



IN THE COURT OF PRINCIPAL DISTRICT & SESSION JUDGE,
MUZAFFARPUR.

(BRMZ010003442015)

Civil Court, Muzaffarpur

District: Muzaffarpur.

Session Trial No. 407/2015

(Arising out of Paroo P.S. Case No. 14/2015)

1. State of Bihar

Prosecution

Versus

1. Kamlesh Kumar Chaudhary @ Kamlesh Kumar

S/o-Prem Chaudhay, aged about 31 years.

(Resident of village –Khutahin, PS.- Paroo, District- Muzaffarpur.)

Accused.

Name of P. S.: – Paroo

FIR No. – 14/2015

FIR u/s: -302, 120 (B)/34 of IPC.

Committed on: - 20.06.2015

District: - Muzaffarpur.

Charges framed under: 302, 120 (B) of IPC read with section 34 of the Indian Penal Code.

Learned Counsel for the State: Sri Ajay Kumar, P.P

Learned Counsel for the Accused: Sri Om Prakash Singh ‘Prakash’ (Advocate)

DATE OF JUDGMENT: 05th June 2026

PRESENT: SHWETA KM. SINGH

List of cases cited in the Judgment:

1. *Birdhichand Sarda Vs. State of Maharashtra* [(1984) 4 SCC 116]
2. *State of U.P. Vs. Satish* (2005) 3 SCC 114; AIR 2005 SC 1000.
3. *State of Rajasthan Vs. Kashi Ram*, (2006) 12 SCC 254.
4. *Arabindra Mukharjee Vs. State of West Bengal* [(2011) 14 SCC 352]
5. *Satpal Vs. State of Haryana*[(2018) 6 SCC 610], *Shyamal Ghosh Vs. State of West Bengal* [(2012) 7 SCC 646]
6. *G. Parashwanath Vs. State of Karnataka* [(2010) 8 SCC 593]
7. *Sahabrao Bobade & Anr. Vs. State of Maharashtra* (1973) 2 SCC 793, Para 6
8. *Dhananjoy Chakravarty Vs. State of West Bengal* [(1994) 2 SCC 220]

9. *Santosh Kumar Bariyar Vs. State of Maharashtra (2009) 6 SCC 498.*
10. *Abdul Rashid Vs. State of Odisha 2013 SCC online 493.*
11. *Maru Ram & Ors. Vs. Union of India & Ors. [(1981) 1 SCC 107]*
12. *Nilabati Behera [Nilabati Behera (Smt.) alis Lalita Behera (through the Supreme Court Legal Aid Committee) Vs. State of Orissa & Ors, (1993) 2 SCC 746]*

J U D G M E N T

1. The prosecution has charged the accused namely Kamlesh Kumar Chaudhary @ Kamlesh Kumar with offences punishable under Sections 302, 120 (B) of IPC, read with section 34 Indian Penal Code.
2. Prosecution story in brief, as per the fardbyan of the informant Tinku Kumar Sah, is that, in the evening of 17th of January 2015, around 5 p.m., accused Kamlesh Chaudhary came to his house and asked his brother Vimal Sah, to come for a walk. Thereafter, his brother Vimal Sah went with Kamlesh Chaudhary. Around 06:30 p.m., while he was at the sweet shop of Virendra Sah at Zafarpur Chowk, once again he saw his brother Vimal Sah and the accused, roaming at Zafarpur Chowk. Next morning, he was told by the villagers that his brother Vimal Sah was murdered and his body thrown at Zafarpur main road. After getting the information, when he reached here, he found his brother dead with his throat slit. The case was registered against the accused Kamlesh Choudhary, as the informant firmly believes that Kamlesh Chaudhary, called his brother from the house, under a conspiracy and killed him with the help of his associates. The reason behind the incident is said to be illicit relationship of the accused with the wife of the deceased, namely Sangeeta Devi, which was objected to by the family and the deceased.
3. Based on the written statement of the informant- Tinku Kumar Sah, the Police registered an FIR bearing Paroo P.S. Case No. 14/2015, dated 18.01.2015, against the accused namely Kamlesh Chaudhary. After completion of the investigation, police submitted charge sheet under Sections 302, 120(B)/34 of the Indian Penal Code. Thereafter, the Id. S.D.J.M. (West), Muzaffarpur on 21.05.2015, took cognizance for the offence u/s 302, 120(B), read with Section 34 of the Indian Penal Code and as the offences were exclusively triable by the court of Sessions, the case was committed to the court of Sessions on 20.06.2015 and charges were framed under sections 302, 120(B) of the IPC read with section 34 of the Indian Penal Code, by the learned Sessions Judge, Muzaffarpur on 06.10.2015 The charges were read over and explained to the accused in Hindi, to which he pleaded

not guilty and claimed to be tried and so the file was put up for prosecution evidence.

