

Judgment reserved on: 24.06.2025
Judgment delivered on: 09.07.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.19 of 2007

Dhani Ram and AnotherAppellants

Vs.

State of UttarakhandRespondent

With

Criminal Appeal No.20 of 2007

BablooAppellant

Vs.

State of UttarakhandRespondent

Presence:

Mr. Milind Raj, learned counsel for the appellants in CRLA/19/2007.

Ms. Monika Pant, learned counsel for appellant in CRLA/20/2007, appeared through video conferencing.

Mr. S.S. Chauhan, learned D.A.G., Mr. Bhaskar Chandra Joshi, learned A.G.A. with Mr. Vikas Uniyal, learned Brief Holder for the State of Uttarakhand.

Hon'ble Pankaj Purohit, J. (Per)

Since both these criminal appeals are arising out of same judgment and order and common question of law and facts are involved, hence, they are taken up together and are being decided by this common judgment. For the sake of brevity, the facts of CRLA No.19 of 2007 are taken into consideration.

2. These criminal appeals are preferred by the appellants assailing the judgment and order dated 11.01.2007/ 12.01.2007 passed by learned Sessions

Judge, District Tehri Garhwal, in Sessions Trial No.21 of 2005 *State Vs. Dhani Ram @ Dugri and Ors.*, whereby, the said Court has convicted the appellants for the offence punishable under Section 304 IPC read with 34 IPC and sentenced them seven years' rigorous imprisonment each with fine of Rs.3,000/- each, with default stipulation, six months' additional rigorous imprisonment each.

3. The prosecution story in brief is that one-Mr. Bhagwati Prasad on 22.04.2005, came to Revenue P.S. Navakot, Tehsil-Jakhnidhar, District Tehri Garhwal and informed that the ex-village Pradhan had informed him that a person's dead body was lying at newly constructed Navakot motor road band. On hearing this, the concerned Patwari reached the alleged spot and prepared the Inspection Report, Site Map and sent the dead body for postmortem. Thereafter, on the same day at around 06:00 PM, one Mr. Sunil S/o Amar Dev, lodged a report that his father's dead body was found at Navakot road band and he had suspicion that someone had killed his father and thrown his body down the road. The chick FIR was registered against unknown persons under Section 302 IPC on the same day.

4. On the basis of the above facts, the Naib Tehsildar appointed Supervisor Kanungo as the Investigating Officer, who after investigation, has filed the charge-sheet against the appellants/accused persons, who were last seen with the deceased, under Section 304 IPC, in the Court of learned Judicial Magistrate, who in turn committed the case to learned Sessions Judge, Tehri Garhwal, for trial.

5. Thereafter, on 17.10.2005, learned Sessions Judge, Tehri Garhwal, framed charges under Section 304 IPC read with 34 IPC. The charges were read over and

explained to the appellants/accused persons, who pleaded not guilty and claimed to be tried.

6. Prosecution has examined as many as ten witnesses i.e. PW-1 (Pankaj Raturi), PW-2 (Rajendra Singh), PW-3 (Sunil Datt), PW-4 (Debendra Datt), PW-5 (Smt. Harshpati), PW-6 (Ramesh Chandra), PW-7 (Manohar Lal), PW-8 (Dr. Anand Shukla), PW-9 (Patwari Vishal Singh) and PW-10 (Revenue Inspector Gambhir Singh) to substantiate and prove the charges against the appellants.

7. Thereafter, the statements of appellants/accused persons were recorded under Section 313 of the Cr.P.C., in which, they stated that they were innocent and had falsely been implicated and claimed to be tried. Appellants/accused persons-Dhani Ram @ Dugri, Jagdamba Prasad and Babloo accepted that the deceased was in their truck on 21.04.2005, but, denied any sort of enmity with the deceased and stated that he boarded their truck near the band and they have no knowledge about what transpired thereafter. The learned Trial Court, at the end of trial, has recorded the findings of the appellants' conviction. Hence, these Appeals.

