



CNR No.-UPKJ010036792021

Date of Institution	Date of Judgement:	Age:
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In The Court of Sessions Judge, Kannauj

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553

Session Trial Number-687 of 2021

State of Uttar Pradesh

... Prosecution

Versus

1. Dinesh, son of late Sevaram, resident of village Dharmangadpur, Police Station Bela, District Auraiya
2. Awadhesh Tiwari, son of late Murarilal, resident of Parsupurwa, Police Station, Indargarh, District Kannauj.
3. Rajput Chauhan, son of Manak Singh, resident of village Kathar, Police Station, Indargarh, District Kannauj.

... Accused.

Crime Number-37/2020

Under Sections 302, 201 IPC

Police Station- Indargarh,

Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),

Defence Counsel: Shri Jagdish Chandra Divedi, Advocate.

JUDGMENT

1. Introduction

This case arises out of a complaint dated 03.03.2020 filed by the deceased's wife, Vimla Devi, alleging that on 25.02.2020 at 11, the accused, Dinesh Agnihotri, came to her house and had wine with her husband, Ved Prakash Awasthi. Thereafter, they left for Kathela by her husband's motorcycle UP74Y1182. In Haseran, both stayed at Bhullu Mishra's shop and started drinking at the nearby wine shop. There, Awadhesh Tiwari and Rajpoot Chouhan came and took the keys of her husband's bike. Her husband asked for keys, but they did not return. All three took away her husband and killed him, and to hide his body, they threw it in a canal. The police recovered the body from the canal and sent it to Hallot, Kanpur, for postmortem. She identified her husband's body at Hallot. Due to her sorrow, she was unable to present the application. On 02.03.2020, Sanjeev Kumar, alias Bablu, came to her house and asked for a compromise on Rs. Ten Lack otherwise, she will be killed. Prior to this, a missing report was submitted by Vimla Devi on

Citations hyperlinked.

28.02.2020 to the effect that her husband's motorcycle was found on 27.02.2020 at Prabhat Guest House, Haseran. In this report, there was no mention of Awadhesh Tiwari and Rajpoot Chouhan. After completing the investigation, the IO sent a chargesheet against the accused, Dinesh, Awadhesh Tiwari, and Rajpoot Chouhan, under sections 302 and 201 of the Indian Penal Code. The prosecution case is that Dinesh, Awadhesh and Rajput murdered the deceased on the night of 25.02.2020, disposed of the body (Sections 302/201 IPC) and that accused Sanjeev alias Bablu thereafter offered the money to the widow and family for compromise and on refusal threatened with death. The accused were arrested and charged. The prosecution examined the complainant (wife) (PW-1), her children (PWs 2, 3, 5), and the investigating officer (PW-4), among others, while the defence did not present any material evidence. The accused denies all charges on examination under section 313 of the CrPC. Awadhesh stated that police detained him on 27.02.2020 from his house and kept him in lockup for many days. When his brother presented an application in court for illegal detention, the FIR was lodged against him, and the police sent a false challan. Accused Dinesh stated that he was a relative of the deceased. Decease came with him up to Haseran. At the Haseran, he dropped the deceased and proceeded to his house. Accused submitted certified copies of the illegal detention application dated 03.03.2020, presented in the CJM court and FIR lodged against the deceased and his son in 2012.

2. Charges Framed

The charges, as framed based on the chargesheet (Crime No.37/2020), are as follows: Dinesh Agnihotri, Awadhesh Tiwari and Rajput Chauhan are charged with murder of Ved Prakash Awasthi punishable under Section 302 IPC and with causing disappearance of evidence (disposing of the body) punishable under Section 201 IPC. The respective charges were read over and explained to the accused, who pleaded not guilty and elected to stand trial.

3. Points for Determination

1. **Whether the prosecution has proved beyond reasonable doubt that on 25.02.2020 the deceased Ved Prakash Awasthi was murdered by the accused Dinesh Agnihotri, Awadhesh Tiwari and Rajput Chauhan? (Section 302 IPC)**
2. **Whether the prosecution has proved beyond reasonable doubt that these accused caused disappearance of evidence (i.e. disposed of the body) of the deceased? (Section 201 IPC)**

These are pure questions of fact and law. The prosecution must establish all elements of each offence beyond reasonable doubt. If two views are possible – one indicating guilt, the other innocence – the accused must be given the benefit of doubt ([*Sharad Birdhi Chand Sarda vs State Of Maharashtra on 17 July, 1984: 1984 AIR 1622*](#)).

