

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

+ **CRIMINAL APPEAL No.235/2013**

% **Reserved on: 7th May, 2013**
Date of Decision: 31st May, 2013

RAKHI MANDAL Appellant
Through: Mr. Chetan Lokur, Advocate.

versus

STATE Respondent
Through: Mr. Sanjay Lao, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J.:

The appellant-Rakhi Mandal has assailed her conviction vide judgment dated 24th May, 2012 in Sessions Case No. 1/2012 arising out of FIR No. 519/2007, Police Station Sangam Vihar. The appellant has been convicted under Section 302 and 381 of the Indian Penal Code, 1860 (IPC, for short). By order on sentence dated 31st May, 2012, Rakhi Mandal has been sentenced to undergo life imprisonment, fine of Rs.15,000/- for the offence under Section 302 IPC and Rigorous

Imprisonment for three years, and fine of Rs.5,000/- under Section 381 IPC. In default of payment of fine of Rs.15,000/- and Rs.5,000/- as noted above, the appellant is to undergo Simple Imprisonment for nine months and five months, respectively.

2. On 16th May, 2007 at about 1.25 p.m., a PCR call was received that a woman was lying locked inside room at 3rd Floor of House No. J-8, Saket and somebody was pelting stones from outside. The same was recorded vide DD No.11 (Ex.PW1/A). The same was marked to Head Constable Vijay Pal, who along with Constable Deepak Tiwari and Head Constable Shiv Kumar reached at spot. S.I. Aishveer Singh also reached at the spot and found one lady lying in unconscious condition in the bathroom of her bed room. Later on her name was revealed as Archana Grover. Keshav Adhaya and Janvi, son and daughter respectively of Archana Grover and one Sandeep and Suman Sharma neighbours were found present there. Archana Grover was immediately sent to Max Hospital through PCR van. In hospital, she was declared dead with one ligature mark with erythema around anterior 2/3rd of her neck. It was revealed that maid servant Rakhi Shah @ Reena (appellant) was missing. SI Aishveer Singh made endorsement and got the FIR registered Ex.PW15/A and investigation was entrusted to Inspector Pankaj Singh.

3. During investigation, statement of Keshav Adhaya, Som Nath Grover, Arbindo Grover son, father and brother respectively of the deceased under Section 161 Cr.P.C. was recorded. On 17th May, 2007, post mortem was got conducted. Upon completion of investigation, charge-sheet was filed.

4. In support of its case, prosecution examined as many as 34 witnesses whereas appellant did not examine any defence witness.

5. The star witnesses of prosecution are Keshav Adhaya (PW-20), who is the son of the deceased, Budheshwar Mandal (PW-26) is the person who got the appellant employed, and Suman Sharma (PW-6) and Sandeep Bansal (PW-13) the neighbours of the deceased.

6. Learned counsel for the appellant has submitted that Keshav Adhaya (PW-20) has given different versions as to the time etc. and his testimony has been wrongly relied upon by the trial court. In fact, PW-20 was not present at the spot and his belated recording of statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) shows that he is a propped up witness, who was subsequently included or added due to lack of evidence. He relies upon FSL report which confirms and opines that there was absence of poison or sedative. This falsifies the testimony of PW-20. The appellant was

turned out of the house by the husband of the deceased at 8.30 A.M. on the date of occurrence. The prosecution case hinges on the last seen, which is per se a weak evidence. PW-20 is a child witness and the discrepancies highlighted are vital and creates serious doubts on the allegations made in the prosecution story. Alleged recovery of key from the appellant is entirely unbelievable. It is incomprehensible and against normal course of human conduct that the appellant would have hidden stolen articles rather than selling or disposing them. The trial court has completely ignored the strained relationship between the deceased and her husband. There was every possibility that the deceased may have been killed by her husband. The trial court has disregarded testimony of Som Nath Grover, father of the deceased, who appeared as PW-14 and had clearly implicated the husband of the deceased and stated that he was a perpetrator of the crime.

