



CRA-D-152-DB-2004 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

CRA-D-152-DB-2004 (O & M)

Reserved on: 26.03.2025

Date of Pronouncement:02.04.2025

Som Nath

... Appellant

V/s

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Aarav Gupta, Advocate as Amicus Curiae  
for the appellant.

Mr. Siddharth Attri, Addl.A.G., Punjab.

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**JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of conviction and order of sentence dated 10.09.2003 passed by the Additional Sessions Judge, Fast Tract Court, Ludhiana.

2. The instant FIR came to be registered on 31.05.1999. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 10.09.2003. The present appeal against the judgment of conviction and order of sentence was filed on 29.01.2004. The



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matter has come up for final hearing now after almost 26 years of the registration of the FIR.

3. The brief facts of the case as advanced by the prosecution are that on 31.05.1999, one Kewal son of Bishan Dass Resident of Gali No.4, Dashmesh Nagar, Ludhiana made a statement to the police that they were four brothers namely Thakar Dass, Ved Pal, Sohan Lal and the complainant himself. Sohan Lal was working as a Beldar in Irrigation Department, Sub Division, Nawan Shahar and was residing alongwith his family in Dashmesh Nagar, Nawan Shehar. He was living with his wife Mamta Rani and 3 children. Adjoining to their house, Som Nath alias Vishal son of Sarwan Ram resident of village Kidna, Police Station Garhshankar, District Hoshiarpur was also residing, who was working in a Scooter repair shop at Garhshankar. The said Som Nath developed illicit relations with Mamta Rani wife of Sohan Lal and in October, 1998 he kidnapped Mamta Rani alongwith three children. The said Som Nath started residing at Ludhiana alongwith Mamta Rani and children. When Sohan Lal came to know about it, he came to Ludhiana on 01.11.1998 to know the whereabouts of his wife and children. However, he did not come back to Nawan Shehar. Sohan Lal was being traced and various applications were given to the police officers and then the complainant came to know that his brother Sohan Lal had been taken away by Som Nath alias Vishal son of Sarwan Singh, Anil Kumar alias Sonu son of Darshan Kumar and Sonu Sharma son of Kishor Chand to a liquor Ahata and all of them took liquor there and thereafter, they took



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Sohan Lal to some unknown place for killing him. The complainant stated that Sohan Lal as well as accused persons were seen taking liquor in a Ahata by Tarlok Chand son of Ramesh Chand resident of Ludhiana who disclosed the said fact to him on the date of recording the FIR.

4. After recording the statement of Kewal Krishan, a formal FIR was registered Under Section 364/34 IPC. Thereafter investigations were conducted during which it was found that Sohan Lal had been thrown away on the Railway Line and he was injured by a Railway train. He was taken to Civil Hospital, Ludhiana by Constable Surjit Singh No. 810 on the night of 1/2-11-1998. His admission in the hospital was done at about 7.45 A.M. and he expired at 8.25 A.M. He was examined by Doctor Gurcharan Singh, Medical Officer, Civil Hospital, Ludhiana. He also intimated the police about the incident. The Post Mortem of Sohan Lal was got done in the civil Hospital, Ludhiana and the Post Mortem Report was obtained on the file. The accused were arrested and during the investigations the accused Som Nath made a disclosure statement Exh.P-D whereupon he got recovered one silver '*Karrah*' (Bangle) belonging to Sohan Lal from a concealed place which was taken into custody vide recovery memo Exh.P-E. The site plan was drawn, other documents were taken into possession, Inquest Report was prepared, statements of the witnesses Under Section 161 Cr.P.C. were recorded and after the completion of the investigation, the challan was presented in the court for the trial of the accused.



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5. On commitment, charges were framed against the accused under Section 302 IPC. The accused pleaded not guilty to the charge and claimed trial.

