



2026:AHC:26376-DB

A.F.R.

Reserved On 13.01.2026

Delivered On 06.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4445 of 2005

Balak Ram And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

| | |
|---------------------------|---|
| Counsel for Appellant(s) | : Akhtar Ali, Chetan Chatterjee, G.K. Singh, N.C. Tripathi, Pankaj Tyagi, Rishikesh Tripathi, S.K.Singh, Shakeel Ahmad Azmi, Smt. Archana Tyagi, Smt. Nayan Shri, Sudhanshu Srivastava, Yogesh Srivastava |
| Counsel for Respondent(s) | : Govt. Advocate |

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Jai Krishna Upadhyay, J.)

1. Heard Sri Chetan Chatterjee, learned counsel appointed by the High Court Legal Service Committee for arguing the appeal on behalf of appellant no.2, who has also been appointed as amicus curiae by this Court for arguing the appeal on behalf of appellant no. 3; Sri G. N. Kanojiya, learned A.G.A.-I appearing on behalf of the State and perused the trial Court record as well as the judgment and order passed by the trial Court.

2. This criminal appeal has been preferred by the appellants against the judgment and order of sentence dated 24.09.2005 passed by the Additional Sessions Judge, Saharanpur arising out of Case Crime No. 37 of 1992, registered as Sessions Trial No. 66 of 1995 (State Vs. Anoop Singh and others), whereby the learned Additional Sessions Judge had convicted appellant Anoop Singh under Section 364 and 302/34 I.P.C. and sentenced him under Section 364 I.P.C. to undergo 10 year rigorous imprisonment with fine of Rs. 10,000/- and to undergo life imprisonment with fine of Rs. 10,000/- under Section 302/34 I.P.C. In case of default in the payment of fine, he was sentenced to undergo additional sentence of

three months. Appellants, Ram Kumar, Vinod and Balak Ram have been convicted and sentenced to undergo life imprisonment with fine of Rs. 10,000/- under Sections 302/34 I.P.C. In case of default in payment of fine, they have been sentenced to undergo additional sentence of three months.

3. Two appellants, namely appellant no.1, Balak Ram and appellant no.4, Vinod, died during the pendency of this appeal and the appeal qua them stood abated vide orders dated 11.01.2023 and 08.01.2026 respectively passed by this Court. The only surviving appellants are appellant nos. 2 and 3, namely, Anoop Singh and Ram Kumar, respectively.

4. The prosecution story in nutshell is as under:-

On 07.02.1992 at 6:00 am, Anoop Singh and Ram Kumar kidnapped Chandrapal @ Chandraprakash from the house of Baldev Singh situated in Mohalla Mahagarh, Police Station Mandi, District Saharanpur, with the intention to kill him and on 08.02.1992 at 01:00 pm, they murdered Chandrapal @ Chandraprakash near the Ballabgarh railway station within the territory of police station Ballabgarh, District Faridabad. The informant in the instant case is Baldev Singh who is brother of the deceased. He lodged F.I.R. in the police station on 12.02.1992, after which case was registered and investigation was conducted. The dead body of the deceased Chandraprakash was recovered near Ballabgarh railway station.

5. During investigation of the present case, an inquest of the dead body was done, post-mortem was conducted and statements of the witnesses under Section 161 Cr.P.C. were recorded. The accused persons were arrested. The Investigating Officer submitted the charge-sheet against accused Anoop Singh, Ram Kumar, Vinod and Balak Ram and cognizance was taken. Thereafter, the matter was committed to the Court of Sessions. The charge was framed under Sections 364, 302/34 I.P.C. All the accused denied the charges and claimed trial.

6. During the course of the trial as many as 12 prosecution witnesses were examined. The incriminating circumstances appearing in the prosecution evidence were put to the appellants while recording their statements under Section 313 Cr.P.C. The appellants denied the incriminating circumstances and claimed that they had been falsely implicated in the present case.

7. By the impugned judgment, the learned trial judge convicted the appellants. Hence, this appeal.

8. Sri Chetan Chatterjee, learned counsel appearing on behalf of the appellants submitted that:-

(i) PW1 and PW2 were already aware about the fact that accused Anoop Singh and Ram Kumar had taken the deceased with them but missing report was only given on 12.02.1992 i.e. with delay of 5 days after the incident which took place on 07.02.1992.