4. Appreciation of Evidence

The dead body was recovered on 29.02.2020 from a canal in the Kakwan area of District Kanpur, far away from the alleged incident site. An inquest was conducted there (suspecting drowning), and a postmortem was conducted in Hallot Hospital, Kanpur, on 01.03.2020 between 1:30 PM and 2:00 PM. The evidence on record is entirely circumstantial and based on the testimony of interested witnesses (close relatives of the deceased) and the investigating officer. Notably, **no independent eyewitness saw the alleged murder**. PW-4 (the IO) candidly admitted that he found “कोई चश्मदीद साक्षी नहीं मिला था, जिसने मृतक की हत्या करते हुए मुल्जिमानों को देखा हो” (no eyewitness to the murder). The case thus rests on circumstantial evidence (body recovery, missing report, confessional statements to police with disclosure of place of blood of deceased and motorcycle) and the family’s testimony of last-seen, and offer of compromise and threats.

5. PW-1 (wife of the deceased) stated that on 25.02.2020 at about 8:00 AM, accused Dinesh arrived and left his house at 11:00 AM with the deceased, saying he would drop him at Katela, but instead took him towards Haseran. The deceased did not return home that evening; PW-1 called Dinesh and was told that her husband was with him, but later could not return home. Dinesh, later on, switched off his phone. PW-1 admitted that she lodged a missing report. The motorcycle was found on February 27. Police informed her that a body had been found, which she identified as her husband’s. PW-1 further testified (after learning of the body) that “दिनेश ... अवधेश ने मिलकर मेरे पति की हत्या की तथा लाश को नहर में फेंका था” and that accused Bablu came on 02.03.2020 demanding ₹10 lakh and threatening to kill her if she refused to compromise. PW-2 (son Pankaj) and PW-3 (daughter Arti) gave similar accounts of the disappearance and threat. PW-3 in particular claimed to have seen Dinesh and her father drinking together at Katela, then stated later that her initial statement to police that they drank was “गलत बयान” (false).

Several contradictions and infirmities appear in the witnesses’ versions. For instance, PW-3 admitted during cross-examination that she had given the police a *false* account of events (that she saw the accused drinking with her father). On the witness stand, she retracted the drinking allegation and insisted her father did not drink that day. Moreover, the identity and role of one informant, Bhullu (Shyam Shankar) Mishra, is inconsistent: PW-1 and the IO called him a relative of the deceased, whereas PW-3 (Arti) said he was “रिश्तेदार नहीं है” and had no involvement. The family witnesses also differ on details such as who was present when the father left home, who first learned of the body, etc. These contradictions undermine the reliability of the evidence. It is elementary that evidence of interested relatives is to be scrutinised with caution; falsehoods or inconsistencies in their statements necessarily cast doubt on the entire version.

6. Crucially, the case is essentially one of circumstantial evidence. It is well established that in such cases “*prosecution must prove every link of the chain and complete chain*” of circumstances to exclude every reasonable hypothesis

of innocence. Here, the link between the accused and the crime is not conclusively established. The last-seen evidence (that the deceased was with Dinesh in the morning) is insufficient by itself to infer murder, especially given the delay before discovery of the body. The Hon'ble Supreme Court has emphasised that last-seen-together is only an important piece of circumstantial evidence if there is close proximity of time to death. If a substantial gap intervenes, *"a very heavy burden is placed upon the prosecution to prove that during this period ... no other person had access to the deceased"* (Hon'ble Supreme Court in the case of [Dinesh Kumar vs The State Of Haryana on 4 May, 2023: CRIMINAL APPEAL NO.530 OF 2022](#)). In the present case, the deceased's body was found four days after his disappearance, with the postmortem suggesting death could have occurred anywhere between 24.02.2020 and 26.02.2020. As the doctors noted, the two scalp contusions on the body *"किसी भी प्रकार से गिरने से भी आ सकते हैं"* (could also result from a fall). This opens the possibility that the injuries were not inflicted by the accused at all. In any event, the prosecution has not excluded the possibility of other persons intervening in the intervening period, nor offered any evidence of motive apart from a vague claim of Dinesh's quarrel regarding want of motorcycle.

