

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 07TH DAY OF SEPTEMBER 2021 / 16TH BHADRA, 1943

CRL.A.NO.539 OF 2015

[AGAINST THE JUDGMENT IN S.C.NO.76 OF 2013 DATED 28.03.2015 OF
THE COURT OF THE ADDITIONAL SESIONS JUDGE-II, N.PARAVUR]

[C.P.NO.40/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA]

[CRIME NO.263/2011 OF ALUVA WEST POLICE STATION]

APPELLANT/ ACCUSED:

PRADEEP SONAR, S/O.MANEEDAR SONAR KACHEMARY,
KODVALY POLICE STATION LIMIT,
KUCH BIHAR, WEST BENGAL.

BY ADVS.
SRI.RENJITH B.MARAR
SMT.RESHMI JACOB
SRI.P.B.SUNEER

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY ADVS.
SMT.AMBIKA DEVI. S., SPECIAL GOVERNMENT PLEADER
(ATROCITIES AGAINST WOMEN & CHILDREN &
WELFARE OF WOMEN & CHILDREN)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27.08.2021, THE COURT ON 07.09.2021 DELIVERED THE FOLLOWING:

K.Vinod Chandran & Ziyad Rahman A.A., JJ.

Crl.Appeal No.539 of 2015

Dated this the 07th September 2021

JUDGMENT

Vinod Chandran, J.

Far from their homes and family, the plight of migrant workers is an endless narrative, often meaningless in form and sad in content. The prosecution alleges the murder of a mother and child by the former's live-in partner; all of them migrated from the east of India to its southern tip for eking out a mere subsistence. The prosecution alleges that sometime in the night of 04.05.2011 the accused murdered his live-in partner and her child, presumably for the money stashed away by the murdered woman. The accused fled to his home-State, from where the police arrested him.

2. Sri. Renjith B. Marar appears for the appellant and Smt.S.Ambika Devi for the State.

3. The learned Counsel for the appellant points out that there is no chain of circumstances connecting the accused with the crime. There is no motive established and the accused had a valid explanation for being away from his workplace. Reliance is placed on S.K. Yusuf v. State of

West Bengal [(2011) 11 SCC 754] to argue that the mere fact of the accused having absconded does not lead to a necessary conclusion of a guilty mind and also challenge the last seen theory propounded. Subramanian v. State of Kerala [2004 KHC 814] is also relied on for the very same purpose. The fact that the grandmother of the accused was ill and he had taken a loan from PW1, coupled with the enquiry to PW8 about the time it takes to reach Thrissur and Shornur, explains his absence, which is sufficient under Section 106 of the Evidence Act. Reading Ext.P2 inquest report and PW1's deposition juxtaposed with Ext.P9 sketch, it is pointed out that the shed adjacent to the unit of PW1 was open and accessible to anybody. PW1 was not present on the fateful day and there is sufficient indication in the evidence of PW8 that the accused was planning to leave his workplace. The mother and child, in all probability, would have been attacked by unknown assailants, who were aware of the absence of both PW1 and the accused on the crucial day.

4. The last seen theory cannot be relied upon without establishing that death was proximate to the time when they were last seen together. The death is said to have occurred sometime on the night of 04.05.2011 and despite the unit being operational on the next day, the

absence of mother and son was not enquired into. The evidence is that the crime was detected only at 5 p.m. and an FIR was registered at 6.00 p.m. It is also elicited from the witnesses that the police had inspected the site, after which the FIS was recorded at the Police Station. This casts a suspicion regarding the intimation of the crime. There is no motive, preparation and previous or subsequent conduct which connects the accused with the crime as in Section 8 of the Indian Evidence Act, 1872. As far as Section 27 is concerned, the exact words of the accused have not been recorded, which has been held to be mandatory by a Division Bench of this Court in Sanjay Oraon v. State of Kerala [2021 (5) KLT 30]. If there is absence of proof of disclosure and concealment by the accused, it is fatal to recovery under Section 27 as held in Bahadul vs. State of Orissa [(1979) 4 SCC 346]. Pohalya Motya Valvi vs. State of Maharashtra [(1980) 1 SCC 530] was relied on to contend that authorship of concealment has to be clearly stated in the confession made by the accused. It is argued that the inquest report, specifically the description of the body of the woman, raises a reasonable inference of sexual molestation. The body was completely nude and wrapped only around the hip, with a saree. Though there is nothing detected on chemical analysis to support such an

inference, the doctor has categorically stated that the distance of time from death, to the post-mortem, would reduce the chances of detection of any remnants pointing to sexual molestation. Subhash Chand v. State of Rajasthan [(2002) 1 SCC 702] is relied on to urge that suspicion however strong cannot take the place of hard evidence and the circumstances should be individually proved, which should collectively forge an unbroken chain, incriminating the accused beyond all reasonable doubt.

