



2026:AHC:9655-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 398 of 2018**

Girraj Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Shiv Shanker Yadav, Shivam Dwivedi
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

(Per Hon'ble Chandra Dhari Singh, J)

1. This criminal appeal has been filed against the judgement and order dated 14.12.2017 passed by Additional District and Sessions Judge, Court No.13, Agra in Session Trial No. 380 of 2012, arising out of Case Crime No. 320 of 2012, under Section 302 IPC, Police Station Sikandara, District Agra whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 50,000/- under Section 302 IPC and in case of default in payment of fine, the appellant was further directed to undergo six months additional imprisonment.

Brief facts

2. The facts that formed the bedrock of the instant criminal appeal are that a written report was given on 29.04.2012 by the first informant Ram Khiladi written by one Mukesh Kumar at the police station Sikandara, district Agra that he is resident of Haat Maidan, police station Raja Kheda, district Dhaulpur and is presently residing in Mohalla Vinayak Nagar, police station Sikandar. At about 2.00 PM on 28.04.2012, when he along with his son Rakesh aged about 24 years and his elder son Raju were present at his house, at that time Girraj (hereinafter referred to as "the appellant") son of Deewan Singh, resident of Shiva Kunj Colony, K.K. Nagar, police station Sikandara, district Agra came there and took his son-Rakesh (hereinafter referred to as "the deceased") with him. When Rakesh did not return till 10:00 PM, the first informant went to the house of Girraj to enquire about Rakesh, whereupon Girraj told him that Rakesh has gone to Dargah. The first informant along with other persons made a hectic search for Rakesh, but in vain. The first information report further alleges that when the first informant again went to the house of Girraj, he was not present and when he looked in through the window, his son was lying dead on the cot and electric wire was wrapped around his neck. The first informant suspected that his son was murdered by Girraj.

3. On the basis of the aforesaid written report, a case was registered at case crime No 320 of 2012, under Section 302 IPC by PW-6, Constable 1351 Awadhesh Kumar.

4. After the registration of the case, the investigation of the case was taken up by PW-11, Rajiv Yadav. On 29.04.2012, he copied the contents of relevant documents and took into possession electric wire and one quarter country liquor and recorded the statement of the first informant and inspected the spot on the pointing out of the first informant. He also recorded the statement of witnesses Ram Kumar and Babu Lal and prepared site plan, Ext. K-10. On 30.04.2012, he copied the copy of the inquest report and the postmortem report. He also recorded the statement of Raju, son of Ram Khiladi, the first informant and Smt Maya Devi. After culmination of investigation and completing necessary formalities, the investigating officer submitted charge sheet dated 06.05.2012 against the appellant under Section 302 IPC, Ext. Ka-11.

5. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as eleven witnesses. PW-1, Ram Khiladi (the first informant) and father of the deceased, PW-2, Smt Maya Devi, mother of the deceased, PW-3, Babu Lal, PW-4, Raj Kumar, PW-5, Raju, the brother of the deceased, PW-6, Constable Awadhesh Kumar, who prepared Chik FIR, PW-7, Dr. Ajit Baba, who conducted autopsy on the cadaver of the deceased, PW-8, Bhura alias Jalaluddin, PW-8A, Ramdeen, PW-9, Kunwar Pal Singh, PW-10, SI Manikant Sharma, PW-11, Rajiv Yadav, the investigating officer of the case.

6. PW-1, Ram Khiladi, the first informant of the case in his examination-in-chief has deposed that accused used to come to his house. On the date of occurrence, accused

came to his house when his wife, son-Rakesh (deceased) and Raju were present. Accused took the deceased on the pretext of attending Bhandara. When the deceased did not return till 09:00 PM, he went to Girraj to enquire about the deceased, who told that he has gone to drive Tempo. Thereafter, he went to Dargah in search of the deceased, but in vain. He further deposed that when the first informant again went to the house of Girraj at 7:00 AM, next day, he was not present and his door was locked and when he looked in through the window, his son was lying dead on the cot and electric wire was wrapped around his neck.

