



2025:PHHC:091842-DB



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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRA-D-554-DB-2004

Niyaz etc.

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-D-609-DB-2004

Sanjay

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-25-DB-2005

Bijender

... Appellant

Versus

State of Haryana

... Respondent

Date of decision: 23rd July, 2025

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H. S. GREWAL**

Present: Mr. Deepak S. Saini & Ms. Vamika Johar,
Advocates for the appellants in CRA-D-554-DB-2004.

Mr. K.D.S. Hooda, Advocate for the appellant
in CRA-D-609-DB-2004.

Mr. Shiv Kumar, Advocate for the appellant
in CRA-D-25-DB-2005.

Mr. Karan Sharma, Dy. Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The present appeals are directed against the judgment of conviction dated 22.05.2004 and the consequential order of sentence dated 25.05.2004 passed by the Court of learned Additional Sessions



Judge (Ad hoc), Faridabad, whereby the appellants have been convicted and sentenced, in connection with the alleged murder of one Gian Chand, as under:

Under Section	Sentence	In default of payment of fine
302/149 IPC	Imprisonment for life and to pay a fine of ₹ 3000/- each	Further imprisonment for six months each
364 IPC	Rigorous imprisonment for seven years and to pay a fine of ₹ 1000/- each	Further rigorous imprisonment for two months each
201 IPC	Imprisonment for three years and to pay a fine of ₹ 500/- each	Further imprisonment for one month each

All the substantive sentences were ordered to run concurrently.

2. Since all these appeals have arisen out of the same judgment of conviction and order of sentence, they are being taken up together for disposal by way of this common judgment.

3. Having heard learned counsels for the parties and upon a comprehensive appraisal of the entire material on record, we are of the considered view that the case set up by the prosecution suffers from serious legal and factual infirmities, which fatally undermine the foundational basis for conviction in a case resting entirely upon circumstantial evidence.

4. Learned counsels for the appellants have assailed the impugned judgment primarily on the ground that the conviction is based on wholly unreliable and uncorroborated evidence, and that the prosecution has failed to establish the chain of circumstances in a manner that would satisfy the legal standard applicable to a case of circumstantial evidence. It has been argued that **motive** for the alleged offense has not been proved. No material was placed on record to



indicate any enmity or other compelling reason for the appellants to cause the death of Gian Chand (hereinafter referred to as 'deceased'). Furthermore, the last seen theory is solely sought to be proved through the testimony of PW-8, Daya Chand (brother of the deceased), an interested witness, whose version lacks corroboration from any independent source. Learned counsels have also argued that recovery of incriminating articles, namely the purse and wrist-watch of the deceased, was allegedly made pursuant to disclosure statements of the accused appellants. However, the recoveries were made several months later from open places accessible to all, thereby diminishing their evidentiary worth. It has been further argued that most pertinently, the recovery of the dead body of deceased Gian Chand was not effected. The continued absence of the *corpus delicti* creates serious doubt as to whether the offense of murder actually took place, and undermines the credibility of the case of the prosecution. Furthermore, no test identification parade (TIP) of the accused was ever carried out. The first identification of the accused/appellants took place during trial, which is an inherently weak piece of evidence and could not have been relied upon for convicting the appellants. Still further, it was argued that PW-5 Sanjay and PW-6 Bijender Singh turned hostile and did not support the case of the prosecution. In fact, it was asserted that both these material witnesses disowned their previous statements made before the police under Section 161 Cr.P.C., further weakening the narrative put forth by the prosecution.

5. Learned counsels therefore urged that the learned trial Court gravely erred in failing to take into account the glaring discrepancies and inconsistencies in the depositions of prosecution witnesses and



overlooked the settled legal principles governing appreciation of circumstantial evidence.

6. Learned State counsel, on the other hand, submitted that the findings recorded by the learned trial Court are well-reasoned, supported by cogent material on record, and call for no interference in appellate jurisdiction. It was contended that although the case rests on circumstantial evidence, the chain of circumstances is complete and unbroken, pointing unerringly towards the guilt of the appellants. The absence of the dead body does not vitiate the prosecution case, as there is sufficient material to establish that the deceased met an unnatural death and that the appellants alone are responsible. The recoveries of the deceased's purse and wrist-watch, though made after some time, were effected pursuant to disclosure statements and duly identified by witnesses. The testimony of PW-8 Daya Chand, though related to the deceased, is natural, cogent, and not shaken in cross-examination. As for the delay in recovery, it was pointed out that such delay, though relevant, is not fatal where the articles recovered are otherwise clearly identified by witnesses and linked to the deceased. The purse and wrist-watch were specifically identified as belongings of the deceased and were recovered pursuant to disclosure statements duly recorded in accordance with law. As regards PW-5 Sanjay and PW-6 Bijender turning hostile, the State counsel submitted that the testimony of hostile witnesses is not to be discarded in toto. Learned state counsel has thus argued that the prosecution has succeeded in establishing each incriminating circumstance, and their cumulative effect leaves no room for reasonable doubt.