5. The learned Special Government Pleader points out that the deceased and the accused were staying together as deposed by several witnesses. The accused in his Section 313 questioning denied that fact; which falsity itself raises a presumption against the accused. Knowingly a false statement was made to escape from the clutches of law and this is an additional circumstance as has been held in Surajdeo Mahto v. State of Bihar [2021 SCC Online SC 542]. The accused was seen on the previous day and he was missed at work on the next day. There can, hence, be no explanation offered that he had left for his native place due to his grandmother's illness. There is no reason stated as to why the accused did not inform his employer, PW1, about his departure on the next day. Though one of the walls of the shed in which the accused and deceased were

living, was not a complete enclosure; there is not even a suggestion that anybody standing in the unit would have clear sight into the residential shed. The employer and co-employees of the accused, attested to his presence on the previous day. PW4 deposed that the murdered child was taken by the accused from his house at 7.30 p.m on the previous day. The accused had not spoken of leaving the State and had borrowed money to be sent to his native State. For facilitating the bank transfer, the I.D was also taken from his employer. The queries made to PW8 could lead to an inference of preparation for the murder and subsequent flight. The accused was seen boarding the train, early morning and he was arrested from West Bengal.

6. PW1, is the employer of the accused and the murdered woman, who gave the FIS at 6.00 p.m. on 05.05.2011. His version before Court is consistent with the FIS. Both the accused and the deceased were working in his industrial unit engaged in manufacturing and laying floor tiles. The accused and the deceased woman were living with the three-year-old child in the shed attached to the unit, where one Habeeb, PW10 and Ambiya Beevi, PW2, were also employed. On 05.05.2011 at 8.00 a.m PW10 informed PW1 that the accused and deceased did not turn up for work and that the mobile number of the accused was switched off. PW1

reached back at the scene of occurrence at 5.00 p.m. Since there was no trace of the couple and the child, PW1 went to the residential shed. The door on the eastern side of the shed was locked from inside. Over the sidewall, PW1 entered the residential shed and saw a pillow and some clothes neatly arranged on the plywood, which was used as a cot for lying down. On pulling aside the plywood, the woman and child were found dead. Immediately the police were informed and he gave FIS at the Police Station. The accused was not seen anywhere at the scene of occurrence. PW1 also deposed that he saw the accused outside the shed on the previous day and the deceased woman, cooking inside the shed.

7. PW2 is a co-employee, who attested to the presence of the accused, the deceased and the baby boy on the previous day and their absence on 05.05.2011. PW3 is the husband of PW2, who spoke of his wife also being employed with PW1. He spoke of PW2 having occasionally brought the baby boy to their house, after which the accused used to take the boy back in the night. It was categorically stated that on the just previous day at about 7.30 p.m, the accused came to their house and took the baby boy back. After that PW3 has not seen the child, the deceased or the accused.

8. PW4 is the witness to Ext.P2 inquest report of the deceased woman and PW5, the witness of Ext. P3 mahazar, both residents of the locality. PW5 was acquainted with the accused and knew that he was employed in PW1's unit. Ext.P3 mahazar evidenced the recovery made of a knife and wooden stick; by the accused in the presence of the police. MO1 is the wooden stick and MO2, the knife, the latter of which had a bloodstain in it. In cross-examination, he specifically stated that he saw the Material Objects being recovered by the accused, who handed them over to the police. PW7 is the witness to Ext.P5 inquest report of the deceased child. PW6, the Grama Panchayat Secretary, produced Ext.P4 ownership certificate in the name of one Rahim, who was examined as PW9. The evidence of PW6 and PW9 proved that the building in which PW1's unit was run, was rented out by PW1 from PW9.

