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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

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Reserved on: 14.07.2025

Date of Pronouncement:17.07.2025

Gopal

. ... Appellant

V/s

The State of Haryana

...Respondent

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

Present: Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kashish Sahni, Advocate, and
Mr. Arnav Ghai, Advocate, for the appellant.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 10/16.02.2004 passed by the Additional Sessions Judge, Panipat.

2. The instant FIR came to be registered on 02.09.1997. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 10/16.02.2004. The present appeal against the judgment of conviction and order of sentence was filed on 05.03.2004. The matter has come up for final hearing now after almost 28 years of the registration of the FIR.



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3. Brief facts of the prosecution case are that on 01.09.1997, on receipt of information about the admission of injured Tara Chand in C.H.C. Samalkha, SI/SHO Yad Ram alongwith other police officials reached there and on an enquiry, the doctor informed that the injured had been referred to General Hospital, Panipat and there also the doctor informed him that the injured had been referred to PGI Rohtak. On 02.09.1997 SI/SHO Yad Ram went to P.G.I. Rohtak and recorded statement of the injured to the effect that he was a resident of village Shahaimalpur, an agriculturist and a retired military personal. The previous day, after withdrawing Rs.6000/- from State Bank of Patiala, Samalkha, he was going to his house at Shahaimalpur on a cycle and at about 3.45 p.m. when he reached 2-2/1/2 killa ahead of Garhi Chhaju turn, then two young boys came from Samalkha on a Bajaj Motor cycle laid their motor cycle in front of his cycle upon which he stopped his bi-cycle and came down. Both the boys started snatching his *thaila* in which he had kept Rs.6000/- wrapped in a handkerchief alongwith some vegetables. When he refused to give the same, then one of them, fired at him with a country-made pistol which hit his left side of the belly and when he tried to catch hold one of them, then they fired in the air on account of which he got afraid. Then both of them fled from the spot alongwith the *thaila* towards the fields after leaving the motor-cycle at that spot. He raised a *raula* but none came to help him. After about ten minutes a three-wheeler came from the side of Garhi Chhaju whose driver shifted him to Govt.

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Hospital Samalkha and got him admitted there. After some time he was referred to Govt. Hospital, Panipat by the doctor and from there to PGI Rohtak. Both the boys were of medium height of the age of about 25 to 30 yrs., clean-shaven, and he could identify them if they came in front of him that action be taken against them and that his bi-cycle and the motor-cycle were lying at the spot. The SI made his endorsement Ex.PN/2 on the said statement and sent the same to Police Station, Samalkha, on the basis of which a formal FIR Ex.PN/3, under Section 394 IPC was registered. Then, he alongwith the other Police officials reached the spot, prepared rough site plan, Ex. PQ, took into possession one motor cycle Kawasaki Bajaj make without registration number and one bi-cycle vide memo Ex.PE. He also recorded statements of witnesses. On 03.09.1997, on receipt of V.T. message, about the death of Tara Chand. Ajmer Singh ASI, reached PGI Rohtak and conducted inquest proceedings Ex.PH, on the dead body and got conducted the post-mortem by moving application Ex.PG, from Dr.S.S.Dahiya, M.O. on 03.09.1997. Vide PMR Ex.PF, he opined that the cause of death was haemorrhage and shock due to ante-mortem multiple injuries (gun shot i.e. fire arm injury) which were sufficient to cause the death in the ordinary course of nature. Thereafter, the offence U/s 302 IPC was added.

4. Thereafter, the investigation was taken up by Bhullan Singh SI/SHO, who on 24.12.1998, interrogated accused Sikender who was

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arrested in a case FIR No.462, under Sections 398/401 IPC. He disclosed about committing the present offence alongwith co-accused Gopal vide disclosure statement Ex.PBB and that Rs.2000/- came to his share whereas Rs.4000/- and copy of Bank passbook had been taken by accused Gopal. A pistol used in this case was also recovered from his possession for which a separate case was registered. Then the SI arrested accused Sikender in this case and he also made the *Nishandehi* of the place of occurrence vide memo Ex.PCC and recorded statements of witnesses. Thereafter, the investigation was taken up by SI Bali Singh on 09.03.1999 and on that day, on receipt of V.T. message from the Welfare Inspector of Panipat, on the basis of secret information received by him (Welfare Inspector), he reached Hathwala Bandh and on the signal of a secret informer, arrested accused Gopal and on interrogation he made disclosure statement Ex.PS. Then on 11.03.1999, accused Gopal was again interrogated and he made a disclosure statement Ex.PT about committing of the present offence alongwith accused Sikender and that he had kept concealed a pass-book belonging to the deceased Tara Chand in his house in a case and offered to get the same recovered. He had kept concealed the pistol alongwith live cartridge under a *Kikkar* tree near Yamuna Bandh and offered to get the same recovered. He also made the *Nishandehi* of the place of occurrence vide memo Ex.PU. Then, on the same day, he got recovered the pass book Ex.PK vide memo Ex.PV and pistol of .315 bore Ex.P.1 alongwith a live cartridge Ex.P.2 vide memo Ex.PX/1



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from the disclosed places. SI Bali Singh also prepared the rough site plans Ex.PDD and Ex.PEE of the places of recovery and had also prepared the rough sketch Ex.PX of the pistol. He recorded the statements of witnesses and then on completion of investigations, both the accused were booked for trial under the above said offences by the Station House Officer of Police Station Samalkha.

