

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 2<sup>nd</sup> September, 2009*  
*Judgment Delivered on: 7<sup>th</sup> September, 2009*

+ **CRL.A.241/2001**

MIRTUNJAY TIWARI ..... Appellant

Through: Mr.K.K.Sareen with  
Mr.Rajeev Ranjan &  
Mr.Sunil Kumar, Advts.

versus

STATE ..... Respondent

Through: Ms. Richa Kapoor, APP.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. D.D.No.25A Ex.PW-10/B was recorded in Police Station Connaught Place to the effect that information had been received from lady Const.Shashi Sharma PW-27 posted in the PCR Division that a foul smell was emanating from house No.16-E, Feroz Shah Road, New Delhi. This D.D. was marked to ASI Randhir PW-18 who along with Const. Dayanand

reached the spot where he was joined by Inspector Nirranjan Singh PW-30, SI V.K. Sharma and H.C. Shahabuddin. Deepanker Pandey PW-16 resident of 16-C Feroz Shah Road who had also noted this foul smell was also present. This house had been allotted to Sh.Ash Mohd. Ansari, a member of Parliament, and this has surfaced in the testimony of Rakesh Vij PW-9, Assistant Engineer, PWD, who had produced the letter of allotment Ex.PW-9/A. The house was found locked from both sides. The lock of the back entrance was broken open; the door of the room from where the foul smell was emanating was forcibly broken open; a dead body of a woman lying upside down was noted on a double bed, the dead body was de-composed and was wearing a printed saree and a blouse. The photographer H.C. Harchand PW-22 was summoned, who took 13 photographs of the scene of crime; negatives of which are Exs.PW-22/A1 to A13 and the positives of which are Exs.PW-22/A14 to A26.

2. Since it appeared to be a case of murder, endorsement on the DD was made by PW-30 which was sent through H.C.George Messey for the registration of the FIR Ex.PW-13/B under Section 302 IPC. The special report was

sent through Const.Rajender Singh PW-24 to the senior Officers and the Area Magistrate on 31.5.1995.

3. On inspection of the crime scene, some dry fruits, a knife, a spoon, a tumbler, a muffler, a underwear and some blood stains were noted on the head side of the double bed; a diary was also found on the spot. All the aforestated articles were seized, sealed and taken into possession. The blood stained wooden portion of the bed was also seized after cutting a piece from the side of the head. The dead body was sent through PW-18 to the mortuary of the R.M.L. Hospital for preservation as the same had not yet been identified. At the time of the removal of the dead body a wrist watch had fallen from the brassiere which was taken into possession vide memo Ex.PW-10/B. The rough site plan Ex.PW-8/A was prepared at the pointing out of Anil Arora; thereafter site plan to scale Ex.PW-14/A was drafted by Mukesh PW-14.

4. The Investigating Officer recorded the statements of various witnesses including Vishwa Nath PW-1, Aas Mohd. Ansari PW-2, Parvez Ahmed PW-3, Vijay Kumar PW-6, Anil Arora PW-8, Ved Pal PW-12, Deepanker Pandey PW-16 which unfolded that on 25.5.1995 the accused Mirtunjay Tiwari, had

gone with his deceased wife Raj Kumari, to E-16, Feroz Shah Road, the house of PW-2, which he often used to visit for the purpose of getting employment for himself. On that day also he had gone to his house hoping that he would accede to his request and get him a job. At about 8.30 PM PW-2 gave money to the accused to bring some food and ice-cream; he i.e. the accused came back after purchasing the ice-cream at about 10.00 PM. PW-2 was in the room where the television and V.C.R. were on; his wife was also in the room; the room was bolted from inside. On repeated knocking when PW-2 did not open the door, the accused started pounding it which led to an altercation between the husband and wife and so much so that when PW-2 intervened, his wrist watch broke and fell down; in this process shirt of the accused also tore. This watch was lifted by the deceased Raj Kumari. Accused was pacified; thereafter the accused and his wife retired for the night in the adjoining room. This verbal duel between the husband and wife had been witnessed by Ved Pal PW-12 who was chowkidar posted at 16-B, Feroz Shah Road as also by H.C. Madan Lal PW-17 who was the security guard posted in the adjoining house of PW-16 at 16-C, Feroz Shah Road, New Delhi.

5. PW-6, working in the canteen of the Parliament House, was the person who had arranged the television and V.C.R. at the residence of PW-2 on 25.5.1995. For this purpose Vijay Kumar had requested Anil Arora PW-8, which had accordingly been installed on 25.5.1995. On the following day i.e. on 26.5.1995, this television and V.C.R. had been taken back by PW-8.

6. The further version of the prosecution is that on 26.5.1995 accused again approached PW-2 hoping to get a job and they i.e. the accused and PW-2 proceeded to Rail Bhawan. Since the shirt of the accused had been torn on the previous night, he borrowed the shirt of PW-2. On their way back from Rail Bhawan they purchased some fruits from Janpath from the stall of Gaya Prasad PW-4. On reaching the house, PW-2 requested PW-3 to get a three-wheeler scooter as he i.e. PW-2 had to go to Gorakhpur and Bihar as the results of his bye-elections were expected. At the time of leaving his house PW-2 in the presence of PW-3 gave the keys of his visitor room to the accused.