4. During trial, the prosecution examined seven witnesses, including the informant. The witnesses examined were PW -1 *Mohan Sah*, PW- 2 *Pradyuman Sah*, PW- 3 *Sudha Devi*, PW- 4 *Harihar Sah*, PW- 5 *Tinku Kumar Sah (the informant)*, PW 6- *Dr. Bijay Kumar Prasad*, and PW -7 *Md. Safir Alam*, I.O.

On request of the learned counsel for the State, prosecution evidence was closed by order dated 22.12.2015 and the file was posted for recording the statement of the accused under Section 313 Cr.P.C. The accused in his statement under Section 313 of the Code of Criminal Procedure, recorded on 05.01.2017, denied the allegations against him generally without taking any specific defence. The court put out to him the incriminating circumstances and evidence against him, but the accused did not take any specific defence. He merely denied the case of the prosecution.

5. Thereafter, the case was posted for defense evidence if any and on the request of Learned counsel for the accused, the defense evidence was closed vide order dated 07.02.2023, and thereafter the file was posted for arguments.

ARGUMENTS ON BEHALF OF THE PARTIES:-

6. The learned Counsel appearing on behalf of the accused submitted that none of the witnesses examined by the prosecution have seen the accused commit the offence. His further leg of argument is the that the prosecution story entirely rests on circumstantial evidence and that the chain of evidence is not complete to hold the accused guilty of having committed the offence alleged. Except for the fact that the victim/deceased was last seen in the company of the accused by the family members, nothing else has been brought forward by the prosecution to prove his guilt. It is also argued that the testimony of the witnesses is marred by inconsistencies and cannot be relied upon for the purpose of conviction. As such he prays that the accused be given the benefit of doubt and be acquitted.
7. The learned counsel for the State, Sri Ajay Kumar, while countering the submissions of the defense has urged that the prosecution while discharging its initial burden of proving the case set up by it, has firmly established the charges against the accused beyond reasonable doubt. It has firmly established that the deceased Vimal Kumar died a homicidal death and was last seen in the company of the accused. The fact of the deceased being last seen in the company of the accused around 6.30 P.M. and his body found in the early morning next day, is also

not disputed. The third fact which stands established is that the death occurred on account of the throat being slit and that the victim did not die a natural death. Thus, the prosecution has been able to prove its case beyond reasonable doubt.

- 8. Now the question that arises for determination before this court is, whether the prosecution has been able to prove its case beyond reasonable doubt and been able to bring home the charges levelled against the accused to attribute him with the culpability of the offence alleged.**

APPRECIATION OF THE EVIDENCE LED BY THE PROSECUTION AND THE LAW WITH RESPECT TO IT.

- 9.** P.W. 1 Mohan Sah, in his examination in chief says, “The incident took place fourteen months ago. I was at my house. Vimal Kumar was my nephew, who had come from Gujarat, on the asking of his wife. Vimal Kumar was called by the son of Prem Chaudhary and killed as he was in an illicit relationship with the deceased’s wife. Prior to this incident, Prem Choudhary’s son was caught inside the house of Vimal Kumar, in a compromising position with his wife and it is because of it that Prem Choudhary’s son murdered Vimal Kumar. I know the accused standing in the dock, who is the son of Prem Chaudhary”.

During his cross-examination, this witness says, “I stay at home, not in Gujarat. Vimal's wife had only been to Gujarat once, to call her husband. Vimal Kumar had returned home from Gujarat about ten days before the incident. There are two houses between Vimal's house and Prem Choudhary's house. Prem Choudhary's son was caught with Vimal's wife before the incident. I do not know whether Vimal's wife is accused in any case or not. Vimal has two sons and a daughter. Vimal Kumar's wife went to her parents’ house along with her children, after her husband’s funeral and since then, she has been staying there. Harihar Sah is Vimal Sah's father. Harihar Sah has three sons, all of whom live separately, as does his father. Vimal Kumar was a foodie and was also in habit of drinking. His family used to ask him not to do so. I don't remember the name of the accused present in the dock. I do not know whether any other case is running against accused apart from this case or not. Vimal Kumar had no problem with anyone in his family”.

The witness denied the suggestion that he is giving false testimony because of the deceased's father.

- 10.** P.W. 2 Pradyuman Sah, in his examination in chief says, “the occurrence took place on 17th of January 2015. The deceased, Vimal Kumar, was my brother. When I

returned from Gujarat, I came to know that he was murdered. I had not given any statement to the police.”

This witness was declared hostile at the request of Id. Public Prosecutor.