5. Both the accused persons were charge-sheeted under Sections 394 and 302 IPC to which they pleaded not guilty and claimed trial. Accused Gopal was also charge-sheeted U/S 25, 54 and 59 of the Arms Act, to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined Vijay Singh, Patwari, as PW-1 who prepared the scaled site plan Ex.PA of the place of occurrence; Gopi Chand Medical Record Clerk as PW-2 who produced the summoned record relating to C.R. No.4718 dt. 01.09.1997 of deceased Tara Chand, Dr. A.K.Sehgal, as PW-3 who had informed the police about the referring of Tara Chand-patient to Medical College Hospital, Rohtak vide report Ex.PB/1 on police application Ex.PB, Dr. A.L.Arora, PW-4 medically examined Tara Chand and proved the copy of the MLR as Ex.PC, Madan Lal Sethi, Reader to District Magistrate as PW-5 proved the Sanction Order Ex.PD, Ram Bhaj son of Parbhu Dayal as PW-6, Dr. S.S.Dahiya Medical Officer as PW-7 who conducted postmortem on the dead body of Tara Chand and proved copy of the PMR as Ex.PF, Constable

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Ranbir Singh PW-8 tendered his affidavit as Ex.PJ, Duli Chand son of Man Singh as PW-9 who proved the withdrawal entry of Rs.6000/- in the ledger book No.6 in the account of Tara Chand bearing No.512/6 and also proved the balance entry of Rs.629.58 *paisa* in the pass book, Yad Ram Inspector PW-10 proved the investigation done by him, ASI Dharambir as PW-11, Constable Rajbir Singh as PW-12 tendered his affidavit Ex.PY, Surinder Singh HC as PW-13 who proved his report Ex.PZ/1 on the application of police Ex.PZ about the pistol .315 bore Ex.P-1, being in working order so produced before him by ASI Bali Ram, Ranbir Singh ASI as PW-14, ASI Om Parkash as PW-15 who tendered his affidavit EX.PAA, Inspector Bhullan Singh as PW-16, who deposed about the investigations done by him, Ajmer Singh ASI as PW-17, who conducted the inquest proceedings on the dead body of Tara Chand and got the autopsy done on the dead body by moving application Ex.PG, Ram Kumar ASI as PW-18 who deposed about accused Sikender pointing out the place of occurrence vide memo Ex.PCC, SI Bali Singh as PW-19 deposed about the investigation done by him. Prosecution also tendered into evidence reports of FSL as Ex.PEE and Ex.PEE/1. PW Ram Niwas was given up as having been won over by the accused whereas PWs Daryao Singh, Paramjit Singh, UGC Jai Bhagwan, ASI Shamsheer Singh, HC Jai Bhagwan, ASI Mohinder Singh, Rattan Singh Constable, Dr. D. Singh and Dr. Rakesh, and Criminal Ahlmad of the Court of Sh. Vimal Sapra, JMIC, Panipat, were given up as unnecessary.



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7. Statements of both the accused persons under Section 313 Cr.P.C. were recorded wherein they denied the prosecution version and pleaded innocence and that they had been falsely implicated in this case and that no recovery was effected at their instance.

8. While disbelieving the deposition of PW-6/Ram Bhaj, the Court of Additional Sessions Judge, Panipat acquitted the co-accused-Sikender Singh son of Lakhi Ram and convicted the appellant-Gopal vide judgment of conviction and order of sentence dated 10/16.02.2004 as under:-

Offence under Section	Sentence	Fine	In default of payment of fine
394 IPC	RI for 10 years	Rs.5,000/-	RI 06 months
302 IPC	Life Imprisonment	Rs.5,000/-	RI 06 months
25, 54 and 59 of the Arms Act	RI 03 years	Rs.2,000/-	RI 03 months

All the sentences were ordered to run concurrently.

9. The aforementioned judgment of conviction and order of sentence dated 10/16.02.2004 passed by the Additional Sessions Judge, Panipat is under challenge before this Court.

10. During the pendency of this appeal, the sentence of the accused-appellant, namely, Gopal was suspended by this Court vide order dated 07.05.2004.

11. The learned Senior counsel for the accused-appellant contends that Ram Bhaj-PW/6 has rightly been disbelieved as he claims himself to be an eye-witness, though, the deceased, the real brother of this witness after

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being shot did not refer to his presence at the spot saying that some unknown person had taken him to the hospital. Be that as it may, the recovery of the passbook from this accused purportedly belonging to the deceased showing the entry of Rs.6,000/- does not further the case of the prosecution and appears to be a crude padding to shore up the prosecution case as the passbook is not of such value so as to be retained by an accused. Reliance is placed on '*Dinesh Kumar versus The State of Haryana 2023(3) RCR(Criminal) 1 and Chandrabhan Sudam Sanap versus The State of Maharashtra 2025 AIR Supreme Court 1103*'.

