

(2011) 10 DEL CK 0042
In the Delhi High Court
Case No : Criminal A. No. 1040 of 2010

Ram Mohan

APPELLANT

Vs

The State of NCT of Delhi

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2011) 10 AD 352 : (2012) CriLJ 745 : (2011) 126 DRJ 558

Hon'ble Judges : Manmohan Singh, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Saahila Lamba in Criminal A. No. 1040/2010 and Mr. Siddharth Aggarwal with Ms Stuti Gujral in Criminal A. No. 1013/2010, for the Appellant; Sanjay Lao, Siddharth Aggarwal with Ms Stuti Gujral in CrI. A. No. 1013/2010, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J

1. These two appeals by Ram Mohan and Ram Prakash alias Munna Tyagi are directed against the judgement dated 26-05-2010 delivered by the learned Additional Sessions Judge-02 (South), Patiala house courts, New Delhi in Sessions Case No.179/2009 (old number: 62/2003) arising out of FIR No.177/03 under sections 302/201/34 IPC registered at police station Vasant Kunj whereby the appellants were convicted for the offence punishable under sections 302/34 IPC. The appellants are also aggrieved by the order on sentence passed by the learned Additional Sessions Judge on 03-06-2010 whereby both the appellants were sentenced to rigorous imprisonment for life and were also directed to pay a fine of Rs. 5000/- each, in default of which, the defaulting convict was to further undergo simple imprisonment for three months. The appellants were given the benefit of section 428 CrPC.

2. The charge against the appellants was that they, on or about 22-03-2003,

near Shiv Mandir Rangpuri Pahari, in furtherance of their common intention committed the murder of Ballu and thereby committed an offence punishable u/s 302/34 IPC.

3. The allegations against the appellants were that the deceased Ballu had been left with the appellants on 22-03-2003 at around 7:30 PM at a temple in Vasant Kunj by PW4 Rishi Raj and on the next day, that this, on 23-03-2003 at around 8:35 AM information was received with regard to a dead body in a burnt condition having been found near Peer Baba Mazar. It is alleged that the dead body was identified as Ballu by PW 4 Rishi Raj who gave the names of the appellants to the police whereupon a raid was allegedly conducted to apprehend the appellants but they went missing. It is further alleged that on 02-04-2003, Ram Mohan was apprehended from the area of police station Vasant Kunj. It is also the case of the prosecution that pursuant to the alleged disclosure made by Ram Mohan a rickshaw was recovered. According to the prosecution, the rickshaw was used to carry the dead body from the mandir to the place where it was found. Appellant Ram Prakash was also allegedly arrested on 28- 04-2003 and, it is further alleged that at that point of time Ram Prakash was dressed in a woman's attire. It is alleged that Ram Prakash made an alleged disclosure statement pursuant to which chappals said to be belonging to the deceased Ballu were allegedly recovered at his instance.

4. In order to prove its case, the prosecution examined 15 witnesses. The most important among them being PW1 Triloki Nath (the person who allegedly lent the rickshaw to the appellant Ram Mohan), PW 2 Dr Arvind Kumar (the doctor who conducted the post-mortem examination), PW 4 Rishi Raj (the person who allegedly left Ballu in the company of the appellants at the temple at about 7:30 p.m. on 22-03- 2003 and also identified the dead body as being that of Ballu), PW 5 ASI Raghubir Singh (who on receipt of DD No.10-A [Exhibit PW 5/A], went to the spot and found a partly burnt body) and PW 14 Inspector Bir Singh (the investigating officer).

5. In his statement u/s 313 CrPC, appellant Ram Mohan denied the allegations against him. He specifically stated that he never resided in the temple and that no rickshaw had been recovered at his instance. He also stated that no recovery had been affected at his instance or from his possession. Similarly, in the statement u/s 313 CrPC, appellant Ram Prakash also denied all the allegations against him. He specifically stated that the deceased Ballu never resided with him. He admitted that he was working as a pujari but denied that Ram Mohan resided with him in the temple. With regard to the women's clothing in which he was allegedly found, appellant Ram Prakash stated that the said clothes were planted upon him by the police and that he had already been detained by the police in the police station several days prior to the date on which he was shown as arrested. He further stated that the disclosure statement was not voluntary and that no recovery had been affected at his instance. He stated that he was innocent and that he had been falsely implicated on account of enmity with Rishi

Raj with whom he had business dealings.

6. After examining the evidence on record and considering the arguments advanced by the prosecution as well as the defence, the learned Additional Sessions Judge came to the conclusion that the prosecution has successfully proved the following circumstances which, according to the learned Additional Sessions Judge, unerringly pointed towards the guilt of the accused:-

(i) the deceased was left by PW 4 on 22-03-2003 at about 7:30 PM with the appellants at Shiv mandir;

(ii) the deceased died an unnatural death and his body was found on 23-03-2003 at about 8:30 AM;

(iii) the body of the deceased was duly identified by PW 4 as to be that of one Ballu of Bullandshahr;

(iv) the appellants were absconding immediately after the offence and that appellant Ram Mohan was arrested on 02-04-2003 whereas the appellant Ram Prakash was arrested on 28-04-2003;

(v) Ram Mohan had borrowed a rickshaw from PW 1 on the day of the incident and he got the same recovered while he was in police custody; and

(vi) the appellant Ram Prakash was found disguised as a woman on the date of his arrest.

7. The learned counsel for the appellants argued that in the first place even if the above-mentioned circumstances are taken to be established it would not lead to the conclusion that the appellants in furtherance of their common intention committed the murder of Ballu. Apart from this, the learned counsel appearing on behalf of Ram Mohan submitted that even the identity of the dead body has not been established. According to the learned counsel, PW 4 Rishi Raj is the only person who is alleged to have identified the dead body as being that of one Ballu of Bullandshahr. Even PW 4 Rishi Raj has identified the dead body from the clothes, as the face was completely burnt and was unrecognisable. It was also submitted by the learned counsel for the appellant Ram Mohan that the alleged recovery of the rickshaw at the instance of the said appellant is meaningless unless and until it can be established that the rickshaw was in any manner connected with the murder in question. It was submitted that, in any event, the seizure of the rickshaw cannot be regarded as a recovery at the instance of Ram Mohan inasmuch as the said rickshaw was in the possession of PW 1 Triloki Nath who was its legitimate owner. It was also contended that Ram Mohan was not absconding and this would be clear from the fact that even as per his arrest memo Exhibit PW 9/A, he was arrested near Shiv mandir opposite C-8, Vasant Kunj, New Delhi. It was submitted that the question of Ram Mohan absconding did not arise as he was found in the same area - near police station Vasant Kunj.

8. It was further contended that if, as per the prosecution, several visiting cards

were found on the person of the deceased then, why was the visiting card pertaining to Rishi Raj alone investigated? It was submitted that there is no evidence to show that the investigating officer contacted any person other than PW 4 Rishi Raj. It was also submitted that PW 4 Rishi Raj had not been in a position to identify the dead body and, therefore, there was serious doubt with regard to the identity of the dead body itself.

9. The learned counsel appearing on behalf of the appellant Ram Mohan further submitted that the evidence categorised as "last seen" has to be considered with a great deal of circumspection. The time gap between a deceased having been seen alive in the company of the accused and when his dead body is discovered should be so small so as to rule out any other intervention. According to the learned counsel, even if the testimony of PW 4 Rishi Raj is to be believed, he last saw Ballu in the company of the appellants at about 7:30 PM on 22-03-2003. The dead body was noticed at 8:35 AM, the next morning, that is, on 23-03-2003. The time gap, therefore, was about 13 hours. During this time there could have been so many intervening circumstances and therefore the circumstance of PW4 Rishi Raj having last seen Ballu alive in the company of the appellants at 7.30 PM on 22-03-2003 is of no consequence.

10. The learned counsel for appellant Ram Prakash reiterated the above submissions and contended that the prosecution has also failed in establishing any motive even as per the trial court. However, the learned counsel submitted, the trial court fell in error in convicting the appellants despite the absence of any motive. It was submitted that in cases which depend entirely on circumstantial evidence, motive is a very important circumstance and the fact that motive was not established by the prosecution could not have been brushed aside lightly. It was further submitted that the identity of the dead body also is not free from doubt. A reference was made to the postmortem examination report Ex.PW2/A where the name of the deceased was shown as "UNKNOWN", his father's name as "Not Known" and his address as "Not Known". It was submitted that had PW4 Rishi Raj identified the body as that of Ballu on 23-03-2003, the said report Ex.PW2/A dated 29-03-2003 would have indicated the name of the deceased as Ballu and his address as that of the temple. Therefore, according to the learned counsel, even the identity of the dead body is in serious doubt.

11. It was also submitted that the appellant Ram Prakash was not absconding and that the women's clothing was planted on him as, on this aspect, there is no statement of any independent witness in support of the prosecution case.

12. Mr Sanjay Lao, appearing for the State, fully supported the impugned judgment and order on the point of sentence. He referred to the impugned judgment and submitted that the circumstances of "last seen", use and recovery of the rickshaw, identity of the deceased and disappearance of the accused soon after the crime were firmly established by the prosecution. He submitted that even if it be regarded that the prosecution has not established the motive behind the crime, this in itself would not enable the appellants to escape from

conviction, if the other circumstances stand established. He submitted that the prosecution has been able to prove that:-

- A. The dead body was discovered at 8.35 AM on 23-03-2003;
- B. The death was homicidal as established by the postmortem examination report Ex.PW2/A and the testimony of PW2 Dr Arvind Kumar;
- C. Visiting cards were found in the pocket of the shirt worn by the deceased. One of which was of PW4 Rishi Raj;
- D. PW4 Rishi Raj was contacted by the police and he identified the body as that of one Ballu who was doing some paint work for him for last few days;
- E. PW4 Rishi Raj stated that at about 7.30 PM on the previous evening (ie., 22-03-2003), he had left Ballu in the company of the appellants at the temple;
- F. PW1 Triloki Nath testified that Ram Mohan had borrowed his rickshaw on "22-03-2003" and had returned it the next morning;
- G. Both the appellants disappeared on 23-03-2003 and absconded till their respective arrests;
- H. Ram Mohan was arrested on 02-04-2003;
- I. When Ram Prakash was arrested on 28-04-2003 he was disguised as a woman.

13. Mr Lao submitted that inasmuch as the above circumstances were established by the prosecution, the chain was complete and, therefore, the appellants were rightly convicted by the learned Additional Sessions Judge and no interference with the impugned judgment or order on sentence is called for.

14. We have considered the arguments advanced by the counsel for the parties and have examined the evidence on record. In the first instance, we may point out that the prosecution has been able to establish that a dead body was found near Peer Baba Mazar at about 8:35 AM on 23-03-2003. The prosecution has also been able to establish that the said deceased died a homicidal death. This is clear from the postmortem report Exhibit PW 2/A as also the testimony of PW 2 Dr Arvind Kumar. The said witness testified that a ligature mark was found on the upper part of the neck. It was present transversely and encircled the neck. The ligature material was a coconut jute fibre rope encircling the neck completely. The said Dr Arvind Kumar also noticed burn injuries on the body of the deceased. He noted that the burns were present on the face, scalp and both shoulders and portion of the chest and about 12 to 14% burns were found on the body. Blackening of the skin was seen on the face and no area of redness was seen on the face or chest. He also noticed that the trachea had soot particles. In the opinion of PW 2 Dr Arvind Kumar, the cause of death was asphyxia following antemortem strangulation by ligature. The burns, according to him, could be perimortem or post-mortem in nature. In his opinion, the time since death was about 6 1/2 days approximately. He proved his report Exhibit PW 2/A.

15. We may observe at this point that the autopsy was done on 29-03-2003. It began at 12:30 PM and was concluded at 1:30 PM. If the starting point of the autopsy is taken as the point from which the time since death is calculated, the time of death would be around 12:30 AM on 23-03-2003. Thus, on the basis of the medical evidence on record it can be safely stated that the deceased died a homicidal death and that the approximate time of death was around 12:30 AM on 23-03-2003.

