



2026:CGHC:3492-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 938 of 2020**

Jamuna Soni W/o Tejendra Soni Aged About 31 Years R/o Nehru
Nagar, Police Station Kotwali, District Raipur Chhattisgarh

--- Appellant**versus**

State of Chhattisgarh Through Station House Officer, Police Station
Telibandha, District Raipur Chhattisgarh

--- Respondent**CRA No. 560 of 2021**

Vinay @ Vikky S/o Late Roshan Valde Aged About 20 Years R/o Surya
Nagar, Gogaon, Police Station Gudiyari, District Raipur Chhattisgarh.

--- Appellant**Versus**

State of Chhattisgarh Through Police Station Telibandha, District Raipur
Chhattisgarh.

--- Respondent

(Cause-title taken from Case Information System)

For Appellant in CRA 938/2020	: Mr. C.R. Sahu, Advocate
For Appellant in CRA 560/2021	: Mr. Praveen Dhurandhar, Advocate
For Respondent/State	: Mr. S.S. Baghel, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**Judgment on Board****Per Ramesh Sinha, Chief Justice****21.01.2026**

1. Since both the above-captioned appeals arise out of a common factual matrix and common judgment, this Court is disposing of both these appeals by a common judgment.
2. Both these Criminal Appeals have been preferred under Section 374(2) of the CrPC against the impugned judgment of conviction and order of sentence dated 20.10.2020 passed by the Court of 8th Additional Sessions Judge, Raipur, District – Raipur (C.G.) in Sessions Trial No.06/2019, by which the appellants have been convicted and sentenced in the following manner with a direction to run all the sentences concurrently:-

CONVICTION	SENTENCE
U/s 120-B read with Section 302 of IPC	Life imprisonment and fine of Rs.100/- and in default of payment of fine amount, further RI for 1 month
U/s 302 read with Section 34 of IPC	Life imprisonment and fine of Rs.100/- and in default of payment of fine amount, further RI for 1 month

3. Case of the prosecution, in brief, is that on 29.09.2018, a mortuary inquiry was initiated upon receiving information about the body of an unidentified person lying in an empty space in front of Gaurav Garden. During the investigation, the deceased's family was questioned, and his younger brother, Suresh Kumar



Baghel, was located. He identified the deceased as his brother, Sushil Baghel. Based on the statements of the deceased's family and the injuries on the deceased's body, a case was registered under FIR No. 485/18, Section 302 of the Indian Penal Code (IPC), and an investigation was initiated. During the investigation, witness statements led to the arrest of the accused, Jamuna Soni. She confessed to conspiring with co-accused Vinay Walde and Akash Sahu to murder Sushil Baghel. Additionally, she admitted to destroying evidence by concealing the deceased's shoes and the knife used in the murder. Consequently, Sections 120B, 201/34 of the IPC, and Section 25 of the Arms Act were added to the case. Witness statements were recorded, seizure proceedings were carried out, and, after finding sufficient evidence, the accused were arrested. Since accused Akash Sahu was absconding, the investigation continued against him, and a charge sheet was presented in the jurisdictional Court against the remaining accused, wherein on determining that the offence under Section 302 of the IPC had been committed, the same was transmitted to the Court of Sessions, wherefrom the case was transferred to Court of 8th Additional Sessions Judge, Raipur for trial vide order dated 24.12.2018. Accused Akash was arrested on 22.07.2019, and after completing the necessary investigative proceedings, a supplementary challan was presented in the jurisdictional Court on 26.09.2019. The case was then sent to the Sessions Court under the surrender order dated 27.09.2019, and



the supplementary charge sheet was received by the Court of 8th Additional Sessions Judge, Raipur on 04.10.2019 for trial.