6. In support of its case, the prosecution examined Doctor Harjap Singh PW-1, Kewal Krishan PW-2, Constable Surjit Singh PW-3, ASI Sukhwinder Singh PW-4, HC Tarlok Chand PW-5, Thakar Dass PW-6, Kishan Chand PW-7, Dr. Gurcharan Singh PW8, Harminder Singh Draftsman PW-9, Kulwinder Singh PW-10, Constable Nirmal Singh PW-11, K.L. Sharma, Advocate PW-12, S.1. Hardeep Singh PW-13, Constable Parminder Singh PW-14 and DSP Hardev Singh PW-15. The prosecution also proved on record documents Exh.P-A to Exh.P-K, Exh. PW4/A, Exh.PW-4/B, Exh.PW-4/C, Exh.PW-4/D, Exh.PW-4/E, Exh.PW-7/A, Exh.PW-8/A, Exh. PW-8/B.

7. The gist of the prosecution evidence is as under:-

8. Dr. Harjap Singh, Medical Officer, Civil Hospital Ludhiana was examined as PW-1. He stated that on 03.11.1998, he conducted the post-mortem examination (Exh.PB) on the dead body of Sohan Lal son of Bishan Dass, resident of Nawan Shahar, aged 45 years. The dead body had been brought by ASI Hardeep Singh, GRP, Ludhiana and was not identified by anyone. The right leg was amputated at the knee. He noted the following injuries:-

1. *Contusion 4 in numbers present on the right side of face measuring from 3" x 1", 2 ½" x 1½", 2" x 1½", 1" x ½".*



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2. *Contusion with greece mark on the right side of upper chest, 3" x 2 ½".*
3. *Contusion with greece mark on the right lower lateral chest 5" x 3".*
4. *Contusion with greece mark on the right upper abdomen lateral extending anterior and posterior 7" x 3".*
5. *Contusion with greece mark right lower back of 5" x 4".*
6. *Contusion with greece mark right buttock extending anterior 7" x 3".*

The cause of death in his opinion was due to a railway accident causing multiple injuries, haemorrhage and shock, sufficient to cause death in the ordinary course of nature. The time between the injuries and death was 19 hours and the time between the death and post-mortem examination was about 13 hours.

Dr. Gurcharan Singh, Medical Officer, Incharge, Civil Hospital, Ludhiana was examined as PW-8. He stated that on 02.11.1998, patient-Sohan Lal was admitted with railway accident injuries at 7.45 a.m. and expired at 8.25 a.m. on the same day. He sent an intimation to the SHO, Police Station GRPS, Ludhiana through Police Station Division No.2, Ludhiana. The intimation was Exh.PW-8/A. He had given first-aid to the patient who had been brought by Constable Surjit Singh and Constable Narinder Singh of GRPS Ludhiana. The information regarding admission was Exh.PW-8/B. It was sent immediately to the Police Station GRPS, Ludhiana when the patient reached the hospital. In cross-examination, he stated that the name and particulars of the deceased were conveyed to him



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by the Constables who had brought him. The death occurred between 35 or 40 minutes of his arrival to the hospital. But without seeing the file, he was not in a position to say if the deceased was conscious when brought to the hospital. The patient had not narrated the circumstances under which he had received the injuries to him. The bed-head ticket of the deceased-Sohan Lal had been lost and was not traceable.

Kewal Krishan-complainant and brother of the deceased was examined as PW-2. He stated that they were four brothers. The eldest was Thakar Dass who was residing at Rahon, near Nawan Shahar. Sohan Lal (deceased) was his brother who was residing at Nawan Shahar while being employed in the Irrigation Department. He was married to Mamta Rani and had three children. Near their house, Som Nath was residing who was working as a Scooter mechanic. He developed illicit relations with Mamta Rani and would visit her frequently. In October, 1998, Som Nath left Nawan Shahar and came to Ludhiana alongwith Mamta Rani and three children. On 01.11.1998, Sohan Lal went to Ludhiana in order to take his children back from Som Nath but he never returned to Nawan Shahar. He and his family members tried to trace him but could not. He came to know from Tarlok Chand that he (Tarlok Chand) had seen Sohan Lal (deceased) taking liquor in a *dhaba* at Partap Chowk alongwith Som Nath and Sonu Sharma alias Anil Kumar. Then, he alongwith Tarlok Chand went to lodge the FIR at Division No.VI, Ludhiana. On the way, ASI Sukhwinder Singh met them and recorded his statement Exh.PC. Som Nath alias Vishal had made a



