

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

% *Judgment Reserved on : August 21, 2014*
Judgment Pronounced on : September 01, 2014

+ **CRL.A.269/2012**

ASHISH NANDWANA Appellant
Represented by: Ms.Sumita Kapil, Advocate with
Mr.Shaan Mohan, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP for the
State with Insp.Rajiv Kumar,
P.S.H.N.Din.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Appellant Ashish Nandwana and co-accused Manoj Nandwana (his cousin) were charged for having entered into a conspiracy and thereafter murdered Shashi in room No.232, Central Guest House Nizamuddin in the morning of March 29, 2008 and thereafter as per the conspiracy they destroyed the evidence pertaining to the commission of the crime with the intention of screening themselves from legal punishment.
2. Vide impugned judgment dated December 24, 2011 learned Additional Sessions Judge has convicted Ashish for the offence of murder and for the offence of destroying evidence pertaining to the commission of the crime. Co-accused Manoj has been acquitted of the charge of murder

but has been convicted for the offence of destroying evidence pertaining to the commission of the crime. The two have been acquitted of the charge of conspiracy. Manoj has not filed any appeal challenging his conviction and the sentence inflicted upon him probably for the reason by the time the decision was pronounced he had already undergone the sentence to undergo RI for three years and nine months inflicted upon him.

3. The learned Trial Court has not clearly spelt out the reason as to why Manoj was being acquitted for the offence punishable under Section 302 IPC, but a careful reading of the decision would reveal that the learned Trial Court believed Shahid Siddique PW-2, the manager of the Guest House that he saw deceased Shashi and Ashish staying together in one room No.232 and the other girl named Savita alias Juli and Manoj stay in the adjoining room No.233, a statement which we find made by Shahid Siddique before the investigating officer, and affirmed by him when he was cross-examined by the learned Additional Public Prosecutor that it was correct that he had told the investigating officer as aforesaid. A reflection thereof is to be found in paragraph 116 of the impugned decision. It was in room No.232 that a mattress cover, bed sheet and pillow cover on which human blood of the same group as that of the deceased was detected. On the walls of the bathroom, attached to the said room and the door of the bathroom human blood of the same group as that of the deceased was detected. It was in this room the investigating officer saw splattered blood.

4. Convicting Ashish, the learned Trial Court has found that the FSL report Ex.PW-32/A proves that the exhibits, except one, seized during investigation from the room in question and further exhibits seized during investigation had human blood of group 'A', which was the blood group of

Shashi. Shirt Ex.9-b got recovered by Ashish which he was wearing when the offence was committed as also the knife Ex.P-4 got recovered by him was also found with human blood of group 'A' thereon. The injuries on the person of Shashi were opined as capable of being inflicted with the knife. Attempt made by the defence to prove that the injuries could be caused by glass if a person falls on glass has been negated by the learned Trial Court with reference to *Essentials of Forensic Medicine and Toxicology*, 29th ed. wherein it was mentioned that wounds by glass are lacerated wounds, which may resemble stab wounds, but the margins of the wound if caused by glass will always show tiny side cuts owing to the irregularity of the glass edges. Further, particles of glass may be found in the wound(s). Injuries from broken glasses show multiple irregular incised-type wounds, which would vary in length and severity; which were missing on the body of Shashi. The learned Trial Court has noted that the medical examination of the body of Shashi did not reveal a single glass piece in the body. Multiple cuts were absent. The injuries on the body of the deceased had regular margins which could not be in wounds inflicted by glass. The learned Trial Court has further noted that the face sheet Ex.5/B prepared at Shashi hospital where Shashi was removed for treatment also notes that there were stab-like injuries on the neck and the abdomen of Shashi. The learned Trial Court has referred to the testimony of Dr.Siva Prasad PW-16 and his post-mortem report Ex.PW-16/A and opinion Ex.PW-16/B wherein he had opined that injury No.1 on the neck and injuries No.2 and No.3 on the abdomen had been caused by a sharp-edged weapon. Injuries No.5, 6 and 7 were opined to have been caused by finger-nails. The learned Trial Court has further noted that the doctor had also opined that there was evidence of

attempted smothering. The learned Trial Court has further noted that the crime team which was summoned for forensic examination of the room where Shashi's blood was seen splattered did not find broken pieces of glass anywhere in the room or the bathroom or elsewhere. Pertinently, no corresponding cuts resulting from the alleged fall over broken glass were found on the clothes of the deceased. (A finding which overlooks that even on the clothes of the deceased no corresponding cut marks relatable to the injuries on the abdomen were to be found. In respect of which it is relevant to note that the time when Shashi sustained the injuries was early morning of March 29, 2008 and Shashi was wearing a shirt Ex.7a and half pyjama Ex.7b and the possibility of the shirt buttons being open and hence no corresponding cut marks on the front of the shirt). The learned Trial Court has noted that in the DOT consent form Ex.PW-5/D at Shahi Hospital, required to be given when a patient is to be operated upon, both accused signed as Manoj Chaudhary and Vishal Chaudhary to hide their identity for the reason their surname was Nandwana. The phone number given by the two was the mobile phone number of Manoj as per the application form Ex.PW-22/C submitted to the service provider TATA Teleservices Ltd. The two could not explain why they gave incorrect names at the hospital. Lastly, the learned Trial Court has noted that as per Dr.Leena PW-4 who had examined Shashi at the Shahi hospital, Shashi could not speak because the voice pin box in her neck was cut, thereby belying the defence version that Shashi had walked up to the reception counter of the Central Guest House, holding a scarf on to her neck and told the manager Shahid Siddique that she had accidentally fallen on glass and as a result had

sustained a cut on her neck and inquired whether there was a hospital nearby.

5. We note that when incriminating circumstances were put to Ashish and co-accused Manoj, they denied everything but admitted that they came to Delhi with Shashi and another girl named Savita/Julie PW-7. The two claimed that Shashi and Savita/Julie stayed at room No.232.

6. It all commenced when as deposed to by Mohd.Dilshad PW-1 on March 27, 2008 he received a telephone call from his friend Shashi who requested him to arrange for two rooms in Delhi where she and her friend could stay on March 28, 2008. As deposed to by him Shashi, her friend Savita/Julie along with Ashish and Manoj reached Delhi and he took the four to Central Guest House, Nizamuddin where the Manager Shahid Siddique PW-2 refused to give any room because there were two boys and two girls. Mohd.Dilshad convinced Shahid Siddique to let the four stay in the guest house. An entry Ex.PW-2/B at serial No.2290 of the lodging register maintained at the guest house was made, duly proved by Shahid Siddique PW-2 recording that Manoj, Julie, Shashi and Ashish were given accommodation in the guest house. As per the requirement of Delhi Police, I.D. proofs Ex.P-2 were given by Ashish and Mohd.Dilshad, the latter gave his I.D. proof because Shahid Siddique wanted identity proof of a local person.

7. Next day morning on March 29, 2008 two boys who disclosed their names as Manoj Chaudhary and Vishal Chaudhary took Shashi in an injured condition to Shahi hospital, Bhogal near Nizamuddin at 10.45 A.M. Sh.Jyoti Ramberd PW-5, the Administrator of Shahi Hospital was present. He summoned Dr.Leena Dadhwal PW-4, a surgeon at the hospital, who

examined Shashi and noted her condition in the MLC Ex.PW-4/A. She recorded therein that there was a 12 cm. long cut near upper fold in the neck of Shashi which was subcutaneous deep upto trachea. There was a hole in the airway in the centre. The central muscles were cut. Two lacerated deep wounds in the fold of hypochondrium and epigastrium having depth upto peritoneum. The patient could not speak since her voice box pin was cut. Since it was a high risk case a DOT consent Ex.PW-5/D was obtained by Jyoti Ramberd from Manoj Chaudhary and Vishal Chaudhary. Manoj Chaudhary and Vishal Chaudhary signed the same. Manoj Chaudhary gave his mobile No.9928050500. Vishal Chaudhary gave his mobile No.9829413137. Both disclosed that they were Shashi's cousins. Both disclosed their address as 21 Dudu Bagh, Sanchar Chand Road, Jaipur. Dr.Leena Dadhwal with more surgeons, one of whom was an ENT surgeon, performed high risk surgery. As the abdomen was open multiple laceration in the pyloroduodenan junction, anterior duodenum, posterioduodenum, four perforations, laceration in the right lower lobe of liver and in the gall bladder were detected. There was a large retroperitoneal haemotoma. The gall bladder was removed. Laceration on the liver and perforations in the duodenum were repaired. Bleeding in the retroperitoneal being due to the adrenal vessel being cut was plugged. Six bottles of blood transfusion was given. Shashi was put on the ventilator but died at 6.45 P.M.

8. So busy became the staff at Shahi hospital to save Shashi that they forgot to inform the local police station, notwithstanding that ex-facie the wounds on Shashi's body were homicidal in nature. It was only at 2.35 P.M. that somebody from the hospital informed PS Nizamuddin over telephone, an information recorded vide DD No.10-A, Ex.PW-6/A, that a

girl named Shashi had been admitted in the hospital in an injured condition. HC Maheshwar Singh PW-18, on duty, recorded DD No.10-A. Copy of DD 10-A was given to SI Yogeshwar Singh PW-31 who accompanied by Ct.Jaswant Singh PW-6 and Ct.Ram Niwas PW-19 went to Shahi hospital. Shashi was not fit for statement. SI Yogeshwar Singh made an endorsement Ex.PW-31/A beneath the copy of the DD entry and sent the rukka through Ct.Jaswant Singh for FIR Ex.PW-6/C to be registered for an offence punishable under Section 307 IPC. SI Yogeshwar Singh to whom blood stained clothes of Shashi were handed over at Shahi hospital seized the same as recorded in the memo Ex.PW-19/A.

9. It is not clear from the record as to what led SI Yogeshwar Singh PW-31, SI Shyoram PW-23, ASI Shahbuddin, (not examined), HC Rajpal (not examined), Ct.Pradeep (not examined), Ct.Ranglal (not examined) and Insp.K.L.Yadav PW-33 to Central Guest House, Basti Nizamuddin. The said police officers found blood on the mattress, bed sheet and pillow cover on the bed in room No.232. They found blood stains on the walls and door of the bathroom attached to the room. From the record maintained at the reception they found that two boys and two girls named Manoj, Ashish, Shashi and Julie/Savita had checked in the guest house in the intervening night of March 28, 2008 and March 29, 2008. Crime team was summoned. Ct.Anand PW-11 of the crime team took 19 photographs Ex.PW-11/1 to Ex.PW-11/19 of the room, negatives whereof are Ex.PW-11/20 (collectively). Three bed covers, three blood stained pillow covers and two washed bed sheets were seized as recorded in the memo Ex.PW-23/A. Cash receipt book and I.D. proof of Ashish and photocopy of driving license of one Mohd.Dilshad (examined as PW-1) were seized as recorded

in the memo Ex.PW-2/C. Somebody informed them that Manoj was standing on a road outside the guest house at 7.00 P.M. and thus Manoj was arrested as recorded in the arrest memo Ex.PW-23/E. He disclosed that Ashish was sitting in a car near Barapula. Ashish was arrested at 7.30 P.M. as recorded in the memo Ex.PW-23/F. From the dickey of the car a blood stained chapel was seized as recorded in the memo Ex.PW-23/B. The car was seized vide memo Ex.PW-23/D. The clothes worn by Ashish and Manoj on which blood stains were noted were seized vide memo Ex.PW-23/P and Ex.PW-23/Q respectively. Ashish made a disclosure statement Ex.PW-23/K in which inter -alia he said that he could get recovered a knife with which Shashi was injured and led the police party to a drain at Mathura Road. He pointed to a spot near the drain and from underneath a heap of leafs got recovered the knife Ex.P-4 which was seized vide memo Ex.PW-23/O.

10. Since Shashi died at Shahi Hospital at 6:25 PM on March 29, 2008, her dead body was seized and sent to the mortuary of All India Institute of Medical Sciences where Dr.Siva Prasad PW-16 conducted the post mortem of the dead body of Shashi and wrote the post mortem report Ex.PW-16/A in which the undernoted ante mortem injuries were recorded by him:-

“ANTE MORTEM INJURIES

1. A horizontal stitched would of 9 cm in length and 16 stitches in number, 9 cm above suprasternal notch and 7 cm below mentum was present over anterior neck. Out of the total length of 9 cm, 6 cm was on left side and 3 cm is on right side of the midline. The wound was subcutaneous deep on both sides of trachea. The anterior half of trachea is cut and it is more deep on left side than on the right side. On left side of trachea it is 0.6 cm deep and on right side of trachea it is

0.4 cm deep. The superior thyroid artery on left side is found surgically ligated. Other minor vessels are found to be ligated in the area. Major vessels in the neck are found intact. Thyroid gland is intact. The thyroid cartilage is cut as mentioned. The wound was found to be surgically closed layer by layer. The edges of the wound are irregular. Whereas the edges of the trachea cartilage wound are distinct, regular and sharp. There is some extravasation into surrounding subcutaneous tissues more on left side of the trachea. The tailing is present towards the right end of the wound.

2. The inverted V-shaped stitched laprotomy wound is present over upper half of the abdomen. From midline towards right lumbar region of 15 cm and towards left lumbar region of about 9 cm. The joint of the V-shaped laprotomy wound is 9 cm below xiphisternum and 7 cm above umbilicus in the midline. The right edge is 7 cm above right anterior superior iliac spine. The left edge is 12 cm above left anterior superior iliac spine. The wound has 24 stitches. On opening the stitches the margins are regular. The wound is found to be closed surgically layer by layer. On opening the abdomen in the liver the anterior border of right lobe is found to be stitched with two stitches near the falciform ligament. The wound is surrounded by adherent clotted blood on opening the stitches the wound was 6 cm deep cholecystotomy done. Cystic artery found to be ligated surgically. Multiple surgical repairs with stitches on pyloric walls and abdominal walls present. Adrenal vessel found to be repaired. Vessel in transverse, mesocolon found to be repaired. Retroperitoneal mesenteric hematoma was present. Blood stained fluid of about 200 ml was present in the peritoneum.

3. A stitched wound of size 2.8 cm with three stitches present horizontally from midline towards right side in the epigastric region. The medial end of the wound is 0.2 cm above the tip of V-shaped laprotomy wound (injury no.2). On opening the stitches the margins were regular and the lateral edges of the wound were blunt and 0.1 cm in width. The

wound is abdominal cavity deep. The direction is towards posteriorly and upwards. On probing it is leading towards the stitched wound of the liver as mentioned in injury no.2.