7. On the other hand, learned APP for the State has argued that the trial court has rightly appreciated the evidence of the witnesses in proper perspective. Documentary evidence corroborates their statements. The appellant was with the deceased inside her room. There are hardly any contradictions or discrepancies on vital and core facts. Some variation on secondary issues can be easily explained and the court was apprised the fact that the deposition of witnesses were

recorded two years after the occurrence. Some lapse in memory is bound to occur because of the delay but this is not good ground to reject the testimony. Recoveries, including recovery of the key at the instance of the appellant, are highly incriminating circumstances, which was duly appreciated by the trial court. PW-20 no doubt is an eye witness and is reliable, credible and truthful. His testimony is corroborated by the documentary evidence as well as testimonies of Head Constable Vijay Pal Chauhan (PW-24), Head Constable Shiv Kumar (PW-23), Sandeep Bansal (PW-13) and Suman Sharma (PW-6). Reliance is also placed on testimony of Dr. B.J. Chaudhary (PW-4) on the appellant's involvement and it is submitted that his testimony remains unshaken. FIR was recorded at the earliest opportunity after PCR intimation was received. On the first occasion itself, PW-20's statement was also recorded. There was no possibility or chance of false implication.

8. We have examined the record and proceedings in context of the submissions made before us.

9. It is not in dispute that Archana Grover (deceased) met a homicidal death. Dr. B.J. Chaudhary (PW-4) in the post-mortem report (Ex.PW4/A) opined that the cause of death was asphyxia as a result of strangulation, which was sufficient to cause death in ordinary

course of nature. The viscera was preserved to rule out any intoxication. All injuries were ante mortem in nature. The opinion was not challenged by the appellant. The viscera report does not refer to intoxication, sedation or poisoning causing/resulting in the death. We only record the fact that the deceased had suffered a homicidal death, is not really disputed and denied before us.

10. The core issue and question is whether the appellant is a perpetrator of the said crime resulting in death of Archana Grover.

11. On the morning of 16th May, 2007, Archana Grover (deceased) was hale and hearty and was present in her house located at J-8, third floor, Saket. Keshav Adhaya (PW-20) her son aged about 11 years claims that he was present in his house as he had summer vacations. His sister Janvi was also present. Immediately after the occurrence PW-20 went to call his neighbours at about 12.00 P.M. as his mother was not responding. Thereupon the neighbours Suman Sharma (PW-6) and Sandeep Bansal (PW-13) reached their flat. Police was informed by Suman Sharma (PW-6) by making call from her telephone. In these circumstances, the presence of Keshav Adhaya at the place of occurrence at the relevant time cannot be doubted or questioned. PW-20 is a child witness aged about 11 years at the time of occurrence and,

therefore, his statement has to be scrutinized with care and caution to rule out any tutoring or attempt to influence him.

12. In this context, it would be useful to notice that the law relating to testimony of the child witness is discussed in the case of *State of Uttar Pradesh vs. Krishna Master and Others*, (2010) 12 SCC 324, the relevant paras of the same is reproduced below:-

“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

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17. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental

disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case.

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29. At this stage, it would be well to recall to the memory the weighty observations made by this Court as early as in the year 1988 relating to appreciation of evidence and the duties expected of a Judge presiding over a criminal trial. In *State of U.P. v. Anil Singh*, AIR 1988 SC 1998, it is observed as under :

“....in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. It is also not proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that

there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.”

13. It is noticeable that PW-20 has given a graphic account in his court deposition about his mother, her relationship with her husband and the occurrence on 16th May, 2007. He has stated that he along with his mother and younger sister Janvi used to reside at J-8, third floor, Saket, Delhi and the appellant-Rakhi Mandal used to live with them as a maid servant. His father Pankaj Rakesh last resided with them as a family member on 9th May, 2007. There was a big fight between the deceased and Pankaj Rakesh, as his father was having extra marital affair, which was going on for last four years. They decided not to allow their father to come back to their house at third floor in Saket. From 9th May, 2007 to 14th May, 2007 their father had

collected his household belongings and other articles from the house. Between 11th to 14th May, 2007 three of them; i.e., he, Janvi and his mother were away from the house and were residing at Panchsheel Enclave with his maternal grandfather. Rakhi Mandal during this period from 11th to 14th May used to be sometimes in Saket and sometimes at Panchsheel Enclave. On 9th May, 2007 his mother had gone to Police Station Malviya Nagar and had made a complaint against his father for harassment and physical cruelty. When they came back they found that some articles had been taken away from the house by breaking open the locks. On 15th May, 2007, Pankaj Rakesh came after 8.30 P.M. but he was sent away. Disgusted Pankaj Rakesh claimed that he would come to their house and sell bananas, i.e., he was angry. On 15th May, 2007 at about 9 P.M. Rakhi Mandal went upstairs for 15-20 minutes at about 9 P.M. to her quarter but had left the main door open. His mother became angry and furious as she felt that Pankaj Rakesh could enter the house. She screamed and Rakhi Mandal was called from the servant quarter and in anger his mother slapped Rakhi Mandal. They all went to sleep. Rakhi Mandal slept in the computer room, which was also the office room. On 16th May, 2007, when he got up he saw his mother was drinking tea. He also asked for tea but he was not permitted and was asked to drink milk. At

10.00 A.M. his mother asked him to get ready as they were to go somewhere. At that time he observed that his mother was dizzy, as when she was sitting on the bed she fell and her forehead hit the chair. His mother was worried but thought that she would be alright as she had neck/shoulder problem. PW-20 and Janvi had breakfast, when watching television they heard a scream of his mother. She was calling him by his pet name Adi. He reached out to his mother's room, which was locked. He found that it was locked with a key. There was glass panel between his mother's room and the adjoining room. PW-20 saw through the glass panel but could not see his mother. He presumed that she may be in bathroom. They (he and Janvi) called out to their mother but she did not reply. They waited till 12 O'clock but she did not respond. Appellant-Rakhi Mandal was last seen by them in the house at about 10.30/10.35 P.M. At 12 noon Rakhi Mandal was not there. Rakhi Mandal had served the deceased with a glass in a tray at about 10 A.M. but PW-20 was not sure whether it was tea or water. Her mother had consumed the contents of that glass or a cup. He called the neighbours, including wife of Professor Sharma, i.e., Suman Sharma (PW-6). The glass panel to the mother's room was broken and they reached the bath room where his mother was lying on the floor. Her skin was turned blue. Her lips were completely white and her

body appeared to be pale. Sandeep, her neighbour, a resident of apartment J-7 amongst others reached there. As Rakhi Mandal was missing, they looked for her belongings, which were found to be missing from the office room where they were kept. He called the ambulance but they declined stating that PW-20 should call the police. Sandeep brought a stretcher from his house and they brought out her mom outside from the room after breaking the lock. Police arrived and asked questions from PW-20 and her sister. The deceased was taken to Max Hospital by Sandeep and may be by the police. Later on he came to know that mobile phone instrument of his mother and charger was missing. The mobile number of his mother 9818566966 and the mobile phone was of Sony Ericsson make. Two-three suits and purse of his mother was also missing. His mother was declared brought dead at the hospital. Rakhi Mandal had joined them as a maid servant for about 2 ½ months. PW-20 deposed that he could identify the belongings of his mother. He recognized the Sony Ericsson mobile phone as Exhibit P-1 stating that it belonged to his mother. Similarly, he recognized the mobile phone charger marked Exhibit P-3. He also recognized card of Saket Sports Complex of his mother and as Exhibits P-4 and P-5. He also recognized citizen shoppers card, privileged member home book store and visiting cards as Exhibit P-7, 8 and 9.

