2025 INSC 1184

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 715 OF 2018

NAZIM & ORS. …APPELLANT(S)

VERSUS

THE STATE OF UTTARAKHAND …RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present case has its genesis in the tragic and unnatural death of a young boy, Muntiyaz Ali, aged merely ten years. On the morning of 5th June 2007, he went to the family's mango orchard near Kishanpur to stand guard, but he did not return home. By late evening, his prolonged absence caused alarm and his father, Nanhe Khan (PW-1), organised a search with family members and co-villagers. Their efforts proved fruitless. At first light on 6th June 2007, PW-1 resumed the search and discovered Muntiyaz's lifeless body beneath a mulberry tree near a pit on

the family's land. A rope was found tightened around his neck, his hands tied behind his back with a rope, and an axe drenched in blood lying close by.

2. PW-1 immediately lodged a written complaint at Police Station Jaspur. In his complaint, he expressed suspicion against six co-villagers with whom he had a long-standing enmity, namely Wahid, Muslim, Arman, Jahangir, Zahid and Babu. Notably, two of the three present Appellants, namely Nazim and Aftab, were not named in the initial First Information Report (*hereinafter referred as* **"FIR"**). The police registered FIR No. 966 of 2007 under Section 302 of Indian Penal Code, 1860 (*hereinafter referred as* **"IPC"**) on 06.06.2007 at about 10 in the morning. Subsequently, during the investigation, Nazim and Aftab were also implicated, and a charge-sheet was filed against all the accused persons under Sections 302, 201, 377 and 120-B IPC.

3. The case was committed for trial before the Court of the Ld. Additional Sessions Judge, Kashipur, District Udham Singh Nagar (*hereinafter referred as* **"Trial Court"**) where it was registered as Sessions Trial Nos. 40 of 2008 and 40A of 2008. After a full-fledged trial, the Ld. Trial Court vide its judgment dated 05.04.2014, acquitted five of the accused, namely Wahid, Muslim, Jahangir, Zahid and Babu of all charges. The present Appellants namely, Nazim, Aftab and Arman Ali, were convicted

under Sections 302, 201 and 120-B IPC and acquitted under Section 377 of IPC. The Ld. Trial Court sentenced each of them to undergo life imprisonment under Section 302 of IPC, along with a fine of Rs. 5,000/- each and in default thereof, to further undergo rigorous imprisonment for one year. For the offence under Section 201 of IPC, they were sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.3,000/- each and in default thereof, to undergo rigorous imprisonment for a period of 6 months. Additionally, they were also convicted for the commission of an offence under Section 120(B) of IPC read with Section 302 of IPC and sentenced to life imprisonment and fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for one year. The Ld. Trial Court directed that all the sentences were to run concurrently.

4. The conviction rested largely on the testimony of three prosecution witnesses. PW-2, the scribe of the FIR, who claimed that on the night of 04.06.2007, he had overheard the accused persons conspiring to avenge an affront to their family's honour. PW-3, Om Prakash, was presented as a 'last seen' witness who claimed to have seen the deceased in the company of the Appellants Nazim and Aftab shortly before the incident. PW-4, Mohammed Rafi, was relied upon for corroborating these circumstances. The Ld. Trial Court placed reliance on these

testimonies and concluded that the Appellants, in furtherance of a conspiracy, had committed the murder of the young boy.

5. Aggrieved by the order, the Appellants preferred Criminal Appeal No. 122 of 2014, while the Complainant filed Criminal Appeal No. 129 of 2014, before the High Court of Uttarakhand at Nainital (*hereinafter referred as* **"High Court"**). By its judgment dated 15.11.2017, the High Court dismissed the appeals (*hereinafter referred as* **"Impugned Judgement"**). The High Court observed that the Trial Court had correctly analysed the evidence on record and found no infirmity in its findings. It affirmed that the testimonies of PW-2, PW-3 and PW-4 were credible and that the chain of circumstances was sufficient to bring home the guilt of the Appellants. The present appeal assails the said Impugned Judgment dated 15.11.2017.

