

2026 LiveLaw (SC) 887

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

SANJAY KUMAR; J., SANJEEV SACHDEVA; J.

September 02, 2026

CRIMINAL APPEAL NO. 4158 OF 2026 (@ SPECIAL LEAVE PETITION (CRL) NO. 3710 OF 2026)

SAHAB SINGH ALIAS SAT PAL *versus* STATE OF HARYANA

Criminal Law — Circumstantial Evidence — Extra-Judicial Confession — Evidentiary Value — Duty of Court - An extra-judicial confession is inherently a weak piece of evidence and, per se, cannot form the sole basis of conviction without independent and cogent corroboration - Wherever the court intends to base a conviction on an extra-judicial confession upon due appreciation of the entire evidence, it must ensure that the confession inspires confidence and is corroborated by other prosecution evidence - If it suffers from material discrepancies or inherent improbabilities, the court is fully justified in ruling such evidence out of consideration - the prosecution alleged an extra-judicial confession was made to the village Sarpanch (PW-9) on 14.03.2007, whereas shopkeepers (PW-7 and PW-8) testified that the accused was already in police custody and brought to the shop on 12.03.2007 - This material contradiction, combined with the lack of intimate connection between the accused and the Sarpanch, completely belied the prosecution story. [Relied On Sahadevan v. State of T.N., (2012) 6 SCC 403; Paras 31 – 43]

Indian Evidence Act, 1872 — Section 27 [Now Proviso to Section 23(2), Bharatiya Sakshya Adhiniyam, 2023] — Disclosure Statement & Information Leading to Discovery — Inadmissibility when no new fact is discovered - A confession made to a police officer is inadmissible except to the extent permitted under Section 27 of the Indian Evidence Act, 1872, where a fact is discovered in consequence of information received from the accused - Where no new fact is discovered and the disclosure statement merely relates to the demarcation or identification of places/spots already within the prior knowledge of the police and recorded in the site plan, Section 27 cannot be invoked, and the disclosure statement cannot be taken into consideration - The High Court fundamentally erred in holding that the disclosure statement dated 14.03.2007 led to the recovery of the deceased's body from the well, when the body had already been recovered by the police two days earlier on 12.03.2007. [Paras 38–44]

Criminal Law — Circumstantial Evidence — "Last Seen Together" Theory — Inferences from Cross-Examination Suggestions — Impermissibility - The theory of "last seen together" cannot be established when the witness testimonies lack consistency, contain material improvements over police statements, and fail to establish that the deceased accompanied the accused in close proximity to the time of death - The High Court committed a manifest error by holding that even if prosecution witnesses failed to depose in their examination-in-chief that the child accompanied the accused, a mere suggestion put by the defence counsel during cross-examination could be treated as an admission/inference establishing the "last seen together" theory to clinch the guilt of the accused - Circumstantial links cannot be substituted with erroneous inferences drawn from defence cross-examination suggestions. [Paras 23-42]

Criminal Law — Forensic Evidence — Burden of Proof — Section 106, Evidence Act — Absence of DNA Profiling - Where human semen is detected on the underwear of

the accused as well as on the rectal swab of the deceased, the prosecution is duty-bound to establish a positive link through DNA profiling or scientific matching - In the absence of a DNA match connecting the two samples, the mere presence of semen on the clothing of an unmarried accused cannot lead to a presumption of guilt - The burden cannot be shifted to the accused to prove that the semen did not belong to him or did not match the victim; the initial burden of proving the charge beyond reasonable doubt remains squarely on the prosecution. [Paras 26 – 45]

Indian Penal Code, 1860 — Sections 302, 201, and 377 — Murder, Causing Disappearance of Evidence, and Unnatural Offences — Circumstantial Evidence — Missing Links in Chain of Events — Benefit of Doubt - Where conviction rests solely on circumstantial evidence, the prosecution is required to establish an unbroken and complete chain of events leading solely to the hypothesis of the accused's guilt - Where there are significant gaps including unexplained seizure of ordinary consumer articles (generic packet of namkeen) before any disclosure, ante-timed/contradictory custody prior to the alleged extra-judicial confession, invalid reliance on Section 27 recoveries, uncorroborated "last seen" theory, and lack of forensic DNA matching the chain remains broken - Conviction and sentence set aside; appellant extended the benefit of doubt and ordered to be released forthwith after serving over 16 years of incarceration – Appeal allowed. [Paras 27–36, 46–50].

