;
3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. **In other words, the circumstances should exclude every possible hypothesis except the one to be proved.** “ .....

49. In an Essay on the Principles of Circumstantial Evidence by William Wills by T. and J.W. Johnson and Co. 1872, it has been explained as under:

"In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the



inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions." The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word "presumption," *ex vi termini*, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.

The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the *reductio ad absurdum*."

50. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the



accused.”

8. Similar view has been taken in State of U.P. v. Satish, (2005) 3 SCC 114; Padala Veera Reddy v. State of Andhra Pradesh and others, 1989 Supp. (2) SCC 706; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116; Gambhir v. State of Maharashtra, (1982) 2 SCC 351; Hanumant Govind Nargundkar and Another v. State of Madhya Pradesh, AIR 1952 SC 343; and State of Goa vs. Sanjay Thakra, 2007(2) RCR (Criminal) 458.

9. In the present case, there is no other evidence to corroborate the last seen evidence. Reliance in the present case can also be placed on the judgment of Supreme Court in case of Bodh Raj @ Bodha and others vs. State of Jammu and Kashmir, (2002) 8 SCC 45, relevant part of which reads as under:-

“The last seen theory comes into play where the time gap between the point of time when the accused and 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 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 accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.**”

10. Elaborating the issue in hand, Hon’ble Supreme Court in Nizam and another v. State of Rajasthan, AIR 2015 SC (Criminal) 1705, has held as under:-

“Undoubtedly, “last seen theory” is an important link in the



chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. **It is well-settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”**

11. In view of the foregoing discussion and the law relied upon by learned Senior Counsel for the appellants, we are of the considered opinion that the prosecution has failed to establish its case against the appellants beyond reasonable doubt. Consequently, the appellants are entitled to the benefit of doubt. Accordingly, the present appeal is allowed. The judgment of conviction dated 14.11.2008 and the order of sentence dated 17.11.2008 passed by the learned Additional Sessions Judge, Panipat, are hereby set aside. The appellants are acquitted of all the charges framed against them.

**(RAJESH BHARDWAJ)**  
**JUDGE**

**(DEEPAK MANCHANDA)**  
**JUDGE**

**07.07.2026**  
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|                           |   |        |
|---------------------------|---|--------|
| Whether Speaking/Reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |