



NON-REPORTABLE

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

CRIMINAL APPEAL NO. 64 OF 2011

DINESH KUMAR

... APPELLANT(S)

VERSUS

THE STATE OF HARYANA

... RESPONDENT(S)

J U D G M E N T

ARAVIND KUMAR. J.

A. THE APPEAL

- 1.** This Criminal Appeal arises from the common Judgment and Order dated 18th September, 2009 of the High Court of Punjab and Haryana in Criminal Appeal No. 62-DB of 2001,

whereunder the High Court has dismissed the Appellant's appeal and affirmed the judgment of conviction dated 15th September, 2000 and the order on sentence dated 18th September, 2000 passed by the Additional Sessions Judge, Sonapat in Sessions Case No. 134 of 1998.

- 2.** The Appellant, along with Manoj and Mukesh Kumar, was convicted for the offences punishable under Sections 302 read with 34 and 392 read with 34 of the Indian Penal Code, 1860 (hereinafter referred to as '**IPC**'). For the offence under Section 302/34 IPC, each accused was sentenced to imprisonment for life and a fine of Rs.10,000/- with a default sentence of three years' rigorous imprisonment. For the offence under Section 392/34 IPC, each was sentenced to seven years' rigorous imprisonment and a fine of Rs.5,000/- with a default sentence of two years' rigorous imprisonment. The substantive sentences were directed to run concurrently.
- 3.** During the pendency of the present appeal, the appellant placed on record an order dated 12th October, 2012 of the Principal Magistrate, Juvenile Justice Board, Sonapat declaring that he was a juvenile on the date of the offence and directing his release, he having already undergone detention well beyond the

maximum permissible period under the juvenile justice law. The record of that inquiry has since been called for by this Court. The appeal, therefore, requires determination both on the merits of the conviction and on the legal consequences of the appellant's juvenility.

B. PROSECUTION CASE

- 4.** Hari Om, the deceased, worked as a driver of Ambassador car No. DHE-3836 owned by Partap Singh (PW-18), and plied it as a taxi from Bhiwani. On the morning of 10th August, 1998 Hari Om and his brother Sumer Singh (PW-13) were at the taxi stand. At about 9.00 to 9.30 a.m., the appellant Dinesh Kumar, Manoj and Mukesh Kumar hired the taxi for Sonapat. PW-13 knew the three accused from before and saw Hari Om leave with them. Hari Om did not return. PW-13 made inquiries and, on 13th August, 1998 went with the car owner to village Thana Kalan, viz., the village of the accused. They were informed that the three accused were not seen in the village for several days. On 13th August, 1998 Shibban, who cultivated a sugarcane field near the Yamuna bandh in village Jaunpur, found a decomposed male body in the field and informed the police. Inquest

proceedings were conducted and the body was sent to PGIMS, Rohtak because it was in an advanced stage of decomposition. On 14th August, 1998 PW-13 and PW-18 reached the mortuary and identified the body as that of Hari Om. The face and parts of the body were mutilated, but the identification was made with reference to the clothes and the remaining physical features known to the witnesses. On the statement of PW-13, FIR No. 265 of 1998 was registered at Police Station Gannaur for offences under Sections 302, 392 and 34 IPC. On 15th August, 1998 acting on secret information, a police party at Taraori intercepted the three accused while they were allegedly attempting to dispose of the Ambassador car. The accused were apprehended with the car; its registration certificate and insurance papers were seized. A country-made pistol was also recovered from Mukesh in the separate case registered at Police Station Butana.

- 5.** During interrogation, separate disclosure statements were recorded. The portions of those confessional statements were not admissible. The prosecution, however, relied on the discoveries said to have followed them. Manoj led the police to a *danda*. The appellant and Mukesh led the police to a concealed tiffin carrier bearing an identifying engraving and to Hari Om's

driving licence in the sugarcane field. The prosecution examined nineteen witnesses and tendered the forensic report and the relevant seizure and disclosure memoranda.

- 6.** Dr P.K. Paliwal (PW-9), who conducted the post-mortem examination, found the body in a highly decomposed and partly scavenged condition, with maggots present and several soft tissues and structures missing. No bony injury was detected and the precise cause of death could not be ascertained. His estimate of the post-mortem interval ranged broadly from about five days to two weeks, while also acknowledging the difficulty of precision in the condition in which the body was received.