Similarly, he recognized the debit cards P-10, P-11 and card of Subhiksha P-12. However, PW-20 was not able to identify the silver pajeb, mobile ear phone and gold ring. PW-20, however, recognized the key of the room and other keys stating that these belong to her mother's room. PW-20 was, however, unable to identify the jewellery articles and he stated that as a boy he was not interested in jewellery and did not know whether it belongs to her mother or somebody else.

14. We have also examined the cross-examination of PW-20 and noticed that he has been quite categorical and clear in his deposition. He did not show any sign or symptom of tutoring whatsoever. He did not recognize the jewellery articles and was clear and candid about explaining that he had little interest in jewellery. At the same time, he recognized the keys, mobile phone, charger, cards etc. without any hesitation or ambiguity. Wherever he was uncertain or had doubt, he has stated and accepted. Like he has accepted that he did not know when Rakhi Mandal was taken as a maid servant. On core and relevant material facts his deposition is credible and truthful. He denied the suggestion that his father was present in the house and was residing with them at the time of the occurrence. When questioned in the cross-examination, he deposed that his father Pankaj Rakesh might have come at the door and had a word with Rakhi Mandal on the date of the

occurrence and he might have come to the house thinking it was unoccupied. He denied the suggestion that his father resides with them. The door of his mother's room was locked with a key. He denied the suggestion that Rakhi Mandal had been sent to her native place on 15th May, 2007. He was unable to make call to his grandparents as the landline was dead and the mobile was with his mother in her bed room. He denied the suggestion that his father was in the house and, therefore, he did not make any phone call. One of the neighbours had made a call to the police, who reached there and had thereafter taken his mother to the hospital. Her maternal grandparents had also reached the hospital. He, however, could not recollect whether he had informed the police.

15. The factual position that Rakhi Mandal was working a maid servant is proved from the testimonies of Suman Sharma (PW-6), Som Nath Grover (PW-14) father of the deceased, Arbindo Grover (PW-21) brother of the deceased and Budheshwar Mandal (PW-26), who had got Rakhi Mandal employed. We need not on the said aspect reproduce their statements as Rakhi Mandal in her statement under Section 313 Cr.P.C. has stated thus:

“Question: It is in evidence against you that Smt. Suman Sharma also reached the spot in pursuance to call of Keshav and Janvi and since

then your(sic) were missing from the house along with her belongings. What do you have to say in this regard?

Answer. It is correct.”

16. She had, however, claimed that she had stayed in Panchsheel Enclave but at the same time in response to the question that she used to sleep in the computer room had stated that this was correct as she used to sleep there daily. She has also accepted as correct that at 12 O'clock, when the incident occurred she was not to be seen in the house and it was correct that she had joined as a maid servant at the house of deceased 2 ½ months prior to her murder. She also accepted as correct that she was paid salary of Rs.2,500/- per month but claimed that salary used to be taken by Budheshwar Mandal. In the end of her statement under Section 313 Cr. P.C., she has stated as under:

“Question. Do you want to say anything else?

Answer. At about 6 AM on the day of incident Pankaj Rakesh husband of deceased had come to the house and told me to leave the house immediately and therefore, I had left the house at about 8.30 AM along with my belongings. I went to my native place by Kalka Mail. My brother Subroto Mandal picked my(sic) from the railway station on his motorcycle and on the way the motorcycle slipped because of which my brother and I suffered injury which were noticed by the doctor in my MLC. On 18.05.2007 the police reached my native place and Budhshwar Mandal also reached and I was falsely implicated in this case. No recovery of any item was made from me. I was brought to Delhi by the police by

air on 22.05.2007. The IO had called Pankaj Rakesh to the police station who gave money to the IO for not implicating him in this case. No recovery of keys or medicine was made at my instance.”