4. When charges were framed against the accused under Sections 120B, 302 read with 34, and 201 read with 34 of the IPC, and against accused Vinay (alias Vicky) and Akash Sahu under Section 25 (1-b)(b), the charges were read out and explained to them. They denied the charges and claimed trial. Their defense was that they were innocent and had been falsely implicated.
5. On behalf of the prosecution, the following witnesses have been examined: Sunil Baghel (A.S.-1), Anil Kumar (A.S.-2), Ramu Sahu (A.S.-3), Hitesh Kumar (A.S.-4), Patwari Dharmendra Verma (A.S.-5), Durga Nayak (A.S.-6), Suresh Kumar Baghel (A.S.-7), Naeem Khan (A.S.-8), Arvind Gupta (PW-9), Sanju Gupta (PW-10), Rajaram Sahu (PW-11), Tilak Bhaskar (PW-12), Deepak Baghel (PW-13), Sub-Inspector Laxman Khute (PW-14), R. Firatraam Lahare (PW-15), Dr. M. Nirala (PW-16), PR Bhagirathi Bhoi (PW-17), Nandkumar Chelak (PW-18), and Sub-Inspector Ramswaroop Dewangan (PW-19).
6. The prosecution has produced the following documents as evidence: Ex.P-1, Ex.P-2, and Ex.P-38 (memorandum statement); Ex.P-3, Ex.P-4, Ex.P-8, Ex.P-13, Ex.P-17, and Ex.P-39 (seizure memos); Ex.P-5, Ex.P-9, Ex.P-16 (police statements of witnesses Sunil Baghel, Ramu Sahu, and Suresh Kumar Baghel); Ex.P-6 (identification panchnama); Ex.P-7 (dead body delivery memo); Ex.P-10 (notice); Ex.P-11 (dead body



panchnama); Ex.P-12 (spot map); Ex.P-14 (application sent to Tehsildar for sightseeing map); Ex.P-15 (sightseeing map); Ex.P-18 (First Information Report); Ex.P-19, Ex.P-20, and Ex.P-40 (arrest memos); Ex.P-21, Ex.P-22, and Ex.P-45 (arrest notice); Ex.P-23 (report for curie); Ex.P-24 (memorandum sent to RTO regarding information about seized vehicle); Ex.P-25 (absconding panchnama); Ex.P-26 (FSL Format); Ex.P-27 (Exhibit Receipt); Ex.P-28 (FSL Report); Ex.P-29 (Duty Certificate); Ex.P-30 (postmortem report); Ex.P-31 and Ex.P-32 (curie report); Ex.P-33, Ex.P-37, Ex.P-43, and Ex.P-44 (copies of diary Sanha); Ex.P-34 (inquest intimation); Ex.P-35 (application for postmortem); Ex.P-36 (register of information on untimely and accidental death); Ex.P-41 and Ex.P-42 (notice).

7. Based on the statements of the prosecution witnesses, when the accused were examined under Section 313 Cr.P.C., they claimed that the evidence against them was false and intended to implicate them. They did not present any defense evidence and maintained their innocence. On behalf of the accused, the police statement of witness Durga Nayak has been marked as Ex.D.1, and the police statement of witness Naeem Khan has been marked as Ex.D.2.
8. The learned trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 20.10.2020, while acquitting co-accused Akash Sahu from the offences charged giving him benefit of doubt, convicted and sentenced the



appellants as mentioned in opening paragraph of this judgment, against which, these two criminal appeals have been preferred by the accused/appellants.

9. Learned counsel, appearing for both the appellants, submitted that the learned trial court failed to appreciate that the conviction of the appellants was not based on any evidence presented by the prosecution beyond a reasonable doubt. They further submitted that there are no eyewitnesses to the incident, and the witness Naeem Khan (P.W.-8), who was the witness to the "last seen together" theory, has clearly stated that, in his presence, the deceased fled from the scene, leaving the company of appellant Jamuna Soni. Therefore, the "last seen" theory is falsified. They further argued that the recovery of the knife is not a connecting piece of evidence, as it was found in an open area near the dead body of the deceased. Moreover, the FSL report does not show the presence of human blood or the blood of the deceased on the knife. As such, the conviction of both appellants is erroneous. Additionally, they contended that the trial court erred in ignoring the fact that the deceased's body was found in an open place that too after 03 days of the incident. They also argued that while the memorandum witnesses are relatives of the deceased, they have not supported the prosecution's case and have turned hostile. Therefore, the memorandum and seizure proceedings are also questionable. The prosecution has failed to establish a complete chain of circumstantial evidence. They lastly submitted that the



conviction of the appellants is based solely on the "last seen" theory, which is not immediately before the incident. They pointed out that both the Hon'ble Supreme Court and this Hon'ble Court have repeatedly held that in cases relying on circumstantial evidence, the conviction cannot be based solely on the "last seen" theory. As such, the conviction, without any substantial evidence, is unsustainable and liable to be set aside.

