CNR No-UPKJ010016992021

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Audio Judgment

IN THE COURT OF THE SESSIONS JUDGE, KANNAUJ

Presiding Officer: Chandroday Kumar, HJS, JO Code: UP06553

Sessions Trial No. 377 of 2021

State vs. Arun Yadav

Counsel for Prosecution: Sri Tarun Chandra DGC (Criminal), COP 055245
Counsel for the accused: Sri Chandrapal Singh, Advocate, COP 188630

FIR No. 156/2020
P.S. Vishungarh, District Kannauj
under Section 302 IPC

JUDGEMENT

Introduction

1. **Background:** This Sessions Case arises from FIR No. 156/2020 registered at P.S. Vishungarh, District Kannauj, under Section 302 of the Indian Penal Code, 1860 ("IPC"), in connection with the death of one Vakil Khan. The prosecution alleges that on the night of 09.10.2020, the accused Arun Yadav, motivated by prior enmity, lured the deceased on the pretext of a compromise and murdered him by strangulation. The deceased's body was found the next morning (10.10.2020) in a field behind a tubewell on the outskirts of Alhanapur village. The accused was arrested subsequently, and during investigation, an alleged murder weapon (a wooden stick **danda**) was recovered at his instance.

2. **Proceedings:** On committal to the Sessions Court, the accused was provided all relevant documents under Section 207 of the Code of Criminal Procedure, 1973 ("CrPC"). The accused pleaded not guilty to the charge and opted for a trial. The prosecution examined eight witnesses (PW1 to PW8) and produced documentary exhibits (Ex. Ka-1 to Ka-13) in support of its case. No evidence was led in defence. The statement of the accused was recorded under Section 313 CrPC, wherein he denied the incriminating evidence and asserted that he was falsely implicated due to prior disputes.

Charges Framed

Charge: That on or about 09.10.2020 at night in village Alhanapur, P.S. Vishungarh, District Kannauj, the accused Arun Yadav committed the

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murder of Vakil Khan (aged 38) by intentionally causing his death, and thereby committed an offence punishable under Section 302 IPC.

The charge was read and explained to the accused in Hindi, to which he pleaded not guilty and claimed to be tried.

Having heard the arguments of counsels of both sides at length and due perusal of the case record, I frame the following points of determination:

Points for Determination

Based on the charge and the material on record, this Court frames the following points for determination:

- **Point (i):** Whether the death of Vakil Khan was homicidal in nature?
- **Point (ii):** If so, whether the accused Arun Yadav caused the homicidal death of Vakil Khan, and if yes, whether it amounts to murder as defined under Section 300 IPC, punishable under Section 302 IPC?
- **Point (iii):** Depending on the findings on the above, what order should be passed?

Appreciation of Evidence

(i) Medical Evidence of Death

3. **Cause of Death:** PW2 Dr. Jaichandra (Medical Officer) conducted the post-mortem on the deceased's body on 10.10.2020. He found a prominent ligature mark around the neck (24 × 1.5 cm) along with fracture of the thyroid cartilage, contusion on the eyelid, a laceration on the inner lips, and other bruises. Rigour mortis was present in the limbs. He opined that the cause of death was asphyxia (suffocation) due to pressure on the neck with a hard object, and that death had occurred approximately half to one day prior to the post-mortem examination. There were no injuries suggestive of accident or suicide. The medical evidence thus establishes beyond doubt that Vakil's death was homicidal, caused by strangulation. The defence does not dispute the fact of death or its homicidal nature.

(ii) Circumstantial Evidence and Witness Testimonies

4. **Motive and Prior Incidents:** The prosecution case rests on circumstantial evidence. It is alleged that a few days before the incident, on 03.10.2020, the accused Arun Yadav had assaulted the deceased Vakil and his mother, leading to a complaint being given to police. PW1 Shakil Khan (brother of the deceased) and PW4 Ruksana (sister-in-law of the deceased) corroborate that after this prior incident, the accused was pressuring the deceased's family to compromise and withdraw the complaint, and had issued life threats when they refused. According to PW1, on 08.10.2020, the accused stopped him on the road and threatened to kill him and his brother if they did not withdraw the case. This motive of revenge provides

context to the events of October 9, 2020. **While motive alone cannot establish guilt, it is a relevant circumstance in a case based on circumstantial evidence** (***Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022*****).**