4. A oval shaped surgical drain wound was present in right lumbar region 2 cm below the right end of injury no.2. It is 1 x 0.5 cm and it is abdominal cavity deep.

5. A curvilinear scratch mark of size 0.6 cm x 0.1 cm in left upper neck 2 cm left of mid line, 6 cm above injury no.1 and 2 cm below mandibular margin. The base is red in colour.

6. A curvilinear scratch mark of size 0.4 cm x 0.1 cm in lower anterior neck midline 6 cm above suprasternal notch.

7. A curvilinear scratch mark of size 0.3 cm x 0.1 cm in lower left anterior neck 4 cm lateral to injury no.6

The time since death is about two days (hospital death). ”

11. He opined thereon regarding cause of death of Shashi as under:-

“OPINION:

The cause of death is hemorrhagic shock consequent to injury no.1 (cut throat) as well as injury no.2 & 3 individually as well as collectively sufficient to cause death in ordinary course of nature. Injury no.1, 2 & 3 have been caused by sharp edged weapon. Injury no.4 is a surgical wound. Injury no.5, 6 & 7 could have been caused by finger nails. There was also evidence of attempted smothering.”

12. Ashish and Manoj were produced on March 31, 2008 for TIP proceedings to be conducted before Manish Yaduvanshi PW-14 working as a Metropolitan Magistrate. The two refused to participate in the TIP proceedings as recorded in Ex.PW-14/B by Manish Yaduvanshi.

13. The investigating officer obtained call record details pertaining to the name of the registered subscriber of the mobile numbers 9928050500 (the number given on the DOT consent form Ex.5/D by the person who disclosed his name as Manoj Chaudhary), 9829413137 (the number given on the DOT consent form Ex.5/D by the person who disclosed his name as Vishal Chaudhary), 9783608985 purportedly used by Shashi from which she spoke to Mohd.Dilshad on his number 9871730789, the record of said number as also the mobile number 9829677920 purportedly used by Ashish.

14. As per Ex.15/C the number 9928050500 was for the SIM card issued in the name of Manoj Nandwana. There is no clarity in the evidence as to who was issued the SIM card for the number 9829413137 but it was issued in the name of a person residing at the same address at which address Ashish Nandwana was residing when SIM card for the mobile number 9783608985 was issued to him pursuant to the application form Ex.12/B submitted by him. As per Ex.15/E the number 9829677920 was in the name of Aditi, the sister of Ashish. As per the application from Ex.15/A, the number 9871730789 was in the name of Mohd.Dilshad.

15. The exhibits seized were sent for forensic examination. Sh.Naresh Kumar, Senior Scientific Assistant (Biology) FSL Rohini examined the exhibits, being twelve in number on which, human blood of the same group (A) was detected. This was the blood group of Shashi evidenced from the fact that her blood sample handed over by the doctor who conducted the post-mortem showed it to be of group (A).

16. The knife recovered at the instance of Ashish was sent to Dr.Siva Prasad PW-16 who opined vide Ex.PW-16/B that injuries on Shashi could have been caused by the knife Ex.P-4.

17. At the trial aforementioned persons whose names and witness numbers have been noted by us hereinabove while narrating the facts concerning the investigation appeared as witnesses to prove the various recoveries and seizures affected. Regretfully, the public prosecutor was lax evidenced by the fact that when Dr.Leena Dadhwal PW-4 and Jyoti Ramberd PW-5 were examined he did not put any question to the two whether the two boys who had brought Shashi to Shahi Hospital in the morning of March 29, 2008 and gave their names as Manoj Chaudhary and Vishal Chaudhary were the accused Manoj Nandwana and Ashish Nandwana. A direct percipient evidence of the two boys who took Shashi to the hospital was not brought on record through the mouth of the two witnesses.

18. Mohd.Dilshad PW-1 deposed that accused Manoj and Ashish were taken by him along with Shashi and her friend to Central Guest House where room No.232 and 233 was given to them and he and Ashish gave their I.D. proofs. He further deposed that next day he received a telephone call from Ashish who informed him that Shashi had either injured herself or had sustained injury in the bathroom. Ashish requested him to lend money. He refused saying that no such thing can happen and why was he trying to make a fool of him two or three days before the all fools day : 1st April. Ashish insisted and made him swear in the name of his mother that he should meet him. Therefore he went with his friend Shanu to Shahi Hospital. He met Ashish and Manoj in the waiting room of the hospital and on inquiry was told by them that everything was ok. The doctor wanted

blood to be arranged. He and Shanu not only arranged for blood but also donated blood. In the evening he received a call from the SHO to reach the police station where his statement was recorded.

19. Mohd.Dilshad PW-1 was subjected to a lengthy cross examination, but nothing has been brought out on record to discredit his testimony on oath.