7. From the version of these witnesses, the role of the accused as the possible culprit had surfaced. He was arrested

on 31.5.1995. He made a disclosure Ex.PW-28/A and pursuant to his disclosure statement he got a blood stained knife and a shirt recovered from under the water tank in the rear portion of the house where the incident had occurred. The accused further led the police team to his own residence at Katna Pahari where in the presence of his landlord Om Prakash PW-11, he got the blood stained shirt, which he had borrowed from PW-2, recovered. He also produced a key of the Harison lock which was purported to be the key of the visitors room which PW-2 had handed over to the accused on 26.5.1995 when he had left for Gorakhpur.

8. The father of the deceased Ved Pal has been examined as PW-1. As per his version his son-in-law the accused often used to visit PW-2 in the hope of getting a job. On 25.5.1995 and 26.5.1995 his daughter Raj Kumari and the accused did not return home; on inquiry from the accused on 27.5.1995 he was informed that his daughter had gone to Bihar with PW-2.

9. Post-mortem on the deceased was conducted on 31.5.1995 by Dr.G.K.Sharma PW-10 who had opined the cause of death as intracranial haemorrhage from fracture of skull

under lesion no.1 consequent upon blunt force of impact; fracture of skull and intracranial haemorrhage being ante-mortem in nature. Time since death was reported to be four to six days i.e. relating back to the intervening night of 25.5.1995 to 26.5.1995. The vaginal swab of the patient had been preserved for ascertaining if any sexual act had been committed; this has been testified by PW-10 on oath.

10. In his statement under Section 313 of the Cr. P.C., the accused has admitted that Raj Kumari, the deceased was married to him. On 25.5.1995 they had visited the house of PW-2; the accused had brought ice-cream at about 10.30 PM on the direction of PW-2; the door of the room was opened after repeated knocking; Raj Kumari was in the room with PW-2 at that time; the television and the V.C.R. were on. As per the accused a verbal duel took place between him and PW-2; he denied that he retired in the adjoining room with his wife after this incident; as per his version, he left the house of PW-2 as PW-2 had undertaken to send his wife with his sister to Bihar to attend the marriage of her sister-in-law. Defence of the accused which is borne out from this statement as also reiterated in the version of the witness DW-1 Paras Nath Tiwari

father of the accused is to the effect that on 26.5.1995 the accused learnt that PW-2 had not gone to Gorakhpur and he went to his house to check; at about 4.30 PM he saw PW-2 leaving in a TSR and he was told that his wife had already left for Bihar. On 30.5.1995 when DW-1 returned from his village he i.e. the accused was informed that Raj Kumari had not gone to the village to attend the marriage of her sister-in-law; the accused suspected foul play on the part of PW-2 and he informed his father-in-law Vishwa Nath; before they could lodge the report, on 31.5.1995 the accused was forcibly lifted from his house, arrested and falsely implicated in the present case.

11. The trial Judge had vide the impugned judgment convicted the accused for the offence under Section 302 IPC. This was admittedly a case of circumstantial evidence. The following circumstances had been relied upon to sustain his conviction.

- i. Last seen theory i.e. the accused and the deceased having been last seen in the company of one another till 4.30 PM on 26.5.1995; reliance has been placed on the versions of PW-2, PW-3 and PW-

1 to establish this circumstance.

- ii. Recovery by the accused on 31.5.1995 of a key of Harison lock which was the purported key of the visitors room which PW-2 had handed over to the accused at the time when he left for Gorakhpur; substantiated by the report of the CFSL that this key belonged to the lock which was used to lock the visitors room of 16-E, Feroz Shah Road.
- iii. Recovery by the accused on 31.5.1995 of a torn blood stained shirt and a knife from beneath the water tank behind 16-E, Feroz Shah Road which contained blood group 'A' which was also the blood group of the deceased.
- iv. Recovery by the accused on 02.6.1995 of a blood stained shirt from his tenanted house which was the purported shirt given by PW-2 to the accused; it was stained with blood group 'A' which was the blood group of the deceased.
- v. Recovery from the spot i.e. on 30.5.1995 of a diary in the handwriting of the accused containing his address which had led the police party to

initiate investigation against the accused.

vi. Report of PW-13 the CFSL Expert who had opined that Q1,Q2 and Q3 i.e. the applications written by the accused to the SHO were in his writing.

vii. Motive of the accused to kill his wife as he had suspected her to be having an illicit relationship with PW-2.

12. All these factors had collectively been considered by the trial Judge to return a finding of guilt against the accused.

13. On behalf of the accused, it has been urged that before addressing the court on the inconsistencies and contradictions which have appeared in the version of PW-2 vis-a-vis the testimony of other witnesses of the prosecution, the circumstance of the accused being a humble man hailing from a low socio-economic background, being pitted against an influential and powerful politician i.e. PW-2 being a member of the Parliament, has to be kept in mind. It is submitted that it has come on record in the testimony of Inspector Niranjana Singh PW-30 that PW-2 had surfaced in the scene on

04.6.1995 when he had straightway been admitted to the R.M.L. Hospital and the anticipatory bail application filed by his advocate had not been opposed by Inspector Niranjana Singh, who had granted him a clean chit without any interrogation or query when he was probably the most important person to throw light on this controversy and the circumstances and the manner in which death of Raj Kumari had occurred keeping in view the fact that the dead body had been recovered from bedroom of PW-2; yet the Investigating Officer chose not to oppose his bail application. It is urged that the statement of PW-2 was recorded as a witness only on 14.6.1995 after a long delay, giving him enough time to manipulate a strategy as per his convenience. Attention has also been drawn to the testimony of PW-6 wherein the Presiding Officer of the Court had noted that PW-6 had been accompanied by certain persons who were keeping a watch on the court proceedings and on specific query it had transpired that these persons are watching the court proceedings on every hearing on behalf of Vishwa Nath, the father of the deceased. It is submitted that the father of the deceased is a poor man and not even a resident of Delhi; he is not in a position to engage any counsel

or solicit the services of persons who could keep a paravi on the proceedings; all this was being done at the behest of PW-2. It is submitted that it is in this background that the court must appreciate the arguments advanced by the defence counsel. Learned defence counsel has drawn the attention of this court to the version of PW-12 and PW-17 who had apparently witnessed the verbal altercation between the accused and his wife Raj Kumari. It is submitted that as per the version of aforesaid witnesses, this argument was not between the husband and wife but it was an argument between the accused and PW-2 and, in fact, PW-12 and PW-17 who were both present there at that time do not whisper a word about the presence of Raj Kumari as she was inside the room and had not come out in spite of repeated knocking on the door by her husband. It is submitted that the accused was in regular employment with a private firm and this has come in the testimony of DW-1 and is also evident from the letters Ex.DW-1/1 and Ex.DW-1/2 written by his employer; there was no occasion on his part to visit the house of PW-2 for the purpose of employment; it is a concocted version; the real culprit is PW-2 himself. It is submitted that PW-2 being a powerful and

influential politician and hailing from the same village as the family of his wife, it was under his pressure that his father-in-law, Vishwa Nath, PW-1 has deposed against him. It is argued that this is a clear case where the investigation has been carried out only at the behest and as per the convenience and directions of PW-2; there is no reason as to why the accused would have taken the life of his wife; there is, in fact, every reason why PW-2 would have wanted to get rid of Raj Kumari. He had physically exploited her and on the previous night i.e. on 25.5.1995 PW-2 had been greatly annoyed at the reaction of the accused and his daring to accost him which had led to a verbal abuse between the two which became the reason to teach a lesson to the accused and thus to implicate him for an offence which had actually been committed by PW-2. It is submitted that recovery of the blood stained shirt and knife from the water tank from the rear of the house is doubtful not having been witnessed by any public person; the torn blood stained shirt purported to be of PW-2 recovered from the house of the accused is also doubtful. The key of the lock purported to have been handed over by the accused is again suspicious as the personal search memo of the accused

Ex.PW-28/J shows that no key was found on his personal search; this document is dated 31.5.1995; attention has also been drawn to the seizure memo of key Ex.PW-28/B which is also of the same day; it is argued that if the key was not recovered from the personal search of the accused, how it could be handed over to him subsequently; from where and under what circumstances, has not been explained by the prosecution. Accused had been forced to write the applications Q1, Q2 and Q3 when he was in police custody; no cognizance can be taken of the same; motive has also not been proved.

14. We have perused the record and noted the submission made by the learned defence counsel.

15. The circumstance of the accused having been last seen in the company of the deceased has been reflected in the versions of PW-2, PW-3 and PW-1. Aash Mohd. Ansari PW-2 is, in fact, the star witness of the prosecution and the version of the prosecution is hinged, by and large on his testimony. He had been allotted house E-16, Feroz Shah Road, New Delhi in his capacity as a Member of Parliament. He has deposed that after becoming an MP, Vishwa Nath had introduced his

son-in-law Mrtityunjaya Tiwari to him making a request to recommend him for a job as he was without a job. The accused visited him with his wife and his father-in-law on one or two occasions for the said purpose. In the first week of April his entire family had gone to his native village. PW-2 also used to go for tour for his Bihar election programme and used to remain out of Delhi for long period of time. He had deposed that on 25.5.1995 after attending the Parliament session he returned back to his Kothi; at his request Vijay who was working in the canteen of Parliament House arranged for a V.C.R. in the evening at about 10 to 10.30 PM. At about 8.30 PM Mirtunjay Tiwari had gone to bring some food for him which he consumed at about 10.00 O' Clock in the room; thereafter, Mirtunjay Tiwari and his wife i.e. the deceased had their dinner. At about 10.30 PM, Mirtunjay Tiwari went out to bring some ice-cream; since the V.C.R. was playing in the room, his wife sat on the opposite sofa for watching movie; Mirtunjay Tiwari returned back and knocked at the door; since the television and V.C.R. were on at a loud volume it was only after two or three repeated knocks that PW-2 opened the door. This annoyed Mirtunjay Tiwari who started misbehaving with

his wife and so much so that PW-2 had to intervene; meanwhile the shirt of Mirtunjay Tiwari tore and his wrist watch fell down which was picked up by deceased Raj Kumari; thereafter PW-2 retired to his room and the accused and his wife retired to their separate room. PW-2 has further deposed that at this time some persons who had heard noise of this argument came to inquire about the incident but returned back when they were told that this is a routine husband wife dispute and the matter had been settled. In the morning of 26.5.1995, PW-2 was again requested by the accused for a job; since his shirt had got torn on the previous night PW-2 had given him his badami coloured embroidered shirt. They went to the Rail Bhawan where they met one person by the name of Hajma. The Rail Minister was not there. They went back to the Parliament House where Hajma wrote out an application on behalf of the accused which was signed by accused; another forwarding letter was also written by Hajma on behalf of the accused. The said letters are Ex.PW-2/A and Ex.PW-2/B. Thereafter PW-2 along with the accused returned back to their kothi, on the way, since the accused had informed PW-2 that his wife was fasting they went to Janpath

to purchase some fruits which included Bananas, Papayas and Mangoes. On their return to the khoti, PW-2 after consuming a Mango went to sleep in his room and the accused and deceased wife retired in their room. PW-2 has further deposed that in the evening at about 4 PM Vijay came to take V.C.R. back. At 4.30 PM Parvez PW-3 a person who hails from his constituency came to visit him in connection of his service. At that time, PW-2 was leaving for Ghaziabad. He requested PW-3 to bring a three-wheeler scooter for him; meanwhile the accused and his wife also came to his room and he informed them about this programme for Gorakhpur; in the presence of PW-3 he i.e. PW-2, gave the key of the visitors room to the accused and thereafter left in the three-wheeler scooter along with PW-3 who accompanied him upto I.T.O. Thereafter PW-2 remained at Ghaziabad, then at his sister's house at Saleempur, District Deveria; between 30.5.1995 up to 2.6.1995 he remained at Kailashpuri District Behraich in connection with the of purchase of some land. He returned back Delhi on 4.6.1995 where he was straightway admitted in the RML hospital as he was not well. He met Investigating Officer on 12<sup>th</sup> when he handed over the documents Ex. PW-

2/A and Ex.PW-2/B to him. His statement was recorded by the police on 14.6.1995.

16. In his cross-examination PW-2 has stated that he had locked his kothi from the outside and the key of the other portion which was locked with a Harison lock has been given to the accused. He denied the suggestion that Vijay was his close contact; he stated that Vijay was only known to him as he used to show cassettes from time to time. He admitted that on 26.5.1995 he had gone to meet the Railway Minister Mr.Zafar Sharif without appointment hoping that he would meet him and in case he did not meet him, he would meet him in the Parliament House. He has admitted that on the morning of 26.5.1995 his room was not cleaned by the regular maid as there was no requirement for cleaning. He has admitted that PW-3 is known to him since he has become an M.P. i.e. from the year 1994 and he often used to visit him; he admitted that on 24.5.1995 in the evening at about 7.00 PM PW-3 and another boy had been sent to Badarpur where accused and his wife were living. PW-2 admitted that he reads the newspaper and he was told by people of Kailashpuri that there was some news in the paper about him though he has not read that

newspaper. He could not recollect the name of the seller from whom he has purchased the land on 29.5.1995; he denied the suggestion that he had not gone to see land on that, in fact, he had visited Dr. Subhash for getting treatment of the injury which he had suffered. He admitted that he had moved an application for anticipatory bail on the advice of his advocate at the time when he was in the hospital. He denied the suggestion that any altercation took place between him and the accused on the night of 25.5.1995.

17. Learned defence counsel has submitted that PW-2 is an untrustworthy witness and his entire version is a bundle of lies; it has come on record that he had reached Delhi on 4.6.1995 but his statement was recorded by the Investigating Officer only on 14.6.1995; in between his application for anticipatory bail had also been allowed and the Investigating Officer had given no objection to the grant of the same. It is submitted that the entire case has been investigated at the behest and supervision of PW-2 only to save the skin of PW-2 who is the actual offender and Mirtunjay Tiwari has been falsely roped in.

18. This submission of learned defence counsel can be

adjudged by scrutinizing the entire deposition of PW-2 vis-à-vis the deposition of other related witnesses and not in relation to his singular version of his having last seen the accused and the deceased together.

19. PW-2 has been categorical in his version that on 25.5.1995 when the accused had brought ice-cream and after his knocking, when the door was not opened an altercation took place between the deceased and the accused. He was the intervener who had tried to save the situation and in that process the shirt of the accused had got torn and his watch had broken and fallen down. This watch had been picked up by Raj Kumari. In his cross-examination, he specifically denied the suggestion that any altercation took place between him and the accused.

20. PW-12 and PW-17 have given contrary versions in this regard. PW-12 Ved Pal is the chowkidar at 16-B, Feroz Shah Road. He had deposed that on 25.5.1995 at about 11 PM he was stationed outside his kothi; he saw Mirtunjay Tiwari carrying ice-cream cups and going towards Kothi No.16-E; he saw the accused pounding on the door of the house of PW-2; PW-2 opened the door and there was an argument which

ensued between the accused and PW-2; PW-12 went to enquire but he was told that the matter was internal. In his cross-examination, PW-12 has reiterated that the argument between PW-2 and the accused was loud and high pitched and so much so that they could hear it from the place where he was stationed which was about 25 to 30 yards away.

21. PW-17 was the security guard of Deepak Pandey posted at 16-C, Feroz Shah Road. He had deposed that on 25.5.1995 at about 11 PM he saw the accused pounding at the door of the house of PW-2; he was having ice-cream cups in his hands; the door was opened and there was a loud argument between PW-2 and the accused; on his enquiry he was told that it was an internal matter and required no intervention. In his cross examination, he has reiterated that this argument was between PW-2 and the accused.

22. Versions of PW-12 and PW-17 clearly establish that on that day when the accused had come back after bringing the ice-cream, the argument had taken place between the accused and PW-2 and not between the accused and his wife as has been the version of PW-2; PW-12 and PW-17 have not ascribed any role to the wife of the accused; she was nowhere

in the picture in this verbal exchange.

23. Version of PW-2 on the one hand and of PW-12 and PW-17 on the other hand were clearly conflicting and it is obvious that it is only one of the two versions which is reliable.

24. The watch of PW-2 was subsequently recovered from the brassiere of the dead body of Raj Kumari; if the deceased had picked it up when it fell down she would in routine have returned it to PW-2; how was it found in her under garment; this part of the version of PW-2 is also suspect.

25. PW-2 had deposed that he had gone with PW-1 to the Rail Bhawan in the morning of 26.5.1995 to meet the Railway Minister admittedly without an appointment. This appears to be questionable as it is difficult to imagine that a busy politician of the rank of a Minister would meet a person without an appointment and especially in view of the fact that the Parliament Session was on and he had shortly to attend the Session. The documents Ex.PW-2/A and Ex.PW-2/B i.e. the forwarding letter and the letter making request for employment on behalf of the accused are purportedly in the hand of Hajma, an acquaintance of PW-2; this person by the

name of Hajma has not come into the witness box; he has not been examined. Ex.PW-2/A purported to have been signed by the accused had not been subject matter of any scientific examination; scribe of the documents has not come into the witness box and the accused denied having signed any such document; we are left only with the version of PW-2 to decide whether any such documents had been prepared or not. These documents thereafter had been handed over by PW-2 to the Investigating Officer on 12.6.1995.

26. In our view, it is highly unlikely that these documents had been prepared in the manner as deposed by PW-2. It is improbable that PW-2 who was going to Gorakhpur on his election tour for a period unknown would have carried these letters along with him and thereafter he was able to hand over the same to the IO on 12.6.1995. Normal human conduct would presuppose that even if these letters had been written they would have been in the custody of the accused, to be handed over to the Railway Minister by PW-2 on his return, at an opportune occasion. This part of the version of PW-2 also does not inspire confidence.

27. PW-2 had further deposed that while they were

returning back from the Parliament House to their Kothi on the way they purchased fruits for the wife of PW-2 as she was fasting. Again human conduct cannot pre-suppose a situation that a man of the stature of PW-2 i.e. a Member of Parliament would take a detour and obviate his normal traffic route and go to Janpath to purchase fruits for a person who is hardly known to him i.e. the accused and with whom he had no special relation as from the version of PW-2, the accused had visited him only on one or two occasion prior to 25.5.1995 in connection with his employment; in fact PW-2 in his testimony had ridiculed the accused for his begging tactics for seeking a job. PW-4 has come into the witness box to depose that the fruits were purchased by PW-2 from his stall at Janpath at about 12.00 Noon on 26.5.1995. The fruits vendor who is selling fruits to hundreds of people every day and even presuming that PW-2 was his regular customer, it is difficult to imagine that PW-4 would have been in a position to identify the companion of PW-2 i.e. the accused after a gap of two years as he has come into the witness box only in July 1997. This witness also appears to be a procured witness only to build up a corroboration of the version sought to be set up by

PW-2.

28. Version of PW-2 is further to the effect that at 4.00 PM Vijay who was known to him as he was working in the Canteen had come to take back the V.C.R.; PW-2 has specifically denied the suggestion that Vijay was close to him; as per his version Vijay was known to him because he used to show him cassettes from time to time. This is contrary to the deposition of Vijay PW-6 who has deposed that he was living in garage No.72 which had been allotted to PW-2; this shows that Vijay was a close proximate of PW-2, that is why he i.e. PW-2 allowed Vijay to stay in his garage. On this count also PW-2 is lying.

29. PW-6 has stated that on 26.5.1995 when he reached the house of PW-2 at about 1.00 PM he met PW-2 who informed him that the TV and VCR were lying in the room next to the Varandah. PW-8 Anil Arora had deposed that when he reached the house of PW-2 to remove the television and V.C.R. he saw that the television and the V.C.R. had been disconnected and they were lying outside the room and Vijay was sitting in a folding chair and keeping a guard.

30. These versions of PW-6 and PW-8 establish that

PW-2 was in his house in the afternoon of 26.5.1995; he had not returned back at 4.30 PM as has been deposed by him; when PW-8 had come to take back television and V.C.R., Vijay who used to live in the garage of PW-2 was sitting outside and keeping a guard outside the room; television and V.C.R. had been disconnected and had been shifted outside from the initial room where it had been installed. This scene as depicted clearly shows that PW-2 had something to hide and did not want any entry in the house.

31. Further version of PW-2 is that he left the house for Ghaziabad at about 4.30 PM after an auto-rickshaw had been called by PW-3. As per his version PW-3 had come to his house at 4.30 PM with a request for employment. PW-2 has admitted that PW-3 was known to him since 1994 and on 24.5.1995 he had sent him to Badarpur where the accused and his wife were living.