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disclosure statement on the basis of which a silver *karrah* came to be recovered. He came to know from Vijay Kumar that Sohan Lal had been taken by all the three accused alongwith the railway track and they placed the dead body on the railway track and he was murdered.

Constable Surjit Singh who was posted at GRPS, Ludhiana was examined as PW-3. He stated that during the night of 01/02.11.1998, he alongwith two volunteers of Punjab Home Guard were deputed for patrolling from Dhandari Kalan to Ludhiana side. At about 4.30 a.m., they found one clean-shaven male at the railway track with both the legs amputated lying on the down railway lines. He disclosed his name as Sohan Lal. They took him to Civil Hospital, Ludhiana for medical treatment. In his cross-examination, he stated that he did not know Sohan Lal previously. Whey they first saw him, he was unconscious and both of his legs had been amputated by the train. There was a blood at the site where Sohan Lal was lying. It was correct that that he did not know the name and particulars of the deceased when he was lifted from the track and taken to the Civil Hospital, Ludhiana. He did not get recorded the name of the deceased and his father's name in the record since he did not know the said details.

ASI Sukhwinder Singh was examined as PW-4. He stated that on 31.05.1999, he met the complainant-Kewal Krishan who made a statement Exh.PC before him. He endorsed the said statement Exh.PW-4/A which was sent to the Police Station for the registration of the case on the basis of which the FIR Exh.PW-4/D was recorded by Raj Kumar ASI.



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Thereafter, he went to the Tavern where the deceased had taken liquor. The place was pointed out by Tarlok Chand who was accompanying the complainant. He prepared a site plan (Exh. PW-4/B) and recorded the statement under Section 161 Cr.P.C. of Tarlok Chand (Exh.PW-4/C) and Jarnail Singh. The challan was submitted by Inspector Nirabjit Singh. In cross-examination, he stated that he had not recorded the statements of owner and servants of the Tavern nor had he joined them in investigation. He had also not mentioned the name of the Tavern.

Tarlok Chand was examined as PW-5. He stated that on 01.11.1998, he had gone to Partap Chowk at the liquor Tavern to drink liquor. There, Som Nath, Sohan Lal (brother of his wife's sister's husband) alongwith Sonu alias Anil Kumar were present whose names he had come to know later. He identified all of them in Court. They were all taking liquor. After some time, they left the Tavern while he continued to remain there. Sohan Lal was employed in the Irrigation Department, Nawan Shahar while Som Nath was a Scooter mechanic near the house of Sohan Lal. He had gone out of station for some business. When he came back and met Kewal Krishan, he was told that his brother-Sohan Lal had been missing and could not be traced on which he had informed Kewal Krishan that he had seen the deceased in the company of the accused. In cross-examination, he stated that his wife and the wife of Kewal Krishan (complainant) were real sisters. He had not told any one about seeing the deceased in the company of the accused between 01.11.1998 and 31.05.1999 as he had gone to Rishikesh on





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02.11.1998 and came back only on 29.05.1999. He, however, admitted that he had come to see his family 4/5 times during that period wherein he used to stay at his house and would leave on the next morning. He admitted that he had not spoken about the missing Sohan Lal to his wife and nor had she spoken to him. He had also not informed his wife that he had seen Sohan Lal with the accused. On the Court's question, he stated that it was Kewal Krishan who told the names of two other persons as Sonu alias Anil and Som Nath on 31.05.1999. He had not been made to join any identification parade.