7. PW-2, Smt. Maya Devi, who is the mother of the deceased and wife of first informant, PW-3, Babu Lal, PW-4, Raj Kumar, PW-5, Raju, who is the son of the first informant and brother of the deceased, PW-8, Bhura alias Jalaluddin, PW-8A, Ramdeen, PW-9, Kunwar Pal Singh, who have been examined as witnesses of facts have not supported the prosecution case and have been declared hostile and prosecution were permitted to cross-examine them.

8. PW-7, Dr. Ajit Baba has conducted postmortem on the cadaver of the deceased. He found ligature mark of 30 cm x 1-1/2 cm around the neck of the deceased around 6 cm below the chin. In the opinion of the doctor, the cause of death of the deceased was strangulation.

9. After the closure of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 Cr.P.C., in which he denied the charges levelled against him and claimed to be tried.

10. Learned Additional Sessions Judge, Court No. 13, Agra after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

11. Hence, this appeal.

Submissions on behalf of the appellant

12. Learned counsel for the appellant submits that the learned trial court, while convicting the appellant, committed a grave error in appreciating the last seen theory. It is contended that the trial court failed to consider that in his examination-in-chief, PW-1, Ram Khiladi deposed that the appellant had asked the deceased to accompany him to attend a *Bhandara* on 28.04.2012 at about 02:00 PM. PW-1 also stated that the appellant had come to his house in the presence of his wife (Smt. Maya Devi, PW-2 and son (Raju, PW-5), but, neither PW-2, Smt. Maya Devi nor PW-5, Raju supported the prosecution case that the appellant had come to their house to take the deceased to attend the said *Bhandara*.

13. It is further submitted that it is a settled proposition of law that if the statement of a hostile witness is relied upon for the purpose of convicting an accused, such statement must be corroborated by other reliable evidence, either ocular or documentary. In the present case, the statement made by PW-1, Ram Khiladi in his examination-in-chief has not been corroborated by any other witness or independent evidence. Therefore, the trial court, while convicting the appellant, has committed

a manifest error by arriving at a conclusion contrary to the principles laid down by the Hon'ble Supreme Court as well as the High Courts.

14. It is further submitted that no recovery has been made from the possession of the appellant. Whatever recoveries have been shown by the prosecution were effected only from the alleged vacant house of the appellant and not at the instance or from the possession of the appellant himself.

15. Learned counsel for the appellant also submitted that even if the deposition of PW-1 is assumed to be correct that the appellant had come to his house and had taken the deceased along with him at about 02:00 PM on 28.04.2012 to attend a *Bhandara*, there is a gap of more than 12 hours between the alleged time of last seen and the probable time of death as opined by the doctor (P.W.-7). Such a long time gap completely breaks the proximity required to apply the last seen theory. It is further submitted that the entire prosecution case rests solely on circumstantial evidence. Therefore, it was incumbent upon the prosecution to establish a complete and unbroken chain of circumstances pointing only towards the guilt of the appellant. However, the prosecution has miserably failed to do so. It is further submitted that there is no evidence of motive for committing the alleged offence. There was no enmity or dispute between the deceased and the appellant. On the contrary, the deceased and the appellant were friends. It has come in evidence through PW-2, Smt Maya Devi and PW-5, Raju, i.e. wife and son of the informant that the appellant had

handed over the key of his house to the deceased for taking care of the vacant house.

16. It is further submitted that on the date of the alleged incident, the appellant was residing at his in-laws' house, as his wife was staying there. The place of occurrence and the place where the appellant was residing are about 22 kms. This fact further weakens the prosecution case. Learned counsel for the appellant further submits that when motive is completely absent, the last seen theory is not supported by the witnesses, and there exists a substantial time gap of more than 12 hours between the alleged last seen and the time of death, the prosecution case becomes highly doubtful. All material witnesses have turned hostile, and even the examination-in-chief of P.W.-1 has not been corroborated by any independent evidence. Consequently, the prosecution has failed to complete the chain of circumstantial evidence. It is further submitted that the appellant was not present at the spot, the house was admittedly vacant, and the key of the house was with the deceased for the purpose of looking after the same. This fact has also been stated by P.W.-2 and P.W.-5 in their cross-examination. Thus, the appellant has sufficiently discharged his burden under Section 106 of the Indian Evidence Act.