11. P.W.- 3 Sudha Devi- mother of the deceased, says, “The incident took place about one and a half years ago. The deceased, Vimal Kumar was my son. He lived in Gujarat and worked there. My son had returned from Gujarat about a month before the incident. On the day of the incident, Prem Choudhary's son took him along with him from the house and killed him. My daughter-in-law had an illicit relationship with accused. Before this incident, Prem Choudhary's son was caught doing wrong deed, with Vimal's wife in his house. This is why Prem Choudhary's son killed my son, Vimal Kumar. I know the accused, Prem Choudhary's son, standing in the dock.”

During her cross-examination, the witness says, “my statement was taken by the police about fifteen days after the incident. The police took my statement at my house. My son, Vimal Kumar, has two sons and a daughter. The eldest son is about 4-5 years old. We have filed a case against our daughter-in-law. About a month before my son's murder, the accused was caught in a compromising position with my daughter-in-law. No panchayat was held regarding the matter. Prem Choudhary's son ran away with my daughter-in-law, breaking open the thatched house. This matter was reported to the police”.

The witness further says “I have poor eyesight. When the accused took my son with him, I was sleeping in the house. Soon she says, me and my husband were lying in the verandah outside. It was in the morning of the next day of the occurrence, that I came to know that my son had been murdered. The accused had called my son and taken him along around 5.00 P.M. No one had gone out in the night looking out for him, as it was a foggy winter night.

I went to the spot where my son's body was found. His body was found near the Phuladh Temple. My son's body was found one mile from my house. Everyone in the house went to the scene, and I went too. Ashok from the same village told me that my son was killed and his body was lying. Ashok Sah's father's name is Mahesh Sah, he is a co- villager.

I hadn't told my son about my daughter-in-law running away with the accused. My son did not consume toddy or liquor. My son and daughter-in-law always got along well, never quarreled. My daughter-in-law is currently at her parents' home”.

The witness denied the suggestion that her son used to eat and drink, and it was in that process that he was murdered by someone and that the accused has been falsely implicated.

12.P.W.- 4 Harihar Sah, father of the deceased, in his examination in chief says “deceased Vimal Kumar was my son. He used to work in Gujarat and had come home. Kamelesh Chaudhary called my son from the house and then he was murdered. Once Kamlesh Chaudhary had entered my house, as he has illicit relationship with my daughter in law. As the family objected to their relationship, Kamlesh Chaudhary killed my son Vimal Kumar. I recognize the accused Kamlesh Chaudhari present in the court”.

During his cross-examination, this witness says, “I own a sweet shop which is about 25-30 feet from my house. I close the shop at 7 p.m. I was at the shop, when my son left the house. The police recorded my statement. I didn't complain to anyone about the illicit relationship between my daughter-in-law and the accused. My son used to eat and drink a little. I didn't go to the Batasi shop to inquire about my child. My deceased son lived separately from me, and my daughter-in-law lives here and there. Accused Kamlesh's house is 20-25 feet east of my house. I have not told the police that Ashok Shah, son of Mahesh Shah, had informed me about the murder of my son. I received the information about my son's death at 6 am near Baiju Shah's shop. I was alone at the shop at that time. After informing my family, I went to the toddy shop where the dead body of my son was lying. There is no house near the toddy shop”.

The witness denied the suggestion that the accused Kamlesh Chadhary was implicated in this case on mere suspicion.

13.P.W.- 5 Tinku Kumar Sah, (informant) in his examination in chief says “the incident is of January 17th, 2015, 6.15 p.m. I had seen my brother Vimal Sah and accused Kamlesh Choudhary together. Kamlesh Choudhary had called my brother Vimal from home and taken him along. Once again in the evening, I saw them roaming around at Jafarpur Chowk. The next morning, when I was at home and my father went to Baiju Sah's shop to have tea, he was informed by Ashok Sah that Vimal Sah has been murdered and his body thrown on Jafarpur Phular road. When my father told us, we went there and found my brother killed and his body lying on the road, with his neck and finger cut. The reason behind this incident is the fact of my brother's wife having an illicit relationship with accused Kamlesh Chaudhary, which was objected to by the family members. The police officer took my statement in this regard and read it over to me and finding it correct; I put my thumbprint. I recognize accused Kamlesh Choudhary, standing in dock.”