16. Insofar as the visiting cards allegedly recovered from the pocket of the shirt worn by the deceased are concerned, the testimony of PW 5 ASI Raghubir Singh would be material. According to this witness, on receipt of information with regard to the dead body, he, along with Constable Ramesh Chand, went to the spot where he found a partly burnt dead body of a male. He found that the hands of the deceased were tied behind the back with a rope and the other end of the rope was tied around the neck. The face of the deceased had been burnt with the help of a gunny bag and the pants of the deceased both of which were partly burnt. He stated that the half burnt pant, visiting cards, recovered from the pocket of the deceased, and the gunny bag and earth control were taken into possession by Inspector Bir Singh vide memos Exhibit PW 5/B, C, D and E respectively. Exhibit PW 5/C is the seizure memo in respect of the visiting cards. As per the said memo certain articles were found in the right front pocket of the shirt worn by the deceased. Those articles were:-

1. Some visiting cards (Ex.P4);
2. One plastic scale 6-inch (Ex.P8);
3. Three painting brushes with burnt hair (Ex.P5);
4. One burnt pencil (Ex.P6);
5. One small looking glass of plastic (Ex.P7);

17. Several of the cards indicated -- "Rishi Raj 9811109849 - Deals in all type of air cooling plants and electricity DG - on hire, Opposite Raj Cinema, Delhi Road, Gurgaon 122W1CHR)". So, a visiting card of Rishi Raj was allegedly found in the shirt pocket of the deceased. Of course, there were other visiting cards which have not been described in Exhibit PW 5/C. In the course of his cross-examination, PW5 admitted that one of the visiting cards recovered from the pocket of the deceased was of "Jai Durga Tempo Service" and there were other visiting cards of "Alok Auto", "SG Dresses & Stationers" and "Lucky Drycleaners". All these visiting cards also bore the mobile numbers. PW5 ASI Raghubir Singh also admitted that the following were also recovered from the deceased:-

- i. A paper slip bearing the name of Manoj Dubbhal and telephone number 26964589;
- ii. A piece of paper bearing the name of Sanjay Khan Mahipalpur and telephone number 9811109849;

iii. A piece of paper on which it was written - "Khan Maruti Excel Repair" alongwith telephone numbers 9127375300, 9127177077, 9127564344 and 9127564332;

When he was questioned about these visiting cards and paper slips, PW5 ASI Raghbir Singh replied that he could not say if the investigating officer had contacted all the persons mentioned in the visiting cards and the paper slips.

18. It is noteworthy that out of the several visiting cards and paper slips allegedly found in the shirt pocket of the deceased the visiting card of Rishi Raj was singled out. Only Rishi Raj was contacted by the investigating officer. It is indeed intriguing as to why the investigating officer did not bother to contact the persons mentioned in the other visiting cards and paper slips. The investigating officer PW 15 Inspector Bir Singh has not stated that he even attempted to contact the other persons mentioned in the other visiting cards and paper slips. He has also not stated that he even attempted to call the telephone numbers mentioned in the visiting cards and the paper slips. It is also surprising that the investigating officer straightaway picked up the visiting card of Rishi Raj and contacted him and he turned out to be the person who not only last saw the deceased in the company of the present appellants but also the person who straightaway identified the deceased as being Ballu who was doing some painting work for him. However, despite this intriguing coincidence, let us, for the time being, assume that the visiting cards and particularly that of Rishi Raj was recovered from the shirt pocket of the deceased.

19. This takes us to the next circumstance which is of great significance. This is the circumstance of identification of the dead body. According to the prosecution, after the visiting card of Rishi Raj was found in the shirt pocket of the deceased, Rishi Raj was contacted and he came to the police station at about 11:30 AM. PW 4 Rishi Raj was allegedly shown the dead body and he identified the same as that of Ballu who was allegedly employed as a painter by him. PW 4 Rishi Raj stated in his examination in chief that he identified the dead body to be that of one Ballu resident of Bullandshahr as he had worked with him as a painter at a shop and used to reside in a temple near Vasant Kunj police station. In his cross-examination, the said witness stated as under:-

The deceased was wearing a brown colour sweater and underwear of brown colour at that time. It is incorrect to suggest that the colour of the clothes worn by the deceased was not brown.