5. **Last Seen Together:** The crucial factual assertion is that the deceased was last seen alive in the company of the accused on the evening of 09.10.2020 near a temple outside the village. PW1 deposed that around that evening, he saw his brother Vakil and the accused Arun behind a temple in conversation, with the accused insisting on a compromise and threatening harm. PW4 Ruksana further testified that when Vakil did not return home, she (along with PW1 and the deceased's mother, Shabina) went to the temple to fetch him. They found the accused and the deceased there, and the accused told them that Vakil "is not going anywhere until our matter is settled." He allegedly threatened that if Vakil didn't compromise, he would kill him, and warned PW1 not to interfere on pain of death. PW4 stated that they urged Vakil to come home soon and then left the spot. Later that night, around dinner time, PW4 went a second time to look for the deceased; she again found the accused and deceased in discussion and objected to the accused's conduct. At that point, the accused allegedly told her and the deceased's mother to go home, saying that Vakil would come later after their "settlement talks". PW4 deposed that sometime thereafter, at a late hour, the accused and deceased both disappeared from the temple area, and Vakil did not return home that night.

6. **Discovery of Body:** It is undisputed that at about daybreak on 10.10.2020, the body of Vakil was found lying in a field behind one Sunil Tiwari's tubewell on the outskirts of the village. PW1 stated he came to know of the body around 6-7 AM from a villager (dhobi), while PW4 said her young son discovered the body around 8 AM when he went to call his uncle Vakil for tea. In either case, by about 8-9 AM that morning, a large crowd, including family members and police personnel, had gathered at the scene. The inquest was conducted on the spot by PW7 SI Ashok Kumar Mishra. Sketch photos were drawn, and blood-stained soil was collected from near the corpse. PW7 confirmed that the body bore multiple external injuries and blood was observed on the ground near the head of the deceased. These circumstances establish that Vakil met a violent death during the intervening night of 09/10.10.2020, after he was last seen in the accused's company.

7. **Recovery of Alleged Weapon (Stick):** The most significant piece of evidence put forth by the prosecution is the recovery of a wooden stick (**"danda"**) purportedly used to commit the murder. The Investigating Officer ("IO"), PW6 Inspector Krishna Lal Patel (SHO), deposed that during custodial interrogation on 16.10.2020, the accused disclosed that he had hidden the stick near a pond on the way from

the crime scene. An initial search on 17.10.2020 proved futile, as many sticks were found lying around the pond and the specific object could not be identified. Thereafter, the police obtained a police custody remand and, on 28.10.2020, took the accused to the village for recovery. PW5 Khurshid Alam – who is a relative of the deceased (brother-in-law) – testified that on 28.10.2020, he happened to be in the village and was asked by the police to witness the recovery along with one local villager, Jiledar. PW5 stated that the accused led them to a kachcha pond at the edge of the village. From near a stack of dried maize stalks, the accused produced a wooden stick about 2.5–3 feet in length, hidden in the grass. In PW5's presence, the accused allegedly told the police that "this is the same stick with which I strangled and killed Vakil". The police seized and sealed the stick on the spot and prepared a recovery memo (Ex. Ka-5) which bears the signatures of PW5 and the other witness. PW6 (the then IO) corroborated that the danda was recovered on 28.10.2020 on the accused's pointing, duly sealed, and produced before the Court as material Exhibit-1.

8. **Other Evidence:** PW3 HC Balram Singh (the duty head constable) proved the FIR (Ex. Ka-3) and the General Diary entry of its registration. PW8 Inspector Satya Prakash (successor IO) deposed that he forwarded the blood-stained soil to the Forensic Science Laboratory ("FSL") for examination. However, notably, **no forensic analysis of the recovered stick was conducted** – PW8 candidly admitted that he did not send the wooden danda to the FSL. He also did not recall observing any bloodstains on the stick. Thus, there is no scientific evidence (such as fingerprints, DNA, or blood) linking the stick to the crime or the deceased. The prosecution also did not produce any independent witness from the village who saw the accused around the time of the murder near the field or leaving the scene. The case therefore hinges on the circumstantial mosaic of (a) motive and threats, (b) last-seen evidence, and (c) the recovery and implied confession.