Thakar Dass son of Bishan Dass was examined as PW-6. He stated that Sohan Lal (deceased) was his brother. The accused had developed illicit relations with the wife of his brother-Sohan Lal. Som Nath had started living with Mamta Rani wife of Sohan Lal at Ludhiana. On 01.11.1998, his brother-Sohan Lal had gone to Ludhiana in order to trace out his children and wife. As he could not be found, they searched for him but he could not be traced. Thereafter, he submitted applications to the higher authorities regarding the missing of his brother-Sohan Lal. He identified Som Nath in Court.

Kishan Chand was examined as PW-7. He stated that he knew Som Nath who was working as a Scooter mechanic at Garhshankar. On 01.10.1998, Som Nath demanded a sum of Rs.500/-. As a security, he gave him (this witness) one envelope containing two affidavits and he (this witness) gave a sum of Rs.500/- to Som Nath. Later, when he examined the



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affidavits, they pertained to the marriage of Som Nath. He had produced these affidavits before the police on 14.08.1999 which were taken into possession vide memo Exh.PW-7/A attested by him and some police officers. Som Nath's affidavit was Mark A-1 and that of Mamta Rani Mark-B1.

Harminder Singh Draftsman was examined as PW-9. He stated that he had prepared the site plan Exh.PF on the demarcation of PW-Kewal Krishan.

Kulwinder Singh Stamp Vendor, Nawan Shahar was examined as PW-10. He stated that he had sold stamp papers Exh.PG and PH. Exh.PG was sold to Som Nath and Exh.PH to Mamta Sharma. The entries in that regard had been made in his Register at Sr. No.3285 and 3286 dated 09.07.1998.

Constable Nirmal Singh was examined as PW-11. He brought the application dated 31.12.1998 filed by Thakar Dass, Work Mistri, Office of SDO, Water Works, Nawan Shahar addressed to SSP, Nawan Shahar. The application entered at Sr. No.793/Spl./R/SSP dated 31.12.1998. Exh. PJ was the correct photocopy of the same. The SSP had marked this application to SHO, Police Station Nawan Shahar.

Sh. Y.L. Sharma Notary Public was examined as PW-12. He stated that he had attested the affidavits Exhs.PG and PH of Som Nath and Mamta Sharma on the identification of Avtar Chand, Advocate, Nawan Shahar.



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SI Hardeep Singh posted at GRPS, Ludhiana was examined as PW-13. He stated that he had prepared the inquest report of the deceased Exh. PK and had got conducted the post-mortem examination after which the dead body was got cremated from the Municipal Corporation, Ludhiana. In cross-examination, he stated that the dead body could not be identified. In the inquest report, the cause of death was written due to railway accident as the dead body had injuries on his person. After conducting the proceedings in the hospital, he had visited the place from where the dead body was lifted by Constable Surijit Singh. Some blood stained stones were recovered at the spot. That place was at the distance of 03 kms. away from Railway Station, Ludhiana towards Dhandari Kalan and was 100 yards away from Sherpur overbridge. He admitted as correct that many accidental death had taken place on these tracks.

Constable Parminder Singh was examined as PW-14. He brought on record the original complaint of Kewal Krishan received in the residence of SSP, Ludhiana vide No.9940-1086-SSP dated 04.05.1999. It was marked to Incharge, CIA, Staff for enquiry. Exh.PL was the photostat copy of the same. As per the report of the Incharge, CIA Staff, Ludhiana dated 18.06.1999, no action on the application was recommended as the FIR in this connection had already been recorded.