IMPUGNED JUDGMENT

6. While upholding the conviction of the Appellants, the High Court appreciated the testimonies of the prosecution witnesses and acknowledged that the case is based on circumstantial evidence. After examining the testimonies of the prosecution witnesses, the High Court accepted the testimonies of PW-2, PW-3 and PW-4 as credible and summarised what it considered to be a complete chain of circumstantial evidence. It observed:

"18. What emerges from the statements of witnesses, as discussed hereinabove, is that PW-1 Nanhe Khan's son Muntiyaz Ali was missing on 05.06.2007. He had gone to look after the mango orchard. He did not come back till late night. The dead body was recovered on 06.06.2007. It was the case of strangulation. The axe was also seen by PW-1 Nanhe Khan near the dead body. It was soaked with blood. PW2 Tauhid Ali is the important witness. He has heard Appellants being told by Wahid, Jahid, Hussain, Jahangir, Muslim and Babu to take revenge from the family of Nanhe Khan, since his nephew has teased their sister. He has heard their conversation on 04.06.2007. Nanhe Khan's son went missing on 05.06.2007. He has also signed the recovery memo of rope as well as of axe. The Appellants - Nazim and Aftab were seen by PW3 Om Prakash Singh on 05.06.2007. PW4 Mohd. Rafi has seen Nazim, Arman and Aftab together in the evening of 05.06.2007. It is the case of the circumstantial evidence. In order to prove the case based on circumstantial evidence, it is necessary to complete the chain. All the circumstances must exclusively point towards the guilt of the accused. In the present case, the prosecution has completed the chain, as far as the Appellants are concerned. They were seen on the date of occurrence by PW3 Om Prakash Singh and PW4 Mohd. Rafi. The conversation was heard by PW2 Tauhid Ali, whereby the co-accused exhorted the Appellants to take revenge from the family of Shamshad, who was the relative of Nanhe Khan. The cause of death, as per the statement of PW8 Dr. T.K. Pant was strangulation and injury no. 1 could be caused with an axe. The rope was recovered at the instance of Arman Ali."

7. The High Court thereafter adverted to certain medical and investigative aspects, noting that:

> *"19. It has come in the statement of PW8 Dr. T.K. Pant that some blunt object was inserted in the anus of the deceased.*
>
> *20. Learned counsel for the Appellants-accused has argued that the axe was not sent for FSL examination. It is a case of defective investigation. However, there is overwhelming evidence that the cause of death of deceased was due to strangulation and injury from axe."*

8. On a careful perusal of the Impugned Judgment, it could be seen that the High Court has heavily relied upon the testimonies of the prosecution witnesses – PW-1 and PW-2. Therefore, with regards to the submission that upon overhearing the conspiracy, PW-2 should have informed PW-1, the High Court reasoned as under:

> *"21. Learned Senior Advocate for the Appellants in CRLA No. 122 of 2014 has argued that if PW2 Tauhid Ali has heard the conversation, he should have told it to Nanhe Khan. The fact of the matter is that he has overheard the conversation. The co-accused were exhorting the Appellants to take revenge from the family of Shamshad. Shamshad happens to be the relative of Nanhe Khan. It has come in the statement of PW2 Tauhid Ali that he did not take the issue very*

> *seriously, since there was enmity between the family of the accused and Nanhe Khan. He was under the impression that it was of loose talk. The statement of PW2 Tauhid Ali does inspire confidence. He has no animosity with the accused."*

9. The Court next dealt with the defence contention that the feast at which the conspiracy was allegedly hatched had occurred on 3rd June 2007 rather than 4th June 2007. It observed:

> *"23. DW1 Shafiq Ahmad has deposed that the feast was on 03.06.2007. He has admitted that all the accused were called in the feast by him. The statement of DW2 Shamim Ahmad does not inspire confidence, since he has not produced the original receipt and register. The fact of the matter is that the feast was thrown by DW1 Shafiq Ahmad on 04.06.2007. The accused namely Arman, Nazim and Aftab were recognised by PW3 Om Prakash and PW4 Mohd. Rafi. PW3 Om Prakash and PW4 Mohd. Rafi are also natural witnesses. Their statements inspire confidence."*

10. Finally, the High Court endorsed the findings of the Trial Court and dismissed the appeal in the following terms:

> *"24. Learned Trial Court has correctly appreciated the evidence, whereby the Appellants have been convicted and sentenced, as noticed hereinabove. There is no evidence against the other co-accused, who have rightly been acquitted by learned Trial Court. The prosecution has failed to*

prove that the unnatural offence has been committed by the Appellants and co-accused."

THE CHALLENGE

11. Taking exception to the Impugned Judgement, Ld. Counsel on behalf of the Appellants submitted that the High Court did not examine the grounds taken by the Appellants and has assailed the concurrent findings of the courts below on multiple grounds. It is submitted that the prosecution's case is founded solely on circumstantial evidence and has failed to establish an unbroken chain of circumstances pointing only towards the guilt of the Appellants. In his submission, several vital links necessary to establish their guilt are missing.