For Petitioner(s) Mr. S. Mahendran, AOR

For Respondent(s) Mr. Justine George, A.A.G. Mr. Samar Vijay Singh, AOR Ms. Sabarni Som, Adv. Mr. Aman Dev Sharma, Adv. Ms. Anjali Upadhyay, Adv. Mr. Tushar Saigal, Adv. Mr. A.S.L.N. Raju, Adv.

J U D G M E N T

SANJEEV SACHDEVA, J.

1. Appellant, Sahab Singh @ Satpal, impugns Judgment dated 18.10.2022, passed by the High Court of Punjab and Haryana at Chandigarh in CRA-D-566-DB-2010 (O&M), whereby the appeal preferred by the Appellant against the judgment of conviction dated 24.04.2010 and order on sentence dated 26.04.2010 passed by session judge Ambala in case No. 11 of 2007 has been dismissed. The Trial Court in the said case arising out of First Information Report¹ No. 70 of 2007, Police Station Baldev Nagar, District Ambala dated 12.03.2007, held the Appellant guilty of the offences punishable under Sections 302, 201 and 377 of the Indian Penal Code² and sentenced the Appellant to undergo imprisonment for Life for the offence under section 302 IPC and to pay fine of Rs. 30,000/- and in default to undergo Rigorous Imprisonment³ for a period of 3 years; 5 years for the offence under section 201 IPC and to pay fine of Rs. 10,000/- and in default to undergo RI for a period of 1 year and 10 years for the offence under section 377 IPC and to pay fine of Rs. 20,000/- and in default to undergo RI for a period of 2 years. All the substantive sentences to run concurrently. Appellant has already served over 16 years and 7 months of incarceration.

2. There is no direct evidence of the offence and the entire case against the appellant was based on circumstantial evidence and the theory of '*last seen together*'. The case of the prosecution is that the Appellant was last seen with the deceased. It is their case that when the appellant bought a packet of Namkeen and two tablets for cold from a shop, the

¹ 'FIR' for short

² 'IPC' for short

³ 'RI' for short

deceased was seen with him. He thereafter gave a tablet for cold to the deceased and gave him some namkeen and then committed unnatural sexual assault and then smothered him to death and threw him in a well. Thereafter, two days later he is alleged to have gone to the village Sarpanch and made an extra judicial confession and narrated the entire incident and admitted his guilt. The sarpanch then took him to the police station. The appellant is alleged to have then identified the spot of the incident and certain recoveries were made on account of the disclosure statement of the appellant.

3. As per the FIR (*Exhibit PH*), on 12.03.2007, when Sub Inspector Surinder Singh was on patrol duty at Geeta Nagri he received a telephonic message that a dead body of a child was lying in a well at village Kakru. He immediately reached the spot and recorded the statement of Balbir Singh (father of the child) who stated that he has two sons and one daughter. On 11.03.2007 at about 08.00 pm, his son aged 06 years went to attend the marriage at the house of Amar Nath. At about 10.00 pm when he returned and enquired about his son Gaurav from his wife, she informed him that he had not returned. During night, he searched for his son here and there, but did not find him. In the morning, he was told that slipper of Gaurav was lying in the verandah of post office. He immediately went to that place along with his brother Surmukh Singh due to suspicion. They went near the place and found that dead body of a child was lying in the well, whose one hand and leg were visible. The dead body was taken out. It was found to be of his son Gaurav.

4. Sub Inspector Surinder Singh sent the endorsement to the Police Station, on the basis of which subject FIR was registered on 12.03.2007. Inquest report was prepared and the body was sent for post mortem. Dr Rajinder Rai, PW 02, issued post mortem report opining the cause of death to be asphyxia as a result of smothering and cervical spinal injury.

5. As per the prosecution, since there were injuries to the anus and anal, samples were taken. *Vide* possession memos Ex. P5 and Ex. P6, the slippers(*sic*) of the deceased; *vide* Ex. P7, the pant of Coca-Cola colour of the deceased, and *vide* Ex. PR, a packet of namkeen, were taken into possession from the spot.