He further contends that the weapon of offence purportedly recovered from the accused and stated to have been used in the occurrence was never sent for forensic analysis. It was only the .325 bore pistol recovered from Sikender which was sent to the FSL, Madhuban and the cartridge in the weapon itself is said to have been fired from the same weapon. Therefore, the weapon recovered from Sikender cannot be connected to the offence and in any case, he already stands acquitted.

He, thus, contends that as Sikender/co-accused stands acquitted, the case of the appellant-Gopal being on a similar footing, he deserves the similar relief as well. Therefore, the impugned judgment is liable to be set aside.

12. The learned counsel for the State, on the other hand, contends that there is a recovery of the passbook from this accused showing an entry



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of Rs.6,000/- which had been snatched by the accused as per the prosecution case. He, thus, contends that there is sufficient evidence against the accused and therefore, there being no merit in the present appeal, the same deserves to be dismissed.

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

14. The present case is based on circumstantial evidence and in the context of circumstantial evidence, 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 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.



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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.

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)

In *Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273*, in the context of circumstantial evidence, the Hon’ble Supreme Court held as under:-

“46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the



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circumstances should exclude every possible hypothesis except the one to be proved.”

47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.”

(Emphasis supplied)

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



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chain of circumstances must be so complete that 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.

The Hon'ble Supreme Court in the case of **Anjlus Dunggulan** **Versus State of Jharkhand, 2006(4) RCR (Criminal)** has held that suspicion howsoever strong cannot take the place of proof. The relevant para is as under:-

“12. Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of bloodstained balwa and tangi upon the disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any



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case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.”

(Emphasis supplied)

15. Coming back to the facts of the present case, as regards the recovery of a passbook of the deceased from the accused-appellant, it may be pertinent to mention here that the occurrence took place on 01.09.1997 and the recovery was purportedly effected on 11.03.1999. It is quite unlikely that an accused who has made efforts to conceal himself would retain the passbook of the deceased for a period of one and a half year when it is of no financial value. It only goes to show that the recovery of the passbook has been planted upon him.

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



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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.

17. In '**Chandrabhan Sudam Sanap versus The State of Maharashtra 2025 AIR Supreme Court 1103**', the Hon'ble Supreme Court held as under:-

119. Learned counsel for the appellant submits that appellant's sister was in the same society and she has not been examined. That the disclosure statement lacked material details like the description of articles or the place where they were allegedly kept; that the theory that the appellant retain the ID card of her



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college for over 2 months was unnatural since according to prosecution he went as far as Nasik to get rid of the trolley bag. According to the learned counsel, PW-5 was an unreliable witness who had acted as a Panch witness before and knew PW-38. That none of the items were linked to the appellant, argues learned counsel.

120. We are not able to sustain the conviction based on this recovery for the same reason as we are not impressed by the mere purported recovery of the trolley bag from PW-24. The prosecution has not answered the infirmities pointed out by the learned counsel for the appellant. As to why the college identity card of the deceased EA would be preserved by the accused and kept in custody of the sister nearly two months after the incident, is something we find very intriguing.

121. All these facts cumulatively constrain us to conclude that there are gaping holes in the prosecution story leading to the irresistible conclusion that there is something more than what meets the eye in this case. While the old adage, witness may lie but not the circumstances, may be correct, however, the circumstances adduced, as held by this Court, should be fully established. There is a legal distinction between 'may be proved' and 'must be or should be proved' as held by this Court. The circumstances relied upon when stitched together do not lead to the sole hypothesis of the guilt of the accused and we do not find that the chain is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.

18. As regards the recovery of the weapon of offence i.e. .315 country-made pistol from the appelland, the said weapon was not sent for



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forensic analyses. It was only the weapon recovered from the acquitted accused Sikender which was sent to the FSL, Madhuban and as per the report Ex.PEE, the country-made cartridge Mark 2/1 found in the weapon marked W/1 was fired from the same weapon. The finding of the Trial Court that the weapon recovered matched the empty cartridge as per the FSL thereby alluding to the fact that it was the weapon of this accused and not of Sikender cannot be sustained.

19. The upshot of the aforementioned discussion is that the chain of circumstantial evidence is not so complete so as to conclusively point to the guilt of the accused excluding any other hypothesis. Therefore, we find considerable merit in the present appeal. The same is accepted. The impugned judgment of conviction and order of sentence dated 10/16.02.2004 passed by the Additional Sessions Judge, Panipat, is set aside and the accused-appellant, namely, Gopal, is acquitted of the charges framed against him.

20. The pending applications, if any, shall stand disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

17.07.2025

sukhpreet

Whether speaking/reasoned : Yes/No
 Whether reportable : Yes/No