12. First and foremost, it is contentiously submitted that the Appellants, namely Nazim and Aftab, were not named in the FIR. PW-1, who lodged the report, suspected six other villagers with whom he had long-standing enmity, but did not mention the names of the present Appellants. Counsel contended that this omission in the earliest version of events raises serious doubt about subsequent attempts to implicate the present Appellants.

13. Ld. Counsel for the Appellants assailed the credibility of PW-2, Tauhid Ali, the scribe of the FIR, who later claimed to have overheard a conspiracy meeting on the night of 04.06.2007. Counsel submitted that his testimony cannot be relied upon for

several reasons. *First,* although PW-2 scribed the FIR at the dictation of PW-1, he did not mention any conspiracy in that document, nor did he inform PW-1 about such an incident when they met. Instead, PW-2 surfaced with this allegation for the first time before the Court during trial. *Secondly,* when questioned, PW-2 explained that he had treated the conversation as "loose talk" and therefore refrained from disclosing it earlier. Counsel submitted that such an explanation is implausible. PW-2 himself admitted that he did not treat the matter seriously because of the pre-existing enmity between the families. Thirdly, conspiracies are not ordinarily conducted loudly in social gatherings so as to be overheard by passers-by. The claim that the accused would openly plot murder during a feast, within earshot of others seems improbable. Fourthly, the defence highlighted that DW-1 Shafiq Ahmad, in whose house the alleged meeting occurred, categorically denied that any feast took place on 04.06.2007, stating instead that his son's marriage was solemnised on 03.06.2007.

14. The next limb of submission relates to the 'last seen' theory. PW-3, Om Prakash, claimed to have seen the deceased with the Appellants, namely Nazim and Aftab, on 05.06.2007. Learned counsel submitted that PW-3 admitted in cross-examination that he did not know the Appellants earlier. Despite this, no test identification parade (*hereinafter referred as* **"TIP"**)

was conducted. Counsel submitted that when a witness is a stranger to the accused, a TIP becomes essential to test the capacity of the witness to identify the accused. Identification for the first time in court, without the safeguard of a prior TIP, carries little probative value and cannot be treated as reliable evidence of identity. Counsel further pointed out that PW-3's wife, Mithilesh, and his son, Pintu, were allegedly present with him at the time of the sighting. Yet, the prosecution chose not to examine them, though they were the most natural witnesses to corroborate PW-3's account. Their non-examination, according to counsel, strikes at the root of the prosecution's case and creates a serious lacuna in the evidence.

15. Similarly, PW-4, Mohd. Rafi, claimed to have seen the Appellants together on the evening of 05.06.2007. However, his statement finds no mention in the FIR and, upon scrutiny, suffers from internal contradictions. Counsel submitted that this omission in the earliest version, coupled with inconsistencies in his deposition, undermines his credibility.

16. On these grounds, the Counsel contended that the High Court's assertion that PW-3 and PW-4 were "natural witnesses" and their statements "inspire confidence" ignores these deficiencies.

17. Ld. Counsel for the Appellants also challenged the evidentiary value of the rope and axe. He pointed out that the

recovery was at the instance of the co-accused Arman Ali. It was only during the pendency of the appeal before the High Court, and at its direction, that the rope, axe, and clothes were forwarded to the Forensic Science Laboratory for examination. The FSL categorically reported that no complete DNA profile could be generated from the exhibits and, therefore, no match with the Appellants could be established. Counsel stressed that this was the only scientific evidence available in the case and, far from supporting the prosecution, it failed to implicate the Appellants in any manner. He submitted that both the Trial Court and the High Court ignored this crucial finding, even though it directly undercut the prosecution's case. By treating the inconclusive DNA report as insignificant, the courts below overlooked the settled principle that when scientific evidence tilts in favour of the accused, it cannot be brushed aside. Counsel further underscored that the axe was not initially sent for forensic examination at all. This lapse, according to him, revealed a serious flaw in the investigation. He submitted that the failure to subject a key alleged weapon of offence to scientific analysis at the appropriate stage amounted to defective investigation and deprived the prosecution's case of the corroborative support it ought to have provided.

18. Counsel also referred to the testimony of PW-8, Dr. T.K. Pant, who conducted the postmortem. The doctor opined

that the cause of death was strangulation and that the injury could have been caused by an axe. However, he also noted that a blunt object had been inserted in the anus. The Appellants were acquitted of the unnatural offence, and counsel argued that the medical evidence does not, by itself, link the Appellants to the murder. He contended that the alleged motive, i.e. revenge for an insult to the sister of one of the co-accused is vague and unproven. In a case involving circumstantial evidence, the absence of motive weighs in favour of the accused.