I knew the deceased Ballu about 10-12 days before his death as I had hired his services for painting my shop on daily basis.

The deceased had only disclosed to me that he was a permanent resident of Bullandshahr and his name was Ballu. When I saw the dead body the face of the deceased was found burned. I had identified the dead body to be that of Ballu from his appearance, the clothes he was wearing at that time, paint brushes and knife which were shown to me by the police. During the period Ballu remained in

my services, he was wearing the same dress all the time which was found on the person of the deceased when I saw the dead body.

When I saw the dead body it was simply covered. And I were shown the whole dead body. I had disclosed to the police that I had identified the dead body according to the clothes worn by the deceased and other articles shown by the police.

20. From the above, it is clear that PW 4 Rishi Raj identified the dead body as that of Ballu on the basis of the clothes worn by the deceased and some of the articles shown by the police. It is pertinent to note that the clothes allegedly worn by the deceased were not shown to the said witness in court. Nor were the articles on the basis of which he is said to have identified the dead body shown to him in court. So, there is nothing to show that the clothes and articles which were shown to him by the police were the very clothes and articles which had been seized by the police.

21. Another important point which emerges from the above discussion is that the only name given by PW 4 Rishi Raj to the police was that of Ballu. If this were the case, then it is indeed intriguing as to how the hue and cry notice Exhibit PW 14/B carries the name "Kunnu @ Ballu". As per PW 14 Inspector Bir Singh, the hue and cry notice with the photograph of the dead body was published on 27-03-2003. From where did PW 14 Inspector Bir Singh get the name "Kunnu"? That has remained a mystery. We must also remember that PW 4 Rishi Raj had allegedly identified the dead body as that of Ballu of Bullandshahr. PW 4 Rishi Raj also stated that Ballu was residing in the temple along with the appellants. However, the hue and cry notice does not mention either Bullandshahr or the address of the temple. The address of the person in the hue and cry notice has been given as "namaloom" (unknown). The same is the position in the post-mortem report Exhibit PW 2/A where even the name of the deceased has been indicated as "UNKNOWN".

22. Apart from this, it is pertinent to note that PW 4 Rishi Raj identified the dead body primarily on the basis of the clothes worn by the deceased. Therefore it was imperative that, in so far as his testimony with regard to clothes was concerned, there should be no confusion. But this is not the case. We have already noted above that PW 4 Rishi Raj stated categorically that the deceased was wearing a brown sweater. But this is not borne out by the photographs (Ex. P13 to 17) on record. Even the postmortem report Exhibit PW 2/A describes it as a grey coloured sweater. It is, therefore, apparent that when the testimony of PW 4 Rishi Raj is shaky with regard to the clothes themselves, it cannot form the basis of identification of the dead body as that of Ballu of Bullandshahr.

23. Thus, we are in agreement with the submissions made by the learned counsel for the appellants that there is serious doubt with regard to the identity of the dead body.

24. We now come to another important aspect of the case and that is with regard

to the evidence which is categorised as "last seen evidence". PW 4 Rishi Raj has testified that on 22-03-2003 at about 7:30 PM he left Ballu in the company of the appellants at the said temple. The dead body, which we shall assume to be that of Ballu, was found at about 8:35 AM on 23-03-2003. Even if we believe the prosecution version we find that the time gap between Ballu being last seen alive and his dead body being discovered is of 13 hours. So many things could have happened in these 13 hours. Ballu may have come in contact with so many other persons. It cannot be assumed that Ballu remained in the company of the appellants throughout this time or at least till his death. It may be recalled that as per the medical opinion the time of death was fixed at approximately 12:30 AM on 23-03-2003. Thus, even if we take 12:30 AM as the terminal point, the time gap still remains to be five hours.

