

**Citation Analysis**  
**Appreciation of circumstantial evidence and evidence of last seen together**  
**Supreme Court of India**  
Appeal (crl.) 873 of 2004

PETITIONER:  
STATE OF GOA

RESPONDENT:  
SANJAY THAKRAN AND ANR

The relevant facts, as summarized by the Supreme Court are as under,

on 26-02-1999, the deceased couple, namely, Vikas Nanda (D-1, age 26 years) and Kavita Nanda @ Priya Nanda (D-2, age 23 years), arrived in Goa from Mumbai for their honeymoon and stayed in Hotel Seema at Ribandar. On 27-02-1999, the deceased couple went for sight-seeing at Ozran, Vagator with P.W.13-Vincent, who was the car driver and had also taken them for the sight-seeing trip a day earlier as well. At about 2.30 p.m., D-1 told P.W.-13 that they had met some friends from Delhi and hence P.W.-13 returned from there. P.W.30-Suhasini Govekar, who operated a shack at Anjuna beach with her husband, mentioned that on 27-02-1999, the accused couple and their children came to her place in between 1.00-2.00 p.m. and then went to take bath. When they returned back, the deceased couple accompanied them. The accused couple was running a bar and the restaurant Iguana Miraj and hotel Lalita Beach Resort in Goa. P.W.11-Dinesh Adhikari, who was servant of the respondents, saw the deceased couple at respondents' hotel 2 or 3 days preceding the festival of Holi in the year 1999 at approximately 6.00-7.00 p.m. According to this prosecution witness, A-1-Sanjay Thakran, D-1-Vikas Nanda and P.W.14-Calvert were sitting outside the hotel and A-2-Anjali Thakran was sitting with D-2-Priya Nanda inside a room in the hotel. He saw A-1-Sanjay Thakran and D-1-Vikas Nanda walking towards the beach sometime after 9.00-9.30 p.m. and that was the last time when D-1 was seen alive. After sometime P.W.11 saw A-1-Sanjay Thakran, A-2-Anjali Thakran and D-2-Priya Nanda as they were walking away from Iguana Miraj. Another prosecution witness, P.W.14-Calvert Gonsalves also saw the deceased couple at the hotel of the accused couple. As per P.W.6-Amit Banerjee, who was working as a receptionist at Hotel Seema, D-2-Priya Nanda returned to Hotel Seema without D-1 and along with A-1-Sanjay Thakran at about 11.30 p.m. She asked for the key of their room from P.W. 6. A-1- Sanjay Thakran helped her to carry the luggage from the Hotel room as she checked out about 11.40 p.m. A-2 did not come to the hotel and remained seated in the white colour Maruti Car that had a Delhi registration number on it. D-2-Priya Nanda, A-1-Sanjay Thakran and A-2-Anjali Thakran went away in that car and thus, D-2 was also last seen alive in the company of the accused couple.

On 28-02-1999, P.W.2-Charles Mills lodged a report at Anjuna Police Station that a dead body of unknown female foreigner (later identified as D-2) was found at the Vagator Beach. According to this witness, who was staying near the beach, at around 7.30 a.m., he was told by someone that a female body was floating in the seawater. The deceased was wearing a blue skirt and a top. On the same day, P.W.17-Fausto Afonso lodged report with Colva Police Station that a dead body of unknown male foreigner (later identified as D-1) was found at about 00.30 hours at the Benaulim Beach. The distance between the Vagator Beach and Benaulim Beach is around 60 kilometers.

As the deceased couple neither returned to Delhi as expected by 01-03-1999 nor contacted P.W.33-Subhash Nanda i.e., father of D-1, he called up P.W.4-A.C. Duggal to inquire about them. Accordingly, P.W. 4-A.C. Duggal, who was uncle of D-1 and lived in Mumbai, called up N. Murari, who was posted in Goa and worked in the Union Bank of India with P.W.-4, to know about their whereabouts on 01-03-1999. N. Murari told P.W.-4 that they had already checked out of the Hotel Seema. Since the deceased couple did not reach Mumbai as stipulated by P.W.-4 on 02-03-1999, he again called up N. Murari. On 03-03-1999 at about 7.15 p.m., N. Murari informed P.W.-4 that a dead body of male person with similar description to that of Vikas had been found and asked him to come to Goa. P.W.-4 rushed to Goa and identified the dead body of D-1-Vikas Nanda on 04-03-1999. On the same day, N. Murari lodged a missing report [Exhibit No. 20] at Old Goa Police Station. After identifying the body of D-1-Vikas Nanda at morgue, P.W.-4 went to Seema Guest House and made inquiries about the couple. The dead body of D-2 was also identified on 05-03-1999. P.W.-4 lodged a complaint [Exhibit No.21] on 05-03-1999 at Anjuna Police Station with P.W. 38- Sub-Inspector Sandesh Chodankar. According to this complaint, on 04-03-1999, P.W.-4 was informed by Hotel Manager that D-2 checked out from hotel on 27-03-1999 at about 11.40 p.m. and another person having short built, bald from front and having fair complexion accompanied her. The complainant believed that since the dead bodies of the couple had been found at places nearly 60 kilometers away from each other, the newly married couple must have been lured by some disgruntled mischievous element, who had killed them for their ornaments, as all the gold ornaments of the deceased couple were found missing.

