

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

% **Judgment Reserved on : August 22, 2013**
Judgment Pronounced on : September 20th, 2013

+ **CRL.A. 553/2010**

BHAGTU MUNDA ...Appellant

Through : Ms.Saahila Lamba, Advocate

versus

STATE Respondent

Through : Ms.Richa Kapoor, Advocate

CORAM :

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE G.P. MITTAL

G.S. SISTANI, J.

1. The present appeal has been filed under Section 374 (2) Cr.P.C. against the judgment dated 17.03.2010 and order on sentence dated 22.03.2010. The case of the prosecution as noticed by the learned Additional Sessions Judge is as under:-

(i) On 07.01.2005 at about 9:30 AM Bisham Singh Tyagi, the Manager of Hotel Vikrant, Church Mission Road, Delhi came to the Police Post Church Mission Road and informed that one lady was lying dead in the bathroom of Room No.33 of the said hotel. This information was recorded by Ct.Sher Singh (PW-2) vide DD No.9 (Ex.PW-2/A). SI Ram Niwas, Incharge Police Post, Ct.Virender Kumar (PW-31) along with Ct.Rajesh, went to Room No.33, of Hotel Vikrant. On receiving DD No.10-A

(Ex.PW-1/A), Insp.Rai Singh Khatri (PW-46) along with SI Ritesh Kumar and SI Ved Prakash also reached the spot and found articles lying scattered in the room on the double bed, table and chairs and the dead body of a lady aged 21/22 years lying in the toilet-cum-bathroom of the said room. Head of the dead body was on the seat of the toilet (Indian type) while legs were towards the door. The mouth of the deceased was open and her tongue was between her teeth. Blood had oozed out of the mouth of the deceased on to the cheek and neck. Her hair were scattered. She was of dark complexion and wearing a salwaar-kameez. There were ligature marks on the neck of the deceased. The bed sheet as well as pillow on the bed were having blood stains.

- (ii) As per the entry at S.No.1661 dated 05.01.2005 made at 6:30 PM in the reception register (Ex.P-8) of Hotel Vikrant, the occupants of room No.33 were registered as “Manish Kujur” aged 24 years and “Mrs.Suman” aged 21 years r/o Govindpur, District Dhanbad, Jharkhand. Rukka was sent on DD No.9 dated 7.1.2005 from the Police Post Church Mission Road to PS Lahori Gate for registration of case by Insp.Rai Singh Khatri through Ct. Rajesh Kumar at 11:00 AM. The crime team and finger print expert inspected the spot. The spot was photographed and searched thoroughly. One iron chain (Ex.P-7) having segments duly chained in each other of about 4 feet length was recovered from the latrine pot of the toilet with the

help of the safai karamchari Vijay (PW-41). Few hair were found entangled in the segments of the iron chains. About 13 small torn pieces of railway tickets, 6 torn pieces of bus tickets and 36 torn small pieces of written pages of a diary were also recovered from the latrine pot.

- (iii) The blood stained bed sheet (Ex.P-4) along with the pillow (Ex.P-5), one diary of the year 1969 (Ex.P-11) having some torn pages and remaining blank pages, a ticket of Delhi sight seeing (Ex.P-1), the clothes and other articles including some polythene bags having the address of “Madame Footwear near Vishnu Cinema, Main Road, Ranchi”, “Raju Vastralaya Chutia, Ranchi, Neeraj Khalsa Civil” and “Military Tailors and Drapers, Chandi Mandi, Saket, Haryana” and one spectacle box having address of “Nayan Sukh Optician HB Road, Ranchi” were seized from the room. The reception register (Ex.P-8) of Hotel Vikrant in which the accused had made entries (Ex.PW-47/A) along with the kitchen register (Ex.P-9) having entries of eatable items served to the accused and deceased in room No.33 during 5.1.2005 to 7.1.2005 were also seized.
- (iv) The inquest proceedings were conducted. The dead body was forwarded to CMO Civil Hospital Mortuary, Subzi Mandi, Delhi with the request from the IO to preserve it for 72 hours and thereafter for further 48 hours since the identity could not be determined.

- (v) The portraits of the accused were got prepared with the help of the staff of Hotel Virkant, from the computer. On 7.1.2005 a team headed by SI Ram Niwas proceeded to Ranchi. The photographs of the deceased were published in local newspapers and wide publicity was given to the same in Ranchi. On 12.01.2005 Marcos Barla the father of the deceased along with his neighbour Kalyan Barla came to Delhi and identified the deceased as Suman Barla his daughter. Investigation disclosed that the address of Govindpur mentioned by the accused in the reception register of Hotel Vikrant was fictitious.
- (vi) The iron chain (Ex.P-7) recovered from the latrine pot was forwarded to CMO, Aruna Asaf Ali Govt. Hospital, Police Mortuary for opinion. On 12.01.2005 at 5.15 PM in the said mortuary the postmortem was conducted, after which the body was handed over to the father of the deceased, Marcos Barla on the same day.
- (vii) The autopsy surgeon Dr.Kulbhushan Goel opined vide the postmortem report (Ex.PW-24/A) dated 12.01.2005 the cause of death as “Asphyxia consequent upon ligature strangulation” and that the ligature mark found on the neck of the dead body was consistent with the iron chain (Ex.P-7) recovered from the latrine spot or alike object.
- (viii) On investigation it was revealed that the deceased Suman Barla was having a love affair with the accused who was working as a Sepoy in 980 Tpt. Coy. ASC at Karcham, Himachal Pradesh and