10. On the other hand, Mr. S.S. Baghel, learned Government Advocate, appearing for the State/respondent opposed the aforesaid submissions and would submit that the trial court rightly convicted the appellants based on strong circumstantial evidence. The appellants' argument that there is no evidence beyond reasonable doubt is incorrect. The "last seen together" theory, supported by the testimony of Naeem Khan (P.W.-8), establishes the appellants' involvement. The fact that the deceased fled from the scene does not falsify the theory, as the circumstances surrounding this event point to the appellants' guilt. The recovery of the knife, found near the crime scene, is a significant piece of evidence, despite the lack of blood traces. The delay in recovering the body and the hostile testimony of some witnesses do not weaken the prosecution's case, as the evidence as a whole remains strong. He further contends that the "last seen" theory, when combined with other circumstantial evidence, is sufficient for conviction, as affirmed by the Hon'ble Supreme Court and this Court in similar cases. The conviction is



based on a complete chain of circumstantial evidence, and the appeals should be dismissed.

11. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
12. Conviction of the accused-appellants is substantially based on the circumstantial evidence, recovery of one pair sports shoe of the deceased and one mobile phone at the instance of accused Jamuna Soni, recovery of knife with bloodstained on it at the instance of accused Vinay @ Vikky and last seen theory as stated by PW-8 Naeem Khan.
13. ***The first question for consideration would be, whether death of deceased Sushil Baghel was homicidal in nature ?***
14. Dr. M. Nirala (PW-16), who conducted postmortem over the dead body of deceased Sushil Baghel and given his report vide Ex.P-30, has given clear opinion on the nature of the deceased's death, stating that if the injuries were inflicted before death, the nature of death would be homicidal. Looking at the indications in the scene map Ex.P.12 and the site map Ex.P.15 prepared by the Patwari, there is no indication that the injuries inflicted on the deceased must not have been caused by sharp, pointed, or blunt object but by some other accidental cause. Considering the aforesaid aspect, the trial Court has come to conclusion that the death of deceased was homicidal in nature.
15. After hearing learned counsel for the parties and after considering



the submissions advanced by learned counsel for the parties, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Sushil Baghel was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.

16. ***The next question for consideration would be, whether recoveries of one pair sports shoe of the deceased and one mobile phone at the instance of accused Jamuna Soni and recovery of knife with bloodstained on it at the instance of accused Vinay @ Vikky pursuant to their memorandum statements are admissible and it can be used against them or not ?***
17. In the present case, there is no direct evidence / eyewitness available on record. The trial Court has convicted the appellants on the basis of their memorandum statements followed by recovery of one pair sports shoe of the deceased and one mobile phone at the instance of accused Jamuna Soni and recovery of knife with bloodstained on it at the instance of accused Vinay @ Vikky.
18. Memorandum statement of accused Jamuna Soni (Ex.P-1) and memorandum statement of accused Vinay @ Vicky (Ex.P-2) have been proved by the Investigating Officer Laxman Khunte (PW-14) and on that basis, the appellants have been convicted.
19. A careful perusal of memorandum statements of accused Jamuna



Soni (Ex.P-1) and accused Vinay @ Vicky (Ex.P-2) would show that they have been recorded by Investigating Officer Laxman Khunte (PW-14) in presence of two panch witnesses Sunil (PW-1) and Anil Kumar Sarthi (PW-2), who are brothers of the deceased, but they both have not supported the case of prosecution and they have been turned hostile.

20. ***Now the next question for consideration would be whether the trial Court is justified in convicting the appellants only on the basis of theory of 'last seen together' as stated by Naeem Khan (PW-8) finding it to be duly established ?***
21. Naeem Khan (PW-8) stated that he had last seen the accused, Jamuna, alive with the deceased at the scene of the incident. He stated that the accused Jamuna used to travel with the deceased and therefore recognized her. The incident was of one day after the Ganesh Utsav procession of the previous year, on that day he was standing at Chandni Chowk at around 9-10 pm to buy chicken. At that time, this accused, driving an Activa, reached there with Lala, *i.e.* the deceased, sitting behind her on the Activa and he talked to both of them about eating chicken. Lala asked him about drinking alcohol, then he said that he did not have money, then Lala said that he would get it. Then he followed the accused and Lala on his Pulsar motorcycle to Baron Bazar, from where, after taking the alcohol, they went towards the house of this accused via VIP Road. Then the accused said that there is no need to go home. Drink it here, then he and the deceased



drank alcohol on VIP Road itself. After that he was asked to leave and while he was starting his bike, two boys reached there, one of them was a thin boy standing at a distance and the other boy had tied an orange colour cloth on his face, who caught the collar of the accused and started asking why are you giving testimony in any case, at the same time Lala jumped over the road divider and started running away, then the other boy told to caught him. Both the boys ran after Lala and the accused also went to look for them from there. He also searched for Lala for some time and when he could not find him, he went to his home. The next day the accused informed him that Lala was dead. This witness, after seeing the accused Vinay alias Vicky during the evidence, said that the boy who had caught the collar of the accused had a cloth tied around his face and his height was equal to that of this accused.