32. PW-3 has deposed that he knows PW-2 since he is an M.P. and hails from their constituency and he had met him on two or three occasions earlier; he has deposed that at the request of PW-2 he had brought the TSR for him as PW-2 has to go to Ghaziabad; in his presence, the accused and his wife

were handed over the key of the interior room by PW-2. In his cross-examination, he has stated that he has seen the accused once on an earlier occasion and this was about two and half months before.

33. This version of PW-3 is clearly in contrast to the testimony of PW-2 who had stated that on 24.5.1995 PW-3 had been sent by him to the house of the accused at Badarpur.

34. This also finds confirmation in the admission of the accused in his statement under Section 313 Cr.P.C. wherein he has admitted that PW-3 has come to his house on 25.5.1995. PW-3 appears to be at great pains to conceal from the court that he was not well known to PW-2 whereas PW-2 has stated that he knew PW-3 since 1994. Even otherwise how did the Investigating Officer contact PW-3 is also not answered; PW3 was not a resident of Delhi; either of the two witnesses i.e. PW-3 or PW-2 are lying and not coming out with the truth in this regard. PW-3 is not a credible witness; he has been roped in by the Investigating Officer only to corroborate PW-2 that the deceased was alive till 4.30 PM of 26.5.1995; he i.e. PW-3 had seen the accused and deceased in the company of one another at that time and PW-2 had given him the key of the

visitors room. It is also difficult to imagine as why a Member of Parliament would give the key of an interior room of his house to a mere acquaintance when he was travelling outstation for an unknown period, as also the fact that it was not as if Mirtunjay Tiwari was without an abode; he was admittedly living in the rented accommodation of PW-11 at Badarpur, Delhi and was not without a shelter. This part of the version of PW-3 again constrains the court to hold that the investigation has been carried out only to build up a protective umbrella for PW-2 who on all occasions has failed to pass the test of a truthful witness.

35. It were these versions of PW-2 and PW-3 which had as per the trial Judge established that the accused and the deceased had been last seen in the company of one another. It is also on record that statement of PW-2 was recorded by the Investigating Officer on 14.6.1995; his anticipatory bail application had been allowed without any opposition; this was on 4.6.1995; obviously PW-2 was apprehending trouble of a possible arrest yet the Investigation Officer remained complacent. Trial Judge has held that it has been established that PW-2 is untruthful in some parts; he has not explained his

period of disappearance from 26.5.1995 upto 4.6.1995 when he was admitted in the hospital; trial Judge had also held that a relationship between the deceased and PW-2 has been established; yet the trial Court chose to believe this witness which in our view was a mis-appreciation of his testimony; not only being unreliable, PW-2 can safely be labeled as a liar. Both these witnesses i.e. PW-2 and PW-3 have discredited themselves and their testimonies not inspiring confidence, are discarded.

36. Testimony of PW-1 has also been taken into account by the trial Judge to establish the circumstance of the last seen theory. This is a clear a mis-appreciation of testimony of PW-1. PW-1 has only deposed to the effect that the accused did not return home on 25.5.1995 and 26.5.1995 which had led the trial Judge to presume that if the accused absented himself and did not return home on the said two days, it could be for the reason that he was still in the house of PW-2 and in the company of his deceased daughter. This is an improper and mis-conceived reasoning; it also has to be discarded.

37. The prosecution has failed to establish

circumstance no.1.

38. Site plan Ex.PW-2/A has been perused. As per the version of PW-8 he had installed the TV and VCR at point X1 which is a smaller room adjacent and connected to another bigger room B1 which was the bed room of PW-2 and has a front door entrance. This door is at point D. Both these rooms are in the front portion of the house. When PW-8 went to collect his TV and VCR they were lying disconnected and removed from the room X1 i.e. where they were initially installed; as per his testimony the TV and VCR were lying in the gallery outside i.e. the area shown as the verandah in the site plan. The dead body was recovered from point A in a room which was in the interior of the house. This room was purportedly the visitors room. There was no door between this room and the front two rooms i.e. B1 and X1. That is to say, that all the three rooms, i.e. the TV room X1, the adjacent bed room B1 and the room from where the dead body was recovered were interconnected having no doors in between. PW-2 has stated that he had handed over the key of the visitors room describing it as the back portion to the accused. Access to this room was from the back door of the house. This

back door had been found locked and police had forced entry into it. The key of the lock had been produced by the accused. Presuming this to be correct, it would be a situation where the accused by gaining entry from the back door to access the visitor room would in fact be accessing the entire house including the front two rooms which is definitely not the case of the prosecution. PW-2 had only given the key of the visitors room to the accused; the site plan however does not support this theory.

39. From this picture which has emerged before us, it is clear that the TV and VCR were installed in a room in the front portion of the house. They were disconnected and lying outside this room in the open verandah. When PW-8 had gone to collect the TV PW-6 was found keeping a guard on the entrance of the house. There was only one entrance from the front and if any person would have gone inside, such a person would also have had access to the interconnected interior room from where the dead body was recovered. It is apparent that TV and the VCR had been kept outside as PW-2 did not want any entry into the house; he had something to hide. It is also difficult to conceive a situation that a man of the status of

a Member of Parliament would have handed over the key of a room in the interior of his house to a hardly known acquaintance. Site plan clearly shows that the occupants of the interior room would have access to virtually the whole house; what was the point of PW2 locking the front entrance; it would be a mere formality. It is also to be borne in mind that the accused had a permanent abode in Delhi and was living as a tenant in the house of Om Prakash PW-11; he was not without a roof or shelter.