wanted to marry him. On 12.01.2005 the accused was traced in village Barka Toli, PS Torpa, Distt. Ranchi, Jharkhand with the help of the local police. He was arrested on the same day. He gave his disclosure statement (Ex.38/E). On 13.01.2005 he was produced in the Court of Chief Judicial Magistrate, Ranchi in a muffled face. His transit warrant was issued with the direction to produce him before CMM, Delhi on 15.01.2005. On 14.01.2005 the accused was brought to Delhi and got medically examined in Aruna Asaf Ali Hospital vide MLC No.383/05 (Ex.PW-16B). On 15.01.2005 he was produced in muffled face before CMM, Delhi who instructed to produce him in the concerned court. The accused was produced in the court of Sh.P.K.Jain, MM who directed the application for TIP to be put before Smt.Archana Sinha, Ld. MM, Tihar Jail on 17.01.2005 and remanded the accused to JC till 20.01.2005. On 19.01.2005 the witnesses namely Puran Chand, Gopal and Bhajan Lal, all employees of Hotel Vikrant, were present for the test identification parade. However the accused refused to participate in the TIP.

- (ix) On 22.01.2005 the police custody remand of the accused was obtained for one day. Investigation revealed that on 05.01.2005 the accused had checked in Auchinleck Sainik Aramgah, Delhi Junction where he was till the evening of 05.01.2005.
- (x) The reception register (Ex.P-8) of Hotel Vikrant having questioned writing of the accused dt. 05.01.2005 by way of the

entry made by him (Ex.PW-47/A) along with his specimen and admitted writing and signatures were forwarded to the Government Examiner of Questioned Document, Shimla for comparison and opinion along with the letter of the DCP, Crime Branch dt. 22.02.2005. Sh. I.S.Rao Assistant Government Examiner GEQD Shimla in his report dt. 10.03.2005 (Ex.PW-25/A and Ex.PW-22/B) opined that the questioned entry made in the reception register of Hotel Virkant on 05.01.2005 by the accused tallied with the admitted and specimen handwriting/signatures of accused.

- (xi) The investigation disclosed that the deceased had written various letters (Ex.PW-22/A to Ex.PW-22/D) to the Commanding Officer (in short 'CO') of 980 Tpt. Coy. ASC, where the accused was working as a Sepoy, mentioning about her love affair with the accused and him wanting to deceive her for another girl. She also enclosed one joint photograph (Ex.PW-46/C) of her with the accused taking meal as well as photocopies of his letters written to her. She also dispatched invitation cards of her marriage (Ex.PW-23/A to Ex.PW-23/C) with the accused to the CO, 2nd CO and Duty Clerk of 980 Tpt. Coy. ASC. In her letter dated 29.12.2004 (Ex.PW-22/D) to the CO she mentioned that the accused informed her that he would reach Ranchi on 5/6.01.2005 and that they would solemnize their marriage on 7th or 8th. She further mentioned that she had already sent invitations to her friends and relatives, but now the

accused has changed his decision and called her to Delhi on 5.01.2005 for their marriage and that she had left for Delhi.

(xii) Investigation revealed that the deceased took leave from 4.1.2005 to 9.1.2005 vide her application dated 4.1.2005 submitted to Nagar Mal Modi Sewa Sadan Ranchi, where she was working as a Nurse. She travelled from Ranchi to Delhi by Jharkhand Swaran Jyanti Express leaving Hatia on 4.1.2005 and reaching Delhi on 05.01.2005. The four letters of the deceased seized from the trunk of the accused in 980 Tpt. ASC, Karcham along with admitted handwriting of the deceased collected from Nagar Mal Modi Sewa Sadan Ranchi were sent to GEQD Shimla vide letter dt. 26.03.2005. The opinion (Ex.PW-25/D) of the handwriting expert given on the same showed that the letters (Ex.PW-22/A to Ex.PW-22/D) written to the CO were written by the deceased. Post investigation charge sheet was filed. The case was committed to the Court of Sessions.

(xiii) Charge under Section 302 and 201 IPC was framed to which the accused pleaded not guilty and claimed trial.