22. The aforesaid statement of Naeem Khan (PW-8), regarding the last sighting of the deceased with the accused, Jamuna, cannot be fully relied upon as evidence of the "last seen" scenario. Although Naeem Khan claims to have seen the accused and the deceased together on the night of the incident, his account raises several inconsistencies. First, his observation of the event is based on a somewhat casual interaction, where he allegedly spoke to both the accused and the deceased while they were out buying chicken, and later followed them to Baron Bazar for alcohol. During this sequence, Naeem Khan himself admits that



he did not notice any immediate threat or suspicious behavior, and his account of the events appears disjointed when it comes to the critical moment when the alleged assailants, described as two boys, one with a cloth around his face, approached the accused. His description of the assailants, especially the one with a cloth tied around his face, who supposedly grabbed the collar of the accused, is vague and lacks clarity, making it difficult to determine the identity of the individuals involved. Furthermore, Naeem Khan's statement that he was unable to locate the deceased after the confrontation, combined with the fact that the next day the accused herself informed him of the deceased's death, raises doubts about the reliability of his account. Given these gaps and the lack of concrete evidence supporting his narrative, his testimony cannot be considered definitive in establishing the timeline of the deceased's last moments, thus weakening the "last seen" evidence.

23. The Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ has clearly laid down the factors to be taken into account in adjudication of cases of circumstantial evidence, which states as under :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused,

¹ (1984) 4 SCC 116



that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

24. In the matter of **Arjun Marik v. State of Bihar**², it has been held by their Lordships of the Supreme Court have held 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 to though 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

² 1994 Supp (2) SCC 372



the accused and, therefore, no conviction on that basis alone can be founded.”

25. 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 persons 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 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

3 (2007) 3 SCC 755



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. ”

26. Similarly in the matter of **Kanhaiya Lal v. State of Rajasthan**⁴, their Lordships of the Supreme Court have clearly held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who

4 (2014) 4 SCC 715



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 Rajasthan⁵.

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.”

27. Finally in the matter of **Anjan Kumar Sarma v. State of Assam**⁶ their Lordships of the Supreme Court have clearly held that in a

5 (2010) 15 SCC 588

6 (2017) 14 SCC 359



case where other links have been satisfactorily made out and circumstances point to guilt of accused, circumstance of last seen 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.

28. Reverting to the facts of the present case in light of the aforesaid decisions rendered by the Supreme Court particularly in the matter of **Anjan Kumar Sarma** (supra), it is quite established that the prosecution has only proved that death of deceased Sushil Baghel was homicidal in nature and no other connecting links have been satisfactorily made out and no other incriminating circumstance which leads to the hypothesis of guilt against the appellants have been proved. Further there is no evidence of any conspiracy has been proved by the prosecution for committing murder of the deceased. as such, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellant for offence under Sections 120-B read with Section 302 and Section 302 read with Section 34 of the IPC.
29. As a fallout and consequence of the aforesaid legal analysis, both the appeals are **allowed**. Impugned judgment of conviction and order of sentence dated 20.10.2020 passed by the Court of 8th Additional Sessions Judge, Raipur, District – Raipur (C.G.) in



Sessions Trial No.06/2019, convicting and sentencing the appellants for offence under Sections 120-B read with Section 302 and Section 302 read with Section 34 of the IPC is hereby set aside. The accused /appellants are acquitted of the said charge levelled against them.

30. The appellants are reported to be on bail. Keeping in view the provision of Section 437-A of Cr.P.C. (now Section 481 of Bhartiya Nagarik Suraksha Sanhita), the appellants are directed to forthwith furnish personal bond in terms of Form No.45 prescribed in the Cr.P.C. of sum of Rs.25,000/- each with one surety each in the like amount before the trial Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
31. The trial court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice