



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.921/2015

DARSHAN KUMAR

Appellant(s)

VERSUS

THE STATE OF HIMACHAL PRADESH

Respondent(s)

O R D E R

1. The appellant has been arrayed as an accused in Crime No.99/1995 for the offence punishable under Section 302, 392 read with Section 34 of the Indian Penal Code, 1860 along with accused No.2 (since absconding).
2. The case of the prosecution, in brief is that, there was a dispute pertaining to a loan transaction between the appellant and the deceased, wherein, the appellant was not able to return the money. Consequently, the appellant along with accused No. 2, went to the house of the deceased and committed the offence.
3. The date and time of the occurrence was 26.04.1995

between 9.15 a.m. to 10:45 am. It is a case of circumstantial evidence. The deceased was smothered, strangled and attacked with a knife. The body of the deceased was found by PW-2, a little while thereafter. Upon raising the alarm PW-16 telephonically informed the police. The inquest report was prepared on the same day. PW-3 who is the son of the deceased, gave his version on the same day. PW-4, being the wife of the deceased, registered the FIR on the next day evening.

4. According to the prosecution, the wife of the deceased fainted on the previous day. She was taken to the hospital and she returned at about 10 p.m., but nonetheless the statement was recorded on 27.04.1995 during the evening time.
5. The appellant was arrested on 28.04.1995. In pursuant to the disclosure statement made by him, a blood stained shirt, a jacket and a muffler which was used to strangle the deceased, was recovered from him. A knife was recovered from

accused No.2. Jewels were recovered from the accused No.2. However, PW-13 who signed the recovery mahazar turned hostile while PW-12 who is yet another witness introduced for the aforesaid purpose, made a statement that he did not enter the house, and the police brought the items outside.

6. Before the Trial Court, the prosecution examined 22 witnesses, and marked 34 material objects. The Trial Court dis-believed the evidence of PWs-3 and 4. It was held by the Trial Court that the statements made by them were hit by Section 162 of the Code of Criminal Procedure, 1973. The injuries sustained by the appellant did not match with the timing of the alleged occurrence. The recovery has not been proved as the muffler has been received from an open space, and there is no evidence to support that the recovered muffler was used for strangulation. The Trial Court also dis-believed the last seen theory set up in view of the statement made by PW-3. The omission in the

statement of PW-4 with respect to the jewellery theft, was also taken due note of due to which factum of recovery of jewels from accused No. 2 was disbelieved by the Trial Court. On the evidence of PW-1, the medical examiner who conducted the *post mortem* and examined the appellant, the Trial Court found that he admitted the correction made on the timing of the occurrence. He has changed the timing from evening to morning, as admitted by him. Secondly, the Trial Court has disputed the injuries suffered by the appellant as they did not co-relate with the case of the prosecution, with specific reference to the timing of the occurrence.

7. The High Court re-appreciated the evidence of the witnesses and took a contrary view. The High Court was pleased to hold that the statement made by the PWs-3 and 4 are admissible evidence and the theory of last seen has been proved. The High Court went on to state that the prosecution has proved its case and, therefore, the reasoning

adopted by the Trial Court is perverse.

8. Learned counsel appearing for the appellant submits that for arriving at a finding of perversity, the High Court should have specifically found the reasoning of the Trial Court to be incorrect. Except for stating that the reasons of the Trial Court are perverse, there was absolutely no discussion by the High Court on the findings rendered. While the High Court is entitled to re-appreciate the evidence, it cannot substitute its view when the Trial Court's view is a probable one.
9. In support of this contention learned counsel for the appellant relied upon a decision of this Court in *Mallappa & Ors. v. State of Karnataka* 2024 INSC 104.
10. It is further submitted that the discovery from the open space cannot be the sole basis for conviction, especially when we are dealing with a case of circumstantial evidence. In support of this contention, learned counsel relied upon the

judgment in *Manjunath & Ors. v. State of Karnataka*
- 2023 INSC 978.

11. Learned counsel appearing for the State would submit that the High Court has re-appreciated the evidence and, therefore, there is no need for interference. Due explanation has been given for not registering the FIR on the same day, as PW-4 got admitted in the hospital as she had fainted. Considering the materials available on record, the judgment of the High Court requires confirmation.
12. The law on re-appreciation of evidence, especially when the Trial has rendered acquittal is quite settled. On a perusal of the impugned judgment, we find that the High Court did not say specifically which are the reasons assigned by the Trial Court that are perverse. In other words, it re-appreciated the evidence and substituted it with that of the Trial Court. When the view expressed by the Trial Court is either the possible or plausible one, the High Court should not replace the Trial Court's view with its view. When there

is a doubt and the prosecution has not proved its version beyond reasonable doubt to the satisfaction of the Court, then the benefit will have to be given to the accused.

13. On a perusal of the judgment of the Trial Court, which has the benefit of seeing the demeanor of the witnesses, the Trial Court has rightly appreciated the evidence. We are dealing with a case where the evidence of PW-3 was recorded even on 27.04.1995. At that point of time, he did not whisper anything about the presence of accused persons. It is clearly a case of improvement made thereafter. The information of offence has been given by PW-16. The inquest itself was done on that day even without the registration of First Information Report. If not from PW-16, the First Information Report ought to have been registered by PW-4. Strangely, this was not done.

14. As rightly submitted by the learned counsel appearing for the appellant we are dealing with a case of circumstantial evidence. The Trial Court

gave reasons for dis-believing the evidence of PWs 1 and 12.

15. The reason given for registering the FIR belatedly cannot be sustained as PW-4 returned back to her home at about 10 p.m. and in any case, the FIR has been registered the next day evening.

16. The recovery, inclusive of the stained shirt, is doubtful particularly when the DNA proved inconclusive with respect to the blood present on the shirt.

17. We do not find any perversity with the views expressed by the Trial Court, and an order of acquittal creates a double presumption and, therefore, the First Appellate Court will have to be doubly sure in reversing the order of the Trial Court which has not been done in the present case. In view of the same, we are inclined to set aside the same by restoring the judgment passed by the Trial Court.

18. Accordingly, the impugned judgment stands set

aside, and the judgment of the Trial Court is restored.

19. The appeal stands allowed, accordingly.

20. The appellant is directed to be released forthwith unless required in any other case.

21. Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
JULY 22, 2026.

DARSHAN KUMAR

Appellant(s)

THE STATE OF HIMACHAL PRADESH	Respondent(s)
IA No. 15568/2018 - Application for Bail	
IA No. 56523/2020 - EARLY HEARING APPLICATION	
IA No. 11266/2015 - GRANT OF BAIL	

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Appellant(s)	Mr. Rohan Kochhar, Adv.
	Mr. Avishkar Singhvi, Adv.
	Mr. Mrityunjai Singh, AOR
	Ms. Gauri Goburdhun, Adv.
	Mr. Abhishek Yadav, Adv.

For Respondent(s) Mr. Vivek Kumar, Adv.
Mr. Abhishek Gautam, AOR
Ms. Anushka Sharma, Adv.

Mr. Mrityunjai Singh, AOR

UPON hearing the counsel the Court made
the following
O R D E R

The Court *inter alia* directed as under:

"20. The appellant is directed to be
released forthwith unless required in
any other case."

The appeal stands allowed in terms of the
signed order.

Pending application(s), if any, shall stand
disposed of.

(ASHA SUNDRIYAL)
DEPUTY REGISTRAR

(POONAM VAID)
ASSISTANT REGISTRAR

[Signed order is placed on the file]