9. PW8 is again another local, who was engaged in driving a mini lorry. He was acquainted with PW1 and also the accused, who was an employee of PW1. PW1 regularly used PW8's mini lorry for the transportation of tiles. PW8 deposed to have seen the accused on the date on which he heard about the death, at the Railway Station by around 4 O'Clock in the early morning. He had gone to the Aluva Railway Station to drop a friend's relative. While he was

having coffee from a shop on the platform, he saw the accused crossing the railway track from the other side and boarding a train from the 3rd platform. He also deposed that two days before, the accused had asked him the distance to Shornur and Thrissur. PW11 is also a local, who is conversant with Hindi and Bengali. He assisted the Investigating Officer ['I.O' for brevity] in translating the confession made by the accused regarding the concealment of MO1 and MO2. He identified MO1 and MO2 but stated before Court that it was the police who recovered the Material Objects. PW13 is the Village Officer, who prepared Ext.P9 sketch of the scene of occurrence.

10. PW10 is the relative of PW1, who was also employed in his unit. The employees of the unit were himself, accused, deceased and PW2; four in number. He corroborated the evidence of PW1 and stated that the accused was staying with the deceased and their child in the shed adjacent to the tile unit. On 04.05.2011 he saw the accused, deceased and child at about 5.30 p.m. when he left the unit after work. The next day he came at 8.00 a.m. and PW2 was standing outside. The accused, deceased and their child were not seen anywhere. The door leading to the shed was closed. He went inside the unit and looked into the shed, obviously over the incomplete wall. He saw some

utensils and dress inside the shed; but, no sign of the residents. He called PW1 to inform him about the absence of the resident employees. PW2 and PW10 commenced and continued the work in the unit and at about 5.00 p.m, PW1 came back. PW1 had also inquired, in the meanwhile, about the residents in the shed. After PW1 came, he went into the shed over the half wall inside the unit. The door was locked from the inside, which was opened by him. PW2 and PW10 entered the shed and saw a hand under the plywood, which was pointed out to PW1. PW1 lifted the plywood and they saw the dead bodies lying to the southern end of the building. There was a pool of blood on the floor. PW1 kept the plywood back and informed the police. He categorically stated that the accused was not present there at the time. PW14 was examined to further establish the presence of the accused on the previous day. PW14 runs a chicken centre and the accused, with a friend, purchased chicken from his shop at 7.00 p.m. He also said that they wanted half each, which division was made by him.

11. PW11 is a friend of PW1 and a resident of the same locality. He is slightly conversant with Hindi and Bengali. He translated the confession statement of the accused and was present when there was the recovery of MO1 and MO2, which, according to him, was taken out by the

police. PW15 is a Civil Police Officer who accompanied PW17, S.I. of Police to West Bengal. The police team which went to West Bengal comprised of PW15, PW17 and a driver. They went by flight to Calcutta and from there went directly to Cooch Behar Railway Station, after reporting before Kotwali Police Station. At the Railway Station, they searched for the accused from among the persons alighting there. On the 8th, they were informed of the accused having reached his village. The brother of the accused was summoned to the Police Station, who informed them that the accused has a family, a wife and children, residing in his village. On the 9th at around 10.25 p.m., the accused was located in the house of a friend, Mittu. The accused attempted to flee but was chased and apprehended. He was produced before the jurisdictional Magistrate Court on the 10th and with the aid of a transit warrant, brought to the State of Kerala and produced before the jurisdictional Magistrate within the State. PW17 is the Sub Inspector who registered the FIR and led the Police team to Calcutta. His deposition corroborates PW15 to the hilt. The transit warrant was produced as Ext.P11. The SI confirmed that the accused had a wife and children living in West Bengal. Statements were taken from the parents of the deceased. PW18 is the I.O.

12. PW12 is the Doctor who conducted post-mortem examination on both the deceased. The post-mortem certificate of the murdered woman was marked as Ext.P7. Death was opined to be due to incised injuries sustained to the face and the left side of the chest, specifically injuries 3, 4, 5 and 7. Injury No.7 was possible of being inflicted with MO1. Injuries 3 to 5 could be inflicted with a heavy cutting weapon of appropriate size, most likely MO3 axe. Injuries 1, 2 and 14 could be inflicted with a blunt weapon, which MO1 is. The doctor was re-examined on directions of this Court in the appeal. The doctor has specifically spoken of the 15 ante-mortem injuries on the body of the woman, of which injuries 3,4,5 and 7 are the cause of death, which are extracted hereunder:

"3. Incised wound 7.5x3 cm communicating with oral cavity, horizontal, on the left side of face, its inner end 5.5 cm to the left of mid line and 2 cm above upper lip and back end 3 cm below left ear. Fracture fragmentation of maxillary bone underneath behind the first molar tooth.

4. Incised wound 2x2 cm communicating with oral cavity, oblique involving with whole thickness of upper lip just to the left of midline. Underneath the left incisor and canine teeth of the upper jaw cut and fragmented.

5. Incised wound 8x3 cm bone deep oblique on the left side of face its upper inner end at the lower lip just to the left of midline. Underneath the central incisors and left lateral incisors cut and fragmented.

Fracture fragmentation of mandible underneath.

xxx

xxx

xxx

7. Incised penetrating wound 6.5x3 cm on the left side of chest, its upper blunt end 16 cm to the left of midline and 4 cm below armpit. The wound penetrated the left chest cavity cutting the end rib and first inner coastal space 5.1x1.5 cm after coursing through the muscles of chest wall for a depth of 9 cm punctured the pleura 3x1 cm through which the lung tissue was protruding out. Left chest cavity contained 30 ml of blood. Left lung partly collapsed. The wound was directed backwards and to the right for a depth of 9.5 cm".

13. Ext.P8 is the post-mortem report of the three-year-old child. Death was due to ligature strangulation. Pressure abrasions were found on the neck where the ligature was tied. The ligature recovered from the crime scene was marked as MO4. The death of both the mother and child had occurred approximately 36 to 48 hours before 3.00 p.m. on 06.05.2011. Hence, the death occurred between 5.00 p.m. of 04.05.2011 and 3.00 a.m. of 05.05.2011. That the death is a homicide is well

established and now we search for the circumstances, which according to the prosecution, unerringly pin the homicide on the hands of the accused.

14. There is no eye witness and the prosecution relies on the circumstances; the last seen together theory, the flight of the accused, the arrest of the accused from his native State, recovery under Sec.27 of MO1 and MO2 at the instance of the accused and the deliberate falsehood stated under Sec.313 of the Cr.P.C. We first look at the recovery under Sec.27 of the Evidence Act. Ext.P3 is the mahazar. The translation of the confession statement is recorded in Ext.P3, as translated by PW11. The confession reads as 'the knife and the wooden stick were put by me near the boulder construction adjacent to the shed in which I am residing'. As has been pointed out by the learned Counsel for the appellant, there is interpolation in so far as the vernacular word referring to oneself ('I' or 'me'). Further, the confession was made in Bengali, presumably as there was a translator engaged to translate the questions under Sec.313, put to the accused and his responses too.

15. PW11 though deposes that he translated the statement as given by the accused; does not speak of the language in which the accused confessed. The prosecution also did not elicit the same from the witness and merely

made him speak of his bare acquaintance with Hindi and Bengali. The confession statement having not been recorded in the same language in which it was stated, stands against it being used against the accused especially going by the decision of this Court in Sanjay Oraon(supra). We are unable to place any reliance on the confession statement or the recovery under that. However, the fact remains that the seizure of MO1 and MO2 from near the scene of occurrence and MO3, from the very room in which the offence was committed is established. The medical evidence is also that the incised wounds could be caused by MO2 knife and one deep cut wound by MO3 axe. The contusions seen on the head, specifically injuries 1 and 2, as opined by the doctor, is possible by the blunt weapon MO1, an axe handle.

16. That the accused and deceased were living with the child in the shed attached to the floor tile unit stands fully established. PW1, the employer of the accused and the deceased and PW2 & PW10 their co-employees, have spoken of the same. PW2 saw the accused and the deceased at 5.00 p.m. on the previous day. PW10 also spoke of having seen both at around 5.30 p.m on 04.05.2011 when he left the floor tile unit. PW1, the employer, on the same day evening, after the working time, saw the accused, sitting outside the shed and the deceased engaged in cooking,

inside the shed. The murdered woman was seen alive last by PW1, inside the shed where she was residing along with the accused. PW3, the husband of PW2, deposed that on the previous day at around 7.30 p.m, the accused came to his house and took the child back. This is the last time the child was seen alive by anybody. PW14 also spoke of having seen the accused at around 7.30 p.m when he purchased meat from his shop. Then, the accused was seen by PW8 at 4.00 a.m on 05.05.2011 at the Aluva Railway Station, where he boarded a train. The incident occurred as per the medical evidence between 5.00 p.m on 04.05.2011 and 3.00 a.m on 05.05.2011, i.e., within 36 to 48 hours from the time when post-mortem was conducted at 3.00 p.m on 06.05.2011. The accused, hence, was the last seen person with the deceased and was the only person who would have been available in the shed where the couple were living with the child. The last seen theory becomes more credible for the reason of the proximity of the time when the accused was last seen together with the mother and child and the death which occurred either on the night of 04.05.2011 or early morning of 05.05.2011. The accused also boarded a train in an attempt to flee from the locality in the wee hours of 05.05.2011 at 04.00 a.m. He was seen with the child on the previous night at 7.30.

17. The appellant's Counsel argued that the shed in which the murder occurred, was accessible to any person and there could have been unknown assailants involved. Much has been argued about both PW1 and the accused being away from the scene of occurrence. There is nothing to indicate that anybody knew about the absence of PW1 and the accused on the fateful day. PW1 was employed elsewhere and he used to be away from morning to evening. As far as the accused is concerned, his definite explanation is that he returned to his native place for the reason of his grandmother's illness. This was not pre-planned since even the accused did not have a case that he had informed the trip planned to his employer, PW1. PW1 deposed that a few days back the accused had taken a loan and also the ID Card to transfer money to his family, citing the illness of his grandmother. If he had planned to travel to his native State, definitely it would have been informed to the employer. PW8 is a mini lorry driver, who used to transport goods from the floor tile unit of PW1. His evidence is only that the accused asked him the distance to Thrissur and Shornur. This does not lead to any presumption of the accused having planned to return to his native place, especially when he had not informed the same to his employer.

18. Further, it has come out in evidence that the door into the shed can be locked from inside. There was also a separating wall between the unit and the shed which was however not a complete enclosure. That the accused and the deceased were residing together in the shed has been proved by the evidence of various witnesses. Their live presence on the previous evening is attested by PWs 1,2 and 10. In the night at 7.30 p.m, the accused purchased a chicken according to PW14 and also took back the baby boy from the residence of PW3, as stated by him. There is hence no possibility of unknown assailants having trespassed into the shed and murdered the mother and child, especially when the accused was present there.

19. As far as the delay in registering the FIR, we do not see any ground for raising such an argument. Immediately on detection of the crime, it was informed to the police and an FIR was registered. The delay was only in the detection of the bodies, which, in the given circumstances, is only natural. Both the deceased and the accused were in the locality on the previous day. PW2 and PW10 deposed that both of them were absent on 05.05.2011 and hence the two carried out the work of that day. PW10 informed PW1 about the absence of the other two employees and in the course of the day, PW1 had also enquired about

their whereabouts to PW10. The employees normally would not peek into the residential quarters of their co-employees. The dead bodies were also hidden from view having been covered with plywood, upon which clothes were stacked. Only in the evening, noticing the continued absence of the couple and the boy, PW1 ventured into their residential quarters, followed by PW2 and PW10. It was then the bodies were recovered and we find no delay in the registration of an FIR. The delay is not in registering the crime but in detection of the bodies of the deceased; which in the circumstances is quite natural.

20. Now we come to the false explanation given by the accused in the Sec.313 questioning and the argument that it would be an additional circumstance giving rise to a presumption against the accused. The accused admits to having worked in the tile factory along with his wife, Selma, in response to the first question. But, to the very next question as to the couple having stayed together with the child, he answered that he was staying alone. He repeated it, to the question put as to the couple having stayed with the child in a shed adjacent to the unit. This is a deliberate falsehood and the Prosecutor argues that it is a link in the chain of circumstances, relying on the decision in Surajdeo Mahto (supra).

