



2026:CGHC:4398-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 513 of 2017**

Ashok Toppo @ Babu, S/o. Edward Toppo, Aged About 25 Years, R/o. Village Godhanpur, Ambikapur, Police Station Gandhinagar, District- Surguja, Chhattisgarh.

--- Appellant**versus**

State Of Chhattisgarh, Through The Police Station Rajpur, District- Balrampur-Ramanujganj Chhattisgarh, Civil District Surguja- Ambikapur, Chhattisgarh.

--- Respondent

For Appellant : Mr. Ashok Kumar Shukla, Advocate

For Respondent : Mr. Amit Buxy, Dy. Govt. Advocate with Mr. Siddhant Tiwari, Panel Lawyer

&**CRA No. 898 of 2017**

Amit Bhagat @ Pintu, S/o. Sukhnath Bhagat, Aged About 26 Years, R/o. Village Parsagudi, Police Station Rajpur, District- Balrampur- Ramanujganj, Chhattisgarh.

---Appellant**Versus**



State Of Chhattisgarh, Through Station House Officer, Police Station- Rajpur, District Balrampur-Ramanujganj, Chhattisgarh, Civil District Sarguja, Ambikapur, Chhattisgarh.

--- Respondent

For Appellant : Mr. Siddharth Pandey, Advocate

For Respondent : Mr. Amit Buxy, Dy. Govt. Advocate with
Mr. Siddhant Tiwari, Panel Lawyer

(Division Bench)

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

(27.01.2026)

Sanjay K. Agrawal, J.

1. Amit Bhagat @ Pintu (A-1) has preferred Criminal Appeal No. 898/ 2017 and Ashok Toppo @ Babu (A-2) has preferred Criminal Appeal No.513/2017. Since common question of law and facts are involved in both the appeals and have been arisen from Sessions Trial No. R-21/2013, they have been clubbed together, heard together and are being disposed of by this common judgment.

2. Both the appeals filed under Section 374(2) of Cr.P.C. are directed against the impugned judgment dated 16.03.2017 passed by learned Additional Judge of Additional Sessions



Judge, Ramanujganj, District Surguja (Ambikapur) in Sessions Trial No. R-21/2013, by which, the appellants herein have been convicted and sentenced as under :

CONVICTION	SENTENCE
U/s. 302 read with Section 34 of IPC.	: Life imprisonment and fine of Rs. 1000/- in default of payment of fine, further rigorous imprisonment for 50 days.
U/s. 201 of IPC.	: Rigorous imprisonment for 3 years and fine of Rs.1000/-, in default of payment of fine, further rigorous imprisonment for 50 days.
Both the sentence to run concurrently.	

3. Case of the prosecution, in short, is that in between 07.08.2013 at 3:00 P.M. till 08.08.2013 at 5:00 A.M. at village Parsagudi, Police Station Rajpur, District Balrampur-Ramanujganj, both the appellants in furtherance of their common intention caused the death of Kishore Goswami @ Golcha (now deceased) and in order to screen themselves from the offence, they thrown the dead body into the septic



tank of the house of Sukhnath Bhagat (PW-5) and thereby committed the aforesaid offences. The matter was reported to the police, pursuant to which, Merg Intimation was registered vide Ex.P-13, FIR was registered vide Ex.P-12, Inquest was conducted vide Ex.P-16 and dead body of deceased Kishore Goswami was subjected to post-mortem, which was conducted by Dr. A.P.Gupta (PW-11), who proved the post-mortem report vide Ex.P-19, according to which, cause of death was stated to be syncope due to hemorrhagic shock, injury to neck and head and death was homicidal in nature. Pursuant to memorandum statement of the appellant (A-1), blood stained iron spade, motorcycle, nokia mobile phone of deceased were seized vide Ex.P-4 and from the memorandum statement of appellant (A-2), iron angle, jeans pant & wooden stick were seized vide Ex.P-17. After due investigation, the appellants were charge-sheeted for the aforesaid offences to the jurisdictional criminal court and the case was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which, the appellants abjured their guilt and entered into defence stating that they have not committed any offence and they have been falsely implicated.



4. In order to bring home the offences, prosecution examined as many as 16 witnesses and exhibited 26 documents and the accused/ appellants in support of their defence had neither examined any witness nor exhibited any document.
5. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellants herein for the aforesaid offences as mentioned in the opening paragraph of this judgment, against which the present appeal has been preferred.
6. Mr. Arun Kumar Shukla & Mr. Siddharth Pandey, learned counsel appearing for the appellants, would submit that the theory of last seen together has not been established and, even if, it is established, corroboration would be required and furthermore, the prosecution has failed to bring home the offence beyond reasonable doubt, therefore, the appellants are entitled for acquittal and the appeal deserves to be allowed. They would rely upon the decision of the Supreme Court rendered in the matter of **Padman Bibhar v. State of Odisha**¹.
7. Mr. Amit Buxy & Mr. Siddhant Tiwari, learned State counsels, would submit that the prosecution has been able to bring



home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellants herein, therefore, the 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 question for consideration as to whether the death of deceased Kishore Goswami was homicidal in nature has been answered by the trial Court in affirmative relying upon the post-mortem report (Ex.P-19) proved by Dr. A.P.Gupta (PW-11), according to which, cause of death was stated to be syncope due to hemorrhagic shock, injury to neck and head and nature of death was homicidal, which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly, we hereby affirm the said finding.
10. The case of the prosecution is based on theory of last seen together. Now, the question is whether the trial Court is justified in convicting the appellants relying upon the theory of last seen together to be duly established ?



11. At this stage, it would be appropriate to notice the decisions with regard to theory of last seen together rendered by the Supreme Court.
12. In the matter of Jaharlal Das v. State of Orissa², 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.
13. In the matter of Arjun Marik v. State of Bihar³, 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 to though a number of witnesses have been examined be the evidence of the appellants

2 (1991) 3 SCC 27

3 1994 Supp (2) SCC 372



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 Thakran⁴, 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 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

4 (2007) 3 SCC 755



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 Rajasthan⁵, 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

5 (2014) 4 SCC 715



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*.

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 Assam⁶, their Lordships of the Supreme Court have clearly held that

6 (2017) 14 SCC 359



in a 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.

17. In the matter of Navaneethakrishnan v. State by Inspector of Police⁷, 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

7 (2018) 16 SCC 161



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 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. In the matter of State of Goa v. Sanjay Thakran and another⁸, their Lordships of the Supreme Court found that there was considerable time gap of approximately 8½ hours when the deceased was last seen alive with the accused persons and their Lordships held that there being a considerable time gap between the persons seen together and the proximate time of crime, the circumstance of last seen together, even if proved, cannot clinchingly fasten the guilt on the accused.
19. In the instant case, the appellants and deceased were last seen alive on 07.08.2013 at 10:00 A.M. at Nawapara Chowk,

8 (2007) 3 SCC 755



Ambikapur and dead body of deceased was noticed on 08.08.2013 at 4:00 P.M. with a gap of more than 29 hours. As such, there is a considerable time gap between the last seen together and the time when dead body of deceased was recovered. Therefore, it cannot be held that it is only the appellants who are perpetrator of crime in absence of corroboration, as required in the matter of Navaneetha-krishnan (supra).

20. The next incriminating circumstance which has been found proved by the trial Court is that the dead body of deceased was recovered from the septic tank of newly constructed house of Sukhnath i.e. father of appellant (A-1). However, no such document has been produced by the prosecution to demonstrate that the newly constructed house was owned by Sukhnath (PW-5). Since the dead body of deceased was found in the house of Sukhnath (PW-5) which happens to be father of appellant (A-1) but that itself would not implicate the appellant (A-1) for the offence in question, unless the offence in question is established beyond reasonable doubt by the prosecution.
21. The last incriminating circumstance is that pursuant to memorandum statement of appellant (A-1) proved by



Prakash (PW-1) & Suraj Kumar (PW-9), iron spade has been recovered in which blood has been found, but the blood group has not been ascertained. As such, mere recovery of blood-stained weapon from the possession of the appellant (A-1), pursuant to his memorandum statement, conviction cannot be sustained in light of the decision of the Supreme Court in **Raja Naykar v. State of Chhattisgarh**⁹. Furthermore, though Nokia mobile phone of the deceased is said to have been recovered from the appellant (A-1), but it has not been established that the seized mobile phone having a particular IMEI number was owned/purchased by the deceased and, as such, it could not be proved that the seized mobile belongs to the deceased. Furthermore, from the appellant (A-2), one iron angle was seized, but it has not been supported by the seizure witness Dhaniram (PW-10) & Satish Kumar Dubey (PW-16). Even otherwise, it cannot be held that seized article was used in commission of offence in absence a close link between discovery of material object and its use in commission of offence in light of decision of the Supreme Court in the matter of **Mustkeem Alias Sirajudeen v. State of Rajasthan**¹⁰. As such, the prosecution has failed to bring home the offence beyond reasonable doubt,

⁹ 2024 SCC Online SC 67

¹⁰ (2011) 11 SCC 724



therefore, both the appellants are entitled for acquittal on the basis of benefit of doubt.

22. In view of the above, the impugned judgment of conviction and order of sentence dated 16.03.2017 is set aside. The appellants (A-1 & A-2) stand acquitted giving them benefit of doubt from the charges framed against them for the offence under Sections 302/34 & 201 of I.P.C. The appellants are already on bail, they need not surrender; however, their bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437-A of the Cr.P.C.
23. In the result, both the criminal appeals are allowed.
24. Let a certified copy of this judgment along-with the original record be transmitted to the concerned trial Court forthwith for necessary information & action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Kumar Verma)
Judge