(iii) Inconsistencies and Witness Credibility

9. **Testimony of Relatives:** PW1 Shakil (informant and brother of the deceased) and PW4 Ruksana (deceased's sister-in-law) are both related and interested witnesses. The law does not disqualify relatives from testifying, but their evidence must be scrutinised with caution. It is well-established that interested testimony requires close scrutiny, and **material contradictions or falsehoods can undermine its reliability**. In the present case, the statements of PW1 and PW4, when read together, reveal certain inconsistencies and embellishments:

    - **Timing and Details of "Last Seen":** Both witnesses assert seeing the accused with the deceased near a temple on 09.10.2020, but neither specified to police the exact time or which temple it was. PW1 admitted in cross-examination that he **did not mention in his written report or initial statement**

the precise temple or timing of this meeting, nor did he point out the temple location to the Investigating Officer. PW4 likewise conceded that she **never told the police which temple or at what time the accused and deceased were talking**. This omission is significant given that the village has multiple temples. The vagueness raises doubts about the exact circumstances of the last sighting. Both witnesses also differ slightly on sequence: PW1 says after he first saw them and returned home, **it was his wife (PW4) who went to call Vakil and witnessed the accused apologizing and asking for pardon**, whereas PW4 describes herself going twice (once with PW1 and later with her son) and makes no mention of any apology by the accused except that he told them to leave and that Vakil would come later. These variations, though not extreme, indicate that the **exact narrative of the "last seen" occurrence is not consistent** and may have been reconstructed with some conjecture.

- **Discovery of Body and FIR Timing:** There is a discrepancy in the testimony regarding when the body was found and when the FIR was lodged. PW1 said he learned of the body around 6–7 AM but **did not immediately inform the police**; he went to the scene, and only around 11 AM did he dictate a written complaint (tahrir) to PW5 Khurshid, which was then filed at the police station. PW4, on the other hand, stated that **police were informed by 8–9 AM and arrived at the scene by 9 AM**, and that PW1 had already gone to the station by 8 AM to give a report. PW6 (IO) clarified that he received a *phone call* about the murder around 9:00 AM and rushed to the spot by 9:15 AM. The formal typed FIR was registered at 1:30 PM on 10.10.2020 (Ex. Ka-3) after PW1's written complaint was brought to the police station. Thus, there was a gap of several hours between the discovery of the body and the registration of the FIR. The witnesses' differing versions of this timeline cast some doubt on the exact sequence. However, this delay by itself may not be sinister since the police had arrived and the inquest started by morning; the FIR was eventually lodged the same day. What is more concerning is the possibility of *improvements or additions* in the written report during this interval (addressed shortly).

- **Addendum in Written Complaint:** PW1's original handwritten complaint (Ex. Ka-1) contains a curious statement that "apart from Arun, other people might be involved in the incident". Under cross-examination, PW1 professed ignorance as to how this line was included, claiming **he did not dictate such words**. PW5 Khurshid Alam, who authored the complaint, shed light on this: he testified that the **Investigating Officer directed him to add that line about possible involvement of others**, and that it was inserted later at the police station before PW1 signed the

final report. Indeed, PW5 stated that the earlier version of the report (which was used merely for the inquest proceedings and bore no signatures) did **not** mention "other people," whereas the FIR-bearing version does include it. This indicates an unexplained interpolation by the investigating agency. While the inclusion of such a statement might have been a precautionary measure by the IO (to avoid excluding unknown culprits), it nonetheless reflects a *procedural lapse* and raises the possibility that the written FIR was not a verbatim reproduction of PW1's account but was modified. This undermines the complete credibility of the FIR as a contemporaneous document.

- **Other Quarrels and Potential Suspects:** Under cross-examination, PW1 revealed that the deceased Vakil had quarrels with numerous people in the village over time – he named at least half a dozen villagers (Pradeep T., Mohan (pradhan), Vinod, Saroj, Santosh, Manoj, Ashok (home guard), Bablu, Matru, etc.) with whom the deceased had past altercations. He maintained that none of those persons held a serious grudge, denying the suggestion that his brother was quarrelsome or had enmities. Interestingly, PW4 Ruksana was either unaware of or denied any such prior incidents – she testified that *to her knowledge Vakil had no fights with Mohan, Saroj, Vinod, Santosh, etc., and she did not know about any quarrel with Bablu or any "Tiwari"*. This contradiction suggests that PW1 may have been concealing the extent of the deceased's local disputes initially, only for it to surface under cross-examination, while PW4 (who is less informed of the deceased's dealings) gave a different picture. The existence of multiple prior quarrels in the village introduces the **possibility of other potential adversaries**, a factor which the investigation appears to have glossed over. Notably, the IO (PW6/PW8) did not seriously pursue or interrogate any of those individuals in connection with the murder.