19. It was further submitted that both the Appellants, Nazim and Aftab were juveniles on the date of the incident, as evidenced by their school records and the report of a medical board. The Juvenile Justice Board rejected this claim based on an electoral roll. Appellants submit that this contravenes Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (*hereinafter referred as* **"JJ Act"**).

20. Even apart from juvenility, Counsel submitted that the High Court failed to re-appreciate the evidence independently, as it merely echoed the Trial Court's reasoning and dismissed the appeal without addressing the serious deficiencies pointed out by the defence. He emphasized that the chain of circumstances is incomplete and that the Appellants are entitled to acquittal.

21. Opposing the appeal, Ld. Counsel for the State supported the concurrent findings of the courts below. He submitted that the

testimonies of PW-2, PW-3, and PW-4 are cogent, trustworthy, and mutually corroborative, and that together they establish a complete chain of circumstances pointing only to the Appellants' guilt. Counsel emphasised that the case rests on circumstantial evidence and submits that prosecution has successfully proved unbroken chain of circumstances pointing only towards the guilt of the Appellants. He pointed out that PW-2 overheard the co-accused exhorting the Appellants to take revenge, PW-3 saw the deceased in the company of Nazim and Aftab on the evening of 05.06.2007, and PW-4 also identified the Appellants later that evening. According to the State, these witnesses were natural witnesses, situated at the relevant time and place, and their testimonies inspire confidence.

22. Counsel for the State further highlighted that the rope and axe were recovered from the spot itself, and the post-mortem report established that the cause of death was strangulation and that one of the injuries could have been inflicted by an axe. He argued that these facts provide corroborative support to the ocular testimony.

23. Addressing the inconclusive DNA findings, Counsel submitted that failure to obtain a complete profile does not absolve the Appellants. He explained that forensic results often turn inconclusive due to the degradation of biological samples over time. Therefore, such reports cannot automatically

exonerate an accused when other evidence firmly establishes guilt.

24. On the issue of non-mention of the Appellants' names in the FIR, Counsel submitted that PW-1 initially suspected other villagers due to prior enmity. But subsequent investigation revealed the involvement of Nazim and Aftab. In his submission, the omission is not fatal when credible witnesses later identified the Appellants and linked them to the occurrence.

25. Lastly, Counsel contended that the plea of juvenility was rightly rejected by the Juvenile Justice Board and the High Court. He further submitted that the absence of motive is not decisive when the prosecution has otherwise succeeded in proving a consistent chain of circumstances sufficient to sustain a conviction.

DISCUSSION

26. Having heard learned counsel for both parties and perused the record, the principal issue for consideration is whether the prosecution has succeeded in establishing, beyond a reasonable doubt, a complete chain of circumstances leading only to the conclusion of guilt of the Appellants, or whether the circumstances leave room for reasonable doubt warranting acquittal.

27. The present case rests entirely on circumstantial evidence. Therefore, before entering the discussion about the case of the Appellant and the submissions of the respective counsel, it will be worthwhile to briefly state the principles relating to any conviction to be imposed based on circumstantial evidence, which this Court has repeatedly laid down in various decisions. It will be essential to extricate these principles in order to appreciate the approach made by the Trial Court, as well as the High Court while convicting the Appellant based on such circumstantial evidence.

28. It is trite that in such cases, the prosecution must establish a complete chain of circumstances consistent only with the guilt of the accused and inconsistent with any other hypothesis. This Court in its decision in ***Sharad Birdhichand Sarda v. State of Maharashtra,***[1] held that before a conviction can be sustained on circumstantial evidence, five conditions must be fulfilled: (i) the circumstances from which the conclusion of guilt is drawn should be fully established; (ii) the facts so established should be consistent only with the hypothesis of guilt; (iii) they should be of a conclusive nature; (iv) they should exclude every possible hypothesis except that of guilt; and (v) there must be a chain of evidence so complete that it leaves no reasonable ground for a conclusion consistent with innocence. These "five golden

[1] (1984) 4 SCC 116

principles" constitute the panchsheel of circumstantial evidence. This Court has repeatedly reiterated that if the circumstances proved are consistent either with innocence or guilt, the accused is entitled to the benefit of doubt, and that where two views are possible, the one favourable to the accused must be adopted.