7. Before proceeding further, it would be appropriate to give a gist of the case of the prosecution:



8. As per the prosecution, on 30.07.2002, deceased Gian Chand, employed as a driver of a Marshal Mahindra Jeep, owned by one Naresh Kumar (PW-10), was allegedly hired by 3 persons for a journey to Garh Ganga. When neither the vehicle nor the driver returned by the next day, efforts were made by the owner PW-10 Naresh Kumar and the brother of the deceased PW-8 Daya Chand to trace them. A missing report Ex.PB was lodged on 03.08.2002. The vehicle was subsequently recovered from Bihar, but the driver remained untraceable. During investigation, accused Niyaz, Imran and others confessed to having murdered Gian Chand and throwing his body into the Agra canal. Based on these disclosures, a wallet and a wrist-watch allegedly belonging to the deceased were recovered from an open place. The accused were challaned and thereafter sent up to face trial. They were charged for offences under Sections 364 IPC, 302 IPC read with Section 149 IPC, and Section 201 IPC. In support, the prosecution examined 15 witnesses. PW-1 Inspector Sumer Singh, PW-2 Manoj Kumar, who prepared scaled plan Ex. PA of the place of occurrence on 25.09.2002, PW-3 ASI Mohd. Idris who recorded DDR No. 9 on the basis of complaint Ex. PB (missing report of deceased), including PW-5 Sanjay, PW-6 Bijender Singh, PW-7 Hari Ram, PW-8 Daya Chand, PW-9 Kanwar Pal, PW-10 Naresh Kumar (complainant), and others. Admittedly, PW-5 Sanjay had approached the deceased to take his vehicle of hire to Garh Ganga, with the three persons (accused) whom he already knew. However, he did not support the case of the prosecution and was declared hostile; he denied acquaintance with the deceased nor did he identify any of the accused. Similarly, PW-6 Bijender Singh was declared hostile as he failed to identify the accused.



9. After the conclusion of prosecution evidence, all incriminating material was put to the accused under Section 313 Cr.P.C. The accused denied the allegations and pleaded false implication. They did not lead any defence evidence. The trial court, on appreciation of the evidence, held that the prosecution had succeeded in proving the charges beyond reasonable doubt and convicted all the four accused under Sections 364, 302 read with Section 149, and 201 IPC.

10. At the very outset, it is necessary to reiterate that the present case is based entirely on circumstantial evidence. It is a well settled principle of law that in cases resting solely on circumstantial evidence, the prosecution must establish a complete and unbroken chain of circumstances which point unerringly towards the guilt of the accused and are wholly inconsistent with any hypothesis of innocence.

11. The essential links in such a chain typically include proof of motive, last seen theory, recovery of incriminating articles, medical or forensic evidence supporting the cause of death and of any other corroborative evidence. In the above background, it would be necessary to examine whether the prosecution was successful in discharging its burden in the present case.

12. In cases resting on circumstantial evidence, '**motive**' plays a significant role. The prosecution, however, in the present case, has failed to prove any motive whatsoever for the commission of the alleged crime. While it was vaguely suggested that robbery was the motive, no credible evidence has been brought on record to substantiate the same. The learned trial Court also did not record any cogent finding on the issue of motive. In a case of circumstantial evidence, especially where other links are absent or tenuous, the absence of motive assumes critical importance and significantly weakens the case of the prosecution.



13. Coming next to the ‘last seen’ theory, the only evidence pressed into service in support of the same, is the testimony of PW-8, Daya Chand, the brother of the deceased, who deposed that he saw the deceased leave with the accused in the vehicle. This witness, being closely related to the deceased, is an interested witness. His testimony is not corroborated by any independent evidence. Furthermore, no test identification parade (TIP) was conducted. The initial failure to identify the accused during investigation and their identification for the first time in Court renders the “last seen” theory highly doubtful.

14. Furthermore, the so-called recovery of the wallet and wristwatch of the deceased, which forms the sole incriminating circumstance against the accused, is fraught with serious legal infirmities. These articles were allegedly recovered several months later from open and accessible places, pursuant to disclosure statements made by the accused. The evidentiary value of such recoveries is highly questionable and does not inspire confidence. There is no credible evidence linking the recovered items exclusively to the deceased.

15. The most significant lacuna in the case of the prosecution is the complete failure to recover the dead body of the deceased. The case, therefore, rests on the presumption of death without any direct proof of homicide. The principle of *corpus delicti* – the requirement of proving that crime has actually occurred – becomes extremely relevant. No doubt in some instances, conviction can be sustained even in the absence of the body, such cases rest on overwhelming circumstantial evidence, which is conspicuously lacking here. In the absence of proof of death, the risk of wrongful conviction becomes dangerously high.

16. PW-5 Sanjay and PW-6 Bijender Singh, key prosecution witnesses, turned hostile and denied having made any incriminating



statements to the police nor did they identify the accused during trial. The remaining witnesses are closely related to the deceased. No independent witness was examined. This lack of corroboration further impairs the credibility of the prosecution version.

17. On an overall assessment of the material on record, we find that the prosecution has failed to establish a complete and unbroken chain of circumstances linking the appellants to the commission of the alleged offense. The non-establishment of motive, lack of credible ‘last seen’ evidence, absence of test identification, dubious recoveries, hostile witnesses, and above all, the non-recovery of the dead body, cumulatively render the case of the prosecution wholly unsustainable in law.

18. The learned trial Court, in our considered view, erred in convicting the appellants on the basis of such frail and uncorroborated evidence. The impugned judgment and order of sentence, being contrary to law and unsupported by evidence, cannot be allowed to stand. Consequently, all these three appeals are allowed and the appellants are acquitted of charges levelled against them.

(MANJARI NEHRU KAUL)
JUDGE

(H. S. GREWAL)
JUDGE

July 23, 2025
rps

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