- **Accused's Whereabouts:** The defence suggested that the accused was not even present in the village on the night of the crime, implying an alibi that he was away in Delhi for work. This claim emerged in the form of suggestions in cross-examination. PW4 vehemently denied the suggestion, asserting that the accused was present in the village on the day of the occurrence and that the accusation against him was not false due to enmity. It is observed that **no defence evidence** (such as co-worker testimony or travel records) was produced to substantiate the alibi. Therefore, the alibi remains a mere suggestion without weight. However, the fact that this suggestion was put reinforces that the accused has consistently disputed his presence and involvement.

10. **Independent Witnesses and Investigation Gaps:** Apart from the related eyewitnesses (PW1, PW4) and the formal police/medical witnesses, the prosecution brought in PW5 Khurshid Alam as a *panch* witness for the recovery and inquest. PW5 is the brother-in-law of PW1, hence not entirely disinterested. The only ostensibly neutral witness to the recovery, one villager Jiledar, was not examined in court. The IO recorded statements from two villagers, Karan Singh and Arif, who had assisted in identifying the body and conducting the inquest, but **neither was called as a witness**. No priest or local person from the temple area was examined to corroborate seeing the accused and deceased together on 09.10.2020 (indeed, PW6 admitted he did not locate or examine the temple priest or specify which temple since the witnesses themselves had not specified it). The *scene of crime* (field where the corpse was found) was in an open area; no witness saw the actual crime or the accused near that field at the relevant time. The **investigation did not recover any physical evidence, such as footprints, fingerprints, or personal belongings of the accused, from the scene** that could tie him to the act. There is thus a marked absence of direct or scientific corroboration for the circumstantial account.

11. **Conduct of Accused:** The post-offence conduct of the accused is also a relevant circumstance. It is evident that the accused was absconding for a few days after the incident – the record shows that he was surrendered on 15.10.2020 (indeed, the IO had to obtain a custody remand thereafter). Unexplained abscondence can sometimes be a guilty circumstance. However, given that the accused knew he was a prime suspect (because PW1 had named him in the FIR), his decision to go into hiding or move to a different city for a few days could also be a result of fear of being falsely implicated. The Court must be cautious in drawing adverse inference from abscondence alone. In the case of **Matru @ Girish Chandra v. The State of U.P. - AIR 1971 SC 1050,** Hon'ble Apex Court has held as under:

12. " . . . . . The act of absconding is no doubt a relevant piece of evidence to be considered along with other evidence, but its value would always depend on the circumstances of each case. Normally, the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case, the appellant was with Ram Chandra till the FIR was lodged. If, thereafter, he felt that he was being wrongly suspected and he tried to keep out of the way, we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."

13. Moreover, when the overall evidence is weak, the fact that the accused later obtained bail (as hinted by PW4, who stated that "Arun is out of

jail and threatening us") cannot be given undue weight in terms of merit.

In summary, the prosecution's case suffers from a lack of direct evidence and relies on a chain of circumstantial evidence, including motive, threats, last-seen circumstances, and a belated recovery of a weapon. The Court will now examine whether this chain is sufficiently complete and credible to sustain a conviction, in light of the legal standards governing circumstantial evidence.

Procedural Lapses in Investigation

Before analysing the legal sufficiency of the evidence, it is pertinent to catalogue certain procedural and investigative lapses that have emerged, as they have a bearing on the benefit of doubt:

- **Delay and FIR Manipulation:** While the prompt arrival of police for inquest is noted, the formal FIR was lodged only by early afternoon on 10.10.2020, leaving a gap during which the contents of the written report were modified by the IO (addition of "and others" clause). Such tampering violates the integrity of the FIR and may indicate an attempt by investigators to broaden the scope of suspects or hedge against incomplete evidence. This dilutes the evidentiary value of the FIR as the earliest version of events.