20. Shahid Siddique PW-2 the Manger of the Central Guest House deposed that Dilshad, a local resident of Delhi had brought two boys and two girls to the guest house at 1:15 in the middle of the night on March 29, 2008 and on Dilshad's guarantee, after obtaining his I.D. proof Ex.P-2 and photocopy Ex.P-1 of Ashish's driving license he gave room No.232 and 233 to the boys and the girls on an assurance that the girls would stay in one room and the boys in the other. Cash receipt Ex.P-3 was issued by him after he received Rs.1,000/-. At 8:30 AM the girls called the attendant for tea to be served and since there was no kitchen facility in the guest house they were told that they could take tea outside the guest house. Thereafter Ashish and Manoj came to him and enquired about availability of tea. He told them that they could take tea outside the guest house at which the boys left. An attendant told him thereafter that a girl had fallen in room No.232. After 10-15 minutes of Ashish and Manoj leaving the guest house, when he was writing the accounts, Shashi pressing her neck with her scarf came to his counter. He asked what had happened. She replied that she had fallen in the bathroom and sustained injuries. She inquired whether there was a hospital nearby. He asked her whether the injuries were serious and she replied that it was a minor injury. He told her about Shahi Hospital. Ashish and Manoj came back in the meanwhile and took her to Shahi Hospital.

Thereafter at around 12:30 PM on March 29, 2008 Ashish and Manoj checked out and in his presence Manoj put his signatures at point 'B' on the guest register at entry Ex.PW-2/B. He had handed over photocopy of I.D. proof of Mohd.Dilshad, photocopy of Ashish's driving license and guest house register to the investigating officer who had drawn up the seizure memo Ex.PW-2/C in his presence.

21. Since Shahid Siddique was resiling from his statement made to the investigating officer on March 30, 2008 wherein he had stated that in the morning of March 29, 2008 the two accused, holding Shashi was seen noted by him going downstairs and on his asking them what was wrong they told him that Shashi had fallen in the bathroom and sustained injury, he was declared hostile by the learned Additional Public Prosecutor. He was confronted with his previous statement(s) made. He denied the same.

22. Cross examined by learned counsel for the accused he stated that the injured girl was in a position to speak and she herself told him that she had sustained the injury when she fell in the bathroom. He said that she told him that the hotel staff should clean the bathroom and therefore the hotel staff had cleaned the bathroom. He said that a broken glass was picked up by the hotel staff and thrown in the dustbin. He said that this fact was told to the police but in spite thereof they did not pick up the broken glass from the dustbin.

23. Mohd.Siddique PW-3 an attendant at the Central Guest House deposed that he had carried the luggage of two boys and two girls in room No.232 and 233 past midnight of the intervening night of March 28, 2008 and March 29, 2008. The girls stayed in one room and the boys in the other. Next day morning the girls rang up from room No.232 asking for tea

to be served. He told them that kitchen facility was not available and they could go outside to take tea. Thereafter he saw Ashish and Manoj leaving the guest house to take breakfast. Soon thereafter one girl came down holding her neck and abdomen. The Manager enquired from her as to what had happened and she informed that she had sustained injuries from a glass when she fell down. The Manager enquired whether the injury was serious. The girl replied that it was not serious. He and the Manager told her about Shahi Hospital. In the meanwhile Ashish and Manoj came back and took the injured girl to the hospital, but before leaving the girl told the Manager that her room and bathroom should be cleaned.

24. Since the witness was resiling from his statement recorded by the investigating officer on March 30, 2008 he was cross examined. He denied that he told the police that in the morning Ashish and Manoj had brought down Shashi and had taken her to Shahi Hospital. He denied that he told the police that in the afternoon Ashish and Manoj came back and checked out taking along with them the other girl.

25. Cross examined by learned counsel for the accused he said that it was correct that Shashi had told him to clean the room and the bathroom.

26. Dr.Leena Dadhwal PW-4 deposed having operated upon Shashi after she was admitted to Shahi Hospital by two boys who disclosed their names as Manoj Chaudhary and Vishal Chaudhary. Being relevant to discuss the argument of learned counsel for appellant Ashish, we would prefer to note Dr.Leena Dadhwal's testimony on oath regarding condition of Shashi and what surgical intervention was given by Dr.Leena Dadhwal. She spoke thus:

“Patient could not speak as her voice box pin on neck was cut and she was drowsy and arousable to pain, her pulse was 140 p/m, blood pressure was 80/50 mm/Hg, her pupils were equal size reacting to light. She had a long lacerated wound about 8 cm long in the upper crease of the neck with maximum depth in the centre with a leak through a hole in the air way which was equal to one cm, muscles were also cut, peripherally the depth was only upto subcutaneous tissue. She also had two cuts one of one & half inch and the other of one inch in the epigastrium and right hypochondrium. The abdomen was distended. There was free air and free fluid. On cathelrisation no blood in the urine. We had obtained high risk consent, if it was not available she was to be shifted to higher centre. Patient relatives gave high risk consent and she was taken for the surgery with the team of two more surgeons one of which was ENI surgeon. ENT surgeon repaired the neck injury under General Anesthesia. When I opened the abdomen along with another surgeon, we found there was lot of blood in the abdomen. There were multiple laceration in the pyloro duodenal junction, anterior duodenm, posterior duodenum, all perforation (four in number), laceration in the right lower lobe of liver and multiple in the gall bladder. There was a large retroperitoneal haematoma, right side was much bigger than left. There was no haemeturia. We removed the gall bladder, repaired the laceration on the liver and the perforations in the duodenum. Pont of bleeding in the retroperitoneal which was in the adrenal vessel was closed.

