



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

सत्यमेव जयते

D.B. Criminal Appeal (Db) No. 133/2018

Ramavtar S/o Panna @ Kalyan, R/o Village Jivad Kheda, Police Station Sadar Gangapur City, Presently Raghuwanti, Police Station Malarna Dugar, Distt. Sawai Madhopur Raj. Presently Confined In Central Jail, Bharatpur.

-----Appellant

Versus

State Of Rajasthan Through P.P.

-----Respondent

For Appellant(s) : Mr.Dheeraj Singhal with
Ms.Bhavna Laddha
For Respondent(s) : Mr.Jeetendra Singh Rathore, P.P.

HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Judgment

Reserved on : **25/08/2025**

Pronounced on : **01/09/2025**

AVNEESH JHINGAN, J:-

This appeal is preferred by Ramavtar S/o Panna @ Kalyan (hereinafter referred to as 'appellant') against the judgment dated 06.09.2017 passed by District & Sessions Judge, Sawai Madhopur, in Session Case No.128/2014 convicting the accused-appellant under sections 364, 394 & 302 of IPC. Vide order of even date, the appellant was ordered to undergo sentence as under:-

Name of the accused-appellant	Conviction under Sections	Punishment
Ramavtar S/o Panna @ Kalyan	364 IPC	Ten years rigorous imprisonment and to pay fine of Rs.5,000/-.



		In default of payment of fine to undergone six months simple imprisonment
	394 IPC	Ten years rigorous imprisonment and to pay fine of Rs.5,000/-. In default of payment of fine to undergone six months simple imprisonment
	302 IPC	Life imprisonment and to pay fine of Rs.5,000/-. In default of payment of fine to undergone six months simple imprisonment

2. The facts as set up by the prosecution are that on 10.05.2014 PW-4 Islam Khan (complainant) filed a complaint at Police Station Mantown, District Sawai Madhopur stating that his father and mother went to the labour chowk in search of work. A person came for hiring the labour, the amount offered was not accepted by father of the complainant but his mother Kamli (hereinafter referred to as 'deceased') went along and did not return thereafter. The deceased was wearing silver anklets (hereinafter referred to as 'kadiya') and it was suspected that with a motive to have the kadiya, deceased has been abducted. An FIR No.149/2014 was registered on 10.05.2014 at Police Station Mantown, Sawai Madhopur. On 11.06.2014 an FIR No.669/2014 was also registered at Police Station, Sanganer. On 16.06.2014 the appellant was arrested by the Sanganer police. On 17.06.2014 appellant was taken on police remand to the Mantown Police Station. On the information of appellant, human skeleton was recovered on 17.06.2014. On 18.06.2014 the appellant flee from the custody of the Mantown Police Station and FIR No. 181/2014



was registered on 18.06.2014 at Police Station Mantown, District Sawai Madhopur.

2.1 The appellant was again arrested on 16.07.2014 in FIR No.149/2014. On disclosure of the appellant, a knife was recovered on 22.07.2014, recovery memo is Ex.P.17. On the same day by recovery and seizure memo Ex.P.19 Kadiya were recovered from the room of appellant in farm hidden one feet under the floor. As per the description memo Ex.P.9, skeleton of the deceased was recovered, clothes and broken bangles were recovered from the spot and recovery memos are Ex.P.11 & Ex.P.13. Upon matching the DNA with sister of the deceased the skeleton recovered was identified to be that of the deceased.

2.2 After filing of the charge-sheet, charges were framed u/s 364, 394 and 302 IPC. The prosecution examined eighteen witnesses and exhibited thirty six documents to prove the case. In the statement recorded u/s 313 Cr.P.C., the appellant stated it to be a case of false implication and claimed trial. The trial Court after considering the facts and appreciating the evidence, convicted the appellant. Hence, the present the appeal.

3. Learned counsel for the appellant submits that the prosecution has failed to prove that the appellant killed the deceased. The contention is that recovery of the knife was from an open space. The kadiya recovered from the room belonging to the appellant are easily available in the market and were shown to the complainant in the police station. It is further argued that there was a gap of thirty five days between the appellant being seen with the deceased and recovery of the skeleton.



