

in a case the prosecution leads two acts of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation.

24. Based on the foregoing discussions, we conclude that PW-1 Siddha stated in his statement that the incident was witnessed/seen by Murlidhar, Ram Ratan, Ram Asrey, Chaman, Rafiq, but failed to justify except Ram Asrey (PW-2) as to why the police witness Rafiq Ahmad, Rameshwar, Mohan, Babu Khan, Chaman Lal, Murlidhar, Ram Ratan, Ram Swaroop, Kamta Prasad and Bhagwan Singh are not produced by the prosecution. This fact assumes significance that witness Bhagwan Singh police witness has been figured in the FIR, had animosity with accused, therefore, non production of witness Bhagwan Singh casts serious doubt on the prosecution story, moreso when suggestion was given to the PW-1 that his son's name was arrayed as an accused in the murder of Phool Singh and Sheo Nath Singh, he showed ignorance which also cast doubt on the truthfulness of the witness deposition. Witness PW-2 has denied his knowledge about the murder of Bhagwan Singh's father in which Siddha (PW-1), Babu Singh, Prithvi Singh were arrayed as accused.

25. Therefore, applying the law held in **Vadivelu Thevar (supra)** and **Harchand Singh (supra)**, we conclude that the PW-1's testimony is neither wholly reliable nor wholly unreliable and conviction based on testimony of PW-1 would be unsafe.

26. In the given facts-circumstances, the appellant is entitled for the benefit of

doubt as suspicion so raised can not take the place of evidence.

27. As a result, the conviction and sentence passed against the appellant vide impugned judgment of conviction and order of sentence dated 8.3.1983, passed by 3rd Additional Sessions Judge, Hamirpur in Sessions Trial No.51 of 1982 titled State v. Ram Krishna, u/s 302 IPC and Sessions Trial No.16 of 1983 titled State v. Ram Krishna, u/s 25 of Arms Act, registered at Police Station Kharela, District Hamirpur, is hereby set aside and the appellant is acquitted of all the charges. Thus, the appeal is **allowed**.

28. Office is directed to send back the record of this appeal to the trial court concerned along with a copy of this order for compliance of section 437-A Cr.P.C.

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**(2024) 11 ILRA 147**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 13.11.2024**

**BEFORE**

**THE HON'BLE RAJNISH KUMAR, J.**

Second Appeal Defective No. 94 of 2024

**Vidhan Chandra Pandey & Anr.**

**...Appellants**

**Versus**

**State of U.P. & Anr.**

**...Respondents**

**Counsel for the Appellants:**

Ravi Prakash Mishra

**Counsel for the Respondents:**

**Civil Law-The Indian Evidence Act,1872-Sections 107 & 108-** Suit for declaration of death---Section 107 provides that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years,

the burden of proving that he is dead is on the person who affirms it and Section 108 provides that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. Thus, when a question will arise as to whether a man is alive or dead, only then the presumption can be drawn by the court on the cogent evidence adduced by the person, who affirms it. This question may arise, if a person claims or he is denied any right or benefit or for any other cause, which may be dependent on the death of the person, who has not been heard of for seven years by those who would naturally have heard of him.

**Appeal Dismissed.** (E-15)

**List of Cases cited:**

LIC of India Vs Anuradha, (2004) 10 SCC 131

(Delivered by Hon'ble Rajnish Kumar, J.)

**(C.M. Application No.1 of 2024)**

1. Heard Shri Ravi Shankar Mishra, learned counsel for the appellant.

2. The office has reported a delay of 22 days in filing the appeal.

3. The ground shown in the affidavit filed in support of the application is sufficient to condone the delay.

4. The application is allowed and the delay in filing the appeal is condoned.

**In re: Appeal**

1. Heard learned counsel for the appellant.

2. The appeal has been filed assailing the judgment and decree dated 30.05.2024 passed in Civil Appeal No.63 of 2023 (Vidhan Chandra Pandey & Others Vs. Common Man & Another) by Additional District & Sessions Judge/ F.T.C.-1, Pratapgarh and the judgment and decree dated 01.04.2023 passed in Original Suit No.154 of 2021 (Vidhan Chandra Pandey & Others Vs. Common Man & Another) by Civil Judge (Senior Division), Pratapgarh, by means of which the suit for declaration of death of brother of the appellant no.1 and the son of the appellant no.2 has been dismissed and the appeal filed by the appellant has also been dismissed.

3. Learned counsel for the appellants submits that the brother of the appellant no.1 was missing for the last more than seven years, therefore, he had filed the suit for declaration of his death but without considering it, the suit has wrongly and illegally been dismissed.

4. Having considered the submissions of learned counsel for the appellants, I have perused the material placed on records of this appeal.

5. The suit filed by the appellants for declaration of death of Akhilesh Chandra has been dismissed on the ground that the appellants have failed to adduce any evidence of death of brother of the appellant no.1 and son of appellant no.2 for making presumption under Section 108 of Indian Evidence Act as any property or legal right of the appellants have not been denied by any department or authority.

6. Sections 107 and 108 of Indian Evidence Act, relevant for this case, are extracted here-in-below:-

***"107. Burden of proving death of person known to have been alive within thirty years. - When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.***

***108. Burden of proving that person is alive who has not been heard of for seven years. - 1 [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2 [shifted to] the person who affirms it."***

7. The aforesaid Section 107 provides that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it and Section 108 provides that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. Thus, when a question will arise as to whether a man is alive or dead, only then the presumption can be drawn by the court on the cogent evidence adduced by the person, who affirms it. This question may arise, if a person claims or he is denied any right or benefit or for any other cause, which may be dependent on the death of the person, who has not been heard of for seven years by those who would have naturally have heard of him.

8. In the present case no such occasion has arisen and the suit for declaration of civil death only was filed, therefore, this

Court is of the view that learned trial court has rightly and in accordance with law dismissed the suit. Accordingly, the appeal filed by the appellant has also been dismissed. Even otherwise no declaration of civil death can be made. Only a presumption of civil death can be made, if the aforesaid conditions are fulfilled, if the question arises.

9. The Hon'ble Supreme Court, in the case of **LIC of India Vs. Anuradha, (2004) 10 SCC 131**, has held that an occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise. The relevant paragraphs 12, 13 & 14 are reproduced here-in-below:-

*"12. Neither Section 108 of the Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years' absence and being unheard of having elapsed before that time. The presumption stands unrebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination. At what point of time the person was dead is*

*not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death.*

13. *A presumption assists a party in discharging the burden of proof by taking advantage of presumption arising in his favour dispensing with the need of adducing evidence which may or may not be available. Phipson and Elliott have observed in Manual of the Law of Evidence (11th Edn., at p. 77) that although there is almost invariably a logical connection between basic fact and presumed fact, in the case of most presumptions it is by no means intellectually compelling. In our opinion, a presumption of fact or law, which has gained recognition in statute or by successive judicial pronouncements spread over the years, cannot be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing with the judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.*

14. *On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words: the law as to presumption of death remains the same whether in the common law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of the Evidence Act, though Sections 107 and 108 are drafted as two sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which*

*according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a court, tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings, the occasion for raising the presumption does not arise."*

10. In view of above, this Court does not find any illegality or error in the impugned judgment and decrees. No substantial question of law arises in this