29. Tested against these principles, in the present case, the evidence on record can in no fathomable circumstance complete the chain of circumstances pointing to the guilt of the accused persons. The prosecution case reveals substantial gaps. The first and most glaring circumstance is the omission of the names of Nazim and Aftab in the FIR. PW-1, the complainant and the father of the deceased, expressly named six persons with whom he admittedly had long-standing enmity, yet he did not attribute any role to the present Appellants, Nazim and Aftab. This Court in ***Ram Kumar Pandey v. State of Madhya Pradesh***[2], has emphasised that when important facts are omitted in the FIR, such omissions are relevant under Section 11 of the Indian Evidence Act, 1872, in judging the veracity of the prosecution case. The Court observed:

> *"9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it [....] but omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the*

[2] (1975) 3 SCC 815

Evidence Act in judging the veracity of the prosecution case."

30. In the present case, both PW-1 and PW-2 were admittedly familiar with Nazim and Aftab. Despite this, their names were not mentioned in the FIR, nor was any contemporaneous explanation offered for their absence. The High Court acknowledged the omission but brushed it aside as inconsequential. This approach is untenable. In a case based solely on circumstantial evidence, every circumstance must withstand rigorous scrutiny. The failure to name two of the three Appellants in the FIR, despite the complainant's familiarity with them, casts a serious shadow on the subsequent attempt to implicate them. It raises a legitimate inference that their names were introduced at a later stage, thereby suggesting the possibility of false implication. If PW-1 and PW-2 genuinely believed that Nazim and Aftab were responsible, there is no plausible reason for their omission in the FIR. This significant omission strikes at the root of the prosecution narrative, undermines its credibility, and constitutes a material fact that must weigh heavily in favour of the accused.

31. Now, coming to the first link in the chain of circumstances relied upon by the subordinate courts to convict the Appellants is the deposition of PW-2, Tauhid Ali. He deposed that on the night of 04.06.2007, while returning from his fields around 10:00 p.m.,

he passed in front of the house of Shafiq Ahmad, where a marriage reception was underway. According to him, he noticed several co-villagers, including Wahid, Jahid Hussain, Muslim, Babu, Arman Ali, Nazim and Aftab, sitting on charpai near the entrance. He claimed that Wahid, Jahid, Jahangir, Muslim and Babu exhorted Arman, Nazim and Aftab to avenge the alleged insult caused when Shamshad, nephew of the complainant, teased their sister. They allegedly told the Appellants that they should not tolerate such humiliation and that they would only be respected if they "finished" a male member of Shamshad's family. PW-2 further stated that the Appellants responded by declaring that within one or two days they would act accordingly. PW-2 admitted that he treated these remarks as mere "loose talk", gave them no weightage, and walked on without reporting the matter to anyone. Even when the boy went missing the next day, he maintained silence, and when the body was found on 06.06.2007, he still did not disclose this alleged conspiracy. Significantly, on that very morning, he scribed the FIR at the dictation of PW-1, yet he omitted this crucial fact. His explanation that he did not take the conversation seriously because of pre-existing enmity between Wahid Ali and Nanhe Khan's families, and therefore assumed it was "loose talk" is unconvincing. If indeed he had overheard an open and categorical threat to commit murder, it is inexplicable that he

suppressed it from the complainant, from the police, and even from the FIR that he himself scribed.

32. Furthermore, PW-2's testimony that he overheard such a grave conspiracy being discussed in a marriage feast, with several villagers and guests present, appears inherently improbable and lacks plausibility. Conspiracies to commit homicide are rarely, if ever, hatched so loudly and publicly as to be overheard by passers-by. The defence witnesses, DW-1 Shafiq Ahmad and DW-2 Shamim Ahmad, also testified that the marriage feast had taken place on 03.06.2007 for DW-1's son and not on 04.06.2007, thereby casting additional doubt on PW-2's timeline. Added to this is the fact that PW-2 not only remained with PW-1 during the search for the missing boy but also attested the seizure memos for the rope and axe on 06.06.2007, yet still kept silent about the alleged conspiracy. This belated revelation, for the first time during the trial, bears all the hallmarks of an afterthought.

33. The High Court brushed aside these serious contradictions and omissions on the ground that PW-2 bore no animosity against the Appellants and that his testimony "inspires confidence". Be that as it may, such an approach fails to recognise that in a case founded solely on circumstantial evidence, every link in the chain must be firmly established and wholly credible. The improbabilities in PW-2's testimony, coupled with his

unexplained silence at crucial stages, render this circumstance unreliable and incapable of forming part of the chain of proof.

34. The prosecution next relied on the testimonies of PW-3, Om Prakash and PW-4, Mohd. Rafi to establish the last-seen circumstance. The Trial Court and the High Court both accepted these witnesses as "natural witnesses" and treated their accounts as reliable. Upon closer scrutiny, however, serious infirmities emerge that make their evidence less reliable.

35. PW-3 deposed that on 05.06.2007, he, along with his wife Mithilesh and son Pintu, was harvesting sugarcane in the fields of Sardar Harjeet Singh. Around 9:00 a.m., a boy approached them and enquired whether they could sell him milk. PW-3 testified that upon asking, the boy disclosed that he was a resident of Rajpur. PW-3 directed him to Sardar Harjeet Singh for milk. According to PW-3, later in the forenoon, when they were returning from the fields around 11:00 a.m., he saw Nazim conversing with the deceased, under a mango tree on PW-1's land. He added that when he returned around 5:00 p.m. to the sugarcane fields, he noticed a charpai lying unattended under the same tree, but did not see any persons there.

36. In cross-examination, however, PW-3 made admissions that significantly weaken his testimony. He candidly admitted that he did not know either Nazim or Aftab previously. His identification of them in court was, therefore, the first occasion

on which he claimed to recognise them. He also admitted that the mango trees were situated 150–200 metres away from where he was working. The sugarcane crop he was harvesting was about three feet high, and while cutting, he and his family members were bending forward, facing the western side, whereas Nanhe Khan's orchard lay to the east. By his own admission, therefore, his line of sight was obstructed, and he could not see what lay ahead while engaged in harvesting.

37. Equally significant is the fact that although PW-3 claimed his wife and son were with him at the time of the alleged sighting, the prosecution did not examine them. Both would have been natural witnesses capable of corroborating or contradicting his account. Their non-examination is a glaring omission. PW-3 also admitted that he could not say what transpired between 11:00 a.m. and 5:00 p.m., nor could he explain the presence of the charpai he saw in the evening.

38. PW-4, Mohd. Rafi, a labourer by occupation, deposed that on the evening of 05.06.2007, he was returning from work with his friend, Noor Mohammed, after loading soil onto a trolley. They stopped at Kishanpur dhaba to have tea. PW-4 stated that as they were about to leave, he saw the Appellants Nazim and Aftab, along with co-accused Arman, walking together from the northern side of the chak road. According to him, on seeing PW-4 and his companion, the three appeared shocked and quickly

changed direction, walking away towards the other side. PW-4 further deposed that after witnessing this, he returned to his village and informed PW-1, Nanhe Khan, that he had seen these three persons.

39. In cross-examination, however, PW-4 admitted that although he claimed to have conveyed this information to PW-1, he could not recall when exactly he had told him. He further acknowledged that he did not have any conversation with the accused at the Dhaba, nor did he know from where they had come or where they had gone after he saw them. His statement provides no detail linking their presence on the road to the crime. Importantly, this alleged sighting did not find mention in the FIR, which PW-2 had scribed the very next morning at the dictation of PW-1. The omission of such a material fact in the earliest version of the incident severely weakens its reliability.

40. PW-4 also conceded that he joined the search party on the night of 05.06.2007 after the child went missing, but he did not disclose to anyone in that large gathering that he had seen the accused earlier in the evening. This silence, despite an obvious occasion to speak, casts further doubt on his version. It was only during trial that PW-4 articulated these facts in detail, thereby lending his account the character of an afterthought.

41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3

admitted he had never known the accused earlier. It is well settled that dock identification without a prior TIP has little evidentiary value where the witness had no prior familiarity with the accused. In ***P. Sasikumar v. State***[3], this Court acquitted the accused on precisely this ground, holding:

> ***"17.*** *The admitted position in this case is that the test identification parade was not conducted. All the prosecution witnesses who identified the accused in the Court […] were not known to the present Appellant. They had not seen the present Appellant prior to the said incident. He was a stranger to both of them….*
>
> ***18.*** *[…] Under these circumstances, TIP had become necessary particularly when both the accused, who are alleged to have committed this murder were arrested within two days.*
>
> ***19.*** *[…] No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done."*

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution

[3] (2024) 8 SCC 600

in accepting such identification. The following paragraph of ***P. Sasikumar*** **(supra)** is indicative of the same:

> *"21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.*
>
> *23. […] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.*
>
> *24. […] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused."*

43. In the present case, it is clear that the identification of the appellants by PW-3 and PW-4 cannot be accepted with confidence. PW-3 himself admitted he had never known Nazim or Aftab previously, yet no TIP was conducted. His alleged sighting was from a considerable distance while engaged in harvesting work, with his line of sight obstructed, and the natural witnesses present with him were not examined. PW-4, though a co-villager, failed to mention his alleged sighting either in the FIR or during the search for the missing child, and could not even recall the timing of him informing PW-1 about it. Both witnesses

identified the Appellants for the first time in court, which, in the absence of a TIP, renders their dock identification less credible. Their testimonies, therefore, cannot constitute reliable evidence of identification.

44. Even apart from the deficiencies in identification, the 'last-seen' theory is itself a weak link unless the prosecution establishes a narrow time gap between when the accused and the deceased were seen together and the recovery of the body, such that the possibility of intervention by a third person is excluded. At this juncture, it is relevant to refer to the following decisions:

a. This Court has consistently cautioned against treating the last-seen circumstance as conclusive proof of guilt. In ***State of U.P. v. Satish***[4], it was observed:

> *"22. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen*

[4] (2005) 3 SCC 114

together, it would be hazardous to come to a conclusion of guilt in those cases…."

b. The same principle was reiterated in ***Hatti Singh v. State of Haryana***[5], where this Court held:

"28. There cannot be any doubt that conviction can be based on circumstantial evidence, but therefor the prosecution must establish that the chain of circumstances only consistently points to the guilt of the accused and is inconsistent with his innocence. Circumstances, as is well known, from which an inference of guilt is sought to be drawn are required to be cogently and firmly established. They have to be taken into consideration cumulatively. They must be able to conclude that within all human probability the accused committed the crime."

c. In the subsequent decision in ***Chattar Singh & Anr. v. State of Haryana***[6], this Court warned against drawing hasty inferences from such evidence. It observed that the last-seen theory is a weak kind of evidence. It would be unsafe to base conviction solely on this circumstance unless it is corroborated by some other strong and clinching material.

[5] (2007) 12 SCC 471
[6] (2008) 14 SCC 667

d. Most recently, in ***Krishan Kumar & Anr. v. State of Haryana***[7], this Court reiterated the dangers of indirect or presumptive application of the last-seen theory stating that the theory cannot be applied in the absence of clear and positive testimony placing the deceased in the company of the accused at a proximate time before the occurrence. The doctrine cannot be stretched to presume such presence indirectly, nor can conjectures substitute proof. Any indirect application of the last-seen theory is impermissible.

45. In the present case, the prosecution's reliance on the last-seen theory is misplaced. PW-3 stated that he saw the deceased conversing with Nazim around 11:00 a.m. on 05.06.2007, whereas PW-4 claimed to have seen Nazim, Aftab, and Arman walking together in the evening. The body, however, was recovered only the next morning. The interval between the alleged sightings and the discovery of the corpse is too wide to exclude the possibility of intervention by others. As held in ***Satish* (supra)**, the last seen theory applies only when the time gap is so narrow that the hypothesis of another's involvement is eliminated. That condition is absent here.

[7] 2023 SCC OnLine SC 1180

46. Equally, the circumstances narrated by PW-3 and PW-4 do not furnish corroboration of each other. PW-3 spoke only of a morning sighting from a distance whereas PW-4 described an evening encounter near a dhaba with no link to the deceased. Neither account establishes continuity of presence or proximity to the time of death. As cautioned in ***Hatti Singh*** **and** ***Chattar Singh*** **(supra)**, last-seen theory alone is weak evidence and requires corroboration, which is absent in this case.

47. In this respect, as emphasised in ***Krishan Kumar*** **(supra)**, courts cannot presume the presence of the deceased with the accused indirectly or through conjecture. Here, to accept the last-seen circumstance would require precisely such inference, stretching two vague and temporally separated sightings into a conclusion of guilt. The law does not permit such an approach. The last-seen evidence in this case, therefore, fails to meet the threshold laid down by this Court. It neither rules out alternative hypotheses nor completes the chain of circumstances, and instead leaves wide gaps inconsistent with conviction.

48. Thus, the prosecution's reliance on PW-3 and PW-4 falters on two counts: *firstly*, the absence of TIP renders their identification unreliable and *secondly*, even if their testimony is accepted, 'last-seen' theory alone is insufficient to sustain the conviction in the circumstances of the present case. The High

Court's reliance on PW-3 and PW-4 overlooks this cautionary principle.

49. Beside the testimonies of prosecution witnesses, the High Court placed weight on the medical opinion of PW-8, Dr. T.K. Pant, who conducted the post-mortem. He deposed that the cause of death was shock and haemorrhage due to an ante-mortem stab injury and suffocation by strangulation. He noted a deep stab wound in the throat consistent with a sharp-edged weapon, bluish ligature marks on the wrists, and multiple abrasions. He also observed injuries consistent with a blunt object inserted into the anus and opined that the stab wound could be caused by an axe but equally by a sword or knife and the wrist marks were consistent with a rope. While his testimony confirms homicide, it does not link the injuries to any particular weapon or to the appellants.