During his cross-examination, this witness says, “I saw my brother going with accused. Kamlesh had called my brother from home and taken him along around 6.15 in the evening. My father, mother and sister-in-law were at home that time. I was at the shop. My uncle Mohan Shah was also present at my house. My family members at home told me that accused had called my brother from home

and taken him away. Jafarpur Chowk is about 30 feet east of my house. Rajendra Rai and the shop owner- Prabhat, were at the shop where I worked, and 50-60 persons visited the shop. No one tried to stop my brother. I asked him as to where was he going, to which he replied that he would come back in half an hour. He did not go towards the house but headed towards south. When my brother went with accused, he was wearing a full pant and a shirt, and a red high-neck underneath. The distance from the place where my brother's body was found and Jafarpur Chowk is about 25 feet. I cannot tell the boundary of the place where the body was found. There is no house near the place where the body was found, but there is a toddy shop. The toddy seller's name is Patashi. I did not see my brother being murdered, I do not know the time of the murder. I came to know about it the next morning, from my father. Ashok Sah had informed my father about the incident. Where the body was found, people frequent the toddy shop till 10 P.M., to have toddy. My brother never went to the toddy shop or drank toddy. I don't know who informed the inspector. My brother has two sons and a daughter. The eldest son is about 6 years old. Accused used to come to my house often and used to meet my sister-in-law alone. That's how we got information about him. The accused had been coming to my house almost every day, for the last three months. My family had asked my brother's wife not to keep any contact with the accused, but she did not listen. My brother also knew that accused used to come to our house. At the time of my brother's murder, there was no division of property with him. There had never been any quarrel with accused before the incident”.

“I don't understand the meaning of the fardbeyan. I don't remember the time when the police took my statement. The police took my thumb impression on a written paper. My statement was taken 10 steps away from the toddy shop of Patashi. I work at Virendra Shahi's shop. My father also works at the same shop, but he was not at work at the time of occurrence. My father was not working at that time. I had a good relationship with Kamlesh before the incident. We did not involve my sister-in-law in this incident. My brother lived in Gujarat and had arrived 15 days before the incident. In addition to my family, the police took the statement of the Mukhiya, Usha Devi. Her statement was taken at the very spot where the body was found. It is wrong to say that accused has been falsely implicated in this case”.

14. P.W.-6 Dr. Bijay Kumar Prasad, who conducted the autopsy of the deceased says “I was posted as Prof. and HOD, Department of Forensic Medicine, S.K. Medical College, Muzaffarpur and on that day the postmortem examination was done on the dead body of Vimal Sah, aged about 24 years, S/o Harihar sah, village- Khutahi, P. S. Paroo, Distt. Muzaffarpur and the following ante-mortem injuries were found: -

(i) Incised wound 4" x 1" on front of neck.

(ii) Penetrating wound 2"x 2"x1" on left side of neck.

(iii) Incised wound 2"x1" on ended ring and middle finger.

Opinion: - The deceased died due to hemorrhage due to above mentioned injuries. Injury was caused due to sharp and pointed weapon.

Time since death- within 12 to 24 hours.

This report is written by me and bears my signature which has been marked as Ext.1."

During cross-examination, this witness says, "I have not mentioned the color of injuries in the P.M. report. I assessed the time since death by rigor mortis appeared on the dead body.

Such type of death may be caused by suicide."

15. PW 7- Md. Safir Alam, I.O. of this case says, "On 18.01.15., I was posted as SHO Paroo Police Station. That day I received an information that a dead body was lying on Zafarpur main road. Thereafter, to verify the same, I left the police station with the police force. When we reached the spot, a dead body was seen lying. The informant Tinku Kumar Sah was present at the spot. I took his fardbeyan there, read it over to him, finding it true, he put his thumb impression. This is the same fardbyan which is in my handwriting and signature, the same is marked as **Exhibit 2**. After that, I prepared the inquest report at the scene itself. The inquest report has the signatures of Usha Devi, Mukhiya and Shiv Kumar Singh. Thereafter, I put my signature over the same. The same is marked as **Exhibit-3**. I then took the body to S.K.M.C.H. Muzaffarpur, for postmortem examination. Thereafter, I came to the police station, did the page initiation and signed on the fardbeyan and the same is marked as **Exhibit- 4**. The formal FIR was prepared by Anil Kumar, the Chowkidar and the same is marked as **Exhibit 5**. Thereafter, I took over the investigation, took statements of the informant along with other witnesses namely, Harihar Sah, Sudha Devi, Pradyuman Sah and Mohan Sah. The postmortem report of the deceased Vimal Sah was obtained. Subsequently, the supervision note of the Deputy Superintendent of Police was obtained. Subsequently, charge sheet no. 147/15 was filed on 30-4-2015. Witness Pradyuman Lah had given a statement in my presence that the incident had taken place four-five days ago, he had come home from Gujarat to get his Aadhar card made. On 17.01.15 in the evening, Kamlesh Chaudhary took my brother on the pretext of going for a walk, they ate and drank at the shop and after killing him, he threw him on the Zafarpur Phuladh Main Road. The reason for the incident is that Vimal Kumar's wife had an illicit relationship with accused. A month ago, Kamlesh Chaudhary had entered the house of Vimal Kumar. When the people in the house saw him, they were locked inside but they cut through the thatched house and ran away. Kamlesh Chaudhary wanted to have an

illicit relationship with Sangeeta Devi and due to this enmity, the case was registered.”

