CGHC010239172017 2026:CGHC:35836-DB

SAIFAN KHAN Digitally signed by SAIFAN KHAN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 135 of 2017

[Arising out of judgment dated 20.09.2016, passed in Sessions Trail No.53/2014 (State of Chhattisgarh v. Radheshyam @ Babla Banjare and another) by the Special Judge (Atrocities), Raipur (CG)]

1 - Radheshyam @ Babla Banjare S/o Vishram Banjare Aged About 27 Years Caste- Satnami, R/o Village- Chichouli, Police Station- Kharora, District Raipur, Chhattisgarh., Chhattisgarh

2 - Brajesh Kumar Sahu S/o Khemkaran Sahu Aged About 21 Years Caste Teli, R/o Village- Gaurkheda, Police Station Kharora, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

... **Appellants**

(On Bail)

versus

State of Chhattisgarh, through District Magistrate, Raipur, District Raipur, Chhattisgarh., Chhattisgarh

... **Respondent**

[Cause-title taken from Case Information System (CIS)]

For Appellants : Mr. Anil Tripathi, Advocate

For Respondent : Mr. Amit Buxy, Dy. Government Advocate

Division Bench

Hon'ble Mr. Justice Sanjay K. Agrawal, and
Hon'ble Mr. Justice Radhakishan Agrawal

Judgment on Board

(13.08.2026)

Sanjay K. Agrawal, J

(1) Invoking criminal appellate jurisdiction of this Court, two

appellants herein have preferred this criminal appeal under Section 374(2) of Cr.P.C., calling in question the legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 20.09.2016, passed in Sessions Trail No.53/2014 (State of Chhattisgarh v. Radheshyam @ Babla Banjare and another) by the Special Judge (Atrocities), Raipur (CG), whereby they has been convicted under Section 302/34 of IPC and sentenced to undergo imprisonment for life with fine of Rs.1,000/- each and, in default of payment of fine, additional rigorous imprisonment for 02 months each.

(2) The case of the prosecution, in short, is that in the intervening night of 11-12/10/2014, at Village Chataod, near Nursery in front of ruins of brick Bhata Jamin, Police Station Newra, the accused-appellants herein alongwith one juvenile co-accused (who has been acquitted by the trial Court), in furtherance of their common objection, assaulted Biselal, due to which, he suffered grievous injuries and died and, thereby, the appellants are said to have committed the aforesaid offences.

(3) It is further case of the prosecution that when the matter was reported to the police, merg. Intimation (Ex.P/02) and Fir (Ex.P/31) were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/14 and inquest proceedings were conducted vide Ex.P/15. Site map was

prepared vide Ex.P/01. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. GR Agrawal (PW-13) and, as per PM report (Ex.P/19), cause of death of the deceased is excessive haemorrhage and shock due to injuries on vital organs and nature of death is homicidal. The appellants-accused were arrested vide Ex.P/27 & Ex.P/28 and their memorandum statements were recorded vide Ex.P/06 & Ex.P/08. Pursuant to the memorandum statement of appellant- Raheshyam (A-1), pass-book of the deceased, shirt, barmuda were seized vide Ex.P/07, whereas from appellant- Brajesh Kumar Sahu (A-2) shirt, paint were seized Ex.P/09. The seized articles were sent for chemical examination, as as per FSL report (Ex.P/31) stains of blood were found on the shirt seized from appellant-Brajesh Kumar Sahu (A-2). After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellant in the competent criminal court having jurisdiction and, thereafter, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellant/accused abjured his guilt and entered into defence by stating that he is innocent and has been falsely implicated.

(4) The prosecution in order to prove its case examined as many as 19 witnesses and exhibited 32 documents part from Article-A & A/1, whereas the appellant-accused in support of their defence examined

03 witnesses and exhibited 04 documents.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict appellants herein for offence under Section 302 r/w 34 of IPC and sentenced them as mentioned herein-above, against which this appeal has been preferred by the appellants-accused questioning the impugned judgment of conviction and order of sentence.

(6) Mr. Anil Tripathi, learned counsel appearing for the appellants submits that the learned trial Court is unjustified in convicting the appellants for the aforesaid offences, as the prosecution has failed to prove the same beyond reasonable doubt. He argued that the theory of last seen together has not been established at all. Smt. Panchi Bai (PW-02), who is witness to the theory of last seen together, did not know the appellants herein prior to the incident. In the present matter, Test Identification Parade (TIP) requires to be conducted, which the prosecution has miserable failed to do so and, even, there is no corroboration to the theory of last seen together, therefore, the same is not at all established in the present case. So far recovery of articles (clothes and passbook of the deceased) pursuant to the memorandum statements of the appellant is concerned, the witnesses to said seizure and memorandum, namely, Sangram Singh (PW-05) and Tuka Ram (PW-16) both have turned hostile and not supported the case of the prosecution and, even otherwise, merely on

the basis of forensic evidence that stains of blood were found on the shirt seized from appellant- Brijesh (A-2), the appellants herein cannot be held guilty of the offences in question. Hence, the present appeal deserves to be allowed and the appellant is liable to be acquitted of the said charges on the basis of benefit of doubt.