C. DECISIONS OF THE COURTS BELOW

- 7.** The Trial Court treated the case as one resting on circumstantial evidence. It framed five principal issues: identification of the body; the evidentiary value of the last-seen circumstance; the effect of the medical evidence; the recoveries pursuant to disclosure; and the alleged discrepancies in the prosecution evidence.
- 8.** The Trial Court accepted the identification by PW-13 and PW-18, holding that facial identification was not the sole permissible

mode where a close relative could identify the body from clothes and remaining physical features. It further held that the last-seen circumstance was materially reinforced by the recovery of the deceased's taxi from the three accused shortly thereafter and by their attempt to sell it. The Trial Court regarded the medical opinion as approximate because the body had lain exposed in a field, had been attacked by animals and insects, and was in an advanced state of decomposition. It also accepted the recoveries of the danda, tiffin carrier and driving licence, observing that the articles were concealed within a large sugarcane field and were discovered at places specifically indicated by the accused. As such, the Trial Court concluded that the prosecution succeeded to prove the case against the Appellant beyond reasonable doubt.

- 9.** In Appeal, the High Court independently excluded the inadmissible confessional portions of the disclosure statements and relied only on the information distinctly connected with the discoveries under Section 27 of the Evidence Act, 1872. It held that the last-seen evidence of PW-13, the possession of the deceased's taxi by the three accused within a few days, their attempt to dispose of it, and the recovery of the deceased's driving licence and tiffin carrier formed a complete chain. As such, the appeals were accordingly dismissed.

D. GROUNDS URGED IN THE APPEAL

- 10.** We have heard Mrs. Prabhati Nayak, learned counsel appearing on behalf of the Appellant. The conviction is assailed principally on the ground that the dead body was beyond recognition; the medical officer could neither ascertain the cause of death nor find a bony injury; the post-mortem interval was said to be inconsistent with the prosecution timeline; PW-13 was a related and solitary witness on the last-seen circumstance; the recoveries were from an accessible field; and the prosecution failed to prove motive or an unbroken chain of circumstances.
- 11.** On the other hand, the State relies on the concurrent findings and emphasizes that PW-13 knew the accused, the deceased left with them in the taxi, all three were apprehended within five days in possession of the same taxi while attempting to dispose of it, and the appellant participated in the discovery of the deceased's driving licence and tiffin carrier. It is also material that the connected appeal of co-accused Manoj, arising out of the same common judgments and the same evidentiary record, was disposed of by this Court on 6th August, 2025 without interference with the conviction.

- 12.** The subsequent declaration of juvenility does not, by itself, erase a finding of guilt recorded on evidence. It principally affects the forum and nature of the permissible disposition and renders the adult sentence legally ineffective.

E. POINTS FOR DETERMINATION

- 13.** Having perused the material on record, we are of the considered view that the following questions arise: (i) whether the concurrent conviction under Sections 302/34 and 392/34 IPC calls for interference; (ii) whether the appellant was a juvenile on the date of the offence; and (iii) if so, what order should follow concerning the sentence and consequential disqualifications.

F. CONVICTION ON MERITS

- 14.** A conviction based entirely on circumstantial evidence can be sustained only when each circumstance relied upon is firmly proved; the proved circumstances form a complete chain; and the chain is consistent only with the guilt of the accused and inconsistent with a reasonable hypothesis of innocence. The five

principles stated in *Sharad Birdhichand Sarda v. State of Maharashtra*¹, continue to govern the inquiry.

- 15.** The circumstance of last seen cannot ordinarily, by itself, sustain a conviction for murder. In the present case, however, it does not stand alone. PW-13 was not a chance witness unfamiliar with the accused. He was the deceased's brother, was present at the taxi stand, knew the three accused and saw deceased Hari Om depart with them in the taxi on the morning of 10th August, 1998. The accused were thereafter found absent from their village and Hari Om was never seen alive again.
- 16.** The most significant corroborative circumstance is the recovery of the very taxi from the joint possession of the three accused at Taraori on 15th August, 1998 accompanied by its registration and insurance papers, when they were said to be attempting to dispose of it. This was not an innocuous or remote recovery. It occurred within five days of the hiring and shortly after the body was discovered. No explanation was offered by the accused in their statements recorded under Section 313 Cr.P.C. as to how the taxi came into their possession.