8. During trial, PW-1 Pankaj Raturi deposed that the deceased Amar Dev was his father and on the fateful day, when he didn't reach home, he went to search for him towards Jakhni Dhar but he was not there, then he went towards Kumhar Dhar and thereafter came to his village when his father was not found at home, he went to search for him again; on his way, he saw accused/appellant Babloo, but due to fear, he didn't ask anything to him, he was roaming half naked; then he went to Jakhni Dhar, next day, Rajendra Singh (PW-2) told him that his father was accompanying with him and

the appellants/accused persons in their truck No.5910 and he got down in Jakhni Dhar and the rest persons were gone to Navakot. He further stated that on 22.04.2005 at about 08:00 am, Bhagwati Prasad informed him that his father is lying dead near the band, when he reached there; he found his father's body in naked condition. He also stated that the FIR was lodged by his brother and denied false implication of accused persons. In his cross-examination, he deposed that the FIR was lodged by his brother and he did not see anyone killing his father. He also stated in his cross-examination that his father was not used to drink alcohol frequently, he only used to drink at home.

9. PW-2 Rajendra Singh on oath deposed that he was accompanying the deceased Amar Dev along with the appellants/accused persons in the same truck, which was driven by Dhani Ram-accused person. He further deposed that he deboarded the truck at Navakot Motor Marg Band at about 08:30 PM and all the other four persons continued the journey, at that time the deceased-Amar Dev was alive. He also informed that he got to know about the death of the deceased on the next day. On cross-examination, he accepted that the appellants, deceased and he was drunk country made liquor. He also accepted that the deceased was heavily drunk. He accepted that he deboarded the truck near the band but denied that the deceased deboarded the truck in Navakot band along with him. He further stated that he had no knowledge about the fact that what transpired after he deboarded the truck.

10. PW-3 Sunil Datt in his examination-in-chief deposed that on 21.04.2005, when his father did not reach home on his usual time, he along with his brother

Pankaj Raturi (PW-1) went to search for him, when they saw a man running half naked, they did not asked him anything due to fear. Thereafter, on 22.04.2005 at about 09:00 AM, they got to know from villagers that some person was lying, when they reached there, their father's dead body was lying near the motor band in a half naked condition he was wearing shirt but nothing on lower body. He further deposed that when they reached there, a crowd had already gathered over there. In his cross-examination, he denied lodging of false report.

11. PW-4 Debendra Datt was a formal witness, who recognized his signatures on the *Panchnama* as Ex-Ka-2.

12. PW-5 Smt. Harshpati, who was the wife of deceased Amar Dev reiterated the prosecution story and supported the version of PW-1 and PW-3, she further deposed that few days before her husband's death, her husband had informed her that he had a dispute with the appellant-Dhani Ram @ Dugri about bringing the clean sand. In her cross-examination, she stated that her husband did not use to drink at home and she wasn't aware that whether he used to drink outside or not. She also denied falsely implicating the appellants/accused persons.

13. PW-6 Ramesh Chandra on oath deposed that he has a photo studio near the alleged place of incidence. He also deposed that he took photographs of the dead body and surrounding area, after he was asked by Patwari to do so. He proved material Exhibits 1 to 7.

14. PW-7 Manohar Lal was a formal witness and verified his signature on the *Panchnama*.

15. PW-8 Dr. Anand Shukla was the doctor, who conducted the examination of dead body and on examination, he found the following wounds on the person of deceased:

1. *There was a peeled bruise mark on the right side of the head of the deceased about 4cm X 3cm.*
2. *The entire face was swollen.*
3. *There was 3 Cm X 2.5 cm laceration mark below the mouth and nose and nose of the deceased was swollen and broken.*
4. *Bruise mark on waist measuring 10 Cm X 5 cm.*
5. *Abraded mark on left knee measuring 5 Cm X 6 cm.*
6. *There were many peeling bruised mark on the upper part of right leg.*
7. *There was 2 Cm X 2.5 cm bruised mark on left elbow.*

In the internal examination he found that on the right side of skull, there was blood clot under the skin and the fracture was visible. This fracture was below the Wound No.1 before the death of the deceased. There was fracture on the nasal bones, brain was congested and right side of the brain there was blood clot found. He opined that the time of death was within 24 to 36 hours and the death was caused due to head injury and also stated that the deceased was intoxicated at the time of death. In his cross-examination, he admitted that the injuries and the death could be possible even due to accidental fall but it is rare. He also admitted that if a person fall due to intoxication, then also the said injuries could be possible.

16. PW-9 Patwari Vishal Singh and PW-10 Revenue Inspector, were the revenue police authorities, who investigated the case and supported the prosecution story during trial. They proved charge-sheet, Site Plan.