(7) *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellants for offence in question. Thus, the present appeal deserves to be dismissed.

(8) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(9) The first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in affirmative by taking into consideration the postmortem report (Ex.P/19), wherein it has been opined that cause of death of the deceased is excessive hemorrhage and shock due to injury on vital organs and nature of death is homicidal, which is

duly proved by the statement of Dr. GR Agrawal (PW-13), who has conducted postmortem of the dead-body of the deceased. Accordingly, taking into consideration the postmortem report (Ex.P/19) and the statement of Dr. GR Agrawal (PW-13), we are of the considered opinion that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. We hereby affirm the said finding.

(10) Now, the next question for consideration would be whether the appellants herein are authors of the crime or not ?

(11) In the case at hand, the base the conviction of the appellants the learned trial court relied upon the theory of last seen together, therefore, it would be appropriate to quote the relevant decision of the Supreme Court governing the theory of last seen together.

(12) In the matter of **Jaharlal Das v. State of Orissa**[1], the Supreme Court has noted the fact that at the stage of inquest, the important incriminating circumstance namely, the deceased was last seen in the company of the accused, was not noted and that is not there in the inquest report. Thereafter, in that view of the above fact and other evidence on record, their Lordships have held that the deceased was last seen in the company of the accused is not established beyond reasonable doubt.

1 (1991) 3 SCC 27

(13) In the matter of **Arjun Marik v. State of Bihar**[2], it has been held by their Lordships of the Supreme Court that conviction cannot be made solely on the basis of theory of 'last seen together' and observed in paragraph 31 as under :-

> "31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount tothough a number of witnesses have been examined be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

(14) Likewise, in the matter of **State of Goa v. Sanjay Thakran**[3], the Supreme Court has held that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was observed in paragraph 34 as under :-

> "34. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together

2 1994 Supp (2) SCC 372

3 (2007) 3 SCC 755

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

(15) Similarly, in the matter of **Kanhaiya Lal v. State of Rajasthan**[4], their Lordships of the Supreme Court have clearly held that the

4 (2014) 4 SCC 715

circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime and there must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant in our considered opinion, by itself cannot lead to proof of guilt against the appellant. It has been held in paragraphs 15 and 16 as under :-

> "15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*[1].
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> 16. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is allowed and the conviction and sentence imposed on the appellant-accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise."

(16) In the matter of **Anjan Kumar Sarma v. State of Assam**[5], their Lordships of the Supreme Court have clearly held that in a case where other links have been satisfactorily made out and circumstances point to guilt of accused, circumstance of last seen

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5 (2017) 14 SCC 359

together and absence of explanation would provide an additional link which completes the chain. In absence of proof of other circumstances the only circumstance of last seen together and absence of satisfactory explanation, cannot be made basis of conviction.

(17) In the matter of **Navaneethakrishnan v. State by Inspector of Police**[6], the Supreme Court has held that though the evidence of last seen together could point to the guilt of the accused, but this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration, and observed in paragraph 22 as under: -

> "22. PW 11 was able to identify all the three accused in the court itself by recapitulating his memory as those persons who came at the time when he was washing his car along with John Bosco and further that he had last seen all of them sitting in the Omni van on that day and his testimony to that effect remains intact even during the cross-examination in the light of the fact that the said witness has no enmity whatsoever against the appellants herein and he is an independent witness. Once the testimony of PW 11 is established and inspires full confidence, it is well established that it is the accused who were last seen with the deceased specially in the circumstances when there is nothing on record to show that they parted from the accused and since then no activity of the deceased can be traced and their dead bodies were recovered later on. It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that

6 (2018) 16 SCC 161

> they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone cannot discharge the burden of establishing the guilt of accused beyond reasonable doubt and requires corroboration."

(18) Recently, the Supreme Court in the matter of **Padman Bibhar v. State of Ordisha**[7] has held as under:

> "22. In the case at hand also the only evidence against the appellant is of 'last seen together'. The evidence of motive does not satisfy us to be an adverse circumstance against the appellant inasmuch as if the appellant has any doubt about his wife's chastity, he would have caused injury or harm to his wife rather than to wife's cousin with whom he had no animosity. Moreover, the so-called weapon of the offence i.e. the stone has not been recovered at his instance nor there is any memorandum statement of the appellant.
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> 23. On the basis of above discussion, we are of the opinion that the nature of circumstantial evidence available against the appellant though raises doubt that he may have committed murder but the same is not so conclusive that he can be convicted only on the basis of evidence on 'last seen together'."