6. Subject FIR was registered on the statement of Balbir Singh, father of the deceased, who stated as under:

"Statement of Balbir Singh s/o Mehar Singh caste Saini, r/o Village Kakru P.S. Baldev Nagar, Distt. Ambala aged 38 years. It is stated that I am resident of above cited address and do labour work. I have two sons and a daughter. That my son Gaurav aged about 6 years went in the marriage alongwith other children yesterday, on dated 11.3.2007 in the night at about 8.00 P.M in our village at house of Amar Nath. That at about 10.00 in the night I on return on my house asked my wife about non returning of Gaurav at home. That I was searching my child here and there for whole night. That, today in the morning some children of the village told me that slippers of Gaurav are lying in the verandah of post office of the village. Then I alongwith my brother Surmukh Singh reached near the post office and on suspicion, I saw in old well behind the post office that a dead body whose one hand and a leg were appearing. When we took out the dead body with the help of villagers then it was found to be dead body of my son Gaurav. That I am fully confident that my son Gaurav has been killed by some unknown person by throwing him in the well."

7. The FIR was registered on 12.03.2007 at 04.00 PM. Pursuant to the FIR Form No. 25.35(1)B was prepared by ASI Surinder Singh, In-charge Police Station Baldev Nagar, wherein he recorded the apparent cause of death as "drowning in the well". It was recorded that he, along with the police party, reached the spot, wherein the dead body of the child was lying in the well, hands and legs of the child were appearing above the surface. He brought out the dead body of the child with the help of the villagers. Thereafter,

he recorded that photographs were taken and he started to inspect the dead body. Private photographer were called to the spot and directed to shoot the photographs at the place of occurrence.

8. As per the affidavit of Head Constable Suresh Kumar (PW5), the case property was deposited with him in the Malkhana on 12.03.2007 by SHO Om Prakash (PW17). The case property consisted of one open packet of Namkeen on which it was mentioned "Ram Dev Bikaner renowned Bhujia", one packet of pair of chappal of light sky colour of Gaurav. On 14.03.2007, a parcel of pant of grey colour and underwear of sky colour was deposited by SHO Om Prakash (PW17).

9. Ex. P1 to P4 are the photographs of the spot, which include a photograph of the pant of the deceased recovered from the spot. Ex. PR is the recovery memo dated 12.03.2007 which shows the recovery of one pair of chappal rubber, one packet of namkeen made Ram Dev, one pant of terrycot of coca cola colour. Ex. PN, is the recovery memo of parcels at the malkhana dated 12.03.2007 which reads as under:

*"State: Vs. Sahab Singh @ Sat Pal
FIR No. 70 of 12.3.2007
Under Sections 302/377 IPC
Police Station Baldev Nagar.*

Translation of Ex. PN

*Through : Shri Balbir Singh s/o Mehar Singh caste Saini r/o Kakru, Ambala.
FIR No.70 dated 12.3.07 Vs. U/S 302 IPC P.S.Baldev Nagar Ambala.
Vs. --- --- ---*

Recovery memo of parcels.

In the presence following witnesses Sh.Surinder Singh Incharge, PP Baldev Nagar, District Ambala had produced the following parcels before me, Inspector/SHO. All the parcels have been taken into possession of the police vide recovery memo as a proof and signatures of witnesses have been obtained.

- 1. One parcel of pair of chappal rubber sealed with the seal of 'SS'.*
- 2. One parcel of pant terrycot of coca cola colour sealed with the seal of 'SS'.*
- 3. One parcel of vial of glass duly sealed with seal of 'CS'.*
- 4. Sample seal with three seals of 'SS'.*
- 5. One sample seal of 'CS'.*
- 6. One parcel of 'namkeen' sealed with seal of 'SS'.*

Witness : Vinod Kumar ASI Sd/-in English

P.S Baldev Nagar SHO,

Sd/-in English P.S. Baldev Nagar

Dt.12.3.07

Witness : HC Tehal Singh No.515

P.S. Baldev Nagar

Sd/-in English"

10. Ex. PS are the marginal notes to the site plan on the spot prepared on 12.03.2007 which read as under:

"State Vs. Sahab Singh @ Sat Pal

FIR No. 70 of 12.3.2007 Under Sections 302/377 IPC

Police Station Baldev Nagar. Translation of Ex. PS

Marginal notes: - *In the site plan Mark-A is the place where in the well of the village dead body of deceased Gaurav is lying.*

2. In the site plan Mark-B is the place where dead body Gaurav has been kept after taking it out of the well.

3. In the site plan Mark-C in the place where pant of deceased Gaurav was found lying.

4. In the site plan Mark-D in the place where the chappal of deceased Gaurav was found lying.

5. In the site plan Mark-E in the place where packet of 'namkeen' were found lying which contained some namkeen on which Ramdev is mentioned. The site plan has been prepared without scale.

Sd/-in Hindi

Surinder Singh ASI

I/C PP Baldev Nagar P.S. Baldev Nagar dt. 12.3.07"

11. On 14.03.2007, the accused was produced before Inspector Om Parkash, SHO, Police Station Baldev Nagar (PW17), by Shri Shiv Chand, Sarpanch of Village Kakru (PW9). According to Shri Shiv Chand (PW9), the accused made an extra-judicial confession admitting to having committed the offence. The accused is thereafter alleged to have made a disclosure statement.

12. Ex. PT is the alleged disclosure statement of the accused, recorded on 14.03.2007, which read as under:

"State Vs. Sahab Singh @ Sat Pal

FIR No. 70 of 12.3.2007

Under Sections 302/377 IPC Police Station Baldev Nagar.

Translation of Ex.PT

P.S. Baldev Nagar District Ambala

State through Balbir Singh s/o Mehar Singh, caste Saini, r/o Kakru, FIR No. 70 of 12.3.2007 U/S 302,377,201IPC P.S Baldev Nagar.

Disclosure statement of accused.

In the presence following witnesses accused Sahab Singh @ Sat Pal s/o Balbir Singh @ Billu r/o Kakru aforesaid have been his disclosure statement himself in the police custody "that on 11.3.07 in our village there was marriage of the son of Amar Nath in which my younger brother Satbir Singh had also gone. On asking of my mother I had gone to call for my brother. In the street of the house of Amar Nath a small child namely Gaurav s/o Balbir Singh caste Saini of the village was weeping. I asked him as to why he has been weeping and you may come with me and I will provide you something from the shop. On this Gaurav started with me after holding my finger. I made child Gaurav standing on a side of the Karyana Shop of Goldi which falls in the way and purchase one packet of 'namkeen' and two tablets of cold (Jukam) and one polytheen envelop. I took the child with me in the verandah of post office near the temple in the darken position and there I provided him to eat the namkeen and put the tablet of cold in the mouth of Gaurav and provided him water to drink and then I also provided him to eat some more namkeen and I took Gaurav behind the post office in old dispensary which is a deserted place. I removed the pant of Gaurav and started doing unnatural sexual act with him and Gaurav started weeping due to pain. Then I smothered the mouth and nose of Gaurav and continued doing unnatural sexual act with him. Gaurav became unconscious. Due to fear that Gaurav may not tell at his house I done him to death by smothering his mouth and nose. Thereafter, I lifted Gaurav and thrown him in a nearby old well. Where I provided namkeen to eat and committed unnatural sexual act with Gaurav and where I thrown Gaurav in the well those places I can get that place demarcated". On this the disclosure statement of accused was reduced into writing and accused put his thumb impression on the same and the signatures of the witnesses obtained.

Sahab Singh@ Satpal

Accused

LTl Accused

Witness:- ASI Surinder Singh I/C PP Baldev Nagar

Sd/-in Hindi

Sd/-in Hindi

Witness:- Sanjay Kumar No.224

Office Incharge

P.S. Baldev Nagar P.S. Baldev Nagar
Sd/-in Hindi dt. 14.3.07”

13. Ex. PU is the alleged demarcation memo place of occurrence, which read as under:

“State Vs. Sahab Singh @ Sat Pal FIR No, 70 of 12.3.2007

Under Sections 302/377 IPC

Police Station Baldev Nagar Translation of Ex.PU.

P.S. Baldev Nagar District Ambala State through Balbir Singh s/o Mehar Singh, caste Saini, r/o Kakru, FIR No. 70 of 12.3.2007 U/S 302,377,201 IPC, P.S Baldev Nagar.

Versus Sahab Singh @ Satpal s/o Balbir Singh @ Billu caste Jat r/o Kakru P.S. Baldev Nagar Distt. Ambala.

Demarcation memo of place of occurrence.

In the presence of following witnesses aforesaid accused Sahab Singh @ Satpal in police custody led in Village accused to the to the verandah of the post office situated near Sanatan Dharam Mandir and demarcated the place where accused Sahab Singh provided to eat ‘namkeen’ and tablet of cold to child Gaurav of 11.3.2007 in the night. Thereafter, after going behind the same post office to the room of old dispensary he demarcated the place where accused had committed unnatural sexual act after removing the pant of Gaurav and killed him by smothering his mouth and nose with his hands. Thereafter, he demarcated the place where he threw the dead body of Gaurav, by going in front of old dispensary near the old well. On this, demarcation memos were prepared and signature of the witnesses obtained on the memos.

Witness:- HC Tehal Singh No.515
P.S. Baldev Nagar
Sd/- in English Sd/- in English
I/C P.S. Baldev Nagar
Dt. 14.3.07

Witness: Garib Dass s/o Mehar Singh
r/o Kakru
Sd/-in English”

14. The accused was charge-sheeted for the offences punishable under Section 201, 302 and 377 of the IPC. The Trial Court, vide judgment dated 21.04.2010, held the appellant guilty of the said charges and by order dated 26.04.2010, sentenced him to undergo RI for a period of 5 years and to pay a fine of Rs. 10,000/- for the offence punishable under Section 201 IPC; imprisonment for life and to pay a fine of Rs. 30,000/- for the offence punishable under Section 302 IPC; and RI for 10 years and to pay a fine of Rs. 20,000/- for the offence punishable under Section 377 IPC.

15. The Trial Court in its judgment noted the point for determination as under :

1. Corroboration of oral evidence by medical evidence.
2. Extra judicial confession.
3. Delay in lodging FIR.
4. Discrepancies.

16. With regard to Point No. 1, i.e., *Corroboration of oral evidence by medical evidence*, the Trial Court with regard to the contention of the defense counsel that there was no injury on the male organ of the accused, noticed the crossexamination of Dr. Rajinder Rai (PW2), who stated that, in such like cases, there must have been blood and injury on the male organ and that, had there been carnal intercourse, there must have been an injury on the private parts of the accused. This contention was negated by the Trial Court, relying upon the testimony of PW1, Dr. Virender Bharti, who opined that it was not necessary for a person who commits an assault to suffer an injury. The Trial Court further opined that the injury might have healed by the time the accused was arrested.

17. The Trial Court further relied upon the FSL Report, (Ex. PF), which reported that Semen was detected on the underwear of the accused and he had failed to explain as to how semen had appeared on his underwear. The Trial Court was of the view that, since the accused was unmarried person, the presence of semen on his underwear corroborated the prosecution story.

18. With regard to Point No. 2, i.e., *Extra judicial confession* alleged to have been made by the appellant to PW9, Shri Shiv Chand, the Sarpanch. The Trial Court observed that PW9, in his cross-examination, had stated that he had a friendly relationship with the police, being the Sarpanch of the Village. The Trial Court observed that this relationship had developed over time and had resulted in increased intimacy with the police and as the accused had committed a heinous crime with a minor boy, he might have thought to take shelter with the Sarpanch to escape from the wrath of not only the public but also the police. The Trial Court opined that, as the Sarpanch had no enmity with the accused or any close relationship with the victim, he was the most neutral person in the case.

19. With regard to Point no. 3, i.e., *delay in lodging the FIR*, it may be noticed that the incident took place on 11.03.2007 at about 8.00 P.M. The body was discovered at 1.30 P.M. in the morning on 12.03.2007 and the FIR was registered at 4.00 P.M. on 12.03.2007 (as noticed in Ex. PE). The Trial Court has negated the argument of delay in registering the FIR that the complainant must have been shocked after seeing the dead body of his son, and it is not possible to just start narrating the incident there and then. As one takes a little bit of time to reconcile to narrate the incident, the delay in registering the FIR was not sufficient to disbelieve the prosecution's story.

20. With regard to Point No. 4, i.e., *Discrepancies in the prosecution's theory*, the Trial Court noticed the contention of the defense that PW7, Inderjit Singh, the owner of the Karyana shop from whom the packet of Namkeen and two tablets for treatment of cold were allegedly purchased, had stated that the accused was brought to his shop by the police on 12.03.2007 whereas, he had made the extra judicial confession only on 14.03.2007. Further, PW8, Pawan Kumar, stated that when the accused purchased a Namkeen, one child was with him. The Trial Court negated the contention of the defense that when PW8, came to know about the incident on 12.03.2007, he did not inform the police about the same. The Trial Court opined that PW8, might have kept mum till the police came to him so that he may not be entangled in any manner. The Trial Court has noticed that both PW7 and PW8 stated that the accused was produced before them on 12.03.2007 whereas he made the extra judicial confession and was produced before the police by the Sarpanch only on 14.03.2007. The Trial Court negated this contradiction by holding that "*if a witness is telling lie on particular facts, it does not mean that his statement is also false qua other facts*". The Trial Court has further held that "*it is also common knowledge that human memory fades with passage of time and it is not possible to remember all the facts in the same sequence. Even otherwise, to err is human. Minor errors can not be given weightage while deciding such like cases.*" The Trial Court has further held "*proof beyond reasonable doubt is a guide-line and not a fetish, and guilty person can not get away with it because truth suffers from some infirmities when projected through human processes.*" The Trial Court has, thus, held that the prosecution has succeeded to prove that accused took Gourav to the abandoned dispensary and committed wrong act with him and as he was scared that Gaurav may not tell this incident to villagers, he committed his murder. In these circumstances, the Trial Court held the appellant guilty of the offences charged with.