17. It is further submitted that the examination-in-chief of P.W.-1 itself is unreliable, as he stated that he saw the dead body of the deceased through the window of the room, however, a bare perusal of the site plan reveals that there is no window in the said house. This material

contradiction clearly shows that the testimony of P.W.-1 is not trustworthy and is not supported by documentary evidence. Learned counsel for the appellant further submits that since the entire prosecution case is based on circumstantial evidence and the chain of circumstances is incomplete, and all the material witnesses have turned hostile. The conviction of the appellant based solely on presumption under Section 106 of the Indian Evidence Act, without any credible or clinching evidence, is unsustainable in the eyes of law. Therefore, the impugned judgment and order passed by the learned trial court are liable to be set aside and the present appeal deserves to be allowed. In support of his submission, learned counsel has placed reliance upon the judgements of Hon'ble Supreme Court in the cases of ***Sujit Biswas Vs. State of Assam (2013) 12 SCC 406, Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan (2013) 5 SCC 722, Ramreddy Rajesh Khanna Reddy and another Vs. State of A.P. (2006) 10 SCC 172 and Kali Ram Vs. State of Himanchal Pradesh (1973) 2 SCC 808.***

Submissions on behalf of the State

18. Per contra, S.K. Ojha, learned Additional Government Advocate has vehemently opposed the appeal and submitted that there is no error or illegality in the impugned judgment and order passed by the learned trial court. It is further contended that the trial court has taken into consideration the entire evidence and material available on record and has rightly come to the conclusion

that the prosecution has proved its case beyond reasonable doubt by establishing a complete chain of circumstantial evidence. It is further submitted that in his examination-in-chief, PW-1, Ram Khiladi has clearly stated that the appellant came to his house at about 02:00 PM and asked the deceased to accompany him to attend a *Bhandara*, after which the deceased was missing. Thereafter, when he went to the house of the appellant, he found the deceased lying dead inside the house.

19. Learned Additional Government Advocate further submits that the appellant has failed to explain as to what happened after he took the deceased with him to attend the *Bhandara* and thereafter left for his in-laws' house. The appellant has also failed to disclose the time and place when both parted company. It is further submitted that since the dead body of the deceased was recovered from the house of the appellant, the burden lies upon the appellant to explain the circumstances under which the deceased was found dead inside his house. The appellant has failed to discharge this burden.

20. Learned Additional Government Advocate also submits that the appellant has not examined any defence witness to establish that at the relevant time he was either present elsewhere or was residing at his in-laws' house. Therefore, the trial court has rightly drawn an adverse inference against the appellant and the conviction recorded does not call for any interference.

21. Learned A.G.A., relying upon the observations made by the learned trial court, further submitted that the appellant has failed to discharge the burden cast upon

him under Section 106 of the Indian Evidence Act. It is submitted that as per Section 106 of the Evidence Act, when any fact is especially within the knowledge of an accused, the burden of proving such fact lies upon him. According to the prosecution case, the dead body of the deceased was recovered from the house of the appellant. Therefore, it was incumbent upon the appellant to come forward with a cogent explanation to establish that he was not involved in the commission of the crime and to explain the circumstances under which the deceased was found dead inside his house, including his absence or non-involvement at the relevant time. However, the appellant has failed to offer any such explanation. In support of his submission, learned Additional Government Advocate placed reliance upon the judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Balveer Singh (2025), INSC 261***, wherein it has been held that when incriminating circumstances are within the special knowledge of the accused, failure to explain such circumstances permits the court to draw an adverse inference under Section 106 of the Evidence Act.

22. Learned Additional Government Advocate submitted that the deposition of P.W.-1 clearly established the "last seen" theory and that the recovery of the dead body from the house of the appellant remains unexplained. The appellant has failed to explain how the deceased reached his house or under what circumstances the deceased died therein. In support of his submissions, learned Additional Government Advocate has also relied upon the judgment of the Hon'ble Supreme Court in ***Chetan vs. State of Karnataka, 2025 INSC 793***, to contend that once the

prosecution establishes the chain of circumstantial evidence and the accused fails to discharge the burden under Section 106 of the Evidence Act, the conviction is justified. It is thus submitted that the entire chain of circumstantial evidence stands duly established by the prosecution, and the appellant has failed to discharge the burden cast upon him under Section 106 of the Evidence Act. Therefore, there is no illegality or infirmity in the impugned judgment and the present appeal is liable to be dismissed.