Hardev Singh, the then CIA Inspector, Ludhiana was examined as PW-15. He stated that on 01.06.1999, he took up the investigation of the present case. Tarlok son of Ramesh Chand was joined in investigation. The



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three accused persons came to be arrested by him. On the disclosure statement of Som Nath, one silver *karrah* was recovered concealed in a box of a television concealed in the room which had been taken on rent by him. On the inner side of the said silver *karrah*, Sohan Lal son of Bishan Dass had been inscribed. He also prepared the rough site plan of the spot of the recovery.

9. After close of prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded in which they denied having committed any offence and asserted that the case was false.

10. Based on the evidence led, while acquitting two of the accused, namely, Sunil Kumar and Sonu Sharma, accused-appellant/Som Nath came to be convicted and sentenced by the Court of the Additional Sessions Judge, Fast Track Court, Ludhiana vide judgment of conviction and order of sentence dated 10.09.2003 as under:-

Offence U/S	Sentence RI	Fine	RI in default of payment of fine
302 IPC	Life Imprisonment	Rs.5,000/-	RI 02 years

11. The aforementioned judgment of conviction and order of sentence dated 10.09.2003 passed by the Additional Sessions Judge, Fast Track Court, Ludhiana is under challenge before this Court.

12. During the pendency of this appeal, the sentence of the accused-appellant, namely, Som Nath was suspended by this Court vide order dated 20.10.2008.



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13. The learned Amicus Curiae for the accused-appellant contends that the prosecution case is based primarily on the statement of PW-5/Tarlok Chand who had last seen the deceased in the company of the accused. As per his statement, he had seen the accused drinking with the deceased on the night of 01.11.1998 between 8.00 and 8.30 p.m. at a liquor Tavern. The body of the deceased was discovered in the early hours on 02.11.1998. However, this witness had informed the complainant about having seen the deceased in the company of the accused only on 31.05.1999 i.e. 07 months after the occurrence on which date the FIR came to be registered. This delay is fatal to the prosecution case, particularly, in the context of the fact that PW-5/Tarlok Chand's wife and PW-2/complainant-Kewal Krishan's wife were real sisters and the deceased-Sohan Lal was the real brother of the complainant-Kewal Krishan. The explanation furnished for the delay that he had gone away to Rishikesh on 02.11.1998 and came back only on 29.05.1999 cannot be believed. Even otherwise, when he came back during the intervening period, he had multiple opportunities to inform his wife and the family of the complainant about having seen the deceased in the company of the accused. This having not been done, the statement of this witness is to be taken with a pinch of salt.

Taking the last seen evidence to be correct, it is apparent that the deceased was found lying on the railway track in the early hours of 02.11.1998. He was admitted to the hospital at 7.45 a.m. and expired at 8.25 a.m.. However, as per the prosecution case, he was alive when the police



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party discovered him. It does not stand to reason that the accused would leave the deceased alive when the intention was to do away with him. Therefore, it is possible that the deceased accidentally fell on the track and was not pushed by anyone.

He contends that as per the prosecution case, the deceased had come to Ludhiana to take back his children who were living with their mother-Mamta Rani who was in a relationship with the accused. If this was so, then it does not stand to reason that the deceased who was inimical to the accused as he was in an illicit relationship with his wife-Mamta Rani would go drinking with him to a Tavern. This also creates a doubt in the prosecution case.

The motive for the murder is the alleged illicit relations between the accused-Som Nath on the one hand with Mamta Rani, the wife of Sohan Lal (deceased) on the other. However, he referred to affidavits dated 09.07.1998 to contend that once the accused and the wife of the deceased were residing together and the affidavits in that regard had been furnished, for the purposes of a Court marriage, there was absolutely no motive for the accused to have committed the offence in question.

As regards the recovery of *karrah* with the name of the deceased written on it, he contends that it does not stand to reason that the accused would have taken the *karrah* from the deceased at the time of the occurrence and retained it with himself. Even otherwise, it seems far-fetched that the *karrah* with the name of the deceased inscribed on it would



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be got manufactured by the accused. However, accepting this recovery to be believable, it is not enough to fasten guilt upon the accused.