17. Thus, she claims that she had left the house at 8.30 A.M. along with her belongings on 16th May, 2007 and therefore, was not present at the time of occurrence. However, the aforesaid position was never put to or suggested to PW-20 in his cross-examination. Suman Sharma (PW-6) has stated that on 16th May, 2007 at about 12.30 P.M. Keshav Adhaya and Janvi came and stated that their mother appeared to have fainted in the bathroom and the room was locked. They requested for help. She called police at No. 100. Keshav Adhaya had told that the maid servant Rakhi Mandal, the appellant, was missing along with her belongings. In the morning at about 9.30 A.M., he had seen, the maid servant was present. Their neighbour Sandeep broke the lock of the bed room and he had come after her arrival. This fact is affirmed by Sandeep Bansal (PW-13). The fact that PW-13 did not know appellant-Rakhi Mandal does not help or exonerate the appellant. He may not have come across and have known her personally. Som Nath Grover (PW-14) has stated that Rakhi Mandal was working as a maid servant in the house of his daughter. She was employed in January or February, 2007 as a full time servant. He used to occasionally visit his

daughter's house. On 16th May, 2007 he was present at his business premises near Filmistan Cinema when he was informed about the occurrence and the fact that his daughter had been taken to Max Hospital. In the cross-examination, he has stated that he did not know where Rakhi Mandal was when, he reached the hospital but Rakhi Mandal was not at the residence of his daughter when he reached there. He confirms, therefore, that Rakhi Mandal was working as a maid servant and had gone missing. Arbindo Grover (PW-21), brother of the deceased has deposed on similar lines. In the cross-examination, he has stated that he came to know from the children that the appellant was present in the house. He denied the suggestion in the cross-examination that the appellant was sent to his native village on 14th May, 2007 by the deceased's husband. He also denied the suggestion that the deceased's husband was in the house till 16th May, 2007. He was shown and accepted two hand written complaints made by the deceased to Police Station Malviya Nagar as well as Police Station Saket, CAW Cell on 8th May, 2007 and 11th May, 2007 against her husband.

18. Budheshwar Mandal (PW-26) has stated that he was selling clothes as a hawker but about 10 to 12 years back he started working in a placement agency as a peon. He had brought Rakhi Mandal to Delhi

from village Dukhi Nakara Taula. From mother of the deceased, he came to know that the deceased required a maid servant to whom she was ready to pay monthly salary of Rs.2,500/-. Rakhi Mandal accordingly started working as a maid servant on a monthly salary of Rs.2,500/-. At the time of occurrence, he had gone to his village Mali Giri when he received a telephone message on 18th May, 2007 that Rakhi Mandal had run away with money. He tried to make a call on mobile of Rakhi Mandal but there was no response. So, he made a call on the mobile phone of the deceased and the same was attended to by Rakhi Mandal who kept saying hello, hello and thereafter disconnected the phone. On 18th May, 2007 he went to village of Rakhi Mandal but she was not there. He, subsequently received a message from the village that some police officers had come to his house from Delhi and he was asked to reach Police Station Sandesh Khaali of village Dukhi Nakara Taula. He requested his maternal uncle (mama) to keep a watch and inform if Rakhi Mandal came to her house. On 19th May, 2007 at about 1 P.M., three more police officers from Delhi reached Police Station Sandesh Khaali. He received a call from his maternal uncle Suman Mandal that Rakhi Mandal had come to her house. Thereafter, he along with five Delhi Police Officers and one police officer/Daroga of Police Station Sandesh Khaali came to the village

and apprehended the appellant vide arrest memo Exhibit PW-26/A. She made a disclosure statement Exhibit PW-26/B and thereafter the robbed articles, which were kept in a bag were recovered and seized vide memo Exhibit PW-26/C. The said seizure memo was signed by him and accused Rakhi Mandal. Her mobile phone with the photograph of mother of the accused Rakhi Mandal as a screen saver was also seized. A ladies purse with ATM cards, jewellery etc. were found and seized. He identified the said articles in the court. In the cross-examination, he accepted that he used to collect salary of Rakhi Mandal from the deceased. Out of the said amount, Rs.1,000/- used to be paid to her family members in the village and the remaining amount of Rs.1,500/- was kept by him. He affirmed that he had received a telephonic message from his maternal uncle Samual Mandal about presence of Rakhi Mandal in her house and thereupon the Delhi Police Officers reached the village and arrested and apprehended Rakhi Mandal. Disclosure statement of Rakhi Mandal was recorded and thereafter recoveries were made.