21. The High Court, by the impugned order, dismissed the appeal relying on the theory of last seen. The High Court analyzed the deposition of PW7, Inderjit Singh, the owner of the Karyana shop; PW8, Pawan Kumar, the alleged chance witness in the shop and PW9, Shiv Chand, the Sarpanch, before whom the alleged extra judicial confession was made.

22. With regard to PW7, the High Court has noticed that he deposed that accused visited his shop and purchased a packet of namkeen and two tablets for treatment of cold and thereafter the accused left his shop. Analyzing the deposition of PW7, the High Court has held that the prosecution story was that in the immediate proximity of time, when the body of the deceased was found inside the well, the accused was last seen in the company of the deceased. However, as per the High Court *“insightful reading of the testimony, omitted to unravel, the incriminatory factum that at the relevant time deceased was accompanying the accused”*. The High Court came to the conclusion that, based on the testimony of PW7, *“the prosecution could not rest its theory of the accused and the deceased were seen together, more particularly in proximity of the time the body of deceased was discovered in the well and no firm conclusion could be drawn that on its basis, and no valid inculcation could be drawn against the accused.”*

23. The High Court further analyzed the statement of PW8, who stated that the accused was accompanied by the child. The High Court noticed the suggestion given in the cross examination to the witnesses. The High Court held that, irrespective of both PW7 and PW8, having failed in their respective examination in-chief, to state about the deceased accompanying the accused or being last seen together, the suggestion given by the counsel for the accused in his cross examination, that the deceased was accompanied by the accused led to an inference that both the deceased and accused accompanied were last seen together, which clinched the guilt of the accused.

24. The High Court further relied upon the extra judicial confession allegedly made by the accused to Shiv Chand, the Sarpanch (PW9). The High Court has opined that there was no suggestion to the said witness during his cross examination that there was any animosity or inimicality between the said witness and the accused, nor was he a close confidante of the accused or could be ever led to confess his guilt before him which, in the opinion of the High Court, led to the conclusion that not only the accused visited the house of (PW9), but also he made a credible incriminatory extra judicial confession before him.

25. The High Court has further relied upon the disclosure statement and recovery of the body of the deceased. The High Court held that *“pursuant to the disclosure made by the accused about throwing the body of the deceased into a well, did also lead to a body of the deceased being recovered therefrom*. The High Court held that accused by the disclosure statement *“has caused the recovery of the body of the deceased from the well, where into it had thrown the same, at the instance of the accused,”* which remained unproven to be either a false or a tainted recovery, and this was held to be an incriminatory link in the chain of circumstances.

26. Further, the High Court has noticed the forensic report, which opined that human semen was detected on the underwear of the accused and on the rectal swab taken from the deceased. The High Court held that though there was no firm conclusively to both, however, the defense did not choose to cross-examine the author of the forensic report to suggest that the semen as found on the relevant items did not belong to the accused. In these circumstances, the High Court dismissed the appeal of the appellant.

27. As noticed hereinabove, the entire case of the prosecution is based on circumstantial evidence and the theory of last seen. We are of the considered opinion that

prosecution had failed to prove its case beyond reasonable doubt. It has failed to prove the guilt of the accused/appellant. There are several missing links in the chain of events.

28. The deceased went missing on 11.03.2007, and the dead body was discovered on 12.03.2007 in the morning. Police was informed and the dead body was taken out of the well.

29. As per the prosecution, slippers of the deceased, pant of coca cola colour were seized on 12.03.2007, along with an open packet of namkeen, which was also seized from the site. It has come in the evidence of Inderjit Singh PW7 that the Namkeen was a generic brand and he had sold thousands of packets of namkeen and such like packets of namkeen were sold by other shops in the village.

30. There does not appear to be any reasonable explanation as to why the packet of namkeen which was allegedly found at the site was also seized. Since such packets were sold on daily basis what was so suspicious about an open packet of namkeen for the police to seize it. The seizure was made on 12.03.2007, when the story of alleged purchase of a packet of namkeen by the appellant emerged only on 14.03.2007, when he allegedly made the confessional statement.