(xiv) The prosecution to prove its case, in all examined 47 witnesses.

2. Learned counsel for the appellant at the outset submits that grave procedural irregularities have been committed during the trial which has caused serious prejudice to the appellant in defending himself. It is submitted that between 06.02.2006 and 08.05.2006 lawyers were abstaining from work in the District Courts and during this period PW-3 to PW-32 were examined in the Trial/District Court. Some of the

witnesses could not even be cross-examined. An application filed under Section 311 Cr.P.C. for recall of the said witnesses was dismissed by an order of 05.03.2007. In the year 2009 another application for the same relief was filed and by an order of 11.05.2009 the said application was allowed and appellant was granted opportunity to cross-examine witnesses PW-3 to PW-9, PW-12 to PW-15 only. The remaining witnesses were not allowed to be cross-examined.

3. Counsel further contends that to bring home the guilt of the appellant the prosecution primarily relied upon two circumstances. Firstly, that the deceased was last seen in the company of the appellant in a place from where the dead body was recovered. Secondly, the appellant had a strong motive to do away with the deceased.
4. Learned counsel for the appellant submits that with respect to the circumstance of last seen the prosecution has placed strong reliance and sought to prove the said circumstance on the basis of the testimony of the hotel employees where the appellant and the deceased had last stayed including PW-3 Puran Singh, PW-6 Bhajan Lal and PW-15 Gopal Singh. The prosecution has also relied on the handwriting expert to show that the entry contained in the hotel register is in the handwriting of the appellant. Learned counsel for the appellant further submits that the opinion of the handwriting expert cannot be believed for another reason that there is no opinion on documents A-4 and A-6 which were also sent to the handwriting expert for opinion and in their absence the entire report is inadmissible.

5. Learned counsel submits that there are material contradictions in the evidence on PW-3, PW-6 and PW-15. The discrepancies which have been pointed out are detailed as under:-

<u>Puran Singh PW-3</u>	<u>Gopal Singh PW-15</u>	<u>Bhajan Lal PW-6</u>
He was employed as a waiter in the hotel. There are 4 waiters in hotel	No other person was employed as waiter in hotel except him in January 05, and one person Bhupinder used to assist him.	-
In January 2005, his duty hours were from 6.00 AM to 2.00 PM (Pertinently, appellant is stated to have arrived at the hotel at 6.30 PM on 05.01.2005 as recorded in hotel register) Gopal was my reliever on 05.01.2005 and he had come at 2 PM. Gopal and Bhuvan had relieved him on 5/6.01.2005 at 2 PM On 05.01.2005 he performed duty on entire day as Gopal had not come. On	On 05.10.05 he was on duty from 09:30 AM till 08.00 PM. -	-

05.01.2005 my duties ended on 11.00 PM and Bhuvan had taken over from him.		
There is only one manager Bhishan Tyagi in the hotel.	-	-
He went to Tihar Jail on 19.01.2005 for purposes of TIP of appellant.	He went to Tihar Jail on 22.01.2005 for purposes of TIP of appellant. (As per prosecution he had gone to Tihar Jail on 19.01.2005).	Firstly, he stated that he had gone to Tihar Jail for TIP of appellant on 21.01.2005 and later stated that he had gone on 19.01.2005 and had mentioned date of 21.01.2005 by mistake.

6. In view of the contradictions in the evidence of PW-3, PW-6 and PW-15 counsel for the appellant submits that their evidence is not trustworthy and the circumstance of last seen is thus not proved against the appellant and on this ground alone the appellant is liable to be acquitted. With respect to the opinion of the handwriting expert regarding the entry contained in the guests' register of the hotel, learned counsel contends that the opinion is essentially based upon the specimen of the handwriting of the appellant obtained by the Investigating Officer on 14.01.2005 which could not have been done in view of the ratio of law laid down by a Full Bench of this Court in the case of Sapan Halдар & Anr. v. State 191 (2012) DLT 225 (Full Bench). Para 31 of the decision reads as under:-

“31. We answer the reference as follows:-

(i) Handwriting and signature are not measurements as defined under clause (a) of Section 2 of The Identification of Prisoners Act, 1920. Therefore, Section 4 and Section 5 of The Identification of Prisoners Act, 1920 will not apply to a handwriting sample or a sample signature. Thus, an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence.

(ii) Prior to June 23, 2006, when Act No.25 of 2005 was notified, inter-alia, inserting Section 311A in the Code of Criminal Procedure, 1973, even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. In cases where Magistrates have directed so, the evidence was held to be inadmissible as per the decision of the Supreme Court in *Ram Babu Mishra's* case (supra). According to Section 73 of the Indian Evidence Act, 1872, only the Court concerned can direct a person appearing before it to submit samples of his handwriting and/or signature for purposes of comparison.”