50. However, the manner in which the rope and axe were dealt with by the investigating agency, and later by the courts below, is deeply unsatisfactory. During the course of the hearing of the criminal appeal, the High Court itself observed that these material exhibits had not been properly examined. It directed that the axe, rope, and certain items of clothing be sent for DNA and fingerprint testing, and further directed that the blood samples of the Appellants be collected and matched with the exhibits. Upon examining the same, the Forensic Science Laboratory reported

that no complete autosomal DNA profiles could be generated from the exhibits. Consequently, no opinion could be given on a match with the blood samples of the Appellants. In effect, the only scientific evidence available was neutral as it neither connected the Appellants to the crime nor corroborated the oral testimony. This is akin to the situation in ***Padman Bibhar v. State of Odisha***[8], where the Supreme Court noted that the chemical examination report was inconclusive because the blood group could not be matched and, therefore, the last seen evidence alone could not sustain a conviction.

51. Despite the inconclusive forensic report, the High Court dismissed the absence of DNA evidence as inconsequential and affirmed the conviction solely on ocular testimony. Such an approach is untenable in a case based entirely on circumstantial evidence. Where scientific evidence is neutral or exculpatory, courts must give it due weight. To convict on doubtful testimony while ignoring scientific tests is to substitute suspicion for proof. The Supreme Court has repeatedly cautioned that suspicion, however strong, cannot replace evidence.

52. There are further doubts about the recovery of the rope. The prosecution claimed it was recovered from the scene in broad daylight, yet no independent public witnesses were

[8] 2025 SCC OnLine SC 1190

examined to corroborate this. The investigating officer admitted that villagers were present during the seizure of soil samples, but none were called to testify. Such lapses diminish the credibility of the recovery and, by extension, the evidentiary value of the rope.

53. In a nutshell, the medical evidence proves the fact of homicidal death but does not implicate the Appellants. The forensic report is neutral, the recovery is procedurally suspect, and the High Court failed to grapple with these deficiencies. When the only scientific evidence available neither supports the prosecution's narrative nor connects the accused to the crime, it is impermissible to uphold a conviction solely on doubtful eyewitness testimony.

54. The case of the prosecution with respect to motive is also tenuous. The motive alleged by the prosecution is only that the Appellants sought revenge for an insult to their sister. However, no concrete evidence of animus was led. In ***Kali Ram v. State of Himachal Pradesh***[9], this Court observed that where the evidence admits two possibilities, i.e. one pointing to guilt and the other to innocence then the accused must receive the benefit of doubt. Absence of motive in a circumstantial case assumes significance and tilts the balance in favour of the accused. Here, the supposed

[9] (1973) 2 SCC 808

motive is speculative and there is no evidence that the Appellants bore any grudge against a ten-year-old child.

55. Another aspect that deserves careful consideration is juvenility. The Appellants placed reliance on school records and a medical board report indicating that Nazim and Aftab were minors at the time of the incident. The Juvenile Justice Board dismissed this claim based on an electoral roll. Rule 12 of the JJ Act gives primacy to matriculation or equivalent school certificate, or in its absence a birth certificate or medical opinion. We certainly do not find it necessary to decide this issue in view of our conclusion on merits, however, the summary rejection of the juvenility plea reinforces the overall perception that the High Court did not fully re-appreciate the evidence.

CONCLUSION

56. In light of the foregoing discussion, we are of the considered view that the prosecution has failed to establish a complete and unbroken chain of circumstances. The circumstances on record are not consistent with the hypothesis of the guilt of the accused and fail to exclude every other reasonable hypothesis, including their innocence. As is well-settled, suspicion, however strong, cannot take the place of proof. Accordingly, the Appellants are entitled to the benefit of the doubt.

57. Hence, the conviction and sentence of the Appellants Nazim, Aftab and Arman Ali under Sections 302, 201 and 120-B IPC, as affirmed by the High Court in its judgment dated 15.11.2017, cannot be sustained. The appeal is accordingly allowed.

58. In view thereof, the Impugned Judgment dated 15.11.2017 passed by the High Court of Uttarakhand at Nainital and the judgment dated 05.04.2014 passed by the Ld. Additional Sessions Judge, Kashipur, are set aside to the extent that the Appellants are acquitted of charges under Sections 302, 201 and 120-B IPC. Since the appellants are on bail, their bail bonds and sureties shall stand discharged.

59. The captioned appeal stands disposed of in the aforesaid terms. Application(s), if any, shall also stand disposed of. No costs.

…….J.
[M. M. SUNDRESH]

…….J.
[SATISH CHANDRA SHARMA]

NEW DELHI
October 06, 2025