- **Inquest Report Incomplete:** The inquest papers (Ex. Ka-8) prepared by PW7 SI Ashok reveal blanks – the column for "apparent cause of death as per informant" was left blank, and the reference GD entry and time were not filled in. No clear opinion on cause of death or suspect was recorded in the inquest findings. While an inquest's purpose is limited (to ascertain cause of death), the failure to fill these details reflects a degree of carelessness. It is also noted that the inquest *panchayatnama* did not mention the accused's name as a suspect at all, even though PW1 and others had already suspected Arun – indicating either that the family did not immediately impute blame in writing or that the police withheld it.

- **Non-documentation of Initial Information:** PW6 (IO) received a phone call about the dead body around 9:00 AM on 10.10.2020. He made a **departure entry at 09:01 AM (GD No.14) to proceed to the scene**, but he **did not append a copy of that GD entry or the substance of the phone call in the case diary**. This is a lapse in procedure under Section 157 CrPC, which requires the earliest information of a cognizable offence to be recorded and forwarded to the Magistrate. The failure to mention the substance of that call in the case diary's first page was admitted by PW6. This omission, though seemingly minor, could raise doubts about the exact time the police became aware and whether the FIR was ante-timed (the defence suggested the inquest might have been conducted before the FIR was filed). However, PW7's testimony that he left the police station with a

copy of the *chik* FIR in hand for the inquest counters the claim of any ante-timing.

- **Lack of Independent Witness Involvement:** The only independent civilian involved in the crucial recovery was one "Jiledar" from the village, but the police did not ensure his testimony in court. The recovery memo (Ex. Ka-5) shows a signature/thumb impression of a witness besides PW5, presumably Jiledar, yet he was not examined. Moreover, PW5 disclosed that the police did not even perform the statutory precaution of searching the witnesses or ensuring they had no object, nor did they allow witnesses to search the police party, before the recovery. Standard procedure (to rule out planted evidence) was overlooked. This procedural irregularity casts a shadow on the authenticity of the recovery.

- **Forensic Examination Neglected:** Despite collecting blood-soaked soil from the scene, the investigation **failed to have any forensic DNA comparison done** to confirm that the blood was that of the deceased. More glaringly, the **alleged murder weapon was never sent to the forensic lab**. No serological or fingerprint tests were conducted on the stick. If the stick truly had been used to strangulate or assault the deceased, one might expect traces of blood, tissue, or at least the deceased's DNA or the accused's fingerprints on it. The IO's admission that he did not even recall whether any blood was visible on the stick – and PW6's admission that "no blood was found on the stick" – significantly diminishes the probative value of this weapon. The failure to utilise forensic tools, when available, is a serious lapse that deprives the prosecution case of potentially crucial support or could have exposed whether the recovered stick was in fact connected to the crime.

- **Scene Reconstruction and Other Leads:** The IO (PW6) conceded that he **did not inspect or prepare a site plan of the temple area** where the deceased was allegedly last seen with the accused, because the witnesses had not specified which temple and he was transferred before further progress. Thus, a potentially significant crime scene (or at least the last-seen scene) was left unexamined. No timelines of movements of the deceased or accused that evening were sought via call detail records or otherwise. The investigators also did not interrogate the other villagers with whom the deceased had quarrels. Had the investigation explored these leads, it might have uncovered alternative suspects or motives, or at least strengthened the conclusion that none other than Arun had the opportunity. The lapse in this regard leaves a lingering uncertainty whether the possibility of another assailant was effectively excluded.

- **Reliance on Custodial Confession:** The police in this case have essentially relied on the accused's custodial disclosure to solve the crime (the recovery of the stick). There is no indication of any substantive investigation yielding anything other than what the

accused allegedly "told" them. This over-reliance on a confession made to the police (which is generally inadmissible except for the purpose of recovery) can be problematic if the recovery itself is not impeccable. Moreover, PW5's testimony suggests that the IO already knew most of the facts by the time the accused was interrogated (indeed, they already knew where the body was found, etc.). The Supreme Court has cautioned that **there cannot be a "discovery" of an already known fact under Section 27 of the Evidence Act (Para 8 of *Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022*)**. In the present case, by 16.10.2020, the police were generally aware that a stick might have been used and could be near a pond (from the accused's first statement), and on 17.10.2020, they even searched the pond area and found many sticks. Thus, when on 28.10.2020 the accused physically produced one stick, it is arguable whether this was truly a "distinct new fact" or merely a presentation of an object that the police had already been looking for in a known location. This lapse in securing the evidence earlier and the timing of its recovery under police custody create doubt whether the recovery was genuine or staged to bolster a weak case.