7. Ms.Lamba, counsel for the appellant submits that in view of the decision of the Full Bench of this Court the opinion of the handwriting expert is inadmissible in evidence and cannot be used against the appellant. To substantiate her arguments further it is contended that the fact that the opinion of the handwriting expert is based upon the specimen of the handwriting of the appellant and not his admitted writing is clear from the fact that admitted handwriting of the appellant consists of his 3 signatures (A1, A2 and A3) and words ‘6396455B SE (not clear). B. Munda Kalka Ranchi’ (A5) while opinion refers to

letters s, G, o, A, D, Govindapur, Indian, v, P, Ph. which letters are absent in admitted handwriting of the appellant. Furthermore, mere 3 words and three alphabets contained in the admitted handwriting are not sufficient for coming to a conclusion regarding handwriting of the appellant.

8. With respect to the motive of the appellant, learned counsel for the appellant submits that letter dated 16.01.2004 Ex.PW-22/DA admittedly written by the father of the deceased and signed by the mother of the deceased dents the case of the prosecution regarding the motive in view of the fact that in the letter the father of the deceased had objected to the marriage of the appellant and the deceased on the ground that both the appellant and the deceased were of the same caste and marriage between them was impermissible. It is contended that the explanation given by the parents of the deceased for having written the said letter is flimsy inasmuch as the mother has stated that the father had written the said letter at the instance of the brother of the appellant, whereas the father has stated that he does not remember who had got written the said letter from him.
9. It is next contended by learned counsel for the appellant that it is extremely unusual that the deceased was informing the Commanding Officer of the appellant with regard to each and every step and event in her life. It is contended that letters Ex.PW-22/A to Ex.PW-22/E and more particularly letters Ex.PW-22/C and Ex.PW-22/D are shrouded in great mystery. As per Ex.PW-22/C i.e. letter dated 29.12.2004 it is recorded that appellant had called the deceased to Delhi for performing

marriage with her and for this purpose she had left her house for Delhi on 05.12.2004. Another letter Ex.PW-22/D is an undated letter which records that the appellant is calling her to Delhi for marriage on 05.01.2005. It is contended that in case the deceased was unsure of the appellant, she would not come all alone to Delhi. The marriage card which is alleged to have been prepared mentions the date of marriage as 18.12.2005 whereas the marriage was to happen in the month of January 2005 all of which would show that the letters and marriage cards are fabricated documents created to falsely show the motive of the appellant to do away with the deceased.

10. Ms.Kapoor, learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The appellant was identified by PW-3 Puran Singh in his testimony. He has clearly stated that on 05.01.2005 he was present in the hotel when the appellant and the deceased had come to the hotel to rent a room and he had taken both of them to their room. The hotel register was filled up by the appellant in his handwriting. On 06.01.2005 at 6:00 AM he had served them two cups of tea and toasts. On the next day at about 07:15 AM he had again served the appellant tea and toast which the appellant received at the door. The appellant had also requested this witness to get two tickets for local sightseeing which he had procured from Green Travel Service. It is thus contended that the deceased was last seen in the company of the appellant who stayed with her in Room No.33 of Hotel Vikrant. Since he had met the appellant on more than four occasions he had identified him. Counsel

submits that the evidence of PW-3 is duly corroborated by the evidence of PW-6 and PW-15. PW-6 Bhajan Lal was the Manager of the hotel and he was present at the hotel on 05.01.2005 when the appellant and the deceased had come to the hotel and had desired to take a room. He has corroborated the evidence of PW-3 Puran Singh and has testified that Puran Singh had showed the room to the appellant and the deceased. He has also stated that he filled up the details in his handwriting in the guest register. Ms.Kapoor submits that the contradictions which have been pointed out by the learned counsel for the appellant are not material and the testimony of the witnesses is to be read as a whole. She further contends that the appellant was also last seen together with the deceased by PW-15 Gopal Singh, who had brought food for the appellant on 05.01.2005. Ms.Kapoor contends that the presence of the appellant in Delhi is also proved by PW-10 who had proved the original record register being Ex.PW-10/A where the appellant had entered his name and his Army No.6394555 at Serial No.99 on 05.01.2005 at Auchinleck Sainik Aram Ghar, Delhi Junction. The evidence of PW-10 is also corroborated by the evidence of PW-11 and PW-13. As per PW-11 he had made the entry after checking the I-card of the appellant and issued a gate pass to him. He checked in the luggage of the appellant in the cloak room and issued Token No.251. PW-13 had returned the luggage after checking his token and I-card and appellant had put his initials at point 'D' in Ex.PW-10/B. Ms.Kapoor submits that the evidence of PW-10, PW-11 and PW-13 clearly establishes the presence of the appellant in