19. The aforesaid facts relating to arrest and the disclosure statement and the recoveries are also deposed to by Inspector Aishveer Singh (PW-29), SI Ram Ayodhya Singh (PW-32) from Kolkotta and Inspector Pankaj Singh (PW-33). PW-29 has stated that he reached the

crime spot on 16th May, 2007 and had interacted with PW-20 and his sister Janvi. He had sent the deceased to Max Hospital and had found one ear ring of yellow colour lying in the bathroom. He noticed there was one kitchen knife in the wash basin. The maid servant Rakhi Saha, i.e., the appellant was missing. He collected the MLC of the deceased from the hospital. During investigation they came to know that appellant Rakhi Mandal had taken the mobile of the deceased as well as some other belongings and household articles. They made search for Rakhi Mandal but without success in Delhi. On 18th May, 2007, PW-29 along with Inspector Pankaj Singh and Constable Jitender went to West Bengal and thereafter on 19th May, 2007 went to Police Station Sandesh Khaali, North 24 Pargana, West Bengal where they met SI Parveen, Constable Vijender along with Budheshwar Mandal. SI Ram Ayodhya from Police Station Sandesh Khaali accompanied them to the house of the accused and they arrested Rakhi Mandal, who made a disclosure statement Exhibit PW-26/B. From her they recovered one mobile phone, hand bag, purse, big bag and other jewellery and wearing clothes, which were seized and taken into police custody vide seizure memo Exhibit PW-26/B. He gave details of the articles seized, which included three Godrej almirah keys, a mobile phone instrument, cards of banks, card of Saket Sports Complex etc.

Rakhi Mandal was produced before the court of ACJM, Bashir Haat after her medical examination and transit remand was obtained. They went to Kolkata and then they came to Delhi. Rakhi Mandal got recovered two keys with the name of Panther and Godrej from the bushes and the same were taken into custody vide memo Exhibit PW-29/D. The jewellery items seized included silver ankle pajebe, a diamond ring, silver coin etc. The mobile phone of Sony Ericsson make with airtel sim card was recovered from Rakhi Mandal was identified by PW-29. In the cross-examination it is clarified that at the pointing out of Budheshwar Mandal they had apprehended the appellant.

20. SI (Retd.) SI Ram Ayodhya Singh (PW-32) was posted in Police Station Sandesh Khaali, North 24 Pargana, West Bengal and along with a Delhi Police Team had visited the village Dukhi Nakara Taula where Budheshwar Mandal identified Rakhi Mandal, who was then apprehended. She was arrested vide arrest memo Exhibit PW-26/A and made a disclosure statement Exhibit PW-26/B, which was signed by PW-32 also. Recoveries were thereafter effected vide seizure memo Exhibit PW-26/C. He identified the recoveries made in the court and stated that he had accompanied the Delhi Police to ACJM court Bashir Haat, North 24 Pargana, West Bengal for transit remand,

which was obtained. He had stated that villagers were asked to join them but they refused. No lady Home Guard had accompanied them but she was called to the police camp.