Analysis and conclusion

23. There is no eyewitness to the alleged crime. The appellant has been convicted and sentenced on the basis of circumstantial/last seen evidence alone, which, in the considered view of the trial court, forms a complete and unbroken chain so as to rule out every hypothesis other than the guilt of the appellant and excludes the possibility of any other person having committed the offence.

24. The case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on

circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

25. ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, AIR (1984) (SC) 1622 is the celebrated judgement on the point, wherein Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under;

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

(ii) 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.

(iii) The circumstances should be of conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and,

(v) 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.

26. In the case of ***Padala Veera Reddy v. State of A.P.***, 1989 Supp (2) SCC 706, Hon'ble Apex Court opined as under:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

*(3) the circumstances, 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 and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See **Gambhir v. State of Maharashtra**, (1982) 2 SCC 351)"*

27. In ***State of U.P. Vs. Ashok Kumar Srivastava***, (1992) Cri. L.J. 1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

28. In the case of ***C. Chenga Reddy & Ors. v. State of A.P.***, (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

29. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.**, (2006) 10 SCC 172, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

*"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See **Anil Kumar Singh v. State of Bihar**, (2003) 9 SCC 67 and **Reddy Sampath Kumar v. State of A.P.**, (2005) 7 SCC 603)."*

30. In the case of **Sattatiya v. State of Maharashtra**, (2008) 3 SCC 210, Hon'ble Apex Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by

circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106."

31. In **Rambraksh alias Jalim Vs. State of Chhatisgarh**, 2016(12) SCC 251, Hon'ble Supreme Court observed that the last seen theory applies only when the

time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. The Court further held as under:

"It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

32. In **Krishnan alias Ramasamy and others Vs. State of Tamil Nadu**, (2014)12 SCC 279, Hon'ble Supreme relying on its earlier decision in *Arjun Marik Vs. State of Bihar*, 1994 Supp (2) SCC 372, held as under

"Thus, the evidence that the appellant had gone to Sitaram in the evening

of 19.07.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive . Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But, it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

33. **In Kanhaiya Lal Vs. State of Rajasthan**, (2014) 4 SCC 715, Hon'ble Supreme Court held that evidence of last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 IPC.

34. In the light of the above pronouncements of Hon'ble Apex Court, we shall now consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime.

35. PW-1 Ram Khiladi is the first informant of the case. He is not an eyewitness of the case. He deposed that the appellant used to visit his house. He visited his home one day before the occurrence and took his son with him in the presence of his wife, PW-2, Smt Maya Devi and his

son, PW-5, Raju. He further deposed that in the night when he went to the house of the appellant to enquire about the deceased, he was told that the deceased has gone to drive Tempo. Thereafter, he searched the deceased near Dargah, but in vain. He further deposed that when he visited the house of the appellant next day in the morning, the house of the appellant was locked and when he looked in through the window, his son was lying dead on the cot.

36. PW-2, Maya Devi is the mother of deceased and is not an eye witness of the occurrence. She deposed that she does not know the accused-appellant. He had not come to her house to call her son, the deceased. She further deposed that neither she went to search the accused nor she saw the occurrence. She also does not know the accused-appellant. On the aforesaid deposition, she was declared hostile and have not spoken a single word against the appellant.

37. Similarly, PW-3, Babu Lal, PW-4 Raj Kumar, PW-5, Raju, brother of the deceased, PW-8, Bhoora alias Jalaluddin, PW-8A, Ramdeen and PW-9, Kunwar Pal Singh have not supported the prosecution case and they have been declared hostile.

38. It is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted.

39. In **Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh**, 1991(3) SCC 627, Hon'ble Supreme Court held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny.

40. In **State of U.P. Vs. Ramesh Prasad Misra**, (1996)10 SCC360, Hon'ble Supreme Court held as under:

“Evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.”