Delhi. She further submits that the appellant had sought leave which is established by the evidence of PW-27. The leave record shows that the deceased was granted leave from 05.01.2005 to 09.01.2005 which is duly supported by the evidence of PW-39. Ms.Kapoor next contends that the appellant had booked his ticket from Ranchi to Delhi which was reserved on 04.01.2005 and the same stands duly proved by the testimony of PW-17. It is also submitted by Ms.Kapoor that the scientific evidence also establishes the presence of the appellant with the deceased. Reliance is placed on the evidence of PW-26. It is submitted that semen which was found on the vaginal swab slide of the deceased belonged to Group 'A' which is the same group as that of the sample of the appellant. While learned counsel for the appellant submits that the decision of the Full Bench would be applicable to the facts of the present case with respect to the opinion of the handwriting expert, she submits that the handwriting expert has not only relied on the specimen of the handwriting of the appellant but also relied upon the admitted handwriting of the appellant which clearly shows that the appellant had made the entry in the register of the hotel. She submits that there was a strong motive for the appellant to do away with the deceased as he was engaged with PW-28 despite having love affair with the deceased. It is submitted that the appellant and the deceased had also stayed together on 20.09.2003 and 21.09.2003 at Hotel Amrit, Ranchi and on 06.12.2003, 23.12.2003, 04.05.2004 and 07.04.2004 at Hotel Embassy, Ranchi which is duly proved by the evidence of PW-18 and PW-19.

11. We have heard learned counsel for the parties, carefully examined the evidence on record and considered the rival submissions of the counsel for the parties. Learned counsel for the appellant had stated at the outset that grave procedural irregularity has been committed during the trial. The submission made by learned counsel for the appellant is without any force. Learned counsel for the appellant has contended that during the period the lawyers were on strike, PW-3 to PW-32 were examined and an application filed thereafter under Section 311 Cr.P.C. was dismissed on 05.03.2007. Admittedly another application was filed for the same relief which was allowed by an order of 11.05.2009 and the appellant was granted an opportunity to cross-examine witnesses PW-3 to PW-9 , PW-12 and PW-15. We have perused the order dated 11.05.2009. The order does not show that the prayer of the appellant for cross-examining the witnesses was rejected and only a limited relief was granted. It seems that the counsel had primarily sought permission to cross-examine the aforesaid witnesses so mentioned. In case the appellant was aggrieved by the order of 11.05.2009 he could have availed of such remedy as was available to him in accordance with law.
12. It may also be observed that in the case of **Harish Uppal vs. Union of India** 2003 (2) SCC 45, the Supreme Court has deprecated strikes by lawyers. Para 35 of the decision read as under:-

“35) In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or

placards, wearing black or white or any colour arm bands, peaceful protect marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance to a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him.”

13. We are thus of the view that there was no procedural irregularity committed during the trial.
14. The second argument of learned counsel for the appellant that there are material contradictions in the evidence of PW-3, PW-6 and PW-15 who are the material witnesses with respect to the circumstance of last

seen is also without any force. We have extracted the contradictions which have been so pointed out by the learned counsel for the appellant. In our view only material contradictions can affect the case of the prosecution and every variation by itself may not be enough to adversely affect the case of the prosecution. The contradictions which have been pointed out are with regard to the fact that according to PW-3 he was employed as a waiter in the hotel but according to PW-15 no other person was employed as a waiter in the hotel except himself in January 2005. We may notice that in the same breath PW-15 has stated that Bhupinder used to assist him. In our view this is not a material contradiction. The incident took place in the month of January 2005. The evidence of this witness was recorded in the month of February 2006. He was recalled for further cross-examination in the month of August 2006. It is during cross-examination that PW-15 had deposed that no other person was employed as a waiter at that time. In our arriving at a conclusion that the contradictions in the evidence are material no statement of a witness can be read in part or in isolation. We have examined the evidence of this witness in its entirety. In the preceding lines this witness has testified that “another boy named Bhupinder was on duty along with me. No other person was employed as a waiter at that time.” The witness further goes on to state that the hotel has three floors having 36 rooms including the second floor which has 12 rooms. Reading the evidence in totality would show that the witness has said that “*at that point of time no other person was employed as a waiter at that time*”. The same

cannot be read to mean that there was no other waiter at all to cater to the needs of the guests in the hotel which had 36 rooms. In our view the contradiction which is sought to be pointed out has been read out of context. We may also notice that this witness has also deposed that the hotel did not have a restaurant and food items and other services like laundry etc. are procured from outside. It is impossible that one waiter would be able to serve guests in a Hotel of 36 rooms and also bring food from outside. Much cannot also be read about the contradiction with regard to the date when the witnesses were taken to Tihar Jail for the purpose of TIP. PW-3, PW-6 and PW-15 are material witnesses who had seen the appellant and the deceased together at the hotel Vikrant where the dead body of the deceased was found on 07.01.2005 in room No.33 which was taken on rent by the appellant and the deceased. The appellant was posted at Ranchi.