The patient was shifted to the ICU on a ventilator since she was not very well and did not show any improvement after the surgery despite all the best of resuscitative measures and six bottles of blood transfusion. She was declared dead at 6.45 PM on the same day.”

27. She proved MLC Ex.PW-4/A and the five page notes of patient.

28. On being cross examined she admitted that when brought to the hospital the patient was conscious enough to be able to write down in response to a question put to her. Surprisingly she admitted the suggestion that the injuries could be sustained by Shashi if she fell on a broken glass.

29. We note that Dr.Leena Dadhwal was not cross examined with respect to her testimony, which has obviously remained unchallenged that the subcutaneous deep cut in the neck of Shashi was cutting the trachea, in that there was a hole in the airway in the centre due to which the patient could not speak since her voice pin was cut.

30. Jyoti Ramberd PW-5 deposed facts and what was recorded on the DOT consent Ex.PW-5/D, in sync with what we have noted hereinabove while narrating the sequence of events during investigation and what various persons told and handed over to the investigating officer.

31. Dr.Siva Prasad PW-16 proved the post mortem report Ex.PW-16/A and his opinion Ex.PW-16/B concerning the knife got recovered by Ashish as per which he had said that the injuries on the body of Shashi could have been caused by the knife in question.

32. Relevant would it be to note that during cross examination even he admitted that the injuries could possibly have been caused by a fall injury if on glass.

33. Savita PW-7, the girl who had accompanied Shashi along with Ashish and Manoj to Delhi deposed that she and Shashi were classmates and were staying together as trainees at the Air Hostess Frankfin Institute at Jaipur. Shashi and Ashish were friends and used to move together. She came into contact with Manoj through Shashi and Manoj became her friend. On March 28, 2008 all four came to Delhi together and met Shashi's friend

at India Gate who took them to a guest house at Nizammudin where room No.232 and 233 was allotted. She and Shashi stayed in room No.232. Ashish and Manoj stayed at room No.233. At around 9:00 AM on March 29, 2008 Ashish and Manoj came to their room and left saying that they were going to take breakfast. She went to room No.233 and came out after 30-45 minutes but found room No.233 locked and on inquiry was told that her friend had got injured while taking a bath and that her two male friends had taken her to the hospital.

34. The police officers associated with the investigation deposed facts and proved seizures and drawing up of various memos which we have noted hereinabove while narrating the sequence of events during investigation. The service providers of the five mobile phone numbers 9928050500, 9829413137, 9783608985, 9829677920 and 9871730789 deposed and proved various application forms pertaining to the name of the subscriber as per facts noted by us in paragraph 13 and 14 above while narrating the steps taken during investigation to gather relevant evidence pertaining to the fact in issue i.e. what happened to Shashi on the fateful day and who all were in her company.

35. We are therefore not noting in detail the deposition of other witnesses.

36. When the incriminating circumstances were put to the accused they denied everything. But to question No.6 : *It is in evidence against you that PW-2 Shahid Siddique, the Manger of Central Guest House, has specifically deposed in his statement Ex.PW-2/D he has stated that accused Ashish and deceased Shashi had stayed in room No.232 and accused Manoj along with Julie had stayed in room No.233 of the guest house. What have*

you to say? Ashish replied : ‘It is incorrect. Shashi and Savita were staying at room No.232.’

37. It is apparent that he admitted, by not denying, that even he and Manoj stayed in the guest house. He only said that Shashi and Savita stayed in room No.232. He was clever enough not to say that as per him he and Manoj stayed in room No.233, but said admission would be implicit because when it is your duty to speak fully, a half answer would result in a presumption being drawn concerning the other.

38. As regards Manoj he denied the incriminating circumstance as per question No.6. In other words Manoj denied that he along with Ashish had stayed in the guest house along with Shashi and Savita @ Julie.

39. The testimony of Mohd.Dilshad PW-1, Shahid Siddique PW-2 and Mohd.Siddique PW-3 coupled with the record seized by the Investigating Officer from Shahid Siddique concerning the guest house leaves not even an iota of doubt that Ashish and Manoj had checked into the guest house along with Shashi and Savita past midnight of the intervening night of May 28, 2008 and May 29, 2008. The suggestions put to the two witnesses by learned defence counsel are an admission by Ashish and Manoj that they were in the guest house in the company of the two girls. The suggestions by the two to the two witnesses is that the two witnesses had seen the girl Shashi coming down the stairs and telling them that she had suffered the injuries due to a fall on a glass in the bathroom. The two have suggested to the two witnesses that at that point of time Ashish and Manoj came back to the guest house after taking breakfast and took Shashi to Shahi Hospital.