¹ (1984) 4 SCC 116

17. The absence of an explanation under Section 313 Cr.P.C. cannot fill a gap in the prosecution case or relieve the prosecution of its primary burden. Section 106 of the Evidence Act, 1872

“106. Burden of proving fact especially within knowledge.

— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

Once the foundational facts of last seen and recent, unexplained possession of the taxi belonging to deceased were independently proved, and the failure to furnish any plausible account became an additional link and not a substitute for proof.

18. The discoveries of the driving licence and the tiffin carrier of the deceased at the instance of the appellant and Mukesh provide further corroboration. The admissible circumstance is not the narrative of the crime contained in the police statement, but the fact that information supplied by persons in custody led to the discovery of articles connected specifically with Hari Om at the indicated place. The fact that the field was not owned by the

accused does not make the discovery valueless where the articles were concealed in a large standing crop and the precise location was demonstrably within their special knowledge. At the same time, we treat this circumstance as corroborative rather than as the sole foundation of guilt.

19. The challenge to the identification of the body must be evaluated in the context of the complete record. The decomposition prevented facial recognition, but PW-13 and PW-18 identified the clothes and such remaining features as were available. More importantly, the identity was objectively reinforced by the disappearance of Hari Om with the taxi, the recovery of that taxi from the accused, and the subsequent discovery of his driving licence. The dead body retrieved cannot be treated as wholly unconnected merely because decomposition had made ordinary visual identification difficult.

20. The medical evidence deserves careful treatment. The post-mortem doctor – PW 9 could not ascertain the precise cause of death and found no bone injury. That unquestionably limits the medical corroboration available to the prosecution. Yet it is not affirmative evidence that Hari Om died naturally, accidentally, or before he left Bhiwani. The body had lain exposed, partly

scavenged and in an advanced state of decomposition; relevant soft tissues and neck structures were missing. An estimate of the post-mortem interval in such circumstances is necessarily approximate. The marginal variation between the prosecution date and the broad medical estimate is insufficient to override the proved surrounding circumstances.

21. Pertinently, motive is not an indispensable element where the circumstantial chain is complete. In any event, the immediate appropriation and attempted sale of the taxi supplies a discernible pecuniary motive. The minor variations concerning the description of the vehicle used by the police, the exact position of the body, or the names conveyed second-hand to PW-18 do not affect the core circumstances proved by direct evidence.

22. We have also borne in mind that the appellant's case arises from the same occurrence, common trial and common High Court judgment as the appeal of Manoj. By order dated 6th August, 2025 this Court examined the connected record and found no ground to interfere with Manoj's conviction, modifying the consequence only because he had been found to be a juvenile. Consistency of judicial treatment is not a substitute for

independent scrutiny, but the appellant has shown no distinguishing feature in the common evidentiary chain that would justify a contrary merits conclusion.

23. The circumstances, taken cumulatively, therefore establish:

- (a) Hari Om's departure with the appellant and the two co-accused in the taxi;
- (b) his disappearance and the recovery of his body along the route within days;
- (c) the accused's recent and unexplained possession of the taxi belonging to deceased and its papers while attempting to dispose of it; and
- (d) the discovery of the deceased's personal articles at the instance of the appellant and Mukesh.

The chain excludes a reasonable hypothesis consistent with innocence. As such, we find no ground to disturb the conviction under Sections 302/34 and 392/34 IPC.

G. DETERMINATION OF JUVENILITY

24. Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 permits a claim of juvenility to be raised before any court at any stage, even after final disposal. Where the person is found to have been a juvenile on the date of the

offence, the court is required to forward the matter for an appropriate order under the Act and the sentence imposed by the regular criminal court is deemed to have no effect.

25. Section 20 specifically addresses proceedings pending before a regular court. It authorises the court to record or maintain a finding that the juvenile committed the offence, but prohibits an adult sentence and requires the matter to be dealt with under the juvenile justice framework. The Explanation, introduced by the 2006 amendment, makes the benefit applicable to pending trials, appeals, revisions and other criminal proceedings even where the person has crossed the age of eighteen. The saving provision in Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015 preserves the application of the earlier law to proceedings already pending.