He, therefore, prays that the impugned judgment be set aside and the accused be acquitted of the charges framed against him.

14. The learned counsel for the State, on the other hand, contends that PW-5/Tarlok Chand is the witness of having last seen the deceased in the company of the deceased. His evidence cannot be doubted. There was motive to have committed the offence inasmuch as the accused was having illicit relations with Mamta Rani wife of Sohan Lal (deceased). The recovery of *karrah* belonging to the deceased had been effected from the accused. He, thus, contends that as the offence stood established beyond reasonable doubt, the present appeal was liable to be dismissed.

15. We have heard the learned counsel for the parties.

16. The present case is based on circumstantial evidence and the Hon'ble Supreme Court in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622** held as under:-

*“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:-*

*(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji*



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*Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :-*

*"certainly, it is a primary principle 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."*

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

*153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. "*

(emphasis supplied)

17. In the recent judgment of **Karakattu Muhammed Basheer versus The State of Kerala 2024(10) SCC 813**, the Hon'ble Supreme Court in the context of circumstantial evidence has held as under:-

*11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date.*

*Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that*





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*they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.*

18. Coming back to the facts of the present case, the primary piece of evidence is the statement of Tarlok Chand/PW-5, a close relative of the complainant party who is purported to have 'last seen' the accused in the company of the deceased on the night of 01.11.1998. It is indeed strange that despite the fact that the real brother of his brother-in-law was missing, he made absolutely no attempt to inform his family members or the police up till 31.05.1999 that he had seen the deceased in the company of the accused. This conduct of this witness shows that he has been set-up as a prosecution witness and did not actually see the deceased in the company of the accused. It may otherwise be relevant to mention here that the two acquitted accused were not named by him but as per his own admission came to be named only on the statement of the complainant-Kewal Krishan/PW-2.

19. As per the prosecution case, Tarlok Chand/PW-5 had finished his work at 8.00/8.15 p.m., after which he had gone to Tavern. Therefore,



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apparently, he would have seen the accused in the company of the deceased sometimes after 8.00/8.30 p.m.. As per PW-3/Constable Surjit Singh, they had spotted the injured-Sohan Lal at about 4.30 a.m. on 02.11.1998. There is a considerable gap of 6 to 8 hours between the time when this witness purportedly saw the accused in the company of the deceased and the discovery of the deceased lying on the railway track. By no stretch of imagination can it be held that in 6 to 8 hours, there could have been no other intervening person who could have committed the offence, if at all.

It is also relevant to mention here that the accused persons were seen drinking with the deceased. However, there is no evidence to suggest that the deceased had consumed alcohol on the night of 01.11.1998.

20. As per PW-3/Constable Surjit Singh, when the injured was discovered at 4.30 a.m., he disclosed his name as Sohan Lal. In his cross-examination, however, he stated that he did not know the name and particulars of the deceased when he was lifted from the railway track and was taken to the Civil Hospital, Ludhiana. However, PW-8/Dr. Gurcharan Singh stated that the name and particulars of the deceased were conveyed to him by the Constables who had brought him. Therefore, there is a doubt as to how and in what circumstances was the deceased able to narrate his name, etc. to the police party, particularly, in the circumstances when both his legs had been amputated and he must have lost a considerable amount of blood. This also creates a doubt in the prosecution version.



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21. As regards the motive in the instant case on Som Nath committing the murder of the deceased on account of his relations with Mamta Rani wife of deceased, it would be relevant to note that Som Nath furnished affidavit Exh.PG dated 09.07.1998 and Mamta Sharma, calling herself the wife of Som Nath furnished her affidavit Exh.PH on the same date. As per the said affidavits, they had been residing together for three months. Once, the accused and Mamta Sharma were residing together for three months prior to July, 1998, there was little reason for the accused to have committed the murder of the deceased. It is not a case wherein there is any evidence of the deceased being a hindrance to the affair between his wife and the accused. Therefore, the motive has not been established beyond doubt. On the other hand, had there been such grave animosity between the accused and the deceased then there would have been little probability of the deceased and the accused sitting together and drinking at a Tavern where they were purportedly seen by Tarlok Chand/PW-5. Thus, there are certain inherent contradictions in the prosecution case.