40. On 31.5.1995 after the arrest of the accused, his personal search had been conducted vide memo Ex.PW-28/J. As per this document a sum of Rs.422/- in cash, a wrist watch of HMT make, a belt of light brown colour and one suitcase had been recovered. No other article has been shown to have been recovered from the personal search of the accused. This document was attested by SI Jagat Singh and SI Yashwant Singh. Another memo Ex.PW-28/B was also prepared on the same day which is the seizure memo of a key. This document was also attested by SI Jagat Singh and SI Yashwant Singh. This document recites that one key of Harrison lock, being a copper key had been produced by the accused which had

been seized separately vide the aforestated memo. This key Ex. P-6 and the Harrison lock Ex.P-7 purported to have been found on the back entrance of the house of PW-2 which had been broken open by the police to make forced entry were both sent to the CFSL. CFSL vide its report dated 31.8.1995 had opined that this lock was operational with the aforesaid key.

41. We are not inclined to accept this recovery. On the personal search of the accused conducted on 31.5.1995 four articles had been found recovered from his possession but there was no mention of the recovery of any key. On the same day another document Ex.PW-28/B had been prepared showing the seizure of a key; how and from where this key was produced by the accused has not been explained by the prosecution. Accused was admittedly in police custody at this time. It appears that the key has surfaced from nowhere. The attesting witnesses to both the documents i.e. the personal search memo Ex.PW-28/J and the seizure memo of the key Ex.PW-28/B are SI Jagat Singh and SI Yashwant Singh of whom SI Yashwant Singh had not been examined. SI Jagat Singh has made a parrot like recitation on this count. The aforementioned

discrepancy in our view has tarnished this recovery which is liable to be discarded.

42. On the same day i.e. 31.5.1995 the accused had also got another recovery effected i.e. a torn blood stained shirt P-5 and a blood stained knife P-20. Ex.PW-28/C is the recovery memo of this blood stained knife; the sketch of which is Ex.PW-28/E. Ex.PW-28/D is the recovery memo of the blood stained torn shirt and states that it is a full sleeved red and white striped shirt, stained with blood and torn from the left sleeve. All the aforesaid documents i.e. Ex.PW-28/C, Ex.PW-28/D and Ex.PW-28/E had been attested by SI Jagat Singh and SI Yashwant Singh. CFSL vide its report dated 22.8.1995 had opined that the knife and the shirt had blood group of 'A' origin which was the blood group of the deceased. The knife had not been submitted to the doctor for opinion as to whether it could be the weapon of offence in the instant case. There was yet the recovery of another shirt Ex.PX-5 which was got recovered by the accused on 2.6.1995. This recovery was from his tenanted premises and was witnessed by his landlord Om Prakash PW-11. This shirt had been taken into possession vide seizure memo Ex.PW-11/C.

As per this document one yellow coloured polythene bag was hanging in the room of the accused which contained a shirt which had been disclosed by the accused as having been lent to him by Ash Mohd.Ansari, a Member of Parliament and after he i.e. the accused had committed the murder of his wife, he had removed his blood stained torn shirt and hidden it and worn this borrowed shirt of PW-2. Shirt has been described in the memo as a shirt of 40 size with a front embroidered pocket and of badami colour. This document had been attested by Om Prakash PW-11 and SI Jagat Singh. As per this document accused was wearing this badami coloured shirt when he returned back to his house.

43. On oath PW-11 has stated that on 2.6.1995 he had accompanied the police party to the room of the accused where the accused had brought out a yellow coloured shirt and the same was taken into possession vide aforestated memo; the shirt was thereafter sealed. In his cross-examination PW-11 has stated that there was a blood spot on the front of the shirt. The version of PW-11 and the document Ex.PW-11/C are contrary; Ex.PW-11/C has described the shirt to be of a badami colour. PW-11 has

described the shirt as of yellow colour. Version of Vishwanath PW-1 father-in-law of the accused is also relevant. He has stated that when the accused returned back on 27.5.1995 he was wearing a white striped shirt which was new and clean.

44. We are also unable to understand as to how blood was depicted on both the shirts i.e. the shirt which had been recovered on 31.5.1995 and the second shirt which had been got recovered on 02.6.1995. Version of the prosecution is that the accused had committed the offence while he was wearing his torn shirt and after committing the crime he changed the shirt. When he returned back to his house he was wearing the shirt which he had borrowed from PW-2. Crime as per the prosecution had been committed after 26.5.1995. On 26.5.1995 accused had borrowed this shirt of PW-2 to go to the Rail Bhawan. It is obvious that on 26.5.1995, the day of the crime, he would have been wearing the borrowed shirt of PW-2. This shirt would have become blood stained and not his own shirt which had got torn on 25.5.1995 in the course of the verbal duel between himself and PW-2. Yet both the shirts were blood stained. PW-30 in his cross-examination had

admitted that no enquiry was conducted from the accused as to how blood had appeared on both these shirts; prosecution is unable to answer this discrepancy; this coupled with the contrary versions of the witnesses i.e. PW-11 and PW-1 on the colour and the description of the shirt; whether it was clean or blood stained; whether it was of badami colour or yellow colour or white or red striped is not clear; these conflicting versions again constrain us to disbelieve both these recoveries i.e. the recovery of the shirt and the knife on 31.5.1995 and the recovery of the second shirt on 2.6.1995.