During cross-examination, this witness says, “Upon receiving information, I left the police station at 7:45 a.m. for the Zaffarpur main road. I have written about my departure from the police station in my police diary, but not in the case diary. I could not provide the police station diary number. I seized a sickle at the scene, but not a knife. I did not prepare a seizure list of the seized sickle. I did not send the seized sickle for forensic examination. The seized sickle is not currently in my possession. I submitted the said weapon to the police station but did not record it in the diary. The body was sent for postmortem through the watchman Arvind Kumar. That the post-mortem report was received on 15/12/15. The post-mortem report was brought by the postman of Police Station. The deceased's body was not returned to me, nor I demanded the same. Batashi shop is about 100 meters away from the place of occurrence. No one has said about seeing the murder. It is incorrect to say that my investigation is defective. I found no criminal history of accused.”

FINDINGS

16. Since there is no direct evidence on the death of Vimal Kumar, the prosecution has majorly relied upon circumstantial evidence. As discussed above, the case revolves around the death of Vimal Kumar, whose body was found at the Zafarpur Chowk, with his neck slit by a sharp weapon. The accused is implicated in his death on the ground that he was last seen together with the deceased, before his dead body was recovered the next morning.

While scrutinizing the circumstantial evidence, the five golden principles of law governing trials based on circumstantial evidence, as laid down by the Hon’ble Apex Court in Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116], is to be looked into. They include:-

- The circumstances from which the conclusion of guilt is to be drawn should be fully established;
- The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- The circumstances should be of a conclusive nature and tendency;
- They should exclude every possible hypothesis except the one to be proved;
- There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

17. Now, before dealing with the circumstances to consider whether they unerringly point to the guilt of the accused in exclusion of any hypothesis as to the guilt of another person, it has to be first considered whether the death of Vimal Kumar is homicide and if so, whether it is culpable homicide amounting to murder.
18. As a matter of fact, there is no challenge against the identification of the body and also against the finding that the death of Vimal Kumar is homicide and it is culpable homicide amounting to murder, in light of the testimony of the doctor who conducted the postmortem and was examined as P.W.-6, together with the postmortem report, marked as Ext. 1. In the opinion of the doctor, the cause of death is haemorrhage due to the injuries inflicted upon him by sharp and pointed weapon.
19. Once it is found that the death involved in the case is culpable homicide amounting murder, the next question is as to who is the assailant and in order to do so, prosecution has relied on the circumstantial evidence and the first link in the chain of circumstantial evidence is the 'last seen' evidence.
20. The present case squarely falls under the "last seen theory" which is a specie of circumstantial evidence. We will now deal with the most crucial circumstance of last seen together, upon which much emphasis has been laid by the Prosecution. The legal position pertaining to appreciation of circumstantial evidence of 'last seen' has been summarised in Arvind @ Chhotu Vs. State, in the following words:
-
- (i) *Last seen is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding the guilt or otherwise of an accused where the last seen theory has to be applied.*
 - (ii) *It is not necessary that in each and every case corroboration by further evidence is required.*
 - (iii) *The single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last seen.*
 - (iv) *Proximity of time between the deceased being last seen in the company of the accused and the death of the deceased is important and if the time gap is so small that the possibility of a third person being the offender is*

reasonably ruled out, on the solitary circumstance of last-seen, a conviction can be sustained.

- (v) *Proximity of place i.e. the place where the deceased and the accused were last seen alive with the place where the dead body of the deceased was found is an important circumstance and even where the proximity of time of the deceased being last seen with the accused and the dead body being found is broken, depending upon the attendant circumstances, it would be permissible to sustain a conviction on said evidence.*
- (vi) *Circumstances relating to the time and the place have to be kept in mind and play a very important role in evaluation of the weight age to be given to the circumstance of proximity of time and proximity of place while applying the last-seen theory.*
- (vii) *The relationship of the accused and the deceased, the place where they were last seen together and the time when they were last seen together are also important circumstances to be kept in mind while applying the last seen theory. For example, the relationship is that of husband and wife and the place of the crime is the matrimonial house and the time the husband and wife were last seen was the early hours of the night would require said three factors to be kept in mind while applying the last-seen theory.*
- (viii) *The above circumstances are illustrative and not exhaustive. At the foundation of the last seen theory, principles of probability and cause and connection, wherefrom a reasonable and a logical mind would an hesitatingly point the finger of guilt at the accused, whenever attracted, would make applicable the theory of last-seen evidence and standing alone would be sufficient to sustain a conviction.”*

21. Further in [*State of U.P. v. Satish*, (2005) 3 SCC 114 : AIR 2005 SC 1000] it was held as under:

“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. In this case, there is positive evidence that the deceased and

the accused were seen together by witnesses-PW3 and PW5, in addition to the evidence of PW2.”