22. As regards the recovery of the *karrah* of the deceased purportedly on the basis of the disclosure statement of the accused, it cannot be lost sight of that in order to shore up the prosecution case, such kind of planting of evidence is certainly possible on the part of the investigating agency. A perusal of the recovery memo of the silver *karrah* Exh.PE would show that the same has been witnessed by the complainant-Kewal Krishan/PW-2 alone alongwith police officials. Therefore, the said recovery



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by itself is not sufficient to establish the guilt of the accused once we have doubted the other pieces of circumstantial evidence available on the record.

23. In the case of '*Dinesh Kumar versus The State of Haryana 2023(3) RCR(Criminal) 1*', the Hon'ble Supreme Court has held as under:-

*14. As far as the recovery is concerned, the recovery is again weak. The so-called alleged place of crime and the recovery of tractor or the place where the tractor was abandoned had already been disclosed by the co-accused by the time the present appellant was arrested. Therefore, making a disclosure about the place of occurrence or the place where the tractor was abandoned is of no consequence. As far as the recovery of watch, currency notes of Rs. 250/-, hair and 'Parna' from the residence of the appellant are concerned, the currency notes and hair have not been identified with the deceased. In a criminal trial, the prosecution has to prove its case beyond reasonable doubt. This heavy burden has to be discharged by the prosecution. It becomes even more difficult in a case of circumstantial evidence. In the present case, the nature of circumstantial evidence is weak. In order to establish a charge of guilt on the accused, the chain of evidence must be completed and the chain must point out to one and only one conclusion, which is that it is only the accused who have committed the crime and none else. We are afraid the prosecution has not been able to discharge this burden.*

*The factors which have to be taken into consideration by the Court in a case of circumstantial evidence, are too well settled to be stated but nevertheless these factors which are being reproduced from Anjan Kumar Sarma (supra) are 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, 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;*



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*(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."*

*15. In our considered view, in the present case the prosecution has not been able to prove its case beyond reasonable doubt. The evidence of last seen, only leads upto a point and no further. It fails to link it further to make a complete chain. All we have here is the evidence of last seen, which as we have seen loses much of its weight under the circumstances of the case, due to the long duration of time between last seen and the possible time of death. What we can call as discovery here under Section 27 of the Act, is the discovery of 'Parna' and watch of the deceased. This evidence in itself is not sufficient to fix guilt on the appellant.*

*In a case where there is no direct eye witness to the crime, the prosecution has to build its case on the circumstantial evidence. It is a very heavy burden cast on the prosecution. The chain of circumstances collected by the prosecution must complete the chain, which should point to only one conclusion which is that it is the accused who had committed the crime, and none else. Each evidence which completes the chain of evidences must stand on firm grounds. In our considered opinion, the evidence placed by the prosecution in this case does not pass muster the standard required in a case of circumstantial evidence.*

24. The up-shot of the above discussion is that the prosecution has not been able to prove its case beyond reasonable doubt and the chain of circumstantial evidence is not so complete so as to leave no manner of doubt whatsoever that it is the accused alone who has committed the offence.

25. Therefore, the present appeal is allowed. The impugned judgment of conviction dated 10.03.2009 passed by the Additional Sessions



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Judge, Fast Track Court, Ludhiana is set aside and the accused-appellant/Som Nath is acquitted of the charges framed against him.

26. The pending applications, if any, stand disposed of accordingly.

**( GURVINDER SINGH GILL )  
JUDGE**

**( JASJIT SINGH BEDI )  
JUDGE**

**02.04.2025**  
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