26. The statutory position is settled by *Hari Ram v. State of Rajasthan*²; *Dharambir v. State (NCT of Delhi)*³; and *Jitendra Singh @ Babboo Singh v. State of U.P.*⁴, whereby this Court recognized that a person below eighteen on the date of an offence committed even before 1st April, 2001 receives the

² (2009) 13 SCC 211

³ (2010) 5 SCC 344

⁴ (2013) 11 SCC 193

benefit of the 2000 Act; This Court further held that a conviction on merits need not be annulled merely because the person was tried by a regular court; and however the adult sentence cannot survive.

27. The Principal Magistrate, Juvenile Justice Board, Sonapat conducted an inquiry and, by order dated 12th October, 2012 accepted the appellant's date of birth as 3rd February, 1981. The Board calculated his age as seventeen years, six months and eleven days by reference to 14th August, 1998, the date on which the FIR was registered. The occurrence, however, is consistently alleged to have taken place on 10th August, 1998. On that date, the appellant was seventeen years, six months and seven days old. The four-day difference in calculation is immaterial: since on either date he had not completed eighteen years.

28. The record further shows that the Juvenile Justice Board directed the appellant's immediate release after noting that he had already undergone custody for more than three years. The maximum period for which a juvenile could be sent to a special home under Section 15(1)(g) of the 2000 Act was three years. The order of juvenility has not been displaced, and this Court's order dated 9th October, 2025 records that the proceedings culminated in a

declaration that Dinesh Kumar was a juvenile on the date of the offence i.e., 10.08.1998.

- 29.** We accordingly accept the declaration of juvenility. The sentence of life imprisonment and the sentence of seven years' rigorous imprisonment, together with the fine and default stipulations imposed by the Trial Court, cannot operate against the appellant. Ordinarily, the matter would be forwarded to the Board for the appropriate disposition. That exercise has already been completed: the Board has passed an order, found that the appellant had undergone more than the statutory maximum and directed his release. A fresh remand would be empty formality and contrary to the rehabilitative object of the enactment.
- 30.** The connected case furnishes direct parity. In *Manoj v. State of Haryana*, Criminal Appeal No. 768 of 2011, decided on 6th August, 2025 this Court maintained the conviction arising from the same trial but held that the juvenile appellant, having already undergone more than the permissible maximum, need not surrender and discharged his bail bonds. The same consequence must follow here. Section 19 of the 2000 Act further provides that a juvenile dealt with under the Act shall not suffer any disqualification attached to a conviction under another law. The

appellant shall therefore receive the statutory protection against such disqualification, and the competent Board/authority shall take the consequential steps regarding the records in accordance with Section 19 and the applicable rules.

- 31.** As such, Interlocutory Application No. 27571 of 2024 is allowed and the Order dated 12th October, 2012 of the Juvenile Justice Board, Sonapat, together with the connected inquiry record, is taken on record. The finding that the appellant Dinesh Kumar was a juvenile on the date of the offence, 10th August, 1998 is accepted.
- 32.** The conviction of the appellant for the offences punishable under Sections 302 read with 34 and 392 read with 34 IPC is affirmed. The sentences imposed by the Additional Sessions Judge, Sonapat on 18 September 2000 and affirmed by the High Court on 18 September 2009, including the substantive imprisonment, fine and default stipulations, are set aside and shall be treated as having no effect against the appellant in view of Section 7A(2) read with Sections 15 and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. As the appellant has already undergone detention exceeding the maximum period permissible under the 2000 Act and has been

released pursuant to the order of the Juvenile Justice Board/
interim orders of this Court, he shall not be required to surrender.
His bail bonds, if subsisting, shall stand discharged.

33. The Appellant shall not suffer any disqualification attached to
the conviction, in terms of Section 19 of the 2000 Act. The
Juvenile Justice Board, Sonapat shall ensure compliance with
the consequential statutory requirements concerning the records.
In the above terms, the Appeal is partly allowed.

34. Pending applications, if any, stands consigned to record.

.....J.
[ARAVIND KUMAR]

.....J.
[VIPUL M. PANCHOLI]

**NEW DELHI;
AUGUST 12th, 2026.**