15. The appellant had reserved his ticket from Ranchi to Delhi on 04.01.2005. The arrival of the appellant at Delhi has been proved by PW-10, who has proved the entry in the name of the appellant in the register of Auchinleck Sainik Aramgah, Delhi at serial No.93 (Ex.PW-10/A), which proves that the appellant had checked in on 5.1.2010. Granadier Brij Pal (PW-11) has proved the cloak room register (Ex.PW-10/B) dated 5.1.2005 at serial no.93 vide which the luggage of the accused was booked in the cloak room. Granadier Brij Pal (PW-11) has also proved the entries made by him in the cloak room register of the Sainik Aramgah (Ex.PW-10/B) at serial No.93 and testified that he had issued token number 251 to the accused and at about 11:20 a.m.

on 5.1.2005 he checked in the luggage of the appellant in the cloak room. Lance Naik Chanchal Singh (PW-29) has proved the entry made by him in the register of Sainik Aramgah, Delhi Jn. on page no.122 in the name of the appellant at Sl.no.93 between 8:30 am to 9:00 am and the signatures of the appellant in the register Ex.Pw-10/B at pt. A. He testified that after the appellant made his entry, he went in after which he was not aware of the movements of the appellant since there were no restrictions. As per the entry the appellant remained at the Aramgah till the evening of 5.1.2005. Sepoy Kishan Kumar (PW-12) has corroborated the version of PW-10 and PW-11 and has testified that on 5.1.2005 at 10 a.m. the appellant came to the cloak room where he was on duty and produced his I-card and token to take his luggage. After verifying his identity and token PW-12 returned the bag to the accused whom he identified correctly in court. He testified that the accused put his initial at point D in his presence in the cloak room register Ex.PW-10/B. The deceased was also not a resident of Delhi and she was working as a Nurse at Nagarmal Modi Sewa Sadan Hospital. PW-43 Major Vichar Mago has proved the leave record of the appellant [Ex.PW-6/B(1-2)]. From the leave record it stands proved that the appellant had taken leave from 05.01.2005 to 07.01.2005 to go to Delhi. The deceased had also sought leave which has been proved by Shri Raj Kumar Kedia PW-39, the Honorary Secretary of Nagarmal Modi Sewa Sadan Hospital. The application for her leave is dated 04.01.2005 Ex.PW-22/E for leave from 04.01.2005 to 09.01.2005 which was sanctioned by PW-39. Evidence

of PW-43 and PW-39 would show that the appellant and the deceased had taken leave to go to Delhi.

16. From the testimony of the above witnesses it stands proved that the appellant had reached Delhi on 5.1.2005. Once having reached Delhi, the appellant and the deceased came to Hotel, Vikrant. As per the evidence of PW-3, Puran Singh, who was employed as a waiter at Hotel Vikrant for the past 14 years, he was present at the hotel on 5.1.2005 at 6:30 p.m. He identified the appellant in court and deposed that the appellant along with a lady had come to the hotel for a room; and the Manager, Bhajan Lal (PW-6) was also on duty. He had taken both of them on the third floor to room No.33, which was allotted to them at Rs.300/- per day. He returned back with the appellant after showing the room and thereafter the appellant made entries in the Register. After entries were made, PW-3 again escorted the appellant to the room with his luggage. He also met the lady at that point of time as he offered water to both of them. Again on 6.1.2005 he served them tea and toast. On the following day i.e. 7.1.2005 he met the appellant on the first floor at around 7:00 to 7:15 a.m. who placed an order for 2 cups of tea and 4 butter toasts, which he delivered at about 7:30 a.m. and was accepted by the appellant at the door. The appellant thereafter made a request to this witness to procure two tickets for local sightseeing, which he procured from Green Travel Service, which is situated close to the hotel. When he went to deliver the tickets he found the door shut and when he pushed the door to open it he found the belongings strewn in the room, but none was present. He

left the tickets on the table and informed the Manager. Both of them (PW-3 and the Manager) discovered the dead-body of the lady in the bath-room. The evidence of PW-3 remained unshaken even during the cross-examination. We find the evidence of PW-3 trustworthy and reliable.