31. The seizure of open packet of namkeen appears to be to create a link and to corroborate the theory of last seen. There is no reasonable explanation as to why the accused made an extra judicial confession to (PW9), Shiv Chand, the Sarpanch. The Trial Court has held, that the Sarpanch had intimacy with the police, and that is why the accused went to the Sarpanch and made the confession. Merely, because the accused did not have any connection with the Sarpanch, the Trial Court has held that the story of extra judicial confession appears to be true.

32. The logic of the trial court does not appeal to us. There is a possibility that the Sarpanch may not be deposing truthfully and there could be several reasons for the same. It could be because the Sarpanch wanted to protect someone or wanted to help the police in showing that the crime had been solved. A child from the village lost his life and had been subjected to brutal treatment before his death and it is natural for the villagers to be highly agitated. With a view to pacify the villagers, it is possible that the police came up with a story that the case had been solved and the culprit caught. The accused, on the other hand, was a poor labourer and may not have the sympathy of the villagers.

33. PW7, in his deposition, had stated that the accused was brought to his shop by the police on 12.03.2007, whereas the story of the prosecution is that the accused allegedly confessed to his crime on 14.03.2007. The Trial Court has merely brushed aside this major discrepancy by stating that even if a part of the testimony may be false, the other could not be disregarded. The Trial Court has overlooked the fact that this is a very crucial link in the entire prosecution case which is based on last seen together theory. If the very factum that the accused made a confession on 14.03.2007 is disregarded, then, the entire prosecution case fails. If the accused was brought by the police to the shop of PW7 on 12.03.2007, it belies, the entire extra judicial confession allegedly made on 14.03.2007.

34. PW7 does not in his testimony state that there was any child with the accused. PW7 deposed that he sold several packets of namkeen in a day, so there is no explanation as to why PW7 singled out the accused as the one who bought the packet of namkeen from him. He also stated that the accused had brought two tablets of cold from him. It is the prosecution case that a tablet for cold was given to the deceased by the accused. However, it is not the prosecution case that any empty wrapper of the tablet for cold was also allegedly recovered from the spot so as to connect the same and the packet of

namkeen to the accused. There is no such evidence to link the packet of namkeen allegedly recovered from the spot with the packet of namkeen allegedly bought by the accused from the shop of the PW7.

35. In the examination-in-chief of PW8 Pawan Kumar, there is no statement by him that the accused was accompanied by any child. However, in the crossexamination, he deposed that there was a child with the accused at that time and his name was Gaurav. Further, it may be noticed that in the statement given by him to the police on 14.03.2007 (Ex. DA), there was no mention by him of any child accompanying the accused. Clearly, there seems to be an improvement in the statement to help the case of prosecution. As noticed hereinabove, there are several missing links in the case of the prosecution.

36. The theory of the prosecution that the accused and the deceased were last seen together is clearly not borne out from the testimony of the witnesses. The factum of child accompanying the accused at the relevant point of time is also not established by conclusive evidence. Even the High Court has opined that the *“the prosecution could not rest its theory of the accused and the deceased were seen together, more particularly in proximity of the time the body of deceased was discovered in the well and no firm conclusion could be drawn that on its basis, and no valid inculcation could be drawn against the accused.”*

37. Another important fact is that the FIR was registered at 4.00 P.M. and the dead body was allegedly discovered at 1.30PM. Whereas, PW8, Pawan Kumar, in his statement, stated that about 12.00 noon his statement was recorded by the police on 12.03.2007. PW10 Balbir Singh, father of the victim, in his statement deposed that the police reached the village at 12.00 noon and remained in the temple till 3.00 pm and the Sarpanch was also present there.

38. The prosecution has placed strong reliance on the alleged disclosure statement (Ex. PT). It may be noticed that there is no discovery of a fact or recovery of any incriminating article made pursuant to the alleged disclosure statement. The alleged identification of the spot of the incident is merely an identification of an area which was already known to the police, of which even a site plan had already been prepared on 12.03.2007. As such, no reliance can be placed on the alleged disclosure statement (Ex. PT).