4. Learned Public Prosecutor submits that PW-1 Ramjani (husband of the deceased) had identified the appellant. On 08.05.2014, PW-1 had seen the deceased going with the appellant. The contention is that remains of the deceased, knife and kadiya were recovered at the instance of the appellant. Submission is that the evidence adduced prove the case of the prosecution.

5. Heard learned counsel for the parties and perused the record with their able assistance.

6. As per the prosecution, the deceased on 08.05.2014 went with the appellant for doing the labour work and PW-1 Ramjani (husband of the deceased) was there when the deceased left with the appellant. After searching for two days, on 10.05.2014 an FIR no.149/2014 was registered by PW-4 Islam Khan apprehending that deceased was abducted, as she was wearing silver kadiya weighing approximate 750 gms. The appellant was arrested on 16.06.2014 in FIR No. 669 dated 11.06.014 lodged at Police Station, Sanganer. During investigation, it revealed that the appellant was involved in the incident for which FIR No.149/2014 was registered at Police Station Mantown.

7. On an information given u/s 27 of the Indian Evidence Act, 1872 remains of deceased were recovered at the instance of the appellant on 17.06.2014, Ex.P.7 Panchnama and Ex.P.9 description memo of skeleton of the deceased were prepared. From the spot, blood smeared clothes of the deceased, plain and blood stained soil samples were collected, recovery and seizure memo is Ex.P.10. DNA samples of the deceased matched with her sister, thereby identifying the deceased. Vide Ex.P.17 recovery memo, a



knife concealed under a heavy stone in jungle was recovered at the instance of the appellant. Ex.P.19 is recovery memo of two silver kadiya at the instance of the appellant from the room built in the farm and the kadiya were concealed one feet under the floor.

8. Ex.P.14 Post Mortem Report (PMR) dated 17.06.2014 was prepared by Dr. Shishir Bairwa. The doctor deposed as PW-6. The testimony of the doctor and PMR indicated that the death occurred one to two months before the recovery of remains of deceased. The cause of death could not be determined as only bones were found.

9. In cross-examination, PW-13 Investigating Officer Sumer Singh Inda stated that the condition in which remains of the deceased were found can be result of consumption of body by wild animals.

10. The case of the prosecution is based upon circumstantial evidence. The law is well settled that for conviction on the basis of circumstantial evidence, the chain should be completed and a missing link shall prove fatal to the case of prosecution. Reference be made to the decision of Supreme Court in **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, wherein it was held:-

"153. 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 Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the following observations were made: Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

11. Before proceeding further, it would be appropriate to deal with the recoveries made by the police at the instance of the appellant. The knife was recovered from jungle concealed under a heavy stone, tip of the knife was broken and there was no blood stain on the knife, the recovery memo is Ex.P.17. The recovery was from an open space. The cause of death of the deceased is not known. No finger prints were taken from the knife. The prosecution failed to establish a nexus between the knife and death of the deceased.



12. The kadiya recovered from floor of the room of appellant in a farm was allegedly belonging to the deceased. PW-4 Islam Khan recognized the kadiya before the SDM. PW-11 Vishnu Kumar Goyal (SDM) deposed that the kadiya were mixed with other six pair of kadiya and PW-4 recognized it. PW-4 Islam Khan in the cross-examination stated that before identification the kadiya were shown to him in Police Station, Mantown. It was stated that these types of kadiya were easily available in the market and to similar effect, was the cross-examination of PW-2 Keshav Maratha (gold smith). The fact that the recovered kadiya belonged to the deceased is clouded by doubt as the identification done before SDM was a futile exercise, when prior to identification kadiya were shown to PW-4 in police station.

13. The law is well settled that the last seen theory is a weak piece of evidence. Reference in this regard be made to the decision of the Supreme Court in the case of **Padman Bibhar Vs. State of Odisha** reported in **[2025 INSC 751]**.

20. "This Court in Kanhaiya Lal vs. State of Rajasthan has held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the judgment in paras 12 and 15 can be profitably referred:-

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."



14. On 08.05.2014 PW-1 Ramjani (husband of the deceased) had seen the deceased going with the appellant. There was a gap of thirty five days between 08.05.2014 and recovery of remains of the deceased.

15. Another aspect to be considered is that the last seen evidence is not corroborated by the recovery of knife and the kadiya from the appellant. The only incriminating evidence against the appellant is recovery of the remains of the deceased and the blood smeared clothes.