7. The blood-stained soil found at the canal bank is presented as physical evidence, but this too is problematic. The IO collected the soil **11 days after the incident**. In contrast, place was made of interlocking and not soil. Delay and putrefaction had set in, and there is no DNA or forensic comparison on record. Furthermore, the alleged *"disclosure"* by the accused (to police) leading to this recovery cannot form proof of guilt unless it revealed a new fact. The law is clear that only discovery of a *distinct fact* not previously known is admissible under Section 27 of the Evidence Act. As one authority put it, there *"cannot be a 'discovery' of an already discovered fact"* (*Dinesh Kumar vs The State Of Haryana, supra*). Here, the canal site and evidence of bleeding were already generally known by the time police took the accused there. The soil sample, recovered so belatedly, can hardly be said to have proved the accused's guilt with any certainty.

8. In sum

The only threads tying the accused to the crime are the unrecorded confessions made to police and the family's say-so. But confessions to police have no evidentiary value. It is a fundamental rule that *"no confession made to a police officer shall be proved as against a person accused of any offence"* (Hon'ble Supreme Court in the case of [Randeep Singh @ Rana vs The State Of Haryana on 22 November, 2024: CRIMINAL APPEAL NO. 297 OF 2024](#)). PW-4 confirmed that the accused *"इकबालिया बयान"* (confession) made in police custody was never recorded before a magistrate (Section 164 CrPC). Such statements cannot form part of the trial evidence, except insofar as they led to a genuine new discovery (which they did not, *Dinesh Kumar vs. The State of Haryana, supra*). The investigating officer's case diary entry (CD-3), which notes that the accused *"बताया गया था"* (said) they killed the deceased on

25.02.2020, and pointed out the spot of spilt blood cannot legally be read as proof of murder. In fact, the Hon'ble Supreme Court in the case of *Randeep Singh @ Rana, supra*, has reproached trial judges for improperly admitting police confessions into evidence and noted that conviction cannot rest on moral belief arising from such inadmissible statements.

9. Procedural Lapses

The prosecution case is further weakened by serious procedural infirmities. The FIR narrating the murder was lodged on 03.03.2020 – days after the body was found – despite an earlier missing report filed on 25.02.2020. PW-7 (the formal clerical witness - Head Moharrir) candidly admitted he did not note *any reason* for this delay in the police records, only remarking that the complainant had already registered a missing person report on 28.02.2020. Unexplained or delayed FIRs invite suspicion. As the Supreme Court held in *Apren Joseph v. State of Kerala: 1973 (3) SCC 114*, “*undue or unreasonable delay*” in lodging a First Information Report inevitably raises suspicion and puts the court on guard. In *Dilawar Singh v. State of Delhi: 2007 (12) SCC 641*, it was emphasised by the Hon'ble Supreme Court that the trial court must seek a plausible explanation for any delay, for otherwise the report may be viewed as an afterthought. In this case, there is no satisfactory account of why the formal complaint of murder was deferred until after the body's recovery. The prosecution appears to have rushed into lodging an FIR which conveniently provided details (names, manner of death) only after knowing the identity of the victim and the fact of homicide. This loss of spontaneity and opportunity for embellishment undermines the prosecution version (*Dilawar Singh, supra*).

10. Another glaring lapse

Another glaring lapse is the unlawful detention of accused persons without judicial sanction. PW-3 (Arti) testified that the accused, Awadhesh, was kept at the police station for 3–4 days and Dinesh for 5–6 days, presumably without remand orders. Such custodial retention beyond 24 hours without magistrate's remand is illegal and vitiates subsequent evidence. It may safely inferred that an application to CJM about illegal detention triggered the FIR.

11. Recoveries

Recovery operations were also tainted. As per PW1 and PW3, PW5 (first-hand hearsay witnesses on this point), the deceased's motorcycle/keys, TVS Star City, was found on 27.02.2020 from “Prabhat Guest House” in Haseran. According to PW5, the police informed him that the keys to the motorcycle were recovered from the accused, Awadhesh. In contrast, IO PW4 stated that he recovered the motorcycle at the pointing out of the accused people and prepared a memo. However, no memo has been produced before the court. The IO admitted that neither the guest-house owner nor any employee was examined; signatures of local bystanders were taken as panch

witnesses, but no explanation or documentation from the actual proprietors was recorded. This chain-of-custody lapse and callous investigation render the motorcycle recovery inadmissible, at the very least.