22. In the facts of the given case, as per the testimony of the informant and the other witnesses, including P.Ws. 1, 3, 4, the victim was taken by the accused from his house on pretext of taking a stroll around 5.30 in the evening, and was last seen in his company around 6.15 P.M, by the informant. Thereafter, he did not return and his body was found in the early hours of the next morning.

23. Thus, in the instant case, the prosecution has been able to establish that the accused was last seen with the deceased. Now, under Section 106 of the Evidence Act, 1872 onus of proof was upon the accused person to show as to how and when the deceased received those injuries which caused his death. Section 101 of the Evidence Act lays down the general rule that in a criminal case, the burden of proof is on the prosecution and Section 106 is not intended to relieve it of that duty. However, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficult or inconvenience. The accused has neither denied the factum of his being last seen with the deceased, nor furnished any explanation as to how and when did they part, if they did, and what happened thereafter.

24. The applicability of provision has been explained by **Hon'ble Supreme Court in State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254, where it was held as under:—**

“The principle is well settled. The provisions of Section 106 of the Evidence Act, 1872 itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with

his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

- 25.** In the facts of the present case, on the fateful day, the accused had come to the house of the deceased in the evening around 5.30 P.M. and took him along for a walk (not denied even during his statement recorded under section 313 of the Code of Criminal Procedure). The deceased accompanied him, never to return back home alive. Once the accused was last seen in the company of the deceased, the onus lay on him to show that he was not at all involved in the occurrence or that he had left the deceased at his home or any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus lay on the accused to lead evidence to establish his innocence, which he failed to do. The burden was upon him to prove as to what happened when they went out for a walk and thereafter, since those facts were within his personal knowledge. However, the accused failed to do so, leading to the inference that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act.
- 26.** In the instant case, the accused was last seen with the deceased around 7.00 P.M., and his body was spotted early morning around 5.00 A.M, the next day. Normally, in a village setting, especially during the winter season, the active life almost comes to a close around this hour, with very little activity continuing thereafter. In addition to it, it being a foggy winter night, as averred by the witnesses, the time gap between the deceased being last seen in the company of the accused and the dead body of the deceased being found, is so small that possibility of any person other than the accused being the author of the crime becomes impossible and the possible inference would be that the accused had committed the said offence.
- 27.** Once the last seen theory comes into play, the onus rests with the accused persons to explain as to what happened to the deceased after they were together seen alive. The accused was under an obligation to give plausible explanation for the injuries suffered by the deceased and his subsequent death, in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation is considered to be inconsistent with the innocence of the accused, and consistent with the hypothesis of his guilt. It has been consistently held by the **Hon'ble Apex Court in a catena of cases including that of Arabindra Mukherjee Vs. State of West Bengal [(2011)14 SCC 352]**, that "if the accused does not offer any explanation how the victim received the injuries, it is a strong circumstance which indicates that he is responsible for the commission of the crime".

28. In the facts of the present case, the proximity of time between the deceased being in the company of the accused and the death of the deceased is important and the time gap is so small that the possibility of a third person being the offender is reasonably ruled out. In addition to it, the proximity of place, that is the place where the deceased and the accused were last seen alive, (herein Zafarpur Chowk) with the place where the dead body of the deceased was found (Zafarpur Phulad Main Road) is an important circumstance. The distance between the two places is alleged to be just 25 feet. In the present case, there is positive evidence that the deceased and the accused were seen together by witnesses- PWs 1, 3, and 4, in addition to the evidence of the informant, examined as P.W-5. As per the Medical Officer who conducted the postmortem on 18.01.2015, the death occurred within 12 to 24 hours before the postmortem examination, which is consistent with the time the deceased was seen last together with the accused.

29. An additional incrimination factor which completes the link in the chain of circumstances, is the fact that the accused was absconding till his arrest. The factum of the accused absconding in the present circumstances and established facts, not only goes with the hypothesis of guilt of the accused but also points a definite finger towards him. In **Satpal Vs. State of Haryana {(2018)6 SCC 610}**, **Shyamal Ghosh Vs. State of West Bengal.[(2012)7 SCC 646]**, the Hon'ble Apex Court held that-

“Even if this Court assumes that absconding in itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused person as it is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal cases, but in the present case in view of the circumstances and the facts established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards him”.