39. Reference may be had to Section 27 of the Evidence Act, 1872⁴ which reads as under:

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

40. Confession made to a police officer is not admissible, except in terms of section 27 of the Indian Evidence Act, 1872 which lays down that when there is a discovery of a fact, in consequence of information received from an accused, so much of an information as distinctly related to the fact thereby discovered may be proved. In the present case no new fact is discovered. As per the prosecution the accused is alleged to have identified the spots, which as noticed above were already in the knowledge of the prosecution. Thus the alleged disclosure statement cannot be taken into consideration.

⁴ Now incorporated as Proviso to Section 23(2) of Bhartiya Sakshya Adhiniyam, 2023

41. It may be noticed that the presence of the accused at the spot of incident at the relevant time is sought to be established by mere presence of an open packet of namkeen which, in the evidence of the prosecution has been established, is a packet which is readily available and sold in thousands all over the village. The prosecution has failed to establish a connection between the packet of namkeen recovered from the spot and the accused. It may be noticed that the theory of the prosecution of the last seen has been propounded to corroborate the alleged extra judicial confession. There is no plausible explanation of the prosecution as to why the accused would make an extra judicial confession to the Sarpanch of the village with whom neither he nor the victim had any connection.

42. Further, it may be noticed that on the one hand, the High Court has held that the prosecution cannot rest its case on the theory of “*seen together*” and no conclusion of inculcation can be drawn from the testimony of PW7 and on the other still goes on to uphold the conviction on the basis of the theory of “*seen together*”. The High Court has further erred, on the one hand in holding that the testimony of both PW7 and PW8 does not establish the last seen theory, and on the other, merely because of a suggestion by the defense counsel that there was a child accompanying the accused read along with the extra judicial confession, held that the same clinches the guilt.

43. Extra judicial confession is a weak piece of evidence and *per se* without any independent and cogent corroborative circumstance or evidence cannot be make the sole basis for conviction. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.⁵

44. Further, the High Court has erred in repeatedly holding that the disclosure statement (Ex. PW2), led to the discovery of the body (Ex. PU), which is clearly incorrect. The Disclosure statement, (Ex. PT), was recorded on 14.03.2007, whereas the body of the deceased was discovered on 12.03.2007, i.e., two days prior to the disclosure statement.

45. Furthermore, although semen was detected on the underwear of the victim, there was no DNA test conducted to match the semen found on the underwear of the accused and the semen obtained from the rectal swab of the deceased. The Trial Court held that, since the accused was not married, there was no explanation given by him to explain the presence of semen in his underwear. Further, since the prosecution has failed to establish any link between the semen found on the underwear of the accused and that found in the rectal swab of the victim, the onus could not have been shifted to the accused to establish that there was no connection. Without any evidence produced by the prosecution, the High Court has presumed both to be the same and placed the onus upon the accused to establish that they were different.

46. Prosecution has clearly failed to establish beyond any reasonable doubt, the connection between the accused and the victim; presence of the victim in the company of the accused at the relevant point of time and even the very presence of the accused or any connection of the accused with the place of the incident. There are serious doubts regarding the veracity of the prosecution case. This doubt is further fortified by the

⁵ *Sahadevan v. State of T.N.*, (2012) 6 SCC 403

testimony of the prosecution witnesses who deposed that the accused was brought by the police on 12.03.2007 i.e. two days prior to the alleged extra judicial confession.

47. As noticed above, there are several missing links in the chain of the prosecution case which, in our view, do not establish beyond reasonable doubt that the accused was the person who committed the offence. Since, in our view, prosecution has failed to establish the guilt of the accused beyond reasonable doubt, the benefit of the same has to be given to the accused.

48. In view of the above, the Trial Court erred in holding that the prosecution had proved the case beyond reasonable doubt and in convicting the accused. Further, the High Court has also erred in upholding the conviction of the accused. Consequently, the impugned Judgment dated 18.10.2022, passed by the High Court of Punjab and Haryana at Chandigarh in CRA-D-566-DB-2010 (O&M) and the judgment of conviction dated 24.04.2010 and order on sentence dated 26.04.2010 passed by session judge Ambala in case No. 11 of 2007 are set aside.

49. When this case was heard and reserved for judgment on 29.07.2026, this Court was of the opinion that the appeal ought to be allowed by extending the benefit of doubt to the appellant, i.e., Sahab Singh alias Sat Pal. This Court had directed that the appellant Sahab Singh alias Sat Pal, be released forthwith from prison, unless his continued incarceration was lawfully required in connection with any other case. Said order is hereby reaffirmed.

50. This appeal is allowed extending the benefit of doubt to the appellant, i.e., Sahab Singh alias Sat Pal and in the above terms.

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