IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1675/2019

STATE OF UTTARAKHAND **Appellant(s)**

VERSUS

SUDHIR KUMAR SAXENA **Respondent(s)**

O R D E R

1. This appeal is against the judgment and order of the High Court[1] dated 09.04.2015 whereby the appeal[2] of the respondent-accused was allowed and he was acquitted of the charge of murder.

2. The prosecution case in brief was that on 27.09.2007, post noon, the body of the deceased was found in open sugar field by PW-2 of which information was given to the police by PW-1 at about 3.05 pm. Upon receipt of information from newspaper report

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Reason:

1 **High Court of Uttarakhand at Nainital**
2 **Criminal Appeal No.267/2010**

that a dead body was found, on 28.09.2007, deceased's wife lodged a report alleging that the deceased and the accused had a quarrel 3-4 days back over money lent by deceased to the accused; in the morning of 26.09.2007, the deceased was taken from home by the accused and, thereafter, the deceased did not return; therefore, she suspects that the accused has a hand in the murder of the deceased. Autopsy of the cadaver was held at about 12:30 hours on 28.09.2007. In the opinion of the doctor death was a consequence of antemortem injuries, caused by sharp-edged weapon, and could have had occurred on or about the evening of 26.09.2007.

3. During investigation blood-stained clothes of the accused and a *Patal* (a mini sword) was allegedly recovered at the instance of the accused-respondent. However, forensic examination of those articles could not connect the alleged bloodstains with either the blood group or DNA of the

deceased.

4. The prosecution sought to bring home the charge based on three circumstances, namely, (a) the accused held the motive for the murder; (b) the deceased was last seen alive in the evening of 26.09.2007 in the company of the accused and, thereafter his dead body was found on 27.09.2007; and (c) blood-stained weapon of murder and blood-stained clothes were recovered at the instance of the accused.

5. Motive was sought to be proved by examining the wife of the deceased who deposed that the deceased had lent money to the accused and when the deceased demanded back his money, the accused got annoyed and, thereafter, had a grudge against the deceased. The last seen evidence is in two buckets. One is of the deceased being taken from home by the accused early morning of 26.09.2007. Evidence in that regard comes from the deceased-wife and a neighbor who confirms that the deceased was taken in the

morning from home by the accused. However, this evidence is inconclusive in as much as it is stated that the deceased and the accused were seen together having snacks at a nearby shop. The other bucket of last seen evidence comes from two witnesses who saw the deceased and the accused together between 4 pm and 5 p.m. on 26.09.2007. Interestingly, one of the witnesses of this circumstance states that he came to know about the death of the deceased early morning on the next day at about 10 a.m. But this statement does not appear reliable because the body was first discovered by PW-2 post noon of 27.09.2007 and report to that effect was made by PW-1 at 3:05pm on 27.09.2005. Besides, the said witness did not disclose about the incriminating circumstance for as long as 3 days. Apart from above, those witnesses do not disclose about any fight between the deceased or the accused though they allegedly noticed the two quarreling with each other. Having

regard to the nature of the evidence that was brought on record, the High Court found that last seen circumstance by its very nature is a weak type of an evidence and the witnesses who saw the deceased and the accused together have not noticed any kind of weapon being carried by the accused, and therefore, this was a fit case where the benefit of doubt must go to the accused. Consequently, the High Court allowed the appeal and set aside the order passed by the Trial Court.

6. The learned counsel representing the State-appellant submitted that the medical evidence would indicate that the deceased was done to death on or about the evening of 26.09.2007, and the accused and the deceased were seen together on or about that time, therefore, in absence of any explanation or evidence by the accused as to when he parted company of the deceased, an adverse inference ought to be drawn against the accused by virtue of Section 106 of the

Indian Evidence Act, 1872. In such circumstances, there was no justification for the High Court to reverse the decision of the Trial Court and acquit the accused.

7. *Per contra,* the learned counsel for the respondent submitted that the High Court has considered the evidence on record and the view taken by the High Court is a possible view which by no means could be considered perverse particularly having regard to the nature of the evidence which the prosecution led before the court. In such circumstances, according to the respondent, there is no justification for this Court to interfere with the acquittal order passed by the High Court.

8. We have accorded due consideration to the rival submissions and have perused the materials available on record.

9. What is important in this case is that the testimony of the wife of the deceased regarding the motive for the crime does not inspire our confidence in as much as if the

wife was suspecting the accused of harboring an ill motive against the deceased, she would not have waited for two long days to lodge even a missing report. There is no explanation in her testimony as to why she did not make any report that her husband has not returned. Besides, no details of any money transaction have been disclosed in her testimony. In such circumstances, even the motive is not proved beyond doubt.

10. As far as the evidence of last seen is concerned, there appears no clear evidence that the accused was last seen with the deceased near the place where his body was found. Even assuming that they were seen together on or about the same place, there is huge time gap between the last seen circumstance and discovery of the body. Ordinarily, last seen circumstance on its own cannot be the basis of conviction unless the time-gap between last seen circumstance and discovery of dead body is so minimal that involvement of any third person in the

crime is obviated. Moreover, the accused was not noticed carrying any kind of weapon.

11. Having regard to the nature of the evidence brought out by the prosecution as also the fact that the articles recovered could not be connected to the blood group of the deceased, in our view, grant of benefit of doubt to the accused by the High Court was a possible view, which does not call for interference.

12. Accordingly, the appeal is dismissed.

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

……..J
[MANOJ MISRA]

……..J
[VIJAY BISHNOI]

New Delhi;
November 19, 2026

ITEM NO.102 COURT NO.9 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).1675/2019

STATE OF UTTARAKHAND Appellant(s)

VERSUS

SUDHIR KUMAR SAXENA Respondent(s)

IA No. 17732/2015 - EXEMPTION FROM FILING O.T.

Date : 19-11-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Appellant(s) : Mr. Prakash Singh Negi, D.A.G.
Mr. Akshat Kumar, AOR
Ms. Anubha Dhulia, Adv.

For Respondent(s) :Mr. Vivek Singh, Adv.
Ms. Udita Singh- 2248, AOR
Mr. C.P. Rajwar, Adv.
Mr. Rohan Chandra, Adv.
Mr. Krishan Kumar, Adv.

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

1. The appeal is dismissed in terms of the signed order placed on the file.

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

(CHETAN ARORA) (SAPNA BANSAL)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)