These lapses do not, by themselves, prove the accused's innocence, but they do weaken the cogency of the prosecution's evidence. The Court must keep these deficiencies in mind when testing whether the remaining evidence unerringly establishes the accused's guilt beyond reasonable doubt.

Legal Analysis

14. **Circumstantial Evidence and the Burden of Proof:** It is trite law that in a case resting on circumstantial evidence, the prosecution must establish a complete and unbroken chain of circumstances which leads to only one conclusion: that it is the accused and no one else who committed the offence. All the links in the chain must be proved beyond reasonable doubt, and all alternative hypotheses of innocence must be excluded **(Para 14 of *Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022*)**. The Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra: 1984 AIR 1622* famously laid down the five cardinal principles (the "panchsheel") for proof by circumstantial evidence, including that the facts established should be consistent only with the guilt of the accused and inconsistent with any reasonable hypothesis of innocence. If any link in the chain is missing, or if the proved circumstances are capable of two interpretations (one of which points to innocence), the accused must be given the benefit of doubt. In short, **suspicion, however strong, cannot replace proof**. The gap between "may be true" and "must be true" has to be traversed by the prosecution with credible and cogent evidence.

Applying these principles, let us evaluate the circumstantial chain in the present case:

- **Motive:** The evidence of previous animosity and threats (PW1, PW4) does establish a possible motive for the accused to harm the deceased. However, motive alone is not sufficient to convict for murder. At best, it sets the stage and perhaps explains subsequent conduct. It is also notable that the deceased had antagonised several others (as PW1 admitted), so others, too, might have had motives. Therefore, motive here does not singularly point to the accused; it only coincides with suspicion against him.

- **Last Seen Evidence:** The prosecution heavily relies on the fact that the accused was the last person seen in the company of the deceased on the fateful evening. The "last seen together" theory is a relevant piece of circumstantial evidence, but **it is not conclusive on its own**. Jurisprudence dictates that for last-seen evidence to be sufficient, the interval between the accused being seen with the victim and the time of death should be so short and proximate that the possibility of any third party intervening is negated. If a significant time gap exists, or if the victim was alive and unaccounted for long after the last sighting, the probative value of last-seen evidence diminishes and the prosecution then bears a **heavy burden to rule out involvement of any other person during that interval (Para 12 of *Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022***. In the case at hand, according to the prosecution, the deceased was last seen with the accused around 7:30-8:00 PM on 09.10.2020 (though witnesses did not give an exact time) and the death likely occurred that night. The post-mortem indicates death could have happened roughly around late night 09.10.2020 (the medical opinion was death 12–24 hours before 4:30 PM on 10.10.2020) – this window would place the time of death approximately between 4:30 PM on 09.10.2020 and 4:30 AM on 10.10.2020. It is quite possible the death occurred around 9:30–10:00 PM on 09.10.2020, as per the prosecution theory and the accused's alleged confession. Thus, the time gap between the last seen (~8 PM) and the probable time of death is between 4:25 PM on 09.10.2020 and 4:25 AM on 10.10.2020, which is approximately 8 hours and 25 minutes. This is relatively close proximity in time. If that were the only consideration, the last-seen circumstance would indeed be a strong incriminating factor, shifting the onus somewhat to the accused to explain how they parted company. **However, the proximity of death is not the only factor** – the proximity of location and exclusivity of access must also be considered. Here, the deceased's body was found not at the temple where they were last seen, but in a field some distance away, the next morning. There is an **entire night's gap** before discovery of the corpse, and the crime location is different. The prosecution has not established that the accused was seen escorting or taking the deceased towards the field, nor that no one else could have encountered the deceased in that intervening time. The village being small, one might expect someone to have heard or seen something if a violent struggle took place at the field at night, but no such testimony

is forthcoming. The **circumstance of last seen, therefore, while incriminating, does not irrevocably and definitively inculpate the accused without further corroboration (*Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022*).** As the Supreme Court has observed, last seen evidence can only lead up to a certain point – it raises a suspicion and perhaps shifts a narrative burden on the accused, but by itself it **"cannot form the sole basis of guilt"(*Dinesh Kumar vs The State Of Haryana on 4 May, 2023: SUPREME COURT IN CRIMINAL APPEAL NO.530 OF 2022*)** unless a complete chain of other evidence supports it. In the present case, this Court finds the last-seen circumstance to be **not wholly free from doubt** (given the vagueness about exact time/place in records) and, in any event, requiring corroboration by other links in the chain.