40. Learned counsel for appellant Ashish argued the appeal conceding that there is irrefutable evidence to establish that Ashish and Manoj along

with Shashi and Savita had checked into the guest house past midnight in the intervening of March 28, 2008 and March 29, 2008. Learned counsel conceded that notwithstanding PW-4 and PW-5 not being made to identify the two boys who took Shashi to Shahi Hospital, it was Ashish and Manoj who took Shashi to the hospital. Counsel conceded that the two tried to hide their identity by changing their surname from '*Nandwana*' to '*Chaudhary*' and Ashish going a step further by disclosing his name as '*Vishal*'.

41. The only argument advanced was with reference to the admissions made by Dr.Leena Dadhwal PW-4 and Dr.Siva Prasad PW-16 during cross examination that the injury on the person of Shashi could be possible if she fell on glass. Learned counsel argued that the testimony of PW-2 and PW-3 corroborates the fact that Shashi suffered the injury after Ashish and Manoj had left the guest house to take breakfast and she had walked down to the lobby of the guest house holding a scarf on her neck and clutching on to her stomach. She told PW-2 and PW-3 that she got injured when she fell in the bathroom on a glass. At that point of time Ashish and Manoj came back and took Shashi to Shahi Hospital. Learned counsel urged that if experts confirm that the injuries were possible due to Shashi falling on glass, there is no reason why Shashi's dying declaration made to PW-2 and PW-3 should not be believed.

42. It is apparent that Dr.Leena Dadhwal and Dr.Siva Prasad have been won over by the accused. They have spoken a white lie when they admitted the suggestion that the injuries could be suffered by Shashi if she fell on a glass.

43. We firstly deal with whether Shashi could have told Shahid Siddique and Mohd.Siddique that she had sustained the injuries when she fell in the bathroom on a glass.

44. We have already noted hereinabove the testimony of Dr.Leena Dadhwal and the MLC Ex.PW-4/A authored by her and have highlighted that as per her oral testimony and the MLC, Shashi was not in a position to speak because injury No.1 which was subcutaneously deep on both sides of trachea had cut the muscle up to the trachea. The thyroid cartilage was cut. Her deposition that the patient could not speak as her voice box pin on neck was cut, has not even been challenged during cross examination. It may be true that Dr.Leena Dadhwal had said that Shashi was conscious when she was brought to the hospital, but has clarified that not being in a position to speak, Shashi's consciousness was enabling her to respond to a question by writing. The issue is not of Shashi's consciousness. It is one of Shashi being in a position to speak. We note that Shashi's post mortem report also corroborates that her voice pin box has a hole.

45. This completely demolishes the defence which is premised on the unfortunate fact of PW-2 and PW-3 also giving a twist to the truth, obviously being won over by the accused, to justify a defence which has no foundation : a defence which is a castle built with sand on sand near the sea beach, a gentle wave capable of sweeping away which airy castle.

46. PW-2 and PW-3, who were obviously aware that Shashi had not fallen on any glass, had tried to give a twist by deposing that since Shashi had told them to get the bathroom cleaned, they got the bathroom cleaned. Now, Shashi was not in a position to speak. Thus she could not have told the two to get the room cleaned.

47. As per PW-2 and PW-3 the broken glass was thrown in the dustbin but the police did not seize the same in spite of being told said fact. Statements of PW-2 and PW-3 recorded on March 30, 2008 by the investigating officer do not disclose any said fact. The argument of learned counsel for the appellant was that the investigating officer has wrongly and falsely recorded facts and attributed the same to the two witnesses.

48. This line of reasoning overlooks that if Shashi fell in the bathroom and in the process of the fall hit a glass, the same had to be a glass which one ordinarily finds in a bathroom. It could be the looking mirror glass. It could be the glass partition to segregate the bathing area from the toilet area. The broken glass pieces may have been removed (if at all) upon the bathroom being cleaned. But the site where the glass was affixed would have shown that at the site in question there existed a glass which had broken.

49. The photographs Ex.PW-11/1 to Ex.PW-11/19 do not evidence any such fact.

50. Further, if the glass had broken and Shashi had instructed the bathroom to be cleaned, and obeying the instructions PW-2 and PW-3 got the bathroom cleaned, the splattered blood on the walls and the floor of the bathroom would also have been cleaned. The photographs show blood stain on the door of the bathroom, the walls and the floor thereof. The window of the bathroom has a grill. The glass is on the panes. The blood splattered on the walls suggests a scuffle and a movement of Shashi's body when she was standing up right. The blood stains are above the cistern in the toilet and it gives us an indication that the blood stains on the tiles in the wall of the toilet are up to 5 feet above the floor level.