21. Inspector Pankaj Singh (PW-33) was posted as Additional SHO in Police Station Malviya Nagar and had gone to the spot of occurrence. Photographs etc. and incriminating material were seized from the spot. He had recorded the statement of Som Nath Grover and Arbindo Grover. On 18th May, 2007 he received telephonic information regarding presence of Rakhi Mandal in her village and proceeded. Local police officers from Police Station Sandesh Khaali had accompanied the team. Budheshwar Mandal pointed out of the house of Rakhi Mandal and she was apprehended and interrogated. He identified the arrest memo Exhibit PW-26/A and disclosure statement Exhibit PW-26/B. Thereafter, recoveries were made. On coming to Delhi, the appellant took them to the bushes and house No. J-8, Saket and two keys along with one strip of Natrawat tablets was recovered. Four tablets were missing from the said strip. He identified the stolen articles, which were recovered including the mobile phone and the sim card. In his cross-examination, it was suggested that he had taken the mobile phone of the deceased and taken photographs of the appellant's mother in the mobile phone. In other words, it was suggested that he

had visited the native village of the appellant in Bengal. He also denied the suggestion that no recoveries were made and the recoveries were all planted.

22. What is clearly discernible from the said statement is that appellant was arrested from her village on 19th May, 2007 vide arrest memo Exhibit PW-26/A. The time of arrest mentioned therein is 5.20 A.M. The said arrest memo is signed by Budheshwar Mandal (PW-26), SI Ram Ayodhya Singh (PW-32) from Police Station Sandesh Khaali and Inspector Aishveer Singh (PW-29) from Delhi Police. In the lower court records it is noticed that the police team had made an application for transit remand of the appellant (Exhibit PW-31/B) before the court of ACJM, Bashir Haat, North 24 Pargana, West Bengal. The appellant was produced before the court and transit remand was granted. In the application for transit remand (Exhibit PW-31/B) it is mentioned that seizure memo was prepared recording articles recovered from the appellant. The said application was filed by SI H.S. Chaudhary (PW-31) in ACJM court, Bashirhat, 24 Pargana North, West Bengal. He also proved the order passed by Ms. Archana Chaudhary, ACJM, Bashirhat, West Bengal. In these circumstances, it is not possible to accept the contention of the appellant that the recoveries made are of planted articles.

23. The mobile phone with sim No. 9818566966 of the deceased was recovered from the appellant. The deceased was the subscriber of the said number as deposed to by R.K. Singh (PW-19), Nodal Officer, Bharti Airtel Limited. The said witness also proved on record call detail records Exhibit PW-19/A. He had also procured the call detail records from U.P. East and West Circle, which was marked Exhibit PW-19/B and C. Cell ID location relevant to the cell IDs mentioned in Exhibit PW-19/A to C were proved as Exhibit PW-19/D and E. As per their records, from 18th May, 2007 with effect from 6.29.45 hours the mobile phone was on roaming in West Bengal as per Exhibit PW-19/F.

24. The call records mentioned above confirm and corroborate the testimonies of the witnesses. Telephone number 9818566966 received an incoming phone call at 10.25 hours on 16th May, 2007 at location cell ID 40412. At the same location, 2 SMSs were also received at 10.32 and 10.59 hours. The next data is after a delay of about 8/9 hours. The next data is an outgoing call made at 20.20 hours on 16th May, 2007, i.e., after the deceased was murdered and her body was recovered. This call was made at Ram Bazar, Mori Gate cell tower bearing cell ID No. 07672. The aforesaid call details Exhibit PW-19/A negates and destroys the appellant's claim that she had left the house at 8.30 A.M. in the morning before the occurrence. Cell ID No. 40412 is

mentioned in the first call on 16th May, 2007 at 7.00 hours and the same cell ID continued till 10.59 hours. Thus, the mobile phone was removed after 11.00 A.M. on 16th May, 2007. The mobile call records Exhibit PW-19/B, 19/C, 19/D, 19/E and 19/F show that the appellant had travelled by train from Delhi and had gone to her native village in Bengal which she reached on 18th May, 2007.