17. While applying the theory of last seen together, the onus is on the prosecution to establish the time when the appellant and the deceased were last seen together as well as the time of death of the deceased. Reasonable proximity of time between the last seen and the death is a necessary ingredient. The appellant and the deceased had checked in together in the evening of 5.1.2005. PW-3 had escorted the deceased and the appellant to their room. Orders were placed on PW-15, Gopal Singh on 5.1.2005 and 6.1.2005.
18. The appellant was also last seen in the presence of the deceased by PW-15, another Waiter (Gopal Singh). He identified the appellant in court and testified that on 5.1.2005 at about 7:30 p.m. he had brought food from Hotel Sheesh Mahal at the request of the appellant, who was a guest in the room no.33. He had entered this order in Kitchen Book, Ex.P-9. On the following day, he had brought 2 Omelets and Bread at 6:30 p.m. and entry was also made in the Register. He had identified the appellant as the guest staying in the room No.33. There is nothing in the cross-examination, which would show that the witness was deposing falsely. The Manager, PW-6, of the hotel was on duty when the appellant and the deceased checked in. PW-6, Bhajan Lal has also deposed that he was on duty on 5.1.2005 when the

appellant and a girl had come to the Reception to book a room. This witness has also testified that the room was shown by Puran Singh, PW-3. He identified the appellant in court. He also deposed that appellant had filled in details in his own handwriting in the guest register. We find that there is nothing in the cross-examination which would shake the testimony of PW-6 and PW-15.

19. While there is no quarrel to the proposition laid down by the Full Bench of this Court on which reliance is placed by the counsel for the appellant in support of her argument that reliance cannot be placed on the specimen hand-writing of the appellant, on reading of the report of the hand-writing expert, it shows that the hand-writing expert had taken into consideration both the admitted writing and also the specimen hand-writing. The admitted writings (A-1), which is an application dated 19.11.2005 filed by the appellant, contains the signatures of the appellant and his Army number. A-2 is a certificate of the same day, which also contains his signatures with Army number. A-3 to A-5 contain numericals and some words. Thus it cannot be said that the opinion was reached purely on the specimen hand-writing of the appellant.
20. Counsel for the appellant had pointed out during the course of her arguments that two documents i.e. A-4 and A-6 were also sent for examination, but these documents are missing and thus the opinion of the hand-writing expert should be discarded.
21. While placing reliance on the trial court record, it has been clarified by Ms.Kapoor, counsel for the State that the documents are very much

available, but the same were not considered by the expert and they have been remarked “not considered, as being inconsistent”. Thus the submission of the counsel for the appellant that these two letters are missing is not the ground to discard the opinion of the hand-writing expert. Even otherwise, PW-3 and PW-6 have testified that the register at the hotel was filled up in their presence by the appellant. The presence of the appellant along with the deceased has also been clearly proved.

22. It has also been submitted before this court that in view of the communication dated 16.11.2004 (Ex.PW-22/DA) written by the father of the deceased and signed by her mother, which would show that the parents of the deceased were objecting to the marriage between the appellant and the deceased, the motive is not established by the prosecution. The Apex Court in the case of *Lekhraj alias Harisingh v. State of Gujarat*, reported at AIR 1998 Supreme Court 242 has held that it is not necessary to establish the motive in each and every case. Paragraph 5 of the judgment reads as under:

“Learned counsel for the appellant has challenged the view taken by the High Court firstly on the ground that the prosecution has failed to establish any motive for the accused to commit the murder. In support of his submission, the learned counsel relied upon the decision of this Court in *Surinder Pal Jain v. Delhi Administration* (1993) 2 JT (SC) 206: (1993 AIR SCW 1561), wherein it has been held that “in a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case.” This Court has further

observed that “The absence of motive, however, puts the Courts on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof”. This Court has not held that in the absence of any motive an accused cannot be convicted under S. 302, I.P.C. Therefore, the contention raised by the learned counsel deserves to be rejected.”

23. In the present case, however, the motive stands duly established. The appellant and the deceased had intimate relations to the extent that they had stayed together at 2 different hotels at Ranchi. This is established by the evidence of PW-18, the owner of Amrit Hotel, Ranchi, who produced the original register of the hotel to show that on 20.9.2003 at 4:30 p.m. appellant and the deceased had checked in his hotel and they checked out on the following day at 7:00 a.m. The bill Ex.PW-18/A was also produced by PW-18. PW-19, Rohit Kumar, the receptionist of hotel Embassy, Railway Station Ranchi Road, Ranchi has also produced the original register to show that the appellant and the deceased stayed at the hotel on 6.12.2003, 23.12.2003, 7.4.2004 and 4.5.2004. The register containing the correct name and designation were also produced (Ex.PW-19A to D). The evidence of Ms.Santoshi Topna (PW-28) to whom the appellant was engaged has deposed that she was engaged to the appellant, who was present in court. PW-28 has deposed that she had written 6 love letters to him, but she had never met the deceased, Suman Barla. She was thereafter cross-examined by the counsel for the State. During cross-examination, she denied that the police had recorded her statement or that she had told

the police that Suman Barla had come to her house in June, 2004 and disclosed that she was in love with the appellant and desired to marry him. The evidence of PW-18 and 19 would show that appellant and the deceased had stayed together in 2 different hotels during the period of September, 2003 onwards up to May, 2004. There is no evidence on record to show that the deceased was seen going out of the hotel or was seen with anyone else outside the room. Only because of having intimate relations the deceased would have agreed to stay with the appellant in January, 2005 at hotel, Vikrant. On gaining knowledge that the appellant had been engaged to Ms.Santoshi Topna, she made various complaints to C.O. of the appellant. The deceased had addressed various letters to the C.O. complaining about the appellant, including the letter dated 8.9.2004 (PW-22/A and 22/B) and letter dated 29.12.2004 (Ex.PW-22/C and PW-22/D). PW-27 had handed over love letters of the appellant to the prosecution.