16. It would be apposite to note that the blood smeared clothes of the deceased were not sent for Forensic Science Laboratory (FSL) examination. The recovery of skeleton of deceased at the instance of the appellant is not a conclusive proof of the appellant having killed the deceased. For conviction of the appellant, the prosecution has to prove the case beyond reasonable doubt. The recovery of skeleton of the deceased at instance of appellant in itself cannot lead to only one logical conclusion that the appellant had killed the deceased.

17. Reference is made to the decision of the Supreme Court in the case of **Vinod Vs. State of Madhya Pradesh** reported in **(2015) 15 SCC 722**, wherein it was held:-

“19. Mere discovery of the body was not accepted by the trial Court to convict the accused Sandeep. Both Sandeep and appellant Vinod being similarly placed, that is, the recovery of body of deceased Meenu having been made at their disclosure, there was no occasion to acquit one accused, that



is, Sandeep and convict the other, that is, the appellant, Vinod. Apart from the aforesaid evidence, there is no other circumstantial evidence, which corroborates or links the deceased in committing the offence of murder of the deceased Meenu. The circumstantial evidence as noticed by the trial court and the High Court cannot be relied upon to come to an invariable conclusion that it was the accused and the accused only, that is, the appellant Vinod who was the perpetrator of the offence and such evidence is incompatible with the innocence of the accused. Both the trial court and High Court failed to notice the aforesaid fact and erred in coming to a definite conclusion that the appellant is guilty of the offence of murder of deceased Meenu."

18. The Supreme Court in the case of **Bakhshish Singh Vs. State of Punjab** reported in **1971 (3) SCC 182** held:-

"8. Therefore the only incriminating evidence against the appellant is his pointing the place where the dead body of the deceased had been thrown. This, in our opinion, is not a conclusive circumstance though undoubtedly it raises a strong suspicion against the appellant. Even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Further, as mentioned earlier, at the bank of the river where the dead body was thrown into the river, there were broken teeth and parts of the human body lying. Hence anyone who saw those parts could have inferred that the dead body



must have been thrown into the river near about that place.”

19. The case of the prosecution based upon circumstantial evidence is dented by following missing links thereby leaving the chain incomplete; (i) recovery of the knife at the instance of the appellant from an open space had not enhance the case of the prosecution and there were no blood stains on the knife; no fingerprints were taken and in absence of determination of cause of death there was no link of the knife being used in the incident; (ii) the kadiya recovered concealed in the floor of the room of the appellant were easily available in the market as per deposition of PW-2 and PW-4. Further PW-4 in cross-examination admitted that the kadiya at the first instance was shown to him in the police station prior to identification; (iii) the blood smeared clothes recovered from the spot of recovery of the skeleton of the deceased were not sent for FSL and there was no proof that the clothes having human blood stains or that of the deceased. The recovery of the blood smeared clothes is of no help to the case of the prosecution; (iv) the evidence of last seen set up by the prosecution remained uncorroborated with other evidence and there was a time gap of thirty five days between the appellant being last seen with the deceased and recovery of the skeleton and lastly; (v) recovery of the skeleton of the deceased does not prove the case of the prosecution beyond reasonable doubt, moreso, in absence of the cause of death having not been determined in the post-mortem report.

20. The recoveries made at the instance of the appellant and the identification of the appellant having been last seen with the



deceased thirty five days prior to recovery of the skeleton does not prove the case of the prosecution to the hilt. The appellant is given benefit of doubt and is acquitted.

21. The appeal is allowed. The judgment of conviction and order of sentence are quashed and set aside.

22. The appellant is acquitted of the charges framed against him. Appellant who is in custody, be set at liberty forthwith, if not required in any other case.

23. Keeping in view the provisions of Section 481 BNSS, appellant Ramavtar S/o Panna @ Kalyan is directed to forthwith furnish a personal bond in the sum of Rs.50,000/-, and surety bond of the like amount, before the Registrar (Judicial) of this Court, which shall be effective for a period of six months with the stipulation that in the event of filing of Special Leave Petition against this judgment or on grant of leave, appellant Ramavtar on receipt of notice thereof, shall appear before the Supreme Court.

(BALJINDER SINGH SANDHU),J

(AVNEESH JHINGAN),J

Monika/Riya

Reportable: **Yes**