30. Now coming to the motive behind the offence being committed, it is the case of the prosecution, supported by the witnesses, including the informant that the accused was into an illicit relationship with the wife of the deceased and was caught in a compromising position with her in the deceased's house, a few days back. Since the deceased and the his family objected to the relationship, he took the deceased Vimal Kumar with him and killed him.

The law is now well settled that while proof of motive certainly strengthens the prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal. **The Hon'ble Apex Court in G.Parshwanath Vs. State of Karnataka [(2010)8 SCC 593]** has held as follows:

“45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit to the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under 302 IPC. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question.”

31. Thus, on evaluation of the proved circumstances consistent with understandable and socially recognised human behaviour, a clear and definitive pattern has emerged, which irresistibly points to the culpability of the accused person.

As the saying goes, while men may lie, circumstances do not. As discussed above, it has been proved through cogent and credible evidence that the accused was last seen together with the deceased on 17.01.2015, around 6.15. P.M.6 and though the dead body of the deceased was discovered on 18.01.2015, death had occurred around the time the deceased went missing and during this intervening period, the whereabouts of the deceased could not be ascertained. On the other hand, the accused had been absconding.

In the present case the "last seen theory" as a facet of circumstantial evidence is coupled with other circumstances like the proximity of time when the accused was last seen with the deceased, recovery of the body being in very close proximity of time and place. The accused has not led any evidence to show that he was not in the company of the deceased or that he had subsequently parted ways.

32. Another principle of law is not to be lost sight of, in a case based on circumstantial evidence where no eyewitness account is available, that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an

additional link in the chain of circumstances to make it complete. In the present case, despite the incriminating evidence which has come up against him has been pointed out to him by the Court, he has not explained as to whether he was seen in the company of the deceased or not but merely denied it generally, without taking a specific plea, necessary inference can be drawn against him.

33. Thus, the prosecution has been able to prove and establish well beyond reasonable doubt, both the criminal act and intent of the accused charged under section 302 of IPC, for committing murder of the deceased Vimal Kumar. **This Court in this regard is ably guided by following prophetic observations of Justice V.R. Krishna Iyer in *Sahabrao Bobade & Anr. v. State of Maharashtra*, (1973) 2 SCC 793, para 6:**

"6.....The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. ..."

34. Thus in light of the aforementioned facts and discussions, and the appreciation of evidence led by the Prosecution in light of the law laid down by the Hon'ble Supreme Court, this court has arrived at the conclusion that the prosecution has been able to prove and establish well beyond reasonable doubt, both the criminal act and intent of the accused charged under section 302 of IPC, that is, the prosecution has been able to bring home the charges against the accused and proved its case beyond reasonable doubt. To attract clause Thirdly of Section 300 of the IPC, the prosecution had to prove/establish four things as per the ratio laid down in **Virsa Sing Vs. State of Punjab**. Firstly, the Prosecution had to prove that bodily injury is present. Secondly, the prosecution had to prove the nature of injury inflicted and thirdly it must be proved that there was an intention to inflict that injury. Once these elements/ingredients are established, the Court must see whether

the injury is sufficient in ordinary course of nature to cause death. Once these four elements are established by the prosecution, the offence of murder falls under clause Thirdly of Section 300 of the IPC.

35. In the present case, the prosecution has successfully been able to prove the bodily injury present on the person of the deceased Vimal Kumar, which is an undisputed fact, not even controverted by the defense. As to the intention to cause those injuries which were inflicted, the nature of injury found on the body of the deceased, leaves no room for the doubt that he did not intend to inflict those injuries which by all logical means of prudence, as well as the post mortem report, was sufficient in ordinary course of nature to cause death, thus attracting clause Thirdly of Section 300 of the IPC.

36. For the reasons discussed above, on consideration of the circumstantial evidences and other proven facts, in my considered opinion, a clear pattern emerges out of the circumstances so proved with inferential and logical links which unmistakably points to the guilt of the accused for committing murder of the deceased Vimal Kumar, punishable under Section 302 of the IPC. These proved circumstances considered individually or taken together do not indicate the involvement of anyone else other than the accused.

37. However, the prosecution has failed to prove the existence of any common intention attracting Section 34 IPC or any criminal conspiracy punishable under Section 120B IPC.

38. Thus considering the facts and discussions, this court had arrived on the following veritable conclusion:

(a) Accused Kamlesh Chaudhary @ Kamlesh Kumar, son of Prem Chaudhary is found and held guilty for committing the murder of deceased Vimal Kumar punishable under Section 302 IPC.

(b) The bail-bonds of the aforementioned accused is accordingly cancelled, and he is taken into custody.

Put up the file on 10th of June 2026 for hearing on the quantum of sentence.

sd/-

{Shweta Km. Singh}

**Principal District & Sessions Judge,
Muzaffarpur.**

(Dated- 05th Day of June 2026)

16.06.2026

Hearing on quantum of sentence.

