

### **LAST SEEN THEORY:**

In cases where the accused has been seen with the deceased victim (last seen theory), it becomes the duty of the accused to explain the circumstances under which the death of the victim has occurred<sup>1</sup>. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime<sup>2</sup>.

Last seen theory should be applied while taking into consideration the prosecution case in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. He submitted that if the aforesaid principle as laid down by this Court in Sahadevan and another vs. State of Tamil Nadu<sup>3</sup> is applied then the appellants could not be held guilty of the offence of murder of the seven persons<sup>4</sup>.

### **LAST SEEN THEORY:**

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<sup>5</sup>.

### **LAST SEEN - PRESUMPTION:**

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<sup>1</sup> Nika Ram vs. The State of H.P – AIR 1972 SC 2077; Ganeshlal vs. State of Maharashtra – (1992)3 SCC 106=1992 AIR SCW 1175; Ponnusamy – AIR 2008 SC 2110=2008 AIR SCW 3184

<sup>2</sup> Prithipal Singh & Others vs. State of Punjab – (2012)1 SCC 10=AIR 2012 SC (Cri) 333=2012 AIR SCW 594 followed in Ravirala Laxmaiah vs. State of A.P – 2013 Cr.L.J 3147 (SC)

<sup>3</sup> (2012)6 SCC 403=AIR 2012 SC 2435

<sup>4</sup> Baldev Singh vs. State of Punjab – AIR 2013 SC (Cri) 2224

<sup>5</sup> State of U.P vs. Satish - (2005)3 SCC 114

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when 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 perpetrator of the crime becomes impossible. It will 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. However, if the prosecution, on the basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company<sup>10</sup>.

It is trite law that a conviction cannot be recorded against merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, 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 other person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused<sup>11</sup>.

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<sup>10</sup> Sahadevan @ Sagadevan vs. State - (2003)1 SCC 534 referred in Dharam Deo Yadav vs. State of U.P - 2014(4) SCALE 730=(2014)5 SCC 509=2014(2) MLJ (Cri) 435 (SC)

<sup>11</sup> Rambraksh @ Jalim – (2016)2 MLJ (Cri) 736 (SC)=2016(1) CLT (Cri) 33