24. Also Ms.Santoshi Topnna in her letter to the appellant dated 13.7.2004 (Ex.PW-46/IC) she has stated that eversince the “girl” (referring to the deceased) had come to meet her, her mind was wandering here and there as to what to do and what not to do. In her letter dated 30.11.2004 (Ex.PW-46/K) to the accused she has stated that Suman remembers him a lot and that she was guilty that she had got their relationship broken by coming in between them. These statements expressed by her in her letters to the accused only go to prove that the accused was engaged to Santoshi Topna against the wishes of the deceased because of which the deceased was upset, thus

the motive is proved. Moreover the father of the deceased Sh.Marcas Barla PW-23 has testified that he knew the accused. His daughter was in love with the accused and wanted to marry him. The accused had visited them at their village once or twice when he was on leave. He also proved that the letters (Ex.PW-22/A, Ex. PW-22/B, Ex.PW-22/C and Ex.PW-22/D) were written by his daughter to the CO of the accused. In his cross examination he denied the suggestion that his daughter was emotionally blackmailing the accused. He testified that the accused used to call the deceased to his unit and used to take her for outings.

25. The testimony of the mother and father of the deceased respectively has remained unshattered and unshaken with regard to the accused having an affair with the deceased and him proposing to her. The letters written by the deceased to CO of the accused, the marriage card got printed by her (Ex.PW-23/A to Ex.PW-23/C sent to the CO, 2nd CO and Duty Clerk) inviting them for her marriage with accused on 8.12.2005 at Ranchi further corroborate the testimony of the parents of the deceased and prove the deep love affair between the accused and the deceased. The letter dated 16.11.2004 (Ex.PW-22/DA) written by the father of the deceased relied upon by the accused which mentions about the accused and the deceased wanting to marry, further corroborates the version of the prosecution and proves that the accused and the deceased were having a deep love affair.
26. Dr.K. Goel, CMO, Mortuary, Subzi Mandi was examined as PW-24. He testified that he conducted the post-mortem of the deceased on

12.01.2005. On external examination ligature mark was found around the neck in the form of friction abrasion incorporating pattern bruises of varied with present over middle part of the neck. The cause of death was asphyxia consequent upon ligature strangulation. Ligature mark was ante-mortem in nature and was sufficient to cause death in ordinary course of nature. Ligature material used was hard chain like object. The time since death was about five and a half to six days. He proved his detailed postmortem report as Ex.PW-24/A. He proved his opinion as Ex.PW-24/B as per which the ligature mark found around the neck mentioned in PM report Ex.PW-22/A was consistent with the chain (Ex.P-7) or alike object.

27. We have also examined the post-mortem report, Exhibit PW-24/A, wherein it was opined that the cause of death was Asphyxia consequent upon ligature strangulation. Strangulation marks were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. The ligature material used was hard chain like object. It may also be noticed that in this case a chain was found in the toilet pot in the bathroom where the dead body of the deceased was found and as per the opinion of the autopsy surgeon, Ex.PW-24/B, ligature marks found on the neck were consistent with the chain, Exhibit PW-7, or like object.
28. The evidence of PW-3, 6 and 15 read with evidence of PW-10, 11 and 13 as noticed above, leave no room for doubt that the appellant had taken leave to visit Delhi. He arrived at Delhi on 5th January, 2005 and first visited the Auchinleck Sainik Aramgah, Delhi and thereafter took

on rent room No.33 at Hotel, Vikrant. He was accompanied by the deceased. It is also clearly established that the appellant and the deceased were last seen together in the hotel. The appellant had ordered dinner on 5th January and Breakfast on 6th January and on 7th January had also requested Puran Singh (PW-3) to arrange 2 tickets for sightseeing soon before the dead-body of Suman was discovered in the room of hotel. There is nothing to show that till 7.1.2005 nobody else was seen in room No.33 where the deceased was staying with the appellant from 5.1.2005. TIP was held on 19.1.2005 for identification of the appellant in front of three witnesses, Puran Chand, Gopal and Bhajan Lal. PW-45, Archana Sinha, Metropolitan Magistrate has proved the TIP that the accused had refused to participate in the TIP proceedings. Accordingly, we uphold the impugned judgment of conviction and order on sentence and dismiss the appeal.

G.S.SISTANI, J

G.P.MITTAL, J

SEPTEMBER 20th, 2013

dk/ssn/msr