17. Learned counsel for the appellants vehemently argued that the entire case of prosecution is based on

circumstantial evidence and the prosecution has miserably failed to prove any link of chain and the conviction recorded by the learned Trial Court is untenable. He also submitted that there is no direct evidence against the appellants and prosecution has failed to bring any cogent and reliable evidence. He further argued that the fact, that no blood marks were found at nearby places and were only found at the place where dead body was found, supports the theory that death was caused due to accidental fall as a result of high intoxication.

18. Learned counsel for the appellants submits that investigation was not conducted in a proper manner and in the absence of any evidence regarding prior concert or meeting of minds, Section 34 IPC could not have been attracted.

19. Per contra, learned State Counsel supported the case of prosecution and submits that the learned Trial Court, after careful examination of the evidences, rightly came to the conclusion that the evidence of 'last seen together' has been duly proved, which is sufficient to convict the appellants.

20. Having heard the learned counsel for the parties and on perusal of the Trial Court Record, this Court is of the considered opinion that the accused persons/appellants enjoys presumption of innocence and the burden to prove the guilt of the accused persons/appellants beyond reasonable doubt rests on the prosecution. Here in the case in hand, even considering the death to be homicidal and not accidental, there is nothing more than the 'last seen theory' to implicate the accused persons/appellants and it is a settled proposition of law that 'last seen theory' is only a piece of

circumstantial evidence and it can only be used as a cementing material to establish the link of chain of events, but cannot be sole basis of conviction, as although it is a substantive piece of evidence, but doesn't have substantial evidentiary value. Hon'ble Apex Court in ***Kanhaiya Lal Vs. State of Rajasthan (2014) 4 SCC 715*** 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.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan, (2010) 15 SCC 588.*”

21. Similarly, the Hon'ble Apex Court in ***Rambraksh @ Jalim vs. State of Chhatisgarh (2016) 12 SCC 251*** has reiterated above legal position in the following words in paras 12 and 13:

“12. 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.

13. In a similar fact situation this Court in *Krishnan v. State of T.N.* (2014) 12 SCC 279 held as follows: (SCC pp. 284-85, paras 21-24)

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In *Arjun Marik v. State of Bihar* (1994) Supp (2) SCC 372 this Court held as follows: (SCC p. 385, para 31)

‘31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 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.’

22. This Court in *Bodhraj v. State of J&K*, (2002) 8 SCC 45 held that: (SCC p. 63, para 31)

‘31. 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 possibility of any person other than the accused being the author of the crime becomes impossible.’

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In *Jaswant Gir v. State of Punjab*, (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of

“last seen together” even if version of the prosecution witness in this regard is believed.”

22. On perusal of the Trial Court Records, it transpires that the conviction is based on presumption and surmised and also on ‘last seen theory’ without any other corroborating evidence thereby, even not satisfying the conditions necessary to implicate the accused persons/appellants by relying on circumstantial evidence, as it is well settled law that in a case based on circumstantial evidence, the prosecution is obliged to prove each circumstance, taken cumulatively to form a chain so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and none else. Further, the facts so proved should unerringly point towards the guilt of the accused. Hon’ble Apex Court in a celebrated judgment in ***Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116*** has laid down the golden rules in the cases basing circumstantial evidence which is to be proved by the prosecution.

- (i). That chain of evidence is complete;
- (ii). Circumstances relied upon by prosecution should be conclusive in nature;
- (iii). Fact established should be consistent only with the hypothesis of the guilt of accused;
- (iv). Circumstances relied upon should only be consistent with the guilt of the accused;
- (v). Circumstances relied upon should exclude every possible hypothesis except the one to be proved.

23. In this view of matter, it is safe to conclude that the prosecution failed to prove its case beyond all reasonable doubt against the appellants.

24. The upshot of the aforesaid discussions is that these appeals deserve to be allowed. Accordingly, both the appeals are allowed and the impugned judgment and

order dated 11.01.2007/12.01.2007 passed by learned Sessions Judge, District Tehri Garhwal, in Sessions Trial No.21 of 2005 *State Vs. Dhani Ram @ Dugri and Ors.*, is hereby set-aside. The appellants are on bail. They need not to surrender. Their bail-bonds are cancelled and sureties are discharged.

25. Let the T.C.R. be immediately sent back to the learned Trial Court for consignment.

(Pankaj Purohit, J.)
09.07.2025

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