45. On 30.5.1996 a diary in the handwriting of the accused containing his address had been seized from the spot; this diary had been admitted by the accused to be his own diary, A1 to A10 were the admitted handwritings of the accused which had been sent to CFSL for comparison along with the questioned document i.e. Q1 to Q2 which were the letters purportedly written by the accused to the SHO and taken into possession on 31.5.1995 vide memo Ex.PW-28/G. The specimen writing of the accused was taken on 1.6.1995 vide memo Ex.PW-28/K. These specimen writings were taken during the course of the investigation without prior

permission of the concerned Magistrate. In view of the judgment of the Supreme Court reported in Sukhvinder Singh & Ors. Vs. State of Punjab JT 1994(4) SC1, such specimen writing cannot be considered by the court and the subsequent report of CFSL Ex.PW-13/A noting that the questioned document and the specimen/admitted writing were of the same person cannot be read.

46. The motive for the crime has been depicted by the prosecution as the accused having suspected his wife of having an illicit relationship with PW-2 which had led him to murder her. It is true that there cannot be any direct evidence of motive yet in the instant case there appears to be no indirect motive either. As per PW-1 the deceased and the accused were living happily. Version of the prosecution is that the accused and his wife had visited PW-2 only on one or two occasions prior to 25.5.995; how and when PW-2 and the deceased developed intimacy becomes difficult to gauge. Had the accused suspected his wife of having an illicit relationship with PW-2, he would not have left his wife in the company of PW-2, allowing her to accompany him to the village to attend the marriage of her sister-in-law. On the other hand the

motive on the part of the PW-2 to kill the deceased appears to be more apparent. He had physically exploited her and thereafter wished to hide his crime. The photographs of the dead body Ex.PW-22/A14 to A26 show that the saree has been wrapped on her body; post mortem had also detected only one small tear on her saree.

47. It is also relevant to point out that on 27.5.1995 a call of rape having been committed at E-16, Feroz Shah Road had been recorded in the Police Station; ASI Satpal Singh PW-20 had gone to investigate but the call was reportedly hoax; some person had apparently wanted the police to make investigations in this house.

48. From the evidence which had been gathered, it appears that the murder had been committed on the intervening night of 25-26.5.1995 itself. Till late night on that day admittedly the deceased and PW-2 were in the house of PW-2 when the accused had brought ice-cream for PW-2 and when after repeated knocking on the bedroom door of PW-2, PW-2 did not open the door a verbal altercation took place. This verbal altercation was not between the accused and his wife but between the accused and the PW-2 and was

witnessed by PW-12 and PW-17. The accused had left the house leaving his wife at the residence of PW-2 as PW-2 had promised that he would be going to their village on the following day and he would send the deceased along with his sister to attend the marriage of her sister-in-law. On the following day i.e. on 26.5.1995 he remained on guard the entire day and left his house for Ghaziabad at 4.30PM. Till that time he was present in the house and this is an admitted version of both sides. PW-2 had not taken the accused to the Rail Bhawan in the morning and had not remained out of the house till 4.30PM as is his version. He is lying on this count and his testimony has been discussed supra. He had created evidence to build up his alibi that he remained out of the house in the morning of 26.5.1995 up to 4.30 PM. Besides the fact that his version is full of contradictions and inconsistencies, PW-8 has stated that at 12.00 Noon when he came to take back his TV and VCR he found PW-2 in the house and the TV and VCR were lying disconnected in the verandah outside. Obviously PW-2 did not want anyone to enter the house where the crime had already been committed. PW-2 has further admitted that on 25-26.5.1995 his room had not been

cleaned as regular maid not come into the house; why and for what reason; obviously PW-2 did not want entry of any outsider to the house as he had something to hide. Through PW-3 he had tried to build up his case that in his presence he had handed over the key of the visitor room to the accused. Testimony of PW-3 has already been discarded; even otherwise it is difficult to believe that a Member of Parliament would have handed over the key of his entire back portion to a hardly known acquaintance when that person i.e. the accused had a permanent residence in Delhi itself. The theory that the accused was in dire need of employment and that is why he was visiting the house of PW-2 is again uninspiring in view of the fact that admittedly the accused was working in a private firm and doing work of 'thekedari' and this has been elicited in the version of PW-1, his father-in-law, who has admitted that the accused was paying a monthly rent of Rs.500/- to his landlord from his earnings. DW-1, the father of the accused, has also come into the witness box and deposed that the accused was working in a private firm and his version stands un-assailed on this count. PW-2 had admittedly read the news about the incident of murder in his house but he continued to

allude the police; there is no plausible explanation of his long and continued absence from the scene from 26.5.1995 up to 12.6.1995. Needle of suspicion is directed at PW-2.

49. All these cumulative factors clearly show that the accused has been falsely implicated. Benefit of doubt has accrued in his favour; he is entitled to an acquittal. He is accordingly acquitted of the charge levelled against him. Appeal is allowed. His bail bond and surety bond are cancelled.

**(INDERMEET KAUR)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

September 07, 2009  
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