12. Equally, the collection of the earth(mud) and blood-soaked mud samples on the accused's indicated spot was performed in the open field with public witnesses (Rajat and Balvant) present. However, without scientific testing (e.g. DNA matching to the deceased), this remains mere circumstantial evidence. Moreover, public witnesses Rajat and Balvant have not been examined to prove the sanctity of recovery of blood-soaked mud on pointing by the accused. Thus, neither Section 27 nor any other provision can validate the inadmissible admission of guilt by the accused to the police.

13. Lastly, the prosecution's threat case also rests solely on the testimony of PW-1 and PW-5. Both stated that Bablu came on 02.03.2020 offering ₹10 lakh and saying that if the family did not "समझौता" (compromise), the accused would have them killed (indeed PW-3 said her brother was ready to attack Bablu on hearing the threat). There is no independent corroboration on this fact. No written complaint or third-party witness was produced. In view of the general weaknesses in the prosecution case, even this claim of threat must be viewed with caution and taken as part of an overall picture rather than conclusive proof.

14. Legal Analysis

The case must be judged by established legal principles. Firstly, as noted, this is purely circumstantial. The law mandates that "*no link in the chain of circumstances should be left doubtful*". Here, the chain is broken at multiple points: absence of eyewitness to the killing, unexplained FIR delay, lack of forensic link, contradictions among witnesses. The only "direct" evidence is the illegal custodial confession, which cannot be used to convict lawfully. Under Section 25 of the Evidence Act, no confession made to a police officer may be proved against an accused. The Supreme Court has repeatedly warned against convicting on such confessions, stating that conviction must rest on legal proof, not moral certainty.

15. Secondly, the doctrine of *last seen alive* does not save the prosecution. In the absence of any other circumstance firmly connecting the accused to the crime, simply proving that the deceased was last seen with Dinesh is insufficient. The Court of Appeal in similar cases has held that unless the body is discovered in the accused's presence or within a short time thereafter, the prosecution must exclude every other hypothesis. There are no CDRs for the accused people or the deceased. The burden to prove exclusivity of access lies heavily on the prosecution, which it has not discharged. The mere fact that the accused escorted the deceased away at 11 AM does not inexorably lead to murder, particularly when the supposed confession and motive are so infirm.

16. Thirdly, all evidence must be scrutinised in the light of the rights of the accused. Even if the court feels the accused *may be guilty*, without legally admissible proof beyond reasonable doubt, it cannot sustain a conviction. "*Suspicion, however great, cannot take the place of legal proof*". Here two reasonable inferences arise: one consistent with the prosecution version (that the accused murdered the victim) and one consistent with innocence (that the accused innocently accompanied the deceased or that some other misfortune befell him). It is not the function of this Court to act on mere conjecture or rely on the witnesses' moral certitude. The defence version (indeed silence on the facts, as they did not testify) places the risk on the prosecution.

Given the overall weakness of the case, even this unsupported threat allegation cannot stand unless credited beyond doubt.

17. Findings

On the totality of the evidence and law, the prosecution has manifestly failed to prove the guilt of the accused beyond reasonable doubt on any count. The chain of circumstances is neither complete nor conclusive. The crucial statements (purported confessions) were never procured in accordance with law and cannot be used. As Sharad Sarda's case teaches, if two views are possible, the accused are entitled to the benefit of doubt. In this case, such doubt is rife. We hold that the evidence does not establish the offence of murder against Dinesh Agnihotri, Awadhesh Tiwari or Rajput Chauhan, nor does it establish any criminal conspiracy or illegal concealment by them of the body. The conviction cannot be based on suspicion or on a family's averments unsupported by proof.

18. Final Order

In view of the foregoing discussion, all points are decided in favour of the accused. The prosecution has not discharged its burden under Sections 302 and 201 of the IPC. Accused Dinesh Agnihotri, Awadhesh Tiwari and Rajput Chauhan are therefore **acquitted** of all charges. Their bail bonds are hereby discharged, and the sureties are released.

The order is pronounced in open court today.

Date: July 21, 2025

(Chandroday Kumar)
Sessions Judge, Kannauj.