- **Extra-Judicial Confession (Threats):** The prosecution led evidence that the accused openly threatened to kill the deceased (and PW1) if he did not compromise the earlier case. Such threats, if true, evince malicious intent and foreshadow potential harm. However, these were words uttered days and hours before the murder, not a confession after the fact. They serve to prove mens rea (intent) but **do not by themselves prove actus reus (the act of murder)**. There is no confession by the accused to any person outside police custody. The only direct statement of culpability attributed to the accused is the one he allegedly made to the police at the time of recovery ("I strangled him with this stick"). That statement is a **confession made while in police custody** and is clearly barred by Section 25 of the Indian Evidence Act, 1872 ("IEA") from being proved against the accused. It is not admissible as substantive evidence of guilt. The only portion of that statement that the law permits the Court to consider is the fact **leading to discovery** – namely, that the accused led the police to the hidden stick.

- **Recovery of Weapon (Discovery under Section 27 IEA):** Under Section 27 of the Evidence Act, if an accused, while in police custody, provides information leading to the discovery of a fact (such as the finding of a new object connected with the crime), that much of the information as relates distinctly to the fact discovered is admissible. In this case, the fact discovered is the wooden stick (danda) retrieved on the accused's instance from a concealed spot near the pond. The recovery memo (Ex. Ka-5) has been duly proved, and PW5 and PW6 testified to the recovery. **The legal question is the evidentiary value of this discovery.** The defence argued that the recovery is planted and that the object has no nexus with the crime. It is noteworthy that the stick was recovered **11 days after the incident**, from an open area accessible to all. No blood or human tissue was found on it. It was not forensically linked to the deceased's injuries (no FSL report to confirm it was used for strangulation). The only thing connecting the stick to the crime is the accused's own statement, which is inadmissible

beyond the fact of finding the stick. The mere recovery of a wooden stick from a hiding place pointed out by the accused, **without more, does not conclusively prove that this stick was used to commit the murder**. The stick is a common implement. The prosecution did not even establish that it was singularly identifiable or bore any unique mark. In fact, PW6's case diary notes reveal that multiple sticks were lying around the pond area. That the police failed to find it on 17.10.2020 and then "found" it on 28.10.2020 with the accused's help could imply that only the accused knew the exact hiding spot – a circumstance somewhat indicative of guilt – but it could equally indicate that the police were determined to have the accused produce something to strengthen their case. Given the lack of any distinguishing evidentiary trait of this stick, the possibility cannot be ruled out that an available stick was presented as the weapon on the accused's alleged disclosure. Crucially, **for a Section 27 recovery to be incriminating, it must be of a nature that only the perpetrator could have known**. Here, the location (the village pond) was known; indeed, many people had gathered during the recovery and witnessed the process. The recovery witnesses did not see the stick until the police pulled it from the grass, and the police had not bothered to search or secure the area thoroughly earlier. This Court is mindful of the Supreme Court's guidance in *Dinesh Kumar vs. State of Haryana, supra*, where in a similar scenario the Court held that if facts like the crime scene or objects were "already in the knowledge of the police" from an earlier discovery or investigation, then a subsequent disclosure by the accused leading to the same facts cannot be given weight under Section 27 – **"there cannot be a 'discovery' of an already discovered fact."** In the present case, although the exact stick may not have been physically discovered earlier, the general fact that a stick was used and likely hidden near the pond was already known to the police by 17 October 2020. Therefore, the recovery on 28.10.2020 adds only marginal value – it is a piece of circumstantial evidence, but not a clinching link unless corroborated by forensic proof or further conduct. As it stands, the recovery suggests suspicion but **does not irresistibly point to the accused's guilt**.