P.W.26-Dr. Silvano Dias Sapeco, who conducted the postmortem [Exhibit No. 80] on the body of D-2 on 01-03-1999, found the following ante-mortem injuries:

1. Red bruise 20 cms. Diameter on left mid upper arm.
2. Red bruise 1.5 cms. Diameter on right inner aspect of upper third region of thigh.
3. Red bruise 1.5 cms diameter on left mid thigh in inner aspect.
4. Red bruise 1.25 cms. Diameter on right mid lower leg at calf region.
5. Red bruise 1.25 cms. Diameter on left mid lower leg at calf region.

and it was opined that these were caused by blunt weapons. Due to the fact that the doctor, who initially conducted postmortem on body of D-1-Vikas Nanda on 01-03-1999, had not preserved any viscera or material, on 05-03-1999 a second postmortem [Exhibit No. 95] was conducted by P.W.32-Dr. E.J. Rodrigues, which exposed the following ante-mortem injuries:

1. Abrasion reddish and fresh of 6 x 4.5 cms. Present on upper outer part on right side face between outer orbital margin, 2 cms. in front of right tragus of ear and extending on outer part of right cheek bone. No bruising underneath.
2. Abrasion reddish and fresh of 2.5 x 1 cms. Placed vertically on the ridge of nose. No bruising underneath. No injuries to alae of nose.

3. Abrasion reddish and fresh of 5 x 3 cms. on left side upper part of face 2 cms. in front of left tragus of ear extending upto outer orbital margin and also on outer part of left cheek bone. No bruising underneath.
4. Abrasion reddish and fresh of 0.5 x 0.5 cms., 1 cm. above outer end of right eyebrow.
5. Abrasion reddish and fresh of 0.5 x 0.5 cms., 1.5 cms. above outer end of left eyebrow.
6. Abrasion reddish and fresh of 3 x 2 cms., upper middle back of right shoulder.
7. Abrasion reddish and fresh of 2 x 1.5 cms., upper back of left shoulder at acromial process region.

and it was opined that they were caused with blunt surface. The postmortem reports of both the deceased persons have concluded that death had occurred as a result of asphyxia due to drowning in shallow beach water.

From their initial investigation, the Goa police found out about the description of the accused couple and their children. The flat belonging to the accused persons was sealed under the orders of a Civil Court. P.W.-38, therefore, applied to the Judicial Magistrate, Ist Class, Margoa for issuance of search warrant. The Judicial Magistrate, Ist Class, Margoa directed that the bailiff of the Court would accompany P.W.-38 and in the presence of two respectable panchas from the locality, the seal of the court would be opened and inventory of the movable articles and fixtures found in the flat should be made. After the search, the flat should be resealed/locked and the bailiff would file a report to the Court. Accordingly on 17-12-1999, the police conducted search of the flat of accused, which was located at Sapna Residency, Colva. During this search, P.W.-38 attached the passports of the accused-respondents and their two children, two visiting cards of P.W. 19-Subrato Padhi, a visiting card of Iguana Restaurant and one laminated photograph. [House Search Panchnama as Exhibit No. 13 and Report regarding Search Warrant which was submitted to Judicial Magistrate, Ist Class, Margoa as Exhibit No. 108]. The Court bailiff, who accompanied with P.W.-38 and other panch witnesses, prepared a list of movable articles of the flat [Exhibit No. 112]. The flat was resealed after the search was over.