51. Turning to the blatant white lie admission made by Dr.Leena Dadhwal and Dr.Siva Prasad that the injuries on the person of Shashi were possible if she fell on glass, we are left aghast at the murky depth to which humans can fall. The two are ready to stake their careers for money.

52. We go back to the post mortem report Ex.PW-16/A which mirrors MLC Ex.PW-4/A and the note sheets attached therewith. We go back to the testimony of Dr.Leena Dadhwal PW-4. As Shashi's abdomen was opened Dr.Leena Dadhwal saw multiple laceration in the pyloroduodenan junction, anterior duodenum, posterioduodenum, four perforations, laceration in the right lower lobe of liver and in the gall bladder. She noticed a large retroperitoneal haematoma. She had to remove the gall bladder. The laceration on the liver and perforations in the duodenum were repaired. The adrenal vessel, which was found cut, was plugged. Injury No.2 in the post mortem report shows that there were two stitches near the falciform ligament. The cystic artery had also a surgical stitch. The adrenal vessel was found repaired.

53. Cumulatively read, the MLC and the note sheets attached therewith coupled with the post mortem report would evidence that the sharp edged object which pierced the abdomen of Shashi had gone deep inside the abdominal cavity. The falciform ligament is the ligament that attaches the liver to the anterior (ventral) body wall. It is a broad but thin antero-posterior peritoneal fold falciform (latin : *sickle-shaped*). It droops down from the hilum of the liver. The cystic artery supplies blood to the gall bladder and the cystic duct. The adrenal glands, also known as supra renal glands are endocrine glands, sitting at the top of the kidneys. The injury is

so deep inside the body that it renders impossible a glass piece piercing the body if a person falls on glass.

54. That apart, reasons given by the learned Trial Judge with reference to forensic science, which we have noted in paragraph 4 above to conclusively disprove that injuries could be caused by a fall on glass. We adopt said forensic evaluation by the learned Trial Judge who has referred to a text on the subject as our reasoning.

55. Contention urged regarding testimony of Savita PW-7 that she and Shashi stayed in room No.232 and Manoj and Ashish stayed in room No.233 and that she went to room No.233 in the morning after Manoj and Ashish had left and came back to room No.232 after 30 or 45 minutes to learn that her friend had been taken to a hospital because she fell in the bathroom and got injured in the process requires it to be held that Ashish could not be present in room No.232, needs to be noted and rejected for the reason it became Savita's compulsion to depose that she slept in the room with her friend Shashi, because any admission by her that she slept in a room with Manoj would have invited problems for her from her family members. That apart, it hardly matters who slept where. What matters is that Shashi was assaulted in room No.232. It is apparent that somebody was wanting to become physical with her. Injuries Nos.5, 6 and 7 have been opined by the doctor who conducted the post mortem as a result of scratch marks caused due to finger nails. The same suggest an attempt to smother Shashi as deposed to by the doctor who conducted the post mortem of Shashi's dead body. These injuries were not possible if Shashi fell on glass. It is apparent that Savita was not present in room No.232 when Shashi was assaulted. Her claim that she went to take a bath in room

No.232 is a desperate attempt to justify she sleeping in room No.232, obviously with Manoj. Even she has spun a fanciful story. That apart, there is tell tale evidence that Ashish was in the company of Shashi when Shashi suffered the injuries. The truth was spoken by PW-2 and PW-3 when they told the investigating officer that they had seen Ashish and Manoj bringing down the stairs Shashi who was injured. We have already given reasons as to why the twist made by the two witnesses while deposing in Court that Shashi walked down the staircase alone and spoke to them is not believable, being the impossibility of Shashi speaking due to hole in her voice pin box.

56. Evidence brings out that when they were in the room, something happened which led Ashish to cause injuries to Shashi. Manoj and Savita obviously panicked. Savita being a girl panicked more. Her moral reputation was at stake. How could she tell her parents that she slept in a room with a boy. Manoj found himself in a messy situation. The three i.e. Ashish, Manoj and Savita had very little time to think of a strategy to extract themselves. The good in Manoj and Ashish came into conflict with the evil in Ashish. Both of them took Shashi to the hospital hoping and praying that she would survive. But fate had willed otherwise for Shashi. She died. It stared Manoj, Ashish and Savita in their face that the prosecution had irrefutable evidence of the three staying in the guest house along with Shashi. Photocopy of Ashish's driving license given as I.D. proof to PW-2 was with the police. The staff at the guest house had seen the four together in the guest house. They had recorded their stay in the guest house by making an entry in the register of guests. The three tried to

weave a web of lies into the strands of truth which were beyond their control of being refuted.

57. There is no escape from the conclusion that the impugned decision is sound in law and has to be affirmed.

58. The appeal is dismissed. The conviction and sentence imposed upon Ashish is affirmed.

59. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 01, 2014

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