(ii) The prosecution has failed to prove that the contents of parcha (Ex. Ka1) are in the hand writing of accused Anoop Singh.

(iii) No one would murder someone for mere Rs. 7,500/- and there are contradictions in the statement of PW1 about the amount allegedly given by the deceased to accused Anoop Singh and Ram Kumar for getting job. Thus, the prosecution has failed to prove the motive of occurrence.

(iv) Medical evidence does not corroborate the prosecution version.

(v) The prosecution has failed to prove the evidence of last seen. Even if it were proved, conviction cannot be solely based upon it as it is a very weak piece of evidence.

(vi) There is no eye-witness to the case and this is a case of circumstantial evidence. The chain of circumstances is incomplete.

9. On the other hand, supporting the impugned Judgment Sri G. N. Kanojiya, learned A.G.A.-I for the State has submitted that:-

(i) The delay caused in reporting the missing report was explained by PW2. Baldev Singh.

(ii) PW4 Desh Raj has duly proved the Parcha written by accused Anoop Singh .

(iii) The Motive for the occurrence is the money which was given by deceased to accused for getting job, is proved by PW1 Jasmati.

(iv) Prosecution has proved the evidence of last seen which completes the chain of circumstances drawing an inference that accused has committed the offence.

10. Having considered the rival submissions advanced by learned counsel for the parties, it would be appropriate to first analyze the testimony of witnesses.

11. PW1 Smt. Jasmati is the wife of the deceased, who stated that she knew accused Anoop Singh and Ram Kumar. They came to her house and asked about her husband, who was not present at home at that time. They had given her a slip of paper and told her to send Chandraprakash to Rampur on the next day. Chandra Prakash (deceased) did not go to Rampur on the next day. She deposed that again in the next morning, Anoop and Ram Kumar came to her house and took her husband with them. She further deposed that her husband did not return home after that. A photograph from the file was shown to her and she recognized the photograph was of her husband. She further stated that prior to this incident, her husband had given Rs.7,500/- to accused Anoop Singh and Ram Kumar for getting job. She further stated that she left her husband with two accused persons Anoop Singh and Ram Kumar at home and went out for natural call. When she returned back, her husband and both the accused persons had left the house. People from her locality went to the police station 2 or 3 days later. She went to police station much later. She further deposed that if the Investigating Officer mentioned the amount only Rs.7,000/- instead of Rs. 7,500/- in her statement under Section 161 Cr.P.C. , which she cannot explain.

In her cross-examination, she stated that accused Anoop Singh and Ram Kumar were her relatives and they had taken Rs. 7,500/- from her husband to provide job to him. The amount of Rs. 7,500/- was taken by the accused, 2 to 3 months before the murder of her husband. There was no written agreement for making payment of the aforesaid amount.

12. PW2 Baldev Singh is the brother of deceased, who had identified the clothes of Chandraprakash at Ballabgarh establishing that recovered body was that of the deceased Chandraprakash. He deposed that about 5 ½ years back, the accused Anoop Singh and Ram Kumar came to their house and gave a letter to the wife of his brother Chandraprakash (deceased) instructing her to send Chandraprakash to the Rampur bus stand. In the next morning again both the accused came to their house and took Chandraprakash with them. After that his brother never returned back. Chandraprakash (deceased) was the maternal uncle of accused Anoop Singh and Ram Kumar. Anoop Singh and Ram Kumar are the real brothers. He further stated that 2 or 3 days before on 12.02.1992, he alongwith his neighbourhood went to police Station Mandi but police

personnel concerned had refused to lodge the F.I.R. but later on the same day the report was lodged. He further deposed that a note (Parcha) written by accused was given to the police.

In his cross-examination, he stated that Daroga had never recorded his statement. If Daroga had already recorded his statement under Section 161 Cr.P.C., then he cannot explain the reason.

13. PW3 Krishna Lal is the neighbour of deceased who deposed that more than five years back at about 8:30 am in the morning Anoop Singh , Ram Kumar and Chandraprakash @ Chandrapal (deceased) met him in front of Rishipal's shop at Rampur bus stand. They said that they were going to Delhi to purchase sacks and gunny bags. He recognized hand writing and signature of accused Anoop Singh. Paper no. 5/2 was shown to him and on seeing it, he stated that text on it was written by accused Anoop Singh, present in Court.