41. Hon'ble Supreme Court in **Selvamani Vs. State represented by the Inspector of Police**, 2024 SCC OnLine SC 837, after considering a catena of decision held that law on the point can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law can be used by the prosecution or the defence.

42. In this case, PW-2, Smt. Maya Devi, who is the wife of the first informant and mother of the deceased in her deposition has totally denied the prosecution case. Moreover, PW-3, Babu Lal, PW-4 Raj Kumar, PW-5, Raju,

brother of the deceased, PW-8, Bhoora alias Jalaluddin, PW-8A, Ramdeen and PW-9, Kunwar Pal Singh have also not supported the prosecution case. None of the witnesses in their deposition have made any whisper about participation of the accused-appellant in the instance case. Even PW-2, Maya Devi, who is the wife of the first informant and mother of the deceased and PW-5, Raju brother of the deceased have not uttered a single word against the appellant. Moreover, PW-2, Maya Devi in her cross-examination has stated that her husband, the informant has wrongly got the name of the appellant written in the FIR and that the appellant has not taken the deceased with him. In her cross-examination, she has further deposed that appellant resides in his in-laws' house and key of his house was with the deceased. The evidence of PW-1, Ram Khiladi has not been corroborated by any other reliable witnesses either in the form of ocular or documentary. Even PW-1, the informant, in his cross-examination, which was done on 18.01.2016 has specifically deposed that on the date of occurrence, his both sons namely Rakesh (deceased) and Raju-PW-5 went to tent house, where they were working. Raju-PW-5 returned in the evening, but he did not tell about the whereabouts of Rakesh. PW-1 also stated that he did not know as to what was written in the first information report. The contents of the FIR was not read over to him. He also does not know Mukesh, who has written the report. The report was got written by the Constable in the police station. The dead body of his son was lying on the road.

43. From the conjoint reading of deposition of PW-1, Ram Khiladi, it is apparent that neither he was the witness of last seen, nor he witnessed the dead body of the deceased as alleged by the prosecution.

44. We also find that there was no motive for the appellant to commit the murder of the deceased. Further, there was no dispute or enmity of the deceased with the appellant, rather they were close friends and key of the house of the appellant was with the deceased as deposed by PW-2, Maya Devi and PW-5 Raju that the appellant had handed over the key of his house to the deceased for taking care of his vacant house.

45. So far as the contention of learned Additional Government Advocate that it was incumbent upon the appellant to come forward with a cogent explanation to establish that he was not involved in the commission of the crime and to explain the circumstances under which the deceased was found dead inside his house. This contention of learned Additional Government Advocate has no leg to stand in the facts of the present case inasmuch as not a single prosecution witness in his testimony has deposed that the dead body was recovered from the house of the appellant and that the appellant has taken the deceased for attending *Bhandara*, and they do not support the prosecution case of last seen theory.

46. It is a cardinal principle of criminal jurisprudence that Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the accused only after the prosecution succeeds in establishing the basic facts from which a reasonable inference can be drawn

regarding the existence of certain other facts which are within the special knowledge of the accused. In the instant case, we find that the prosecution has totally failed to shift the onus on the accused to explain the basic facts.

47. In **Sawal Das Vs. State of Bihar**, (1974) 4 SCC 193, Hon'ble Supreme Court held as under:

Neither an application of Section 103 nor of 106 of the Evidence Act, could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

48. Hon'ble Supreme Court in **Gargi Vs. State of Haryana**, 2019(3) SCC (Cri) 785, held thus:

Insofar as the 'last seen theory' is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act of the Indian Evidence Act directly operates against the appellant. In our view,

such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden.

49. We have carefully scrutinized and assessed the evidence of all the prosecution witnesses. This Court is of the view that the evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home guilt of the appellant.

50. Accordingly, the order dated 14.12.2017 passed by Additional District and Sessions Judge, Court No.13, Agra in Session Trial No. 380 of 2012 arising out of Case Crime No. 320 of 2012, under Section 302 IPC, Police Station Sikandara, District Agra is set aside.

51. The appeal is allowed.

52. Appellant Girraj Singh is in jail. He shall be released forthwith unless wanted in any other case.

53. Office is directed to transmit a copy of this order along with trial court record to the court concerned for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

January 14, 2026
Ishrat