On 30-01-2000, the accused persons were arrested in Agra by P.W. 15- Police Inspector Navrang Singh, who was posted at police station of Sadar Bazar, Agra. P.W.-38 accompanied with Dy. Superintendent of Police P.W.29-Arvind Gawas, arrived at Agra on the same day. P.W.-15 informed them that A-1-Sanjay Thakran handed over a double barrel gun and A-2-Anjali Thakran took out and handed over a single barrel 12-bore gun from the cupboard. During the house search of the accused persons, police recovered a churidhar set, a ladies purse and some newspapers containing reports that were connected with investigation of the present case. According to the prosecution story, the recovered materials were identified by P.W.33-Subhash Nanda, father of Vikas and P.W.5- Kishen Valecha, brother of Priya as belonging to the deceased couple. P.W.38-Sandesh Chodankar, Sub-Inspector interrogated the accused persons and satisfied himself of their complicity in the crime. On 31-01-2000, he further obtained transit remand and custody of the accused couple. The accused were brought back to Goa on 01-02-2000 and formally arrested in connection with the present case. On 08-02-2000, as alleged by prosecution, during the interrogation A-1-Sanjay Thakran disclosed to P.W. 38 Sandesh Chodankar about the fact that murder of the deceased couple was committed by his wife and him and that the belongings of the deceased couple were present in his flat. On 11-02-2000, in presence of Court bailiff-Peter Fernandes and other panch witnesses, A-1 handed over jewellery from his flat B-2 F-3 at Sapna

Residency, Colva. The jewellery, which was handed over to police, consisted of eight yellow metal bangles, one pair of ear-rings and one finger ring. As has been alleged by the prosecution side, he also produced clothes such as a white full-sleeves shirt, a saffron-coloured women's kameez with a cream-coloured salwar, a green-coloured saree with blouse, a light cream-coloured silken kurta pyjama and a designer black full-sleeves shirt, which belonged to the deceased couple. During interrogation, on 13-02-2000, A-2-Anjali Thakran allegedly disclosed [Exhibit No. 77] that she would point out the goldsmith to whom she had sold the gold ornaments. As per the directions of A-2-Anjali Thakran, a police party and panch witnesses reached the jewellery shop of P.W. 12-Ulhas Lotlikar at Khareband Margao. P.W.12-Ulhas Lotlikar produced two bangles bearing the identification mark 'RK 22 KL', weighing 23.5 grams. According to the prosecution case, the said bangles bearing the identification mark 'RK 22 KL' were gifted to the newly wed couple on their marriage by P.W.-33. The prosecution has alleged that A-2-Anjali Thakran sold these bangles along with a necklace and a ring to the jewellery shop run by P.W. -12. It has also been alleged by the prosecution that A-2- Anjali Thakran sold these jewellery on the pretext that as their restaurant was not running well, they were in urgent need of money. The learned Sessions Judge, Panaji, as well as the High Court on evaluation of the circumstantial evidence, came to the conclusion that the prosecution has failed to prove involvement of accused respondents in commission of the crime and acquitted them of all charges.

#### **Previous decisions relied by the Supreme Court regarding appreciation of circumstantial evidence**

The prosecution case is based on the circumstantial evidence and it is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

[See : State of U.P. v. Satish, (2005) 3 SCC 114, Padala Veera Reddy v. State of Andhra Pradesh and Others, 1989 Supp. (2) SCC 706, Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, Gambhir v. State of Maharashtra, (1982) 2 SCC 351 and Hanumant Govind Nargundkar and Another v. State of Madhya Pradesh, AIR 1952 SC 343].

#### **Parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal**

By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in Tota Singh and Another v. State of Punjab, (1987) 2 SCC 529 as under : "6. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is

circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

Further, this Court has observed in *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225:

"7. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. "

and in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180:

"7. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re- appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. {See *Bhagwan Singh v. State of M.P.*, (2002) 4 SCC 85}. The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793, *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225 and *Jaswant Singh v. State of Haryana*, (2000) 4 SCC 484."

From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which

would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

**Decisions on the point of 'last seen together' relied by the Court.**

It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the above-mentioned general principle with reference to the principle of last seen together in *Bodh Raj alias Bodha & Ors. v. State of Jammu and Kashmir*, (2002) 8 SCC 45 as under:

"31. The 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 author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. .."

[See also : *State of U.P. v. Satish*, JT 2005(2) SC 153 = (2005) 3 SCC 114 (para 22) and *Ramreddy Rajeshkhanna Reddy & Anr. v. State of Andhra Pradesh*, JT 2006 (4) SC 16 (para 29)]. In *Ramreddy Rajeshkhanna Reddy* (supra), this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

In *Jaswant Gir v. State of Punjab*, (2005) 12 SCC 438, it was observed that:

"5. In the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the 'last-seen' evidence, even if the version of PW 14 in this regard is believed. .."

**Ratio laid down by the Court**

From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the

crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.

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