25. PW-20 has deposed and alleged that the appellant had drugged the deceased. The prosecution version also relies upon remnants of tea and the strip of sleeping pills which were seized by the Investigating Officer at the behest/disclosure of the appellant. It is correct that FSL report mentions that no chemicals were found in the remnants of tea or in the viscera. But this fact, however, does not show and prove that the appellant was not the culprit and the perpetrator of the crime. There can be various reasons why the deceased was not keeping well, after she had a tough time with her husband with whom she had differences.

26. The contention of the appellant that husband of the deceased may be the perpetrator of the crime and, therefore, there is doubt about appellant's involvement has to be rejected. (PW-14) Som Nath Grover's statement has to be read with certain reservation and with the care and caution. He was father of the deceased and it appears had a grievance and felt that in case deceased's husband had not left her,

Archana Grover would not have died. He probably felt that the husband of the deceased was involved and the said person had committed the said murder with the help and assistance of Rakhi Mandal. However, we do not find any merit or evidence to show or affirmatively suspect his involvement. The said contention, in spite of the statement made by PW-14, reflects anguish and sorrow of the father who had lost her grown up daughter and felt that her husband had deceived her and was responsible for what has happened. Suspicion or doubts cannot replace and take place of proof.

27. From the aforesaid evidence, the following accepted and admitted facts emerged:

- (i) The appellant Rakhi Mandal was working as a full time maid servant at J-8, third floor, Saket in the house of the deceased Archana Grover.
- (ii) She was seen in the morning of 16th May, 2007 by PW-20.
- (iii) PW-20 heard a scream and went to the room of his mother which was locked from outside. PW-20 and his sister Janvi shouted but their mother did not open the door. In the end they called their neighbour Suman Sharma (PW-6).

- (iv) Archana Grover's dead body was found in the bath room with strangulation marks. She was taken to the hospital and was declared brought dead.
- (v) As per the post mortem report, the deceased had died because of strangulation, i.e. which was sufficient to cause death in ordinary course of nature.
- (vi) The appellant Rakhi Mandal was missing soon after the occurrence. She had removed her belongings from the house.
- (vii) Abscondance of the appellant from all of a sudden and immediately upon the occurrence and the manner in which she vanished are highly incriminating facts proved beyond doubt.
- (viii) The mobile phone records Exhibit PW-19/A to F show that the mobile phone of the deceased bearing No. 9818566966 was at the place of the occurrence at least till 10.55 A.M. on 16th May, 2007 and thereafter was used for making an outgoing call at 20.20 hours at Ram Bazar, Mori Gate, Delhi on 16th May, 2007. The person concerned thereupon travelled from UP West Circle to UP East Circle, Bihar, Kolkata and then to the State of West Bengal.

(ix) The appellant was arrested on 19th May, 2006 from her village in the State of West Bengal and got recovered some articles vide seizure memo Ex.PW26/C. Mobile phone of the deceased was recovered from her and at that time the mobile was having photograph of mother of the appellant as a screen saver. Several other jewellery items, banks' cards etc. were also recovered from her. After her arrest, she was brought to Delhi after taking transit remand from the court of ACJM, Bashir Haat, 24 Pargana North, West Bengal. The transit remand application specifically mentioned that a seizure memo with regard to recoveries have been prepared. Some of the articles stolen/robbed were identified by PW-20. Some of the articles also had the name of the deceased and PW-20 and Janvi mentioned thereon. The recoveries are substantial and cannot be doubted in view of the fact that they were made in a village in West Bengal. The recovery memo was specifically mentioned in the transit remand application.

28. In the light of aforesaid discussion, we find no infirmity in the impugned judgment. The conviction of the appellant is in accordance with law and facts of the case. The appeal is, accordingly, dismissed

and judgment dated 24th May 2012 and order on sentence dated 31st May, 2012 are upheld.

(VED PRAKASH VAISH)
JUDGE

(SANJIV KHANNA)
JUDGE

May 31st, 2013
gm/VKR