In his cross-examination, he stated that Daroga Ji recorded his statement five months later. He stated to the police that he had seen the deceased Chandrapal with the accused persons at the Rampur Bus stand on 06.02.1992. He further stated that if Daroga Ji had recorded in his statement that he had seen the accused persons alongwith deceased on 07.02.1992, then he cannot explain the reason for this discrepancy.

14. PW4 Desh Raj stated that he knew the accused Anoop Singh and Ram Kumar. He owned a grocery store. About 5 ½ years back , at around 6:00 am in the morning, accused Anoop Singh and Ram Kumar came to his shop and asked him for a piece of paper and pencil. Anoop Singh had written something in front of him on the paper while sitting at his shop. He further deposed that Daroga had recorded his statement five months later.

15. PW5 M. S. Ahlawat is the doctor who had stated that on 10.02.1992 , he was posted as a Senior Medical Officer in civil hospital Chandigarh. On that day, he had conducted post-mortem examination of an unidentified dead body and found the following ante-mortem injuries :-

" The deceased was found to have extensive swelling over both eyes and forehead. Upon examining the skull, the cranial cavity was found to be filled with blood and there were fracture of the interior and middle cranial fossa which were also filled with clotted blood. All other organs were healthy. Cause of death is shock and hemorrhage due to injuries on

vital part which are ante-mortem in nature and sufficient to cause death. Possibility of injuries due to railway accident cannot be ruled out."

He has proved the post-mortem report which is exhibited as Ex. Ka2.

In his cross-examination, he stated that he had not mentioned time of post-mortem in post-mortem report. He further stated that police informed him that deceased was under influence of some intoxicating substance due to which he fell down from a moving train and died. The deceased's death could have occurred at any time on 09.02.1992. The injuries found on the body of the deceased could have been caused by falling from a moving train.

16. PW6 B. P. Singh (Deputy S.P.) who had stated that on 19.09.1992, he was posted as an Inspector In-charge at Police Station Mandi. On that day, he commenced investigation in the instant matter. He recorded statements of witnesses under Section 161 Cr.P.C. on the same day. On the same day, PW1 Jasmati had given him a note written by accused Anoop Singh which is Ex. Ka1. He prepared memo Ex. Ka3. On 20.02.1992, he arrested the accused Anoop Singh at about 05.20 pm from the Delhi Bus stand and on 23.02.1992 at around 5.50 am, he arrested accused Balak Ram and Vinod Kumar from Behat Bus stand and interrogated them. The investigation of the present case remained with him till 24.03.1992.

17. PW7 Satyabir is a cobbler who knew the deceased. He stated that around 6 ½ years back at 6:00 pm, he saw the deceased and accused persons at the Delhi railway station when he arrived at the Delhi railway station to travel to Saharanpur. They were accompanied by accused Anoop Singh, Ram Kumar, Balak Ram and Vinod. Thereafter, they met him and had tea together. He further stated that they told him to go to Ballabhgarh to purchase gunny bags .

18. PW8 S. P. Singh (Inspector Incharge) has stated that on 08.07.1992, he took over the investigation and took action to arrest accused Ram Kumar. A report under Sections 82 and 83 Cr.P.C. had been forwarded by him to the C.J.M. concerned.

19. PW9 Babu Lal, the Assistant Sub-Inspector of Police Station City Ballabhgarh, District Faridabad had stated that on 09.02.1992 at around 12:00 Noon, he was standing alongwith his police party in front of Alson Cotton Mill when Richhpal S/o Chhuttan Jat informed him verbally that a

dead body of young man was lying in the field of wheat near the railway line. Upon reaching the spot, he saw that the dead body was approximately four steps away from the boundary of the railway line. He conducted the inquest and sent the dead body for conducting post-mortem. He has proved the inquest report exhibited as Ex. Ka4.