21. In the cited case, as in the present one, there was ample evidence that the accused and deceased were last seen together. When the deceased did not return to his family, there was a complaint registered. In the evidence, it was brought out that the accused to queries made by the relatives, deliberately stated a falsehood that the deceased had gone to Delhi. The accused also absconded, which too was taken as a circumstance to unerringly establish the culpability of the accused. Here, as we noticed, the statement made in Sec. 313 questioning, tested with the evidence is a falsehood. The absence of explanation though is a compelling aspect, the question here is whether the falsity of the response in Sec.313 can be an incriminating circumstance. In the cited decision, the falsity is in the explanation offered by the accused, to the relative, who deposed to that fact before court; having the quality of substantive evidence led before the trial Court. Be that as it may, the established position is that, what is stated under Sec.313 cannot be the sole basis of a conviction.

22. Relying on a number of binding precedents, the Hon'ble Supreme Court in Ashok Debbarma v. State of Tripura [(2014) 4 SCC 747] held so:

"24. We are of the view that, under Section 313

statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh* (1992) 2 SCC 700 held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat* AIR 1953 SC 468 held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678 this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in *Mohan Singh v. Prem Singh* (2002) 10 SCC 236 held that: (SCC p.244, para 27)

"27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."

In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla* (2005) 9 SCC 15 and *Bishnu Prasad Sinha v. State of Assam* (2007) 11 SCC 467. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis

for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.

23. Sunil Clifford Daniel v. State of Punjab [(2012) 11 SCC 205] held so: "This Court in State of Maharashtra v. Suresh (2000) 1 SCC 471 held that, when the attention of the accused is drawn to such circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances." (sic-para 51). The absence of an explanation or a false explanation has been held to be an additional circumstance in the chain of circumstances in Shivaji Chintappa Patil v. State of Maharashtra [(2021) 5 SCC 626], Satpal vs. State of Haryana [(2018) 6 SCC 610] & Prahlad v. State of Rajasthan [(2019) 14 SCC 438 : (2020) 1 SCC (Cri) 381]. We extract

from Satpal supra) with underlining supplied by us for emphasis:

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine".

24. The last seen theory as propounded by the prosecution, according to us, is that compelling circumstance against the accused. On the night of the previous day, the accused was seen with the boy and the woman. They were residing together in the shed which was

found abandoned in the morning. Only when a detailed search was conducted, the bodies of the woman and the child were recovered. The accused who was residing along with the woman and child was conspicuously absent when the dead bodies were recovered. On the same day early morning, i.e., immediately after the probable time of the commission of the crime, the accused was found boarding a train, obviously fleeing from the locality. He was then arrested from West Bengal, his native place. The evidence of the police team is that he attempted to flee, but they chased him and caught him. He was brought back to Kerala on a transit warrant, produced as Ext.P11 issued by the Chief Judicial Magistrate, Cooch Behar. The seizure of the weapons MO1 to MO3 from inside the shed and from its near vicinity is also another circumstance. Added to this is the perceptibly false reply in Sec.313 that the accused was residing alone, while the overwhelming evidence is of the three residing together in the shed adjoining the Unit. S.K. Yusuf (supra) was a case in which the accused was found in close proximity of the area where the dead body was buried; which was held to be not a valid theory of last seen together. The Hon'ble Supreme Court also reiterated the position that absconding is not a circumstance when the person is not the author of the crime. In the present case,

the absconding accused was guilty of flight from the shed in which he was residing with the murdered woman and child just after the death occurred. There are also other circumstances which cumulatively provide an unbroken chain.

25. On the night in which the crime was committed, only the accused and the deceased were inhabitants of the precincts of the floor tile unit. The accused was living with the deceased woman and the baby boy. We notice the absence of scientific evidence connecting the accused with the crime; however, the totality of the circumstances require an explanation from the accused as to his whereabouts when the crime was committed, with proof of the same. On failure to offer that explanation, an additional circumstance pointing to his culpability is made out. The last seen together theory makes it imminently necessary for the accused to give an explanation; in the absence of which there is an unbroken chain of circumstances unerringly pointing to the guilt of the accused. His presence with the deceased, his flight to his native place at a time proximate to the time of death, the lack of an explanation and the false statement in Sec.313 establishes the guilt of the accused. The hypothesis of innocence, based on the shed being accessible to any person is far-fetched and lacks credence. The plea that he left the locality for

reason of his grandmother's illness also fails to impress. We hence find the appeal to be devoid of merit and dismiss the same affirming the conviction and sentence awarded by the trial Court.

Sd/-
K.Vinod Chandran,
Judge

Sd/-
Ziyad Rahman A.A.,
Judge

vku/-