(19) Reverting to the facts of the present case in light of the aforesaid decisions rendered by the Supreme Court, it is quite vivid that the appellants and the deceased were lastly seen together alive on 11.10.2014 at about 05:30 PM, whereas the dead-body of the deceased was found/recovered on 12.10.2014 at about 07 AM vide

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7 2025 SCC Online SC 1190

Ex.P/02 i.e. after about 12 hours, as such, there is a considerable time gape between the appellants and the deceased were lastly seen together and the time the dead-body of the deceased was recovered. Even otherwise, the theory of last seen together is not established in the present case, as the deceased and Smt. Panchi Bai (PW-02), who is wife of the deceased, both used to reside at Village Behradi, whereas appellant- Radheshyam (A-1) is resident of Village Chichouli and appellant- Brjesh Kumar Sahu (A-2) is resident of Village Gaurkheda and, a careful perusal of the statement of Smt. Panchi Bai (PW-02), would show that she didn't know the two appellants herein prior in time, indeed, she was informed by Smt. Memin Bai (PW-06) about them. However, Smt. Memin Bai (PW-06) has turned hostile and has not supported the case of the prosecution. Further, on being asked in Para-20 of her cross-examination, Smt. Panchi Bai (PW-02) clearly admitted that prior to the information given by Smt. Memin Bai (PW-06), she didn't know that the accused-appellant are resident of Village Chichouli, indeed, when her husband did not return to the house, she sent her son (Kuleshwar) to Smt. Memin Bai (PW-06), then she informed her about the same. Similarly, Kuleshwar (PW-03), son of the deceased, who immediately reached to the house after the incident was informed by her mother (Smt. Panchi Bai) about the incident, thereafter, he went to the house of Santram (PW-04), but since Santram was not present in the

house, he met his wife- Smt. Memin Bai (PW-06) who, in turn, informed that the boys of village Chichouli has taken the deceased. However, Smt. Memin Bai has also not named the two appellants herein to be the same person/boys who had taken the deceased on the date of incident and, Smt. Memin Bai (PW-06) has turned hostile. Further, no TIP has been conducted by the prosecution to identify the present appellants to be the persons/boys who has taken the deceased on the date of incident, which was incumbent on the prosecution, but they miserably failed to do so. As such, the theory of last seen together on fact has also not been established and, even otherwise, as held by the Supreme Court in **Navaneethakrishnan** (supra) though the evidence of last seen together could point to the guilt of the accused, but this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration. In view of aforementioned reasons, the theory of last seen together is not found established in the present case and it would be totally unsafe to rest the conviction of the appellants herein on the basis of the theory of 'last seen together'. We hereby hold accordingly.

(20) In shape of corroboration, the learned trial court has relied upon the recovery of passbook of the deceased from appellant-Radheshyam (A-1). However, witnesses to the said seizure and memorandum of the appellant, namely, Sangram Singh (PW-05) and

Tuka Ram (PW-16), both have turned hostile and not supported the case of the prosecution at all. As such, this piece of evidence cannot be relied upon to hold the appellants guilty for the offence in question. We hereby hold accordingly.

(21) Lastly, so far as the recovery of shirt from appellant- Brajesh (A-2) is concerned, in which, as per FSL report (Ex.P/32) stains of blood were found, it is worth noting that incident is said to have taken place on 12.10.2014, the said shirt was seized vide Ex.P/09 on 14.10.2014 and, thereafter sent for chemical examination to FSL, Raipur, which was received therein on 03.11.2014 i.e. after about 19 days and there is no evidence available on record to show that as to whether the said seized article was kept in safe custody for the said period of not. Therefore, chances of fabrication and manipulation cannot be ruled out. Consequently, on this count, the result of FSL report also pales into insignificance and cannot be relied upon. We hereby hold accordingly.

(22) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable doubt, in absence of which, the learned trial Court is unjustified in convicting appellants offence under Section 302/34 of IPC being the authors of the crime in question in light of the findings recorded in the impugned judgment and same are liable to be set aside.

(23) Accordingly, we hereby set aside the conviction so recorded and the sentence so awarded by the trial Court to the appellants vide the impugned judgment dated 20.12.2016. The appellants are acquitted for offence under Section 302 r/w 34 of IPC on the basis of benefit of doubt. The appellants are reported to be on bail, therefore, they need not to surrender. However, their bail bonds shall remain in force for a further period of six months in view of the provision contained in Section 437-A of the CrPC.

(24) This criminal appeal is **allowed.**

(25) Let a certified copy of this judgment alongwith the original record be transmitted to the trial Court concerned for necessary information and action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

sd/-
(Radhakishan Agrawal)
Judge

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