25. In this context it would be instructive to refer to the Supreme Court decision in the case of State of Goa Vs. Sanjay Thakran and Another, wherein the Supreme Court observed as under:-

34. 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 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 application 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 in the crime coming to light is after a considerable long duration. There can be no fixed straitjacket 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 of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is a long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such an accused person. 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.

26. Keeping the above principles in mind, we find that it would not be possible for us to conclude that between the time Ballu was last seen alive at around 7:30 PM on 22-03-2003 in the company of the appellants and the time his body was discovered at about 8:35 AM the next morning, there was no possibility of Ballu coming in contact with any person or persons other than the appellants. The prosecution has not been able to bring any evidence from which we could infer that there was no possibility of any other person being the author of the crime. The place where Ballu was left in the company of the appellants was also not such a place which was in the exclusive possession of the appellants. It was a temple to which the general public had access. Thus, we find that as the time gap is quite considerable, the circumstance of having been last seen together, even if proved, cannot fasten the guilt on the appellants.

27. From the above discussion itself it is apparent that the prosecution case cannot stand. However for the sake of completeness we would also consider the question of the alleged recovery of the rickshaw. First of all, we must remember that the rickshaw was found in the possession of PW 1 Triloki Nath who was its owner. The rickshaw was not in a place which was only accessible or known to Ram Mohan. In fact, the rickshaw was with PW 1 and was being used by him as such when allegedly the police party arrived at his place along with Ram Mohan. Therefore, in our view, the recovery of the rickshaw cannot be regarded as a recovery pursuant to a disclosure statement made by Ram Mohan. Secondly, even if we assume that the rickshaw was recovered pursuant to the disclosure statement of Ram Mohan, it leads us nowhere. Because all that is established is that Ram Mohan led to the recovery of a rickshaw. Unless and until the rickshaw is linked with the crime, this piece of evidence is meaningless. The prosecution has not been able to show as to how the rickshaw was linked with the crime. It's allegation that it was used to carry the dead body is based entirely on the so-called disclosure statement made by the appellant Ram Mohan. But, that would be inadmissible in evidence. Thirdly, it is to be seen that PW 1 Triloki Nath has stated in his examination in chief that on the night of 23-03-2003 accused the Ram Mohan came to him and asked him to give his rickshaw to him. He further stated that the rickshaw was returned to him by Ram Mohan the next morning. It would be recalled that the crime was allegedly committed in the night intervening 22nd and 23rd of March, 2003. Thus, if Ram Mohan had used the rickshaw for transporting the dead body he would have done so in the night intervening the 22nd and 23rd of March, 2003. But, PW 1 has stated that the rickshaw was taken by Ram Mohan on the night of 23rd of March, 2003. This, clearly, belies the prosecution case. It also belies the case that Ram Mohan was absconding immediately after the commission of the crime. This is so because in the night of 23-03-2003, Ram Mohan is stated to have taken the rickshaw from PW 1 and to have returned the same on the next day, that is, on 24-03-2003.

28. In any event, the allegation of the appellants absconding after the alleged

crime would not be of much significance particularly in the absence of other incriminating circumstances. The view expressed by the Supreme Court in *Matru alias Girish Chandra Vs. The State of Uttar Pradesh*, is apposite:-

19. The appellant's conduct in absconding was relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt 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....

29. In view of the clear principles laid down by the Supreme Court, even if it is established that the appellants were absconding, that by itself, cannot form the basis of a conviction. It is not even to be regarded as a determining link in completing the chain of circumstantial evidence.

30. As a result of the foregoing discussion, we are of the view that the prosecution has not been able to prove its case beyond reasonable doubt. Consequently, the appeals succeed and the impugned judgement and order on sentence are set aside. The appellant Ram Prakas @ Munna Tyagi is directed to be released forthwith insofar as his appeal (Crl.A.1013/2010) is concerned. The appellant Ram Mohan's sentence had been suspended and he has been released on bail. Consequently, his bail bond stands cancelled and the surety stands discharged.

The appeals are allowed.