20. PW10 Constable Rishipal Singh, Police Station Behat, District Saharanpur, stated that he was posted as constable in Police Station Mandi. On 12.02.1992 Baldev Singh had given a written report at the police station regarding disappearance of his brother Chandraprakash at 10.30 am which he mentioned in General Diary as Rapat No. 23. The original General Diary had been destroyed and its photocopy which is in his hand writing is on the file, which is exhibited as Ex. Ka10.

The investigation of the case was handed over to S.P. Singh on 19.01.1992 when he returned from Faridabad and the case was converted from missing report to Case Crime No. 37 of 1992, under Sections 364, 302/201 I.P.C.

21. PW11 Ram Babu who was the third Investigating Officer of the case had stated that he has submitted the charge sheet.

22. PW12 Harpal Singh is the Sub Inspector/Reader of the D.I.G., Nainital, Uttaranchal who had assisted PW11 Ram Babu during investigation and has prepared the site plan Ex.Ka15

23. Before we proceed further, considering that we are dealing with a case which is to be decided on the basis of circumstantial evidence, it would be useful to notice the legal principles to be borne in mind when a criminal trial is to be decided on the basis of circumstantial evidence. Where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of circumstances so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused (**vide Hanumat Govind Nargundkar & Anr. V. State of Madhya Pradesh,**

AIR 1952 SC 343; Sharad Birdhichand Sarda V. State of Maharashtra, (1984) 4 SCC 116). In **Vijay Shankar V. State of Haryana, (2015) 12 SCC 644**, the Supreme Court following its earlier decisions in **Sharad Birdhichand Sarda (supra)** and **Bablu V. State of Rajasthan, (2006) 13 SCC 116**, in respect of a case based on circumstantial evidence, held that "the normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of hypothesis other than that of the guilt of the accused and inconsistent with their innocence". Further, (vide paragraph 153 of the celebrated judgment in **Sharad Birdhichand Sarda's case**) the circumstances from which the conclusion of guilt is to be drawn should be fully established meaning thereby they 'must or should' and not 'may be' established. In addition to above, we must bear in mind that the most fundamental principle of criminal jurisprudence is that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions (vide **Shivaji Sahabrao Bobade & Another v. State of Maharashtra, (1973) 2 SCC 793**). These settled legal principles have again been reiterated in a three-judge Bench decision of the Supreme Court in **Devi Lal v. State of Rajasthan, (2019) 19 SCC 447** wherein, in paragraphs 18 and 19 of the judgment, it was held as follows:-

"18. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal

charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same."

24. Having noticed the prosecution evidence and the legal principles governing decision of a criminal trial on circumstantial evidence, we notice that in the instant case, the prosecution seeks to bring home the guilt of the accused appellant by proving following circumstances;-

(i) On 06.02.1992 at around 6:00 am in the morning accused Anoop Singh and Ram Kumar had gone to shop of PW4 Desh Raj and asked him for a piece of paper and pencil. Accused Anoop Singh had written something on the paper, (ii) they had given a slip to PW1 Smt. Jasmati on 06.02.1992 and told her to send Chandraprakash (deceased) to Rampur and again in the next morning they had gone to her house and took her husband with them, (iii) on 07.02.1992 at around 8.30 am in the morning, accused Anoop Singh, Ram Kumar and Chandraprakash (deceased) met PW3 Krishna Lal at Rampur Bus Stand, (iv) on 07.02.1992 at about 6:00 pm, deceased and all the accused persons were seen by PW7 Satyabir at Delhi Railway Station, (v) on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabhgarh, District Faridabad. (vi) cause of death of deceased was ante-mortem injuries and (vii) motive of occurrence is Rs. 7,500/- which was given by the deceased to accused persons Anoop Singh and Ram Kumar for providing him job.

25. Now, we shall examine as to whether the prosecution has been able to successfully prove all the circumstances narrated above.