1. Heard Sri Ajay Kumar, the learned P.P. for the State and Sri Om Prakash Singh 'Prakash', the learned counsel for the defence on the quantum of sentence. The learned counsel for the defence urges for leniency in the sentence on the ground of the accused being first time offender, with no previous criminal antecedent. On the other hand learned APP for the State seeks maximum punishment for the convict arguing that the manner of committing the crime was brutal and the crime committed is heinous.

Before the court proceeds to decide the quantum of sentence, it would be appropriate to consider the sentencing guidelines laid down by the Hon'ble Supreme Court.

2. In the leading case of **Dhanajoy Chakravarty vs. State of West Bengal [(1994) 2 SCC 220]**, the Hon'ble Supreme Court held: "*15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime...*"
3. The Hon'ble Supreme Court, in a catena of judgments have laid down that the sentencing should be proportionate to the magnitude and the gravity of the crime and should not be unduly lenient. Now section 302 of the IPC carries either death sentence, with fine or life imprisonment. Now for applying death sentence, the case should fall in the category of rarest of rare case. In **Santosh Kumar Bariyar vs State of Maharashtra (2009) 6 SCC 498**, the Hon'ble Supreme Court explained the sentencing: "*The rarest of rare dictum serves as a guideline in enforcing **Section 354(3)** and entrenches the policy that life imprisonment is the rule and death punishment is an exception. It is a settled law of interpretation that exceptions are to be construed narrowly. That being the case, the rarest of rare dictum places an extraordinary burden on the court, in case it selects death penalty as the favoured penalty, to carry out an objective assessment of facts to satisfy the exceptions ingrained in the rarest of rare dictum.*"

4. Here the facts of the case do not reveal that the acts of the convicts could be treated as a rarest of the rare category. The prosecution has failed to bring any peculiar fact that would place the acts of the convicts in the rarest of the rare category to merit sentence of death. So the court is left with the other option, i.e. sentence of life imprisonment. The court finds that the probation of offenders Act would not apply here as the crime is a heinous one. So the court cannot award the convict, the benefit of probation of offenders Act and will award substantive sentence.
5. Considering the above said facts and arguments of both the sides, following sentence is awarded with respect to the accused: -

SENTENCING ORDER

Sl. No	Name of accused	Convicted under	Imprisonment	Fine	Imprisonment in default of fine
1	Kamlesh Chaudhary @ Kamlesh Kumar	Section 302 IPC	Rigorous imprisonment for Life	Rs.10,000/-	3 months R.I.

- The period of detention if any, undergone by the convict, during the investigation, inquiry or trial shall be set off as per the provision laid down under section 428 of the CrPC.
- A copy of the Judgment be given to the accused free of cost.

On the Point of Compensation:-

1. Right to life, as enshrined in Article 21 of the Constitution of India, is a Fundamental Right and the State Government is duty bound to protect the lives of its citizens. In the instant case the State has failed to protect the life of the deceased and hence, it cannot escape its responsibility of compensating the kith and kin of the deceased person, though no amount of monetary compensation can ever compensate for a loss of life.

2. In **Abdul Rashid v. State of Odisha 2013 SCC Online 493**, the Hon'ble Apex Court observed: (para 6-10)- "Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal".
3. **Hon'ble Justice Krishna Iyer in Maru Ram & Ors. Vs. Union of India & Ors. [(1981)1 SCC 107]** said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.
4. Thus, in light of the aforesaid ratio laid down by the Hon'ble Apex Court in a catena of cases regarding compensating the victims of a crime, this Court not being oblivious of the agony, trauma and travails the family, especially the children of the deceased, who were less than 6 years old, must have undergone on account of death of father, Secretary, District Legal Services Authority, Muzaffarpur is directed to look into the quantum of compensation to be granted to the children of the victim Vimal Kumar, preferably within a period of 60 days from receipt of communication of this order, in light of principles laid down by **Hon'ble Apex Court in Nilabati Behera [Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa & Others, (1993) 2 SCC 746]** and the provisions of **Bihar Victim Compensation (Amendment) Scheme**.
5. Let a copy of this Judgment be sent to the Secretary, District Legal Services Authority, Muzaffarpur for necessary compliance.
6. The fine amount of Rs.10,000/- to be paid by the accused to the children of deceased, Vimal Kumar, in terms of Section 357 Code of Criminal Procedure, as and when realised.

The Sentence is pronounced in the open court in presence of the parties under my seal and signature on this 16th Day of June 2026.

sd/-

{Shweta Km. Singh}
Principal District & Sessions Judge,
Muzaffarpur.
(Dated- 16th Day of June 2026)