- **Conduct of Accused Post-Incident:** The accused's absence for a few days and his failure to offer any convincing explanation under Section 313 CrPC for the last-seen circumstance might be seen as additional links. However, as the Supreme Court cautioned in *Dinesh Kumar v. State of Haryana*, supra, **Section 106 of the Evidence Act (which allows adverse inference for unexplained facts especially within the accused's knowledge) cannot be used to fill gaps in a weak prosecution case**. Here, the evidence of last seen and recovery is itself not strong enough to conclusively establish guilt, so the accused's mere non-explanation cannot by itself complete the chain. An accused person has the right to remain silent, and the burden of proof remains with the prosecution throughout the proceedings. The Court cannot hold the accused guilty merely because he did not satisfactorily

explain his presence with the deceased or his whereabouts, when the **prosecution's proof of him committing the murder is otherwise deficient**.

15. **Benefit of Doubt:** In view of the foregoing analysis, this Court finds that the prosecution has not succeeded in proving the guilt of the accused beyond reasonable doubt. The circumstances proved do give rise to a strong suspicion against Arun Yadav. Indeed, he had a clear motive; he was last seen with the deceased shortly before the likely time of death, and he purportedly led to the recovery of a hidden stick. However, **a criminal court cannot convict on suspicion or probability**. Each incriminating fact must be proved, and the chain of evidence must be complete. In the present matter, critical gaps remain: There is no eyewitness or direct evidence placing the accused at the scene of murder; no forensic or scientific evidence links him to the crime; the last-seen account, coming only from interested relatives, is not corroborated by any independent testimony or precise detail; and the recovery evidence is fraught with doubts as discussed. Alternative hypotheses – such as an attack by some other enemy of the deceased – have not been satisfactorily excluded, especially given the deceased's history of quarrels. The law mandates that if two views of the evidence are possible, the benefit of the doubt must go to the accused. As the Supreme Court reiterated in *Dinesh Kumar's* case while acquitting in a 23-year-old murder, **"the prosecution failed to prove the case beyond reasonable doubt and the case did not pass the standard required in a case of circumstantial evidence."** Those words apply aptly here. The chain of circumstances in this case is incomplete and does not irresistibly point only to the accused's guilt. Therefore, the accused is entitled to be given the benefit of doubt.

Findings

- **Re: Point (i) – Homicidal Death:** The Court finds that Vakil Khan's death was homicidal. The medical evidence conclusively establishes that he died due to strangulation by a ligature or hard object, and not by natural or accidental causes.

- **Re: Point (ii) – Perpetrator's Identity:** On the evidence, it is **not proved beyond reasonable doubt** that the accused Arun Yadav is the author of the homicide. While there are suspicions against him and certain circumstantial indications, the prosecution's evidence falls short of the certitude required for a criminal conviction. The cumulative effect of the proved facts does not exclude every hypothesis except the guilt of Arun Yadav. Key links in the chain – such as conclusive proof of the accused's presence at the crime scene or forensic connection to the crime – are missing. Substantial evidence (the accused's alleged confession to police) is inadmissible, and what remains (motive, last-seen, recovery) does not unerringly implicate him to the exclusion of all others. Consequently, the Court finds that

the charge under Section 302 IPC is **not established** against the accused with the required degree of certainty.

- **Re: Point (iii) – Order:** In light of the above findings, the accused is entitled to acquittal.

Conclusion (Order)

16. **Acquittal:** Accused Arun Yadav is found **not guilty** of the offence of murder (Section 302 IPC) as charged. He is accordingly **acquitted** under Section 235(1) CrPC. The accused is on bail. The bail bonds are discharged and sureties are released.

17. **Bail Bonds:** In compliance with Section 437-A CrPC, the accused is directed to furnish a personal bond of ₹20,000/- with two sureties in the like amount, which shall remain in force for six months, to appear before the higher court as and when required.

18. **Observations:** Before parting, this Court observes that the investigating agency in this case failed to adhere to best practices, which contributed to the creation of doubt. The benefit of such doubt must go to the accused as per settled law. This judgment, however, shall not detract from the fact that a heinous crime has remained unsolved. The concerned authorities may consider re-evaluating the investigation, if feasible, to ensure the real perpetrators are brought to justice.

Pronounced in open Court on this 24th day of July, 2025.

(Chandroday Kumar)
Sessions Judge, Kannauj