(i) The prosecution relies on slip allegedly written by the accused, which, as per the record, was written with a pen and not with a pencil. There is no reliable proof as to the hand writing, therefore, this circumstance remains doubtful and cannot be treated as strong link against the accused,

(ii) The deceased left his house with accused-appellants is not disputed but this was voluntary act. The wife of accused did not make any complaint to the police before 12.02.1992 alleging suspicion or threat. Mere departure together, without any objection cannot be treated as an incriminating circumstance, (iii) Being present at public place, where many people come and go, does not create any suspicion. There is no record of any quarrel, threat or unusual conduct at that place, (iv) the last seen theory is weak evidence in this case. The deceased was last seen around 6:00 pm on 7.02.1992 with the accused person but the body was found on 9.02.1992 around noon. The long gap of several hours makes the last seen evidence unreliable as possibility of involvement of some other person can not be ruled out, (v) dead body was found near railway line but this does not show any direct link between accused-appellants and place of recovery, (vi) the alleged motive of taking Rs. 7,500 for providing employment is doubtful as they both were labourers. Further, the wife of deceased in her statement under Section 161 Cr.P.C. stated the amount to be Rs. 7,000, which is contradictory to case of prosecution and (vii) PW5 Dr. M. S. Ahlawat who conducted the post-mortem examination stated that deceased's death could have occurred at any time on 09.02.1992 by falling down from the moving train, which could be accidental as it does not show any link to the accused persons.

Keeping in view the above-stated testimonies, the crucial question is-whether the evidence of last seen together is sufficient enough to convict the appellants in a case resting entirely on circumstantial evidence ?

26. Accused-appellants being last seen with deceased on 07.02.1992 at about 6:00 pm at Delhi Railway Station and on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabgarh, District Faridabad. The post-mortem of the dead body was conducted on 10.02.1992 and the doctor had opined that deceased's death could have been occurred at any time on 09.02.1992. Before we dwell on this issue we may observe that, ordinarily, the circumstance of the deceased being last seen alive with the accused may alone not be sufficient to record conviction (**vide Nizam V. State of Rajasthan, (2016) 1 SCC 550; Navneetkrishnan V. State, (2018) 16 SCC 161; and Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715**). But, it is an important link in the chain of circumstances that could point

towards the guilt of the accused with some certainty. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is long gap and possibility of other persons coming in between exists (**vide State of U.P. V. Satish, (2005) 3 SCC 114**). Similar view is taken in **Ramreddy Rajesh Khanna Reddy & Another V. State of A.P., (2006) 10 SCC 172**, where, following the decisions in **State of U.P. V. Satish (supra)** and **Bodhraj V. State of J & K, (2002) 8 SCC 45**, in paragraph 27 of the judgment, it was held that "the last seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. Even in such cases the courts should look for some corroboration."

27. In **Rambraksh v. State of Chhattisgarh (2016) 12 SCC 251**, Hon'ble Apex Court observed that the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

28. Further Hon'ble Apex Court in the case of **Krishnan alias Ramasamy v. State of Tamil Nadu (2014) 12 SCC 279** while relying on its judgment in **Arjun Marik v. State of Bihar 1994 Supp (2) SCC 372** observed as follows:

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows : (SCC p. 385, para 31)

"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 to 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."

29. In view of the facts and circumstances of the case and the law laid-down by Hon'ble Apex Court as mentioned above, we are of the opinion that since the deceased was last seen around 06:00 pm on 07.02.1992 with accused persons at the Delhi Railway Station and on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabhgarh, District Faridabad and PW5 Dr. M. S. Ahlawat has opined that death of deceased could have occurred on 09.02.1992. Therefore, last seen theory is legally unsustainable in this case as law requires a strict proximity of time and place between last sighting and the death. In this case there exists significant gap which is not narrow enough to exclude the possibility of third party interference. Hence, prosecution has failed to establish its case beyond the reasonable doubt. Accordingly, the benefit of doubt would have to be extended to the accused-appellants. Consequently, the appeal deserves to be allowed and it is, accordingly, allowed. The judgement passed by the trial Court is set aside. The appellants nos. 2 and 3 namely Anoop Singh and Ram Kumar, are acquitted of all the charges for which they have been tried.

30. The appellants are in jail. Their bail bonds are cancelled and sureties are discharged.

31. Criminal appeal qua appellant no.2, Anoop Singh and appellant no.3, Ram Kumar, is allowed.

32. Let a copy of the judgment and order alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

33. Sri Chetan Chatterjee, Advocate is entitled to his professional fee of Rs.15,000/- for appearing as Amicus Curiae to argue this appeal.

(Jai Krishna Upadhyay,J.) (Siddharth,J.)

February 6, 2026

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